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.	))))))	File No. EO-2025-0154

POST-HEARING BRIEF OF UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI

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COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its post-hearing brief, states as follows:

I. INTRODUCTION

> [*w]hat the Commission should be doing here is to decide, based on the record in this case, whether Evergy's proposal will support the state's goals in promoting economic development while providing the reasonable assurances from a regulatory standpoint SB 4 requires.*[1]

While the Staff's myriad claims and often conclusory and unsupported statements may make this case *appear* to be complex, the above-quoted statement from Robert B. Dixon, Ameren Missouri's Senior Director of Economic, Community and Business Development and former Director of the Missouri Department of Economic Development, reflects an apt and succinct statement of the over-arching questions the Commission should answer as it decides this case and Ameren Missouri's similar case (File No. ET-2025-0184).[2]

[1] Exhibit 700 Surrebuttal Testimony of Robert B. Dixon p. 6, ll. 16-19.
[2] As Ameren Missouri indicated during the evidentiary hearings, at least from a practical perspective, decisions and policy perspectives adopted in this case will almost certainly have an impact on Ameren Missouri as well. Consequently, the Commission should strongly consider deciding this case and Ameren Missouri's case essentially concurrently with the conclusion of each, after Ameren Missouri's evidentiary hearings and briefing are concluded.

As Section 393.130.7[3] directed it to do, Evergy (1) developed, and then (2) submitted to the Commission, terms and conditions to be included in its tariff to be applicable to customers meeting the peak demand levels specified in that statute, i.e., "large load customers". Evergy did not submit those terms in a vacuum. Rather, as the statute requires, it developed them through an extended process of consultation with those that would be subject to them and in consideration of the tariff terms and conditions being proposed and implemented in the states with whom Missouri is competing to attract such customers.[4]

Since its initial filing, Evergy has come together with every party to this case, other than the Staff and the Office of the Public Counsel ("OPC"), to agree on certain modifications to those initially filed terms which vary somewhat from its original filing. Those somewhat modified terms remain, on the whole, materially consistent with the structure and approach Evergy filed when it initiated this case, which was heavily informed by tariffs being offered or developed in other states in competition with Missouri for large loads.[5] Close to home, the tariff structure and terms are also quite similar to the large load customer tariff terms agreed upon by Evergy and a diverse group of stakeholders, including the Kansas Corporation Commission's Staff and the Citizens Utility Ratepayers Board ("CURB") (the Kansas counterpart to OPC), in Kansas.[6] It is worth noting that Kansas is a state with whom Missouri is in regular competition for economic development activities and to which Missouri lost 25 different economic development projects

[3] Enacted by Senate Bill 4, adopted in the 2025 Regular General Assembly of the Missouri Legislature, signed by the Governor on April 9, 2025, and effective August 28, 2025 ("SB 4").
[4] Exhibit 102, Direct Testimony of Jeff Martin p. 5, l. 18 to p. 6, l. 14.
[5] Non-Unanimous Stipulation and Agreement, EFIS Item No.116; Exhibit 106, (Testimony in Support of Stipulation and Agreement of Kevin D. Gunn). Unless otherwise specifically noted, references in this brief to Evergy's proposal or large load tariff or the like will be references to the tariff terms and conditions reflected in the Stipulation.
[6] Exhibit 104, Surrebuttal Testimony of Kevin D. Gunn, Schedule KDG-1, p. 2.

from 2016 to 2023.[7] In line with tariff terms nationally, Evergy's proposal contains key provisions relating to contract capacity, minimum demand, minimum term, termination (and related termination and exit fees), financial security, and riders designed to meet large load customers' needs.[8] Evergy's proposal also reflects an increased demand charge which, together with the Commission's ongoing regulatory and ratemaking oversight as discussed below and the other terms just mentioned, reasonably ensures that all customer rates – for the large load customers and other customers – will be fair.

Contrast the facts relating to Evergy's proposed large load tariff to the alternative laid before you in this case by the Staff.[9] First, Staff put forth its proposal without going to customers and seeking input on what Staff was going to propose, and without going to the utilities to seek such input.[10] Second, not only did Staff not seek input from utilities or prospective customers, but it failed to seek any input from other state agencies, including the Department of Economic Development or the Division of Energy, or from any consultants with experience in economic development, or in data center or large load customer development or operation.[11] This means the Staff tariff is completely uninformed by what appear to be obvious sources of important, relevant information that ought to be considered in developing such tariffs, It also means that Staff failed to include any meaningful consideration of whether customers would actually be attracted to Missouri to take service under Staff's tariff.

[7] Exhibit 700, Surrebuttal Testimony of Robert B. Dixon, p. 5, ll. 1-16; Tr. Vol 3, p. 128, l. 21 to p. 129, l. 6 (stating that "Kansas is our biggest competitor.")
[8] Exhibit 100, Direct Testimony of Kevin D. Gunn, p. 22, l. 16 to p. 23, l. 2; Exhibit 101. Direct Testimony of Bradley D. Lutz, p. 15, l. 4 though p. 21, l. 4.
[9] Ameren Missouri will refer to this alternative as the "Staff tariff" or "Staff proposal."
[10] Tr. Vol. 2, p. 215, ll. 13-22. Staff apparently either didn't think this was important or didn't "have the time" although Staff took more than five months after the filing of this case to ignore Evergy's proposed tariff and to concoct its own. Tr. Vol 2, p. 220, l. 21 to p. 221, l. 12.
[11] Tr. Vol. 2, p. 262, l. 19 to p. 263, l. 15.

While Staff may have a lot of general experience writing and reviewing utility tariffs, aside from Ameren Missouri's prior service to Noranda, Staff has no experience with tariffs designed to serve customers of the type at issue in this case, and certainly has never undertaken evaluating, let alone drafting from whole cloth, the kind of tariff Section 393.130.7 mandated that Missouri electric utilities develop and file. Taking the ball and running with it,[12] absent seeking input from anyone and apparently without any real thought as to how Staff's approach could be squared with the State's economic development priorities and policies or customer needs is, to put it bluntly, a flawed approach. Among other reasons, this is because if such customers won't be attracted to invest in the state, then the tariff terms will be moot; they simply won't matter. In response to a question from Staff Counsel, Mr. Dixon discussed the resulting problems with the Staff proposal generally and more specifically, in reference to Missouri's inability to compete with Kansas: "What I said was Kansas having a stipulation like this that is more in line with the market is going to make Kansas more competitive for economic development than Missouri were to adopt Staff's proposal…"[13] Logically, the same can be said of other states offering large load tariff terms that are more in line with the market.

Third, the Staff proposal should be judged not only by understanding that the Staff's approach to it was flawed to begin with, as noted above, but also through the lens of the philosophy that underlies it. Specifically, the Staff's proposal was developed by a team whose leader (Mr. Busch) is of the opinion that attracting the customers Evergy (and Ameren Missouri) and the state[14] seek to attract is simply *not worth the risk*.[15] And Mr. Busch is apparently not alone in this opinion,

[12] Tr. (Vol. 2), p. 215, l. 23 to p. 216, l. 10.
[13] Tr. (Vol. 3), p. 135, ll. 2 – 11 (Mr. Dixon clarifying his views on the Staff's proposal as compared to the terms agreed upon in Kansas.)
[14] Discussed in greater detail below.
[15] Exhibit 200, Rebuttal Testimony of James A. Busch, p. 5, ll. 15-17. To be fair, Mr. Busch literally says that serving data centers are not worth the risk, but it is obvious that those data centers that are presenting the most prompt and meaningful opportunities for the state of Missouri.

given that he confirmed in response to cross-examination that it's "fair to say I'm speaking for Staff there" when asked about his opinion that such customers are not worth the risk.[16] Perhaps not surprisingly, the result is a "novel,"[17] complex Staff tariff proposal that reflects what in substance is a substitution of the Staff's judgment (that the risks aren't "worth it") for the State's clear judgment to the contrary. A judgment made by the elected officials who, by virtue of the votes they received in order to take office, have both the right and responsibility to make. Mr. Busch made no bones about Staff's substitution of its judgment for that of the General Assembly:

> Q. So if I understand your answer, you would agree the legislature ***wasn't*** saying keep data centers out of Missouri?
> A. I don't believe that's what they [the legislature] were saying. *I believe that's what Staff **is** saying.* (emphasis added).[18]

Not only is the Staff's tariff proposal flawed in terms of its interaction with the actual service to large load customers, for the reasons generally discussed above and as will be elaborated on further below, but so too is Staff's inappropriate, flawed, and unfair attempt to upend a basic feature of rate of return regulation. Specifically, the Staff's proposal would upend the workings of and proper incentives created by regulatory lag -- both positive and negative – by implementing a one-way tracker that fails to account for the total utility cost and revenue picture as large load customer loads ramp up over time. As discussed in detail by Ameren Missouri witness Steven Wills' Surrebuttal Testimony, Staff's proposal is inappropriate and flawed because (a) its one-way tracker is unfair and ignores the systemic unfavorable regulatory lag utilities face; (b) it directly contravenes the very purpose of regulatory lag – to incent cost control and efficiency; and (c) it is biased and grossly overstates the possible positive regulatory lag that could exist.

[16] Tr. (Vol. 2), p. 261, ll. 5-15.
[17] Tr. (Vol. 2), p. 264, ll. 9-12.
[18] Tr., (Vol. 2), p. 268, l. 14-18.

II. THE GOVERNING LAW

As referenced above, the Missouri General Assembly, as part of a bill that Governor Kehoe characterized as intended to support the "long-term economic development" of Missouri, enacted Section 393.130.7 and therein directed Missouri electric utilities to submit tariffs like those submitted by Evergy in this case: "Each electrical corporation providing electric service to more than two hundred fifty thousand customers shall develop and submit to the commission schedules to include in the electrical corporation's service tariff applicable to customers who are reasonably projected to have above an annual peak demand of one hundred megawatts or more." Section 393.130.7.[19] In doing so, the General Assembly not only recognized the importance of having appropriate tariffs in place to promote economic development but also provided guidance to the Commission respecting its evaluation of those tariffs:

> The schedules should **reasonably ensure** such customers' rates will reflect the customers' representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers. (Emphasis added.)

