

**BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI**

In the Matter of the Application of)
Evergy Missouri West, Inc. d/b/a Evergy Missouri) File No. EO-2022-0061
West For Approval of a Special High Load Factor)
Market Rate)

REPLY BRIEF OF EVERGY MISSOURI WEST

COMES NOW Evergy Missouri West, Inc. d/b/a Missouri West (“EMW” or “Company”) and pursuant to the Missouri Public Service Commission’s (“Commission”) *Order Setting Procedural Schedule* issued December 15, 2021 (“Order”) submits its *Reply Brief* (“Reply Brief”).

In support thereof, EMW states as follows:

All parties agree that EMW’s application for the approval of a Schedule MKT should be granted with modifications to the tariff language. The remaining issues involve which tariff provisions should be utilized to effectuate the new service.

I. OPC/MECG/STAFF’S ECONOMIC DEVELOPMENT RIDER (“EDR”) PROHIBITION SHOULD BE REJECTED.

As OPC has pointed out, the two “compromise” exhibits related to the EDR restriction, Ex No. 7 and 904, are quite similar except that the OPC/MECG/Staff tariff proposal added a second paragraph that would limit the availability of the Schedule MKT to the lesser of three customers or 500 MWs of load for the first five years.¹

The language in Exhibit No. 904 is not acceptable to EMW to the extent that it would limit the availability of Schedule MKT “to the lesser of three (3) customers or 500MW” for a period of five years. Given the strong interest of data centers and other high load factor customers in locating in the Kansas City area, it would not be in the public interest to limit the availability of Schedule MKT in the manner required under Exhibit 904. This is especially true since the Golden Plains

¹ OPC Brief, pp. 43-46; Staff Brief, pp. 11-12.

Technology Park is still in its developmental stages, and it is not certain how many data centers or other high load factor customers will find the Kansas City area attractive for their growing businesses.

While OPC claims that Ex. 904 would make the Schedule MKT effectively a “pilot program,”² the large load, high load factor customers which EMW seeks to attract to Missouri do not need a pilot program, but they need a permanent solution to their need for competitively priced electricity and a method to meet their renewable energy goals. Otherwise, Missouri is likely to lose future high load factor customers. Schedule MKT, as proposed by EMW and Velvet, meets these goals and should be available to all eligible large load, high load factor customers that can be attracted to EMW’s service area. The Commission should not seek to limit the number of data center customers to only three customers or a specified amount of load that could be served off the Schedule MKT.

For these reasons, the EDR Prohibition proposed by OPC, MECG, and Staff should be rejected.

II. EVERGY/VELVET’S HOLD HARMLESS PROVISION SHOULD BE ADOPTED.

As explained in EMW’s Post-Hearing Brief, the OPC Stipulation tariff includes a “hold harmless” provision which will limit the ability to EMW to present evidence of economic benefits and other information related to the Market Rate contract and will prohibit the Commission from considering “all relevant factors” related to any proposed deficiency adjustment in a Commission proceeding.

Staff incorrectly asserts that “The Evergy/Velvet proposal would permit Evergy to ‘present evidence . . . of other economic benefits as a result of Schedule MKT customers taking service from the Company in order to avoid holding non-MKT customers harmless from the effects of the MKT”

² OPC Brief, pp. 45-46.

customers.”³ (emphasis added) This assertion is a mischaracterization of the purpose or effect of the EMW/Velvet “Hold Harmless” provision.

Under EMW/Velvet’s “Hold Harmless” provision, EMW and the Schedule MKT customer will have the opportunity to present evidence for the Commission’s consideration of other economic benefits of Schedule MKT customers taking service from the Company to show that there is no harm to non-MKT customers. The Commission will have the opportunity to evaluate “all relevant factors” to determine whether there is any harm from the Schedule MKT customers’ Market Rate contracts.⁴ Based upon the competent and substantial evidence in the whole record, the Commission will evaluate the need for a deficiency adjustment, if any, to protect non-MKT customers.

