BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for an Accounting Authority Order Allowing the Companies to Record and Preserve Costs Related to COVID-19 Expenses	))))))	File No. EU-2020-0350

INITIAL BRIEF OF
MIDWEST ENERGY CONSUMERS GROUP

COMES NOW the Midwest Energy Consumers Group ("MECG"), pursuant to the Commission's October 20, 2020 *Order Setting Hearing Date and Resuming Procedural Schedule*, and submits this Initial Brief on the issues in this case.

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I. OVERVIEW

On May 6, 2020, Evergy Missouri Metro and Evergy Missouri West (collectively "Evergy") filed its Application for an Accounting Authority Order ("AAO") to accumulate and defer "all extraordinary costs and financial impacts incurred as a result of the coronavirus disease ("COVID-19") pandemic, plus associated carrying costs."[1] As initially requested, Evergy sought to defer: (1) its actual reasonable and prudently incurred costs related to the COVID-19 pandemic, including but not limited to new or incremental operating and maintenance expense related to protecting employees and customers and plan for and communicate about impacts of the pandemic, increased bad debt expense to the extent they exceed levels included in the cost of service, costs related to preparing for and any actual sequestration of employees, and costs related to new assistance programs implemented to aid customers with payment of electric bills during the pandemic; (2) lost revenues related to the COVID-19 pandemic; (3) less costs avoided related to COVID-19; and 4) carrying costs.[2]

Following the filing of testimony the parties sought to suspend the procedural schedule to accommodate settlement discussions. On October 8, 2020, Evergy; Commission Staff; MECG; Missouri Industrial Energy Consumers; and the Sierra Club filed a Non-Unanimous Stipulation.[3] Relative to its initial request, the stipulation provides for the deferral of certain costs and bad expenses as well as any offsetting savings. The stipulation did not, however, provide for the deferral of lost revenues and delayed any decision on carrying costs until the next rate case. On October 15, 2020, Public Counsel and the National Housing Trust filed their objections to the Non-Unanimous Stipulation necessitating an evidentiary hearing. On November 12 and 13, the

[1] Exhibit 4, Klote Direct, page 3.
[2] *Id.* at pages 2-3.
[3] Exhibit 1.

Commission conducted an evidentiary hearing in which it accepted the testimony of 13 witnesses.

In this brief, MECG will first address the law surrounding the treatment of non-unanimous stipulations. Specifically, given that there were objections to the non-unanimous stipulation, the Commission must issue an order which provides for findings of fact / conclusions of law which are supported by competent and substantial evidence. Second, MECG will discuss the standard for accounting authority orders. Third, MECG will provide citations to record evidence supporting each of the stipulation provisions such that the Commission may issue findings of fact that implement each of those stipulation provisions. Fourth, in the event that the Commission does not adopt the terms of the non-unanimous stipulation and decides to issue independent findings, MECG provides its positions on each of issues identified in this case. Of utmost importance, MECG urges the Commission to reject Evergy's initial request to defer alleged lost revenues. Finally, MECG will address two issues identified by the Commission: (a) the Commission's authority to attach conditions to the grant of an AAO and (b) the parties' position in the event that the Commission rejects paragraphs 16, 17 and 18 of the stipulation.

Ultimately, MECG urges the Commission to accept the terms of the non-unanimous stipulation without modification. Importantly, the stipulation is supported by all stakeholder segments: the utility; the Staff; customers (MECG / MIEC); and environmental interests (Sierra Club). MECG maintains that there is competent and substantial evidence to support each and every provision contained in the Non-Unanimous Stipulation. As such, the Commission may simply issue findings of fact that adopts each of the stipulation provisions.

II. CASE LAW AND RULES REGARDING NON-UNANIMOUS STIPULATIONS

In 1977, the Commission opened a docket to consider the rate design underlying the rates for Laclede Gas. In that case the Commission was presented the settlement of several parties. That said, however, Public Counsel objected to the stipulation. On October 9 and 10, 1980, the Commission conducted an evidentiary hearing which provided for a "limited hearing procedure" which focused solely on whether the Commission should approve or reject the stipulation. On October 15, 1980, the Commission issued an order that simply found that the "proposed Stipulation, although not joined in by all of the parties, represents the fairest and most equitable distribution of the rates authorized in Case No. GR-80-210."

On appeal the Western District Court of Appeals determined that the Commission's order approving the non-unanimous stipulation was unlawful for two reasons.[4] ***First***, the Court pointed out that Section 386.420 requires the Commission to issue a "report in writing . . . which shall state the conclusions of the commission, together with its decision, order or requirement in the premises." In *State ex rel Rice v. Public Service Commission*,[5] the Court held that this statute "required the Commission to include findings of fact in all of its written reports."[6] Recognizing that the Commission's order simply approved the stipulation, "the order entered by the Commission in this case does not meet the statutory findings of facts requirement. The findings in this case, as quoted above, are completely conclusory, and provide no insights into if and how controlling issues were resolved."

Second, the Court held that the limited hearing procedure utilized in that case violated due process of law. As the Court noted, "[d]ue process requires that administrative hearings be

[4] *State ex rel. Fischer v. Public Service Commission*, 645 S.W.2d 39 (Mo.App. 1982) ("Fischer").
[5] 220 S.W.2d 61 (1949).
[6] *Id.* at 65.

fair and consistent with rudimentary elements of fair play. One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner."[7] There, the Court held that "the hearing procedure followed in this case failed to satisfy the due process requirement." "The Commission had previously decided that the only issue it would consider was whether or not to approve the stipulation and agreement. In light of this decision, the hearing afforded Public Counsel was not meaningful."[8]

Since the time that the *Fischer* decision was issued, the General Assembly enacted the Administrative Procedure Act ("APA"). One portion of the APA is Section 536.090 which provides for the inclusion of findings of fact in all contested cases.

> Each decision and order in a contested case shall be in writing, and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order.

In the case at hand, the Commission satisfied one concern of the *Fischer* court when it conducted a "full and fair hearing." The Commission has not limited the scope of the hearing in this matter[9] and the objecting parties were allowed to present evidence on all of the issues that they deemed appropriate. That said, however, given the findings in *Fischer*, the Commission may not simply approve the stipulation. Rather, given the holding of the *Fischer* court, and the dictates of Section 386.420 and 536.090, the Commission must issue an order which sets forth

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[7] *Fischer* at page 43 (citing to *Tonkin v. Jackson County Merit System Commission*, 599 S.W.2d 25, 32-33 (Mo.App. 1980); *Jones v. State Department of Public Health and Welfare*, 354 S.W.2d 37, 39-40 (Mo.App. 1962); *Merry Heart Nursing and Convalescent Home, Inc. v. Dougherty*, 330 A.2d 370, 373-374 (1974)).

[8] *Id.*

[9] For instance, if the Commission had found that the scope of the hearing would only consider whether to approve the stipulation in this case and did not allow the objecting parties to present evidence on the appropriate conditions to attach to an order approving the AAO, then such a hearing would not have been "full and fair."

findings of fact that provide insight into if and how controlling issues were resolved. Furthermore, given the requirements of Section 536.140(3), those findings of fact must be supported by "competent and substantial evidence upon the whole record."

Insight into the handling of non-unanimous stipulations is also found in Commission rule. Specifically, 20 CSR 4240-2.115(D) addresses the treatment for Non-Unanimous Stipulation.

> A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

In the case at hand, MECG asserts, based upon the prefiled testimony, as well as the evidence elicited at the evidentiary hearing, that there is competent and substantial evidence to support each of the provisions contained in the non-unanimous stipulation. Therefore, while the stipulation may simply represent the "position" of each of the signatory parties, MECG maintains that the Commission may rely upon the competent and substantial evidence in the record in order to issue findings of fact that implement each of the provisions. As such, MECG encourages the Commission to issue its order, with findings of fact, which adopts each of the provisions contained in the stipulation.

