

**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

INITIAL BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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Introduction

This case concerns a request by Evergy Metro, Inc. d/b/a as Evergy Missouri Metro (“Evergy Missouri Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West”), who will be referred to collectively as “Evergy,” for the adoption of new tariffed rates for large load customers. The name given for this tariffed rate would be “Limited Large Power Service” or “LLPS,” so this brief will refer to these customers as “LLPS customers.” No party to this case objects to either providing service to these LLPS customers generally or to the creation of an LLPS tariffed rate. There is, however, disagreement over the LLPS tariff rate sheets’ structure and mechanics. Before considering those specific disagreements, it is best to begin with a general overview of the applicable law, the central problem in the case, and the proffered solution to that central problem.

The Applicable Principles of Law and Regulation

While many legal considerations are necessary when setting tariffed rates, there is one law that has risen to central importance in this case. That would be Missouri Revised Statute section 393.130.7. The critical component of the law can be summarized easily. The law requires certain sized electric utilities (like Evergy) to promulgate tariff sheets 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]. This can be further condensed into a single, basic concept: the law wishes

to prevent non-LLPS customers from subsidizing LLPS customers. While the OPC is grateful the legislature imposed this requirement, this law is really nothing more than the codification of a long-standing principle of regulatory ratemaking.

Prior to section 393.130.7 being passed, the goal it sought to achieve could already be found in a principal this Commission has a long history of trying to follow; a principle known as the “cost causation principle.” [Tr. Vol III pg. 35 lns. 21 – 25]. The cost causation principle can be summarized as requiring, to the highest degree reasonable, that costs be allocated to those who cause the costs to be incurred. [*Id.* at lns. 10 – 15]. So, applying this principle to the current case, if an LLPS customer caused Evergy to incur a cost, that cost should be allocated to the LLPS customer class. Doing this would ensure that “[LLPS] customers' rates will reflect the [LLPS] customers' representative share of the costs incurred to serve the [LLPS] customers.” [Mo. Rev. Stat. § 393.130.7]. In addition, allocating the cost an LLPS customer caused Evergy to incur to the LLPS class exclusively would stop other customer classes from having to pay that cost and thus “prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to [LLPS] customers.” [*Id.*]. The purpose of section 393.130.7 is therefore just to ensure proper application of the cost causation principle and, in the inverse, ensuring proper application of the cost causation principle achieves the requirement of section 393.130.7.

With the law being clear, it is possible to turn to the central question of this case: is enough being done to ensure LLPS customers are not being subsidized? To

better answer *that* question, one should first consider in what ways non-LLPS customers might end up subsidizing LLPS customers.

The Ways LLPS Customers Could be Subsidized

There are at least four major ways that subsidization of LLPS customers could easily occur if not properly addressed. The first come from a simple timing difference between when generation is being built to serve LLPS customers and when the LLPS customers join the utility's system. For example, if a utility (like Evergy) anticipates that a LLPS customer joining its system will require the utility to secure additional capacity, and it: (1) builds generation to meet that additional capacity, (2) places that generation into service, and then (3) comes to the Commission seeking rate recovery for that generation before the LLPS customer is brought onto the utility's system, then all the utility's customers (meaning commercial, residential and industrial) will be allocated the cost of that generation.¹ [Tr. Vol. III pg. 57 lns. 6 – 21]. Under those circumstances, the cost for that generation would be reflected in the cost of service and recovered from all ratepayers. [*Id.*]. On the other hand, if the large load customer that was anticipated joins Evergy's system after rates are set in a rate case, the revenues associated with that large load customer would not pay down any of the plant costs associated with that generation built to serve them until new rates go into effect. [*Id.* at pg. 57 ln. 22 – pg. 58 ln. 7]. This scenario, which is very easy to engineer

¹ Barring that the Commission were to undertake some unorthodox rate treatment to the contrary.

for a utility who has the privilege of picking when to initiate a rate increase request,² directly results in non-LLPS customers paying for the construction of generation that would not be needed except to serve the LLPS customer while the utility receives revenues from a large new customer for costs are that already being recovered. In other words, it results in non-LLPS customers subsidizing the LLPS customers and the utility double recovering its costs.

A second way that LLPS customer will be subsidized unless prevented is through the application of a Fuel Adjustment Clause (“FAC”). This was explained at length by the OPC’s witness Ms. Lena Mantle:

Q. Do you agree with Staff witness Sarah Lange that the cost incurred by large load customers would be subsidized with the FACs?

A. Yes. When a new LLPS customer comes on one of Evergy’s systems, it will immediately increase the load costs therefore increasing FAC costs unless changes are made to Evergy’s FAC. After the first accumulation period that includes a new LLPS customer, the non-LLPS customers will pay for some of these increased costs through the FAC.

Following the first rate case after a LLPS customer is added, if all customers are included in the FAC, the amount of fuel included in the base rates for the non-LLPS customers will increase as will the FAC base factor. Non-LLPS customers will continue to subsidize LLPS customers through the FAC since the increased FAC costs will be charged all customers.

...

Q. Will subsidization only occur when a LLPS customer is added or reduces its load?

² To quote Staff’s recommendation: “[i]t is the prerogative of Evergy management to time rate cases to maximize shareholder benefit.” [Ex. 201, *Staff Report and Recommendation*, pg. 62 lns. 3 – 4].

A. No. Because LLPS customers will only increase FAC costs, the inclusion of the LLPS load in calculating a base factor in general rate cases would result in all customers being charged more for fuel and purchased power costs in their base rates and in the FAC. The non-LLPS customers will be charged this higher average cost when the average cost for the non-LLPS customers would be lower without the LLPS customer loads.

[Ex. 300, *Surrebuttal Testimony of Lena M. Mantle*, pg. 2 ln. 11 – pg. 3 ln. 10]. As explained, whether one looks at the initial addition of an LLPS customer (*i.e.* before a subsequent rate case) or the impact after a subsequent rate increase request case is completed, the outcome remains the same: LLPS customers are subsidized by the non-LLPS customer class through the FAC.

A third method by which subsidization occurs is the result of Evergy's respective Economic Development Discount riders issued pursuant to Missouri revised statutes section 393.1640. This statute allows customers meeting specific criteria, as defined in both the statute and the utility's tariff, to receive a discount to their electrical bills. [Mo. Rev. Stat. § 393.1640]. However, the results of this discount are not borne by the utility, but rather, are passed on to all other customers. [*Id.*]. This necessarily results in a subsidization of the customer receiving the discount. [Ex. 201, *Staff Report and Recommendation*, pg. 34 lns. 6 – 8 (“[T]he statutory economic development discount – once recognized in a rate case – does not reduce utility revenue. Rather, the revenue not paid by customers receiving a discount is added to the revenue requirement of all customers.”)]. As with the two previous examples, this

subsidization is a result of the regulatory systems and structures currently in place and will almost certainly occur unless some specific action is taken to correct for them.

The fourth and final form of subsidization is comparatively different, in that, it is less certain to occur but will almost certainly be far more impactful should it occur. Evergy, both Missouri West and Missouri Metro, does not possess sufficient generation to meet projected load from LLPS customers. [Ex. 201, *Staff Report and Recommendation*, pg. 38 lns. 3 – 4; pg. 63 lns. 1 – 3]. This means that the addition of LLPS load on either company’s system will more likely than not require the Company’s respective service territory to acquire additional generation. [*Id.*; Tr. Vol. III pg. 56 ln. 24 – pg. 57 ln. 5]. However, if Evergy were to acquire such additional generation and then the LLPS customer does not materialize, or goes out of business, or even just significantly reduces its energy usage, then the investments built to serve that LLPS customer may become a stranded asset.³ [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 17 ln. 25 – pg 3 ln. 2]. “In that case, either ratepayers, shareholders

³ As explained by the OPC’s witness Dr. Geoff Marke:

A “stranded asset” is a term that has different meanings depending on the context. For example, regulation-based stranded assets differ from market-based stranded assets. The latter simply compares the book value of an asset relative to some future market value of the asset. For example, if an oil reserve has \$1 billion book value but sliding demand due to carbon taxes or other environmental regulations reduces its market value to \$400 million, the result is \$600 million in stranded assets. By contrast, regulation-based assets for utilities in the United States are assets that are subject to cost of service regulation. Government regulators at some point, have explicitly approved the asset in the past that includes prudent cost recovery and a reasonable opportunity to earn a return over a defined period of time— typically in line with the Company’s depreciation schedule and subsequent rate cases; however, assets can and should remain useful above and beyond the point they have been paid off. If that does not occur, meaning the asset leaves service before it has been fully paid off, then it is considered a stranded asset.

[Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 17 lns. 12 – 24].

or both will be left footing that bill.” [*Id.* at pg. 18 lns. 2 – 3]. If the Commission decides that ratepayers should be the ones to cover those costs, then, once again, those ratepayers will be subsidizing the LLPS customers. This is of particular concern because of the extreme level of uncertainty surrounding the largest and most represented use of these prospective LLPS customers: artificial intelligence focused data centers.

Understanding the Risks Associated with Artificial Intelligence and Data Centers

Up to this point, this brief has spoken of LLPS customers generally and without reference to the specific end use. But it is also necessary for the Commission to consider the risks incumbent in the businesses that actually intend to take service under the proposed LLPS rates. To that end, it is necessary to directly address who it is that is driving the need for this tariff, which is primarily data centers seeking to utilize artificial intelligence. As Evergy’s Witness Kevin Gunn explains:

Q: What was the impetus for Evergy to develop the LLPS Rate Plan?

A: The technological renaissance occurring with the proliferation of artificial intelligence (“AI”) technology and advanced manufacturing technologies has been well publicized. AI technology, combined with the widescale electrification of various industries, and policy and security desires to on-shore many of the data centers and manufacturing plants needed to support these advancements, is driving significant electric load growth across the country and globe.

[Ex. 100, *Direct Testimony of Kevin D. Gunn*, pg. 4 lns. 12 – 18; *see also* Ex. 302, *Surrebuttal Testimony of Geoff Marke*, pg. 9 lns. 3 – 5 (“**Q. Data centers have**

existed for decades. What is driving this demand today? A. The training and proliferation of large language models to commercially support artificial intelligence (“AI”) services.”]. This is also the reason why the primary industrial signatories to the offered Stipulation are all focused on data centers (*i.e.* Google, Velvet Tech, and the Data Center Coalition). And this should give some significant concern to the Commission considering the number of risks and large uncertainties surrounding the long-term viability of the AI industry.

There is no question that the AI industry is currently fueling massive capital investments across the US. For example, “[a]s of late 2025, the Magnificent Seven (Google, Amazon, Apple, Meta, Microsoft, Tesla, and Nvidia) collectively held a market capitalization of approximately \$19.3 trillion, representing 34% of the total S&P market value.” [Ex. 302, *Surrebuttal Testimony of Geoff Marke*, 12 lns. 16 – 18]. However, there is a very real question as to “whether or not revenues can grow fast enough to keep up with the CAPEX boom.” [*Id.* at pg. 13 lns. 5 – 6]. As things currently stand, these companies that have been heavily investing in AI have also been operating at a loss as their services are being offered “at prices that do not come close to covering the expenses of developing and running their large language models (“LLMs”).” [*Id.* at lns. 14 – 16]. To illustrate:

To date, major AI services like OpenAI and Anthropic have reportedly lost billions of dollars while pursuing market dominance. In 2024, OpenAI (arguably the most “successfully” utilized platform today) expected about \$5 billion in losses on \$3.7 billion in revenue. In 2025, OpenAI’s annual recurring revenue is now on track to pass \$20 billion, but the company is still losing money[.]

[*Id.* at pg. 14 lns. 1 – 5]. On top of that, significant cracks are beginning to show in the value of the actual AI systems these companies are producing. As the OPC’s Dr. Marke explained:

In June, Apple researchers released a paper titled “The Illusion of Thinking,” which found that state-of-the-art “large reasoning models” demonstrated “performance collapsing to zero” when the complexity of puzzles was extended beyond a modest threshold. The study serves as a critical reality for policymakers and investors, reminding them not to mistake fluent language for genuine comprehension. Researchers at Arizona State University reached an even blunter conclusion: claiming what AI companies call reasoning “is a brittle mirage that vanishes when it is pushed beyond training distributions.”

[*Id.* at pg. 14 ln. 21 – pg. 15 ln. 3]. This obviously begs the question, how are these AI driven investments possibly going to produce the profit necessary to continue as a going concern?

While many top executives and business leaders across the nation seem to be eyeing AI as some form of mythical panacea for business costs, the actual reality is much bleaker. A recent study by the Massachusetts Institute of Technology found, after analyzing 300 public AI deployments, “that 95% of AI pilot projects failed to deliver financial benefits.” [Ex. 302, *Surrebuttal Testimony of Geoff Marke*, pg. 17 lns. 1 – 2]. The study further concluded that “the biggest thing holding back AI is that most AI tools don’t learn and don’t integrate well into workflows.” [*Id.* at lns. 2 – 3]. This strengthens the argument that the current AI fever has resulted in a market bubble as there is a clear disconnection “between the large valuation for AI companies

[and] the limited AI profits” as well as “between AI stock prices and a weakening broader economy.” [*Id.* at pg. 19 lns. 11 – 12]. If that is truly the case, then there is a very high likelihood of a future market correction or even a crash. [*Id.* at pg. 20 lns. 1 – 4]. Such a crash could spell the end for any number of large companies now focused on the AI industry. And if these companies that were to experience a significant slowdown, or even outright disappear, happened to have built data centers in Missouri, then the generation that was built to serve those data centers would likely become stranded investments.

