

**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 Authority to Implement Rate)
Adjustments Required by 20 CSR 4240-)
20.090(8) and the Company's Approved)
Fuel and Purchased Power Cost Recovery)
Mechanism)

File No. ER-2023-0011

REPORT AND ORDER

Issue Date: November 9, 2022

Effective Date: November 19, 2022

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PARTIES & APPEARANCES

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REGULATORY LAW JUDGE: Kenneth J. Seyer

REPORT AND ORDER

I. Procedural History

On July 1, 2022¹, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (EMW), pursuant to Section 386.266, RSMo,² and Commission Rule 20 CSR 4240-20.090(8), filed a tariff sheet proposing to revise its fuel adjustment rate (FAR) in its tariffed fuel adjustment clause (FAC).³ EMW proposed to set the fuel adjustment rate per kilowatt-hour (kWh) to \$0.00157 for Accumulation Period (AP) 30 (December 2021 through May 2022) and Recovery Period 30 (September 2022 through August 2023), effective September 1. In its filing, EMW reported that actual net energy costs exceeded the base energy costs included in base rates by \$45,989,755 (after applying a jurisdictional factor).⁴ In accordance with the Commission's rule and EMW's approved FAC, EMW filed an FAC tariff change in rates to recover 95% of those cost changes, or \$43,690,267, plus \$562,597 in interest, subject to adjustment for a Plant-in-Service Accounting (PISA) deferral of \$31 million, and before taking into account true-up, interest, and any ordered adjustments.⁵

Concurrent with its filing to revise the FAR in its FAC, EMW made a true-up filing for AP27 reporting an under-recovery of \$522,660.⁶ Also included in the FAC filing is an adjustment, or refund to customers, of \$160,892, plus interest of \$10,613, ordered in EMW's ninth FAC prudence review, File No. EO-2020-0262. The resulting

¹ Unless otherwise noted, all dates refer to 2022.

² Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

³ Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.

⁴ Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.

⁵ Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.

⁶ Exh. 2, *Direct Testimony of Lisa Starkebaum*, p. 6.

under-recovered true-up amount is \$351,155.⁷ After adjustments, the fuel and purchased power adjustment (FPA) proposed by EMW was \$44,604,020.⁸ Of that \$44.6 million FPA, EMW proposed that \$31 million of “extraordinary” fuel costs not pass through its FAC. Instead, EMW proposed that the \$31 million be included in a regulatory asset, as provided by Section 393.1655.5, RSMo (Supp. 2021).⁹

On July 28, the Staff of the Commission (Staff) recommended the Commission issue an order rejecting the proposed revised tariff sheet and direct EMW to file a substitute tariff sheet that includes the \$31 million fuel costs that the Company proposed to defer to a PISA regulatory asset.¹⁰ On August 15, the Office of the Public Counsel (OPC) filed a *Motion for Summary Determination and Rule Variance or, in the Alternative, Request for Expedited Procedural Schedule* (Motion for Summary Determination).¹¹

On August 24, the Commission issued an order rejecting the Company’s proposed revised tariff sheet, assigned Tracking No. JE-2023-0005, but allowed the Company to file any revised tariff sheets necessary to implement interim fuel adjustment rates consistent with uncontested components of the Company’s proposed fuel adjustment rates.¹² On August 31, the Company filed a proposed interim tariff revision that reflected recovery of \$13.6 million of FAC-related costs in the fuel adjustment rate, after removal of the \$31 million deferral amount that is in dispute.¹³ On September 14, the Commission

⁷ Exh. 2, *Direct Testimony of Lisa Starkebaum*, p. 6.

⁸ \$43,690,267 + \$562,597 + \$351,155 = \$44,604,019.

⁹ Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.

¹⁰ Exh. 100, *Rebuttal Testimony of Brooke Mastrogiannis*, pp. 2-3.

¹¹ *Motion for Summary Determination and Rule Variance or, in the Alternative, Request for Expedited Procedural Schedule* (filed August 15).

¹² *Order Rejecting Tariff to Change Fuel Adjustment Rates* (issued August 24).

