

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

|  |   |                         |
|--|---|-------------------------|
| In the Matter of Evergy Metro, Inc. d/b/a Evergy | ) |                         |
| Missouri Metro for Authority to Implement Rate   | ) | File No. ER-2022-0025   |
| Adjustments Required by 20 CSR 4240-20.090(8)    | ) | Tariff No. JE-2022-0024 |
| and the Company’s Approved Fuel and              | ) |                         |
| Purchased Power Cost Recovery Mechanism          | ) |                         |

**INITIAL BRIEF OF THE MIDWEST ENERGY CONSUMERS GROUP**

**I. FACTS**

On July 30, 2021, Evergy Metro, Inc. (“Evergy”) filed a proposed rate sheet to adjust rates related to the Company’s fuel adjustment clause. That rate sheet reflected Evergy’s fuel and purchased power costs for the 12<sup>th</sup> Accumulation Period (January 1, 2021 through June 30, 2021) which included extraordinary costs / revenues incurred during the February 2021 cold weather event known as Winter Storm Uri.<sup>1</sup>

In the tariff filing Evergy proposed an adjustment by which it would defer any extraordinary costs and revenues associated with Winter Storm Uri.<sup>2</sup> Specifically, Evergy filed Case No. EU-2021-0283 to defer the extraordinary costs and revenues associated with the February 2021 winter storm.<sup>3</sup> Thus, if deferred, the FAC adjustment in this case would be reflective of normal operations (i.e., without Winter Storm Uri effects).

On August 27, 2021, Staff filed its recommendation to reject Evergy’s FAC tariff adjustment. Specifically, Staff asserted that, while the Commission’s FAC rule (4 CSR 4240-20.090(8)(A)2.A.XI) allows for the deferral of “extraordinary costs”, it does not allow for the deferral of “extraordinary revenues”. Therefore, while all parties agree that extraordinary costs

---

<sup>1</sup> Joint Stipulation of Facts, paragraphs 2 and 3.

<sup>2</sup> Revenues and costs are generated as a result of the fact that Evergy sells and buys its energy generation into the SPP Integrated Marketplace. To the extent that Evergy is able to sell its generation into the wholesale market at a cost that exceeds its actual cost of generation then revenues are generated. Thus, the revenues that are generated during the February 2021 winter storm are then considered to be “extraordinary revenues.”

<sup>3</sup> Joint Stipulation of Facts, paragraphs 4 and 5.

should be deferred, Staff believes that extraordinary revenues should be treated in the fuel adjustment clause.

Given the disagreement as to whether the Commission’s FAC allowed for the deferral of “extraordinary revenues”, the parties agreed that Evergy should file an interim FAC tariff sheet. Consistent with Staff’s position, that interim tariff sheet did not include either the extraordinary costs or the disputed amount associated with the extraordinary revenues incurred during February 2021.<sup>4</sup>

In a filing on October 4, 2021, the parties agreed that the sole issue remaining for decision in this case is whether “4 CSR 4240-20.090(8)(A)2.A.XI allows the deferral of extraordinary revenues?”<sup>5</sup> If the Commission finds that this rule allows for the deferral of extraordinary revenues then those revenues will be deferred for consideration, with the extraordinary costs, in the pending AAO docket (Case No. EU-2021-0283). On the other hand, if the Commission finds that the rule precludes the deferral of such revenues, then those revenues will be considered in the Evergy FAC, with the extraordinary costs to be treated separately in Case No. EU-2021-0283.

## **II. IMPLICATIONS OF THE COMMISSION DECISION**

At first blush, there is an appeal to Staff’s position that that extraordinary revenues generated during the February 2021 winter storm cannot be deferred. Such a finding would allow these extraordinary revenues to flow through to customers through the FAC in an expedited fashion. That said, however, such a finding would possibly result in Evergy being allowed to keep 5% of these windfall revenues.<sup>6</sup> This is due to the fact that Evergy’s fuel adjustment clause includes a sharing mechanism by which Evergy must incur 5% of any increase in energy costs /

---

<sup>4</sup> *Id.* at paragraphs 7 and 8.