In the *Nucor* case, the Commission considered evidence of the benefits of economic development, employment benefits, and tax revenues as a part of evaluating the public interest of the special contract.⁵ In *MEEIA* cases, the Commission has often considered evidence of social and societal benefits, including energy efficiency benefits, improved health and safety benefits, investment in local economies and local job creation, and other public policy issues as it evaluated energy efficiency programs.⁶ In a complaint case involving Noranda Aluminum’s rates, the Commission considered benefits to the local economy, employment benefits, and other relevant factors (besides the cost of service) in assessing the appropriateness of Noranda’s special tariffed rates.⁷

³ Staff Brief, p. 12.

⁴ Tr. 196-97.

⁵ Tr. 196-97; *Report and Order*, pp. 5-7, 12-14, Re Application of KCP&L Greater Missouri Operations Company for Approval of a Special Rate for a Facility Whose Primary Industry Is the Production or Fabrication of Steel in or Around Sedalia, Missouri, File No. EO-2019-0244 (issued November 13, 2019).

⁶ Tr. 197; *Report and Order*, pp. 13-14, Re Evergy Missouri Metro and Evergy Missouri West’s Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism, File No. EO-2019-0132 (December 11, 2019).

⁷ Tr. 197; *Report and Order*, pp. 5-7, Noranda Aluminum, Inc. v. Union Electric Company d/b/a Ameren Missouri, File No. EC-2014-0224 (August 20, 2014).

Contrary to Staff’s argument, EMW/Velvet’s Hold Harmless provision will protect non-MKT customers if the Commission finds that there is a harm to non-MKT customers after evaluating the evidence, including economic benefits and other externalities related to the presence of the Schedule MKT customers on EMW’s system. If the Commission finds a revenue deficiency is necessary to hold harmless non-MKT customers after evaluating all the evidence, then EMW and its Schedule MKT customer would share equally the financial impact of any deficiency adjustment.⁸

EMW/Velvet’s proposed “Hold Harmless” language does not “avoid holding non-MKT customers harmless from the effects of the MKT customers” as argued by Staff. To the contrary, EMW/Velvet’s provision would allow the Commission to have a fully developed record to evaluate whether there was a need for a revenue deficiency adjustment to insulate non-MKT customers at all.

OPC spends nearly 25 pages in its brief arguing in favor of what OPC characterizes as a “true and proper hold-harmless provision.”⁹ Boiling down OPC’s argument, OPC argues that there are two reasons OPC believes that its hold-harmless provision is needed: (1) “the first reason is simply because Evergy has explicitly stated that it does not intend for non-MKT customers to subsidize MKT customers and the Commission should hold Evergy to its expressly stated intent”¹⁰; and (2) the “second is that having such a provision ensures that Evergy diligently negotiates the MKT contracts by ensuring the Company will only be able to earn a profit if it fully recovers the cost to serve MKT customers from the MKT customers.”¹¹ Neither reason is a valid one that would justify the adoption of OPC’s proposed language.

⁸ EMW/Velvet Stipulation, Schedule 1, Schedule MTK, Additional Provisions Section, Paragraph 4 states in part: “In the event that any Commission ordered deficiency adjustment is required, the Schedule MKT customer for which there is Commission determined deficiency of revenues to cover the incremental costs to serve will receive a Special High-Load Factor Market Rate Contract rate adjustment sufficient to pay for half the determined cost to serve, with the remainder of the deficiency being borne by the Company.”

⁹ OPC Brief, pp. 6-30.

¹⁰ OPC Brief, p. 17.

¹¹ Id.

It is true that EMW does not intend non-MKT customers to subsidize MKT customers.¹² However, OPC's language does nothing to promote this goal. OPC's language is a blatant attempt to hamstring EMW from presenting its case to the Commission, and the Commission from considering "all relevant factors" in assessing whether the Schedule MTK customer's rate is appropriate and recovering its cost to serve the customer.

Second, OPC's hold harmless language is not needed to give EMW an incentive to negotiate the Market Rate contracts to ensure that the Schedule MKT rates will recover the incremental costs of serving the MKT customer. Any Market Rate contract will be subject to the review and approval of the Commission. In addition, the Commission retains the police power to review all rates including contract rates, if necessary, to establish just and reasonable rates.¹³

Under the EMW/Velvet Hold Harmless provision, EMW will be responsible for one-half of any revenue deficiency adjustment found to be appropriate by the Commission. Under these circumstances, EMW has every incentive to negotiate a just and reasonable rate with its Schedule MKT customers.