The statute neither repealed nor amended the many economic development statutes the General Assembly has enacted, it did not diminish the state's economic development priorities, and it did not limit the Commission's ongoing oversight and authority over the terms, conditions, and rates that govern electric service from investor-owned utilities in Missouri. What the new statute did do is recognize that it is important that the state have appropriate tariffs in place – so important in fact that a specific statute was enacted to require it -- so that the state can take advantage of (i.e., compete for) the benefits large load customers can bring, while recognizing that

[19] While the General Assembly set as the default for utilities of Evergy's size a 100 MW threshold, the Commission was afforded discretion to set a lower threshold but under basic principles governing the Commission's exercise of its authority, the Commission would need substantial and competent evidence and a reasonable justification to do so.

there should be *reasonable* assurance that bringing such customers onto the system will be, boiled down to the statute's essence, fair to all customers. Evaluating the competing proposals in this case must occur through that lens: does the proposal allow Missouri to compete and is it fair.

And that evaluation must occur not just via application of Section 393.130.7, but also with the recognition that the Commission's general ratemaking and regulatory authority *still exists and will be exercised by the Commission as large load customers are served*. That is, once the Commission approves large load tariff terms and rates in this case, the Commission will still, in every rate case, determine revenue requirements, allocate that revenue requirement in a just and reasonable manner to all customer classes (including the large load customers), and ensure that the design of all rates means that the utility's rates are just and reasonable and consistent with Section 393.130.7.[20]

III. ARGUMENT[21]

A. It is the policy of the state to attract large load customers (including data centers) to Missouri. The Staff's tariff ignores that policy entirely.

The Missouri Department of Economic Development ("DED") is a constitutionally created executive department created by the voters of this state pursuant to a proposal put before the voters by the General Assembly in 1972 whose very existence reflects that capturing economic development opportunities is a policy of this state.[22] The General Assembly has reinforced that policy via legislation, including legislation designed to attract one of the key large loads in Evergy's

[20] *See, e.g.*, Section 393.140(5), (11); Section 393.130.1. And contrary to the repeated suggestions Staff makes in its Report, it is the Commission and not Evergy or any other utility that will decide what generation is built, and when, to serve large load customers. Section 393.170.

[21] In this Brief, Ameren Missouri will present its argument in what it believes to be the most logical progression of how the Commission should decide this case, rather than mechanically ticking through each of the 19 (plus subissue) issues upon which there was neither complete agreement on what the list should be or upon the characterization of them. See Footnote 1 of the *Jointly Proposed List of Issues, Etc.* Ameren Missouri will also not address every single issue (or sub-issue) in this Brief. To the extent it does not, please see its Position Statement.

[22] H.J.R. No. 65, adopted by the electorate in the special election held November, 1972.

(and Ameren Missouri's) pipeline of economic development programs, data centers, through the state's Data Center Sales Tax Exemption Program.[23] DED, backed by state resources appropriated to it by the General Assembly, also administers numerous other programs designed to attract economic development to the state.[24] Missouri's leadership is strongly supportive of these economic development efforts, including former Governor Parson, who sponsored the Data Center Sales Tax Exemption Program bill, former Governor Nixon, who signed it, and current Governor Kehoe, who signed SB 4 (of which Section 393.130.7 is a part), hailing it as "a major step forward in strengthening Missouri's energy infrastructure and supporting long-term economic development."[25]

Based on these constitutional and legislative enactments and the Executive branch's clear and ongoing policy support, it is beyond debate that large load tariffs adopted in this state should:

> 1) reflect terms that are reasonably in line with, so as to be competitive with, terms being established in the industry across various jurisdictions with whom Missouri is competing,
>
> 2) meet the needs and preferences of potential customers where those can reasonably be accommodated, and
>
> 3) provide reasonable assurance that large load service under those terms will not result in unjust or unreasonable impacts on existing customers.[26]

And it is similarly clear that Staff's proposal completely ignores the first and second, and with respect to the third, doesn't provide "reasonable assurance" but instead, seeks to overcharge LLCs by creating a hodgepodge of billing determinants and rates[27] that are neither reflective of Evergy's costs nor designed to do what, at bottom, Section 393.170.7 requires: put into place LLC tariff terms that are fair to both LLCs and other customers.

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[23] Exhibit 700, Surrebuttal Testimony of Robert B. Dixon, p. 9, l. 10 to p. 10, l. 9.; Section 144.810 RSMo.
[24] *Id.*
[25] Exhibit 108, Governor's Press Release on SB4 Passage.
[26] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 2, l. 18-23.
[27] Id., p. 7, ll. 13-17.

The record is replete with evidence demonstrating the Staff tariff is devoid of consideration of the first two requirements of the statute listed above. First, as earlier discussed, the Staff sought no input from anyone that would aid the Staff in developing terms that would be competitive with terms being established in jurisdictions with whom Missouri is competing.[28] Second, the Staff's tariff by its own admission is "novel,"[29] and was developed by those who, collectively, do not think that attracting billions of dollars of data center investment to the state is "worth the risk."[30] Third, aside from the Staff's speculation that large load customers might prefer to be exposed to market energy prices for 12 to 17 years of their contract term rather than pay cost-based rates set by this Commission,[31] there is absolutely nothing in Staff's Report or reflected in its evidentiary hearing testimony that would indicate the Staff took competitiveness (including the competing tariff offerings in other states), or customer needs, or economic development into account when it developed its novel approach.

While the record is devoid of any evidence that Staff's tariff can be squared with the state's economic development policies and priorities, and customer needs, the record is full of evidence that it is not. Specifically, the evidence in this case shows that if adopted, Staff's proposal would indeed erect a sign stating that Missouri is "closed for business," depriving the state of the tax base, investment and related economic activity and jobs LLCs would bring.[32] As Mr. Dixon stated, what the state should not be doing is adopt tariffs like the Staff's, that is, the state should not be "[c]hasing other states to see who can be the 'toughest' on the large load customers", as Staff's proposal would do.[33]

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[28] See the Introduction section of this Brief, *supra*, and the discussion therein in connection with footnotes 9-11.
[29] Tr. (Vol. 2) p. 264, ll. 9-12.
[30] Tr. (Vol. 2) p. 261, ll. 5-15.
[31] Tr. (Vol. 3) p. 87, l. 24 to p. 88, l. 3 (Ms. Lange speculating about what large load customers would do)
[32] Exhibit 700, Surrebuttal Testimony of Robert B. Dixon, p. 4, ll. 9-10.
[33] Id., p.6, ll. 7-9.

Those with actual knowledge and experience with attracting economic development to the state generally, with an understanding of what it will take to meet prospective LLCs needs such that Missouri can effectively compete with other states that are also seeking their substantial investments, all agree on one thing: if Staff's proposal is adopted, the odds of actually attracting these investments to Missouri are poor: "if Missouri were to adopt Staff's overall proposal in general, and more specifically, the provisions Mr. Wills discusses in his Surrebuttal Testimony, our state would be among the last to be considered… [by LLCs"];[34] "With fair terms (which can vary between different utilities as discussed above and in my rebuttal testimony) Missouri can compete for these loads, and the economic development benefits they can bring and that the state of Missouri clearly seeks . . . Staff's Tariff is not fair and it is not competitive.";[35] adoption of Staff's proposal "could effectively close the Missouri market to large load customers."[36]

That this is true is aptly demonstrated by the following statement by Evergy witness Brad Lutz: "I cannot foresee how a large load customer or the Company on behalf of the large load customer would confidently model the expected rate [under Staff's tariff proposal] to inform their site selection efforts. If Staff wishes to drive away all large load customers from the State, …. [Staff's] design is tailor-made to achieve that goal."[37] Put another way, why would LLCs invest tens or hundreds of millions, or even billions of dollars in the state of Missouri if they cannot reasonably forecast or understand what a key component of their cost structure (electric service) would actually cost them? Common sense provides the answer: they probably won't.

B. The Staff's Tariff Suffers from Other Fatal Flaws.

[34] Id., p. 4, ll. 20-22.
[35] Exhibit 702, Surrebuttal Testimony of Ajay K. Arora, p. 5, 1l. 11-15.
[36] Exhibit 104, Surrebuttal Testimony of Keven D. Gunn, p. 15, ll. 9-14.
[37] Exhibit 105, Surrebuttal Testimony of Brad Lutz, p. 30, ll. 15-18. Please note that the document submitted into EFIS as Exhibit 105 is labelled as Mr. Lutz's Direct Testimony, but the Presiding Officer admitted it as his surrebuttal. Tr. Vol. 2, p. 198, ll. 7-11

As discussed in detail by Ameren Missouri witness Wills in his Surrebuttal Testimony (pages 3-4), the Staff's tariff, among other problems:

- Reflects a rate structure that is extremely complex for little, if any, benefit, which will reduce the transparency of the rate structure to prospective customers;

- Reflects rate calculations that are not reflective of Evergy's cost of service for a number of reasons, including:
  - The Generation Demand Charge is overstated due to the inappropriate omission of Accumulated Deferred Income Taxes and capacity sale revenues;
  - The energy charge (either version of it) is set to a market-based benchmark – not to the costs that will be included in Evergy's actual revenue requirement – and therefore overstates energy-related costs (or even under the Staff's "optional" approach, divorces Evergy's costs from what the customers would pay by exposing them to the market for 12-17 years); and
  - The "Stable Fixed Revenue Contribution" and "Variable Fixed Revenue Contribution" charges are completely arbitrary and are also overstated due to Staff's gross up for non-existent "phantom" income taxes.

- Contains a punitive method for triggering exit fees that is wholly unreasonable and unfair to prospective customers.

- Adds administrative burdens of separately registering large loads in energy markets to chase an unnecessary level of precision in tracking of very minor categories of cost.

1. Unnecessary Complexity and Transparency, for Little, if any, Benefit.

a. Staff's High Number of Charges; High Rates.