¹³ Letter dated August 31 from Roger Steiner, Corporate Counsel, Evergy, Inc. to Morris Woodruff, Secretary of the Commission (filed August 31).

approved the proposed interim tariff sheet, effective October 1.¹⁴

On September 16, the Commission ordered a procedural schedule that set the evidentiary hearing for September 30,¹⁵ effectively denying OPC's Motion for Summary Determination and granting its request for an expedited procedural schedule. On September 20, the procedural schedule was amended to, among other things, set a deadline for the parties to file a joint list of issues.¹⁶ Written direct and rebuttal testimony was filed by the parties. Per the procedural schedule, surrebuttal testimony was presented at the evidentiary hearing.

The joint list of issues filed on September 23 identified six issues to be decided by the Commission:¹⁷

1. Should the Commission approve EMW's request to defer \$31 million of FAC fuel and purchased power costs for further treatment in a subsequent general rate case?
2. Should the Commission consider the FAC rate adjustment mechanism's requirement that fuel and purchased power costs will be rebased in EMW's general rate case (File No. ER-2022-0130) in determining the amount of EMW's requested deferral in this FAC proceeding?
3. What is the full amount of the current FPA for AP30?
4. If EMW's current FAC rate is changed to allow for full recovery of the FPA for AP30 and no other changes were made to the rates currently in effect, what would the resulting average overall rate for EMW be?
 - a. What is the percentage difference between this rate and EMW's average overall rate as of the date new base rates were set in EMW's most recent general rate proceeding concluded prior to the date that EMW gave notice under Section 393.1400, RSMo?

¹⁴ *Order Approving Interim Tariff to Change Fuel Adjustment Rates* (issued September 14).

¹⁵ *Order Setting a Procedural Schedule* (issued September 16).

¹⁶ *Order Amending Procedural Schedule* (issued September 20).

¹⁷ *Joint List of Issues, Order of Witnesses, Order of Cross Examination and Order of Opening Statements* (filed June 23).

5. Does allowing for recovery of the full FPA for AP30 through EMW's FAC result in a change in the rates charged under EMW's FAC that would cause EMW's average overall rate to exceed the 3% CAGR¹⁸ cap set forth in Section 393.1655.3, RSMo?
6. Should EMW be permitted to defer any portion of the costs related to AP30 on the basis of the company's claim that those costs are extraordinary?
 - a. If so, what accounting treatment should the deferral receive?

Subsequently, the parties filed statements of their positions on the six issues. In their statements of positions, the parties agreed on the third issue.

The Commission held an evidentiary hearing on September 30. Initial post-hearing briefs were filed on October 14. Reply briefs and proposed findings of fact and conclusions of law were filed on October 21.

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. EMW is an "electrical corporation" and "public utility," as those terms are defined by Section 386.020, RSMo. On July 1, EMW filed a tariff sheet proposing to revise its FAR in its tariffed FAC.¹⁹

2. OPC is a party to this case pursuant to Section 386.710(2), RSMo, and by Commission Rule 20 CSR 4240-2.010(10).

¹⁸ Compound Annual Growth Rate.

¹⁹ Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.

3. Staff is a party to this case pursuant to Commission Rule 20 CSR 42402.010(10).

4. EMW filed revised tariffs for a general rate increase proceeding on January 30, 2018.²⁰ The Commission approved tariffs setting new rates in File No. ER-2018-0146 that became effective on December 6, 2018.²¹

5. On December 31, 2018, in File No. EO-2019-0045, EMW elected to make deferrals through PISA, pursuant to Section 393.1400, RSMo.²²

6. EMW filed revised tariffs for a general rate increase proceeding on January 7.²³ A final order approving tariffs has not yet been issued in that case.²⁴

7. EMW's AP30 covered the period of December 2021 through May 2022.²⁵

8. EMW's FPA for AP30 is \$44,604,020.²⁶

9. EMW proposed that \$31 million of AP30 fuel and purchased power costs not pass through its FAC. Instead, EMW proposed that the \$31 million, which it alleged were "extraordinary," be included in a regulatory asset, as provided in Section 393.1655.5, RSMo (Supp. 2021) and recovered in rates in a subsequent general rate case.²⁷

10. EMW's AP29 covered the period of June 2021 through November 2021.²⁸

²⁰ File No. ER-2018-0146, Application, Proposed Tariff Sheets, Minimum Filing Requirements (filed January 30, 2018).