OPC mistakenly argues that the EMW/Velvet tariff sheet "is designed to allow Evergy to clawback the ability to harm non-participants by forcing them to pay part of the cost of serving MKT customers..."¹⁴ Clawback has been defined as:

. . . a specific provision within a legal contract that requires the return of money to an employer in the event of specified actions on behalf of the employee. This type of document may require monies to be paid back if there is poor performance, scandal or misconduct on behalf of the employee or if there is a decrease in overall company profit. A clawback agreement will include the specific amount to be repaid as well as the situations that

¹² Tr. 184.

¹³ See City of Fulton v. Public Service Commission, 204 S.W.386 (Mo. Banc 1918); State ex rel. City of Sedalia v. Public Service Commission, 275 Mo. 201 (Mo. 1918); State ex rel. Washington University v. Public Service Commission, 272 S.W.971 (Mo. 1925); Kansas City Power & Light Co. v. Midland Realty Co., 93 S.W.2d 954 (Mo. 1936).

¹⁴ OPC Brief, p. 21.

necessitate the money to be paid. It will also define the timeline for repayment as well as any additional penalty that may be incurred.¹⁵

Nothing in the EMW/Velvet Hold Harmless provision remotely resembles that definition of a “clawback”.

Apparently, the following sentence in the EMW/Velvet’s proposed tariff is being mistakenly interpreted by OPC as a “clawback”: “It is expressly recognized that the Company and the Schedule MKT customer shall have the right to present evidence for the Commission’s consideration of other economic benefits as a result of Schedule MKT customers taking service from the Company.”¹⁶ This sentence is in no way is a “clawback” of money given to customers. It is simply a reservation of rights to present evidence of other economic benefits to the Commission.

The OPC/MECG/Staff’s proposed tariff, on the other hand, is designed to exclude EMW’s presentation of evidence of economic benefits from future hearings before the Commission. The OPC/MECG/Staff’s position on this issue is effectively a blanket motion *in limine* to exclude any evidence of economic benefits in any future proceeding involving Schedule MKT rates. Motions *in limine* have not been favored by the Commission in past cases, and in fact, have typically been denied.¹⁷ Similarly, the Commission should reject OPC/MECG/Staff’s attempt in this proceeding to incorporate a tariff provision to exclude any evidence of economic benefits from any future proceeding involving Schedule MKT customers.

¹⁵ <https://www.contractsounsel.com/t/us/clawback-agreement>

¹⁶ Ex. 8, EMW/Velvet Non-Unanimous Stipulation, Schedule 1, page 5 of 7.

¹⁷ Order Denying Motions in Limine, Grant, In Part, Motion to Compel, and Granting Motion to File Late-filed Exhibit, Re Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Continue the Implementation of its Regulatory Plan in the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service, File No. ER-2010-0355 (January 12, 2011); Order Denying Second Motion in Limine Of Indicated Industrials, Re Great Plains Energy Incorporated and Aquila, Inc. for Approval of the Merger of Aquila, Inc. with a Subsidiary of Great Plains Energy Incorporated, Case No. EM-2007-0374 (April 8, 2008); Order Denying Motion in Limine, Re Spire Missouri, Inc., File No. GO-2018-0310 (May 19, 2020).

The Commission has often held that it is obligated under State ex rel. Utility Consumers Council of Missouri v. Public Service Commission, 585 S.W.2d 41 (Mo. banc 1979) and Section 393.270(4), RSMo to consider “all relevant factors” when establishing “just and reasonable” rates.¹⁸ The Commission should continue this long-standing practice and reject OPC’s attempt to exclude relevant evidence from consideration in any future case involving the evaluation of Market Rate contracts.