<sup>5</sup> See, Evergy Missouri Metro Response to Order Directing Filing, Section entitled Joint Motion to Establish a Procedural Schedule, filed October 4, 2021.

<sup>6</sup> The extraordinary revenues are significant. Specifically, while extraordinary costs (fuel and purchased power costs) increased by \$164.9 million, extraordinary revenues associated with selling generation into SPP increased by \$200.8 million. Therefore, as stipulated in the Joint Filing, the Evergy Metro profits from the February 2021 extraordinary event was \$32.0 million for the Missouri jurisdiction. (Joint Stipulation of Facts, paragraph 5).

decrease in revenues, but is allowed to keep 5% of any increase in revenues / decrease in costs.<sup>7</sup> It would be unconscionable to allow Evergy to keep 5% of the extraordinary revenues from the February winter storm at the same time that ratepayers are expected to pay 100% of the extraordinary losses associated with the same event. Instead, if ratepayers are expected to pay 100% of the costs associated with shortfalls incurred during the February winter storm, ratepayers should be allowed to realize all of the revenues associated with that same event.<sup>8</sup> This equitable solution is only ensured if the windfall revenues are deferred out of the FAC (which includes the 5% sharing mechanism) and into the next rate case.

MECG recognizes that the benefit of deferring the extraordinary revenues to the upcoming rate case is diminished slightly when one realizes that it won't be returned to ratepayers until the next rate case. That delay is slight, however, when one realizes that Evergy has already indicated its intention to file a rate case in January 2022.<sup>9</sup> That case will be concluded by December 2022. As such, the delay associated with deferring those extraordinary revenues until the next rate case is minimal and certainly offset by the possibility that Evergy would be permitted to keep 5% of the extraordinary revenues through the FAC.

### **III. LEGAL ISSUES**

Does 4 CSR 4240-20.090(8)(A)2.A.XI allow the deferral of extraordinary revenues?

Position: Yes. Section 4 CSR 4240-20.090(8)(A)2.A.XI should not be interpreted in a vacuum. Rather it should be interpreted in the context of its enabling statute as well as the remainder of the Commission's fuel adjustment clause rule. Further, the Commission should avail itself of the guidance provided by previous Commission orders interpreting the Evergy fuel adjustment clause. Given these considerations the Commission should defer the Winter Storm Uri costs as well as

---

<sup>7</sup> See, *Report and Order*, Case No. ER-2014-0371, issued May 3, 2017, at pages 28-29.

<sup>8</sup> This is not meant to imply that ratepayers should be expected to pay 100% of all costs only that costs and revenues should be treated in a similar fashion.

<sup>9</sup> See, Case No. ER-2022-0129

revenues until the next Evergy rate case.

Discussion: As an initial matter, there is no question that the Commission has the legal authority to defer revenues resulting from an extraordinary event. Recently the Commission was asked to consider a consumer request to defer the savings associated with the retirement of an Evergy West generating unit. There the Commission held that the Uniform System of Accounts, not only allows for the deferral of extraordinary costs to a regulatory asset, but also the deferral of extraordinary revenues / savings to a regulatory liability.<sup>10</sup>

In its decision on Evergy's appeal from the Commission's order, the Missouri Court of Appeals agreed.

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.**<sup>11</sup>

Thus, the Commission clearly has general authority to defer extraordinary revenues.

Recognizing the Commission's authority to defer extraordinary revenues, the issue is reduced to whether the Commission is precluded from deferring the extraordinary revenues associated with Winter Storm Uri by either the enabling FAC statute or the regulations promulgated in light of that statute.

Section 386.266.1 provides the Commission with legal authority to implement a fuel adjustment clause. Interestingly, while that statute allows for the consideration of changes in a

---

<sup>10</sup> See, *Report and Order*, Case No. EC-2019-0199, issued October 17, 2019.