²¹ Exh. 1, *Direct Testimony of Darrin R. Ives*, p. 10; Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 8.

²² Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 1.

²³ File No. ER-2022-0130, *Notice of Intended Case Filing* (filed November 8, 2021).

²⁴ File No. ER-2022-0130.

²⁵ Exh. 2, *Direct Testimony of Lisa Starkebaum*, p. 4.

²⁶ Exh. 2, *Direct Testimony of Lisa A. Starkebaum*, p. 10 (filed October 7); Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, LMM-R-4, p. 63.

²⁷ Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.

²⁸ Exh. 2, *Direct Testimony of Lisa Starkebaum*, p. 7.

11. EMW's FPA for AP29 was \$47,488,718.²⁹
12. EMW did not claim in testimony or documentation in its FAC rate change case for AP29 that any fuel and purchased power costs were "extraordinary" and should not pass through its FAC, but instead should be included in a regulatory asset and recovered in rates in a subsequent general rate case.³⁰
13. Inflationary pressures due to the COVID-19 pandemic and Russia's war with Ukraine contributed to higher fuel costs in EMW's AP30.³¹ EMW faced those same external factors during AP29, as well.³²
14. If the full FPA of \$44.6 million for AP30 is included in the FAR and recovered through the FAC, EMW's average overall rate will be \$0.10223/kWh.³³
15. EMW's average overall rate as of the date base rates were set in the last general rate proceeding concluded prior to when EMW elected PISA deferral treatment under Section 393.1400, RSMo, was \$0.09367/kWh.³⁴
16. The difference between EMW's average overall rate as of the date base rates were set in the last general rate proceeding concluded prior to when EMW elected PISA deferral treatment under Section 393.1400, RSMo, of \$0.09367/kWh and EMW's average overall rate of \$0.10223/kWh if the full FPA of \$44.6 million for AP30 is included in the FAR and recovered through the FAC represents a 9.14% increase.³⁵

²⁹ File No. ER-2022-0174, Letter dated December 30, 2021, from Roger Steiner to Morris Woodruff, p.1; FAC Tariff Rider; (filed December 30, 2021).

³⁰ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, pp. 18-19. See, generally, File No. ER-2022-0174. See also, File No. ER-2022-0174 FAC Tariff Rider (filed December 30, 2021).

³¹ Exh. 1, *Direct Testimony of Darrin R. Ives*, p.3 (filed July 1); Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 18.

³² Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 18.

³³ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 9, LMM-R-4, p. 4.

³⁴ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, pp. 8-9.

³⁵ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 9.

17. Compound Annual Growth Rate (CAGR) is the annualized average rate of growth across time taking into account the growth that has already occurred.³⁶ CAGR can be calculated for any given date.³⁷

18. EMW's CAGR for September 1, the effective date of the proposed FAC tariff sheet filed by EMW on July 1, was 11.69%.³⁸ EMW's CAGR for December 6, the date to which the proposed tariff sheets filed by EMW in its pending general rate case (ER-2022-0130) have been suspended, will be 12.55%.³⁹

19. The FPA recovers the difference between what was already collected from customers in base rates for fuel and purchased power costs and what fuel and purchased power costs were actually incurred in the accumulation period.⁴⁰

20. In the most recent FAC case for EMW's sister company, Evergy Metro, Inc. (File No. ER-2023-0030), Evergy Metro's FAC actual net energy cost (ANEC) is nearly the same amount as its FAC net base energy cost (NBEC) included in its base rates – a relatively small difference of approximately \$1.7 million.⁴¹

21. For the time period of December 2021 through May 2022, Evergy Metro's fuel costs were \$105.3 million, while EMW's were \$23.3 million – less than one-fourth of Evergy Metro's. In addition, for the same time period, Evergy Metro's purchased power costs were 13% higher than that of EMW. Yet, Evergy Metro did not describe its fuel and

³⁶ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 7.

³⁷ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 7.

³⁸ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 7.

³⁹ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 8.

⁴⁰ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 10.

