

In the Matter of the Application of Evergy Metro, Inc.

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Hearing before:

Judge John Clark

February 18, 2022

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Vol 03

**PHIPPS REPORTING**

*Raising the Bar!*

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Oral Arguments

Friday, February 18, 2022

9:00 a.m. - 9:50 a.m.

Governor Office Building  
200 Madison Street  
Jefferson City, MO 65102-0360

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In the Matter of the Application )  
of Every Metro, Inc. d/b/a )  
Every Missouri Metro for )  
Authority to Implement Rate )File No. ER-2022-0025  
Adjustments Required by 20 CSR )  
4240-20.090(8) and the )  
Company's Approved Fuel and )  
Purchased Power Cost Recovery )  
Mechanism )

JOHN T. CLARK, Presiding  
SENIOR REGULATORY LAW JUDGE

RYAN A. SILVEY, Chairman,  
JASON R. HOLSMAN,  
COMMISSIONERS

Stenographically Reported By:  
Beverly Jean Bentch, RPR, CCR No. 640

Job No.: 234865

1 APPEARANCES:

2 On behalf of Evergy Missouri Metro:

3 Dentons US LLP  
4 4520 Main Street, Suite 1100  
5 Kansas City, MO 64111

6 BY: KARL ZOBRIST, ESQ.  
7 karl.zobrist@dentons.com

8 On behalf of Evergy Missouri Metro:

9 1200 Main Street, 16th Floor  
10 PO Box 418679  
11 Kansas City, MO 64105-9679

12 BY: ROGER W. STEINER  
13 roger.steiner@evergy.com

14 On behalf of the Staff of the  
15 Public Service Commission:

16 Missouri Public Service Commission  
17 200 Madison Street, Suite 800  
18 PO Box 360  
19 Jefferson City, MO 65102

20 BY: KEVIN THOMPSON, ESQ.  
21 kevin.thompson@psc.mo.gov

22 On behalf of the Office of the Public Counsel:

23 Office of the Public Counsel  
24 200 Madison Street, Suite 650  
25 PO Box 2230  
Jefferson City, MO 65102

BY: NATHAN WILLIAMS, ESQ.  
Nathan.Williams@ded.mo.gov

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1 The following proceedings began at 9:00 a.m.:

2 JUDGE CLARK: Let's bring this proceeding to  
3 order and go on the record. Good morning. Today is  
4 February 18, 2022, and the current time is 9:00 a.m.  
5 The Commission has set aside this time for oral  
6 arguments on whether Evergy Missouri Metro can exclude  
7 extraordinary revenues from Winter Storm Uri from its  
8 FAC in the matter captioned as In the Matter of the  
9 Application of Evergy Missouri Metro, Inc. d/b/a Evergy  
10 Missouri Metro for Authority to Implement Rate  
11 Adjustments Required by 20 CSR 4240-20.090(8) and the  
12 Company's Approved Fuel and Purchased Power Cost  
13 Recovery Mechanism. And this is File No. ER-2022-0025.

14 My name is John Clark and I am the Regulatory  
15 Law Judge presiding over these oral arguments today. On  
16 February 10, the Commission issued an order setting oral  
17 arguments in this matter. The parties have previously  
18 filed a stipulation of facts and briefs for the  
19 Commission's consideration. The Commission Staff  
20 requested oral arguments and the Commission granted that  
21 request.

22 Oral arguments are being held both in person  
23 in Room 310 of the Governor Office Building, as well as  
24 via WebEx telephone and videoconference. At this time  
25 I'm going to ask the parties to enter their appearance

1 for the record starting with Evergy Missouri Metro.

2 MR. ZOBRIST: Thank you, Judge. Karl Zobrist  
3 on behalf of Evergy from the Dentons US LLP firm, 4520  
4 Main Street, Suite 1100, Kansas City, Missouri 64111.  
5 And with me is Roger W. Steiner, Corporate Counsel at  
6 Evergy, Inc., 1200 Main Street, 16th Floor, Kansas City,  
7 Missouri 64105. I'll be presenting the argument,  
8 Judge.

9 JUDGE CLARK: Okay. Thank you, Mr. Zobrist.  
10 On behalf of the Staff of the Commission.

11 MR. THOMPSON: Thank you, Judge. Kevin  
12 Thompson for the Commission Staff, PO Box 360, Jefferson  
13 City, Missouri 65102.

14 JUDGE CLARK: Thank you. Mr. Williams, would  
15 you like to enter your appearance even though you're not  
16 arguing?

17 MR. WILLIAMS: Sure. Nathan Williams, Chief  
18 Deputy Public Counsel appearing on behalf of the Office  
19 of the Public Counsel and the public. My address is PO  
20 Box 2230, Jefferson City, Missouri 65102.

21 JUDGE CLARK: Thank you, Mr. Williams. And  
22 finally Midwest Energy Consumers Group filed a motion to  
23 be excused from this hearing, and I'm going to grant  
24 that motion. So Midwest Energy Consumers Group is  
25 excused.

1           The parties have agreed to an order of oral  
2 arguments with Evergy going first, then the Staff of the  
3 Commission, followed by a rebuttal by Evergy; is that  
4 correct?

