BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro 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.	)))))	**Case No. ER-2022-0025** Tariff No. JE-2022-0024

Staff's Reply Brief

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Reply Brief,* states herein as follows:

INTRODUCTION

This case concerns Evergy Metro Inc.'s ("Metro") effort to evade the requirement of its tariff that the benefit of windfall off-system sales revenues realized during Winter Storm Uri in February, 2021, be returned to its customers. The amount at issue is about $32 million after the applicable jurisdictional allocation factor is applied.[1] Metro's Commission-approved Fuel Adjustment Clause ("FAC") tariff requires that 95% of off-system sales revenues be applied for the benefit of Metro's customers, reducing the amount of fuel and purchased power costs that the customers must pay. Where, as here, Metro's off-system sales revenues exceed its fuel and purchased power costs, the surplus must be distributed to the customers. Metro has neither legal nor policy justification for doing anything else.

[1] Metro also operates in Kansas and a portion of the windfall revenues must be allocated to that state.

ARGUMENT

The Fuel Adjustment Clause:

In traditional cost-of-service utility ratemaking, retail rates could only be changed in a general rate proceeding.[2] Between general rate proceedings, if costs went up, the utility realized reduced profits or even a loss; if costs went down, the utility realized increased profits. Because rates could only be adjusted in a general rate proceeding, while costs could fluctuate anytime, rate adjustments inevitably lagged behind changes in costs. This phenomenon is referred to as "regulatory lag." Under traditional cost-of-service utility ratemaking, the risk that rates would not be accurately aligned with costs was shared equally by the shareholders and the customers.

The Fuel Adjustment Clause ("FAC") is a species of Rate Adjustment Mechanism ("RAM") that, by permitting the adjustment of retail electric rates between general rate proceedings, enables the utility to reduce the regulatory lag that otherwise would reduce profits because of rising costs.[3] An electric utility is not required to have a FAC, but if it requests one, it will remain in effect until modified by the Commission in a general rate proceeding.[4]

Section 386.266.1, RSMo., provides:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing . . . periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently

[2] "General rate proceeding" includes both file-and-suspend rate cases initiated by the utility and rate cases initiated by an overearning complaint. *See* ***State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission,*** 585 S.W.2d 41 (Mo. banc 1979).

[3] *See* § 386.266, RSMo.

[4] Section 386.266.6, RSMo.

> 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.

Pursuant to delegated authority, the Commission promulgated its rule implementing § 386.266.1. RSMo., now codified at 20 CSR 4240-20.090, *Fuel and Purchased Power Rate Adjustment Mechanisms.* In summary, ignoring various details,[5] the rule provides for a Recovery Period, during which the Fuel Adjustment Rates ("FARs") are applied as a surcharge on retail customers' bills to recover from customers -- or return to customers -- the Fuel and Purchased Power Adjustment ("FPA") amount, determined by subtracting the Net Base Energy Costs ("NBEC"), which are the fuel and purchased power costs net of fuel-related revenues billed during the Accumulation Period in base rates, from the Actual Net Energy Costs ("ANEC"), which are the fuel and purchased power costs net of fuel-related revenues actually incurred during the same Accumulation Period.[6] If the difference is positive, it is collected from the customers; if it is negative, it is returned to the customers.[7] As in traditional cost-of-service utility ratemaking, the risk that rates are not accurately aligned with costs is shared equally by the shareholders and the customers because FAC mechanism flows both ways.

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[5] E.g., true-ups; prudence reviews; periodic reports; surveillance monitoring; etc.

[6] Rule 20 CSR 4240-20.090(1).