⁴¹ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 19.

purchased power costs as “extraordinary” nor request deferral of any portion of the costs.⁴²

22. EMW has limited generation resources – much of which are intermittent, in that they rely on wind for generation – compared to Evergy Metro, which has a variety of cost-effective generation resources to sell in the Southwest Power Pool energy market to offset the cost of purchasing its energy requirements from that market.⁴³

23. EMW’s FPA for AP30 contains no costs related to the February 2021 Winter Storm Uri.⁴⁴

24. EMW did not claim that a “force majeure” event occurred in AP30.⁴⁵

25. EMW’s fuel and purchased power costs for AP30 do not threaten the financial integrity of EMW.⁴⁶

26. In the documents accompanying its tariff sheets to change its fuel adjustment rates, EMW did not mention the \$31 million it claims are “extraordinary” fuel and purchased power costs to be deferred, as required by Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), nor did it state how it arrived at that figure.⁴⁷

27. EMW submitted an FAC true-up filing on July 1 in File No. EO-2023-0010 that concluded that EMW had under-collected \$522,660 from customers for AP27 (June 2020 through November 2020) to be recovered in the period of March 2021 through February 2022. Also included in the true-up filing was an ordered adjustment, or refund,

⁴² Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 20.

⁴³ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, pp. 20-22.

⁴⁴ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 23; Sch. LMM-R-5, p. 1.

⁴⁵ Exh. 1, *Direct Testimony of Darrin R. Ives*, p.13.

⁴⁶ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 24.

⁴⁷ Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, pp. 25-26 (citing generally to Tariff Revision, *Information Required by 20 CSR 4240-20.090(8)* (filed October 7)).

of \$160,892 plus \$10,613 interest related to EMW's ninth FAC prudence review, File No. EO-2020-0262. Combined, these amounts resulted in a total under-recovered true-up amount of \$351,155.⁴⁸

28. Staff recommended that the \$31 million in fuel costs requested by EMW to be deferred should instead be included in EMW's FAR.⁴⁹

III. Conclusions of Law

A. EMW is an "electrical corporation," as that term is defined by Section 386.020, RSMo. As such, EMW is subject to the jurisdiction, supervision, control, and regulation of the Commission, as provided in Chapters 386 and 393, RSMo.

B. Section 386.266.1, RSMo, states:

Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

C. Section 393.1400.2, RSMo, states:

(1) Notwithstanding any other provision of this chapter to the contrary, electrical corporations shall defer to a regulatory asset eighty-five percent of all depreciation expense and return associated with all qualifying electric plant recorded to plant-in-service on the utility's books commencing on or after August 28, 2018, if the electrical corporation has made the election provided for by subsection 5 of this section by that date, or on the date such election is made if the election is made after August 28, 2018. In each general rate proceeding concluded after August 28, 2018, the balance of the regulatory asset as of the rate-base cutoff date shall, subject only to the

⁴⁸ Exh. 2, *Direct Testimony of Lisa A. Starkebaum*, p. 6.

⁴⁹ Exh. 100, *Rebuttal Testimony of Brooke Mastrogiannis*, p. 3.

cap provided for in section 393.1655 or section 393.1656, as applicable, be included in the electrical corporation's rate base without any offset, reduction, or adjustment based upon consideration of any other factor, other than as provided for in subdivision (2) of this subsection, with the regulatory asset balance arising from deferrals associated with qualifying electric plant placed in service after the rate-base cutoff date to be included in rate base in the next general rate proceeding. The expiration of this section shall not affect the continued inclusion in rate base and amortization of regulatory asset balances that arose under this section prior to such expiration.

(2) The regulatory asset balances arising under this section shall be adjusted to reflect any prudence disallowances ordered by the commission. The provisions of this section shall not be construed to affect existing law respecting the burdens of production and persuasion in general rate proceedings for rate-base additions.

(3) Parts of regulatory asset balances created under this section that are not yet being recovered through rates shall include carrying costs at the electrical corporation's weighted average cost of capital, plus applicable federal, state, and local income or excise taxes. Regulatory asset balances arising under this section and included in rate base shall be recovered in rates through a twenty-year amortization beginning on the date new rates reflecting such amortization take effect.

D. Section 393.1655, RSMo (Supp. 2021) states, in part:

1. This section applies to an electrical corporation that has elected to exercise any option under section 393.1400 and that has more than two hundred thousand Missouri retail customers in 2018, and shall continue to apply to such electrical corporation until December 31, 2023.

