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

Position Statements

COMES NOW the Office of the Public Counsel ("OPC") and for its *Position Statements*, states as follows:

The *Order Setting Procedural Schedule* issued on May 13, 2025, designated September 22 as the date on which position statements were due. Pursuant to that ordered procedural schedule, the OPC files this statement of its position on all issues identified in the filed list of issues.

Issue A: Should the Commission adopt Evergy's or Staff's conceptual tariff, rate structure, and pricing in order to comply with Mo. Rev. Stat. Section 393.130.7?

Position: The OPC generally supports the conceptual tariff, rate structure, and pricing developed by the Commission's Staff except where otherwise stated herein.

Issue B: Can the Commission establish terms and conditions to exclude otherwise eligible customers from receiving EDR discounts?

Position: Yes. This is "consistent with the existing MKT and SIL tariffs for EMW customers."[1] Further, the statutory provisions of section 393.1640 (which provides for such an EDR discount) clearly states: "[t]he electrical corporation may include in its tariff additional or alternative terms and conditions to a customer's utilization of the discount, subject to approval of such terms and conditions by the commission."

Issue C: What should be the threshold demand load in megawatts ("MW")/criteria for a large load power service ("LLPS") customer to receive service under a Commission approved LLPS tariff?

Position: The threshold demand load in megawatts should be 25 MW.[2] This should be calculated to include multiple sites being operated on an aggregated basis.[3] Further, this LLPS tariff sheet should only apply to facilities operating as "data centers."[4]

[1] Surrebuttal Testimony of Sarah L.K. Lange, pg. 33 lns. 14 – 16.
[2] Staff Recommendation, pg. 31.
[3] *Surrebuttal Testimony of Geoff Marke*, pg. 27 lns. 11 – 12.
[4] *Id*. at ln. 10.

Issue C(a): To the extent the threshold captures existing customers, should a grandfathering provision for such customer be adopted?

Position: The threshold should apply to all customers regardless of when they took service (*i.e.* regardless of whether they were an existing customer before or after the tariff sheets go into effect).

Issue D: What other existing programs and riders should or should not be available to LLPS customers, if any?

Position: Any prospective LLPS customer should be prohibited from participation in Evergy's economic development rider tariff sheet.[5] "If LLPS rates are set to meet the statutory requirement that LLPS rates be set to 'reasonably ensure such customers' rates will reflect the customers' representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers,' then it is not reasonable to immediately reduce those rates by 40%, or other customer classes' rates will necessarily reflect unjust and unreasonable costs caused by LLPS customers."[6] LLPS customers should also be excluded from Evergy's existing FAC rider and instead be placed on a separate and isolated FAC rider unique to that class.[7] This is to prevent the cross-subsidization that <u>will</u> occur if LLPS customers take under the existing FAC rider.[8] There may be other existing programs or riders that either

[5] Staff Recommendation, at pg. 33 ln. 17 – pg. 34 ln. 29.
[6] *Id.*
[7] Surrebuttal Testimony of Lena M. Mantle, pg. 3 lns. 11 – 15.
[8] *Id.* at pg. 2 lns. 11 – 17.

should or should not be available to LLPS customers that the OPC will address in briefing.

Issue E: Should the LLPS customer bear reasonability for its interconnection and related transmission infrastructure costs?

Position: Yes. "[T]he tariff language in the facilities extension provisions should be clarified to include transmission-voltage equipment, and modified to require full prepayment of extensions related to transmission-level interconnections."[9] This can be done by adopting the amended tariff in Staff's Appendix 2 – Schedule 10 to its recommendation.[10]

Issue E(a): How should such interconnection and related transmission infrastructure costs be accounted for or tracked, if at all?

Position: The Commission should "order Evergy to create subaccounts for each set of interconnection infrastructure associated with each customer interconnecting at transmission voltage."[11]

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[9] Staff Recommendation, pg. 110 lns. 13 – 18.
[10] *Id.*
[11] *Id.* at pg. 129 lns. 13 – 15.

