

**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
STAFF’S MOTION FOR CLARIFICATION**

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* (“Motion”) filed by the Commission Staff (“Staff”) on March 31, 2022. In support thereof, EMW states as follows:

1. On March 31, 2022, Staff filed its *Motion For Clarification* of the Commission’s Amended Report and Order (“Order”) issued on March 24, 2022. The Motion addressed the following issues: (a) whether the Commission intended to grant a variance from Section 393.1030, RSMo. and if not, how Section 393.1030 is to be interpreted; and (2) whether the Commission intended that an MKT customer needs to demonstrate retirement of S-RECs per 20 CSR 4240-20.100(1)(R)5 and 20 CSR 4240-20.100(2). For the reasons stated below, no clarification of the Order is necessary.

The Order Clearly Granted Variances from the RES Rule and Not Section 393.1030.

2. Ordered Paragraph 3 of the Order stated: “The RES variances requested by EMW and Velvet are granted.” EMW and Velvet requested variances from the Commission’s RES rules, 20 CSR 4240-20.100(1)(W) and 20 CSR 4240-20.100(1)(S)(1), as described later in the same paragraph of the Order. EMW and Velvet did not request a variance from Section 393.1030. As EMW explained in its Post-hearing Brief at page 19:

Contrary to the assertion of Staff counsel during the hearings, EMW/Velvet are not requesting a variance to the RES statute. The EMW/Velvet

Stipulation requests a variance from the RES rule promulgated by the Commission which determines the method for calculating EMW's RES compliance requirement. (footnote omitted)

3. Staff argued that the Commission did not have authority to grant a variance from a statute. (Staff Brief, p. 7) Staff's request for "clarification" is merely re-argument of its position that the Commission can not grant a variance from a statute. As explained above, it is very clear that the Commission's Order did not grant a variance from a statute. For this reason, Staff's motion should be denied.

4. In the alternative, Staff requests that the Commission announce how it will interpret Section 393.1030, RSMo. in the future. This request is unnecessary and improper. To address the Staff's request at this juncture of the proceeding 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.¹ The courts have also agreed that the Commission lacks authority to issue advisory opinions.² Staff's alternative request for an interpretation of Section 393.1030 should be denied.

Staff's Motion For Clarification Related To S-RECs Should Be Denied.

5. Second, Staff points out that the Commission's Order does not specifically address the solar carve out required under Section 393.1030.1, RSMo., and therefore "Staff seeks clarification as to whether the Commission intended that an MKT customer needs to demonstrate retirement of S-RECs per 20 CSR 4240-20.100(1)(R)5 and 20 CSR 4240-20.100(2)." (Staff Motion, p. 5). For the reasons stated herein, Staff's Motion on this point should be denied.

6. As the Order recognized in paragraph M, page 18, the RES requirements contained in Section 393.1030 is an obligation for all electric utilities – not the Schedule MKT customer's

¹ *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).

² *State ex rel. Laclede Gas Co. v. Public Service Com'n*, 392 S.W.3d 24, 38 (Mo. App. 2012).

obligation. Under Section 393.1030, the Commission was required to prescribe by rule “a portfolio requirement for all electric utilities to generate or purchase electricity generated from renewable energy resources.” At the present time, EMW is required to generate or purchase electricity 15% of its electric sales from renewable sources. Of that 15%, 2% of the portfolio requirement must be derived from solar energy. Section 393.1030(1).

7. The Schedule MKT tariff provisions approved by the Commission in the Order do not require that the Schedule MKT customer must secure solar energy to be eligible for variances granted by the Commission. If the Schedule MKT customer covers 15% or more of its load with renewable energy, then it would be eligible for the variances. No party, including Staff, OPC, or MECG, argued in this proceeding that the Schedule MKT customer should be required to obtain 2% of its load from solar sources in order to be eligible for the RES variances. The Commission should not address this issue at this juncture of the proceeding since it was not raised by any party previously. No further clarification is necessary at this time.

WHEREFORE, EMW respectfully submits this Response to Staff Motion For Clarification 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 12th day of April 2022, to all counsel of record.

/s/ Roger W. Steiner

Roger W. Steiner