5           MR. STEINER: Your Honor, that's correct.  
6 Your Honor, this is Roger Steiner. Could I interrupt  
7 for a second? We have a couple people that aren't  
8 arguing that are involved in the FAC that would like to  
9 view this but they're having trouble signing in. Could  
10 I ask that we wait a moment until we can get them in  
11 this proceeding?

12           JUDGE CLARK: That will be fine. I will wait  
13 until you give me a signal.

14           MR. STEINER: Okay. Let me see what's going  
15 on.

16           MR. ZOBRIST: Judge, as I said before we went  
17 on the record, Lisa Starkebaum who was a manager of  
18 regulatory affairs at Evergy who presented the  
19 affidavits and testimony when this current matter was  
20 submitted as the 12th Accumulation Period filing, she's  
21 also available if there are any technical questions.  
22 They may not come up, because this is we think purely a  
23 legal issue, but she is available if the Commission has  
24 any questions.

25           JUDGE CLARK: Thank you, Mr. Zobrist.

1 MR. THOMPSON: In that regard, Judge, if I  
2 may, I have Brooke Mastrogiannis and also Kim Bolin from  
3 the Commission's technical staff with me.

4 JUDGE CLARK: Thank you, Mr. Thompson. We're  
5 going to go off the record for a moment.

6 (Recess 9:04 a.m. until 9:09 a.m.)

7 JUDGE CLARK: We'll go back on the record.  
8 I'm going to remind everybody to silence your cell phone  
9 if you're here in person. If you're attending by phone  
10 or WebEx, I'm going to ask that you mute yourself. If  
11 you're attending by phone and you need to unmute  
12 yourself for whatever reason, you can use \*6 to do so.

13 Do the parties have any preliminary matters  
14 that the Commission needs to take up at this time?  
15 Everyy.

16 MR. ZOBRIST: We do not, Judge.

17 JUDGE CLARK: Staff.

18 MR. THOMPSON: No, Judge. Thank you.

19 JUDGE CLARK: Okay. Hearing none, we'll move  
20 on now to the oral arguments by the parties. The  
21 attorney for each party will be called to come forward  
22 and speak to the Commission with any questions to follow  
23 up possibly. Commissioners are welcome to interrupt me  
24 if they have a question as well or interrupt the  
25 speaker.



1                   With me from the Commission today are  
2 Commission Chairman Ryan Silvey and Commissioner  
3 Holsman. I don't know if we have any other  
4 Commissioners on at this point, but others may be  
5 joining us.

6                   With that in mind, Evergy, if you would like  
7 to start, give me just a second to let everybody know  
8 you're going to be. All right. Go ahead.

9                   MR. ZOBRIST: Thank you, Judge. This is Karl  
10 Zobrist representing Evergy Missouri Metro, Inc. May it  
11 please the Commission. Here we are on the one-year  
12 anniversary of Winter Storm Uri dealing with the  
13 extraordinary events both in terms of cost and revenues  
14 from a year ago; and although at least here in Kansas  
15 City we had an 8-inch snowfall that was quite  
16 challenging, we did not experience the extraordinary  
17 events that we're still dealing with with Winter Storm  
18 Uri.

19                   Our position remains the same as it was in the  
20 briefs that both extraordinary costs and extraordinary  
21 revenues caused by Winter Storm Uri should be excluded  
22 from this FAC proceeding under Paragraph XI. That's XI  
23 of Section (8)(A)2.A of the Commission's Fuel Adjustment  
24 Clause rule.

25                   This would be consistent with the Fuel

1 Adjustment Clause statute Section 386.266.1 which  
2 recognizes that both increases and decreases in the  
3 utility's prudently incurred fuel and purchased-power  
4 costs should be dealt with in that mechanism.

5 Similarly, all the definitions in the rule  
6 deal with those cost increases, cost decreases and  
7 revenues, and the specific scenario as we noted in our  
8 brief in paragraph 11 deal with increases and decreases  
9 in costs which would therefore include revenues. And  
10 more importantly this would be consistent with the  
11 action which you took when Evergy Missouri West, Metro's  
12 affiliate public utility, filed its FAC case where both  
13 the costs and the revenues were excluded from the FAC  
14 and not passed through. It shouldn't matter whether the  
15 extraordinary costs were incurred as by Missouri West or  
16 were extraordinary revenues were received as in the case  
17 of Metro.

18 Under both circumstances, the 95/5 sharing  
19 mechanism is not appropriate where the intent was to  
20 avoid rate shock and volatility in rates. These  
21 excluded items we believe should be addressed in the AAO  
22 case, the Accounting Authority Order case that we filed  
23 No. EU-2021-0283, which we filed at the end of June of  
24 last year. The factual record can there be developed.  
25 Ultimately the final issues would be decided in the

1 pending rate case and both Evergy Metro, the applicant  
2 in this case, as well as Evergy Missouri West.  
3 Thereto in the rate case you can address the  
4 jurisdictional allocation methodology issues that affect  
5 Metro because it does business both in Missouri and  
6 Kansas and we have different methodologies.