<sup>11</sup> *Office of Public Counsel v. Evergy Missouri West*, 609 S.W.3d 857, 868 (Mo.App.W.D. 2020) (emphasis added).

utility's "fuel and purchased power costs", it does not address changes in the associated revenues.

Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect **increases and decreases in prudently incurred fuel and purchased-power costs**, including transportation.<sup>12</sup>

Despite the statute only addressing changes in fuel costs the Commission subsequently extended its fuel adjustment rules to include associated revenues. Repeatedly throughout the FAC rule the Commission recognized the linkage between fuel and purchased power costs and the associated revenues.

Accumulation period means the time period set by the commission in the general rate proceeding over which historical fuel and purchased power costs **and fuel-related revenues** are accumulated for purposes of determining the actual net energy costs (ANEC).<sup>13</sup>

Actual net energy costs (ANEC) means prudently incurred fuel and purchased power costs **net of fuel-related revenues** of a rate adjustment mechanism (RAM) during the accumulation period.<sup>14</sup>

Base energy costs means the fuel and purchased power costs **net of fuel-related revenues** determined by the commission to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case.<sup>15</sup>

In fact, the Commission has previously recognized that, in the context of the fuel adjustment clause, the consideration of costs and revenues are necessarily joined. "KCPL [now known as Evergy Metro] sells and purchases power "24 hours a day, 7 days a week." This demonstrates how all of the SPP IM costs and revenues are **"inextricably joined"** to permit purchase power and sales to be reflected in the FAC."<sup>16</sup> Inextricably is defined as "in a way that is impossible to disentangle or separate."

Given that "SPP IM costs and revenues are inextricably joined" and impossible to separate

---

<sup>12</sup> Section 386.266.1 (emphasis added).

<sup>13</sup> 4 CSR 4240-20.090(1)(A) (emphasis added).

<sup>14</sup> 4 CSR 4240-20.090(1)(B) (emphasis added).

<sup>15</sup> 4 CSR 4240-20.090(1)(C) (emphasis added).

<sup>16</sup> *Report and Order*, Case No. ER-2016-0285, issued May 3, 2017, pages 26-27 (emphasis added).

the Commission should be hesitant to accept Staff's recommendation to separate the extraordinary revenues associated with Winter Storm Uri from the extraordinary costs.<sup>17</sup> Recognizing that the revenues and costs are inextricably joined, the Commission should defer both the Winter Storm Uri costs and revenues until the next Evergy rate case for consideration in that case.<sup>18</sup>

Respectfully submitted,

/s/ David Woodsmall  
David L. Woodsmall, MBE #40747  
308 East High Street, Suite 204  
Jefferson City, Missouri 65101  
(573) 797-0005  
[david.woodsmall@woodsmalllaw.com](mailto:david.woodsmall@woodsmalllaw.com)

**ATTORNEY FOR THE MIDWEST  
ENERGY CONSUMERS GROUP**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

/s/ David Woodsmall  
David L. Woodsmall

Dated: December 22, 2021

---

<sup>17</sup> Even if the Commission declines to interpret 4 CSR 4240-20.090(8)(A)(2).A.XI in a vacuum and without regard to the implementing statute or other provisions in the FAC statute, the Commission has the power to waive this specific provision such that it can defer not only extraordinary costs, but also extraordinary revenues. Given the nature of the event which resulted in these extraordinary costs and revenues, MECG would suggest that such a waiver is warranted. "Waiver of Provisions of this Rule. Provisions of this rule may be waived by the commission for good cause." 4 CSR 4240-20.090(22).

<sup>18</sup> In the AAO case Evergy asks to defer the extraordinary costs and revenues until the next FAC accumulation period. This issue will be addressed in more detail in the AAO case, but concerns arise with such a proposal in that it could lead to Evergy again being allowed to keep 5% of the extraordinary profits (revenues less costs) associated with the February winter storm.