

**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 for)	
Authority to Implement Rate Adjustments)	No. ER-2022-0025
Required by 20 CSR 4240-20.090(8) and the)	
Company’s Approved Fuel and Purchased Power)	
Cost Recovery Mechanism)	
)	

**EVERGY METRO, INC. REPLY BRIEF REGARDING
TREATMENT OF EXTRAORDINARY REVENUES**

Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro,” “Metro” or “Company”) states the following for its Reply Brief:

A. Summary of the Arguments

1. Both Evergy Missouri Metro and the Midwest Energy Consumers Group (“MECG”) agree that the proposed fuel adjustment rates submitted by Evergy Metro on July 30, 2021 complied with the Commission’s Fuel Adjustment Clause (“FAC”) Rule at 20 CSR 4240-20.090 because Metro properly excluded *both* its costs and revenues related to Winter Storm Uri as they were “extraordinary” under Section 20.090(8)(A)2.A(XI) (“Paragraph XI”) of the FAC Rule. See MECG Initial Brief at 3, 6.

2. Staff continues to oppose this position, based on a narrow interpretation of Paragraph XI. See Staff Initial Brief at 3-4.

3. Staff’s argument runs contrary to its recommendation – on which the Commission relied – in a similar FAC case filed by Evergy Missouri West (“EMW”) where “extraordinary costs,” including both costs and revenues, were deferred under Paragraph XI. See Order Approving Fuel Adjustment True-Up and Tariff to Change Fuel Adjustment Rates at 2-3, In re Evergy Mo. West, Inc. Application for Auth. to Implement Rate Adjustments, No. ER-2022-0005

(Aug. 18, 2021) (“EMW FAC Order”). In that case Staff approved of EMW’s reliance on Paragraph XI to seek deferral of approximately \$297.3 million in fuel and purchased power costs. See Staff Recommendation for Approval of Tariff Sheet, ¶ 13 at 3, Id. (Aug. 2, 2021). That figure was calculated based on both costs and revenues. See Direct Testimony of Lisa A. Starkebaum at 7, Id. Staff reviewed Ms. Starkebaum’s testimony and recommended that EMW’s request be approved. See Staff Recommendation at 6-7, Id.

4. The Commission understood this in its approval order. See EMW FAC Order at 2, n.1. The Commission also acknowledged that EMW sought to defer both costs and revenues in the pending accounting authority order case jointly filed by EMW and Metro. See EMW FAC Order at 3. See In re Application of Evergy Metro, Inc. and Evergy Mo. West for an Acct’g Auth. Order regarding Costs Related to February 2021 Cold Weather Event, No. EU-2021-0283 (filed June 30, 2021) (“AAO Case”).

5. In approving EMW’s request, the Commission correctly relied on and cited Section 386.266.1¹ which allows an electric utility to apply for an FAC or other rate adjustment “to reflect increases and decreases in its prudently incurred fuel and purchased power costs, including transportation.” See EMW FAC Order at 3. This is what Evergy Missouri Metro proposes to do in this case. However, Staff interprets the words “increases and decreases” to exclude off-setting revenues which leads to its one-sided view that Paragraph XI deals only with extraordinary costs and not extraordinary revenues.

6. Because the FAC Rule, as well as Section 386.266.1, explicitly contemplate consideration of *both* costs and revenues, Metro’s FAC filing of July 30, 2021 properly excluded Winter Storm Uri costs and revenues because they were “extraordinary” under Paragraph XI.

¹ All statutory references are to the Missouri Revised Statutes (2016), as amended.

7. The Commission should allow Metro to defer extraordinary revenues associated with Winter Storm Uri and not separate them from extraordinary costs. It should, therefore, approve the revenue adjustment regarding those extraordinary costs in the Company’s July 30, 2021 FAC tariff filing.

8. The Commission should also take steps to approve the Application of both Metro and EMW in the pending AAO Case which has been languishing far too long since it was filed over six months ago in June 2021.

B. Paragraph XI applies to both Extraordinary Costs and Revenues under Section 386.266.1 and the FAC Rule

9. Both Metro and MECG agree that Sections (1)(A) through (1)(C) of the FAC Rule apply to both fuel and purchased power costs, as well as fuel-related revenues. See MECG Initial Brief at 5. Fuel-related revenues are defined in Section (1)(M) of the FAC Rule and are expressly considered in the formulation of periodic adjustments to the FAC. Section (1)(U) of the FAC Rule defines “Net Base Energy Costs” as “the fuel and purchased power costs net of fuel-related revenues billed during the accumulated period in base rates; ... [emphasis added].”

10. Despite these clear references to costs and revenues, Staff focuses solely on the word “costs” in Paragraph XI as if it only refers to an increase in costs. Staff fails to consider that costs can be reduced either by lower costs or by off-setting revenues, as contemplated in the definitions in Section (1) of the FAC Rule. See Staff Initial Brief at 3.

11. To support its restricted reading of Paragraph XI, Staff misapplies appellate cases on how regulations and statutes must be interpreted, arguing that the Commission must ignore all the references to “revenues” that appear elsewhere in the FAC Rule, as well as in Section 386.266.1. See Staff Initial Brief at 4. However, Missouri case law is clear that the “cardinal rule of statutory construction is that the intention of the legislature in enacting the statute must be

determined and the statute as a whole should be looked to in construing any part of it.” J.S. v. Beard, 28 S.W.3d 875, 876 (Mo. en banc 2000) (emphasis added); McAlister v. Strohmeyer, 395 S.W.3d 546, 552 (Mo. App. W.D. 2013).