This Commission cannot afford to be apathetic when it comes to the risks associated with the AI industry given that industry is now fueling what is perhaps the largest load increase in this nation’s history. Nor can it make the mistake of believing there isn’t a risk that the load being built today may very well not exist in a decade. As Dr. Marke explained:

Unlike most natural monopolies, free-market companies can and do go out of business all the time. Despite the transformative potential of AI, it is not without its risk. In fact, I would argue that data centers with their financial relationship with AI pose a greater risk than any large load customer Missouri has ever had.

[Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 20 lns. 1 – 4]. The risk of stranded investments being created because of the LLPS customers joining Evergy’s system is great. Couple this with the risk of all the other potential subsidizations that will almost certainly otherwise occur unless corrected and it is easy to see why this case has resulted in such consternation. However, there is good news. All the problems

identified can be mitigated, if not outright solved, through relatively simple solutions as proposed by the OPC and the Commission's Staff.

Solving for Subsidization

Each of the four major risks for subsidization can be overcome if the Commission orders the adoption of an LLPS tariff substantially consistent with the proposals made by its Staff and the OPC. For example, the first risk of subsidization can be significantly mitigated if the revenues generated after an LLPS customer joins Evergy's system are tracked and then ultimately used to offset the capital improvements built to serve that customer. This has the added benefit of having no negative impact on LLPS customers as they would be required to pay neither more nor less than they otherwise would. Instead, it simply serves to ensure non-LLPS customers are not left paying for costs that they did not cause to be incurred. In a similar vein, all the concerns regarding subsidization through the FAC can be solved quite simply by dividing the FAC into two separate mechanisms: one for LLPS customers and the other for non-LLPS customers. This will separate both the costs and revenues and ensure neither side ends up subsidizing the other.

The EDR subsidization issue may appear more difficult to resolve, but it is actually quite simple once a careful review of section 393.1640 is undertaken. This is because the law makes clear how "[t]he Commission retains reasonable discretion in the design and application of these discounts." [Ex. 201, *Staff Report and Recommendation*, pg. 33 lns. 28 – 29]. For example, Section 393.1640 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.” [Mo. Rev. Stat. § 393.1640.1(2)]. Thus, it becomes reasonable for the Commission to simply order the inclusion of such “additional or alternative terms and conditions” as to prohibit customers of the size necessary to take on LLPS tariff from receiving service under the EDR.

The last subsidization risk, the risk of creating stranded investments, is probably the most difficult to tackle. It is, however, still surmountable. By ensuring that prospective LLPS customers are subject to an exit fee, and have further maintained or supplied sufficient collateral to prove they are capable of meeting that exit fee, the Commission can at least mitigate the risk of a customer leaving Evergy’s system before the cost of investments made to serve that customer are recovered. This protection can be even further extended by lengthening the contractual obligation under which the LLPS customer is to receive service.

Summation

All the solutions just described will be addressed again in the discussion of their respective issues. However, in each instance the Commission should keep in mind its overarching mandate: avoid subsidizing the LLPS customers. [Mo. Rev. Stat. § 393.170.3]. On top of that, the Commission needs to carefully consider the balance of risks present in this case. While AI driven data centers may offer wonderful opportunities for regulated utilities, they operate in a competitive environment where there is no guarantee that the benefits promised from those investments will materialize. At the same time, the risk to captive customers should these LLPS

investments fall through is enormous and has the potential to significantly hinder economic development for the entire State. This case therefore requires a careful and considerate approach that balances the potential risks against the potential rewards. With that in mind, it is time to consider the individual issues in the case.

Review of the Issues

There are twenty-one distinct issues included in the filed *List of Issues* that are accompanied by a further fourteen sub-issues. However, the order in which those issues are presented is somewhat inefficient. To that end, the OPC has divided the issues into logically similar groups and will address each group separately.

Tariff Eligibility

Issues C, F, H, and G all address generally the eligibility requirements that should be imposed on a customer seeking to take service under the LLPS tariff. In the order listed, they ask:

- 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?
- F. What minimum term of service should be required for a LLPS customer to receive service under the Commission approved LLPS tariffs?
- H. What termination fee (exit fee) provision should a LLPS customer be subject to under the Commission approved LLPS tariffs?
- G. What collateral or other security requirements should be required for a LLPS customer to receive service under the Commission approved LLPS tariffs?

To simplify matters, the OPC offers this table that compares the positions taken by the parties on these four subjects:

Issue	Question	Stipulation	Staff	OPC
C	Minimum Load	75 MW ⁴	25 MW ⁵	25 MW

⁴ *Non-Unanimous Global Stipulation*, pg. 2.

⁵ Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, Schedule SLKL-1 pg. 1.

Issue	Question	Stipulation	Staff	OPC
F	Minimum Term of Service	up to five (5) years of an optional transitional load ramp period plus twelve (12) years ⁶	10 years, following a ramp-up period of up to 5 years ⁷	20 years with a five-year notice period for termination
H	Termination Fee	the nominal value of the Minimum Monthly Bill times the number of months remaining in the Term or Extension Term, or for twelve (12) months, whichever is greater, unless the customer seeks to terminate with less than thirty-six (36)-months' notice in which case there is an additional fee equal to the Exit Fee plus two (2) times the nominal value of the Minimum Monthly Bill times the number months less than the thirty-six (36)-months' notice required for termination ⁸	all amounts expected for the remainder of the contract under the following charges: Facilities Charge, Demand Charge for Generation Capacity, Demand Charge for Transmission Capacity, Variable Fixed Revenue Contribution, and Stable Fixed Revenue Contribution ⁹	Staff or the Stipulation depending on how the Commission rules on other rate design issues.
G	Collateral	an amount equal to two (2) years of Minimum Monthly Bills, as	An amount that shall equal or exceed the indicated	Same as the Stipulation but that the Minimum Monthly Bills be

⁶ *Non-Unanimous Global Stipulation*, pg. 4.

⁷ Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, Schedule SLKL-1 pg. 2.

⁸ *Non-Unanimous Global Stipulation*, pg. 6.

⁹ Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, Schedule SLKL-1 pg. 1.

Issue	Question	Stipulation	Staff	OPC
		calculated by the Company ¹⁰ that may be subject to an up to 60% exemption. ¹¹	termination fees, and a commitment to pay or cause to be paid any applicable termination charges, as defined in the LLPS tariff. ¹²	calculated to include 90% of the contract capacity instead of 80% and the removal of the exemption provision

In considering this table, the OPC would stress two points. First, while there are key differences, one should recognize that all parties agree on the underlying necessity of these eligibility requirements. All the parties, for example, agree that there should be *some* form of collateral requirement and *some* kind of early termination fee. Moreover, as will be shown shortly, the apparent differences between the suggestions do not run as deep as one might first assume. There is room for consensus here.

The other point more directly concerns the OPC's proposal. Specifically, the OPC stresses how its own proposals were not created *ex nihilo*, but rather, are the product of reviewing what other states have ordered when presented with the same problem. As explained by the OPC's witness Dr. 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, 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.

¹⁰ *Non-Unanimous Global Stipulation*, pg. 12.

¹¹ *Non-Unanimous Global Stipulation*, pg. 13.

¹² Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, Schedule SLKL-1 pg. 2.

[Tr. Vol III, pg. 291 lns. 6 – 14 (emphasis added)]. It is important to keep this point in mind when considering the proposals. The Commission needs to ask itself a simple question: are Missouri ratepayers being exposed to more risk than those in other states? If the Commission adopts the proposed stipulation, then the answer will be an unfortunate yes.

Issue C: Minimum Load

Evergy's initial proposal included an interconnection process called "Path to Power." [Ex. 302, *Surrebuttal Testimony of Geoff Marke*, pg. 3 ln. 11]. This process included "key milestones, payments, studies, and contract negotiations, that the Company [was] proposing be memorialized in the LLPS tariff" and applied to all loads over 25 MW. [*Id.* at pg. 4 lns. 4 – 6 (emphasis added)]. This was odd because the rest of the LLPS tariff sheets, as originally proposed, would only have applied to customers greater than 100 MW. [*Id.* at lns. 5 – 6]. The OPC was unable to determine the reason for this discrepancy. [*Id.* at ln. 7]. The Commission's Staff, though, was able to figure it out.

The Commission's Staff explained in the recommendation it filed in the case the reason for the 25 MW threshold :

With regard to its selection of 25 MW as the threshold for the "Path to Power," Evergy's response to Google LLC's Data Request G-E-57 stated:

The threshold was first identified as part of our industry outreach, specifically discussions with Arizona Public Service (APS). APS believed this to be a breakpoint

between distribution and transmission service. Review of this threshold by Evergy personnel confirmed it to be a reasonable threshold.

[Ex. 201, *Staff Report and Recommendation*, pg. 32 lns. 17 – 26 (emphasis added)].

This led the Commission's Staff to adopt the 25 MW threshold as the basis for the LLPS rate. As Staff explained:

The distinction between utilizing existing transmission and distribution networks and requiring the construction of new transmission facilities is a reasonable distinction for separate treatment from existing [Evergy] customers.

[*Id.*] The OPC also agrees with this logic (noting particularly the consensus reached by the Arizona Public Service Commission) and so joined Staff's recommendation on this point.

In contrast to the Staff and OPC, the stipulated agreement's threshold of 75 MW does not appear to be based on anything. [Ex. 106, *Testimony in Support of Stipulation and Agreement of Kevin D. Gunn*, pg. 7]. It is both well above the 25 MW originally proposed for the Path to Power, and well below the minimum threshold required by section 393.130.7. [Mo. Rev. Stat. § 393.130.7]. Given that there is no apparent justification offered for this seemingly arbitrary number, the Commission should disregard the Stipulation's proposal on this point and instead accept the recommendation of the Staff and the OPC, which is consistent with the results reached in other states.

Issue F: Minimum Term of Service

Evergy's original proposal called for a contract term of "15 years, which may include a ramp of no more than 5 years[.]" which the OPC understands to mean a total of 15 years. [Ex. 106, *Testimony in Support of Stipulation and Agreement of Kevin D. Gunn*, pg. 7 (emphasis added)]. The Stipulation calls for "12 years, plus an optional ramp of no more than 5 years." [*Id.*]. The OPC understands this to mean a total of 17 years (12 + 5). Staff's proposal calls for a minimum term of service of "10 years, following a ramp-up period of up to 5 years[.]" which the OPC understands to mean 15 years total (10 + 5). [Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, Schedule SLKL-1 pg. 2 (emphasis added)]. The OPC's proposal was offered by Dr. Marke in his rebuttal testimony: "20 years with a five-year notice period for termination." [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 16 lns. 7 – 10]. Dr. Marke did not specify what amount of those 20 years could be used as a "ramp up" period, but given that he was responding to the Company's original proposal and he characterized it simply as requiring "a term of 15 years[.]" it would be reasonable to include the same 5 year optional ramp up period that Evergy included in its initial proposal.¹³ [*Id.* at pg. 15 lns. 24 – 25]. The immediately obvious point to draw is that all these recommendations are fairly close together. That being said, the OPC's proposal is superior for two simple reasons.

¹³ In other words, Dr. Marke was simply adding 5 years to what Evergy had originally proposed.

First, Evergy does not have sufficient generation to meet oncoming LLPS load. [Ex. 201, *Staff Report and Recommendation*, pg. 38 lns. 3 – 4; pg. 63 lns. 1 – 3]. Evergy will therefore have to acquire capacity through either building generation or securing purchase power agreements (“PPAs”) to supply that capacity. [*Id.*]. As Dr. Marke points out, however, “[m]ost new build generation has a depreciation schedule that is thirty years or greater.” [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 15 ln. 25]. In addition, “most PPAs are between 15- and 25-year agreements.” [*Id.* at pg. 16 lns. 1 – 2]. This is critical because “[l]ocking in LLPS customers into a shorter term than the life of the assets being built or procured to serve them can result in cost shifting to other customers should the data center load depart.” [*Id.* at lns. 4 – 6]. Stated in another manner, the LLPS contract length should be set to match, as reasonably as possible, the life of the asset/contract that will be needed to provide service to the given LLPS customer, which thus justifies the OPC’s 20-year proposal.

The second reason is even simpler: the OPC’s proposal is “consistent with what the Kentucky Public Service Commission approved in Kentucky Power’s large load tariff.” [*Id.* at pg.16 lns. 9 – 10]. There is simply no reason or justification for the Commission to adopt protections that are less than what has already been put into place in our bordering states. Therefore, this Commission should follow Kentucky and adopt at 20-year contract length.