7 I would note before I go further that the  
8 amount of Metro's revenue from Winter Storm Uri has  
9 decreased from last summer. The amount of the customer  
10 net benefit of 31.5 million that was noted in this case  
11 in the 12th Accumulation Period case has declined to  
12 about \$26 million as a result of Southwest Power Pool  
13 resettlements, and they may change further because  
14 resettlements according to the advice that SPP has  
15 provided to its members including the Evergy companies  
16 will include additional resettlements for the month of  
17 February which should be received sometime very early  
18 March -- at the end of March of 2022.

19 So these new Metro figures which were filed a  
20 little more than two weeks ago with the Commission in  
21 the current 13th Accumulation Period, not this one,  
22 should be dealt with as we propose them to be dealt with  
23 in the 12th Accumulation Period. Giving this continuing  
24 SPP resettlement process, this is all the more reason to  
25 treat the Metro FAC filings just like you treated the

1 Everygy Missouri West FAC filings.

2           If you follow Staff's recommendation, you  
3 would be acting inconsistently with your orders in the  
4 West case where you acknowledge that the extraordinary  
5 costs caused by Winter Storm Uri should be excluded  
6 under the Fuel Adjustment Clause. You would be saying  
7 that costs that result from an unusual event and an  
8 infrequent occurrence should be treated differently from  
9 revenues that are caused by the same event which is  
10 extraordinary in both cases.

11           You would also allow the 95/5 sharing  
12 mechanism to be applied on a one-way basis under  
13 circumstances that are not related to the incentive  
14 purpose. So we think the best way to resolve these  
15 issues is to treat this case the same way that you  
16 treated the Everygy Missouri West FAC case by excluding  
17 the extraordinary costs and revenues from the FAC under  
18 Paragraph XI.

19           Again, a factual record can be created for  
20 both Metro and Missouri West in the Accounting Authority  
21 Order case, the costs and revenues would be deferred  
22 into either a regulatory asset or liability,  
23 jurisdictional allocations can be dealt with there. Mr.  
24 Klote has a proposal there ultimately to be dealt with  
25 in the rate cases. So it would also avoid the Fuel

1 Adjustment Clause 95/5 sharing mechanism. So because  
2 additionally the changes in the figures in our most  
3 recent Fuel Adjustment Clause filing just filed a couple  
4 of weeks ago create the same issues that we have in  
5 greater amounts of money in this case, the 12th  
6 Accumulation Period, we think that that is the best  
7 thing for the Commission to do is to exclude those costs  
8 and those revenues from both the pending FAC case here  
9 as well as the one, the 13th Accumulation Period that we  
10 filed just a couple of weeks ago. Thank you, Your  
11 Honor.

12 JUDGE CLARK: Thank you, Mr. Zobrist. Any  
13 questions from the Commission? I hear none. I have one  
14 question that comes to mind. If these, and we've chosen  
15 to call them extraordinary revenues are allowed to flow  
16 through the FAC, how is the company harmed?

17 MR. ZOBRIST: Well, it's really not a question  
18 of harm, Judge. We think that it's not permitted by the  
19 rule. I mean, the rule says that, you know,  
20 extraordinary costs may be excluded. You already did  
21 this in the Evergy Missouri West case. We think it's  
22 inappropriate here under these circumstances to apply  
23 that 95/5 percent mechanism. We think all of these  
24 costs should be deferred so that they can be treated  
25 similarly because they're extraordinary costs. We think

1 there's an inconsistency here. Actually, if anything,  
2 there could be a benefit because of this 5 percent that  
3 you have to flow through the utility. We don't think  
4 that's appropriate in this case. This is an  
5 extraordinary event and it ought to be treated for all  
6 utilities whether we're dealing with costs in the case  
7 of Evergy Missouri West or we're dealing with revenues  
8 in the case of Evergy Metro.

9 JUDGE CLARK: Thank you. Now, you said may  
10 when you were talking. You also indicated that it was  
11 not fair or appropriate. You also indicated that you  
12 don't believe it's allowed to go through the FAC. Can  
13 you expound on that at all?

14 MR. ZOBRIST: Well, Judge, all we're saying is  
15 because this is an extraordinary event and the  
16 Commission has traditionally for decades treated  
17 extraordinary events differently from just the slight  
18 fluctuations we see in the Fuel Adjustment Clause, we  
19 don't think the Fuel Adjustment Clause was intended to  
20 deal with this kind of a situation.

21 JUDGE CLARK: And I understand you think it's  
22 not appropriate. If you'll remember my question was how  
23 is the company harmed. That's a different question from  
24 is the company harmed.

25 MR. ZOBRIST: Well, I really don't know if the

1 company is harmed, but what we see is if you begin to  
2 treat customers in different utilities in the same state  
3 differently, that creates harms for both the customer  
4 and the company. For example, I mean, if we have cost  
5 issues rather than revenue issues, they should be  
6 treated the same.

7 JUDGE CLARK: Okay. Thank you. Any other  
8 questions for Mr. Zobrist? I hear none. If you'll give  
9 me just a second.

10 Okay. Staff, would you like to make your  
11 argument?

12 MR. THOMPSON: Thank you, Judge. May it  
13 please the Commission.

14 JUDGE CLARK: Would you be sure your  
15 microphone is on and that you're speaking directly into  
16 it. We had some issues with that last time.

