

**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)

**RESPONSE OF EVERGY MISSOURI WEST TO PUBLIC COUNSEL’S MOTON FOR
CLARIFICATION, REHEARING AND RECONSIDERATION**

COMES NOW Evergy Missouri West, Inc. d/b/a Missouri West (“EMW” or “Company”) and pursuant to 20 CSR 4240-2.080 submits its response to the *Motion For Clarification, Rehearing and Reconsideration* (“Motion”) filed by the Office of the Public Counsel (“OPC”) on March 11, 2022. In support thereof, EMW states as follows:

1. On March 11, 2022, OPC filed its *Motion For Clarification, Rehearing, and Reconsideration* of the Commission’s Report and Order (“Order”) issued on March 2, 2022. The OPC motion addressed the following issues: (a) Clarification of statements related to the RES/RESRAM variances; and (2) Rehearing of the Economic Development Rider (“EDR”) issue. Both issues will be addressed below.

Clarifications of the RES/RESRAM Variances

2. OPC seeks clarification of some of the language contained in the Order related to the variances granted by the Commission. (Motion, pp. 1-3) First, OPC asserts that the language in the Order is unclear when it refers to “an MKT customer ‘meeting or exceeding’ the minimum RES requirement.” (Motion, p. 2) OPC argues that the RES statute imposes a requirement on the utility to ensure that 15% of the energy that the utility sells is procured from renewable sources, and it is not a requirement imposed on the utility customer. OPC is correct that the RES requirement is an obligation of the public utility, and not the utility customer. However, the Commission’s findings related to the Renewable Energy Standard clearly recognizes this distinction. (Order, pp. 11-18)

3. The Commission's Order describes the requested variances as follows:

The first variance would exclude an MKT customer's load from the definition of "total retail electric sales" under 20 CSR 4240-20.100(1)(W), when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the then existing RES requirement that would have been applied to the MKT customer load. The second variance would exclude the RES compliance costs needed to serve an MKT customer from being characterized as part of EMW's RES revenue requirement under 20 CSR 4240-20.100(1)(S)(1), when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the then existing RES requirement that would have been applied to the MKT customer load.

4. OPC states that "OPC presumes that the Commission meant to say that the proposed exclusion only applies when the MKT customer retires Renewable Energy Credits in an amount equal to or greater than the volume of energy (i.e. "load") the MKT customer purchased from Evergy that the RES statute would otherwise require Evergy to ensure was procured through renewable sources." (Motion, p. 2) Evergy believes the Order clearly indicates that this interpretation is correct and it is unnecessary to clarify. However, if the Commission wishes to clarify the statement complained about by OPC, then it certainly has the discretion to do so.

5. Second, OPC raises "the question of whether the MKT customer is required to only procure RECs sufficient to cover 15% (the current RES statute minimum) of its own load or the *entirety* of its own load for the RES exclusion to apply." (Motion, p.3) Evergy believes that it is also clear from the Order that the customer is required to only procure RECs sufficient to cover the current RES statute minimum (i.e. 15%) of its own load to qualify for the exemption from RESRAM, and not the entirety of the customer's load. Contrary to OPC's assertion on page 7, paragraph 12, Evergy and Velvet never argued that the MKT customer must possess renewable attributes greater than or equal to the entirety of the customer's existing load to qualify for an exemption from the RESRAM. It does so happen that Velvet intends to possess renewable attributes for 100% of its load, but that is not a requirement for other MKT customers to qualify for an exemption from the RESRAM.

6. OPC also raises a question about the amount of the customer's load that would be subtracted from Evergy's retail electric sales for purposes of the RES compliance. (Motion, pp. 5-6). Evergy and Velvet recommended that if the MKT customer demonstrates that it has retired or had retired on its behalf, Renewable Energy Credits greater than or equal to the then existing RES requirement applied to the MKT customer load, then the Schedule MKT entire customer retail sales would not be included in Evergy's calculation of its RES portfolio requirement in 20 CRS 4240-20.100(2). This variance would ensure that EMW's RES requirement would not be increased as a result of the Market Rate contract since that Schedule MKT customer would have already covered the state's existing renewable energy goals. (Evergy Brief, p. 19) The Commission Order found good cause to grant the variance and found that the granted variance is consistent with the goals of RES. (Order, pp. 21-22) Even OPC recognized that the "obvious solution to the above problem is found in the first variance that Evergy and Velvet requested in their non-unanimous stipulation." (Motion, p. 6)

7. In footnote 3 of the Motion, OPC notes that the Commission did not directly approve the requested variances requested by EMW and Velvet Tech, but clearly found that there was good cause for the variances. In the event that the Commission finds it has not already approved the requested variances, EMW would request that it do so.