Issue H: Termination Fee

As expressed above, the uncertain nature of data centers poses significant risk for the creation of stranded investments. One of the major safeguards against the stranded investment threat is having a termination fee. The idea is quite simple: having the termination fee will provide cash funds that will help to offset the stranded capital investments of any generation built to serve a LLPS customer that subsequently leaves. [Ex. 201, *Staff Report and Recommendation*, pg. 77 lns. 3 – 4]. All the parties *seem* to understand this point and further all the parties appear to have adopted the same general approach to the problem by making the termination fee some variation of the remaining balance that the LLPS customer would expect to pay under the contract for service. The only reason there appears to be any difference between the parties’ respective recommendations is simply because those recommendations use different rate components with different names.

To prove the point, please consider the side-by-side comparison of the Stipulation’s “Monthly Minimum Bill” to the list of charges that would need to be collected under Staff’s recommendation:

Stipulation	Staff Recommendation
Demand Charge, Customer Charge (metering billing support), Grid Charge (substation and transmission-related costs, exclusive of direct customer-owned substation and transmission-related costs), Reactive Demand Adjustment, and Cost Stabilization Rider	Facilities Charge, Demand Charge for Generation Capacity, Demand Charge for Transmission Capacity, Variable Fixed Revenue Contribution, and Stable Fixed Revenue Contribution

Both include some form of “demand charge,” some form of charge covering distribution and transmission costs (the Stipulation’s “Grid Charge” vs. Staff’s “Facilities Charge”), and some form of fixed cost recovery (the Stipulation’s “Customer Charge” vs. the Staff’s “Fixed Revenue Contribution” charges). Further, as previously explained, both recommendations are set to recover the remaining balance of these charges that would otherwise be required under the contract with the Stipulation requiring “the nominal value of the Minimum Monthly Bill times the number of months remaining in the Term or Extension Term” and Staff simply stating “all amounts expected for the remainder of the contract.” [*Non-Unanimous Global Stipulation*, pg. 6; Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, Schedule SLKL-1 pg. 2]. So, as far as the OPC is concerned, these two recommendations are spiritually the same.

Having stated that, there are two important points that need to be addressed. First, it is necessary to point out how important it is that termination fees paid to Evergy are tracked in some manner. As stated above, the point of the termination fee is to offset stranded capital investments. Even Evergy recognizes this point. [Evergy’s *Statement of Position*, pg. 5 (“Similar to the collateral requirements, the termination fee ensures that the utility is compensated for the long-term investments and capacity planning undertaken to serve the LLPS customer”)]. In order to accomplish this, the termination fee has to be recognized in rates somehow.¹⁴ This presents a

¹⁴ If the termination fee is not recognized in rates, then it cannot possibly offset the capital costs that are being recognized in rates.

problem, however, because under existing ratemaking methodology, if the termination fee occurs outside of the test-year for a rate case, it will not be reflected in rates, and hence will not serve its purpose. It is therefore essential that the Commission order termination fees be tracked.

The proposal offered by the Commission's Staff addresses this problem by using the termination fee as an offset to plant accounts, as intended by all parties. [Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, Schedule SLKL-1 pg. 4 – 5]. The Stipulation does not appear to address the point at all, but it is unclear if this is intentional or just an oversight. It is therefore of the utmost importance that if the Commission adopts the Stipulation's termination fee provisions, it still needs to separately order that the termination fees be tracked in some manner or else these fees lose their value altogether.

The second point to address is that there is an ambiguity created by the Stipulation regarding the termination fee. On its face, the termination fee (which the Stipulation calls the "exit fee") should simply be the Minimum Monthly Bill multiplied by the time remaining in the contract (or twelve months, whichever is greater). [*Non-Unanimous Global Stipulation*, pg. 6]. But the Stipulation includes the line "The Company will use reasonable efforts to mitigate, including but not limited to reassignment of resources, the Exit Fee amount owed by the customer." [*Id.*]. This would seem to imply either that the Company has the power to alter the Monthly Minimum Bill at the point of termination or else can simply waive the

termination fee in some manner at its own discretion.¹⁵ Yet, neither of those options appear elsewhere in the stipulation. It is thus unclear whether the Stipulation's termination fee is what it purports to be or potentially something less. Apart from being one more reason why the Commission should adopt Staff's proposal over the Stipulation, this represents another issue that the Commission should address and clarify in the event it orders the adoption of the Stipulation.

Issue G: Collateral

As expressed above, the uncertain nature of data centers poses significant risk for the creation of stranded investments and this problem is addressed, in part, with the inclusion of a termination fee. Another part of that equation is the inclusion of a collateral requirement. [see Evergy's *Statement of Position*, pg. 5 ("Similar to the collateral requirements, the termination fee ensures that the utility is compensated for the long-term investments and capacity planning undertaken to serve the LLPS customer") (emphasis added)]. The purpose of having a collateral requirement is simply to ensure that there is cash available to pay the termination fee. And, as with the termination fee, every party seems to understand that this is important as every party has included some form of collateral requirement. The only distinctions are as to the *amount* of collateral and whether it can be waived.

¹⁵ Evergy cannot "mitigate" an exit fee that is just the Minimum Monthly Bill multiplied by a number of months remaining on a contract unless it either (1) changes what the Minimum Monthly Bill is, (2) waives at least some part of the Minimum Monthly Bill, or (3) changes or just ignores the number of months remaining on the contract.

Regarding the amount, all three proposals are again based on the same underlying concept. Staff took the very straightforward approach of making the collateral amount the same as its proposed termination fee, while the Stipulation bases the collateral amount off the Monthly Minimum Bill. Yet, one must recall that the Stipulation's termination fee is *also* based off the Monthly Minimum Bill, so the Stipulation collateral requirement can also be viewed simply as being "a portion of the termination fee." In this manner we again see that Staff and the Stipulation are actually aligned, and this explains the OPC's position.

Dr. Marke's rebuttal testimony, filed on behalf of the OPC, responded to Evergy's initial testimony and proposed slight modifications to the same. This is why the OPC uses the Stipulation's collateral requirement as a starting point in the above table. The first modification concerns the calculation of the Monthly Minimum Bill by the Company. According to the stipulation, the Monthly Minimum Bill includes the Demand Charge "with minimum monthly demand set at 80 percent of the Contract Capacity." [*Non-Unanimous Global Stipulation*, pg. 9]. As Dr. Marke pointed out, this is a distinctly lackluster requirement considering that it falls below even the 85% minimum demand ordered by the Ohio Public Utilities Commission. [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 16 lns. 16 – 20]. Instead, Dr. Marke argues that the minimum demand charge should include 90% of the contract capacity, which better reflects the requirements of section 393.130.7 and "is also consistent with what the Kentucky Public Service Commission approved." [*Id.*].

The second modification proposed by Dr. Marke concerns the waiver of the collateral requirement. As explained by the signatories to the stipulation, it contains numerous waiver provisions that would allow prospective LLPS customers to pay even lower collateral amounts. [Ex. 106, *Testimony in Support of Stipulation and Agreement of Kevin D. Gunn*, pg. 8]. This is inadvisable. As Dr. Marke explained at length in both rebuttal and surrebuttal testimonies, there are significant issues regarding the long-term sustainability of the type of high-load customers who would take under the LLPS. [see *supra*, pg. 10]. Allowing these customers to exempt themselves from the collateral requirement despite the volatile nature of their business would dramatically increase the probability of future stranded assets. [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg.17 lns. 5 – 9]. This is something that the Commission should quite obviously avoid if possible.

Based on the foregoing, the Commission should adopt the collateral requirement of the Stipulation but modified in accordance with the testimony of Dr. Marke. This is, again, not a significant departure from what Staff proposed. It will, however, add much needed protection to support the central point of the collateral requirement: mitigating the risk of stranded investments.

Tariff Application Process

Issues J, N, M, and L are similar to the last set, in that, they all deal with what is required of a prospective LLPS customer to join Evergy's system. They differ only in that these issues are less concerned with what the prospective Customer must look

like and are more concerned with what a prospective customer must do as part of the application process. These issues read:

- J. Should the Commission approve Evergy’s “Path to Power” approach?
 - a. What components of the proposed “Path to Power,” if any, should be included in the Commission’s approved tariff sheets?
- N. Should Evergy be required to disclose information about prospective customers?
 - a. If so, what review should the Commission have of prospective customers and terms applicable to specific customers?
 - b. In what case should said review occur?
- M. Should a form customer service agreement be included in the Commission approved LLPS tariffs resulting from this case?
- L. What studies should be required for customers to take service under the LLPS tariff?

As with the last set of issues, there is significantly less disagreement between the parties as to these issues than one might initially think and, even where there is disagreement, it often seems to stem as much from miscommunication than from actual differences in opinion.

Issue J: Path to Power

The first question posed under issue J is whether the Commission should approve the “path to power” interconnection framework.¹⁶ At a high level, this is not actually in dispute. Staff, the OPC, and the Stipulation all agree on allowing the underlying framework of the “path to power.” [Ex. 201, *Staff Report and Recommendation*, pg. 115 lns. 12 – 28; Ex. 301, *Rebuttal Testimony of Geoff Marke*,

¹⁶ Details regarding the “Path to Power” was discussed previously. [*supra*, pg. 20].

pg. 5 lns. 3 – 8; *Non-Unanimous Global Stipulation*, pg. 21]. The only real disagreements appear under subpart a, which asks effectively how that “path to power” should look and/or function.

Staff offers six amendments to Evergy’s path to power in its recommendation. Of those, three are related to the one issue that also drove the OPC’s disagreement, which will be discussed shortly. The other three are as follows:

- Include expected duration for each phase.
- Include deliverables from Evergy to customer for each applicable phase, such as indicative cost estimates.
- Include the title of all required agreements.

[Ex. 201, *Staff Report and Recommendation*, pg. 115 lns. 14 – 17]. Evergy does not proffer any real reason why these three amendments would be inappropriate. Therefore, the Commission should order these three amendments to the “path to power.”

Staff’s other three recommendations concern the initial \$200,000 deposit required during Phase 2 (the Project Details Phase) of the path to power and, as already stated, this is the same issue that the OPC had concerns with. To put matters simply, to proceed to phase two of the path to power, “a project must formally submit details about the project and make a \$200,000 deposit to cover the study costs.” [Ex. 102, *Direct Testimony of Jeff Martin*, pg. 10 lns. 15 – 16]. This is not the only money that may be at stake because, as Evergy’s witness explains, “[t]o the extent Company costs associated with studying a project surpass the deposit, it will require additional

deposit(s) in \$200,000 increments.” [*Id.* at pg. 10 ln. 23 – pg. 11 ln. 2]. However, the issue at hand only concerns the initial \$200,000 because Evergy “plans to waive the initial deposit requirement for Community Interest Projects.” [*Id.* at pg. 13 ln. 8]. Both Staff and the OPC take issue with this provision, though for different reasons.

Staff’s concern stems from the fact that, “in regards to the community interest projects, deposit applicability and managing projects in the queue are subject to Evergy’s ‘sole discretion.’” [Ex. 201, *Staff Report and Recommendation*, pg. 114 lns. 9 – 11]. Here is Staff’s argument for why that is a problem:

As tariffs are binding on the Commission as well as the utility and its customers, the proposed language is unnecessarily vague. . . . In other words, the tariffs of [Evergy Missouri Metro] and [Evergy Missouri West] should obligate each to manage the queue reasonably, appropriately, and in a non-discriminatory manner; and nothing in the tariff should directly or indirectly prohibit the Commission from the appropriate review of [Evergy Missouri Metro] and [Evergy Missouri West]’s queue management and processing.

[*Id.* at lns 11 – 19]. Staff consequently offered three further adjustments:

- Remove reference to Company’s “sole discretion” regarding deposit applicability and managing projects in the queue.
- Prohibit Evergy from being the entity providing certification to its large load customers that the absence of a deposit and expedited timing are critical to the state winning the project.
- Modify language regarding the website and require Evergy to maintain on its website a list of accredited state or regional economic development organizations who may certify the criticality of timing and deposit waiver for a specific customer project.

[*Id.* at pg. 115 lns. 18 – 26]. The OPC, meanwhile, provides a much simpler solution: just don't make ratepayers pay for the waiver.

Dr. Marke laid out the OPC's position for why ratepayers should not have to pay for the waiver in his rebuttal testimony:

Because of the volume and speculative nature of the LLPS applicants, I think it is more than appropriate for customers to have “skin in the game” to indicate their seriousness. That being said, I have no issue if the Company wants to have the option to incur these costs itself and then book them below-the-line. It certainly has the financial incentive to justify it.

[Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 4 ln. 20 – pg. 5 ln. 2]. One of the important facets to Dr. Marke's proposal is that, by placing the cost of the waiver on shareholders, the Company is justified in maintaining its discretion over to whom it would apply. Under those circumstances, the waiver of the initial \$200,000 is effectively an act of largesse undertaken by and for Evergy's shareholders. Therefore, the Commission should simplify the matter and resolve Issue J by ordering the adoption of Evergy's “path to power” but modified according to Staff's first three amendments and then further order that any waiver of the initial \$200,000 fee required under phase two will be booked “below-the-line.”