The Staff's initial tariff proposal consisted of a staggering 27 different charges.[38] The Staff then changed its position,[39] but the proposal still consists of 14 different charges, including a novel "variable fixed" charge (is it "variable" or is it "fixed") and charges that haven't even been

[38] Exhibit 201, Staff Recommendation, Appx. 2, Schedule 1, p. 2.
[39] Respectfully, in contravention of the Commission's rules governing testimony (20 CSR 4240-2.130(70(D)), which required the change to be responsive to a witness's rebuttal testimony. There is nothing in the Staff's Surrebuttal Testimony that would demonstrate that the Staff's change in position meets that requirement.

determined yet. While the Staff did, numerically speaking, reduce the number of charges in its surrebuttal revision,[40] it created other problems when it did so.

First, under its surrebuttal approach, absent agreement to what the Staff calls an "Optional Agreement," the customer's energy charge would equal – for each and every one of the 8,760 hours in a year – the historical summer on-peak market price average for Evergy ($0.055 for Evergy Metro ("EMM") and $0.053 for Evergy West ("EMW")).[41] While actual net energy costs do vary over time (up and down), for reference the currently in effect energy cost rate reflected in EMM's and EMW's fuel adjustment clause as determined in each of their last rate cases was $0.0189 and $0.02309, respectively, far less than one-half of the Staff's energy rate.[42] At such an energy charge, Staff's tariff would charge large load customers a whopping average rate of 11.21 cents per kilowatt-hour (EMM) and an average rate 9.58 cents per kilowatt-hour (EMW),[43] an increase above the Staff's recommended rates when it filed its Rebuttal Report of 42% for EMM and 47% for EMW.[44] While the LLPS rates proposed by Evergy[45] are higher than Evergy's

[40] But it still contains a lot of charges – 14. Exhibit 207, Surrebuttal Testimony of Sarah L.K. Lange, Sch. 1, p. 3 (rate table).
[41] Exhibit 201, Staff Recommendation, p. 55 (Table above line 8 showing historical summer market prices for EMM and EMW, respectively; Exhibit 207, Surrebuttal of Sarah L.K. Lange (showing those same values as Staff's surrebuttal proposal default energy rates).
[42] Exhibit 207, Surrebuttal of Sarah L.K. Lange, Sch. 1, p. 3 ($0.055/kWh for EMM and $0.053/kWh for EMW. The Staff's energy charge would also be very uncompetitive with Evergy's energy charges in Kansas, which would range from $0.00872 to $0.01000 per kWh. Exhibit 104, Surrebuttal of Kevin D. Gunn, Schedule KDG-1, p. 37 of 457.
[43] Exhibit 706, Modified Lange Workpaper, cells C7 and C8. Based on a 384 MW, 85% annual load factor customer. See Exhibit 201C, Staff Recommendation, p. 41. When first asked about what Staff's surrebuttal proposal average rate for large load customers would be, Ms. Lange first claimed it would only increase about 2 cents using Staff's surrebuttal energy rate (as compared to Staff's rebuttal proposal). In fact, after Ms. Lange finally confirmed the calculation, the rate went up fifty percent or more above that – by 3.32 cents per kWh for EMM and by 3.08 cents for EMW. Exhibits 705 and 706 (Cells C and D 7 in each). For reference, Evergy's original proposal which included a system support charge ("SSR") would have charged large load customers 6.92 cents for EMM and 6.597 cents for EMW. Evergy's stipulated proposal has replaced the SSR component of the large load customer rate with a higher demand charge.
[44] Cell C7 from Exhibit 706/Cell C7 from Exhibit 705 (.1121/.0789 = 42%) (EMM), and Cell D7 from Exhibit 706/Cell D7 from Exhibit 705 (.0958/.0650 = 47%) (EMW).
[45] For an 85% annual load factor customer, 6,92 cents/kWh (EMM) and 6.597 cents/kWh (EMW). Exhibit 201, Staff Recommendation, p. 41, ll. 6- 9.

"regular" (LPS) industrial rates, since they included the SSR component/higher demand charge, they are nowhere near Staff's 11.21 cent and 9.58 cent rate under the default Staff tariff large load customers would be subject to if Staff's tariff were adopted. This is not surprising, given that Staff's tariff is biased toward overcharging large load customers (a point addressed in greater detail in this Brief, below).

Virtually every potential customer or customer group in this case is expressing serious concerns with the Staff's tariff proposal, which is an indication, as discussed in detail earlier, that they are unlikely to locate in Missouri and ever be served under it no matter what "options" Staff tries to offer about energy costs.[46] As Mr. Dixon put it, with Staff's proposal, and particularly its alternative option for energy (i.e., exposure to the market for 12 – 17-year terms rather than payment of cost-based, Commission approved rates), it would be "very difficult" to tell a prospective large load customer what its bill would be.[47] Mr. Dixon also went on to note "the bigger concern overall [with the Staff's tariff proposal] is you think about what our competitor states are doing, and they are not doing tariff proposals like Staff has proposed."[48]

Second, the Commission should ask itself the following common sense question: If I were going to invest billions of dollars in a rate regulated state in a business for which utility costs are extremely important, would I want a significant component of my bill exposed to market forces, over which I have little control, for 12 to 17 years or would I prefer to have the state's public utility commission oversee my utility's investment, and fuel and energy procurement, so that what I pay for energy via my utility bill is reflective of the utility's prudently incurred costs? Logically, the answer is that they would prefer the latter.

[46] That is, Ms. Lange's new tariff proposal that threw out an "Optional Agreement" in her Surrebuttal Testimony. Exhibit 207, Surrebuttal Testimony of Sarah Lange, Sch. 1, p. 3 of 6 (rate chart).
[47] Tr. (Vol. 3) p. 128, ll. 7-20.
[48] Tr. (Vol. 3) p. 128, ll. 17-20.

Third, applying common sense again, aside from the question of facing tremendous uncertainty about the energy charge component of their bill, would large load customers prefer and be in a better position to plan their long-term businesses under Evergy's rate structure, which has five charges – see below – or Staff's, which has 14 (and some of the Staff charges remain "TBD" because the Staff hasn't determined what they would be) – see below.

Evergy Rate Structure[49]

Schedule LLPS Initial Monthly Pricing

Schedule LLPS Initial Monthly Pricing - Settlement				
Charges	Missouri Metro		Missouri West	
	Summer	Winter	Summer	Winter
Customer	$ 1,181.28	$ 1,181.28	$ 675.00	$ 675.00
Grid ($/kW) Substation Voltage	$ 3.003	$ 3.003	$ 4.811	$ 4.811
Grid ($/kW) Transmission Voltage	$ 2.200	$ 2.200	$ 4.750	$ 4.750
Demand ($/kW)	$ 21.038	$ 19.038	$ 17.074	$ 15.074
Energy ($/kWh)	$ 0.02988	$ 0.02988	$ 0.02881	$ 0.02881

Staff Rate Structure[50]

[49] Non-Unanimous Stipulation and Agreement, EFIS Item No.116.
[50] Exhibit 207, Surrebuttal Testimony of Sarah Lange, Sch. 1, p. 3 of 6 (rate chart)

Charge	EMM Rates	EMW Rates	Determinant
Customer Charge	$10,000	$10,000	$/Customer
Facilities Charge	$ 0.0107	$ 0.0065	$/$ of Assets
Demand Charge 1 - Charge for Generation Capacity Cost of Service	$ 17.55	$ 8.16	$/kW during demand window
Demand Charge 2 - Charge for Transmission Capacity Cost of Service	$ 3.00	$ 5.81	$/kW during demand window
Energy Charge	$ 0.055	$ 0.053	$/kWh
Alternative to Energy Charge	Execution of an Optional Agreement for Payment of Actual RTO Charges		
RES compliance charge	$ 0.00033	$ 0.00040	$/kWh
Variable Fixed Revenue Contribution	24.77%	24.77%	Percent of other charges
Stable Fixed Revenue Contribution	24.77%	24.77%	Percent of other charges
Demand Deviation Charge	$8.9177	$8.9177	$/kW of deviation
Imbalance Charge	$8.9177	$8.9177	$/kW of deviation
EDI Responsibility Charge	$ -	$ -	$/kWh
Capacity Shortfall Rate, if applicable	TBD	TBD	$/kW
Capacity Cost Sufficiency Rider, if applicable	TBD	TBD	$/Month
Reactive Demand Charge	$ 0.99294	$ 0.46000	$/kVar

b. Other Noteworthy complexity in Staff's tariff.

While there are other aspects of Staff's tariff that are unduly complex, one more bears discussion here, that is, the Staff's proposal to require large load customers to be served under separate commercial pricing nodes ("CP Nodes"),[51] which is an example of the Staff seeking "to the penny" accounting that goes well beyond what Section 393.130.7 requires.[52]

Not only is the administrative complexity of this proposal problematic, but it is also completely unnecessary. As Mr. Wills explains, Staff is targeting energy market imbalance (or load forecast deviation) costs that are very small in the context of potentially billions of dollars of investment that may be accelerated to enable large load service.[53] Moreover, even if the absolute level were

[51] Or that an extensive and complex two page, single-spaced 17-point (with subparts approximately 25 point) tracking and data development requirement be imposed if separate CP Nodes are not. Exhibit 201, Staff Recommendation, Appx. 2, Schedule 2.
[52] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 14, l. 7 to p. 15, l. 11.
[53] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 15, l. 12 to p. 16, l. 1.

significant, there is no evidence at all that the level of imbalance costs attributable to large load customers would be materially or systematically different from the costs associated with all other customer load. As Google witness Dr. Carolyn Berry put it, the Staff "speculates that this might be possible, but has not performed any analysis or even provided a plausible example to establish the likelihood or importance of this issue."[54] Dr. Berry also points out her lack of awareness (and given her position one would expect her to be aware) of any jurisdiction taking this novel approach.[55]

Not only has the Staff failed to support its proposal beyond its own wild speculation, there is evidence that rebuts the notion that imbalance/deviation costs attributable to large load customers would be expected to be materially or systematically different than those associated with all other load.[56] That evidence is grounded in Mr. Wills' *actual experience* with load forecasting (and actual loads) as compared to the Staff's *speculative theory* that there "may" be a subsidization of costs caused by large load customers.[57] As Mr. Wills explains, the most likely type of customers that would be served under the Evergy tariff are more likely to have more predictable loads and relative to other customers, less forecast variance from the actuals, which would reduce, not increase imbalances/deviations.[58] For the only really large customer that has been served by a Missouri utility, Noranda, this was indeed the case and had Staff's separate CP Node proposal been in place then, it would have raised costs for all customers.[59]

[54] Exhibit 551, Surrebuttal Testimony of Carolyn Berry, p. 11, ll. 7-10. As Dr. Berry also points out, serving all of the utilities load under a single CP Node, the current practice reduces volatility for all customers, yet the Staff seeks to discriminate against large load customers by depriving them of that benefit. *Id.* p. 10, ll. 15-21.
[55] Exhibit 551, Surrebuttal Testimony of Carolyn Berry, p. 11, ll. 11-14.
[56] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 16, ll. 1 – 9.
[57] Exhibit 201, (Staff Report), p. 24, l. 13.
[58]Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 16. l. 17 to p. 17, l. 3.
[59]Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 17, ll. 4-19.