III. STANDARD FOR ACCOUNTING AUTHORITY ORDERS

At 20 CSR 4240-20.030, the Commission adopted the Uniform System of Accounts ("USoA") as enacted by the Federal Energy Regulatory Commission.[10] In general, the USoA creates a presumption that all current period profits and losses shall be recorded in the current period. "It is the intent that net income shall reflect all items of profit and loss during the period. . ."[11] That said, however, the USoA also provides an exception from this presumption by allowing for the deferral of the financial effects resulting from with extraordinary events.[12]

> Those items related to the effects of events and transactions which have occurred during the current period and which are of ***unusual nature and infrequent occurrence shall be considered extraordinary***. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company.[13]

The Commission has steadfastly maintained its use of the USoA extraordinary standard for requests to defer costs / savings. Specifically, the Commission has held that use of deferral accounting should be "limited" to situations in which the event is "unusual and unique, and not recurring."

> Under historical test year ratemaking, costs are rarely considered from earlier than the test year to determine what is a reasonable revenue requirement for the future. Deferral of costs from one period to a subsequent rate case causes this consideration and should be allowed only on a limited basis. ***This limited basis is when events occur during a period which are extraordinary, unusual and unique, and not recurring***.[14]

The use of the extraordinary standard is not only consistent with the USoA, Missouri courts have also held that only an extraordinary event could justify the use of deferral

[10] See, Case No. EX-93-237.
[11] 18 C.F.R. Ch. 1 (General Instruction 7) (see Exhibit 4).
[12] *Id.*
[13] *Id.* (emphasis added
[14] *Report and Order*, Case No. EO-91-358, issued December 20, 1991, 1 Mo.P.S.C. 3d, 200, 205 (emphasis added).

accounting. "Because rates are set to recover continuing operating expenses plus a reasonable return on investment, ***only an extraordinary event*** should be permitted to adjust the balance to permit costs to be deferred for consideration in a later period."[15]

Since establishing its extraordinary standard, the Commission has provided greater definition as to what qualities an event must demonstrate in order to be considered extraordinary. Recently, the Commission concluded that the extraordinary standard focused on whether the event is "unusual, infrequent, not foreseeably recurring, activities abnormal and significantly different from the ordinary and typical."[16]

As detailed, *infra*, MECG believes that the Covid-19 pandemic is an extraordinary event which justifies an Accounting Authority Order consistent with the terms of the non-unanimous stipulation and agreement.

[15] *State ex rel. Public Counsel v. Public Service Commission*, 858 S.W.2d 806, 811 (Mo.App. 1993) (emphasis added).
[16] *Report and Order*, Case No. ER-2012-0174, issued January 9, 2013, at page 31. See also, *Report and Order*, Case No. EC-2019-0200, issued October 17, 2019, page 13.

IV. EVIDENTIARY SUPPORT FOR NON-UNANIMOUS STIPULATION

As indicated (pages 4-6), the Commission may not simply approve the non-unanimous stipulation. Rather, since the stipulation was opposed, the Commission must issue a Report and Order with written findings of fact that are based upon competent and substantial evidence. In this case, MECG strongly encourages the Commission to issue findings of fact that adopt each of the stipulation provisions as a fair and equitable resolution of the issues in this case. In order to adopt each of these provisions, competent and substantial evidence must exist in the record. As the following demonstrates, each of the stipulation provisions is supported by evidence and should be adopted by the Commission.

Stipulation Provisions and Evidentiary Citations:

2. The Signatories request that the Commission issue an order that authorizes the Company to track and defer into a regulatory asset the following incremental costs caused by the COVID-19 pandemic, beginning March 1, 2020:[17]

(a) new or incremental operating and maintenance expense related to protecting employees and customers – eligible costs are the following:

(i) additional cleaning of facilities and vehicles;[18]

(ii) personal protective equipment (i.e., masks, gloves, sanitizing sprays, temperature testing, plexiglass shields, etc.);[19]

(iii) technology upgrades which include equipment directly related to enabling employees to work from home and associated contract labor. Such costs shall

[17] Exhibit 4, Klote Direct, page 3; Exhibit 100, Bolin Rebuttal, page 6.
[18] Exhibit 300, Meyer Rebuttal, page 17; Exhibit 4, Klote Direct, pages 5 and 7.
[19] Exhibit 300, Meyer Rebuttal, page 17; Exhibit 4, Klote Direct, pages 5 and 7.

not extend to costs normally incurred by the employee including internet connectivity at the home;[20] and

(iv) employee sequestration preparation costs (and employee sequestration costs if that becomes necessary).[21]

(b) increased bad debt expense due to COVID-19 to the extent total bad debt expense exceeds levels included in the cost of service;[22]

(c) Costs related to any assistance programs implemented to aid customers with payment of electric bills during the pandemic except for the contributions by the Company addressed in paragraph 17 and the program designated as confidential in the Company's filing in Case No. EO-2020-0383;[23] and

(d) Waived fee revenues up to the amount included in rates related to waived late payment fees and waived reconnection fees.[24]

3. The Company agrees to track all costs separately for Evergy Missouri Metro and Evergy Missouri West.[25]

4. The Signatories agree that the bad debt expense and late payment fees, and service reconnection charges included in the Company's last rate cases are $5,552,581 (Evergy Missouri Metro) and $2,894,841 (Evergy Missouri West) for bad debt,[26] and $1,909,451 (for Evergy Missouri Metro) and $725,422 (for Evergy Missouri West) for late payment fees,[27] and $362,605

[20] Exhibit 300, Meyer Rebuttal, pages 16-17; Exhibit 4, Klote Direct, page 5, 6-7.
[21] Exhibit 300, Meyer Rebuttal, page 17.
[22] Exhibit 300, Meyer Rebuttal, pages 12-13; Exhibit 4, Klote Direct, pages 5-6.
[23] Exhibit 300, Meyer Rebuttal, page 16; Exhibit 4, Klote Direct, pages 5-6; Tr. 125.
[24] Exhibit 300, Meyer Rebuttal, pages 13-15; Exhibit 4, Klote Direct, pages 5-6; Exhibit 100, Bolin Rebuttal, page 12.
[25] Exhibit 300, Meyer Rebuttal, pages 22-23.
[26] Exhibit 300, Meyer Rebuttal, page 13.
[27] Exhibit 300, Meyer Rebuttal, page 14.

(for Evergy Missouri Metro) and $271,385 (for Evergy Missouri West) for service reconnection charges.[28]

5. Carrying Costs: The Signatories agree that any party to the Company's next general rate cases may propose or oppose certain ratemaking treatment of carrying costs related to this COVID-19 AAO in the Company's next general rate cases.[29]

6. Lost Revenues: The Company agrees not to defer into a regulatory asset any lost revenues from reduced customer usage (volumetric charges) due to the pandemic or other waived fee revenues except as provided in paragraph 2(d) above.[30]

7. Savings to be deferred: The Signatories agree that operating cost reductions caused by the COVID-19 pandemic shall be tracked and netted against the deferred costs recorded as a regulatory asset.[31] These cost reductions will be identified and tracked separately and included in the reporting process prescribed in paragraph 9 below. These deferred COVID 19 operating cost reductions will be tracked so long as the total expense in each cost category is below the level included in rates in the Company's last rate cases. Operating cost reductions related to the COVID-19 pandemic will be reported separately for Evergy Missouri Metro and Evergy Missouri West. COVID-19 operating cost reductions to be tracked and netted against deferred costs include:[32]

(a) Travel expense (hotels, airfare, meals, entertainment);[33]

(b) Training expense;[34]

[28] Exhibit 300, Meyer Rebuttal, page 14.
[29] Exhibit 300, Meyer Rebuttal, page 22; Exhibit 5, Klote Surrebuttal, page 3; Exhibit 100, Bolin Rebuttal, page 13.
[30] Exhibit 300, Meyer Rebuttal, pages 7-11; Exhibit 100, Bolin Rebuttal, pages 7-12; Tr. 163.
[31] Exhibit 6, Ives Direct, page 14; Tr. 125.
[32] Exhibit 300, Meyer Rebuttal, pages 19-20; Exhibit 4, Klote Direct, page 9.
[33] Exhibit 300, Meyer Rebuttal, page 19.