III. EVERGY/VELVET’S RES/RESRAM PROVISION SHOULD BE ADOPTED

There are two separate issues related to the RES/RESRAM provision, and they will each be addressed separately:

- A. **There is No Disagreement that Schedule MKT Customers Should Be Exempted from RESRAM Charge. However, the EMW/Velvet Stipulation Proposes a Better Approach For Exempting Schedule MKT Customers from the RESRAM Charge.**

The parties, including Staff and OPC, agree that Schedule MKT Customers should be exempt from the RESRAM charge under specified circumstances.¹⁹ The parties also agree that it is within the Commission’s statutory authority to exempt Schedule MKT customers from the Commission rule that created and defined the method for calculating the RESRAM charge.²⁰

The only disagreement is which of the proposed tariff provisions works best for accomplishing this goal. The following language in the EMW/Velvet Stipulation best accomplishes

¹⁸ See Order Denying Reconsideration And Offering Clarification, Noranda Aluminum, Inv. v. Union Electric Company d/b/a Ameren Missouri, Case No. EC-2014-0223 (June 11, 2014); Order Directing Filing, Re Missouri Public Service, Case No. ER-2001-672 (July 27, 2001) (“Public Counsel contends that proceeding with UtiliCorp’s rate case would violate the ‘all relevant factors’ requirement imposed by Section 393.270.4, RSMo 2000. This statute requires that the Commission consider all relevant factors in setting just and reasonable utility rates.”). See also State ex rel. Missouri Water Co. v. Public Service Commission, 308 S.W.2d 704, 719 (Mo. 1957); State ex rel. Midwest Gas Users’ Ass’n v. Public Service Commission, 976 S.W.3d 470, 479 (Mo.App., W.D. 1998); State ex rel. Office of Public Counsel v. Public Service Commission, 858 S.W.2d 806, 812 (Mo.App. W.D. 1993).

¹⁹ Staff Brief, p. 7; OPC Brief, pp. 33-37; Velvet Brief, pp. 16-20; EMW Brief, pp. 17-21.

²⁰ Id.

this goal, and is consistent with Velvet’s plans, and the Commission’s past practices for other special contract customers:

6. Notwithstanding any provisions of the Company’s RESRAM tariff to the contrary, a Schedule MKT Customer shall not be subject to RESRAM charges unless a Schedule MKT customer does not have renewable attributes supporting its load greater than or equal to the then existing Renewable Energy Standard.²¹

Velvet is committed to having 100% of its load supported by renewable energy resources.²²

Under the EMW/Velvet Stipulation, the RESRAM will not be applicable to Velvet since Velvet will be sourcing sufficient renewable resources to cover 100% of its expected load—exceeding the 15% Renewable Energy Standard (“RES”) in Missouri. Under these circumstances, it is not appropriate to require Velvet to pay a second time under the RESRAM for covering Missouri’s RES requirement.

Exempting Velvet’s load from the RESRAM is also consistent with the Commission’s order in the *Nucor* special contract case. In that case, Nucor was authorized to take service under EMW’s SIL tariff that excluded Nucor from the RESRAM surcharge.²³

The RESRAM tariff provision in the OPC/MECG/Staff proposal is as follows:

7. Any provisions of Evergy Missouri West’s RESRAM tariff to the contrary notwithstanding, Customer will not be subject to RESRAM charges if its contribution through a renewable energy contribution charge meets or exceeds the incremental RES compliance costs attributable to the Customer. In such an event, all monies collected through the renewable energy contribution charge shall be used to offset Evergy Missouri West’s RESRAM revenue requirement.²⁴ (emphasis added)

OPC describes its proposal as follows: “In short, this proposal effectively works by taking what would normally be a separate RESRAM bill component for a regular Evergy customer and

²¹ Ex. 8, EMW/Velvet Stipulation, Schedule 1, page 5 of 7.

²² Ex. 300, Brubaker Surrebuttal, p. 3; Tr. 142, 307.

²³ Ex. 301, Original Sheet 157.1. (“Service under this tariff shall be excluded from projected energy calculations used to establish charges under Riders FAC and RESRAM, and programs offered pursuant to the Missouri Energy Efficiency Investment Act, unless otherwise ordered by the Commission when approving a contract for service under this tariff.”)