Staff's other key justifications for its separate CP Node proposal also fail to hold water. First, could a load like an arc furnace show up and require some adjustment to service terms? In theory, yes. But as discussed earlier, if that situation arises, the Commission's ongoing oversight and authority over service terms and rates can be deployed to address that one-off issue, rather than subjecting the entire body of large load customers to administratively complex requirements (that Staff in any event has entirely failed to explain in terms of how they would be accomplished).[60] Second, Staff is just wrong in attempting to justify its separate CP Node proposal on the claim that weather sensitivity of large load customers would somehow cause higher forecast deviation relative to other weather sensitive loads utilities forecast every day – and Staff has presented no evidence at all that this would in fact be the case. As Mr. Wills explains,[61] there is no reason to believe utilities (Evergy here) can't forecast a weather sensitive (if one exists) large load customers' load with any less accuracy than it forecasts other weather sensitive loads, nor is there any reason to believe the large loads should in any event be a noticeable source of imbalance/deviation costs at all.[62]

c. General observations on Staff's complex tariff.

Although referenced above, Mr. Lutz's summation of his general observations about the complexity of the Staff's tariff bears repeating in this discussion of its extreme complexity:

> I cannot foresee how a large load customer or the Company on behalf of the large load customer would confidently model the expected rate [under Staff's tariff proposal] to inform their site selection efforts. If Staff wishes to drive away all large load customers from the State, …. [Staff's] design is tailor-made to achieve that

[60] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 17, ll. 1-17.

[61] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 16, ll. 10-16 Mr. Wills isn't speculating about this topic or advancing theoretical issues but has extensive experience: "In my first role at Ameren over several years, I had the responsibility for developing the forecasting system that Ameren uses for RTO load forecasting and operating and supervising that system to conduct day-ahead forecasts that were submitted to MISO. I "lived" day-ahead load forecasting inside and out during that time, while developing an understanding of different load types, and the impact on RTO settlement statements of forecast variances (imbalances)."

[62] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 18, l. 18 to p. 19, l. 7.

goal."[63]

Mr. Wills sums of this extreme complexity for little if any benefit – and in fact as a detriment – this way:

- That the Staff's tariff "dramatically reduce[s] the transparency and understandability of the rate offering for prospective customers that are very likely to desire detailed information about the trends, trajectories, and potential risks of each of these very specific costs that will be on each and every one of their bills."[64]
- That while such customers are sophisticated, the "complexity of the rate would be a red flag for them related to the lack of transparency of energy pricing and the potential for uncertain and unpredictable outcomes."[65]
- That the Staff tariff is "an obvious outlier" as compared to other large load tariffs across the industry.[66]
- That Staff's tariff reflects "a rate structure and regulatory framework that, if adopted, I expect would create an environment where new prospective large load customers would tend to dismiss Missouri as a potential home for their investments and pursue opportunities to locate in jurisdictions with reasonable electric service terms."[67]

Is the complexity necessary to design rates that will produce a given level of revenue needed? The answer is "no" since one does not necessarily need a large number of different charges to produce the revenues associated with a particular allocation (e.g., an allocation to LLPS customers) of the revenue requirement.[68]

2. Staff's Tariff Proposal is Not Grounded in Evergy's Cost of Service.

Mr. Wills aptly summarized the problem in his Surrebuttal Testimony:

> **Q. Setting aside the complexity of the structure of the rates, do you have concerns with how Staff calculated the level of the charges that it proposes to subject large load customers to?**
>
> A. Absolutely, in fact, I would use the phrase significant concerns. In several respects Staff's rates lack a proper relationship, and for some charges *any*

[63] Exhibit 105, Surrebuttal Bradley D. Lutz, p. 30, ll. 15-18.
[64] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 13, ll. 5-8.
[65] *Id.,* ll. 10-14.
[66] *Id.*, p. 13, l. 11 to p. 14, l. 6.
[67] *Id.*, p. 5, ll. 3-7. See also Exhibit 702.
[68] Tr. Vol., 2, p. 243, ll. 2-6.

relationship, to the costs that are or will be reflected in Evergy operating companies' revenue requirements. Staff's rates simply cannot be said to reflect Evergy's cost of serving large load customers. It is foundational to utility ratemaking that rates be set in a manner that is intended to allow the utility a reasonable opportunity to recover its prudently incurred costs and earn a reasonable return on the investments it has made to serve customers. That principle manifests itself in rate cases as the determination of the utility's annual revenue requirement - the amount of money that rates should be designed to produce in order to provide the utility with that opportunity - based on a thorough review of that utility's costs. Fairness to customers also dictates that just and reasonable rates should not be knowingly and deliberately set obviously higher than the utility's cost to provide them service, at least without some policy justification (e.g., incentives, sharing of savings, etc.), so as to create a significant likelihood of the utility earning revenues that exceed its revenue requirement. Staff's rate proposal fails to achieve these basic principles.

Q. What about the way Staff creates its rate results in this failure?

A. Staff takes a different approach to establishing each type of charge, with little to no consideration of how those charges work together to recover the costs that make up the revenue requirement. And while Staff may argue that they are not making large load rates on an embedded cost basis, but are rather trying to capture some incremental cost of serving large loads instead, the assessment of costs still needs to reasonably reflect the actual costs that are and will be in Evergy's revenue requirement, and certainly should not recover the same costs multiple times across multiple different charge types, or reflect costs that do not exist. If Staff employed its large load methodology to develop rates for all of Evergy's retail service classifications, it is a virtual certainty that the sum total of the annual revenues from those charges would be higher, perhaps significantly so, than Evergy's cost-based revenue requirement. The piecemeal approach Staff has taken to selecting one basis for this charge over here, and a different basis for that charge over there is inconsistent, at best, and is entirely lacking in cost basis at worst.[69]

Even Staff agrees that rates should be cost based and designed to produce revenues by class and overall that match the revenue requirement– not more or less [70] – and that if we collect costs twice rates, could be overstated.[71]

[69] Exhibit 704, Wills Surrebuttal, p. 19, l. 12 to p. 20, l. 18.
[70] Tr. p. 240, l. 19 to p. 241, l. 1. 16.
[71] Tr. Vol. 2., p. 241, ll. 2- 26 (Mr. Busch agreeing that each class (this would apply to Evergy's LLPS class) should pay rates the reasonably reflect Evergy's costs and should neither be too high nor too low); *Id.*, p. 241, l. 17 to p. 242, l3 (Mr. Busch agreeing that if costs are overstated Evergy could collect more than its revenue requirement. This obviously would mean that LLPS customers would not pay their fair share, they would pay too much).

a. The Generation Demand Charge is Overstated Due to Apparently Deliberate Choices by the Staff.

While Ameren Missouri did not dissect each of the 27 charges Staff originally proposed, a good example of Staff's inaccurate and inconsistent ratemaking approach is its "Generation Demand Charge." The Staff purports to come up with an annual revenue requirement that in Class Cost of Service terms would reflect Evergy's production-demand related costs, i.e., the cost of its fleet and operating and maintaining it.[72] However, in doing so, the Staff omits a key component of determining that cost, that is, the well-established offset to rate base created by plant-related Accumulated Deferred Income Taxes that always lowers those production-related demand costs.[73]

Having failed to even mention this important component of determining production-demand related costs (i.e., ADIT) despite having five and one-half months after Evergy submitted its tariff in this case, the Staff apparently realized there was a hole in its Generation Demand Charge approach and came up with a strained rationale for ignoring the offset in its surrebuttal testimony. The crux of this rationale is that large load customers weren't around when the ADIT balances accrued and thus it is "patently unfair" to account for ADIT in determining the large load customers' Generation Demand Charge. That the Staff witness that ran with the ball to come up with the Staff tariff, Ms. Lange, has declared that accounting for the ADIT is "patently"[74] unfair does not make it true.

Consider that the Staff has produced no evidence whatsoever, in the decades that ADIT has been accounted for in ratemaking as a rate base offset, that the Commission has *ever* drawn a line that set rates for "legacy customers" with the ADIT offset, yet set different rates that ignored the ADIT offset for new customers. Had this been an accepted practice, the Staff would have so stated

[72] Exhibit 704, Surrebuttal Testimony of Steven Wills, p. 21, ll. 6-12.
[73] *Id.*, p. 21, l. 15 – p. 22, l. 14.
[74] "Patently," meaning "without doubt." *Oxford Learners Dictionary*.

and it would have produced evidence to support its non-accountant, non-auditor opinion.[75] Has ADIT been an offset to rate base for decades? Decades-old Commission decisions indicate that the answer is "yes."[76] *See, e.g., In the Matter of Union Electric Company,* Report and Order, Case Nos. 18,214 and 18527, 1975 WL 31631 (Mo. P.S.C.) (Dec. 22., 1975), at 9 (Where the Commission agreed with the Staff that ADIT generated decades earlier (in the 1950s) should offset rate base in this mid-1970s rate case, although undoubtedly there were many customers on the system in the mid-1970s that were not on the system (they were not "legacy customers" when the ADIT arose)).