(c) Office supplies;[35]

(d) Utility service provided to facilities leased or owned by the Company;[36]

(e) Staffing reductions due to the COVID-19 pandemic and excluding staffing reductions instituted in furtherance of merger savings and integration plans or in furtherance of the Sustainability Transformation Plan;[37]

(f) Reduced employee compensation and benefits due to the COVID-19 pandemic and excluding reductions in furtherance of merger savings and integration plans or in furtherance of the Sustainability Plan;[38]

(g) Any income tax benefits from taxable net operating losses that are carried back to previous tax years per the 2020 Coronavirus Aid, Relief and Economic Security ("CARES") Act;[39] and

(h) Any direct federal or state assistance the Company receives, or any federal or state assistance received by Evergy, Inc., properly allocable to Evergy Missouri Metro and/or Evergy Missouri West, related to COVID-19 relief.[40]

8. Duration of AAO: All costs and cost reductions will be tracked, netted and deferred into a regulatory asset until March 31, 2021; provided, however, that this period shall be extended for deferral of uncollectibles expense only in three-month increments as follows:[41]

(a) From April 1, 2021, through September 30, 2021, uncollectibles expense as determined in the last rate case for Evergy Missouri Metro and Evergy Missouri

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[34] Tr. 125.
[35] Exhibit 300, Meyer Rebuttal, page 19.
[36] Exhibit 300, Meyer Rebuttal, page 19.
[37] Tr. 125-126.
[38] Tr. 125-126.
[39] Tr. 126-128.
[40] Tr. 126-128.
[41] Tr. 128-130.

West, respectively, will be compared on a quarterly basis to actual net write-offs incurred by each respective company during that quarter. Exhibit 1, attached hereto, sets forth the uncollectibles expense as determined in the last rate case for Evergy Missouri Metro and Evergy Missouri West. This time period may be extended by agreement of the Signatories approved by Commission order or upon request of one or more of the Signatories approved by Commission order.

(b) If actual net write-offs during the quarter exceed the uncollectible expense as determined in the last general rate case for that quarter by at least 10 percent then the amount by which actual net write-offs exceed the uncollectible expense as determined in the last general rate case will be deferred.

(c) If uncollectibles expense as determined in the last general rate case exceeds actual net write-offs for that quarter by at least ten percent then the amount by which uncollectibles expense as determined in the last general rate case exceeds actual net write-offs will be used as an offset to any uncollectibles expense recorded to a regulatory asset pursuant to the Commission's approval of this Agreement.[42]

The duration of this time period for pandemic-related incremental costs and cost reductions, other than uncollectibles expense, may be extended, renewed or terminated upon agreement of the Signatories and subsequent Order of the Commission approving the agreement or, if agreement is not reached among the Signatories, by separate Order of the Commission pursuant to request of one or more of the Signatories. In no event will the deferral authority granted pursuant to the Commission's approval of this Stipulation and Agreement for pandemic-related

[42] Deferral period for uncollectible expense and that mechanism discussed at Tr. 128-130.

cost reductions and incremental costs including uncollectibles expense extend beyond the conclusion of the true-up in Evergy's next general rate cases.

9. Reporting: The Company agrees, within two weeks after the Commission issues an order approving this Non-Unanimous Stipulation and Agreement, to file an initial report identifying the cost categories to be tracked and deferred from the period March 1-June 30, 2020.[43] The report will identify all cost increases and decreases related to the pandemic that have been identified to date, and:[44]

(a) The number of customers, by customer class;

(b) The number of customers, by customer class, voluntarily disconnected by month;

(c) The number of customers, by customer class, involuntarily disconnected by month;

(d) Number of utility reconnections, reported by month;

(e) Number of customers on a utility payment plan, by payment plan type (including budget billing), by month;

(f) Total dollar amount of arrearages by customer class;

(g) The number of accounts in arrearage by customer class in increments (e.g., less than $100, $101 to $250, $251 to $500, $501 to $750, $751 to $1000, $1001 to $1500, $1501 to $2000, $2001 to $2500, $2501 to $3000, and $3000+) by month;

(h) The range of arrearage amounts by customer class (i.e., current high and low dollar amount) and the mean average;

[43] Exhibit 300, Meyer Rebuttal, page 21; Exhibit 4, Klote Direct, page 9; Exhibit 5, Klote Surrebuttal, pages 13-14.
[44] Reporting Requirements discussed at Tr. 130-131.

(i) A quantification of total past-due customer arrearages and number of customers experiencing arrearages, that are thirty, sixty, and ninety days overdue; and

(j) Total dollar amount of accounts receivable balances, including accounts receivable balances that are subject to payment plan agreements, by customer class.

10. The Signatories agree that, for reporting purposes, arrearages will reflect only past due bills.

11. Costs will be tracked by month in the initial and later quarterly reports.

12. The Company will update this report quarterly until the conclusion of the update or true-up period, if applicable, in the Company's next general rate case. The quarterly report shall be filed within 45 days of the end of each quarter.

13. Accounting Practices and Procedures: The Company's authority to defer COVID-19 incremental costs and operating cost reductions is limited to those categories of savings and costs specifically listed herein. Within 30 days of a Commission order authorizing this deferral, the Company will provide the other Signatories copies of the applicable policies and procedures intended to govern how monthly deferral amounts are to be calculated for each applicable category. Such policies and procedures shall also contain a proposed monthly reporting format. Concerns regarding these policies and procedures on the part of any Signatory will be addressed through further discussion by the Signatories.[45]

14. Future Recovery: The Signatories agree that the ability to track and defer costs into a regulatory asset is for accounting purposes only. All questions regarding potential ratemaking

[45] Accounting Practices discussed at pages 131-132.

treatment of the deferred costs are reserved for the Company's next general rate proceedings.[46] The Signatories reserve the right to review and challenge the Company's recovery of COVID-19 costs and recommend adjustments in the Company's next general rate cases.

15. Evergy Appeal (WD83319 and SC98724): The Signatories agree that if either the Missouri Court of Appeals or the Missouri Supreme Court renders a decision in either of these proceedings that invalidates accounting authority orders, this Non-Unanimous Stipulation and Agreement becomes null and void, and the Company agrees to adjust its books and records consistent with the Court's decision.[47]

16. COVID-19 Customer Arrearage Payment Plans: The Company offered incentives for residential and small business customers to resolve arrearages through one- and four-month payment plans in June, July and August. The Company also offered twelve-month payment plans to residential and small business customers seeking flexibility regarding the payment of their electric bills, and the Company will continue to offer those twelve-month payment plans through at least December 31, 2020.[48] Cold weather rule payment plans will also be available to residential customers from November 1, 2020, through March 31, 2021.[49] The Company agrees to evaluate the advisability of extending its offering of twelve-month payment plans to residential and small business customers beyond December 31, 2020, and March 31, 2021, in consultation with Staff, the Office of the Public Counsel and National Housing Trust. In addition, the Company agrees to evaluate the advisability of offering additional customer

[46] Exhibit 100, Bolin Rebuttal, page 5.
[47] On November 24, 2020, the Supreme Court denied Evergy's Application for Transfer in Case No. SC98724. Therefore, the Western District Court of Appeals' decision in Case No. WD83319 affirming the Commission's decision in Case No. EC-2019-0200 is final. Given that neither the Supreme Court nor the Missouri Court of Appeals issued a decision which "invalidates accounting authority orders" this provision is no longer relevant.
[48] Exhibit 300, Meyer Rebuttal, page 16; Exhibit 2, Caisley Surrebuttal, pages 8-9.
[49] 20 CSR 4240-13.055.

assistance programs after December 31, 2021, in consultation with Staff, the Office of the Public Counsel and National Housing Trust.[50]

17. The Company has also provided additional support to help customers in communities it serves recover from the impact of the COVID-19 pandemic, including a pledge of $2.2 million in contributions to help agencies communities and customers. Included in this support is $400,000 already pledged for Evergy Emergency Grants to help non-profit agencies on the front lines that have remained open and are delivering essential services. Also included is $800,000 in grants to non-profit agencies for Evergy's Hometown Economic Recovery Program that will help build back our local economies by supporting small business and entrepreneurial efforts, business attraction and retention, and workforce training and development. In addition, Evergy has announced that it is committing up to $1,000,000 to Dollar-Aide, Project Deserve and other programs that assist customers with energy bill payments.[51] These contributions are being recorded below the line and the Company will not seek to recover them in rates.[52]

18. Customer Protections: The Company agrees that it will continue the practices currently in place of waiving late payment fees and not undertaking full credit external reporting of its customers for the duration of the approved AAO for pandemic-related incremental costs and cost reductions, other than uncollectibles expense as provided in paragraph 8, and will also waive re-connect fees commencing with the effective date of the Commission's order approving this Non-Unanimous Stipulation and Agreement through the end of the same time period.[53]

[50] Tr. 83-84.
[51] Exhibit 2, Caisley Surrebuttal, pages 11-12.
[52] Exhibit 8, Ives Surrebuttal, page 30.
[53] Tr. 83-84.