Issue F: What minimum term of service should be required for a LLPS customer to receive service under the Commission approved LLPS tariffs?

Position: "20 years with a five-year notice period for termination."[12] This "is [] consistent with what the Kentucky Public Service Commission approved in Kentucky Power's large load tariff."[13]

Issue G: What collateral or other security requirements should be required for a LLPS customer to receive service under the Commission approved LLPS tariffs?

Position: The Commission should adopt Evergy's proposal of "a collateral requirement equal to two years of minimum monthly bills" but should reject the Company's proposal to waive the collateral requirements.[14] These collateral payments should not be waived because of "the volatile nature of the business as a whole and the probability of future stranded assets."[15]

Issue H: What termination fee (exit fee) provision should a LLPS customer be subject to under the Commission approved LLPS tariffs?

Position: The Commission should order the termination fee/charge system as proposed by its Staff on page 68 of the Staff recommendation. These terms include "termination charges which are intended to discourage early termination and to

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[12] Rebuttal Testimony of Geoff Marke, pg. 16 lns. 7 – 10.
[13] *Id.*
[14] *Id.* at pg. 17 lns. 2 – 9.
[15] *Id.*

mitigate the risks faced by EMM and EMW captive ratepayers."[16] However, they have also been drafted with a mind toward avoiding "a situation where a brief downturn for an LLPS customer would trigger termination charges which would force a closure."[17]

Issue I: Should any limit be placed on Evergy concerning the amount of LLPS load that it may serve?

Position: Yes. The Commission should order the Captive Customer Risk Mitigation provisions proposed by Staff, which includes limiting service provided on the LLPS schedule "to 33% of EMM/EMW's annual Missouri jurisdictional load."[18]

Issue J: Should the Commission approve Evergy's "Path to Power" approach?

Position: The OPC understands Evergy's "Path to Power" to represent "Evergy's interconnection process" for new LLPS customers.[19] "The process includes key milestones, payments, studies, and contract negotiations, that the Company is proposing be memorialized in the LLPS tariff."[20] Overall, the OPC supports the idea of having a framework for how to bring new LLPS customers onto its system.[21]

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[16] Staff Recommendation, pg. 68 lns. 4 – 8.
[17] *Id.*
[18] *Id.* at pg. 69 lns. 2 – 6.
[19] Rebuttal Testimony of Geoff Marke, pg. 3 lns. 10 – 13.
[20] *Id.*
[21] *Id.* at pg. 5 lns. 3 – 8.

However, there are several issues with what the Company has proposed. For example, the current Path to Power includes "a $200,000 deposit from prospective LLPS customers to Evergy to cover any study costs necessary for a formal submission to the Southwest Power Pool ("SPP") for interconnection service."[22] However, Evergy also "proposes that the $200,000 study costs can be waived if the project meets certain criteria deeming it a 'Community Interests Project'".[23] The OPC opposes such a waiver "[b]ecause of the volume and speculative nature of the LLPS applicants" and instead argues that "it is more than appropriate for customers to have 'skin in the game' to indicate their seriousness."[24] This is but one possible example of the issues with Evergy's "Path to Power," and the OPC will address other issues, as needed, in its briefing.

Issue J(a): What components of the proposed "Path to Power," if any, should be included in the Commission's approved tariff sheets?

Position: As explained above, the Company's proposal for a deposit to pay for necessary studies should be included, but there is no need or reason for those costs to be waived. There may be other changes that must be addressed, which the OPC will argue in briefing.

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[22] *Id*. at pg. 4 lns. 8 – 11.
[23] *Id*. at lns.13 – 14.
[24] *Id*. at lns. 20 – 21.

Issue K: Are changes needed for the Emergency Energy Conservation Plan tariff sheet and related tariff sheets to accommodate LLPS customers?