The Commission should question why Ms. Lange is making the bold claim of "patent unfairness" about an accounting and tax concept in the first place, especially in view of her surrebuttal testimony, which suggests that her understanding of what ADIT actually is may be a bit tenuous. For example, Ms. Lange describes ADIT as "prepaid taxes for utility assets relative to the utility's actual payment of taxes on those assets."[77] That description is inaccurate given that the acronym "ADIT" stands for "Accumulated Deferred *Income* Taxes" (emphasis added). A utility pays *property* taxes on assets, on its generation, but it pays *income* taxes (or generates deferred *income* taxes) on its income, indeed, on its net income after all of its expenses are accounted for.

One other point here bears mention. Ms. Lange properly recognizes that large load customers will be served from the utility's entire system and that it is not practical to somehow parse out which assets serve which customers.[78] But here, when it has the effect of raising the large load customer rates, Ms. Lange demonstrates the bias toward overcharging large load customers and

[75] Exhibit 201, (Staff Report) Appendix 1, pp.23-28, which provides no indication that Ms. Lange has accounting or tax training or has ever acted as a Staff auditor that determines the proper treatment of ADIT in a utility revenue requirement.
[76] Specific to EMM, does Staff contend that when, as an example, the Ford assembly plant in EMM's service territory came onto EMM's system that Ford should pay a higher rate calculated without recognizing the ADIT offset?
[77] Exhibit 207, Surrebuttal Testimony of Sarah Lange, p. 21, ll. 8-9.
[78] Exhibit 201, (Staff Report), p. 45, fn. 90.

clearly has (remembering, again, that Staff is not keen on attracting many of them in the first place) made a conscious choice to parse out a key component of the production-demand related costs of that generation. That approach is in contradiction of the notion that large load customers are served by the system in general – both the system built up and remaining over decades – and the system as it will evolve and change in the future.

Ms. Lange made other deliberate choices that raised the rate large load customers would pay when she excluded excess capacity revenues from Evergy's fleet, i.e., did not offset Evergy's revenue requirement with those revenues even though indeed those revenues *do* reduce Evergy's revenue requirement. As addressed by Mr. Wills' Surrebuttal Testimony, Ms. Lange's logic in doing so is flawed. Specifically,

> If it is true [as Ms. Lange claims] that there is excess capacity to sell today that produces the revenue that Staff is excluding from its calculation of its Generation Demand Charge, that means that there is more capacity than is needed to serve the current load (i.e., capacity that was sold wholesale to other load serving entities). However, Staff, in developing its rate, divides the cost of this capacity (more than needed to serve the retail load) by only using the current level of Evergy's retail load as the denominator of the rate calculation. This means there is a clear mismatch between the costs included in the numerator, which implicitly (due to the existence of capacity sale revenues) can support a higher level of load than the current Evergy retail load, and the denominator of the rate that *only* includes the current retail load. This is not a reasonable basis for establishing a retail charge. The numerator and denominator of the rate must be internally consistent. Staff could have, but didn't, do one of two things to remedy this inconsistency: 1) it could include the capacity revenues (that it chose to exclude) as an offset to the revenue requirement to reflect the revenue generating capability of the excess capacity (where in the future that revenue could come from either the market as capacity sales or from new customers such as large load customers that would make efficient use of the existing excess capacity), or 2) it could impute additional load into the denominator to represent the amount of large load (or other) customer load that could be served by the existing generation fleet. Either of these solutions would reduce Staff's Generation Demand Charge by making the rate calculation internally consistent. [79]

To demonstrate the point, Mr. Wills provided a hypothetical, but plausible example, summarized in

[79] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 22, l. 18 to p. 23, l. 20.

his Table 1 of his Surrebuttal (reproduced below):[80]

Table 1 – Illustration of Staff's Mismatching Rate Calculation Methodology and the Two Possible Solutions to Fixing It

Line	Description	Amount
1	Total Capacity (kW)	2,000,000
2	Total Load (kW)	1,800,000
3	Gross Revenue Requirement Associated with Generation Capacity (Excluding Capacity Sales Revenue)	$100,000,000
4	Capacity Sales Revenues	$4,000,000
5	Net Revenue Requirement (Including Capacity Sales Revenues)	$96,000,000
6	Per kW Rate Using Staff's Method (Line 3 divided by Line 2 divided by 12 months)	**$4.63**
7	Per kW Rate Recognizing Capacity Sales Revenue, which represents revenue generating capability of excess capacity (line 5 divided by line 2 divided by 12 months)	**$4.44**
8	Per kW Rate Based on Exclusion of Capacity Sales Revenue but Imputing Retail Load that Can and Will Contribute to Covering Revenue Requirement in the Future (Line 3 divided by Line 1 divided by 12)	**$4.17**

As the row labels indicate, Row 6 reflects an overcharge by ignoring capacity revenues that in fact do exist, while Rows 7 and 8 reflect reasonable alternatives to properly recognize the existence of those revenues.

[80] *Id.,* p. 23, l. 21 to p. 25, l. 2.

b. The Staff's energy charge (using wholesale market prices) is overstated and is not reflective of Evergy's actual energy-related costs (variable energy costs) of providing retail electric service.

The Staff's proposal in this case – which is completely at odds with the approach the Staff takes when it develops variable energy-related costs in producing a recommended revenue requirement in a rate case – is to use wholesale market prices to set the energy charge for large load customers.[81] This approach is simply wrong, and produced a Staff-recommended energy charge that is too high and not reflective of Evergy's cost of service (recall just how high Staff's average rate per kWh is using these high energy market prices, as discussed earlier in this Brief). Mr. Busch, an economist with bachelor's and master's degrees in economics and Mr. Shawn Lange, who is intimately familiar with the interplay of Staff's production cost modeling and how it interacts with setting revenue requirements, both agreed that the market price of energy is <u>not</u> Evergy's cost of generating energy from its units.[82]

The Staff's approach in this case also directly contradicts the Commission's determination that electric utilities do not "truly" purchase all of the power (energy) used to serve their loads (they only purchase "true purchased power") when they sell all of their generation into the market and then buy all energy from the market.[83] While there are hours when the utility is buying (on a net basis) energy from the market at market energy prices to serve its load – and those purchases are "true purchased power," – the Commission has determined that otherwise the utility is self-supplying its load from its own generation, with the variable cost of doing so driven not by the market price of energy, but by the cost of owning and operating the generation.

[81] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 5, l. 8 to p. 27, l. 4.
[82] Tr. Vol. 2, p. 247, ll. 20 – 25 (Mr. Busch) and Tr. Vol 2, p. 299, l. 22 to p. 300, l. 6.
[83] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, pp. 27 and 28 Mr. Wills explains why the Staff's approach here is at odds with the Commission's determination.

As Mr. Wills explains,[84] the Staff approach in this case to use market prices for energy as if they reflect Evergy's cost to generate energy from its units (as did its conscious decisions in calculating its Generation Demand Charge), systematically biases the energy charge for large load customers to the high side as compared to Evergy's actual variable production (energy) costs. This bias is evident since the wholesale market prices Staff is using are set each hour by the marginal unit (the unit bid into the market in that hour with the highest cost) yet all of the other units have variable costs of producing energy that is lower than that marginal unit, which produces off-system sales that lower the revenue requirement for all customers (effectively, contributing to covering the utility's fixed costs). As Mr. Wills, explains it: "That the LMP [market energy price] is sufficient to make *any* contribution to the fixed cost of a generator, and that Staff is using the LMP to set a retail energy rate when they already designed another rate [the Generation Demand Charge] to recover *all* of the fixed costs of generation,[66] necessarily means that Staff's rate *double counts* some amount of generation costs – i.e., it charges more than the cost of service, and by implication would result in a utility systematically recovering more than its revenue requirement associated with the provision of service to a customer. The result: once again, large load customers would unfairly overpay."[85]

c. The Staff's "Stable Fixed" and Variable Fixed" Revenue Contribution Charges have no basis in Evergy's cost of service.

As Mr. Wills puts it, "I think it's a fair question which of Staff's proposed charges within its large load rate structure is the most removed from having a legitimate basis in cost of service

[84] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 29, ll. 1-10.
[85] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 29, ll. 11-17. As footnote 22 in Mr. Will's Surrebuttal Testimony explains, there are some exceptions for units dispatched by the regional transmission operator purely for reliability reasons (not because they variable cost is at or below the marginal unit), but those units receive make whole payments and thus are treated economically like the marginal unit. The point remains, however, for all of the other units generating margins that cover fixed costs.

analysis, but at the end of the day it is these charges that truly take the "overcharge large load customers" cake. Staff simply takes all of the other charges it has concocted and grosses them up by 24.77%."[86]

Why? First, Staff doesn't assess the costs these Staff charges purportedly are designed to cover at all (that is, Evergy's administrative and general costs), but rather, concocts a charge based on a percentage of all of Evergy's *other* costs.[87] Second, that percentage is grabbed from an economic development discount statute that calls for an intentional deviation from cost-based rates to promote the policy of attracting new load (i.e., fostering economic development) but the discount percentage is neither implicitly nor explicitly tied to any of Evergy's costs, let alone it's A&G costs, and is thus completely arbitrary.[88] Third, the Staff compounds the complete divorce of these charges from any basis in Evergy's costs by making the fundamental mistake of grossing up the revenues the charges produce for *income* taxes when those revenues are designed (apparently) to offset what Staff claims are costs, meaning they will produce no income (revenues will be offset by a like expense) and thus will not generate any income tax.[89]

This problem, together with the other two just-discussed problems, demonstrate a systematic bias in the Staff tariff toward overcharging large load customers, as summarized by Mr. Wills in his Surrebuttal Testimony:

> **Q. Please summarize your perspective on the cost basis of Staff's proposed large load rate.**
>
> A. It is internally inconsistent at best and totally lacking at worst. To be clear, as I stated at the outset of my testimony, I am not even delving into *every* problem with Staff's proposal. I have only commented on *some of the most egregious* problems with it. That said, the fact that Staff's Generation Demand Charge is systematically biased high by not reflecting ADIT or capacity revenues, that Staff's

[86]Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 29, l. 20 to p. 30, l. 3.
[87] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 30, ll. 4-18.
[88] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 30, l. 9 to p. 31, l. 16.
[89] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 31, l. 17 to p. 32, l. 14.