²⁴ Ex. 203, OPC Stipulation, Schedule 1, Schedule MTK, Availability Section, Paragraph 7.

incorporating it into the MKT contract at a fixed rate in the same manner as the other MKT contract fixed rates. That is all there is to it.”²⁵

Under the OPC/MECG/Staff approach, Velvet and other Schedule MKT customers will need to pay a “renewable energy contribution charge” as a part of the MKT contract that meets or exceeds the incremental RES compliance costs attributable to the Customer even though that customer has sourced 100% of its load from renewable energy sources.

EMW believes the OPC/Staff approach is not workable and is inconsistent with the corporate commitments of Velvet to source 100% of its load from renewable sources since Schedule MKT customers may need to pay additional “renewable energy contribution charges” to be exempted from the RESRAM.

OPC suggests that “if Evergy already has sufficient renewable resources to serve the customer under the RES statute, there will not be any incremental costs and hence the MKT customer will not have had to pay anything.”²⁶ The OPC’s approach could mean that the first MKT customer that took service under Schedule MKT would not have to pay a RESRAM if EMW was, at that moment in time, more than covering its RES compliance requirements, but a future MKT customer would have to pay the “renewable energy contribution charge” if EMW’s RES standard was not being met at the time the subsequent customer commenced service under the Schedule MKT. It would be hard to justify such disparate treatment based only upon the EMW’s circumstances (i.e. whether EMW was already exceeding the RES requirements) that existed at the time the Schedule MKT customer commenced being served by EMW.

²⁵ OPC Brief, p. 33.

²⁶ OPC Brief, p. 33.

For the foregoing reasons, the Commission should adopt the EMW/Velvet proposed tariff language exempting Schedule MKT customers from RESRAM and reject the RESRAM proposal of OPC/MECG/Staff.

B. The Commission Has the Statutory Authority to Grant A Variance from RES Rules That Determine the Method for Calculating EMW's RES Portfolio Requirements and Compliance Costs.

EMW/Velvet's proposed variances are designed to protect other non-MKT customers from having their RESRAM charges increased by the addition of Velvet's or other Schedule MKT customer's load when those customers are already sourcing their proportionate share of EMW's RES portfolio requirement through their own means. It would not be good public policy to increase the RESRAM surcharge to other non-MKT customers with the addition of Velvet's load which is expected to be already sourced 100% by renewable energy sources. While OPC and Staff recognize the importance of the issue to other customers of EMW, they are concerned that the Commission may not have the authority to fix a legal concern by granting the proposed variances by EMW.

OPC and Staff both assert that the Commission has no authority to grant a variance from Section 393.1030(1).²⁷ While EMW agrees that the Commission may not grant a variance from the statute, it is within the Commission's authority to grant variances from the RES/RESRAM rule itself that determines how those RES portfolio requirements and compliance costs for the RESRAM charge are determined. 20 CSR 4240-20.100(11) states in part:

(11) Variances. Upon written application, and after notice and an opportunity for hearing, the commission may grant a variance from any provision of this rule for good cause shown.

In fact, the Commission in the past has granted EMW variances from the RES/RESRAM rules.²⁸

²⁷ Staff Brief, p. 7; OPC Brief, pp. 34-35.

²⁸ Order Approving Partial Stipulation and Agreement, Rejecting Tariff, And Establishing Procedural Schedule, Re KCP&L Greater Missouri Operations Company's Application for Authority to Establish a Renewable Energy Standard Rate Adjustment Mechanism, File No. EO-2014-0151 (issued November 5, 2014); Order Regarding 2018 RES Compliance Report, Re KCP&L Greater Missouri Operations Company's Submission of Its 2018 RES Compliance Report, File No. EO-2019-316 (September 4, 2019).

Section 393.1030(1) states that the “portfolio requirement shall provide that electricity from renewable energy shall constitute the following portions of each **electric utility’s sales**:

* * *

(4) No less than fifteen percent in each calendar year beginning in 2021.”

The term “electric utility sales” is not defined in the statute.

The subsection goes on to state: “The portfolio requirements shall apply to **all power sold to Missouri consumers** whether such power is self-generated or purchased from another source in or outside the state.” Again, the statute does not define “all power sold to Missouri consumers.” (emphasis added)

The General Assembly directed the Commission to promulgate rules to implement the provisions of Section 393.1030.²⁹ The task of defining what electric utility sales will be used to determine the utility’s portfolio standard requirements and the revenue requirements that will be used to calculate the RESRAM charge was left to the Commission. The Commission has followed the General Assembly directive to develop RES/RESRAM rules to determine how the RES portfolio requirements will be determined and how the RESRAM charge will be calculated.