* * *

3. This subsection shall apply to electrical corporations that have a general rate proceeding pending before the commission as of the later of February 1, 2018, or August 28, 2018. If the difference between (a) the electrical corporation's average overall rate at any point in time while this section applies to the electrical corporation, and (b) the electrical corporation's average overall rate as of the date new base rates are set in the electrical corporation's most recent general rate proceeding concluded prior to the date the electrical corporation gave notice under section 393.1400, reflects a compound annual growth rate of more than three percent, the electrical corporation shall not recover any amount in excess of such three percent as a performance penalty.

* * *

5. If a change in any rates charged under a rate adjustment mechanism approved by the commission under sections 386.266 and 393.1030 would cause an electrical corporation's average overall rate to exceed the compound annual growth rate limitation set forth in subsection 3 or 4 of this section, the electrical corporation shall reduce the rates charged under that rate adjustment mechanism in an amount sufficient to ensure that the compound annual growth rate limitation set forth in subsection 3 or 4 of this section is not exceeded due to the application of the rate charged under such mechanism and the performance penalties under such subsections are not triggered. Sums not recovered under any such mechanism because of any reduction in rates under such a mechanism pursuant to this subsection shall be deferred to and included in the regulatory asset arising under section 393.1400 or, if applicable, under the regulatory and ratemaking treatment ordered by the commission under section 393.1400, and recovered through an amortization in base rates in the same manner as deferrals under that section or order are recovered in base rates.

* * *

7. For purposes of this section, the following terms shall mean:

(1) "Average base rate", a rate calculated by dividing the total retail revenue requirement for all the electrical corporation's rate classes by the total sales volumes stated in kilowatt-hours for all such rate classes used to set rates in the applicable general rate proceeding, exclusive of gross receipts tax, sales tax, and other similar pass-through taxes;

(2) "Average overall rate", a rate equal to the sum of the average base rate and the average rider rate;

(3) "Average rider rate", a rate calculated by dividing the total of the sums to be recovered from all customer classes under the electrical corporation's rate adjustment mechanisms in place other than a rate adjustment mechanism under section 393.1075 by the total sales volumes stated in kilowatt-hours for all of the electrical corporation's rate classes used to set rates under such rate adjustment mechanisms, exclusive of gross receipts tax, sales tax, and other similar pass-through taxes;

* * *

(7) "Force majeure event", an event or circumstance that occurs as a result of a weather event, an act of God, war, terrorism, or other event which threatens the financial integrity of the electrical corporation that causes a reduction in revenues, an increase in the cost of providing electrical service, or some combination thereof, and the event has an associated fiscal impact on the electrical corporation's operations equal to three percent or greater

of the total revenue requirement established in the electrical corporation's last general rate proceeding after taking into account the financial impact specified in section 393.137. Any force majeure event shall be subject to commission review and approval, and shall not preclude the commission from reviewing the prudence of any revenue reductions or costs incurred during any proceeding to set rates;

* * *

E. Section 393.1655, RSMo (Supp. 2021) applies to an electrical corporation that has elected to exercise any option under Section 393.1400, RSMo, and that has more than 200,000 Missouri retail customers in 2018, and shall continue to apply to such electrical corporation until December 31, 2023. Section 393.1655, RSMo (Supp. 2021) applies to EMW.

F. EMW had a general rate proceeding pending before the Commission as of the later of February 1, 2018, or August 31, 2018. Thus, Section 393.1655.3, RSMo (Supp. 2021) applies to EMW.

G. Commission Rule 20 CSR 4240-20.090(1), states, in part:

* * *

(B) Actual net energy costs (ANEC) means prudently incurred fuel and purchased power costs net of fuel-related revenues of a rate adjustment mechanism (RAM) during the accumulation period;

* * *

(E) Base rates means the tariffed rates that do not change between general rate proceedings;

* * *

(H) FAC charge means the positive or negative dollar amount on each utility customer's bill, which in the aggregate is to recover from or return to customers the fuel and purchased power adjustment (FPA) amount;

(I) Fuel adjustment clause (FAC) means a mechanism established in a general rate proceeding which is designed to recover from or return to customers the fuel and purchased power adjustment (FPA) amounts through periodic changes to the fuel adjustment rates (FAR) made outside a general rate proceeding;