12. When statutes or regulations are examined, they must be read together “to harmonize them and give them both effect.” See South Metro. Fire Prot. Dist. v. City of Lee’s Summit, 278 S.W.3d 659, 666 (Mo. en banc 2009); Union Elec. Co. v. PSC, 591 S.W.3d 478, 485 (Mo. App. W.D. 2019) (rejecting OPC attack on RESRAM recovery in light of Plant-in-Service Accounting statute).

13. Just as Staff overlooks the reference in Section 386.266.1 to “increases and decreases” in costs, which clearly anticipates consideration of both costs and revenues, Staff also fails to consider the definitions in the FAC Rule’s Section (1) which contain numerous references to both “costs” and “revenues.” The two-way mechanism of the FAC, the fuel adjustment rate (“FAR”), and the fuel and purchased power adjustment (“FPA”) in Sections (1)(H) through (1)(K) follow the clear intent of the statute to include an assessment of both costs and revenues in approving adjustments to an FAC rate.

14. To the extent there is any question on this matter, the Commission should interpret the FAC Rule in a manner that is consistent with a view that both costs and revenues are to be considered in making rate adjustments which the courts will respect. Cf. Missouri PSC v. Union Elec. Co., 552 S.W.3d 532, 539 n.9 (Mo. en banc 2018) (if a regulation is ambiguous, courts will give weight to a textually permissible interpretation adopted by the PSC).

15. If Metro understands MECG’s final point correctly, MECG suggests that if the Commission concludes that Paragraph XI applies only to extraordinary costs, it should “waive this specific provision such that it [the Commission] can defer not only extraordinary costs, but also

extraordinary revenues” under 4 CSR 4240-20.090(22). See MECG Initial Brief at 6 n.17. Section (22) of the FAC Rule permits its provisions to be waived by the Commission “for good cause.”

16. However, given the other provisions of the FAC Rule, as well as Section 386.266.1 that explicitly refer to “revenues,” either directly or indirectly, Evergy Missouri Metro urges the Commission to find that Paragraph XI applies both to costs and revenues without resorting to the waiver option under Section (22).

17. Such a straightforward interpretation is consistent with the concept of deferrals under accounting authority orders which authorize both regulatory liabilities for extraordinary revenues and regulatory assets for extraordinary costs. The Commission and the courts have noted that whether an applicant seeks an AAO to authorize a regulatory liability or a regulatory asset for extraordinary items, the same standard applies.²

C. **Evergy Missouri Metro and MECG Agree that the FAC 95%/5% Sharing Mechanism is Not Appropriate in this Case where Extraordinary Revenues and Costs are at Issue**

18. Staff continues to support an interpretation of “extraordinary costs” in Paragraph XI process that would give customers 95% of the extraordinary revenues incurred during the 12th Accumulation Period, and permit Metro to keep 5% of those extraordinary revenues. See Staff Initial Brief at 2. Both Metro and MECG agree that this approach is not appropriate in this proceeding at this time. See MECG Initial Brief at 2-3; Metro Initial Brief at 4, 8-9.

19. Under ordinary circumstances, the FAC’s 95%/5% sharing mechanism would be applicable. However, given the extraordinary financial and operational impacts of Winter Storm Uri on both customers and Metro, it is not the appropriate tool to manage these issues. The better

² See Report & Order at 12, Office of Public Counsel v. KCP&L Greater Mo. Operations Co., No. EC-2019-0200 (Oct. 17, 2019), aff’d Office of Public Counsel v. Evergy Mo. West, Inc., 609 S.W.3d 857, 868 (Mo. App. W.D. 2020).

solution is for the Commission to defer the amounts calculated in this FAC filing, and consider the matter in a future FAC proceeding when more information will be known regarding Southwest Power Pool's resettlements of transactions that occurred during Winter Storm Uri.

20. Additionally, because the AAO proposed by Evergy Metro recommends that the extraordinary revenues be deferred subject to carrying costs, customers are assured of receiving a net benefit that reflects the time value of money. See R. Klote Direct Testimony at 16.

D. Any Credits provided to Customers through the FAC to address the Extraordinary Impact of Winter Storm Uri should be adjusted in light of the Missouri-Kansas Jurisdictional Cost Allocation Issue

21. As Metro argued in its Initial Brief, the jurisdictional cost allocation issue raised in the AAO Case (No. EU-2021-0283) shows that credits to customers in the current FAC process include revenue from off-system sales that never occurred. Crediting customers in both Missouri and Kansas with such "phantom" revenue assesses a cost to Metro that has no basis in fact.

22. Therefore, if benefits are provided to customers – either in this FAC proceeding (per Staff's position) or in a subsequent FAC proceeding (per Metro's position) – they should be adjusted to reflect the different demand allocators approved by this Commission and by the Kansas Corporation Commission. Such a correction will ensure that any credits provided to customers to address the extraordinary impact of Winter Storm Uri are based on an accurate assessment of the off-system sales that actually occurred.

23. To be clear, in requesting this one-time adjustment, Metro does not ask the Commission to fix the jurisdictional allocation mismatch for all purposes in these FAC proceedings. It has submitted a proposal to address the broader allocation issue in the general rate case which it filed last week. See D. Ives Direct Testimony at 17, R. Klote Direct Testimony at 6-9 & J. Wolfram Direct Testimony at 4-22, In re Evergy Metro, Inc., No. ER-2022-0129 (filed Jan. 7, 2022).

WHEREFORE, the Company asks the Commission to find that Paragraph XI applies to both Extraordinary Costs and Extraordinary Revenues; to approve the Winter Storm Uri revenue adjustment contained in the Company's July 30, 2021 FAC tariff filing; and to address promptly the Company's pending AAO Application in No. EU-2021-0283, including its request to consider the Missouri-Kansas jurisdictional cost allocation issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 12th day of January 2022, to all parties of record.

/s/ Roger W. Steiner

Attorney for Evergy Metro, Inc.