V. MECG POSITION ON LISTED ISSUES

In the event that the Commission does not issue findings which adopt each of the provisions in the Stipulation, it must issue independent findings on each of the issues. In such an instance, MECG provides this section which addresses its position on each of the issues reflected in the List of Issues submitted on September 9, 2020. While most of these positions have been reflected in the provisions of that Stipulation, MECG notes that certain provisions are slightly different. These differences primarily involve the sunset provision contained in the Stipulation and the uncollectible test for determining whether the deferral period should be extended.

Issue 1: Is the Covid 19 pandemic an extraordinary event within the scope of the Uniform System of Accounts as it has been historically interpreted and applied by the Commission or as subsequently modified by Missouri courts?

Position: As mentioned previously (pages 7-8), the Commission has faithfully utilized the extraordinary standard contained in the Uniform System of Accounts and recognized by Missouri Court as the "only" basis for utilizing deferral accounting. MECG believes that the Covid-19 pandemic is extraordinary. "Much like a tornado, ice storm or other Act of God, the pandemic is an event that is abnormal or significantly different from that normally faced by Evergy."[54]

a. Is the resulting economic impact material within the scope of the Uniform System of Accounts?

Position: In addition to its focus on the extraordinary nature of an event, the Uniform System of Accounts exception for deferral accounting also considers whether an event is material. Specifically, the USOA provides that "[t]o be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income."[55]

[54] Exhibit 300, Meyer Rebuttal, page 5.
[55] *Id.* at page 4

In this case, MECG has not attempted to quantify whether the costs are 5% of Evergy's income. As MECG witness Meyer pointed out,

> At this point, it is impossible to get an accurate quantification of the costs / savings in question. Unlike a tornado or ice storm, the end of the extraordinary event is usually well defined. In contrast, the pandemic is ongoing and the duration is highly uncertain. Therefore, it is impossible to quantify the financial impacts. That said, however, if the deferred costs are not shown to be material at the point that Evergy seeks rate recovery then the Commission should reject recovery of the deferred costs.[56]

Staff agrees. "At this time, it is unknown what the final incremental costs, revenues and / or savings incurred will be as the COVID-19 pandemic continues for an indefinite period of time. A final assessment of the materiality of the financial impacts of the COVID-19 pandemic to Evergy will be made in its next general rate case proceeding when any request is made to recover the deferral in rates."[57]

Issue 2: Should the Commission approve the Application for an accounting authority order ("AAO") permitting Evergy to accumulate and defer to a regulatory asset for consideration of recovery in future rate case proceedings before the Missouri Public Service Commission ("Commission") extraordinary costs and financial impacts incurred as a result of the coronavirus disease ("COVID-19") pandemic?

Position: In part. Under the Commission's historical standard, the Covid-19 pandemic is extraordinary to Evergy in that it is "abnormal and significantly different from the ordinary and typical activities of the company." As reflected herein, under the Commission's historic standard, the Commission should allow deferral of certain costs as discussed herein, but should reject other aspects of Evergy's request including the request to defer "lost revenues" allegedly caused by the pandemic.

Issue 3: If the Commission determines that an AAO or other deferral accounting mechanism should be ordered in connection with the COVID-19 pandemic, what items should be deferred?

[56] *Id.* at page 5.
[57] Exhibit 100, Bolin Rebuttal, page 6.

Position: MECG asserts that Evergy should be allowed to defer certain costs as follows. Importantly, the Commission should not recognize the deferral of lost revenues.

a. Uncollectible expense in excess of amounts included in rates in the most recent general rate cases of Evergy Missouri Metro and Evergy Missouri West, respectively?

Position: Also known as bad debt, "uncollectible expenses are those amounts billed to customers that go uncollected by the utility."[58] As Mr. Meyer relates, on June 20, 2020, the Commission approved Evergy's proposal to suspend disconnection of service due to non-payment during the pandemic. "One consequence of suspending disconnects will be increased uncollectible expenses. Given the willingness to allow customers to continue to receive service during the pandemic, regardless of the arrearage amount, it is only fair to allow the deferral of any increase in uncollectible expense."[59]

That said, however, it is important that Evergy not be permitted to defer all uncollectible expense. Rather, "the amount of uncollectibles subject to deferral should only be recognized to the extent that the amount exceeds the level built into rates on a 12-month basis. Absent such a limitation, Evergy would be double collecting a certain level of uncollectible expenses."[60] Such a limitation is consistent with the recent settlement in the Spire Covid-19 docket which provided for the deferral of "[i]ncreased bad debt expense due to Covid-19 to the extent total bad debt expense exceeds levels included in the cost of service."[61]

In response to data requests, Evergy indicated that the amount of uncollectible expense currently built into rates is $5,552,581 for Evergy Missouri Metro and $2,894,841 for Evergy

[58] *Id.* at page 12.
[59] *Id.*
[60] *Id.* at page 13.
[61] Spire Settlement at page 2 (administrative notice taken at Tr. 319); See also MAWC Settlement at page 2 (administrative notice taken at Tr. 319).

Missouri West.[62] Therefore, Evergy should be permitted to defer any uncollectible expenses over and above this amount already captured in rates.

b. Costs incurred in connection with the one- and four-month Pandemic payment plan incentives that the Commission permitted the Company to implement in Case No. EO-2020-0383 (including credits awarded as incentives and costs related to customer communications)?

Position: The Commission has previously approved certain programs proposed by Evergy to assist customers during the pandemic. Included was an incentive program by which Evergy would offer incentives to customers that pay off their unpaid balance in either one month or over four months. MECG is in agreement "that these incentive payment credits should be deferred." That said, however, MECG asserts that the Commission should disallow one particular cost. Specifically, Evergy committed $2.2 million as assistance "to help agencies, communities and customers, respond to and recover from the pandemic."[63] The Commission has historically excluded charitable contributions from recovery in rates. "Utility expenses that are highly discretionary and do not benefit customers, such as charitable donations, political lobbying expenses, and incentive compensation tied to earnings per share, are typically allocated entirely to shareholders."[64] Just as the Commission has historically disallowed recovery of these charitable donations it should also disallow the $2.2 million donation made by Evergy.[65] Evergy agrees. "I also clarify here that all charitable and community contributions discussed by Mr. Caisley and previously disclosed by Evergy are contributions made on behalf of the Company

[62] Exhibit 300, Meyer Rebuttal, page 13.
[63] *Id.* at page 16.
[64] *Report and Order*, Case No. ER-2014-0370, issued September 2, 2015, 25 Mo.P.S.C.3d 437.
[65] Exhibit 300, Meyer Rebuttal, page 16.

and its shareholders and have not been requested, nor will they be requested, for deferral or recovery from customers."[66]

c. Waived late payment fees / reconnection fees to the extent that they fall short of the amount included in rates?

Position: The Commission has previously approved Evergy's request to suspend disconnections during the pandemic due to non-payment. The suspension of these disconnections not only led to an increase in uncollectible expense, but also results in a shortfall in the amount of late payment fees and reconnection fees that Evergy would normally collect. Similar to the increase in uncollectible expense, MECG believes that any shortfall in late payment fees and reconnection fees should be deferred.

That said, however, there is a distinction between uncollectible expense and late payment / reconnection revenues. Given this distinction, while Evergy should be permitted to defer uncollectible expense to the extent that it exceeds the amount included in rates, it should be permitted to defer late payment / reconnection revenues to the extent that they fall short of the amount included in rates.[67] Otherwise, Evergy will be double collecting certain amounts. Staff agrees. "Staff recommends allowing Evergy to defer foregone late payment fees up to the amount that was set in Evergy's last general rate case."[68] Again, this provision is consistent with the recent Spire settlement which provided for the deferral of "[l]ost revenues up to the amount included in rates related to: waived late payment fees, reconnection charges, and disconnection charges."[69]

[66] Exhibit 8, Ives Surrebuttal, page 30.
[67] *Id.* at page 15.
[68] Exhibit 100, Bolin Rebuttal, page 12.
[69] *Spire Settlement*, page 2. See also, MAWC Settlement at page 3.