[7] *Id.*

Metro's FAC is an Incentive Plan:

Pursuant to the authority granted by the second clause of the cited statute, the Commission has included an incentive in Metro's FAC tariff that is intended to ensure efficient operation by the utility. That incentive is the 95%/5% sharing ratio, pursuant to which 95% of any increased costs or excess revenues flows to the ratepayers and 5% flows to the utility and its shareholders. Metro's FAC is therefore an "incentive plan" and is thus "binding on the commission for the entire term of the plan."[8]

The Basis of the Dispute:

An electric utility with a FAC is required to file tariffs adjusting its FARs following each Accumulation Period. 20 CSR 4240-20.090(8). "The FARs shall be designed to bill the electric utility's customers, in the aggregate, the FPA if the FPA is positive, or return the FPA to the utility's customers if the FPA is negative."[9] This case began when Metro filed proposed tariff sheets adjusting its FARs for the 12th Accumulation Period, "less an adjustment for 'extraordinary costs and revenues' incurred as a result of the mid-February 2021 cold weather event known as Winter Storm Uri."[10] Rule 20 CSR 4240-20.090(8) specifies the supporting information that must be supplied with a periodic FARs adjusting tariff, including "For the period of historical costs which are being used to propose the fuel adjustment rates— . . . (XI) Extraordinary costs not to

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[8] Section 386.299.9, RSMo.; *see* Rule 20 CSR 4240-20.090(14).

[9] *Id.*

[10] Metro's Tariff Transmittal Letter, July 30, 2021.

be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation or for any other reason(.)"[11]

Metro's proposed adjustment excludes all of the Winter Storm Uri costs and revenues from the operation of the FAC. Concurrently, Metro and its affiliate, Evergy Missouri West, Inc., filed Case No. EU-2021-0283, seeking an Accounting Authority Order ("AAO") permitting the deferral, for later consideration by the Commission, of all of the extraordinary costs and revenues incurred due to Winter Storm Uri. The *Application* explained:[12]

> Based upon preliminary figures, subject to resettlements and a final calculation of any other applicable and valid charges, Evergy Metro, Inc. incurred $55 million in fuel costs and $109.9 million in purchased power costs in February 2021. However, Evergy Metro, Inc. also had off-system sales revenue of $200.8 million. When this amount is factored in and compared to the three-year average baseline, Evergy Metro, Inc.'s total energy costs and off-system sales for February 2021 were $56.8 million less than its February 2018-2020 average of fuel, purchased power costs and off-system sales. After applying the Commission's current cost allocation methodology to Evergy Metro's Missouri jurisdiction, a benefit resulted for Evergy Missouri Metro customers of $32.0 million.
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> . . . At the conclusion of the AAO, Evergy Missouri Metro expects to flow the benefits through the next available FAC. Although using the FAC to flow back Evergy Missouri Metro's over-collected amounts to customers under customary operation of the FAC, without the Commission granting an AAO as requested here, would provide a reduction in their rates, such action would similarly overlook the extraordinary and unusual nature of Winter Storm Uri. This customary operation of the FAC would not address consideration of the 5% impact for customers or the extraordinary impact that the cost allocation methodology differences between Missouri and Kansas would have on Evergy Metro if not addressed.

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[11] Rule 20 CSR 4240-20.090(8)(A)2.A.

[12] *Application,* ¶¶ 28 & 31, Case No. EU-2021-028.

Staff recommended that the proposed tariff be rejected because Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) does not authorize the exclusion of extraordinary revenues, but only extraordinary costs. The Commission accordingly rejected the tariff and this litigation followed.

Reply to Metro's Initial Brief:

The parties agreed that no hearing was required and have submitted the case on a *Joint Stipulation of Facts* and briefs.

In its initial brief, Staff pointed out that rules are construed in the same way as statutes and that Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) plainly refers to costs, but not to revenues.[13] Where a rule is unambiguous, it is not subject to construction.[14] In fact, as Staff also pointed out in its initial brief, Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) on its face does not authorize anything.[15] It is simply one item in a list of items of information that a utility must provide in support of a tariff proposing a FARs adjustment.[16] Metro must look elsewhere for authority to exclude its extraordinary net purchased power revenues from the operation of its FAC.

In its initial brief, Metro argues strenuously that Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) necessarily encompasses extraordinary revenues as well as extraordinary costs. Metro's argument is incorrect and its force is greatly diminished in view of the consideration, noted above, that Rule 20 CSR 4240-20.090(8)(A)2.A.(XI)

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[13] *Staff's Initial Brief,* pp. 3-4.