> energy charge is systematically biased high by reflecting wholesale market prices that contribute to the same fixed costs (i.e., that double counts costs) as the Generation Demand Charge, and that the Stable and Variable Fixed Revenue Contribution charges are arbitrary, with no relationship to Evergy's actual costs, and then further biased high by grossing them up for phantom income taxes, suggests that Staff's rate is wholly unreasonable.[90]

3. The Staff's Exit Fee Trigger is Remarkable in its Unreasonableness and Anti-Competitiveness.

The Staff tariff would trigger large load customer exit fees at any time a large load customer's demand fell below 50% of the customer's contract demand for a mere three consecutive months.[91] The Commission can be the judge of whether a business would choose to locate in Missouri and invest tens, hundreds, or billions of dollars in facilities if a three-month demand reduction, which isn't a clear indication of a permanent termination of service to begin with, could trigger massive exit fees.[92]

Not only is the Staff exit fee proposal unreasonable, but it is also completely unnecessary. All one must do is what Evergy has done: impose reasonable minimum bill requirements on the large load customers.[93]

C. FAC-Related Issues

The Staff and OPC, via OPC witness Mantle's Rebuttal Testimony,[94] make a number of claims designed to (a) leave the impression that Evergy's FAC is a source of "subsidy" by non-large load customers of large load customers, and (b) that this claimed subsidy is a justification for

[90] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 34, ll. 10-21.
[91] Exhibit 201, Staff Recommendation), Appx. 2, Sch. 1, p. 3.
[92] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 36, ll. 11-16.
[93] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 36, l. 17 to p. 37, l. 7. Evergy's tariff proposal imposes a minimum bill requirement at 80% of the large load customer's contract capacity, which can be reduced by the lesser of 25 MW or 10% (e.g., the 80% could become 72%). EFIS Item No. 116, Non-Unanimous Global Stipulation and Agreement.
[94] Ameren Missouri will in many cases reference the Staff Rebuttal Report for the claim at issue and not Ms. Mantle's Surrebuttal Testimony, which is only about three pages long and consists largely of nothing more than a statement of "me too" where Ms. Mantle simply agrees with FAC-related points made by the Staff.

upending time-tested principles of regulatory lag and the beneficial incentives it creates by unfairly imposing a one-way tracker on Evergy for large load customer revenues realized while these customers ramp up. However, these FAC "subsidy" claims are misleading or inaccurate.

The first claim focuses on the period prior to the first rate case where base rates are reset that account for revenues (and associated billing determinants) from large load customers. Specifically, Staff and OPC claim that higher net energy costs caused by adding a large load customer will *entirely* flow through the FAC and be paid for by other customers, while on the revenue side, Evergy will keep all the revenues. This claim *is false*, as Exhibits 708 and 709 (EMM's and EMW's FAC tariffs, respectively), demonstrate.

The mechanics of Evergy's FAC[95] recognize that a certain portion of the revenues derived from application of the base rates paid by any customer, including a large load customer, exist to cover the net base energy costs that were included in the revenue requirement in the previous rate case. See Factor "B."[96] Factor "B" reflects the portion of net energy costs that do *not* flow through the FAC but rather, are covered by base rates -hence the label "net *base* energy costs." In making their false claim, Staff and OPC either ignored or don't understand this *critical* point, and it caused them to grossly overstate the proportion of net energy costs that non-large load customers would pay prior to when large load customer load has been accounted for in setting base rates.

That there is a significant proportion of net energy costs that do not flow through the FAC is confirmed by the formulas contained in the FAC through which the rate customers pay under the FAC, called the "FAR" (Fuel Adjustment Rate), are determined. Those formulas are as follows:

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[95] Both for EMM and EMW, and for Ameren Missouri for that matter. As Ms. Mantle testified, the structure of all Missouri FACs is similar. Exhibit 300 (Mantle Surrebuttal), Sch. LMM-S2.

[96] Ex. 708, Sheet No. 50.39 ("Net base energy costs ordered by the Commission in the last general rate case…."; Sheet No. 50.42, Row 2 ("Net Base Energy Cost (B)," for EMM $148.006 million reflected in base rates from EMM's last rate case. For purposes of this FAC discussion, Ameren Missouri will refer to EMM and its FAC, as did Staff and OPC, but the statements made herein except for specific volumes or dollar figures would apply equally to EMW.

$FAR = FPA/S_{RP}$

$FPA = 95\% * ((ANEC – B) * J) + T + I = P$[97]

"ANEC" in this formula stands for Actual Net Energy Costs. This is the term where the increases in net energy costs that arise from serving new load (manifest as either an increase in purchased power or a decrease in off-system sales) are captured. And it *is true* that this term will result in increased costs flowing into the FAC when new large load service is initiated. However, the claim -- that higher net energy costs caused by adding a large load customer will *entirely* flow through the FAC and be paid for by other customers, while on the revenue side, Evergy will keep all the revenues -- is premised essentially on the notion that the increase in costs reflected in the term ANEC is the *entirety* of the impact of large load customers on the FAC. *It is not*. Why? Because that claim completely ignores the term B in the FAR formula above, which inherently recognizes that the Company has received some base rate revenues from each customer, *including large load customers coming onto the system* before their loads are accounted for in a rate case, that are intended to cover the net energy costs incurred to serve the customer.

Specifically, the revenues reflected in the Factor "B" offset the higher costs that are reflected in ANEC. This is readily visible in the FAC tariff and the above formulas, where B is subtracted from ANEC. And it is this difference (subject to the FAC sharing percentage and any impact from the other factors reflected in the FPA definition which we are ignoring here) that sets the FAR, which is the rate paid by *all* customers (*including a new large load customer*) under the FAC. Consequently, it is simply not true that "essentially all incremental expenses associated with that LLPS customer

[97] Most of this discussion will focus on ANEC- B. By way of explanation, the 95% in the formula is to reflect the sharing percentage, "J" accounts for transmission losses (so customers served at different voltages with different losses are fairly charged under the FAC), "T" reflects true-up amounts as required by the FAC, "I" reflects interest as required by the FAC, and "P" would reflect any ordered prudence disallowances. Ameren Missouri will ignore those variables in this discussion because they don't matter in respect to the points in dispute here.

will flow through the EMM or EMW FAC, however, all revenues from the LLPS customer will flow to EMM and EMW shareholders," since only the *difference* between ANEC and B does.

As the tariff shows, Factor B is calculated by multiplying the Base Factor,[98] which is a rate stated in the FAC tariff that was established in a previous rate case in order to identify the amount of base rate revenues per kilowatt-hour of retail load that exist to cover net energy costs ($0.01829 per kWh)[99], by the Company's retail load as designated in the tariff by the term S_{AP} (or net system input, sales (load), in the Accumulation Period).[100] It should go without saying that the Company's retail load (its S_{AP}) will increase significantly as a result of any large load customer addition (including additions before that first rate case) and that therefore B will increase when that higher load level is multiplied by the Base Factor rate (BF).[101] Note that in the FPA formula B is *subtracted* from (i.e., offsets) ANEC. So, we understand that ANEC will go up as a result of large load service, and *so will B*. Because B increases, and is subtracted from ANEC which also increases, the costs that flow through the FAC for recovery from all customers (including the large load customer itself, which will be subject to paying the FAR) are *not* the entirety of costs incurred for large load customers as Staff claims. Not nearly so.

Rather, it is the *net* of the increase in costs and the base rate revenues received from the customer to cover those costs that ultimately flows "through the FAC." This makes Staff's statement that "essentially all incremental expenses associated with that LLPS customer will flow through the EMM or EMW FAC, however, all revenues from the LLPS customer will flow to EMM and EMW

[98] Exhibit 708, Sheet No. 50.39.
[99] Exhibit 708, Sheet No. 50.39. Note that this is the same BF Ms. Mantle uses in the upper left-hand table in her Schedule LMM-S-3 (part of Exhibit 300 (Mantle Surrebuttal)).
[100] Exhibit 708, Sheet No. 50.39.
[101] The upper left hand table in Ms. Mantle's Schedule LMM-S-3 shows this in the "Add LLPS kWh" row, which reflects 11.052 billion kWhs with the addition of the hypothetical 384 MW large load customer (S_{AP} for the illustrated accumulation period) instead of the load that would have existed without the new large load customer (8,193 billion kWh in the "Annualized kWh" row. Not that Ms. Mantle's "Add LLPS kWh" label is inapt since that number reflects the total load, non-LLPS and LLPS, it is the sum of the two.

shareholders"[102] false. What flows through the FAC is any net costs that were not already *fully* covered by base rate revenues designed to cover net energy costs, and the Company did not retain those revenues that were designed to cover net energy costs, but rather flowed the appropriate portion of those revenues through the term B in the FAC to reduce the incremental net energy costs being recovered in the FAC. Ms. Mantle supplied what that sum was in the upper left-hand table in her Schedule LMM-S-3 in the first row in that table labelled "NBEC" and the second column corresponding to that row. That is, the large load customer paid base rates designed to cover net energy costs totaling $52,295,939.

The bottom line is that existing customers do not pay "essentially all" of the $71,481,600 increase in ANEC caused by this hypothetical new large load customer (also shown in the next row, second column of that same table). Instead, the large load customer pays $52,295,939 of that cost via base rates (NBEC row, second column in that table), the large load customer pays an additional $4,717,786 of FAC charges ("Recovery Period Payment" row, second column, in that same table), other customers pay $13.5 million ("Recovery Period Payment" row, 3rd column), and shareholders pay $959,483 due to the 5% sharing ($71,481,600 - $52,295,939 - $4,717,786 = $959,483). And keep in mind that the $52.295 million the large load customer pays via base rates here is only a fraction of the total base rate the large load customer will pay (the portion designed to cover the base rate portion of net energy costs). The large load customer will also pay additional charges that will produce base rate revenues, e.g., at the EMM base rate of 6.92 cents/kWh,[103] an additional

[102] Exhibit 201, Staff Rebuttal Report, p. 4, ll. 8-11.
[103] Exhibit 201, Staff Rebuttal Report, p. 41, ll. 6-9. The equivalent rate under the stipulation filed in this case will vary some from the 6.92 cents because under the stipulation there is no SSR component, but that component has been replaced by a higher demand charge than EMM originally proposed. EMM's original proposal contained demand charges of $14 and $12, respectively, for summer/winter (Exhibit __, Lutz Direct, Sch. BDL-1 p. 37) and the stipulated demand charges are $21.038 AND $19.038, respectively, for summer and winter. EFIS Item __, p. 27.