In response to data requests, Evergy indicated that late payment fees included in rates are $1,909,541 and $725,422 for Evergy Metro and Evergy West respectively. Reconnection fees built into rates are $362,605 and $271,385 for Evergy Metro and Evergy West respectively.[70]

d. Information technology-related costs incurred to enable employees to work from home, including hardware, licensing fees and connectivity costs?

Position: As a result of the pandemic many of Evergy's employees have been required to work from home. There are necessarily costs, incurred by the utility, to allow these employees to connect with utility computer systems. MECG does not oppose the deferral of these costs. That said, however, MECG does oppose the deferral of any costs normally incurred by the employee including employees' internet access fees. "These costs should either be borne by the employee or absorbed by Evergy."[71] At this point, most if not all employees already have internet access to their home. The need for employees to incur such internet access is further necessitated by the fact that children of employees need internet service for virtual access to schools. Evergy's willingness to incur these costs on behalf of their employees is simply an effort to inflate employee benefits. Therefore, Evergy should not be permitted to defer any connectivity costs normally incurred by the employee. This position is imminently reasonable. In the recent settlement, Spire agreed not to defer any employee internet costs. Rather, that settlement provided for the following deferral: "[t]echnology upgrades and equipment directly related to enabling employees to work from home. Such costs include company costs and ***will not extend to costs normally incurred by the employee including internet connectivity at the home***."[72]

[70] Exhibit 300, Meyer Rebuttal, page 14.
[71] *Id.* at page 17.
[72] Spire Settlement, pages 2-3 (emphasis added).

e. Costs incurred to protect employees unable to work from home, including cleaning supplies, personal protective equipment, temperature testing, employee sequestration preparation (and employee sequestration if that becomes necessary)?

Position: MECG does not oppose the deferral of cleaning supplies, personal protective equipment, temperature testing, employee sequestration preparation and implementation if deemed necessary. This position is also consistent with the recent Spire settlement which provided for the following deferral: "[n]ew or incremental operating and maintenance expense related to protecting employees and customers – eligible costs are the following: (i) additional cleaning of facilities and vehicle; (ii) personal protective equipement (i.e., masks, gloves, sanitizing sprays)."[73]

f. Lost revenues associated with the reduction of electric usage during the Pandemic? As an alternative, should the Commission order the deferral of pandemic-related lost fixed cost recovery due to the pandemic?

Position: No, the Commission should not allow for the deferral of alleged lost revenues. As the Commission has previously recognized, the deferral of alleged lost revenues is inappropriate. Specifically, the Commission has drawn a distinction between extraordinary costs which definitely exist and lost revenues that never existed.

> In support of recording ungenerated revenue on a deferred basis, the Company urges the Commission to look only at whether the tornado was extraordinary. Staff and OPC argue that the AAO sought would not only allow the recording of an item, it would create the item recorded. Staff and OPC are correct.
>
> Actual expenditures exist in the past, present, or future and represent an exchange of value that the Company must record. Ordinarily, the Company records them currently and, if they are extraordinary, the Company must record them in Account 182.3.
>
> The Company's claim is different. Ungenerated revenue never has existed, never does exist, and never will exist. Revenue not generated, from service

[73] *Id.* at page 1.

> not provided, represents no exchange of value. There is neither revenue nor cost to record, in the current period nor in any other.[74]

Still again, in Case No. ER-2014-0258, the Commission denied recovery of alleged lost revenues associated with an ice storm.[75]

As Mr. Meyer relates, Evergy's request to defer lost revenues is a misplaced effort by Evergy to have ratepayers guarantee a certain level of profits. Recognizing that Evergy has had a positive return on equity at all times since its last rate case, Evergy is recovering all of its "operating expenses, depreciation, other taxes and income taxes."[76] Thus, Evergy is not attempting to recover incremental costs associated with the pandemic, but to restore a level of profits to which it believes it is entitled. The Commission has expressly rejected this notion.

> The risk that Noranda's production would fall and that it would be unable to sell as much electricity as it anticipated was a risk the company's shareholders, who benefit from the profits earned by serving Noranda, should bear. ***Ratepayers are not the insurers of Ameren Missouri's profits and should not have to bear the risk that those profits are not as great as anticipated*** because of a drop in production at Noranda. . . Ameren Missouri experienced more than sufficient earnings to cover its fixed costs during all time periods between the ice storm and this rate case. While not a determinative factor alone in deciding whether to grant recovery of any AAO, this is one of the relevant factors the Commission must consider in setting just and reasonable rates in this case.[77]

Staff agrees that, unlike incremental costs resulting from the pandemic, "lost revenues" should not be deferred.

> [T]here is a clear and fundamental distinction between allowing deferral of incremental costs related to the COVID-19 pandemic and allowing deferral of "lost revenues" associated with COVID-19. There is generally no recognition in the normal ratemaking process for costs associated with unanticipated and

[74] *Report and Order*, Case No. GU-2011-0392, issued January 25, 2012, pages 24-25.
[75] *Report and Order*, Case No. ER-2014-0258, issued April 29, 2015, page 43 ("After considering all relevant factors, the Commission decides that recovery of the amounts deferred under the previously established accounting authority order is not appropriate.").
[76] Exhibit 300, Meyer Rebuttal, page 9.
[77] *Report and Order*, Case No. ER-2014-0258, issued April 29, 2015, page 42-43 (emphasis added).

> unusual extraordinary events such as tornadoes, floods, and major wind and ice storms. That is because the ratemaking process is premised upon allowing recovery from customers of prudently incurred normal and ongoing expenses necessary to provide utility service. When a utility's service territory is affected by a catastrophic event, the utility has the obligation to expend funds necessary to continue to serve customers. Staff has long held that good regulatory policy requires some rate recognition of the prudently incurred out-of-pocket costs incurred by the utility to continue service in the aftermath of an extraordinary event. Permitting deferral of these costs through an issuance of an AAO allows the utility the ability to seek later rate recognition of these costs through an amortization to expense. ***In contrast, there is no "out-of-pocket" expenditure associated with lost revenues from an extraordinary event, just a reduction in the earnings level of the affected utility. Use of the AAO mechanism solely to restore utility earnings to an assumed pre-extraordinary event level is not an appropriate use of deferral authority in Staff's view. Use of the AAO in this manner would improperly serve to facilitate a guarantee that a utility would earn a certain return even in the event of a decline in revenues from customers***.[78]

Demonstrating the virtual unanimity with regards to the deferral of lost revenues, Public Counsel[79] and Sierra Club[80] also recommend that the Commission reject Evergy's request to defer lost revenues. Moreover, the decision to disallow the deferral of lost revenues has recently been embraced by the Indiana Utility Regulatory Commission and other state utility commissions.

> Under the regulatory compact, at a base level, utilities are obligated to provide safe, reliable service and customers are obligated to pay just and reasonable rates

[78] Exhibit 100, Bolin Rebuttal, pages 8-9.

[79] Exhibit 200, Schallenberg Rebuttal, pages 16-17 ("I am opposed to "lost revenues" charges to the AAOs. The Companies tariffs are not based on a "take or pay" provisions that their customers are going to be billed for a certain amount of energy whether they use it or not. . . I am also opposed to tracking lost revenues because Evergy should not be allow profits from sales to customers that never occurred.").

[80] Exhibit 500, Roberto Rebuttal, pages 4-5 ("Lost of unearned revenue resulting from lower than anticipated sales is not an accounting item that can be recorded under either the Uniform System of Accounts or Financial Accounting Standards Board ("FASB"), which govern Evergy's accounting requirements. . . Missouri regulation places the risk of volumetric electricity sales variation squarely with the utility. The Commission authorized Evergy's return on equity under circumstances that included this allocation of risk. If the risk had been allocated to customers, the Commission would have necessarily reduced the return on equity granted to Evergy to account for the reduction in risk to Evergy's investors.").