Issue N: Customer Information Disclosure

The dispute in Issue N basically boils down to one question: what should the Commission be allowed to know about prospective LLPS customers. The Commission's Staff advocates for the production of “actual potential customer lists”

and “anticipated loads for each customer” on a quarterly basis. [Staff’s *Statement of Position*, pg. 15]. Everygy meanwhile argues that the Commission should not be allowed to know the names or the anticipated loads of each prospective LLPS customer. [Everygy *Statement of Position*, pg. 7; *Non-Unanimous Global Stipulation*, pg. 18]. Everygy instead proposes to offer only high-level, aggregated information, which will also only be provided annually and on an “anonymized basis.” [*Id.*]. Further, Everygy’s only given reason for this radical position is that “[d]isclosing such information would increase the Commission’s administrative burden and regulatory oversight” and might deter prospective LLPS customers. [*Id.*]. This is not reasonable.

The Commission’s Staff offered four excellent reasons why the Commission should care to know details about LLPS customers:

(1) to ensure that the claims that are being made by the utility are correct, (2) to be able to compare utilities within the state to ensure that multiple Missouri utilities are not counting the same potential customer, (3) because the magnitude, location, and timing of energy usage impacts fuel and purchased power costs as well as the planning of transmission and distribution facilities, and (4) the Commission also needs to be able to review the overall load characteristics of a potential large load customer.

[Staff’s *Statement of Position*, pg. 15]. Everygy’s bare-bones claim that knowing this information will be harmful to the Commission’s ability to operate is not only contradicted by Staff’s reasons, but also frankly insulting to the Commission itself. As for the claim that providing information will deter potential LLPS customers, the

simple answer is to utilize the already existing confidentiality rules. Staff even acknowledged this:

This information should be filed confidentially to make sure that the information is not released to the public, but the Commission must have the ability to review the information that the utility has prior to allowing construction and upgrades on these facilities.

[*Id.*]. If basic confidentiality is not sufficient, the Commission also has rules for achieving heightened confidentiality. [see 20 CSR 4240-2.135]. For these reasons, the Company's arguments just make no sense.

There is simply no good reason why Evergy should be permitted to hide information from the Commission, its Staff, or the OPC, nor for why the Commission should want its own Staff to be uninformed when it comes to data Staff needs to complete its work. Further, any concern about the security of sensitive information can be adequately resolved through the application of the Commission's long-standing confidentiality rules. Evergy's proposal is unnecessarily restrictive and will impede future collaboration. To prevent this, and promote open discourse and cooperation, the Commission should reject the annual reports section of the Stipulation and instead order the quarterly reports recommended by its Staff as a resolution to issue N.

Issue M: Form Customer Service Agreement

Staff witness Claire Eubanks points out in her surrebuttal testimony that Ameren Missouri’s proposed Commission-approval process for large load customers seeking service includes a form service agreement. [Ex. 205, *Corrected Surrebuttal Testimony of Claire M. Eubanks, P.E.*, pg. 5 lns. 18 – 20]. She went on to recommend that the Commission order Evergy to adopt a similar proposal. [*Id.*]. Evergy opposes the idea but does not appear to have any reason for doing so other than claiming it would “unduly restrict Evergy’s reasonable discretion in servicing the unique and complex needs of LLPS customers.” [Evergy’s *Statement of Position*, pg. 7]. This is hard to believe given that it was Ameren who first proposed a form service agreement as part of its own LLPS tariff. It is also worth noting that including a “form” service agreement in the tariff does not mean that every single provision of the agreement would need to be the same for every single customer. Rather, the point of having a “form” agreement is to have a standardized format with consistent information appearing in a consistent order. It achieves efficiency by negating the need to draft a new contract from scratch for every single prospective LLPS customers. Given these points, the Commission should adopt its Staff’s recommendation and order a form contract, as outlined in Ms. Eubank’s testimony, be included in Evergy’s tariff sheets to resolve issue M.

Issue L: Studies

The last issue in this group (issue L) asks what “studies” should be required for customers to take service under the LLPS tariff. In response to that question, the OPC has identified at least three important pieces of information that the Commission should want to have investigated as part of the LLPS application process. Before addressing those three items, however, the OPC will first address the form of the study. Specifically, the OPC will respond to the position taken by the Commission’s Staff.

In her surrebuttal testimony, Staff witness Claire Eubanks expressed that she did not support Dr. Marke’s recommended studies. [Ex. 205, *Corrected Surrebuttal Testimony of Claire M. Eubanks, P.E.*, pg. 5 lns. 8 – 14]. However, her reason for that position was based only on the idea that Dr. Marke had recommended the studies be conducted by third parties. [*Id.*]. As to the information being requested, Ms. Eubanks expressed support both in testimony and at the hearing. [*Id.* at pg. 3 ln. 18 – pg. 5 ln. 2; Tr. Vol III, pg. 27 lns. 5 – 7 (“ . . . it's great that he proposed some metrics and some ideas. I think they're worth exploring . . . ”)]. To that end, Ms. Eubanks proposed resolving Dr. Marke’s request for information through its recommend minimum filing requirements:

Q. How does Staff’s recommendation alleviate Dr. Marke’s concern?

A. Staff’s recommended minimum filing requirements include components of Dr. Marke’s areas of concern: annual reporting requirements, evidence of interconnection studies that include

consideration of harmonics, and documentation of customer consultation with other utility providers (i.e. water, sewer, and gas).

[Ex. 205, *Corrected Surrebuttal Testimony of Claire M. Eubanks, P.E.*, pg. 6 lns. 17 – 21]. These minimum filing requirements would be in addition to the filing of the form service agreement, as discussed above, which would take place during the LLPS customer application process that Ameren recommended. [Tr. Vol III pg. 29 ln. 23 – pg. 30 ln. 2]. This resolution is acceptable to the OPC.

The OPC's primary concern regarding the studies that are the subject of this issue is the development and procurement of the underlying information, not the specific means by which that information is provided. Whether the Commission orders the studies recommended by Dr. Marke or adopts the minimum filing requirements recommend by its Staff is irrelevant as long as the Commission can safely say that it is being properly informed about the impact large load customers are having on their neighbors and the likelihood of this load being maintained (given limitations on natural resources and advancements in efficiency). On that note, it is best to consider the actual studies themselves.

Of the three studies recommended by Dr. Marke, perhaps the most important is the study of "total harmonic distortion." This concept, harmonic distortion, refers to the "the presence of unwanted frequency components in a power system." [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 11 lns. 20 – 22]. It is important because the presence of these distortions "can significantly impact the performance and reliability

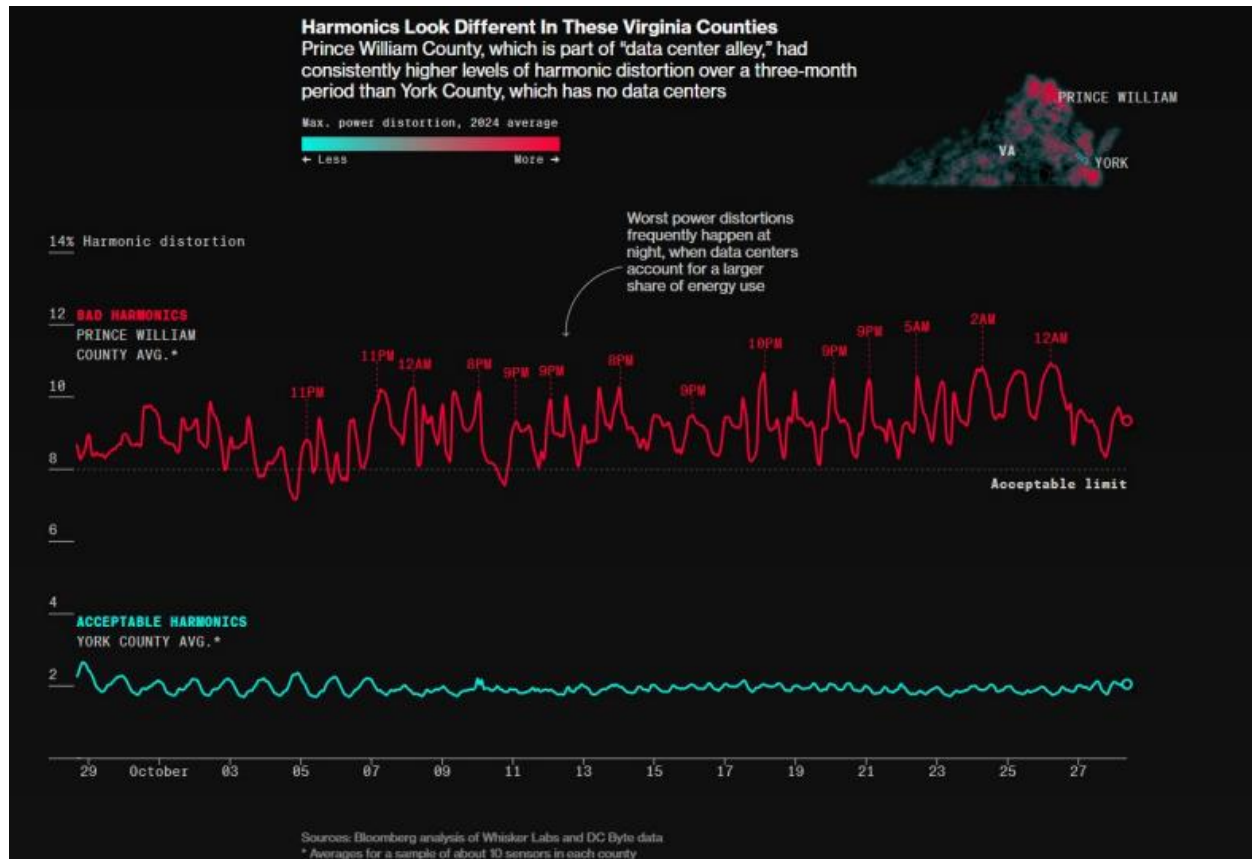
of the distribution system.” [*Id.* at lns. 22 – 23]. Dr. Marke cites the following *Bloomberg News* article detailing these impacts:

Bad harmonics can force home electronics to run hot, or even cause the motors in refrigerators and air conditioners to rattle. It’s an issue that can add up to billions of dollars in total damage . . . the worse power quality gets, the more the risk increases. Sudden surges or sags in electrical supplies can lead to sparks and even home fires. Left unaddressed, one problem can morph into another.

[*Id.* at pg.12, lns. 6 – 10 (emphasis added)]. What is clear from this testimony (and, it should be noted, remains undisputed by other witnesses) is that the harmonic distortion problem poses an immediate threat to the safety and adequacy of service being provided by Missouri utilities. Thus, the issue should be of paramount importance to this Commission who is obligated to safeguard the provision of safe and adequate service by Missouri’s regulated utilities. [Mo. Rev. Stat. § 393.130.1].

Understanding the impact that harmonic distortion can have is only half the battle. The other half is understanding why studying the phenomenon is so important for LLPS customers. The simple reason is that “[p]oor harmonic distortion of the distribution system is strongly correlated in areas with significant data center buildout.” [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 12 lns. 2 – 3]. As Dr. Marke notes, an analysis performed by “Whisker Labs and DC Byte Data concluded that more than three-quarters of highly distorted power readings across the country are within 50 miles of significant data center activity.” [*Id.* at lns. 3 – 5]. Dr. Marke also offered “a visual representation of acceptable and bad harmonic levels” that was

generated by “comparing York County, Virginia against Prince William County, Virginia (home of “data center alley”):”



[*Id.* at pg. 12 ln. 17 – pg. 13 ln. 3]. As this image shows, being near LLPS customers like data centers can have a profound impact on non-LLPS customers. In order to understand that impact, to know what the costs of remedying it might be, and above all to ensure the continual provision of safe and adequate service, the Commission should order the evaluation of the total harmonic distortion both expected and actually caused by each LLPS customer either as a study (as recommend by Dr. Marke) or as part of the minimum filing requirements and annual reporting (as contemplated by the Commission’s Staff).

While the total harmonic distortion problem presents the highest degree of immediate risk to Evergy's customers, the other two studies recommended by Dr. Marke both remain important due to the long-term issues surrounding these new LLPS customers. For example, the first study Dr. Marke recommended was a Power Usage Effectiveness or "PUE" study. [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 5 lns. 9 – 13]. This kind of study would measure "the energy efficiency of a data center or large energy-intensive facility and helps recognize any opportunity to improve energy usage over time." [*Id.* at lns. 20 – 22]. Such a study would be important because it would help to determine the likelihood of a stranded investment being created due to sudden changes in the energy efficiency of an LLPS customer.

As has been stated above, there is simply "not enough energy to meet the expected demand on the grid today." [*Id.* at pg. 6 lns. 4 – 5]. Moreover, "that demand is largely being driven by the emergence of AI and the vast amount of power that is required to serve it." [*Id.* at lns 11 – 12]. This parallels a similar concern that arose in the early 2000s "that energy demands to support the proliferation of internet would not be sustainable." [*Id.* at lns 12 – 13]. However, this did not come to pass. Instead, "server farms and computing got exponentially more efficient through miniaturization and increased transistor density." [*Id.* at pg. 7 lns 4 – 7]. This meant that the industry became "more efficient and the electric grid and accompanying investments reverted back to a largely flat growth line." [*Id.*]. It needs to be recognized that if what occurred during the internet boom of the early 2000s were to happen again today during the AI boom, the result would be that much generation

investment built to serve new data centers could become unnecessary and thus stranded. In fact, this kind of efficiency gains have already started to occur, as was shown with the arrival of “China’s open-source AI platform, DeepSeek, and its energy consumption and cost relative to US firms.” [*Id.* at lns. 9 – 21]. For these reasons, the Commission being aware of the energy efficiency of new LLPS customers, and perhaps more importantly the opportunity for energy efficiency advancements, can have a profound impact on resource planning for the utilities serving those LLPS customers, which justifies why the Commission should order utilities to provide the PUE information recommended by Dr. Marke.