$145,565,130 in base rate revenues annually that would cover *non*-net energy-related costs.[104] The above-discussed FAC-related claims related to periods *prior* to the first rate case that accounts for a new large load customer (for purposes of that discussion, Staff's hypothetical 384 MW large load customer). We now turn to a discussion of claims made regarding alleged FAC impacts *after* that first rate case occurs.

As Ms. Mantle explained, adding a large load customer (and this is true of adding *any* new load) will increase net energy costs and that increase will be captured in the first rate case recognizing that new customer. If one has a new customer, say the hypothetical customer in Ms. Mantle's illustration (that has a load of 2.859 million MWhs), then the billing units from that customer (again, from *any* new load) will also be accounted for in that rate case, meaning that case will reflect an assumption that those increased billing units will produce more retail revenues. This is Ratemaking 101. The net energy costs increase because the utility must generate or procure energy to serve the customer, and that has a cost that will go into the revenue requirement (i.e., net energy costs increase).[105] But the customer will also pay a retail bill and produce revenues that cover some portion of the revenue requirement (i.e., retail revenues increase).[106] Holding infrastructure needs constant, the impact of a new load on other customer rates in a rate case comes down to the *difference* between these two offsetting effects. Since retail rates are generally higher than market energy prices[107] – this

[104] $0.0692 * 2,859,264,000 = $197, 861.069, less the $52,295,939 discussed earlier to cover net energy costs – difference of 145,565,130.
[105] Exhibit 300, Surrebuttal Testimony of Lena M. Mantle), p. 2, l. 18-20
[106] In the case of Staff's hypothetical 384 MW large load customer, retail revenues will increase by the total base rate times the 2.859 million MWhs the customer is adding (e.g., at a 6.92 cent/kWh base rate, by the approximately $197 million referenced earlier. The same thing is mathematically true for any new customer, e.g., a new 1 MW customer with an 85% load factor that adds just 7,446 MWhs of new billing units (1 * 8,760 hours * .85). At that same assumed 6.92 cents/kWh, such customer will produce $5.152 million in new retail revenues (7,446 MWhs * 1,000 * 6.92 cents).
[107] *Cf.* Historical energy prices for EMM and EMW (Exhibit 201 (Staff Rebuttal Report), p. 53, Table above line 12 (market rates between about $.03 cents/MWh to a high of just over $30/MWh (in the summer)), versus the retail rate Evergy's LLPS tariff proposal would charge ($66.92/MWh for EMM and $65.97 for EMW (*Id.* p. 41, ll. 6-9.

trade off – i.e., selling energy at retail rather than wholesale, will generally drive down the revenue requirement responsibility of existing customers.

A review of Ms. Mantle's Surrebuttal Testimony reveals that she gave no consideration to large load customer impacts that will occur *outsid*e the FAC itself when it claimed that the FAC will cause other customers to subsidize large load customers.[108] Ms. Mantle flatly confirmed during cross-examination that she gave this no consideration in making her similar claims.[109] Consequently, Ms. Mantle's Schedule LMM-S-3 lower left-hand table only depicts her view of what is happening *inside* the FAC after a rate case that bakes in new large load customer impacts has occurred. However, this myopic view of the impacts of large load customers (even if one accepted that there may be a "subsidy" at times inside the FAC) misses a huge part of the overall picture, that is, the base rate revenues the large load customer will also pay. Ms. Mantle recognizes that after this first rate case, the "FAC base factor,"[110] as she calls, will increase, and that's likely true. But so must the utility's base rate revenues (which offset the overall revenue requirement) because the large load customer is providing additional retail revenues that are accounted for in setting the revenue requirement in that case and thus, mathematically reduce the existing customers' revenue requirement responsibility by what again, mathematically, will be a larger amount than any increase in NBEC except in the unlikely event that the NBEC built into base rates reflects a rate that is higher than the retail rate.

That this is unlikely is borne out by figures of record in this case, that is, Ms. Mantle shows a higher BF of $0.02003/kWh[111] after the first rate case compared to the much higher $0.0692 overall

[108] Exhibit 300, (Surrebuttal Testimony of Lena M. Mantle), p. 2, ll. 18-22.
[109] Tr. (Vol 3), p. 164, ll. 14 – 17.
[110] It's clear this was Ms. Mantle's way of referring to NBEC.
[111] Exhibit 300, Surrebuttal Testimony of Lena M. Mantle, Sch. LMM-S-3 (table at the lower left, "After Rate Case" "BF").

base rate, as discussed earlier. Using Ms. Mantle's own hypothetical example of FAC impacts, at hearing she acknowledged that the increase in net energy costs of $71.5 million that would be reflected in a rate case would be accompanied by $197 million of revenue that more than offset the increase in revenue requirement, resulting in a reduction in rates for other customers arising from impacts of the large load customer.[112]

What this means is that while it may be true that the result of *any* load addition – net base energy costs that are subject to treatment in the FAC mechanism are higher, total rates for all customers are *lower*. Essentially, a benefit that was flowing through the FAC (off-system sales revenue in the instance of a utility that is "long" generation or lower purchased power costs if the utility is "short") is displaced by a larger benefit (retail revenues to cover the revenue requirement) that is manifest outside of the FAC mechanism. The overall picture is one of net benefit for all customers. The fact that the *location* of that benefit shifted into a different part of the rate structure – *from* the FAC *to* base rates - doesn't matter – there is a benefit.[113] It is thus misleading at best to claim that the FAC is "creating a subsidy." The FAC charges will have gone up, yes, but the new load is providing *more* benefits through its contribution of retail revenue outside the FAC than would have existed when those benefits were derived from wholesale revenues inside the FAC because MWH that previously had a value of (using the Evergy figures above) of in the $20s or $30s of dollars/MWh are producing retail revenues because the customer is paying for those same MWhs at more than $60/MWh.

To paint the full picture, it should be noted that the above-discussion is premised on the situation where infrastructure costs are held constant. It is certainly theoretically possible, depending

[112] This is the same $197 million noted earlier. Tr. (Vol 3), p. 216, l. 9 – 19.
[113] Again, unless the unlikely happens – wholesale energy costs used to set the revenue requirement are higher than the overall base rate.

on the amount and cost of new generation that is built relative to the amount of new revenue to be derived from the new load, that infrastructure costs reflected in base rates could be high enough such that the added load does not mean lower base rates. This is exactly why Evergy (and utilities/states across the country) include minimum bill, term, termination and exit fee, and financial security terms in their large load tariffs. However, such a subsidy cannot be ascertained through *an FAC analysis*, and if it were to occur, it would still not result in a conclusion that *the FAC* was a source of ongoing subsidy that needs to be corrected by tinkering with the FAC itself. The higher costs that would be able to be characterized as a subsidy would be fixed costs of plant and have nothing to do with claims made by Staff or Ms. Mantle about the role of the FAC after a rate case. Neither Staff nor OPC has conducted any analysis whatsoever on which to make such a claim.

Ignoring the full picture has lead Staff and OPC to a biased and inaccurate viewpoint which in turn has led the Staff to propose a tariff that is, among other problems, unduly complex and overcharges large load customers (as discussed in detail above) and that has caused OPC to raise a parade of horribles about the nature of businesses it worries about and to, it appears by default, to tumble to the Staff's proposal without any real, coherent analysis to back up its position. That ignoring the full picture is problematic is demonstrated by yet another omission on the Staff and OPC's part, this time an error of omission.

Not only do Staff and OPC ignore impacts relating to net energy costs and additional base rate revenues outside the FAC when large load customers come onto the system, both before and after that first rate case the recognizes their load, but they ignore other effects outside the FAC that also cut the other way, that is, where the additional large loads are benefitting ("subsidizing") other customers. For example somehow, both of them, managed to completely ignore any impacts that large load customers will have on other customers (for EMW in this instance) through EMW's

securitization rider. As Exhibit 710 -712 shows, assuming this hypothetical large load customer comes onto EMW's system at full load starting June 1, 2027, that customer would be expected to pay non-bypassable securitization charges totaling about $115 million of the $384 million of the amount remaining to be paid.[114] That's $115 million[115] other customers will not have to pay – but which they would have had to pay – had the large load customer not shown up. This means that the large load customer will "subsidize" existing customers through EMW's securitization rider, which arose from costs that occurred before the large load customer ever existed.

The summarizing point is that cries of "FAC subsidy" without looking at the overall picture, can lead to false and misleading results that one might conclude led Staff to decide that it's not worth the risk to serve many such customers at all, and OPC to take what at best can be described as partially baked positions that if adopted would not be helpful in capturing the economic development opportunities large load customers present to the state.

D. REGULATORY LAG

The Staff proposes to eliminate the beneficial incentives provided by a longstanding and key feature of rate or return regulation, that is, Staff proposes to completely eliminate any positive regulatory lag Evergy could realize as large loads ramp-up operations. The Staff proposes to do so via a one-sided, one-way tracker that, in the Staff's words, would operate as follows:

> until a rate case recognizing the customer at the full level of projected demand, the difference between the revenue for each charge considered for that customer in the last general rate case, and the current level of revenue for that charge will be recorded to a regulatory liability account [for future refund to customers].

[114] Tr. (Vol 3), p. 195, l. 13 to p. 196l. 3.