17 MR. THOMPSON: Absolutely, Judge. I don't  
18 have anything to control whether or not the microphone  
19 is on up here. Unlike the others it doesn't have a  
20 button. Is it on?

21 JUDGE CLARK: As far as I know.

22 MR. THOMPSON: I will speak directly into it  
23 and as loudly as I can. You all will be glad when I go  
24 home.

25 MR. WILLIAMS: Judge, this is Nathan Williams.

1 We had trouble with the connection on that microphone in  
2 the past. If you want to hear him better, probably  
3 better off at counsel table.

4 JUDGE CLARK: Are you okay giving your  
5 argument from counsel table?

6 MR. THOMPSON: I certainly am, Judge.  
7 Whatever is most convenient for the Commission.

8 JUDGE CLARK: I just want to be sure everybody  
9 can hear you. Go ahead, Mr. Thompson.

10 MR. THOMPSON: Thank you, Judge. May it  
11 please the Commission.

12 We are here because Evergy Missouri Metro has  
13 improperly refused to distribute to ratepayers some \$30  
14 million in net off-system sales revenues. Last July  
15 Evergy Missouri Metro proposed a tariff to adjust its  
16 charges related to the company's Commission-approved  
17 Fuel Adjustment Clause, referred to as an FAC, intended  
18 to take effect on October 1, 2021. However, it did not  
19 take effect because Staff recommended that the tariff be  
20 rejected and the Commission accordingly did reject it.

21 Staff recommended that the tariff be rejected  
22 because Metro refused to include the net off-system  
23 sales revenues in the calculation although the tariff  
24 requires the inclusion of those revenues. The FAC is a  
25 Rate Adjustment Mechanism, or RAM, authorized by Section



1 386.266 pursuant to which Metro's rates are adjusted  
2 every six months between general rate cases to reflect  
3 fluctuations in its fuel costs.

4 Fuel costs are the largest single category of  
5 costs for an electric utility. These fuel costs are  
6 offset by certain types of revenue chief among which is  
7 off-system sales revenue. Section 386.266 authorizes  
8 the Commission to build an incentive into the FAC to  
9 encourage the company to keep its fuel costs as low as  
10 possible and the Commission has done so.

11 Metro's FAC tariff provides that only 95  
12 percent of its fuel costs will be recovered from its  
13 customers. Likewise, only 95 percent of any off-system  
14 sales revenue is credited to the ratepayers to reduce  
15 the amount of fuel costs they must pay. That leaves  
16 that 5 percent that Mr. Zobrist referred to that is due  
17 to go to the company under the FAC tariff.

18 Staff advised the Commission to reject the  
19 proposed tariff because Metro had withheld from its FAC  
20 the windfall net revenues realized during an unusual  
21 event in February 2021, known as Winter Storm Uri. This  
22 storm which lasted from February 13 through February 17,  
23 2021, particularly affected the southern Midwest  
24 freezing natural gas wellheads in Oklahoma and thereby  
25 obstructing the supply of gas, causing widespread power

1 outages in Texas and causing energy prices to skyrocket  
2 right here in Missouri.

3 As a result, Metro's off-system sales revenues  
4 skyrocketed and significantly exceeded its fuel costs  
5 resulting in some \$30 million of net Missouri  
6 jurisdictional revenues, 95 of which should be  
7 distributed to ratepayers through Metro's FAC.

8 This case is one of a cluster of related  
9 cases, some of which were referred to by Mr. Zobrist.  
10 There is Case EU-2021-0283, the Winter Storm Uri AAO or  
11 Accounting Authority Order case. Metro and its  
12 affiliate West both seek to defer extraordinary costs  
13 and revenues related to Winter Storm Uri rather than  
14 immediately process them through their FACs as those  
15 tariffs require.

16 The status of this case is that it has been  
17 stalled since October 26. This case is ER-2022-0025,  
18 Metro's FAC rate adjustment tariff. Metro submitted an  
19 FAC tariff, as I explained earlier, excluding the quite  
20 significant Winter Storm Uri net off-system sales  
21 revenue, 95 percent of which is owed to the ratepayers.

22 There is also Case ER-2022-0129, Metro's now  
23 pending general rate case. It was filed in January of  
24 this year. Metro included no proposed treatment of the  
25 Winter Storm Uri costs and revenues in that case

1 although they occurred during its proposed test year.  
2 Metro seeks approximately \$47 million in increased  
3 revenues in that case even though it is improperly  
4 holding hostage over \$30 million belonging to the  
5 ratepayers from the Winter Storm Uri net off-system  
6 sales revenues.

7 Finally, there is Case ER-2022-0206, Metro's  
8 current FAC rate adjustment tariff filed January 31 of  
9 this year. Staff's recommendation is due on March 2.  
10 Metro has again submitted an FAC tariff adjustment that  
11 excludes the lion's share of the Winter Storm Uri net  
12 off-system sales revenue that it owes to its ratepayers.  
13 I can tell you that Staff expects to recommend rejection  
14 of that tariff also.

15 What is driving all of these cases? And this  
16 was not explained by Mr. Zobrist. Metro operates in  
17 both Missouri and Kansas and so must allocate its costs  
18 and revenues between the two states. Because of a  
19 mismatch between the demand-based jurisdictional  
20 allocation methods used in Missouri and Kansas, Metro  
21 asserts that it would be required to distribute 107  
22 percent of the Winter Storm Uri net revenues to  
23 Missouri. 107 percent. That is more than it actually  
24 realized.