The last study Dr. Marke recommended was a water usage effectiveness (“WUE”) study. It is probable that the connection between a LLPS customer’s water usage and the Commissions’ regulatory power is the least obvious, but the reasoning behind this request is actually quite simple. It is again aimed at determining the likelihood of a stranded investment being created, this time due to LLPS customers being shuttered due to lack of water resources. This is necessary due to the immense volumes of water an LLPS customer may use. A study by the Environmental and Energy Study Institute, for example, found that “large data centers can consume up to 5 million gallons per day, equivalent to the water use of a town populated by 10,000 to 50,000 people” [*Id.* at pg. 10 lns. 4 – 6]. Much as with the PUE study, failure to properly account for this water usage could mean that LLPS customers are unable to operate at full capacity or might even have to be shut down if too much water is consumed too quickly. It also means that benchmarking water usage effectiveness “is

a relatively low-cost means of monitoring and assessing future planned investment” and will thus “minimize the possibility of future stranded assets.” [*Id.* at pg. 10 lns. 15 – 17].

British statesman Winston Churchill once said that true genius resides in the capacity for evaluation of uncertain, hazardous, and conflicting information. If that is true, then no such genius can exist unless and until one is actually in possession of all the necessary information. The core of the OPC’s request is simply to ensure that the Commission is so equipped. There is little reason, as evidenced by the lack of meaningful testimonial rebuttal, for why this Commission should choose not to keep itself informed over the three matters that Dr. Marke recommended studies be performed. At the same time there is a great deal of risk should the lack of data lead to an unfortunately uninformed decision that could result in stranded investments or damage to personal property. The only safe and rational course of action, therefore, is for this Commission to order the evaluation of the total harmonic distortions, PUE, and WUE for LLPS customers either through Dr. Marke’s recommended study or Staff’s recommended minimum filing requirements and annual reporting.

Issue T: Additional Riders

Issue T consist of exactly one question: “should the proposed additional riders be authorized by the Commission?” This issue is, quite obviously, followed by six separate sub-issues that represent the six separate additional riders that have been offered by parties in this case. None of these six riders are essential to the provision of service under the proposed LLPS tariff sheets. They all instead provide certain

options that prospective LLPS customers can choose to avail themselves of in the future. And therein lies probably the single greatest issue: there is no need for the Commission to rule on these riders right now.

This brief will, in short order, identify the lingering issues or other reasons for delay for each of the six additional riders. However, the OPC openly admits that many of those issues and/or reasons for delay are not insurmountable. Rather the problem is that the Company is trying to do too much too quickly. Many of these riders could be implemented with slight modifications, or additional work to address missing components, or just waiting for other cases that are attempting to achieve the same goal to complete. Rushing to accept the riders just because of their inclusion in the Stipulation will instead result in a collection of broken or undefined systems or others that will soon be subject to potential radical change. This will guarantee additional litigation in the future to address what was left unresolved in this case. To prove that point, this brief will consider each rider in turn.

Sub-Issue a: Customer Capacity Rider

According to the Stipulation, the customer capacity rider (“CCR”) “[e]nables the Company to credit customers for using their supply of generation capacity as Southwest Power Pool-accredited capacity for use by the Company to serve the customer’s load.” [*Non-Unanimous Global Stipulation*, pg. 11]. To rephrase that in even simpler terms: it lets Evergy buy capacity from LLPS customers. This is done, according to the Stipulation, through a bilateral contractual agreement. [*Non-*

Unanimous Global Stipulation, pg. 11]. On a conceptual basis, this is probably fine. The problems come exclusively from the way the proposed rider has been designed.

As Dr. Marke pointed out in his rebuttal, under the current design of the CCR, “all contracting is subject to [the] Company’s capacity need and its complete discretion.” [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 24 lns. 15 – 16]. This total discretion by the Company makes the rider unworkable. As described 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]. If Evergy had actually sought to work with Staff and the OPC on addressing these concerns, there is a high likelihood that this rider could have been made into a workable tool. As it stands now, though, this rider will, if approved, guarantee future litigation. The Commission should deny this rider and order the parties to work collaboratively to develop a new version that cures the uncertainties around its operation.

It is also necessary to note that this will in no possible way harm either the Company or LLPS customers simply because “nothing prohibits [Evergy Missouri Metro] or [Evergy Missouri West] from entering into agreements with an LLPS

customer to purchase energy or capacity from that customer[.]” [Ex. 201, *Staff Report and Recommendation*, pg. 100 lns. 17 – 21]. In other words, this rider is designed to allow for something that can already be done right this very instant. The only difference is that, as of right now, Evergy would have to prove that the amount being paid for capacity from an LLPS customer is prudent, which, to be clear, is something Evergy should be required to do.

Sub-Issue b: Demand Response & Local Generation Rider

This is a basic demand response program. It allows LLPS customers to “designate some amount of load as interruptible (*i.e.* curtailable) and provide the Company with the right to curtail participant load during peak and constrained grid condition periods[.]” [*Non-Unanimous Global Stipulation*, pg. 11]. In exchange for this, “[p]articipating customers will be compensated through a credit based on their enrolled timing option.” [*Id.*]. As with the last rider, this is conceptually a good idea bogged down by a handful of issues. [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 25 lns. 1 – 5]. To wit:

1. 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].
2. 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.

3. 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].

These are just some of the issues identified by the Commission's Staff and the OPC. As with the CCR, many of these issues could potentially be solved, if Evergy is willing to work with other stakeholders in addressing them. So, once again, the Commission should deny this rider and order the parties to work collaboratively to develop a new version that cures the identified problems.

Sub-Issue c: Renewable Energy Program Rider

This program would "enable customers in Evergy's Missouri territory to access historical RECs at a fixed price adjusted annually." [*Non-Unanimous Global Stipulation*, pg. 11]. The primary issue on this rider is that the North American Renewables registry ("NAR") "has limits on the amount of RECs that can be retired on behalf of others." [Ex. 201, *Staff Report and Recommendation*, pg. 105 ln. 6]. This may severely limit the ability of Evergy to retire the RECs on the behalf of others, as provided for in the rider. [*Id.* at lns. 11 – 12]. 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]. As with the prior two riders, the best

course of action here is for the Commission to deny the rider as contemplated in the Stipulation and order the parties to work collaboratively to develop a new version to resolve these issues.

Sub-Issue d: Green Solution Connections Rider

This rider is designed to allows certain LLPS customers “to subscribe to future renewable energy attributes associated with new Company-owned wind or solar generation acquired through the Integrated Resource Planning (“IRP”) process that are not needed to meet renewable compliance targets or requirements.” [*Non-Unanimous Global Stipulation*, pgs. 19 – 20]. There is already a case open before the Commission (EA-2024-0292) where “Evergy applied for a [Certificate of Convivence and Necessity] for the two program resources and proposed the [Green Solution Connection Rider] program for [Evergy Missouri West].” [Ex. 201, *Staff Report and Recommendation*, pg. 107 lns. 10 - 17]. “Staff and the Company committed to continuing to work on the details of the program and file specimen tariffs in the docket for Commission approval at least six months prior to the expected completion of the two facilities.” [*Id.*]. This proposed rider should therefore be put on hold until the EA-2024-0292 is resolved to ensure consistency between the programs for Evergy Missouri Metro and Evergy Missouri West. Stated differently, this rider will be fine, if the Company would just wait for its other case to finish.

Sub-Issue e: Alternative Energy Credits Rider

This Rider is designed to provide LLPS “customers with the ability to include emission-free nuclear energy from Company-owned or sourced resources into their clean energy portfolio to support the customer’s sustainability and decarbonization goals” [*Non-Unanimous Global Stipulation*, pg. 20]. This would be done by allowing the sale and retirement of Alternative Energy Credits (“AECs”). [Ex. 201, *Staff Report and Recommendation*, pg. 108 lns 3 – 8]. “An AEC 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.” [*Id.* pg. 108 lns 9 – 10]. As with this Renewable Energy Program Rider, this rider is conceptually sound but subject to a critical flaw. Specifically, “there is currently no existing market for AECs and there is also no standard set by statute or rule.” [*Id.*, pg. 109 lns 3 – 4]. As a result, “Eversource would be unable to sell these AECs outside of this program.” [*Id.* at ln. 4]. Further, there are no registries that “track AECs like they do RECs, so Eversource would need to find and hire a third party in order to track and retire AECs.” [*Id.* at lns. 13 – 15]. But, as with all the other riders, this is not an insurmountable issue. The Commission just needs to implement a system for the sale for AECs in Missouri to ensure they are treated in the same manner as RECs before approving this kind of rider. Staff also provided an alternative recommendation that “the Commission require that Eversource 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.” [*Id.* at lns. 20 – 23]. The Commission should therefore deny the rider unless it takes one of these two offered solutions to address the problems identified above.

Sub-Issue f: Clean Energy Choice Rider

The simple way to explain this rider is that it “allows LLPS customers to influence the Company’s IRP analysis, the Company’s Preferred Resource Plan (PRP), and the Company’s resource acquisition strategy.” [Ex. 201, *Staff Report and Recommendation*, pg. 79 lns. 6 – 8]. The simple explanation as to why the Commission should not approve this rider is because the recently passed Senate Bill 4 requires a complete overhaul of the Commission’s IRP process by August 28, 2027. [*Id.* at pg. 80 lns. 7 – 10; 393.1900]. As such, the entire rider will be effectively nullified and need to be re-written, if not completely scrapped, in less than two years. As Staff pointed out:

With only one large load customer currently included in EMM’s and EMW’s 2025 Annual Updates, that would receive service under the Schedule LLPS rate no sooner than the first quarter of 2026, and the new legislation requiring an integrated resource planning proceeding commencing by August 28, 2027, Staff is of the position that a new rider such as Schedule CER not be approved at this time. 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.

[*Id.* at pg. 82 lns. 2 – 8]. As with the Green Solution Connections Rider, the central problem of the Clean Energy Choice Rider is really just one of timing. There is

absolutely no need for Evergy to push for this rider right now. The Commission should therefore deny this rider as included in the Stipulation and instead just wait for the IRP rules to be re-written.

Summation

As stated above, the problem with these riders is that the Company is trying to do too much too quickly. The result has been a number of errors, missing information, overlooked conflicts, and simply illegal requests. But that doesn't mean that the proposed riders should be disqualified in their entirety. Instead, the Commission needs to order Evergy to actually engage in a collaborative discussion with the Staff and the OPC to resolve these lingering issues and produce riders that will work.

Subsidization

As the name suggest, the basic premise for each of these issues was already addressed in the introduction as they all touch on one of the four ways that subsidization of LLPS customers might occur. [*see supra*, pg. 6]. The five issues that concern subsidization are Issue R, O, P, B, and S. Those issues read:

- R. What treatment is needed to address revenues from LLPS customers occurring between general rate cases?
- O. Should LLPS customers be included in the FAC?
 - a. What, if any, changes should be made to Evergy's existing FAC tariff sheet?
 - b. When/in what case should these changes be made?
 - c. What if any FAC related costs should the Commission order tracked?

- 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?
- B. Can the Commission establish terms and conditions to exclude otherwise eligible customers from receiving EDR discounts?
- S. Should the Commission approve the Evergy System Support Rider or take other steps to address cost impacts to non-LLPS customers?

The OPC will address each of these issues in turn by explaining both how they touch on the subject of subsidization and how that subsidization can be avoided.

Issue R: Revenue Tracking

This issue concerns the first means by which subsidization can occur discussed in the introduction. Recall that the issue is one of timing. If a utility builds generation to serve LLPS customers but places that generation into service and seeks recovery before the LLPS customer joins the system, then non-LLPS customers will be paying for that generation. [Tr. Vol III pg. 57 lns. 6 – 21]. In the same scenario, because the new LLPS customer joins Evergy’s system after rates are set in a rate case, none of the revenue from that customer will be reflected in rates and so none of that revenue will pay down any of the plant costs associated with that generation built to serve them. [*Id.* at pg. 57 ln. 22 – pg. 58 ln. 7]. Thus, non-LLPS customers are forced to subsidize LLPS customers by paying for generation needed because of the load requirements of the LLPS customers. [*see also* Ex. 201, *Staff Report and Recommendation*, pg. 63 ln. 1 – pg. 64 ln. 4 (explaining the same)].

The solution to this problem is to track the revenues from LLPS customers that join Evergy's system in between rate cases. This will allow that revenue to offset what Evergy's non-LLPS customers have already paid for the plant, thus reducing the degree to which they are subsidizing the LLPS customers. It would also directly address the double-recovery that will otherwise occur under the scenario described, as explained by Staff:

It is important to note that EMM and EMW are each recovering the full cost of owning and operating their generation fleets from existing customers, as of the conclusion of each of their last rate cases. If a new LLPS customer begins paying for the generation fleet – as they should – then EMM and EMW will over-recover that amount. As a very simple example, consider four friends who decide to buy a \$20.00 pizza. Each of the four hands \$5 to the cashier. Just then a fifth friend walks in and joins them. Should this newcomer also give the cashier \$5? Or should the newcomer give \$1 to each of those who already paid? Evergy is in the position of the restaurant manager, who would be pleased to accept a \$5.00 gratuity on that \$20.00 pizza.