Position: Evergy's Emergency Energy Conservation Plan outlines Evergy's Load Management and Manual Load Shed Plans which include how Evergy may curtail load in the event of a grid emergency.[25] These should be updated to ensure "that service under the LLPS schedule be subject to mandatory emergency curtailments as warranted."[26] This is consistent with provisions adopted recently in Texas.[27] "[T]he ability to curb LLPS load in the face of an emergency is a non-negotiable issue . . . given the recent history of excess fuel costs Evergy customers are currently paying today and well into the future from Winter Storm Uri."[28]

Issue L: What studies should be required for customers to take service under the LLPS tariff?

Position: The Commission should order that three studies/reporting mechanisms proposed by the OPC's witness Dr. Geoff Marke be undertaken/required before customers can take service under the LLPS tariff sheets.[29] The first of these three is the "pre-construction power usage/energy efficiency study and post-construction Power Usage Effectiveness ("PUE") reporting."[30] The PUE " is a metric that measures the energy efficiency of a data center or large energy-intensive facility and helps

[25] Staff Recommendation, pg. 112 lns. 12 – 22.
[26] Rebuttal Testimony of Geoff Marke, pg. 25 lns. 9 – 10.
[27] *Id.*
[28] *Id.*
[29] *Id.* at pg. 5 lns. 9 – 17.
[30] *Id.*

recognize any opportunity to improve energy usage over time."[31] Benchmarking this is important because it "will place a heightened emphasis on reducing costs, enhancing sustainability, supporting the necessary electric service build-out, and allow regulators, customers and the utility the ability to make more informed planning decisions moving forward."[32] The second is the "pre-construction water usage study and post-construction Water Usage Effectiveness ("WUE") reporting."[33] This represents "a metric that measures the water efficiency of a data center or large energy-intensive facility and helps recognize any opportunity to improve this over time."[34] Measuring it will allow stakeholders to "be better able to make informed planning decisions across the service territory in regards to valuing finite natural resources and assuring the surrounding areas are sustainable."[35] The third and final study/reporting mechanism is the "pre-construction total harmonic distortion ("THD") and power quality study and post-construction harmonics reporting."[36] "Harmonic distortion is the presence of unwanted frequency components in a power system . . . and can significantly impact the performance and reliability of the distribution system."[37] "The results of this analysis should help inform right-sizing equipment and load patterns to minimize harmonic distortions moving forward."[38]

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[31] *Id*. at lns. 20 – 22.
[32] *Id*. at pg. 8 lns. 2 – 5.
[33] *Id*. at pg. 5 lns. 9 – 17
[34] *Id*. at pg. 9 lns. 11 – 13.
[35] *Id*. at lns. 21 – 22.
[36] *Id*. at pg. 5 lns. 9 – 17.
[37] *Id*. at pg. 11 lns. 20 - 23.
[38] *Id*. at pg.14 lns. 3 – 4.

Issue M: Should a form customer service agreement be included in the Commission approved LLPS tariffs resulting from this case?

Position: Yes, subject to caveat. "[T]erms of service and rates for service [should] be reflected in the promulgated tariff, and not reserved to confidential agreements that are not subject to Commission review and might be subject to change at Evergy's discretion."[39] That being said, the Commission should order a form copy of a customer service agreement substantially consistent with the recommendation of Staff witness Claire M. Eubanks be included in the tariff.[40]

Issue N: Should Evergy be required to disclose information about prospective customers?

Position: Yes. As a general rule, the OPC supports open and transparent disclosure, especially considering the magnitude of the costs being contemplated

Issue N(a): If so, what review should the Commission have of prospective customers and terms applicable to specific customers?