25 Metro refuses to do this until the

1 jurisdictional allocation mismatch is corrected. It  
2 hopes to accomplish this in its general rate case  
3 ER-2022-0129 by getting both Missouri and Kansas to move  
4 to identical hybrid allocation methods. I can tell you,  
5 however, that Staff will oppose Metro's jurisdictional  
6 allocation method change proposed in that rate case.

7 This is a complicated case and the controlling  
8 law is also complicated. The Commission, of course, is  
9 created by state statute and has no powers other than  
10 those specifically granted or necessarily implied by  
11 those statutes.

12 In 1979, the Missouri Supreme Court in the  
13 most famous of all Missouri utility-related decisions  
14 advised us that the Commission's powers do not extend to  
15 allowing electric utilities to have Fuel Adjustment  
16 Clauses. In 2005, however, the Missouri General  
17 Assembly enacted Section 386.266 which expressly grants  
18 that authority to the Commission. Accordingly, the  
19 Commission has promulgated rules to implement Section  
20 386.266 and those rules appear at 20 CSR 4240-20.090,  
21 and we have had occasion to refer to those earlier  
22 today, Mr. Zobrist referred to Section (8).

23 As you know, an administrative rule duly  
24 promulgated within the scope of the applicable statutory  
25 rulemaking authority has the force and effect of law. A

1 utility requests an FAC by proposing a tariff describing  
2 its operation. This must be done in the context of a  
3 general rate case, and the FAC must comply with the  
4 Commission's FAC rule and with Section 386.266.

5 I should mention that a tariff duly approved  
6 by the Commission and maintained on file for public  
7 inspection also has the force and effect of law. It is  
8 binding, the courts tell us, on the utility, the  
9 utility's customers and on the Commission itself.  
10 This is called the filed tariff doctrine or filed rate  
11 doctrine. This is a well established principal of law.

12 How do these considerations affect the  
13 questions before us? First, Metro's FAC tariff does not  
14 permit it to withhold the net Winter Storm Uri  
15 off-system sales revenues from the FAC. The tariff does  
16 not include any exception nor does it have a provision  
17 allowing waiver.

18 The Commission's FAC rule has a waiver  
19 provision but Metro's FAC tariff does not and the tariff  
20 controls. Second, the Commission's FAC rule does not  
21 authorize deferrals. At 20 CSR 4240-20.090(8)(A)2.A(XI)  
22 -- wow, what a mouthful. Let's just refer to that as  
23 Provision XI from now on. In a list of items to be  
24 submitted in support of a proposed rate adjustment  
25 tariff, the rule refers to, quote, extraordinary costs

1 not to be passed through, if any, due to such costs  
2 being an insured loss, or subject to reduction due to  
3 litigation or for any other reason, end quote. That  
4 language plainly in and of itself does not authorize any  
5 deferral or any exclusion. What that rule actually says  
6 is, (A), when an electric utility files with the  
7 Commission tariff sheets to change its fuel adjustment  
8 rates and serves it upon parties, the filed tariff  
9 sheets shall be accompanied by, No. 2, the following  
10 information in electronic format, where available, with  
11 formulas intact. A, for the period of historical costs  
12 which are being used to propose the fuel adjustment  
13 rates. (XI) extraordinary costs not to be passed  
14 through, if any, due to such costs being an insured  
15 loss, or subject to reduction due to litigation or for  
16 any other reason.

17 The rule simply describes one item among  
18 several that must be supplied to the Commission in  
19 support of a tariff proposing a Fuel Adjustment Clause  
20 rate change. It does not authorize anything. Again, I  
21 will point out that neither of those listed  
22 circumstances are applicable here. An insured loss  
23 should be not be distributed because it is no loss at  
24 all since an insurance proceeds are expected to cover  
25 it.

1           Costs subject to litigation should not be  
2 distributed because they are uncertain as to amount and  
3 ownership. The net Winter Storm Uri off-system sales  
4 revenues at issue here by contrast are certain. They're  
5 not subject to litigation in terms of amount or  
6 ownership. The ownership at least is clear. The amount  
7 is evidently continually changing. For any given moment  
8 we can say what the amount is.

9           Third, Section 386.266.6 provides once such an  
10 adjustment mechanism, that is an FAC, is approved by the  
11 Commission under this section, it shall remain in effect  
12 until such time as the Commission authorizes the  
13 modification, extension, or discontinuance of the  
14 mechanism in a general rate case or complaint  
15 proceeding. The AAO case that I mentioned earlier where  
16 Evergy Metro is seeking authority to defer these  
17 revenues, these net revenues I should say, it is not a  
18 general rate case and it's not a complaint case.

19           Consequently, the Commission is without  
20 authority to grant a deferral, an exception from the  
21 operation of the FAC in that case. The net Winter Storm  
22 Uri off-system sales revenues must therefore be  
23 distributed as Metro's FAC tariff requires.