> for any such service they receive. The balance of this Order seeks to work toward allowing customers to meet their obligation while providing utilities the reasonable relief they need to help such customers do so. However, ***asking customers to go beyond their obligation and pay for service they did not receive is beyond reasonable utility relief based on the facts before us. A utility's customers are not the guarantors of a utility earning its authorized return***. Instead, utilities are given the opportunity to recover their costs and a fair rate of return, which includes a certain level of risk attributable to variable sales. The approvals herein are intended to support the revenue recovery by utilities for the service they have provided pursuant to their approved rate designs by supporting a customer's ability to eventually pay for services received. We decline to move beyond this recovery based upon the facts presented.[81]

Recent settlements approved by the Commission also disallow the deferral / recovery of any lost revenues associated with reduced customer usage from the pandemic.[82]

Besides the blanket opposition that parties have to the deferral of "lost revenues", Staff also filed testimony which casts serious doubts on Evergy's claim of lost revenues. Specifically, Staff pointed out that, while usage dipped temporarily because of the pandemic, usage was up for all the previous months. Therefore, "the monthly differences that exist between the Companies' rate case usage and actual billed usage average out and are similar to or higher than the usage approved in Evergy's last rate cases for all rate classes except for the Large Power class."[83] The fact that the decline was temporary was also admitted in the context of Evergy's August 5 earnings call. "In the earnings call, it was discussed that Evergy's decline in commercial and industrial usage was partly offset by increase in its residential usage. Also in the call, it was

[81] *Phase 1 and Interim Emergency Order of the Commission*, Cause No. 45377 / 45380, issued June 29, 2020, at page 9 (emphasis added).
[82] Spire Settlement, page 6 ("Spire Missouri agrees not to defer into a regulatory asset, lost revenues from reduced customer usage (volumetric charges) due to the pandemic or other lost revenues except as provided in paragraph 2(c) above."). See also, MAWC Settlement, page 3 ("MAWC agrees not to defer lost revenues from reduced customer usage (volumetric charges) due to the pandemic or other lost revenues except as provided in this *NonUnanimous Stipulation and Agreement* in paragraph 4.").
[83] Exhibit 101, Byron Murray Rebuttal, page 5.

indicated that the commercial and industrial usage was only temporarily down in April and May and is already improving."[84]

In addition to the numerous policy reasons dictating that the Commission reject Evergy's request to defer "lost revenues", the Commission should also deny Evergy's request for equitable reasons.[85] As Evergy readily admits, customers in the Evergy service area are suffering as a result of the pandemic.

- Macy's, Kohl's, Best Buy, casinos, and motion picture theaters have closed in March and April;
- Ford Motion Company plant in Claycomo closed its production line on March 20 for two months, reopening on May 18;
- Hospitals are currently open for all procedures, but none are operating at pre-Covid 19 levels.
- Casinos have reopened, but we understand that patronage of those businesses has fallen substantially during the Pandemic.
- Retail stores are also experiencing substantial difficulty during the Pandemic;
- The Kansas City Royals have not played a single game in front of fans.
- Starlight Theater in Swope Park has cancelled its 2020 season of performances.
- The Kansas City Symphony, the Kansas City Ballet, the Lyric Opera of Kansas City, and the Harriman-Jewell series have cancelled all of their performances until January 2021.[86]

Despite its recognition that its customers are suffering the effects of the pandemic, "Evergy believes that it alone should be insulated from any financial impact associated with the pandemic and asks that it be allowed to recover lost revenues / profits."[87] Certainly placing the monopoly utility in a position that it should be insulated from any effects of the Covid pandemic while all other segments of its service area are suffering does not comport with notions of equity. Instead of seeking to charge customers for energy that they did not use, Evergy should be seeking to be a good corporate citizen and shoulder its share of the pandemic effects.

[84] Exhibit 100, Bolin Rebuttal, page 12.
[85] Section 386.510 at least implies that equitable reasons should be considered in Commission proceedings.
[86] Exhibit 6, Ives Direct, pages 7-8.
[87] Exhibit 300, Meyer Rebuttal, page 10.

As previously indicated, Evergy now agrees that, as part of the non-unanimous stipulation, it should not be allowed to defer lost revenues.

> Q. Okay. And do you believe this provision is reasonable?
>
> A. Based upon all the other items that are included in this non-unanimous stipulation, that would be my position, yes.[88]

g. Other incremental costs or other unfavorable financial impacts resulting from the Pandemic not presently identified?

Position: Throughout its application Evergy has asked that the Commission authorize the deferral of specific costs. That said, however, Evergy also asks that the Commission abdicate its authority to Evergy and allow it to defer other incremental costs and financial impacts as it deems appropriate. "This request is simply too expansive and could lead to deferral of costs that are highly objectionable to the parties. AAOs are a special regulatory tool and should be used sparingly in ratemaking."[89] At this point, Evergy is over 6 months [now 9 months] into the pandemic. Given this, Evergy should have a good idea by now. . . of which expenses have increased or suddenly been incurred due to the pandemic."[90]

There is a reasonable alternative to Evergy's request that it be granted unilaterally authority to defer costs as it deems appropriate. "MECG would recommend that if Evergy discovers an expense that it had not requested for deferral, it could meet with the parties to this case to discuss deferral authority. If the parties agree, a Stipulation can be filed with the Commission notifying it of the agreement. If the parties cannot agree on the necessity for

[88] Tr. 163.
[89] *Id.* at page 18.
[90] *Id.* The reference to six months was as of the date that testimony was filed on August 17, 2020.

deferral, Evergy could file with the Commission for special recognition of the new expense deferral and parties would be allowed to file in support / opposition."[91]

h. What pandemic-related savings should be booked as a regulatory liability or included as an offset to the regulatory asset related to the pandemic-financial impacts?

Position: In its Report and Order in Case No. EC-2019-0200, the Commission recognized that an Accounting Authority Order can be used not only for the deferral of costs, but also for the deferral of cost savings. The Western District Court of Appeals agrees with the Commission.

> In its briefing, Evergy emphasizes that, in past cases, AAOs have been employed to protect utilities from the effects of extraordinary expenses or revenue shortfalls. It seemingly argues that AAOs are a "one-way street" which can only be employed to protect a utility's financial interests, not to protect ratepayers from the financial windfall a utility may receive when it experiences extraordinary savings or revenue increases. We see nothing in General Instruction 7 which limits the use of deferral accounting to address only extraordinary costs, but not extraordinary cost savings or revenues. Rather, General Instruction 7 refers generically to extraordinary financial "items" caused by "events and transactions" which are of an "unusual nature and infrequent occurrence." General Instruction 7 does not distinguish between extraordinary "items" which decrease revenue versus those which increase it.[92]

Evergy now recognizes that savings can be deferred within an AAO and asks that it be allowed to not only defer incremental costs, but also to defer cost savings resulting from the pandemic.

> Evergy will also track all offsets to the cost increases it has experienced associated with the COVID-19 pandemic and will reduce the amount of the regulatory asset by any cost reductions. Such offsets will likely include reduction in travel costs, reduction in electricity and other costs at Evergy offices, and any related increase in residential revenues that occurs as a result of more people working from home.[93]

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[91] *Id.*

[92] *Majority Opinion*, Case No. WD83319, issued July 28, 2020, pages 15-16, not yet reported (emphasis added).

[93] *Application of Evergy Metro, Inc. and Evergy Missouri West, Inc. for Accounting Authority Order Related to Covid-19 Costs and Financial Impacts*, Case No. EU-2020-0350, filed May 6, 2020, at page 13.

In its testimony, MECG agreed and asserted that "these costs savings be maintained in a separate regulatory liability so that auditing the savings can be performed."[94] As reflected in the recent Spire Covid-19 AAO settlement, MECG asserts that such savings from reductions in the following expenses should be deferred: (1) travel expenses; (2) training expenses; (3) office supplies; (4) utility service costs; (5) staffing reductions; (6) reduced employee compensation and benefits; (7) taxable net operating loss that is carried back to previous tax years per the CARES Act; and (8) any direct federal or state assistance received related to Covid.[95]

i. Should carrying costs be excluded during the deferral period and be considered for inclusion in rates in Evergy's next general rate case?