20 CRS 4240-20.100(2) states that “The RES portfolio requirements are based on total retail electric sales of the electric utility.” The Commission’s RES rule 20 CSR 4240-20.100(1)(W) defines “total retail electric sales” as “the megawatt-hours (MWh) electricity delivered in a specified time period by an electric utility to its Missouri retail customers’ monthly billing statements.” The phrase “total retail electric sales” is defined only by the Commission’s rule and the Commission may grant a variance from it.³⁰

²⁹ Section 393.1030(1), RSMo.

³⁰ 20 CSR 4240-20.100(11).

Staff witness Claire Eubanks testified that the term “electric utility sales” used in the statute has the same meaning as the phrase “total retail electric sales” used in the Commission’s RES rule, “To me they’re the same, they mean the same, but the words are different.”³¹

EMW and Velvet are requesting a variance so that Velvet’s load is not included in “total retail electric sales” under 20 CSR 4240-20.100(1)(W). Under the EMW/Velvet proposed tariff, “the kWh supported by Schedule MKT customer’s ‘renewable attributes’ will be subtracted from the calculation of total retail electric sales in 20 CSR 4240-20.100.”

Under the second variance, the RES compliance costs needed to serve a Schedule MKT customer would not be characterized as part of EMW’s RES revenue requirement under 20 CSR 4240-20.100(1)(S)(1). This would also ensure that Velvet’s Market Rate contract would not increase the RES revenue requirements for other non-MKT customers.

The effect of these two variances is to recognize that EMW’s RES requirements and the RESRAM paid by other customers should not be affected by the Schedule MKT customer’s Market Rate contract since the customer will have demonstrated that it had retired or had retired on its behalf, Renewable Energy Credits (“RECs”) equal to or more than equal to what would be otherwise considered its share of the RES compliance costs.

For these reasons, EMW respectfully requests that the Commission approve the EMW/Velvet Stipulation, including the RES/RESRAM tariff provision and the requested variances discussed above.

IV. OPC/MECG/ STAFF’S SECURITIZATION PROVISION SHOULD BE REJECTED.

As explained in Evergy’s Post-Hearing Brief, the regulatory authority for securitizing assets of an electric corporation was recently granted by the General Assembly.³² Section 393.1700 RSMo.

³¹ Tr. 468 l: 17-18.

³² §§393.1700, RSMo.

is a very complex statute that will require careful analysis in any future proceeding in which an electric company is requesting the authority to securitize some of its assets.

To date, the Commission has not authorized any public utility to securitize any of its assets, pursuant to this statutory authority.³³ However, EMW has filed a *Notice Of Intended Case Filing* which stated “that it intends to file a petition pursuant to RSMo. §393.1700.2(2) to obtain a financing order that authorizes the issuance of securitized utility tariff bonds regarding the extraordinary costs incurred during the anomalous weather event of February 2021.”³⁴ EMW expects to file its application in the near future. It would be premature to include OPC/MECG/Staff’s securitization provision as a part of the Schedule MKT tariff being considered in this proceeding.

Staff and OPC did not provide any legitimate reason why the Commission must include the securitization provision in this case when there is a case on the near horizon that will fully address the issues raised by securitization for EMW, including a determination of what customer classes may be required to have a securitization surcharge on their bills.

OPC argued that the Commission should include the securitization provision in this case since “the MKT tariff sheet will need to be updated and any contracts that had previously been entered into under that tariff sheet may need to be renegotiated to include the securitization charge once Evergy’s first securitization case is complete.” (OPC Br. at 39-40). While it is likely some edit to the MKT tariff is expected, this argument is also premature. EMW’s application in File No. EF-2022-0155 is expected to include a securitization schedule which will be a separate tariff to address the securitization surcharge and related issues. This schedule will be separate from any other rate schedules much like the schedules related to the Fuel Adjustment Charge³⁵, RESRAM³⁶, and

³³ Tr. 200.