(J) Fuel adjustment rate (FAR) means the rate used to determine the FAC charge on each utility customer's bill during a recovery period of a FAC. The FAR shall be designed to recover from or return to customers the recovery period FPA. The FAR may be positive or negative;

(K) Fuel and purchased power adjustment (FPA) amount means the dollar amount intended to be recovered from or returned to customers during a given recovery period of a FAC. The FPA may be positive or negative. It includes:

1. The difference between the ANEC and NBEC of the corresponding accumulation period taking into account any incentive ordered by the commission;

2. True-up amount(s) ordered by the commission prior to or on the same day as commission approval of the FAR adjustment;

3. Prudence adjustment amount(s) ordered by the commission since the last adjustment to the FAR;

4. Interest; and

5. Any other adjustment amount(s) ordered by the commission;

* * *

(U) Net base energy costs (NBEC) means the fuel and purchased power costs net of fuel-related revenues billed during the accumulated period in base rates;

(W) Rate adjustment mechanism (RAM) refers to either a commission-approved fuel adjustment clause (FAC) or a commission-approved interim energy charge (IEC);

* * *

H. Commission Rule 20 CSR 4240-20.090(2), states, in part:

An electric utility may only file a request with the commission to establish, continue, or modify a RAM in a general rate proceeding and must rebase base energy costs in each general rate proceeding in which the FAC is continued or modified.

I. The FPA does not itself include fuel and purchased power costs that are already included in base rates because the FPA is defined as the difference between the fuel and purchased power costs net of fuel-related revenues billed during the accumulated period that are already included in base rates (NBEC) and the prudently incurred fuel and purchased power costs net of fuel-related revenues actually incurred during the accumulation period (ANEC).

J. Because the FPA does not itself include fuel and purchased power costs already included in base rates, the FAC charge does not recover fuel and purchased power costs that are already included in base rates.

K. Because the FAC charge does not recover fuel and purchased power costs already included in base rates, no fuel and purchased power costs already included in base rates are charged under the FAR.

L. Because no fuel and purchased power costs already included in base rates are charged under the FAR, no fuel and purchase power costs already included in base rates are recovered through a rate charged under a rate adjustment mechanism approved by the Commission under Section 386.266, RSMo.

M. When it comes to statutory interpretation, the primary rule is to give effect to legislative intent, as reflected in the plain language of the statute at issue.⁵⁰ When

⁵⁰ *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011) (quoting *Parktown Imps., Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009).

necessary, courts may sometimes rely on maxims known as the canons of statutory interpretation as considerations made in a genuine effort to determine what the legislature intended.⁵¹ One such canon of statutory construction is the maxim *expressio unius est exclusio alterius*, generally understood to mean the expression or inclusion of one thing implies the exclusion of the other or of the alternative.⁵² Under the maxim, where a statute designates a form of conduct, its manner of performance and operation, and the persons and things to which it refers, there is an inference that all omissions are understood as exclusions.⁵³ When the items expressed are members of an associated group or series, they justify the inference that the legislature deliberately excluded items not mentioned.⁵⁴ The maxim's force is strengthened where a thing is provided in one part of the statute and omitted in another.⁵⁵

N. Because Section 393.1655.5, RSMo (Supp. 2021) explicitly states that it is triggered only if a change in rates needed to recover costs “charged under” one of two specific rate adjustment mechanisms would cause an electric corporation’s average overall rate to exceed the relevant CAGR cap while Section 393.1655.3, RSMo (Supp. 2021) applies regardless of what causes the electric corporation’s average overall rate to exceed the CAGR cap, the doctrine of *expressio unius est exclusio alterius* dictates that only costs that are actually recovered under one of the two rate mechanisms explicitly set forth in Section 393.1655.5, RSMo (Supp. 2021) should be considered when determining

⁵¹ *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011) (quoting *Parktown Imps., Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009).

⁵² *State v. Carson*, 317 S.W.3d 136, 141 (Mo. App. 2010).

⁵³ *State v. Carson*, 317 S.W.3d 136, 141-142 (Mo. App. 2010).

⁵⁴ *State v. Carson*, 317 S.W.3d 136, 142 (Mo. App. 2010).

⁵⁵ *State v. Carson*, 317 S.W.3d 136, 142 (Mo. App. 2010).

whether the triggering mechanism of the statute is met and that all other costs should be excluded from consideration.