Position: In its testimony, MECG and Staff both argued that the issue of carrying costs should be best addressed in Evergy's next general rate case. "MECG asserts that this issue is really a revenue requirement issue and should be decided in the context of a rate case. The Commission has decided issues of carrying costs in rate cases in the past."[96] Similarly, Staff argued that "[i]nclusion of carrying costs in a deferral has rarely been authorized by the Commission. Since the appropriateness of applying carrying costs to deferrals is essentially a ratemaking determination, Staff recommends the Commission wait until Evergy's next general rate case proceeding to decide this issue."[97] In its surrebuttal testimony, Evergy agreed. "I agree that excluding carrying costs from Covid-19 deferrals during the deferral period and leaving the carrying cost issue as one to be addressed in Evergy's next general rate cases is a reasonable resolution of the issue for purposes of this proceeding."[98] This provision was also agreed to in

[94] Exhibit 300, Meyer Rebuttal, page 19.
[95] Spire Settlement at page 3. See also, MAWC Settlement at pages 3-4.
[96] Exhibit 300, Meyer Rebuttal, page 22.
[97] Exhibit 100, Bolin Rebuttal, page 13.
[98] Exhibit 5, Klote Surrebuttal, page 3.

the Spire settlement. "Signatories agree that any party may propose or oppose certain ratemaking treatment of carrying costs related to this Covid-19 AAO in Spire Missouri's next general rate case."[99]

Issue 4: Should any sunset provision include the opportunity for the AAO to be extended?

Position: Yes. It is unreasonable to allow this deferral mechanism to continue for an indeterminate period of time.

AAOs are designed to defer unusual costs. For this reason, the Commission rejected AAOs associated with usual costs like property taxes;[100] cybersecurity costs;[101] PSC assessments;[102] and transmission expenses.[103] Despite this historic position the requested mechanism in this case seeks to defer changes in ordinary costs (i.e., increases in uncollectible expenses and decreases in late payment / reconnection fees). By asking that the AAO be allowed to extend for an unlimited period of time, Evergy effectively seeks to use the pandemic as justification for turning the pandemic AAO into a tracker mechanism for usual costs. In this regard it is important to recognize that the AAO is not only capturing the change in these usual costs associated with the pandemic, but also the changes regardless of the reason.

> I don't see how it is possible to determine whether an uncollectible expense or a waived late payment fee / reconnection fee results from the pandemic or is caused by another event. Therefore, it is inevitable that the AAO deferral will capture

[99] Spire Settlement at pages 2-3. The MAWC goes a step further in that it does not even allow MAWC to request carrying costs in a rate case and expressly disallows any carrying costs. MAWC Settlement at page 3 ("MAWC will not seek carrying costs on the deferred balances in this AAO case or in the Company's currently pending rate proceeding (WR-2020-0344). MAWC will not seek carrying costs in a subsequent rate case for deferred items beyond the true-up date in WR-2020-0344.").

[100] See, Report and Order, Case No. WU-2017-0351, issued December 20, 2017, at page 18. See also, Report and Order, Case No. ER-2014-0370, issued September 2, 2015, at page 56.

[101] See, Report and Order, Case No. ER-2014-0370, issued September 2, 2015, at page 58.

[102] See, Report and Order, Case No. GU-2019-0011, issue March 20, 2019, at page 18.

[103] See, Report and Order, Case No. ER-2014-0370, issued September 2, 2015, at page 54. See also, Report and Order, Case No. ER-2012-0174, issued January 9, 2012, at page 32.

> costs that result for other reasons. In this regard, the deferral is necessarily overly broad, but I don't see any method for segregating the uncollectible expense increase resulting from the pandemic from that which may have occurred for other reasons. . . For this reason it is important, as discussed below, that this AAO have a set date for termination (with an opportunity for it to be renewed). Otherwise, the AAO simply turns into a tracker for an ordinary expense.[104]

For this reason, MECG recommends that the AAO "have a sunset date of February 28, 2021. This is one year from Evergy's request to begin deferring expenses associated with the pandemic."[105] That said, however, MECG recommends that Evergy be allowed to seek Commission approval to extend the AAO if the pandemic conditions still linger at that time.[106]

Except for the sunset date which is one month longer, this provision is largely consistent with the recent Spire settlement which provides that "[a]ll costs and cost reductions will be tracked and deferred separately into a regulatory asset / liability until March 31, 2021. The duration of this time period may be extended or renewed upon agreement of the Parties and subsequent Order of the Commission approving the agreement or by separate Order of the Commission."[107]

Staff agrees with MECG's recommendation:

> Staff recommends Evergy's deferral begin March 1, 2020 and end February 28, 2021. Because AAO deferrals should be strictly limited to the duration of extraordinary event impacts, normally there will be a relatively short period of time in which a utility is allowed to defer costs through an AAO application. However, due to the current uncertain duration of the Covid-19 pandemic, Staff's position is that allowing Evergy to defer Covid-19 pandemic costs for an initial 12-month period is reasonable. If Evergy can demonstrate material continuing financial impact on it related to the Covid-19 pandemic after February 28, 2021, Staff would not be opposed to entering into discussions with Evergy and other parties concerning a possible extension of the deferral at that time, or granting of a new AAO request.[108]

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[104] Exhibit 300, Meyer Rebuttal, page 15.
[105] *Id.* at page 20.
[106] *Id.*
[107] Spire Settlement at pages 3-4. See also, MAWC Settlement at page 4.
[108] Exhibit 100, Bolin Rebuttal, page 6.

Issue 5: If the Commission adopts an AAO for some or all of the costs and revenues associated with the COVID-19, should the Commission order periodic reporting of information associated with the deferral? If so, what information should be reported and how often?

Position: Yes. Given the unusual nature of this deferral, MECG agrees that some level of reporting is necessary. That said, however, MECG takes no position on the specific nature of the information that should be reported. Instead, MECG directs the Commission's attention to the positions advanced by OPC.

Issue 6: Should the Commission adopt the recommendations of NHT related to extension of the moratorium on nonpayment service disconnections, arrearage management programs, long-term payment deferment plans, expansion of the Economic Relief Program, income-eligible energy efficiency plans, suspend credit reporting, suspend disconnection and reconnection fees, or other customer programs?

Position: In its testimony, NHT has presented two different types of proposals. First, NHT "describes several programs for lower income ratepayers that will allow low income customers to pay a reduced bill coincident with their ability to pay."[109] Second, NHT "discusses energy efficiency programs and how those programs should be emphasized for low income customers."[110]

While MECG does not take a position on the legitimacy of the programs advanced by NHT, it does belief that such proposals are beyond the scope of this docket. Specifically, as Mr. Meyer points out that "the application filed by Evergy requests Commission authority to defer to a regulatory asset for potential recovery in future rate case proceedings, all extraordinary costs, and financial impacts incurred as result of the pandemic plus associated carrying charges."[111] Therefore, the scope of this docket should be limited and not include the design of programs.

[109] Exhibit 301, Meyer Surrebuttal, page 6.
[110] *Id.*
[111] *Id.* at page 5.

MECG asserts that these efforts are better addressed in other dockets. First, in regards to the low income proposals, MECG notes that the Commission has opened Docket No. AW-2020-0356. In that case, the Commission is addressing concerns with past due customer balances resulting from the pandemic. Certainly, issues regarding past due balances of low income customers can / should be addressed in that docket. Second, issues regarding energy efficiency programs, including those for low income customers, are best addressed in MEEIA dockets. Interestingly, in the context of Evergy's most recent MEEIA filing, NHT presented many of the same proposals that it is providing in this docket. Therefore, NHT's efforts are largely an attempt to get "another bite at the apple."[112]

Staff agrees completely. "Mr. Colton provides a lot of good information related to the effects of Covid-19 on vulnerable populations. This data and information would be very useful in the Commission's consideration of best practices for recovery of past-due utility customer payments after the Covid-19 Pandemic Emergency in File No AW-2020-0356."[113] "As to Evergy-specific conditions. . . it is my opinion that they are outside the scope of the Commission's consideration of Evergy's AAO application."[114]

Finally, NHT's proposal appears to be unworkable in the context of this case. As Mr. Meyer points out, "I do not see these programs being able to be implemented in a timely manner. . . Implementing these programs and obtaining proper funding may take more time that is proposed for this AAO request."[115]

Issue 7: Should the Commission adopt any of the customer-specific recommendations of OPC including: 1) waiving disconnection and reconnection fees; 2) ceasing full credit reporting; 3) waiving late payment fees and deposits; 4) expanding payment plans to 12

[112] *Id.* at pages 6-7.
[113] Exhibit 103, Dietrich Surrebuttal, page 3.
[114] *Id.*
[115] Exhibit 301, Meyer Surrebuttal, page 7.

months or greater; and 5) establishing an arrearage matching program, dollar-for-dollar on bad debt for eligible customers.