24           Fourth, Section 386.266, as I noted earlier,  
25 authorizes the Commission to build an incentive into the

1 FAC to encourage the company to keep its fuel costs as  
2 low as possible, and the Commission has done so with  
3 Metro's FAC. It provides that only 95 percent of the  
4 fuel costs will be recovered from customers. Likewise,  
5 only 95 percent of any off-system sales revenue is  
6 credited to the ratepayers to reduce the amount of fuel  
7 costs they must pay.

8 Section 386.266.9 provides, quote, in the  
9 event the Commission lawfully approves an incentive- or  
10 performance-based plan, such plan shall be binding on  
11 the Commission for the entire term of the plan, close  
12 quote. Under this provision, the Commission lacks power  
13 to alter the operation of Metro's incentive plan  
14 containing FAC except in a general rate case when the  
15 term of the plan is completed. This is not a general  
16 rate case and the AAO case is not a general rate case.

17 The Commission can only alter the operation of  
18 that FAC when the term of the incentive plan has ended.  
19 Well, you might say there is a general rate case pending  
20 right now and the Commission is free to change Metro's  
21 FAC in the context of that case. Well, that's true, but  
22 how do you get the net Winter Storm Uri off-system sales  
23 revenues into that rate case.

24 Under the terms of the FAC, they are required  
25 to have already been distributed, 95 percent to the



1 ratepayers, 5 percent to Metro. The Commission is  
2 expressly prohibited, as I have explained, from altering  
3 this incentive plan. And Metro's FAC does not allow for  
4 any deferral or exception.

5 Based on these considerations, the unavoidable  
6 conclusion is that the Commission is without authority  
7 to grant an AAO to defer distribution of the net Winter  
8 Storm Uri off-system sales revenues. The Commission  
9 therefore must order Metro to distribute those revenues  
10 through its FAC without further delay including interest  
11 at Metro's short-term borrowing rate to make the  
12 ratepayers whole for the time that they have had to wait  
13 while this money has been improperly withheld.

14 And I will close by saying if the Commission  
15 disagrees with me and decides that it has the power to  
16 grant this AAO, then Staff strongly urges the Commission  
17 to not do so. These revenues were realized during the  
18 test period, the test year of an ongoing rate case.  
19 They should be distributed and not further withheld.  
20 Thank you very much.

21 JUDGE CLARK: Thank you, Mr. Thompson. Any  
22 questions from the Commission? I have a question.

23 MR. THOMPSON: Yes, sir.

24 JUDGE CLARK: Let's set aside Evergy's tariff  
25 and the filed rate doctrine for just a second. Let's

1 just look at the Commission's rule as it sets out there  
2 where it says it sets out extraordinary costs. Why  
3 should these revenues not be excluded given that they  
4 don't just come from somewhere else, these revenues are  
5 a direct result of Storm Uri --

6 MR. THOMPSON: Correct.

7 JUDGE CLARK: -- just like the extraordinary  
8 costs that I don't believe the Commission is challenging  
9 excluding. Why shouldn't this be treated the same way,  
10 I mean, other than the fact that it says costs?

11 MR. THOMPSON: Right. There is a disconnect  
12 between what Staff is arguing here and what Staff  
13 recommended be approved with respect to the costs that  
14 Evergy West wanted to defer. I will acknowledge that  
15 and I don't have an explanation for that other than the  
16 fact that in preparing this case, writing the briefs and  
17 analyzing the applicable law, I came to a different  
18 conclusion.

19 The language of the Commission's rule, as I  
20 did my best to explain, does not authorize any  
21 exclusion. It simply says if there are items excluded,  
22 then they are among the quantities that must be  
23 presented to the Commission in support of the proposed  
24 tariff. It's simply a list of items one of which is  
25 items excluded. It doesn't use the word deferral, let

1 me mention, anywhere. And we analyzed the two items,  
2 the two examples of items excluded, and we saw that both  
3 of those were appropriate for exclusion. One, because  
4 it's not a loss, it's going to be covered by insurance  
5 proceeds presumably not yet received and the other one  
6 because litigation makes it uncertain. This situation  
7 is not akin to either of those. In this situation under  
8 the normal operation of this utility admittedly in  
9 abnormal conditions the utility realized off-system  
10 sales revenues that significantly exceeded its related  
11 costs. That's an unusual circumstance right there. But  
12 the FAC tariff and the FAC rule, neither of them says  
13 oh, if the weather is such that you make money rather  
14 than spending money for the accumulation period, well,  
15 then you have to do something different. Neither of  
16 those things say that.

17 And because they don't say that, I don't think  
18 treating that revenue, that unexpected windfall revenue  
19 differently, I do not believe that is permissible.

20 JUDGE CLARK: Thank you. I've got one kind of  
21 follow up based on what you said. You said that costs  
22 that the way it's set up now they're excluded but  
23 there's no mention of an AAO, there's no allowance for  
24 deferral in the Commission's rule in regard to that.  
25 Isn't that exactly where it's going for some of the

1 other companies that have applied? And if it's not to  
2 go to an AAO, where else would it go?