Position: At a minimum, it needs to be a higher degree of review than what Evergy is currently proposing. As Staff points out, Evergy has reserved discretion for itself on a wide range of topics in the tariff.[41] As a result, "the discretion EMM and EMW reserve to themselves steps over into areas that must be subject to regulation through

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[39] Staff Recommendation, pg. 75 ln. 24 – pg. 76 ln. 2 (emphasis added).
[40] Corrected Surrebuttal Testimony of Claire M. Eubanks, PE, pgs. 5 – 8.
[41] Staff Recommendation, pg. 74 ln. 12 – pg. 75 ln. 23.

published tariffs."[42] "If there is concern that a tariff does not offer the flexibility to address situations as they arise, then it would be reasonable to set out procedures for expedited Commission resolution, rather than to include so many reservations of such broad discretion."[43] Once again, the OPC supports the recommendation of Staff witness Claire M. Eubanks.[44]

Issue N(b): In what case should said review occur?

Position: Review should occur in a new case filing that should be made every time a new customer proposes to take service under the LLPS tariff.[45]

Issue O: Should LLPS customers be included in the FAC?

Position: The Commission should order the establishment of "two FACs – one for the LLPS customers and one for the non-LLPS customers."[46] This is necessary because "[w]hen a new LLPS customer comes on one of Evergy's systems, it will immediately increase the load costs therefore increasing FAC costs[,]"[47] and if the LLPS customer is not on a separate FAC then "the non-LLPS customers will pay for some of these increased costs through the FAC." Stated another way, if the LLPS customers are not

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[42] *Id.*
[43] *Id.*
[44] Corrected Surrebuttal Testimony of Claire M. Eubanks, PE, pgs. 5 – 8.
[45] *Id.* at pg. 6 lns. 23 – 25.
[46] Surrebuttal Testimony of Lena M. Mantle, pg. 3 lns. 11 – 15.
[47] *Id.* at pg. 2 lns. 11 – 17.

segregated to their own FAC, then non-LLPS customers will end up subsidizing them. Separating the LLPS customer class into their own FAC solves this problem and "also result[s] in lower FAC base costs being included in the base rates of non-LLPS customers."[48]

Issue O(a): What, if any, changes should be made to Evergy's existing FAC tariff sheet?

Position: The OPC believes no change will be necessary to Evergy's existing FAC if the Commission separates the LLPS customers into their own FAC. This is because "[l]anguage could be included in the LLPS tariff sheet excluding the LLPS customers from the currently effective FAC."[49]

Issue O(b): When/in what case should these changes be made?

Position: As addressed above, the OPC believes no change will be necessary to Evergy's existing FAC if the Commission separates the LLPS customers into their own FAC. If the Commission were to reach a contrary determination and order a change to the FAC for any reason, then any changes that would need to be made to the FAC should be made at the earliest possible point the Commission determines it is legally permissible to do so. <u>The Commission should also prevent any customer</u>

[48] *Id*. at pg. 3 lns. 11 – 15.
[49] *Id*. at lns. 21 – 22.

from taking service under the LLPS tariff until such changes to the FAC that are deemed necessary have been made.

Issue O(c): What if any FAC related costs should the Commission order tracked?

Position: The Commission should order the "[t]racking [of] costs and revenues associated with fuel and purchased power [to] be dealt with as proposed by [Staff witness] Ms. Mastrogiannis in the next general rate case."[50]

Issue P: Should LLPS customers be registered with a separate Southwest Power Pool ("SPP") commercial pricing node (subject to SPP support) or alternatively should Evergy be required to provide the Staff-recommended data (Appendix 2, Schedule 2) node?

Position: "[E]ach LLPS customer [should] be registered with SPP as a separate commercial pricing node."[51] Failing to do this will make it "difficult to isolate the expenses caused by LLPS customers that would otherwise be flowed through the FAC and which may cause unreasonable impacts on captive ratepayers."[52] "In the absence of separate commercial pricing nodes for each LLPS customer, . . . the Commission [should] order each of the conditions included in Appendix 2 – 27 Schedule 2."[53] This is not a perfect solution, in that it "will not allow for full cost causation transparency,

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[50] *Id*. at lns. 23 – 24.
[51] Staff Recommendation, pg. 22 lns. 12 – 20.
[52] *Id*.
[53] *Id*. at pg. 22 ln. 25 – pf. 23 ln. 2.

and will create additional work processes for Staff and other parties" but would still be "an improvement over Evergy's current documentation processes."[54]

Issue Q: Should LLPS customers be a subclass of Evergy's Large Power Service ("LPS") or be a stand-alone class?