[14] *Id.*

[15] *Id.*

[16] *Id.*

is merely an item in a list and not authority to exclude anything from the operation of the FAC.

Why is Metro's argument wrong? Because, had the Commission intended to include revenues in Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), it would have said so. As Metro points out in its brief, several provisions of the FAC rule expressly mention revenues, but that circumstance only emphasizes the point that the exclusion of revenues from Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) was purposeful.[17] Under the familiar maxim, "*expressio unius est exclusio alterius,*" meaning "omissions shall be understood as exclusions," the omission of revenues from Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) must be understood as a purposeful exclusion.

Metro next argues that Staff's view that Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) applies only to extraordinary costs and not to extraordinary revenues will create unnecessary volatility in the FAC process, which was intended to shield customers from such cost swings.[18] The volatility would result from deferring the extraordinary costs, but not the extraordinary revenues, creating a situation where customer bills would first spike in one Recovery Period, only to be reduced in the next.[19] This argument is nonsense. Remember, Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) does not authorize the deferral of anything, either costs or revenues. And, contrary to Metro's assertion, Staff has never recommended that the Winter Storm Uri extraordinary costs be deferred while the revenues are distributed.

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[17] *Metro's Initial Brief,* ¶¶ 6-16.

[18] *Id.,* at ¶¶ 17-22.

[19] *Id.*

Metro next complains of Staff's different treatment of Metro and its affiliate, Evergy Missouri West, Inc.[20] *Metro's Initial Brief,* This point is also without merit. While Metro realized surplus net revenues from Winter Storm Uri, West realized excess net costs, an entirely different situation. Staff agrees that West's excess net costs should be deferred.

Metro next – finally! – gets to the issue that is actually driving this matter. "Because of the conflict between the [jurisdictional allocation] methodologies of this Commission and the Kansas Corporation Commission, Metro customers would receive a credit of approximately 107% of Evergy Metro Inc.'s actual off-system sales across Missouri and Kansas." The conflict between the two different jurisdictional allocation methodologies can only be resolved in a general rate proceeding. Metro goes on to say:[21]

> The allocation issue raised in the AAO matter 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 is a cost to Metro that has no basis in fact. Because Staff recommends that a credit be flowed back in this case to customers from Metro's off-system sales revenue, this jurisdictional allocation issue should be analyzed and steps taken to ensure that before any benefits are provided to customers, they reflect an accurate assessment of what those off-system sales actually were.

That goal could better be achieved by deferring only a portion of the Winter Storm Uri extraordinary revenues. Metro states that the jurisdictional allocation issue would

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[20] *Id.,* at ¶¶ 23-26.

[21] *Id.,* at ¶ 31.

require distribution to Missouri customers of 107% of the extraordinary revenues actually received.[22] Deferral of only 7% would therefore achieve Metro's stated goal.

Deferral of Winter Storm Uri Extraordinary Costs and Revenues:

As noted above, Metro must look elsewhere for authority to defer the Winter Storm Uri extraordinary costs and revenues because Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) does not itself authorize the deferral of anything, either costs or revenues. That authority must be sought from the Commission via an AAO application, such as is already pending. The policy underlying the FAC supports the immediate distribution to the ratepayers of their share of the Winter Storm Uri extraordinary revenues. After all, Metro has been enjoying its benefits under the FAC for quite some time now.

As Staff pointed out earlier, Metro's FAC is an "incentive plan" and is thus "binding on the commission for the entire term of the plan."[23] A question necessarily arises, in view of § 386.299.9, RSMo., whether the Commission is permitted to exclude the Winter Storm Uri extraordinary revenues from the operation of Metro's FAC. But that is a question for the AAO case.

CONCLUSION

As explained herein, Metro's proposed exclusion of the Winter Storm Uri extraordinary costs and revenues from its FAC is impermissible and should be denied.

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[22] *Id.,* at ¶ 30.

[23] Section 386.299.9, RSMo.

In particular, Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) provides no support for Metro's proposal.

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will direct Metro to file a proposed FARs adjustment tariff in compliance herewith; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, on this **12th day of January, 2022.**

/s/ Kevin A. Thompson