

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri)
West for Permission and Approval of a)
Certificate of Public Convenience and)
Necessity Authorizing It to Purchase, Own,)
Operate, Maintain and Otherwise Control and)
Manage an Existing Wind Generation Facility)
in Oklahoma)

No. EA-2022-0328

NOTICE OF EVERGY MISSOURI WEST

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West,” “EMW,” or the “Company”), and states the following:

1. This Notice is filed in light of the Missouri Public Service Commission’s (“Commission”) discussion of this case at its agenda meeting held on March 29, 2023. EMW recognizes and appreciates that the conditions proposed by the Chairman and supported by a majority of Commissioners were an effort to find a path forward to approve the Company’s Application for an Operating Certificate of Convenience and Necessity (“CCN”). Unfortunately, the proposed conditions are unprecedented and inconsistent with the Company’s Application, the testimony offered by EMW’s witnesses, and the positions taken in the Company’s post-hearing Initial and Reply Briefs. Furthermore, an order granting an Operating CCN with these conditions would likely jeopardize future generator and other resource adequacy proposals submitted by EMW and Missouri’s other regulated electric utilities.

2. Throughout this proceeding, EMW has made clear that the elements of various “hold harmless” provisions proposed by other parties would not allow the Company to proceed with the transaction in Missouri to acquire the Persimmon Creek wind farm because they would

create unacceptable risks for EMW and are inconsistent with the public utility regulatory compact under Missouri law.¹

3. The Company made clear in the testimony of Vice President Kayla Messamore that it “will not be able to proceed with the Persimmon Creek acquisition if such a [hold harmless] condition is imposed on the CCN approval.”² She explained that under this condition its “return could be determined by SPP [Southwest Power Pool] wholesale energy market conditions that are outside of the Company’s control. If SPP wholesale energy revenues in combination with the Persimmon Creek tax credits were below what was needed to recover all costs (including capital related costs), EMW shareholders would be required to absorb the difference under Staff’s recommended condition. This would be both unreasonable and confiscatory.”³ A decision in this case that includes Staff’s hold-harmless sharing mechanism would recognize neither the purpose of the SPP wholesale energy market, nor retail ratepayers’ responsibility for resources that are necessary to serve their needs.⁴

4. If the Commission issues an order in this case that grants a CCN with such a condition, EMW would be unable to proceed with the Persimmon Creek acquisition in Missouri and the Company would be forced to pursue other alternatives. If EMW is unable to proceed, its parent company Evergy, Inc. or an affiliate thereof (other than EMW) may elect to pursue the acquisition of Persimmon Creek, pursuant to the existing contractual arrangements with the seller,

¹ See Ex. 9/9C at 4 (K. Messamore Surrebuttal) (If the Commission issues an order that imposes Staff’s condition on a CCN where customers are held harmless by the Company if Persimmon Creek does not generate net profits from the wholesale market and tax credits, “EMW will not proceed with the Persimmon Creek acquisition”).

² Id. at 18 (Messamore Surrebuttal).

³ Id. at 18-19.

⁴ As Evergy’s Director of Regulatory Affairs Matt Dority explained at the evidentiary hearing, the sharing mechanism approved by the Commission in Empire District Electric Company’s application for Construction CCNs (No. EA-2019-0010) to build three plants was presented as part of a complex stipulation agreed to by the parties. In addition to the unknown construction and supply chain risks in that case, the three plants were to be owned by Empire and a tax equity partner via tax equity financing in two holding companies. See Tr. 65-67. Here, Persimmon Creek has been operating efficiently for four years and its benefits will flow back to customers immediately. See Ex. 8 at 13-14, 21-23 (Humphrey Surrebuttal).

outside the jurisdiction of the Commission and without the need to obtain a CCN. As Ms. Messamore testified, an order adopting “Staff’s argument [supporting hold-harmless conditions] would indicate that many of EMW’s existing resources should not be a part of its fleet and EMW should simply procure all its energy from the SPP market for EMW customers, accepting the pricing and reliability risk that comes with that decision.”⁵ In fact, virtually no generating resource to serve Missouri customers can reasonably meet the criteria advanced by Staff in this case.

5. The confidential chart on page 19 of Ms. Messamore’s Surrebuttal Testimony (Ex. 9/9C) shows why a Commission order that adopts Staff’s hold-harmless sharing mechanism “if the costs of Persimmon Creek exceed the market revenues and ratepayer realized benefits”⁶ would be tantamount to directing Evergy Missouri West and all other Missouri regulated electric utilities to halt their efforts to acquire or build generation to serve their customers.

6. Moreover, the Commission’s acceptance of Staff’s condition that EMW be ordered to establish a deferral mechanism to track production tax credit benefits and to credit customers in future rate case proceedings⁷ amplifies the unacceptability of such an order. It ignores the fact that revenue from Persimmon Creek would flow to customers through the fuel adjustment clause, as well revenue from the sale of renewable energy credits that would offset and likely exceed annual deferrals of the PISA 85% depreciation expense and the property tax tracker.⁸

7. Evergy Missouri West reiterated this position in its post-hearing briefs, advising that accepting certain positions of the other parties “would create unacceptable conditions”⁹ and

⁵ Id. at 19-20.

⁶ Staff Initial Brief at 24.

⁷ Staff Initial Brief at 24-26.

⁸ EMW Initial Brief at 26-27, citing hearing testimony of Vice President Jason Humphrey at Tr.[C] 103-06.

⁹ EMW Initial Brief at 4.

that the Company “would not be able to proceed with acquiring Persimmon Creek if they were imposed on the Operating CCN.”¹⁰

WHEREFORE, Evergy Missouri West, Inc. requests that its Application for an Operating Certificate of Convenience and Necessity be granted in the form in which it was filed, as modified by and consistent with the positions taken by the Company in its evidence and in its post-hearing briefs.

Respectfully submitted,

/s/ Roger W. Steiner

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¹⁰ Id. at 33. See EMW Reply Brief at 39 (Staff condition for a hold-harmless sharing mechanism regarding market revenues and Persimmon Creek costs “would prevent the Company from closing the transaction to acquire Persimmon Creek.”).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served upon counsel for all parties on March 31, 2023 by either e-mail or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner

Attorney for Evergy Missouri West