Position: LLPS customers should be a stand-alone class. There is no "advantage to including the LLPS customer class as a subclass of the Large Power Service rate schedule."[55] The Commission's Staff also "recommends the rates for LLPS customers be set out as a separate rate schedule, and studied and set separately in future rate cases."[56]

Issue R: What treatment is needed to address revenues from LLPS customers occurring between general rate cases?

Position: The Commission should order the tacking of revenues as set forward specifically on page 66 of the Staff's recommendation and as supplemented elsewhere in Staff's testimony.[57] "These provisions ensure that EMW and EMM do not experience excessive positive regulatory lag, and enables the revenues provided by

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[54] *Id.*
[55] Staff Recommendation, pg. 78, lns. 8 – 10.
[56] *Id.*
[57] *Id.* at pg. 66.

LLPS customers to prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to LLPS customers."[58]

Issue S: Should the Commission approve the Evergy System Support Rider or take other steps to address cost impacts to non-LLPS customers?

Position: The System Support Rider represents an additional, unavoidable charge to customers who receive service under Schedule LLPS.[59] "It is intended to account "for the accelerated investments in resources needed to integrate large new loads into the system."[60] At a high level, the SSR is a good concept with no reasonable argument against it.[61] However, there are a number of issues with its current design as noted by the Commission's Staff.[62] Therefore, the OPC argues the Commission should order the adoption of the system support rider, but updated to address the concerns of its Staff.

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[58] *Id.* at lns. 2 – 5.
[59] Rebuttal Testimony of Geoff Marke, pg 23 lns. 21 – 22.
[60] *Id.* at pg. 24 ln. 1 – 2.
[61] *Id.* at ln. 4.
[62] Staff Recommendation, pgs. 87 – 94

Issue T: Should the proposed additional riders, be authorized by the Commission at this time

(a): The Customer Capacity Rider?

Position: The Customer Capacity Rider allows Evergy to source capacity from LLPS customers.[63] It is unnecessary because "nothing prohibits EMM or EMW from entering into agreements with an LLPS customer to purchase energy or capacity from that customer, including customers who may be considered qualifying facilities as contemplated in the Commission's rule regarding cogeneration and small power production, 20 CSR 4240- 20.060."[64] The Commission's Staff also found major problems "with Evergy's requested tariff language, and recommends the Customer Capacity Rider be rejected."[65] Given the concerns outlined by Staff, the OPC presently concurs with that assessment.

(b): The Demand Response & Local Generation Rider

Position: At its most basic level, this rider allows LLPS customers to "get paid to use their onsite generation to provide demand response services to Evergy."[66] Such a rider is conceptually a good idea, but there are significant concerns around the interplay between this rider and Evergy's MEEIA.[67] It is also unclear what "potential

[63] *Id*. pg. 99 lns. 1 – 4. Lns.
[64] *Id*. at lns. 17 – 21.
[65] *Id*. at lns. 16 – 17.
[66] Rebuttal Testimony of Geoff Marke, pg. 24 lns. 22 – 24.
[67] *Id*. at pg. 25 lns. 2 – 5.

implications this has on future demand response aggregators of retail choice."[68] The OPC therefore supports the Commission's Staff's recommendation that the Commission reject the DRLR rider, but encourage[] Evergy to continue discussions with potential LLPS customers to develop a future tariff filing for a reasonable demand response program."[69]

(c): The Renewable Energy Program Rider?

Position: This program is designed to "give customers the option to purchase unbundled RECs at a fixed price that is adjusted annually."[70] As long as (1) the RECs are sold <u>at or above</u> market price, (2) selling the RECs does not cause Evergy to incur additional costs in excess of the revenues generated, and (3) all revenues generated are treated as revenues offsetting the Company's revenue requirement for ratemaking purposes, then this program is acceptable. If any one of these three requirements is not met then the program should not be implemented.