3 MR. THOMPSON: I think it has to be treated  
4 the way the tariff requires. You know, the AAO is a  
5 creature of the Uniform System of Accounts. The Uniform  
6 System of Accounts, and I believe it's account 185 or  
7 186, allows the utility to treat extraordinary items  
8 differently. And because the Commission might not agree  
9 with what the utility has done, the practice has arisen  
10 whereby the utility comes to the Commission to get an  
11 order, an Accounting Authority Order, authorizing it to  
12 give those extraordinary items different treatment. And  
13 the thinking about this is that well, rates are set up  
14 based on a normalized year. We go to a lot of effort to  
15 normalize the weather and normalize the costs and  
16 normalize the revenues in order to predict a pro forma  
17 or future year when rates will be in effect and rates  
18 will cover costs and leave a little bit extra for profit  
19 which is what the system requires.

20 Okay. So what happens? In reality, of  
21 course, there's no such thing as a normal year. Every  
22 year is out of whack. In every year, rates and costs do  
23 not match. Either the customers are paying less than  
24 they should or the company is earning more than it  
25 should. Somebody is benefiting from regulatory lag.

1 And regulatory lag just means that costs and revenues  
2 have changed but they're not reflected in rates.

3 So in that world extraordinary items are  
4 treated under the Uniform System of Accounts, right,  
5 they can be deferred to be dealt with later, because  
6 maybe it's a cost from a winter storm, good example,  
7 that just isn't reasonable for the company to have to  
8 shell out for when it's not collecting rates that were  
9 set with such a thing in mind. There's an example. But  
10 we're not in that normal world. We're in the world of  
11 the FAC. That's a different world.

12 The legislature created the authority to grant  
13 these FACs, these RAMs, and in that situation there are  
14 certain strictures placed on the company and on the  
15 Commission if you choose to go down that FAC road, and I  
16 mentioned two of those, right, that the FAC continues in  
17 operation until the Commission changes it in a general  
18 rate case or in a complaint case; that if the Commission  
19 creates an incentive plan in that FAC the Commission  
20 cannot alter it until the term of the incentive plan is  
21 completed. That statute specifically states the  
22 Commission cannot alter it. That's not directed at the  
23 company or at the ratepayers. It's directed at the  
24 Commission. It says don't touch it. You create it,  
25 you're stuck with it. That's the situation we have.

1 JUDGE CLARK: Is it your opinion or is it  
2 Staff's opinion that if the Commission orders that these  
3 amounts flow through the FAC that that necessarily and  
4 logically cuts the Commission off from issuing an AAO  
5 for these amounts?

6 MR. THOMPSON: Yes.

7 JUDGE CLARK: And is that merely because  
8 they've already been distributed?

9 MR. THOMPSON: Yes.

10 JUDGE CLARK: Give me just a second. I don't  
11 have any more questions for you at this time. Are there  
12 any follow-up questions based on mine by the Commission?  
13 I hear none. With that we will move on to Evergy's  
14 rebuttal.

15 MR. THOMPSON: Thank you, Judge.

16 MR. ZOBRIST: Thank you, Judge. Am I being  
17 heard properly here clearly?

18 JUDGE CLARK: Yes.

19 MR. ZOBRIST: Okay. Thank you. Well, I  
20 appreciate Mr. Thompson's acknowledgment that Staff has  
21 recommended inconsistent resolutions to both the Metro  
22 and the Missouri West case. To call it a disconnect is  
23 a diplomatic way. It is absolutely inconsistent. And  
24 the consistent way of dealing with this problem would be  
25 to apply Paragraph XI as it is written this is an

1 extraordinary cost, it is an extraordinary revenue. And  
2 if you look at the last portion of Paragraph XI, it says  
3 for any other reason. And if you link that back to the  
4 word extraordinary, we're talking about extraordinary  
5 costs and extraordinary revenues.

6 We had a situation in Evergy Missouri West of  
7 an extraordinary cost that was excluded from the FAC  
8 with Staff's approval recommendation. The Commission's  
9 order is final. That has been excluded. And that is in  
10 our view awaiting a disposition in the Accounting  
11 Authority Order case. That's where it should go.

12 Similarly in this case we have an  
13 extraordinary revenue, a smaller amount than the costs  
14 in Evergy Missouri West but still a significant amount.  
15 It should be treated in the same way. It should be sent  
16 to the AAO case and there it should be dealt with, and  
17 there the Commission can begin to deal with the  
18 jurisdictional allocation issue too.

19 Judge, you asked about a harm to Evergy Metro.  
20 If the FAC were applied in this case when it wasn't in  
21 the Missouri West case, we would be failing to deal with  
22 the jurisdictional allocation issue and passing through  
23 sums that reflect off-system sales that were not made.  
24 So that's a harm to Metro.

25 Finally I would say what we're trying to do

1 here is to urge the Commission to act consistently. The  
2 FAC rule was drafted with this Paragraph XI that gave  
3 the Commission the authority to either reject or affirm  
4 the utility's proposal about extraordinary costs or  
5 extraordinary revenues that should not be passed  
6 through. That was done in the Missouri West case. It  
7 should be done in this case. That would be the fair  
8 thing to do. The jurisdictional allocation issue can be  
9 dealt with in the AAO case and the methodology issue be  
10 dealt with in the rate case. But the Commission was not  
11 wrong in the Missouri West case. We think it would be  
12 wrong because it would be inconsistent in dealing with  
13 revenues in this situation. Costs and revenues should  
14 be dealt the same. Both issues should be taken up in  
15 the AAO case and ultimately a decision would be made in  
16 the rate cases with regard to all of the other issues.