[115] Tr. (Vol 3), p. 196, l. 25 to p. 198, l. 5 (With Ms. Mantle caveating her answer by speculating that large load customers would somehow go to the General Assembly to get the securitization law changed to avoid this result. The Company submits that this would be impossible given that the securitization bonds have been issued, approved by the Commission, and require non-bypassable charges, but Ms. Mantle is speculating in any event. Note that while Ms. Mantle and OPC counsel didn't want her to answer these questions, they and Ms. Mantles answers to them are based on Exhibits 710 – 712, which were admitted after OPC's objection to them was overruled. *Id.*, p. 193, 1-9.

For several reasons, the Staff's proposal should be summarily rejected.

First, while it is possible that once rates are set a utility's current period revenues can exceed its current period costs (which would manifest itself as positive regulatory lag), that circumstance is far from the norm, meaning that in general, Evergy like other Missouri electric utilities has experienced frequent periods when its current period costs are more than its current period revenues, i.e., experienced negative regulatory lag, which undercuts the utilities' ability to earn its authorized return.[116] Adopting the Staff's proposal in effect would perpetuate a system where utilities are already challenged in continuing to make the investments needed to modernize their systems while maintaining adequate financial results to attract the capital they need to do so. If the Commission desires that utilities be able to attract that capital, it should not sanction a system like that which would exist under the Staff's proposal, where the utility is expected to absorb earnings declines when negative regulatory lag exists but is precluded from experiencing earnings enhancements when the pendulum swings the other way.[117] When it suits it, the Staff has fully recognized the beneficial workings of regulatory lag, positive and negative, clearly articulating the fact that it is intended to be a two-way street.[118]

Second, the Staff's theory that the positive regulatory lag from large load customers is not "ordinary" and thus justifies its proposal doesn't hold water because it is completely lacking in any examination of the other side of the equation, that is, the "historical and likely future inability of the historic test year-based regulatory paradigm to cover Missouri utilities' costs due to unfavorable regulatory lag…."[119] The Staff ignores that while yes, PISA has mitigated some regulatory lag, it

[116] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 38, l. 9 to p. 39, l. 9.
[117] Exhibit 704, Surrebuttal Testimony of Steven M. Wills, p. 39, l. 10 to p. 40, l. 17.
[118] Exhibit 704, Surrebuttal Testimony of Stevn M. Wills, p. 40, l. 18 to p. 42, l. 2. And so has OPC. *Id.*, p. 42, l. 3 to p. 43, l. 4.
[119] Exhibit 704 Surrebuttal of Steven M. Wills, p. 44, ll. 8 – 10.

still exists on fully 15% of utility investment in qualifying electric plant, which will results in significant negative regulatory lag on, as an example, an investment in one, simple cycle gas generation facility, totaling at least $11 million on just that one plant even if a rate case is optimally timed, and as much as $39 million even if there is just a 12-month interval between when the plant goes into service and when new rates reflecting it are set.[120] And this lag is in addition to negative lag caused by other items like increasing transmission costs due to the ongoing substantial expansion of the transmission network, which continue to lag the level of such costs reflected in base rates, year after year (along with general inflationary pressures that have the same impact).[121] While Ameren Missouri does not have access to the detailed information it would need to assess these kinds of impacts on Evergy specifically, it expects that Evergy faces similar pressures from negative regulatory lag.[122] Based on that reasonable assumption, the Commission should consider that extremely significant shortfall Ameren Missouri has experienced in recent times (the last five years as addressed in Mr. Wills' Surrebuttal Testimony), and specifically the persistent inability to earn its authorized return and the resulting very significant shortfall in rate revenues as compared to its costs.[123]

Third, the Staff's attempt to discount the negative regulatory lag that the Staff ignores by modeling seemingly large amounts of positive regulatory lag rests on flawed assumptions that cause Staff's quantifications to be extremely biased toward the high side.[124] The first problem with the Staff's assumptions is that the Staff assumes that the hypothetical large load customer would show up at full load and provide 4 full years of revenues before rates are reset, yet it is likely (a) that the

[120] Exhibit 704, Surrebuttal of Steven M. Wills, p. 45, l. 16 to p. 46, l. 13.
[121] Exhibit 704, Surrebuttal of Steven M. Wills, p. 44, ll. 12 - 19
[122] Exhibit 704, Surrebuttal of Steven M. Wills, p. 46, l. 8-9.
[123] Exhibit 704, Surrebuttal of Steven M. Wills, p. 45, ll. 1- 15 please see for a quantification of these figures, which Ameren Missouri has not stated here to obviate the need to file a second, confidential brief.
[124] Exhibit 704, Surrebuttal of Steven M. Wills, p. 47, ll. 10- 18.

customer would gradually ramp-up to its full demand over a number of years, and (b) that Evergy's rates will be reset more frequently than every four years and would thus reflect the customer's revenues (and thus reduce other customer rates) much sooner.[125]

The Staff also assumes that there will be no offsetting increases in revenue requirement as large load customers come onto the system that would cut the other way, that is, that would create negative lag for Evergy – that assumption is wrong. To take just one example, load-based transmission charges, which are for the most part not captured in any mechanism (meaning increases in this cost fall negatively to the utility's bottom line, i.e., negative regulatory lag) will increase along with the increase in load from the large load customer.[126]

There are other serious problems with Staff's one-way tracker proposal, starting with the Staff's failure to recognize that a not insignificant portion of the revenues the Staff seeks to include in its tracker are *already flowed-back to customers via Evergy's FAC*, as discussed in the FAC discussion in this Brief above.[127] Including these sums in the Staff's one-way tracker and giving them back via the FAC would double-count them, giving them back twice.

Yet another serious double-counting problem arises from the Staff's "N-Factor" proposal. The Staff's one-way tracker would capture the regulatory lag associated with all large load customer revenues but its N-Factor like mechanism would also shift the increase in net energy costs that a large load customer would cause out of the FAC. Put another way, the positive regulatory lag between rate cases that the utility would receive via base rates is taken away from the utility in the one-way tracker, and the negative regulatory lag the utility would, under the operation of the FAC,

[125]Exhibit 704 Surrebuttal of Steven M. Wills, p. 47, l. 18 to p. 48, l. 17. Mr. Busch confirmed that he too would expect such loads to ramp up over a series of up to five years, contradicting the Staff's assumption for purposes of its regulatory lag analysis. Tr. Vol II, p. 258, l. 24 to p. 259, l. 12.
[126] Exhibit 704 Surrebuttal of Steven M. Wills, p. 49, ll. 8 – 18.
[127] Exhibit 704 Surrebuttal of Steven M. Wills, p. 50, l. 8 to p. 51, l. 11.

be protected from (except for the 5% sharing) would also now be ripped out of the FAC so that the utility is no longer protected from it.[128] Perhaps the Staff doesn't even realize the problem its N-Factor proposal would create since it appears, as discussed above in connecting with the FAC, that the Staff does not fully grasp the complex interaction of the FAC with base rates.[129]

The totality of Staff's regulatory lag proposals are completely unjust and unreasonable, as an illustrative – but plausible – illustration from Mr. Wills' Surrebuttal Testimony shows:

Table 3 – Totality of Effect of Staff's Regulatory Lag Proposals

Line	Description	Amount	Calculation
1	New Large Load Usage Subsequent to a Rate Case (MWh)	1,000,000	
2	Average Large Load Retail Rate ($/MWh)	$60	
3	New Large Load Retail Revenue Subsequent to a Rate Case	$60,000,000	Line 1 x Line 2
4	FAC Base Factor ($/MWh)	$15	
5	Market Price of Energy ($/MWh)	$30	
6	Large Load Revenues Implicitly Returned to All Customers through Standard Operation of FAC	$15,000,000	Line 1 x Line 4
7	Regulatory Lag Experienced by Utility Prior to Staff's Proposals	**$45,000,000**	Line 3 - Line 6
8	One-way Tracker Impact of Deferring All Revenue for Return to Other Customers	-60,000,000	Opposite of Line 3
9	"N-Factor" Impact (Carves Out the increase in Net Energy Costs Based on the Difference Between the Market Price of Energy and the Base Factor to All Customers for Each MWh Served)	15,000,000	(Line 5 - Line 4) x Line 1
10	Regulatory Lag Experienced by Utility After Staff's Proposals	**-30,000,000**	Line 7 + Line 8 - Line 9

[128] Exhibit 704 Surrebuttal of Steven M. Wills, p. 51, l. 12 to p. 52, l. 20.
[129] Exhibit 704 Surrebuttal of Steven M. Wills, p. 52, l. 20 to p. 53, l. 12 (including Mr. Wills' call out of the falseness of a statement from Ms. Lange to the effect that Evergy can't possibly "fully recover the cost of energy through LLPS rates" through receipt of large load customer revenues if all of those revenues are tracked and returned to customers in the Staff's one-way tracker.

As the table shows, by failing to recognize that large load customers will pay base rates that cover a portion of the net energy costs reflected in net base energy costs (the FAC Base Factor) the tracker captures too much positive regulatory lag in the first place (captures and returns to customers $60 million but the actual positive lag is only $45 million – so the utility is "down" $15 million without Staff's proposal), and then compounds the problem with its "N-Factor", doubling the utility's loss to $30 million.[130]

IV. CONCLUSION

The Staff's proposal was not developed with any consideration of whether it would advance state economic development policies and priorities. It is overly complex and biased toward overcharging large load customers, among myriad other problems. It is novel, and cannot be lined up against large load tariff offerings across the country, certainly not against Evergy's proposal in Missouri or the very similar terms agreed upon in Kansas. The Staff (and OPC) have mis-represented the totality of what happens under the workings of the FAC, and have ignored what happens via base rates, when new large load customers come on and have thus painted a biased and inaccurate picture of the claimed impact of adding large load customers to Evergy's system. Evergy's tariff proposal is in line with national offerings, it contains the basic protections needed to comply with SB 4, and the Commission can ensure continued compliance via its ongoing ratemaking authority.

Evergy's proposal should be approved. Staff's should be rejected.

[130] Exhibit 704, Surrebuttal Testimony of Steven M. Wills Surrebuttal, p. 53, l. 13 to p. 55, l. 5 and Table 3.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed to the attorneys of record for all parties to this case as specified on the certified service list for this case in EFIS, on this 29th day of October, 2025.

/s/ James B. Lowery
James B. Lowery