[Ex. 201, *Staff Report and Recommendation*, pg. 63 ln. 21 – pg. 64 ln. 1]. By tracking the LLPS customer revenues (the hypothetical fifth friend's added \$5) it is possible to distribute those revenues equitably to the other ratepayers who have already paid (the other four friends in the hypothetical). Under the Stipulation's approach, by contrast, the restaurant manager is paid \$25 for a \$20 pizza and the fifth friend (the LLPS customer) gets to eat for free, having been subsidized by the other four. [*Id.*].

Finally, it is important to note that the present issue is set to be further exacerbated with the introduction of construction work in progress ("CWIP"). CWIP would allow Evergy to recover costs for generation before it is even brought online.

[Tr. Vol. III pg. 58 ln. 20 – pg. 59 ln. 4]. This will further guarantee that non-LLPS customers end up paying for generation to serve LLPS customers. [*Id.* (see also Ex. 302, *Surrebuttal Testimony of Geoff Marke*, pg. 26 lns. 12 – 16 (“CWIP effectively converts consumers into involuntary investors, placing the burden of up-front financing costs onto them. In theory, this could result in some long-term savings to customers if everything goes as planned. But if not, if costs continue to increase, if the data centers move on, or if a project is abandoned—ratepayers could be on the hook for a lot of unnecessary costs.”)]].

Ironically, the very basis for awarding CWIP in the first place is to allow the utility to mitigate the delay in recovery of costs, what is also known as “negative regulatory lag.” [Tr. vol. III pg. 59 lns. 5 – 11]. This creates a hypocritical juxtaposition against the Stipulation’s insistence that the delay in recognizing revenues (“positive regulatory lag”) should not be accounted for. In reality, the proper balance between these two mechanisms would be to recognize either both or neither. If the Commission intends to adopt the Stipulation at face value, then it should not permit accelerated recovery of plant construction costs through CWIP. If, on the other hand, the Commission wishes to allow utilities to use CWIP to accelerate rate recovery of their rate base, then it should also order tracking of added revenues to offset that accelerated rate base recovery, just as Staff witness Sarah Lange explained on the stand:

So, we're mitigating the positive regulatory lag, and we're using that mitigated positive regulatory lag to offset the additional rate base that

is caused by the additional plant, as well as any CWIP treatment or other treatment that may have entered before the rate was set.

[Tr. Vol III pg. 60 lns. 6 – 12]. For all these reasons, the Commission should order the tracking of revenues from LLPS customers occurring between rate cases in the manner proposed by the Commission’s Staff. [Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, pg. 27 lns. 13 – 16].

Issue O: FAC Treatment

A Fuel Adjustment Clause is designed to allow a utility to recover or return to customers the variations in both fuel costs and purchased power costs that occur in between rate cases. [20 CSR 4240-20.090(1)(I)]. As it relates to “purchased power,” this is referring to energy that a utility purchases for its customer’s usage, which, for Missouri’s regulated utilities such as Evergy, means the energy purchased from a regional transmission organization like the Southwest Power Pool (“SPP”). Because Evergy sells all energy it generates into SPP and purchases all the energy it ultimately sells to retail consumers from the SPP, the mere “act of selling more energy to retail customers results in [Evergy] transacting more energy purchases through the FAC.” [Ex. 201, *Staff Report and Recommendation*, pg. 64 lns. 19 – 20]. Because adding a new LLPS customer onto Evergy’s system will require the utility to sell more energy (to the LLPS customer specifically), adding the LLPS customer “will immediately increase the load costs therefore increasing FAC costs[.]” [Ex. 300, *Surrebuttal Testimony of Lena M. Mantle*, pg.2 lns. 13 – 15]. This is an unavoidable consequence of the method by which the FAC operates. Because of this, non-LLPS

customers will end up paying increased costs through the FAC “[a]fter the first accumulation period that includes a new LLPS customer.” [*Id.* at lns. 15 – 16].

Because the FAC is designed to reflect variations in purchased power costs between rate cases, one might expect that this subsidization would cease after the new LLPS customer’s costs are included in rates as part of a subsequent rate case.

This, unfortunately, is not true:

Following the first rate case after a LLPS customer is added, if all customers are included in the FAC, the amount of fuel included in the base rates for the non-LLPS customers will increase as will the FAC base factor. Non-LLPS customers will continue to subsidize LLPS customers through the FAC since the increased FAC costs will be charged all customers.

...

Because LLPS customers will only increase FAC costs, the inclusion of the LLPS load in calculating a base factor in general rate cases would result in all customers being charged more for fuel and purchased power costs in their base rates and in the FAC. The non-LLPS customers will be charged this higher average cost when the average cost for the non-LLPS customers would be lower without the LLPS customer loads.

[Ex. 300, *Surrebuttal Testimony of Lena M. Mantle*, pg. 2 lns. 18 – 22, pg. 3 lns. 5 - 10 (emphasis added)]. Again, this is just the natural result of how an FAC functions and is guaranteed to occur if the Stipulation is adopted because the Stipulation maintains

the core FAC mechanism unchanged.¹⁷ However there is a simple, *simple* solution to the problem.

All the Commission needs to do in this case is to order two separate FACs for Everygy. [Ex. 300, *Surrebuttal Testimony of Lena M. Mantle*, pg. 3 lns. 11 – 15]. The first would be the one that already exists and would apply to non-LLPS customers while the second would apply only to LLPS customers. [*Id.*]. The beauty of this solution lies in its simplicity. No individual party is made any worse off except that LLPS customers would not be subsidized by the non-LLPS customers. As OPC's witness Ms. Mantle explained on the stand:

Q. . . . Your recommendation, as I understood it, was to keep them separate, to try and separate LLPS customers from non-LLPS customers. Does that have a negative impact on LLPS customers?

A. No, it shouldn't. It actually it should just make sure the costs are recovered correctly from both sets of customers. It could be in the future that the non-large customer costs go up, then the large power customers would not then not be subsidizing the non. The only way you can make sure that there is no subsidization is to split the two.

[Tr. Vol III pg. 241 lns. 2 – 12]. Moreover, because the FAC's mechanism would be the same in either case, the utility is placed in the exact same position as if there had been one FAC, so not even the utility can claim to have suffered from this result. This

¹⁷ The Stipulation does make changes to the FAC, but only to “to reflect cost offset for revenues from the Renewable Energy Program Rider, Green Solutions Connections Rider, and Alternative Energy Credit Rider.” [*Non-Unanimous Global Stipulation*, pg. 20].

really is a seamlessly easy solution to prevent cross-subsidization between customer classes under the FAC.

As it relates to the sub-issues for issue O, the splitting of the FAC into two can be achieved easily simply by including language in “the LLPS tariff sheet excluding the LLPS customers from the currently effective FAC.” [Ex. 300, *Surrebuttal Testimony of Lena M. Mantle*, pg. 3 lns. 21 – 22]. Then the Commission would order tracking of the costs and revenues associated with fuel and purchased power for LLPS customers, which “would be dealt with as proposed by [Staff witness] Ms. Mastrogriannis in the next general rate case.” [*Id.* at lns. 23 – 24]. “At that time tariff sheets detailing a FAC for LLPS customers could be proposed and approved.” [*Id.* at pg. 3 ln. 24 – pg. 4 ln. 2]. Using this method will guarantee there is no subsidization of the LLPS customers by non-LLPs customers through the FAC. [Tr. Vol III pg. 241 lns. 2 – 12].

Issue P: Separate SPP Pricing Nodes

This issue is only included in this section because of its interrelation to the FAC issue just covered. As explained by the Commission’s Staff:

Given the size of potential LLPS customers, Staff recommends that the Commission require that each LLPS customer be registered with SPP as a separate commercial pricing node. Absent this treatment, it is 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.

[Ex. 201, *Staff Report and Recommendation*, pg. 22 lns. 12 – 16]. The basic idea here is pretty simple: SPP related costs (such as purchased power) flow through the FAC, so, to be able to identify which of these costs are specific to LLPS customers, those customers should be separated from the rest. [*Id.*]. Given the soundness of this logic and the need for the separation of the FAC as illustrated above, the OPC supports this request by Staff. The OPC further notes that in the event the Commission finds the above request untenable for any reason, Staff provided an alternative:

In the absence of separate commercial pricing nodes for each LLPS customer, Staff recommends that the Commission order each of the conditions included in Appendix 2 – Schedule 2. The conditions included in Appendix 2 – Schedule 2 are not a perfect solution for identifying the costs associated with the LLPS customers, will not allow for full cost causation transparency, and will create additional work processes for Staff and other parties. However, absent separate commercial pricing nodes, the information provided would provide an improvement over Evergy's current documentation processes.

[Ex. 201, *Staff Report and Recommendation*, pg. 22 ln. 25 – pg. 23 ln. 2]. The OPC can conceive of no justifiable reason for why the utilities and the LLPS customers who signed the Stipulation would be so adamant against providing transparent SPP cost information other than to ensure the subsidization of LLPS customers by non-LLPS customers through the FAC. This contradicts the Commission's statutory mandate and should not be allowed. [Mo. Rev. Stat. § 393.130.7]. The Commission should therefore order either the separate pricing nodes as specified in Staff's first recommendation or the alternative conditions in Appendix 2 – Schedule 2 of the Staff's recommendation.

Issue B: the Economic Development Rider

As was specified in the introduction to this brief, Evergy's economic development rider ("EDR") tariff mechanism is a blatant subsidization. [*see supra*, pg. 8]. If LLPS customers receive a discount under the EDR, then the impact of that EDR discount is recovered from all other ratepayers. [Mo. Rev. Stat. § 393.1640; Ex. 201, *Staff Report and Recommendation*, pg. 34 lns. 6 – 9 ("This is because the statutory economic development discount – once recognized in a rate case – does not reduce utility revenue. Rather, the revenue not paid by customers receiving a discount is added to the revenue requirement of all customers.")]. All the parties to the case appear to have recognized this is true and to further recognize the incompatibility of this outcome with the Commission's statutory mandate. [Mo. Rev. Stat. § 393.130.7]. There is a division, however, on how best to deal with the problem.

The signatories to the Stipulation have developed a convoluted and messy system designed to eliminate the EDR discount that they have called the Cost Stabilization Mechanism ("CSR"). [*Non-Unanimous Global Stipulation*, pg. 10 p 17 – 18]. The basic premise is that the CSR compares what the LLPS customer would have paid before the EDR discount and after the EDR discount and then charges the LLPS customer "an amount" based on the difference. [*Id.*]. It is not clear from the Stipulation what the "amount" is, though the OPC presumes it is the entire difference. If this is true, then the CSR is just charging back to the LLPS customer the same amount it would receive with the EDR discount, for a net zero impact. The Stipulation goes on to say that "[t]he CSR shall not be subject to any related Economic

Development Rider discount” and that “[m]aking the CSR non-bypassable ensures that Schedule LLPS customers are substantially covering the cost to serve them[.]” [Id]. However, there is a far better way to achieve this goal: just don’t allow the EDR discount at all.

The recommendation of the Commission’s Staff and the OPC is to simply not allow LLPS customers to utilize the EDR discount. This achieves the same goal as the Stipulation’s complicated CSR mechanism but much faster, cleaner, and easier. The only real issue appears to be a claim that not allowing LLPS customers to utilize the EDR would violate the language of the statute that governs it (Section 393.1640), hence the wording of this issue. But that is legally wrong. Section 393.1640 makes it very clear that this Commission retains considerable discretion regarding the design and application of the EDR discounts. Specifically, subsection 1(2) states that “[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.” [Mo. Rev. Stat. § 393.1640.1(2)]. This has already been placed into practice in Evergy’s tariffs. Evergy West’s current Special Rate for Incremental Load Service (Schedule SIL) and Special High-Load Factor Market Rate (Schedule MKT) already include provisions that exclude a customer utilizing the EDR as a prerequisite for taking service. [Ex. 201, *Staff Report and Recommendation*, pg. 33 lns. 19 – 23]. There is no reason for this Commission to suddenly decide contrary to these already existing tariffs.

Overall, the real point to consider is that attempting to differentiate the CSR mechanism from the alternative of not applying the EDR is just fundamentally flawed. There is no reasonable judicial basis to distinguish (1) not allowing a discount from (2) allowing the discount and then immediately re-charging the amount of the discount so as to negate the discount. They are the same. Either not charging the EDR and the CSR mechanism are both legal or they are both illegal.¹⁸ And once you reach that point, the only real question remaining is which of the two options are better. In that case, not charging the EDR is objectively better as it is faster, cleaner, and easier for all parties involved. Therefore, the Commission should reject the Stipulation's proposed CSR and instead order that LLPS customers taking under the LLPS tariff are not eligible for the EDR discount.