Position: Unlike NHT's positions, which go beyond the scope of this docket, OPC's customer programs appear to be related to the pandemic. As such, while MECG does not take a position on the merits of any specific OPC program, the Commission should consider each of those recommendations carefully.

Issue 8: What, if any, other conditions should the Commission adopt in connection with the AAO?

Position: Given its operations in two states and, within Missouri, as two separate utility, MECG recommended that costs and savings be specifically assigned to utilities where possible. In the absence of a specific assignment, costs should be fairly allocated to utilities consistent with the allocations in Evergy's most recent rate case (ER-2018-0145). In its surrebuttal testimony, Evergy largely agreed that an appropriate assignment / allocation methodology should be implemented. "The Company does agree with Mr. Meyer that following allocation principles are important in the accumulation of costs and the amounts accumulated and deferred if ultimately approved will follow the allocation principles as set forth in the Company's cost allocation manuals."[116]

[116] Exhibit 5, Klote Surrebuttal, page 18.

VI. AUTHORITY TO ATTACH CONDITIONS

At the beginning of the evidentiary hearing in this matter, the Regulatory Law Judge asked parties to brief the Commission's authority to attach conditions to the issuance of an accounting authority order. At the conclusion of the hearing, the Commission clarified this request to primarily involve conditions involving the creation of new customer programs.[117]

As indicated, the Western District Court of Appeals has held that the use of deferral accounting is limited. Specifically, that Court indicated that "[b]ecause rates are set to recover continuing operating expenses plus a reasonable return on investment, ***only an extraordinary event*** should be permitted to adjust the balance to permit costs to be deferred for consideration in a later period."[118] Thus, the Commission is limited to using deferral accounting in instances of an extraordinary event.

That said, however, the Commission is not required to grant an AAO in all instances in which an extraordinary event has occurred. Rather, the Courts have held that the decision as to whether to grant an AAO in response to an extraordinary event is a "matter properly confined to the PSC's expertise."[119] For this reason, the Commission may consider other factors in addition to whether an event is extraordinary including materiality, the reasonableness of rates, and the balancing of interests between ratepayers and utility shareholders. Recognizing then, that the

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[117] Tr. 357-358 ("The question that was posed to the parties at the beginning of the proceeding was to address in briefing the Commission's authority to attach conditions in an AAO order, and I think there should probably be some nuance there because there are all sorts of different kinds of conditions that the Commission might attach in different orders. So I think one of the questions that's posed there is the Commission's authority to attach conditions that essentially create new programs or require certain treatment of customer arrearages or pick up some of the recommendations that were made by some of the parties. So that's where the main question of authority goes.").

[118] *State ex rel. Public Counsel v. Public Service Commission*, 858 S.W.2d 806, 811 (Mo.App. 1993) (emphasis added).

[119] *Kansas City Power & Light Company v. Missouri Public Service Commission*, 509 S.W.3d 757, 770 (Mo.App. 2016).

Commission has discretion to grant an AAO in response to an extraordinary event, the Commission may necessarily attach conditions to its issuance of an AAO.

Importantly, except as otherwise provided by law, the Commission may not insert itself into matters that normally fall within the authority of utility management. Therefore, while the Commission may seek to impose such conditions to the utility's request to defer costs, the utility may simply reject such conditions and forego the requested deferral.

In the case at hand, given its support of the Non-Unanimous Stipulation, MECG does not request that the Commission impose any conditions other than those already agreed to as part of the Non-Unanimous Stipulation. MECG believes that the conditions contained in that Stipulation provide for a proper balancing of interests such that the AAO in this case is appropriate.

VII. POSITION IF PARAGRAPHS 16-18 ARE REMOVED

At the conclusion of the hearing that Regulatory Law Judge asked the parties to address whether their position, with respect to the Non-Unanimous Stipulation, would change if the Commission decided not to include paragraphs 16, 17 and 18.[120] To answer directly, the elimination of paragraphs 16, 17 and 18 (so long as it did not provide for deferral of the $2.2 million charitable contribution made by Evergy) would not affect MECG's support of the stipulation.

Paragraph 16, in large part, is simply a recitation of things that have already occurred.[121] Specifically, paragraph 16 indicates that Evergy has "offered" one- and four-month payment plans in June, July and August. Similarly, paragraph 16 indicates that Evergy "also offered" twelve-month payment plans to residential and small business customers and that the Evergy would "continue to offer those twelve-month payment plans through at least December 31, 2020." The only forward-looking aspect of paragraph 16 is Evergy's willingness to consider "the advisability of extending its offering of twelve-month payment plans to residential and small business customers" and to "evaluate the advisability of offering additional customer assistance programs after December 31, 2020." Since Evergy's willingness to consider additional payment plans to residential and small business customers does not implicate the

[120] Tr. 345 ("So a question that has occurred to the Commission is what the party positions are in regard to the proposed stipulation and the AAO if the provisions in paragraphs 16, 17 and 18, either the Commission were to determine that it didn't have authority to order those provisions in relation to an AAO or if the Commission determined it would be inappropriate to use its discretion to do so. Would that change the parties' position in support of the AAO that is proposed by that stipulation?").

[121] Evergy appears to agree. Tr. 346. ("I would tell you that with respect to paragraph 16, the first part of that paragraph until the second to the last sentence ***simply recites historical information*** and the existence of the cold weather rule which I think does not implicate the Commission's authority in any respect whatsoever.") (emphasis added).

concerns of MECG, as an advocate for large business customers, the elimination of that provision would not affect MECG's support for the stipulation.

Similarly, paragraph 17 is a recitation of contributions that have been made in the past by Evergy in response to the Covid pandemic.[122] The final sentence of this paragraph ("[t]hese contributions are being recorded below the line and the Company will not seek to recover them in rates") appears to be a statement of Evergy's accounting treatment for these contributions. As such, the accounting treatment does not appear to be in the way of a condition in that Evergy is not agreeing to condition its accounting treatment on the issuance of an accounting authority order. To the extent that Evergy views this final sentence as a condition, then MECG asserts that this condition is critical to its willingness to support the stipulation. Otherwise, if paragraph 17 is entirely a recitation of things that have already occurred, then MECG suggests that the elimination of this paragraph would not affect MECG's support for the stipulation.

Finally, paragraph 18 provides three affirmative agreements on Evergy's part. First, Evergy agrees to continue to waive late payment fees for the duration of the AAO. Second, Evergy agrees not to undertake full credit reporting for its customers for the duration of the AAO. Third, Evergy agrees not to charge re-connect fees starting with the effective date of the AAO. Again, since these provisions appear to primarily focus on residential and small commercial customers, they do not implicate the interests of MECG. As such, the inclusion of paragraph 18 is not critical to MECG's support of the stipulation.

While most of paragraphs 16, 17 and 18 are not necessary to maintain MECG's support, MECG notes that the inclusion of such provisions appear to be critical to maintain the broad-based support of all of the Signatories. Currently, the stipulation is supported by the regulated

[122] Specifically, Evergy pledged $2.2 million to help agencies, communities and customers.

utility; Staff; a segment of customers (MECG), and an environmental interest (Sierra Club). Paragraph 21 provides, however, that each of the provisions are critical and that provisions cannot simply be eliminated.

> This Non-Unanimous Stipulation and Agreement has resulted from negotiations and the terms hereof are interdependent. If the Commission does not approve this Non-Unanimous Stipulation and Agreement in total or approves it with modifications or conditions to which a Signatory objects, then this Non-Unanimous Stipulation and Agreement shall be void and no Signatory shall be bound by any of its provisions.[123]

Thus, in order to maintain the broad-based support for the Stipulation, MECG encourages the Commission not to make non-critical changes to the Stipulation.

[123] Exhibit 1, Non-Unanimous Stipulation, paragraph 21.

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ATTORNEY FOR THE MIDWEST ENERGY CONSUMERS' GROUP

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was electronically served this 3rd day of December, 2020**,** on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ David L. Woodsmall