(d): The Green Solution Connections Rider?

Position: This is a voluntary program that allows Commercial and Industrial ("C&I") customers to subscribe to certain renewable energy resources.[71] This concept mimics

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[68] *Id.*
[69] Staff Recommendation at pg. 94 lns. 9 – 12.
[70] *Id.* at 102 lns. 8 – 9.
[71] *Id.* at pg. 106 ln. 34 – pg. 107 ln. 1.

another Evergy proposal already before the Commission in case no. EA-2024-0292.[72] "In order to ensure consistency for the Green Solution Connections Program between EMW and EMM, . . . the Commission reject the Green Solution Connections Program as filed in this case until such time that the program has been approved in EA-2024-0292."[73]

(e): The Alternative Energy Credits Rider?

Position: The Alternative Energy Credit Rider "would allow all C&I customers, including [LLPS] customers, to purchase [alternative energy credits] produced from Evergy's Wolf Creek Nuclear Generating Station located in Kansas."[74] An alternative energy credit "is a certificate similar to a REC, however it represents that 1 MWh of electricity has been generated from an alternative energy source such as a nuclear energy facility."[75] The OPC's position is therefore effectively the same as the OPC's position for the Renewable Energy Program Rider. The OPC further supports Staff's recommendation 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."[76]

[72] *Id*. at pg. 107 lns. 9 – 17.
[73] *Id*. at lns. 19 – 21.
[74] *Id*. at pg. 108 ln. 3 – 6.
[75] *Id*. at lns. 9 – 10.
[76] *Id*. at lns. 20 – 23.

(f): The Clean Energy Choice Rider?

Position: The Clean Energy Choice Rider "would allow new LLPS customers to influence the Company's IRP analysis, the Company's Preferred Resource Plan [] and the Company's resource acquisition strategy."[77] This is unnecessary and massively burdensome. LLPS customers can just choose to intervene in the Company's IRP cases before the Commission like all other customers. In addition, "the IRP process is likely to drastically change with the recent passage and signing of Senate Bill 4."[78] "The Commission should allow for the new IRP process to be developed and understood prior to considering a rider that allows for customers to influence prudent resource planning."[79]

Issue U: Should the Commission order a community benefits program as described in the testimony of Dr. Geoff Marke?

Position: As explained in the testimony of the OPC's witness Dr. Marke and further exemplified by the many problems in Staff's *Recommendation*, there are tremendous risks associated with the introduction of LLPS customers into Missouri. In order to combat these problems, the Commission should order the creation of a "community benefits program to inject direct support into Missouri."[80] As Dr. Marke explained:

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[77] *Id*. at pg. 79 lns. 6 – 8.
[78] *Id*. at pg. 80 lns. 7 – 8.
[79] *Id*. at pg. 82 lns. 6 – 8.
[80] Rebuttal Testimony of Geoff Marke, pg. 23 ln. 4.

> As the Commission is well aware, the federal government has recommended that states are in a better position to determine whether or not funding is necessary for many of the U.S.'s historically federally funded social service benefits programs including funding for Low Income Home Energy Assistance Program ("LIHEAP") and Low-Income Weatherization Assistance Program ("LIWAP"). In Kansas City, Missouri potential federal funding to support the City of Kansas City's Urban Heat Island Mitigation initiative is highly unlikely to materialize. All three initiatives impact Evergy customers specifically. I believe it is more than appropriate to explore outside funding from data center customers as a means of offsetting some of the perceived risk and helping ease the societal transition they are supporting.[81]

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept the OPC's *Position Statements*, rule in the OPC's favor on all positions taken herein, and order such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

By: /s/ John Clizer

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[81] *Id*. at lns. 4 – 13.

Certificate of Service

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this twenty-second day of September, 2025.

/s/ John Clizer