O. Fuel and purchase power costs to be included in base rates in a pending general rate proceeding are not yet effective rates and so, under the maxim *expressio unius est exclusio alterius*, cannot be considered as part of a change to an existing FAC rate under Section 393.1655.5, RSMo (Supp. 2021).

IV. Decision

In order to grant EMW's request that the Commission allow it to defer \$31 million in fuel and purchase power costs to be included in a PISA regulatory asset deferral account, as provided by Section 393.1655.5, RSMo (Supp. 2021) and recovered in rates in a subsequent general rate case, the Commission must agree with EMW's position that, because there is no language in Section 393.1655.5 that excludes consideration of the rebasing of base energy costs required in a general rate case from the calculation of the 3% CAGR cap, the Commission can consider rebasing of base energy costs in a future general rate case. EMW contends that doing so would result in an average overall rate increase that would exceed the 3% CAGR cap of 11.69% as of July 1 and the December 6 cap of 12.55%. EMW next argues that because it would exceed the 3% CAGR cap, Section 393.1655.5 requires the Commission to allow deferral.

The Commission simply disagrees with EMW's argument.

First, just because there is no language in Section 393.1655.5, RSMo (Supp. 2021) that *excludes* consideration of the rebasing of base energy costs required in a general rate case from the calculation of the 3% CAGR cap does not mean that the Commission

is free to do so. In fact, the opposite is true. The Commission has no authority beyond what is granted to it by state statutes.⁵⁶

Second, amounts charged under the FAC do not include amounts included in base rates – the NBEC already billed to customers. EMW would like the Commission to find that if a change in any rates charged under EMW’s FAC, when added to the amount that will be included in base rates in a future rate case to recover fuel and purchased power costs, would cause EMW’s average overall rate to exceed the CAGR limitation of 3%, then EMW should be allowed to defer amounts to stay under the 3% CAGR cap. The Commission finds no legal basis for EMW’s position.

Once future rebasing of base energy costs is taken out of consideration, the FPA to be recovered of \$44.6 million results in an increase of 9.14% from EMW’s average overall rate as of the date base rates were set in the last general rate proceeding concluded prior to when EMW elected PISA treatment and EMW’s average overall rate including the full \$44.6 million FPA for AP30. This 9.14% increase did not exceed the 3% CAGR cap of 11.69% on September 1, nor will it exceed the 3% CAGR cap of 12.55% on December 6. Therefore, the Commission will not approve EMW’s request to defer \$31 million, as the triggering mechanism for deferral under Section 393.1655, RSMo (Supp. 2021) has not been met. The Commission will order EMW to file a substitute tariff to include the full FPA of \$44.6 million.

⁵⁶ Kan. City Power v. Mo. Pub. Serv. Comm’n, 618 S.W.3d 520, 524 (Mo. banc 2021) (“[The PSC’s] powers are limited to those conferred by statutes, either expressly or by clear implication as necessary to carry out the powers specifically granted.” (citing *State ex re. MoGas Pipeline, LLC v. Pub. Serv. Comm’n*, 366 S.W.3d 493, 496 (Mo. banc 2012)).

Because this order affects EMW's pending general rate case (ER-2022-0130) and that case has an operation of law date of December 6, 2022, the Commission finds it reasonable to make this order effective in less than 30 days. Additionally, the Commission finds good cause exists for the compliance tariff to become effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. EMW's request to defer \$31,000,000 pursuant to Section 393.1655, RSMo (Supp. 2021) to be included in a regulatory asset and recovered in rates in a subsequent general rate case is denied.
2. EMW shall file, no later than November 21, 2022, a tariff sheet that includes the full FPA of \$44,604,020 in the FAR in its FAC with an expedited effective date of December 5, 2022.
3. No later than 12:00 p.m. on November 28, 2022, Staff shall file a recommendation on the substitute tariff and other parties shall file any responses.
4. This report and order shall become effective on November 19, 2022.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Holsman, and
Kolkmeier CC., concur.
Coleman, C., absent.

Seyer, Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 9th day of November, 2022.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 9, 2022

File/Case No. ER-2023-0011

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, prominent "M" and "W".

**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.