17 JUDGE CLARK: Thank you. One question comes  
18 to mind. Why is Evergy asking that these revenues be  
19 excluded from the FAC to an AAO and not excluded from  
20 the FAC and being dealt with in the currently filed rate  
21 case?

22 MR. ZOBRIST: Because we need to have a  
23 deferral order. And these costs should be excluded and  
24 we believe that they should be deferred because they  
25 relate to an extraordinary event, and the Commission has



1 historically dealt with extraordinary costs in  
2 connection with Accounting Authority Orders. To the  
3 extent that they include extraordinary revenues that  
4 would turn into either a regulatory asset or a  
5 regulatory liability, the AAO is the proper vehicle for  
6 dealing with those. And then ultimately the cost issues  
7 can then be dealt with in the rate case.

8 JUDGE CLARK: Thank you. In the Company's  
9 opinion, if these revenues were excluded from the FAC  
10 and an AAO were granted, could that AAO defer those  
11 revenues to the currently filed rate case?

12 MR. ZOBRIST: Well, we believe there's enough  
13 time given that the rate cases were filed just five or  
14 six weeks ago that that can be dealt with, you know,  
15 with appropriate procedural orders in the rate cases.

16 JUDGE CLARK: I have no further questions.  
17 Any questions from the Commission?

18 CHAIRMAN SILVEY: Judge, this is Commissioner  
19 Silvey.

20 JUDGE CLARK: Go ahead, Chairman.

21 CHAIRMAN SILVEY: Thank you, Judge. So I  
22 would just like to clarify that last answer. If the  
23 Commission were to grant the AAO, it could then be  
24 disposed of in the current rate case and the company is  
25 not necessarily expecting us to defer it to the

1 following rate case years down the road; is that  
2 correct?

3 MR. ZOBRIST: Well, I have to say I've not  
4 conferred with my client on that. I'm just thinking  
5 that because the rate cases were filed January 6 and  
6 we're awaiting a procedural order that they ought to be  
7 able to be dealt with in the pending rate cases  
8 consistent with SPP resettlement charges.

9 MR. STEINER: Chairman Silvey, this is Roger  
10 Steiner. I could chime in. It could be dealt with in a  
11 rate case or the FAC, the next FAC case after the AAO  
12 decision.

13 CHAIRMAN SILVEY: Okay. Thank you. Thank  
14 you, Judge.

15 JUDGE CLARK: Thank you, Chairman. Any other  
16 Commission questions? Hearing none.

17 COMMISSIONER HOLSMAN: No questions, Judge.

18 JUDGE CLARK: Thank you, Commissioner Holsman.  
19 I have no additional questions. With that, Ms. Bentch,  
20 when are transcripts of this --

21 MR. WILLIAMS: Judge?

22 JUDGE CLARK: Yes.

23 MR. WILLIAMS: This is Nathan Williams for  
24 Public Counsel.

25 JUDGE CLARK: Go ahead, Mr. Williams.

1 MR. WILLIAMS: I know I said I didn't intend  
2 to argue, but I do have a piece of information that the  
3 Commission might find relevant.

4 JUDGE CLARK: Go ahead.

5 MR. WILLIAMS: In addition to -- There was a  
6 reference to Evergy West and being in a similar posture  
7 to this Evergy Metro case. There was an earlier case  
8 involving Liberty dealing with the same type of issue in  
9 terms of storm costs and whether or not they should flow  
10 through the FAC. The case number for that is  
11 ER-2021-0332.

12 JUDGE CLARK: Thank you, Mr. Williams. Ms.  
13 Bentch, when will transcripts be available for this  
14 proceeding?

15 THE STENOGRAPHER: My instructions say March  
16 4.

17 JUDGE CLARK: March 4. Sounds good. Are  
18 there any other matters by the parties that need to be  
19 addressed by the Commission at this time?

20 MR. THOMPSON: No, thank you, Judge.

21 MR. ZOBRIST: Not from Evergy, Judge.

22 JUDGE CLARK: I'd like to thank everyone for  
23 their participation today. I understand that the  
24 weather did not make it the most conducive to do this  
25 this morning so I appreciate everybody participating in

1 these oral amounts. With that, I'm going to adjourn  
2 these proceedings and we will go off the record.

3 MR. THOMPSON: Thank you, Judge.

4 (Thereupon, the proceedings concluded at 9:50  
5 a.m.)

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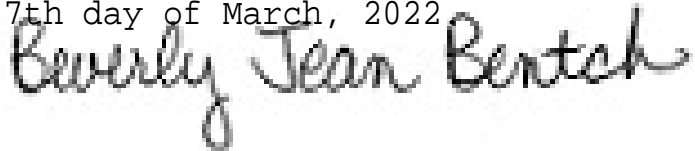
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I, Beverly Jean Bentch, RPR, CCR No. 640, do hereby certify that I was authorized to and did stenographically report the foregoing Public Service Commission Oral Arguments and that the transcript, pages 48 through 82, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or counsel connected with the action, nor am I financially interested in the action.

Dated this 7th day of March, 2022



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Beverly Jean Bentch, RPR, CCR No. 640

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