Issue S: System Support Rider

This is not actually a live issue any more. The Stipulation eliminated the Company's system support rider and replaced it with the CSR just mentioned in the previous issue. [Ex. 106, *Testimony in Support of Stipulation and Agreement of Kevin D. Gunn*, pg. 10 lns. 11 – 12]. There is an argument regarding whether the new CSR should be allowed, but that argument is the same argument regarding the EDR that was also just discussed in the immediately preceding issue. Because the system

¹⁸ This is actually a major problem for the Stipulation. A finding that the Commission cannot establish terms and conditions to exclude otherwise eligible customers from receiving EDR discounts is tantamount to finding the Stipulation's proposed CSR is illegal because the act of charging a customer a non-bypassable amount equal to the EDR discount is functionally equivalent to excluding the customer from receiving the discount.

support rider is no longer being offered and because its replacement (the CSR) has already been discussed, nothing more needs to be said on this issue.

Rate Design

While there is an argument that all issues addressed in this brief fall under the category of “rate design,” there are three that can be isolated from those issues addressed above yet which do not merit the level of individual attention as those described below. Issues Q, E, and D read in order:

- Q. Should LLPS customers be a subclass of Evergy’s Large Power Service (“LPS”) or be a stand-alone class?
- E. Should the LLPS customer bear reasonability for its interconnection and related non-FERC transmission infrastructure costs?
 - a. How should such interconnection and related non-FERC transmission infrastructure costs be accounted for or tracked, if at all?
- D. What other existing programs and riders should or should not be available to LLPS customers, if any?

As with many of the other issues discussed above, there is far less disagreement between the parties than would first appear.

Issue Q: LPS vs. LLPS rate class

It is unclear whether this is truly even an issue in dispute. Of all the parties to file position statements, only three had anything of material value to say on this issue and that was the OPC, Staff, and Evergy. Staff and the OPC both argued that LLPS customers should be a stand-alone class, both citing the same statement from Staff’s recommendation:

Staff is unaware of any advantage to including the LLPS customer class as a subclass of the Large Power Service rate schedule. Staff recommends the rates for LLPS customers be set out as a separate rate schedule, and studied and set separately in future rate cases.

[Ex. 201, *Staff Report and Recommendation*, Pg. 78 lns. 8 – 10]. Evergy’s position statement, meanwhile, provided the following:

The LLPS customers should initially be included with the Company’s LPS class. A decision to create a stand-alone LLPS rate class should be made when details are available about the nature of the cost associated with these customers and to ensure these customers are distinct from LPS costs.

[Evergy’s *Statement of Position*, pg. 9]. This position, which is offered with no citation to evidentiary support, is problematic as it is difficult to tell how it actually differs from the OPC and Staff positions.

Based on its filed position, Evergy *appears* in support of a stand-alone class for LLPS customers *at some point* in the future. However, the Company does not indicate when that stand-alone class should be created other than “when details are available.” Does this mean during a rate case, or some period before a rate case? Also, how and why would one separately track the “nature of the cost associated with [LLPS] customers” if they are not included in their own rate class? Most importantly, does not the fact that this entire case is designed to create a separate rate exclusively for LLPS customers in and of itself justify having those customers in their own rate class? Why would Evergy want to create a new rate that would apply to only one set of customers but then keep those customers in the same class that the rates are designed to separate them from? The only logical reason the OPC can come up with

is that the Company is purposefully trying to obfuscate the cost to serve the LLPS customers by co-mingling their costs with the other LPS customers to thereby make it difficult in a future rate case to track who is responsible for what. It should not need to be said that the Commission should not encourage such an endeavor. Between this and the fact that Evergy does not appear to have support for its position, it seems the obvious choice is to create a new LLPS customer class, thus keeping the LPS and LLPS customers classes separate.

Issue E: Interconnection Costs

As with the prior issue, the degree of real disagreement here is obfuscated. The OPC, Staff, and Evergy all answer the question posed in the initial issue (should the LLPS customer bear reasonability for its interconnection and related non-FERC transmission infrastructure costs?) with a simple yes. [OPC's *Statement of Position*, pg. 4; Staff's *Statement of Position*, pg. 8; Evergy's *Statement of Position*, pg. 3]. To make that perfectly clear, everyone agrees that LLPS customers should bear reasonability for their interconnection and related non-FERC transmission infrastructure costs. The actual dispute comes in the sub-issue, which is effectively just *how* do you get to the initial "yes."

It appears that the only real disagreement between the parties on sub-issue a of Issue E is some requested tariff modifications. Specifically, Staff argues that "the 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." [Ex. 201, *Staff Report and*

Recommendation, pg. 110 lns. 13 – 15]. This is necessary, Staff argues, because “[w]hile the current language of this tariff refers to ‘service connection’ and ‘distribution system extension,’ where a customer’s interconnection to the utility system occurs at a transmission voltage, those facilities are functionally distribution and properly recorded to distribution accounts.” [*Id.* at lns. 9 – 12]. Staff even went out of its way to provide “a comprehensive revision of the [Eversource Missouri West] facility extension tariff to incorporate necessary changes” and proposed making the same changes to Eversource Missouri Metro’s tariff sheets.¹⁹ [*Id.* at lns. 15 – 18].

Eversource’s response to Staff’s requested changes is to simply rely on the edits made to Eversource’s tariffed Rules and Regulations as set forth in witness Brad Lutz’s direct testimony. [Eversource’s *Statement of Position*, pg. 3; *Non-Unanimous Global Stipulation*, pg. 21]. Staff explained in its report why this is inadequate:

Eversource’s proposed tariff revisions appended to Mr. Lutz’s direct testimony fail to adequately modify terms referring to distribution infrastructure to clearly include equipment that operates at transmission voltages, and apply only to customers interconnecting on the proposed LLPS tariff. Also, Eversource’s proposed revisions exclude the costs associated with “network upgrades” from the responsibility of the interconnecting customer. Staff’s recommended tariff revisions address these concerns with the Facility Extension Tariffs.

¹⁹ Staff also notes the need to modify provision 4.04 “Increasing Connected Load” on sheet R-28 of Eversource Missouri West’s tariff to include transmission and substation installations in addition to distribution facilities and metering installations and recommends making the same or similar change to Eversource Missouri Metro. [Ex. 201, *Staff Report and Recommendation*, pg. 111 lns. 4 – 12].

[Ex. 201, *Staff Report and Recommendation*, pg. 110 lns. 19 – 24]. The Commission should heed its Staff’s recommendations and order the modifications it has proposed so that the responsibility for all of the costs are clearly stated. Without this clarification, other customers could end up paying some of the costs thus subsidizing the cost to serve LLPS customer.

The only other component of this issue that needs to be addressed is the recommendation that “the Commission order Evergy to create subaccounts for each set of interconnection infrastructure associated with each customer interconnecting at transmission voltage.” [Ex. 201, *Staff Report and Recommendation*, pg. 111 lns. 1 – 3]. This has already been addressed previously in regard to Issue P and will not be discussed again here. [*supra*, pg. 58].

Issue D: Other existing Programs and Riders

Staff witness Sarah K. Lange’s filed surrebuttal includes a draft LLPS tariff as Schedule SLKL-1. [Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, Schedule SLKL-1]. This schedule includes a section labeled “Other Tariff Applicability” that excludes LLPS customers from participating in the: Underutilized Infrastructure Rider, Economic Development Rider, Large Power Off-Peak Rider, Limited Large Customer Economic Development Discount Rider, Standby Service Rider, Voluntary Load Reduction Rider, Curtailable Demand Rider, Demand Side Investment Mechanism Rider, and Market Based Demand Response. [*Id.* at pg. 1 lns. 27 -37]. Evergy’s position statement states:

The rider restrictions identified by Staff witness Sarah Lange in her Surrebuttal, Schedule SLKL 1, “Other Tariff Applicability”, other than the Economic Development Rider and the Limited Large Customer Economic Development Discount Rider, are reasonable.

[Eversky’s *Statement of Position*, pg. 3]. The Economic Development Rider has already been discussed under Issue B at length and will not be discussed again here. [*supra*, pg. 60]. The only other Rider worth discussing is the FAC, which has also been discussed extensively under Issue O and will also not be discussed again here. [*supra*, pg. 55]. Excluding the FAC and EDR issues discussed above, all the remaining rider exclusions identified in Sarah K. Lange’s Schedule SLKL-1 should be applied as even Eversky agrees they are “reasonable.”

Issue K: Emergency Conservation

Issue K asks if there are any changes that need to be made to Eversky’s Emergency Energy Conservation Plan to accommodate LLPS customers. In deciding this issue, the Commission needs to be aware that there are actually two different concepts at play here. The first, which is easier to understand, is the need to manage the order in which Eversky customer classes are curtailed during an event in which there is not sufficient generation on SPP’s system to meet load requirements. In that event, there is little actual disagreement between the parties. Staff “recommends the Emergency Energy Conservation Plan tariff sheets indicate that customers taking service under Schedule LLPS may be interrupted during grid emergencies under the same circumstances as any other customer.” [Ex. 201, *Staff Report and*

Recommendation, pg. 112 lns. 18 – 22]. Evergy, meanwhile, argues that no such change is necessary. [Ex. 101, *Direct Testimony of Bradley D. Lutz*, pg. 22 lns. 1 – 4]. Evergy does not seem to provide much of a justification beyond claiming that the plans are just already “well suited to guide Company actions during an emergency condition[s.]” [*Id.*]. Frankly it seems rather odd that the Company would be so hesitant to make what appears to be a rather innocuous change, especially since the Company’s witness also testified that LLPS customers most likely would be interrupted during grid emergencies under the same circumstances as any other customers, which makes Staff’s proposed language accurate. [see *Id.* at pg. 21 lns. 10 – 18]. This may be just one more of the many cases of seemingly unnecessary dispute in this case.

The second concept that needs to be addressed in this issue is what to do when SPP may have enough energy to meet load, but that price to provide that energy has become inefficient for Evergy to meet it. This is the subject currently being investigated for Missouri’s utilities as part of “a large-scale Value of Lost Load (“VOLL”) Study with Lawrence Berkeley National Labs.” [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 25 lns. 22 – 23]. “The results of that study should be completed by the end of this year[.]” [*Id.*]. Once the study is complete, the Company’s Emergency Energy Conservation Plan should be updated to reflect the capacity to curtail load when economically inefficient to supply generation. [*Id.* at pg. 25 ln. 24 – pg. 26 ln. 2]. This “ability to curb LLPS load in the face of an emergency [should be] a non-negotiable issue” for this Commission “given the recent history of excess fuel

costs Evergy customers are currently paying today and well into the future from Winter Storm Uri.” [*Id.* at pg. 25 lns. 16 – 19]. It further reflects “the recent passage of Texas Senate Bill 6 [that] requires data centers to be subject to mandatory curtailment during firm load emergency events and provides a voluntary demand response procurement program with loads of 75 MW or more that could ramp down or switch to backup generation at utilities’ request.” [*Id.* at lns. 12 – 15]. The Commission should therefore order an update to Evergy’s Emergency Energy Conservation Plan following the conclusion of the Lawrence Berkeley VOLL Study.

Issue U: Customer Benefits Program

As stated at the very beginning of this brief, the central crux of the issue in this case is preventing a subsidization of LLPS customers by non-LLPS customers. All the largest and most important disagreements between the signatories to the Stipulation and the OPC or Staff are reflected in that idea. And, as explained above, the current Stipulation serves to ensure that subsidization will occur. The OPC’s witness Dr. Geoff Marke has offered one small way to help counter-balance this: creating a community benefits program. [Ex. 301, *Rebuttal Testimony of Geoff Marke*, pg. 23 lns. 3 – 17]. This would be a mechanism that would allow a much-needed direct injection of support to Missouri’s existing community-oriented programs. [*Id.*]. As Dr. Marke Explains:

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.

[*Id.*]. Even if the Commission should find that no such community benefits program can or should be created as part of this case, for whatever reason, it would behoove the Commission and all the other parties to this case to begin considering the need for a collaborative discussion to discuss the problems outlined by Dr. Marke. The increase in costs that will be hitting all customers as a result of the inclusion of LLPS customers onto Evergy’s system is sure to drive public resentment. Taking a positive action to meet that resentment by voluntarily contributing to the greater Evergy served community through existing programs like LIHEAP would appear, from the OPC’s perspective, to be a wise choice for any LLPS customer.

Final Considerations: the Two Remaining Issues

The last two issues that have not been previously addressed are issues A and I. These two are special, in that, it is best to consider both in terms of general policy rather than through an exhaustive examination of competing testimony. To illustrate, consider each in turn.

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

Staff answers this question in the affirmative and goes on to argue the limit should be 33% of the annual Missouri jurisdictional load for the respective utility. [Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, Schedule SLKL-1]. The stipulation says nothing and Evergy's position statement says no, so it is safe to assume the signatories disagree. [Evergy's *Statement of Position*, pg. 5]. This issue is obviously one of the few in this case where there is a legitimately irreconcilable differences between the parties. But why? What exists at the heart of this issue that drives the ideological divide here? The answer comes in the form of an old saying.