OPC's Motion For Rehearing On the EDR Issues Should Be Denied.

8. OPC also requested that the Commission issue an order for rehearing or reconsideration with respect to the EDR issue. For the reasons stated herein, OPC's request for rehearing should be denied.

9. In its decision on the issue concerning the EDR, the Commission's *Report and Order* stated as follows:

The Commission rejects the late inclusion of the issue of a proposal to limit MKT customers from taking service under an economic development rider (EDR) tariff, specifically Schedule PED. The Commission's rules and procedural order clearly direct the parties to submit a list of issues, testimony, and position statements that reference the contested issues that need Commission determination. (Order, p. 22)

10. OPC does not dispute that the EDR prohibition provision was not raised or even mentioned in any pre-filed testimony of Staff, OPC, or MECG as required by the *Order Setting Procedural Schedule* issued on December 15, 2021 and the requirements of Commission Rule 20 CSR 4240-2.130.¹ OPC and Staff filed testimony in this case, but failed to mention EDR in any way.

11. OPC does not dispute that the Joint List of Issues filed on behalf of all parties failed to specifically identify this matter as an issue to be addressed by the Commission. Under paragraph 6(E) of the *Order Setting Procedural Schedule*, any issue that has not been identified by the parties is considered uncontested and not requiring resolution by the Commission:

E. Although not all parties may agree upon how each issue should be described or on whether a listed issue is in fact a proper issue in this case, the parties shall agree upon and file a list of the issues to be heard, the witnesses to appear on each day of the hearing, the order in which they will be called, and the order of cross-examination for each witness. The list of issues should be detailed enough to inform the Commission of each issue that must be resolved. The Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission. (Emphasis added.)

12. OPC does not dispute that the Position Statements filed by Staff, OPC, and MECG also failed to address this EDR prohibition issue. The Commission has correctly and appropriately decided not to allow the insertion of this issue into the hearing at the eleventh hour by Staff, OPC and MECG in violation of the Commission's rules of practice and procedure, and the procedures discussed in the *Order Setting Procedural Schedule* which were jointly agreed to by the parties,

¹ 20 CSR 4240-2.130(7)(C) states: For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows: . . . (C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case;

including Staff, OPC, and MECG.

13. OPC argues that there is no difference distinguishing the proposed EDR modifications from any of the other proposed modifications (including the hold harmless provision, the RES provision, the securitization provision, etc.). (Motion, p. 9) OPC ignores the fact that the other proposed modifications (i.e. Hold Harmless provision, RESRAM exclusion and Securitization provision) were raised in testimony and cross-referenced in position statements filed days before the hearings commenced. (See Ex. 200, Marke Rebuttal, pp. 13-16); Ex. 103, Kliethermes Surrebuttal, Schedule RK-s1, p. 4; OPC Position Statement, p. 2; and Staff Position Statement, pp. 2-3)

14. Instead, OPC rests its argument on the fact that the night before the evidentiary hearings, OPC, Staff and MECG filed a non-unanimous stipulation and agreement hours before the evidentiary hearings commenced which included a EDR prohibition. According to OPC, this non-unanimous stipulation became its “position” of OPC, Staff and MECG. (Motion, p. 10) This interpretation, if adopted by the Commission, would encourage litigation by surprise.

WHEREFORE, EMW respectfully submits this Response for consideration by the Commission.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586

Corporate Counsel

Phone: (816) 556-2314

E-mail: roger.steiner@evergy.com

Evergy, Inc.

1200 Main – 16th Floor

Kansas City, Missouri 64105

Fax: (816) 556-2787

James M. Fischer, MBN 27543

Fischer & Dority, P.C.

101 Madison Street, Suite 400

Jefferson City, MO 65101

(573) 636-6758 (Phone)

(573) 636-0383 (Fax)

jfischerpc@aol.com

**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 23rd day of March 2022, to all counsel of record.

/s/ Roger W. Steiner _____

Roger W. Steiner