³⁴ *Notice of Intended Case Filing*, File No. EF-2022-0155

³⁵ EMW Tariff Sheet Nos. 124-124.23, inclusive.

³⁶ EMW Tariff Sheet Nos. 137-137.3, inclusive.

Demand Side Investment Mechanism (“DSIM”) Rider.³⁷ The Company expects to disclose the securitization charge in the list of Adjustment and Surcharges identified on each rate tariff. However, at this time it is unknown what the securitization charge will be called and how this reference would be worded. Any edit now would be speculative. Similarly, it is undetermined how the securitization surcharge will be applied to contracts under the MKT tariff. As the Market Rate Contract for Velvet will not be brought before the Commission until 2024, it is premature to consider how any possible edits for securitization might be addressed.

The Commission should consider all issues related to securitization surcharges (including the applicability of any securitization surcharge to specific customer classes) at the time it has a securitization proceeding pending before it. To address the securitization provision in this proceeding when there are no securitization issues pending before it, as requested by Staff and OPC, would amount to the issuance of an advisory opinion. The Commission has very recently held in EMW’s *Transportation Electrification Report and Order* that it has no legal authority to issue advisory opinions.³⁸ The courts have also agreed that the Commission lacks authority to issue advisory opinions.³⁹

For these reasons, the Commission should reject the OPC/MECG/Staff proposal to include a securitization provision in Schedule MKT in this proceeding.

V. THE EVERGY/VELVET SUBSTATION VOLTAGE PROVISION SHOULD BE ADOPTED.

The tariff language proposed by OPC/MECG/Staff removes the substation voltage customers from the tariff availability, as included in the EMW/Velvet Schedule MKT. As explained

³⁷ See EMW Tariff Sheets Nos. 138-138.18, inclusive.

³⁸ *Report and Order*, pp. 27-29, Re Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro for Approval of a Transportation Electrification Program, File No. ET-2021-0151 (issued January 12, 2022).

³⁹ State ex rel. Laclede Gas Co. v. Public Service Com’n, 392 S.W.3d 24, 38 (Mo. App. 2012).

by Staff, the effect of removing the EMW/Velvet substation voltage provision would be to require customer ownership of the substation.⁴⁰

As Google has emphasized, the Schedule MKT tariff will be one of general applicability, not one intended to serve just one design customer, Velvet.⁴¹ In the future, there may be customers that request that EMW build and maintain the necessary substation to serve a data center or other high load factor customer.⁴² Under those circumstances, the Schedule MKT customer would be expected to pay the costs of the substation as a part of the Market Rate contract, but EMW would retain ownership of the substation itself.

Staff's principal reason for suggesting that the customer must own the substation is so "We don't have to worry about making sure that those costs are assigned" to the Schedule MKT customer.⁴³ Staff argues that "So to make it easier, just to make it clearer, keeping that substation voltage customer out would be better."⁴⁴ Better for whom? It may be better for Staff's rate design experts, but it may not be better for future customers that prefer to have the substation owned, operated, and maintained by EMW.⁴⁵ Cost allocations and direct assignment of costs are a routine part of the ratemaking process. The Commission should not restrict the availability of Schedule MKT to only customers that own the substation, as requested by Staff, merely to save Staff rate design experts some time or effort in the cost allocation process.

⁴⁰ Staff Brief, pp. 9-10.

⁴¹ Google Brief, pp. 4, 6-13; Tr. 195.

⁴² Tr. 213-14, 228-29, 245-46.

⁴³ Staff Brief, p. 10.

⁴⁴ Id.

⁴⁵ Tr. 213-14, 228-29, 245-46.

WHEREFORE, EMW respectfully submits this Reply Brief and requests the Commission grant the relief requested in its application, as modified in its surrebuttal testimony and the EMW/Velvet Non-Unanimous Stipulation And Agreement, and pursuant to arguments and evidence presented at the January 25th and 26th evidentiary hearings.

Respectfully submitted,

/s/ Roger W. Steiner

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**ATTORNEYS FOR EVERGY MISSOURI
WEST**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 18th day of February 2022, to all counsel of record.

/s/ Roger W. Steiner

Roger W. Steiner