The OPC hopes that the Commission is familiar with the adage: never put all your eggs in one basket. The general idea espoused in that saying is that one should not concentrate all of one's efforts or resources into a single area as the failure of that one area could then result in one losing everything.²⁰ It is a well-worn piece of advice that has proven itself time and time again, yet it is now being put to the test in the

²⁰ *i.e.* if you put all your eggs in one basket and then drop the basket, you will lose all your eggs.

present case. This is because the unchecked addition of LLPS customers could easily lead to a scenario where Evergy is forced to put most, if not almost all, of its eggs in one basket. As Explained in the Staff recommendation:

A customer of the size contemplated by the proposed LLPS tariffs is unique. Staff is not aware of an investor owned utility retail customer in Missouri's history taking service in excess of 95 MW. A single 100 MW customer with a 90% load factor would comprise approximately 9% of EMM's annual energy sales. A single 384 MW customer operating at an 85% load factor, as studied by EMM, would comprise over 25% of EMM's annual energy sales.

[Ex. 201, *Staff Report and Recommendation*, pg. 2 lns. 4 – 8]. Evergy Missouri West is in a nearly identical position. [*Id.* at pg. 3 lns. 4 – 5]. This means that as more LLPS customers come online in Evergy's service territory, more and more of its overall load (*i.e.* eggs) will be caused by one customer class (*i.e.* placed into this one basket). And this, as the adage tells us, is a risk.

A mere dozen or so LLPS customers of the scale the Stipulation contemplates would equate to 100% or more of Evergy's existing overall annual energy sales.²¹ This would effectively require doubling the size of Evergy's current plant investments. Yet if just one of those customers were to leave the impact would be a cost increase of nearly 10% on all the remaining customers. If half those dozen LLPS customers quit Evergy's service territory (due to a sudden "pop" in an AI bubble, for example) the resulting financial impact on the remainder would be disastrous. And to be clear,

²¹ 9% of existing annual energy sales multiplied by 12 to yield 108% of existing annual energy sales.

“leaving” in this context does not have to mean going out of business. It could simply mean moving the data center from one service territory to another. It could even move within Missouri and, due to the balkanization of electric service territories, still have catastrophic effects on one of the two Evergy service territories. This is the risk of allowing Evergy to put so much of its eggs into one basket, and hence is the reason for Staff’s recommendation.

The policy soundness for Staff’s recommendation based on the forgoing is clear on its own. Yet if the Commission disregards its Staff’s recommendations, it should still consider the impact of that decision in the larger context. Many of the previous issues concerned disputes about how to best mitigate the risk associated with LLPS customers leaving Evergy’s system and thereby shifting costs onto non-LLPS customers. Issues E, F, G, H, J, L, N, and U all touch on this point, for example. Thus, each issue the Commission finds in favor of the signatories will further compound the risks that come with having so much load borne by LLPS customers. This can be compared to not only placing so many eggs in one basket, but then further plucking out segments of the basket weave, thereby weakening the basket itself. Such policy decisions would expose non-LLPS customers, who do not have the same resources to be able to leave the Evergy system, to extreme risks and increase the likelihood of a future significant rate hike caused by LLPS customers hitting everyone.

Evergy’s position statement makes clear that its position is based on claims that a limit like that proposed by Staff would harm economic development. But the call for economic development cannot become a byword to excuse all risk being placed

on non-LLPS customers. The Stipulation signed in this case already has lower protections than what is currently in place in many other states including Arizona, Ohio, Kentucky, and Texas [*see supra*, pgs. 20, 23, 28, and 70]. For Evergy and the Stipulation to go further and permit unlimited expansion on top of these already weakened protections reflects nothing but disregard for non-LLPS customers. It is essential for the Commission to determine whether it is comfortable with Evergy's decision to place as much as half of its entire annual energy sales, if not more, in the hands of a small number of customers. The OPC respectfully argues that this is unwise and so joins Staff's recommendation on this issue.

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?

This issue is addressed last for a very specific reason. This issue can be seen as something of a summation for all the other issues in the case. Further, its reference back to Mo. Rev. Stat. section 393.130.7 brings the brief full circle. Having wandered the whole breadth and length of the list of issues, we return to the one central question that overhangs every other facet of this case: which of the proffered tariffs will best prevent subsidization from occurring?

Because this brief has spent so much time on this issue already it will not tarry long here to reiterate the points previously made. The Staff's conceptual tariff, rate structure, and pricing is far superior to the Company when it comes to the question of avoiding the subsidization prohibited by section 393.130.7 for all the many reasons

addressed above. But the OPC wishes to use this issue to address a matter of policy that it believes may be otherwise overlooked. And that is, quite simply, who should be given the benefit of the doubt.

The testimony filed in support of the Stipulation claims incorrectly that the Stipulation “represent a broad range of diverse stakeholder interests.” [Ex. 106, *Testimony in Support of Stipulation and Agreement of Kevin D. Gunn*, pg. 18 lns. 15 – 16]. In reality, the Stipulation only really represents two main interests: the utilities and the LLPS customers. Only three other parties outside of these two groups signed and each had a specific interest that existed outside the true focus of the case. Consider, for example, Nucor Steel Sedalia, LLC, who filed no testimony, took no position on any issue in its filed position statement, and is currently “served on a specially-designed tariff, which was approved by the Commission following extensive customer-specific testimony, discovery, and negotiations[.]” [Nucro’s *Statement of Position*; Tr. vol II pg. 72 lns. 18 – 20; Ex. 201, *Staff Report and Recommendation*, pg. 32 lns. 7 – 10]. It is obvious given its posture and activity in the case that Nucor’s sole objective was to protect this highly special and customized rate from interference, which is certainly its prerogative.

The other two signatories are the Sierra Club, who again filed no testimony and took no position on any specific issue, and Renew Missouri who did at least file testimony and issue actual position statements, though, in both cases the subject focused almost entirely on the rider mechanisms discussed in Issue T. [Sierra Club’s *Statement of Position*; Renew’s *Statement of Position*; Ex. 651, *Rebuttal Testimony of*

Jessica Polk Sentell, pgs. 6 - 18]. As the testimony filed in support of the Stipulation acknowledges, these two groups represent “conservation interests[,]” meaning that they represent a political effort to protect natural resources and promote renewable or other “green” forms of generation. [Ex. 106, *Testimony in Support of Stipulation and Agreement of Kevin D. Gunn*, pg. 18 ln. 17]. This is why these two focused on the proposed riders exclusively, as those riders represent an attempt to facilitate the addition of new renewable generation (see The Renewable Energy Rider Program, the Green Solution Connections Rider, and the Alternative Energy Credit Rider). And so, again, it is obvious that the interests of the Sierra Club and Renew Missouri do not lie with preventing subsidization, or any of the other rate design components that made up the remaining 95% of this case, for which they did not offer any testimony, cross any witness, or even state a specific position.

Once those three are removed from the equation, the remainder of the signatories fall into exactly two groups. The prospective large load customers (Google, Velvet, and the Data Center Coalition) and the utilities themselves (Evergy, Ameren, and Liberty). [Ex. 106, *Testimony in Support of Stipulation and Agreement of Kevin D. Gunn*, pg. 18 lns. 16 – 18]. This is a major problem as both these groups have strong monetary interest in having non-LLPS customers subsidize LLPS customers. For the LLPS customers, that interest is self-evident. No utility customer could ever be blamed for wanting to pay less for their utility bill and having other customers pay for costs that customer caused to be incurred is one way of accomplishing this. For the utility companies the monetary interest is less obvious, but still just as strong.

Under traditional ratemaking principles, such as those employed by this Commission, utility companies earn a profit based on their plant investments. Building more utility plant thus increases profits for the utility. LLPS customers require enormous amounts of energy and will therefore require additional generation to be built to serve them. This generation will be utility plant. Therefore, having more LLPS customers on its system means a utility will have a reason to build more generation on which it will earn a return and thus increase its profits. And finally, a utility can encourage more LLPS customers to join its system by offering to subsidize their electricity costs through protective rate design, hence the filed Stipulation.

As has now been shown, the signatories to the stipulation all either have an interest in ensuring subsidization or specific interests irrelevant to the issue of subsidization. Consider now who stands opposed to the Stipulation. First there is the OPC, who is tasked with representing all utility customers. Because this Office is tasked with representing everyone, the Office seeks to avoid cross-subsidization of utility customer classes whenever possible. In other words, we seek to adhere to the principle of cost causation. But perhaps even more important than the OPC, for purposes of this case at least, is the position of the Commission's own Staff.

The Commission's Staff does not have a horse in this race. It represents no one interest (either consumer or utility) and has no monetary incentive one way or another. Instead, the Commission's Staff is tasked simply and solely with advising the Commission to achieve the most reasonable outcome under a proper application of the law. While it is certainly true that the OPC has taken positions contrary to

Staff in past cases, and will almost certainly do so again in the future, those disagreements are often premised on the OPC's belief that Staff has failed to consider something of material importance, or has relied on faulty information, or a disagreement on legal interpretations. But that cannot be leveled in this case. There is no real dispute as to the legal meaning of section 393.130.7 and just the amount of work that Staff has put into its *Recommendation* demonstrates the degree of care and scrutiny that has been paid to the issue. And the result of that careful examination has been made clear as day:

Evergy's proposed LLPS tariffs, associated riders, and other tariff changes will not prevent other customer classes' rates from reflecting unjust and unreasonable costs to other customers. This is due to a combination of the Evergy-requested rate structure, and due to a failure to specify how the revenue from LLPS customers will be treated. Specifically, prior to a rate case recognizing the addition of an LLPS customer, essentially all incremental expenses associated with that LLPS customer will flow through the EMM or EMW FAC, however, all revenues will flow to EMM and EMW shareholders.

[Ex. 201, *Staff Report and Recommendation*, pg. 4 lns. 4 – 11; see also Ex. 210, *Memorandum in Response to Non-Unanimous Stipulation and Agreement*]. It cannot be stressed enough that this recommendation has been offered with no ulterior motive, in stark contradiction to the signatories of the Stipulation.

When it comes to the question of who among the respective parties should be believed, there is only one reasonable outcome. Moreover, there is a clear implication that will be drawn by all those who witness this case should the Commission simply decide to adopt an agreement between the utilities and the LLPS customers over and

against the recommendation of its own Staff and the objections of the public advocate. Such a result is entirely unnecessary and avoidable. This Commission can simply adopt the proposed tariff that has been offered by its own Staff in surrebuttal testimony. [Ex. 207, *Surrebuttal Testimony of Sarah L.K. Lange*, Schedule SLKL-1]. It can also order the Company to offer changes to its own proffered tariff (or what was agreed to in the Stipulation) to address the concerns raised by Staff and OPC, including the recommendations that Staff and the OPC have provided. It can order the parties to continue to work together to collaboratively resolve the issues on which there is not significant disagreement such as the problems with the riders discussed in this brief under Issue T. It can open a new docket to allow collaborative discussion of the issues found here and in Ameren's LLPS docket (ET-2025-0184) with strict guardrails to control the time spent on issues and with regulatory law judges acting as mediators to ensure disputes are resolved.²² Or it could resolve the case by considering each issue separately and ruling, based on the evidence presented on that specific issue, in order to build a balanced outcome.

Of all the outcomes at the Commission's disposal, the only one that is truly against the public interest would be to simply accept the filed Stipulation as a resolution of the case. This choice alone would not only guarantee that non-LLPS customers subsidize LLPS customers, it would also permanently affix culpability for any future rate increases borne from that subsidization squarely on the Commission's

²² This is already contemplated to a degree under the Commission's Rules. [Mo. CSR 20 CSR 4240-2.125].

decision to overlook its own Staff's recommendation in favor of a stipulation signed by parties with a clear conflict of interests. As stated above, the Staff's conceptual tariff, rate structure, and pricing is far superior to the Company when it comes to the question of avoiding the subsidization prohibited by section 393.130.7.

Conclusion

It bears repeating from the introduction that no party to this case is arguing that LLPS customers should not be served, whether by Evergy or any other investor-owned utility in this State. [*see, e.g.* Tr. Vol. III pg. 290 lns. 1 – 6]. Instead, the real struggle is simply seeking to ensure that these LLPS customers are paying their own way and are not being subsidized by non-LLPS customers. This is the task that the Missouri Legislature charged the Commission with, and the lens through which the entire case should be examined. Moreover, a careful review of the positions taken by the parties shows they are far closer together than they are apart when seeking to meet that objective, despite what other parties may argue. While the OPC has gone to great lengths to outline the justifications for its positions (and will continue to advocate for an outcome that ensure adherence to the cost causation principle), the office also remains committed to engaging in further collaborative discussions toward the aim of preventing the subsidization of LLPS customers.

At the end of the day, this Commission has been tasked with a simple yet important responsibility. The OPC asks the Commission to carefully consider the facts and arguments now laid before it and weigh both the rewards and risks that LLPS customers pose toward Evergy's legacy ratepayers. Only by doing this can the Commission issue an order that will establish just and reasonable rates in this case. And, when in doubt, this Commission should err on the side of caution by adopting the position advocated by its own Staff, the only party who represents no specific

interest in the case. With these considerations in mind, the OPC asks the Commission to rule in its favor on all issues presented in this brief.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission rule in the OPC's favor on the issues presented herein and grant any such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

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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 twenty-ninth day of October, 2025.

 /s/ John Clizer