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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: ER-2022-0130

REBUTTAL TESTIMONY

OF

LARRY KENNEDY

ON BEHALF OF

EVERGY MISSOURI WEST, INC.

**Kansas City, Missouri
July 2022**

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**REBUTTAL TESTIMONY
OF**

LARRY KENNEDY

**Case No. ER-2022-0129 / 0130
I. INTRODUCTION**

1

2 **Q: Please state your name and business address.**

3 A: My name is Larry Kennedy. My business address is 200 Rivercrest Drive SE, Suite 277,
4 Calgary, Alberta, T2C 2X5.

5 **Q: Are you the same Larry Kennedy who submitted direct testimony in this docket on**
6 **January 7, 2022?**

7 A: Yes.

8 **Q: On whose behalf are you submitting this Rebuttal Testimony?**

9 A: I am submitting this Rebuttal Testimony to the Missouri Public Service Commission on
10 behalf of Evergy Missouri West, Inc., d/b/a Evergy Missouri West (“Evergy Missouri
11 West,” “EMW,” or “Company”).

12 **Q: What is the purpose of your Testimony?**

13 A: The purpose of my Rebuttal Testimony is to respond to the direct testimony of Commission
14 Staff (“Staff”) witness Keith Majors, Office of the Public Counsel (“OPC”) witness Geoff
15 Marke, and Midwest Energy Consumers Group (“MECG”) witness Greg Meyer regarding
16 the Company’s decision to retire in November 2018 the Sibley coal-fired generating
17 station, specifically its Unit 3 (“Sibley”).

18 **Q: How is the remainder of your Rebuttal Testimony organized?**

19 A: My testimony is organized as follows:

- 1 1. Section 2 provides an update to my Direct Testimony regarding the
2 prevalence of coal-fired electric generation plants retirements, and
3 examples of the ratemaking treatment adopted by state commissions.
- 4 2. Section 3 addresses the regulatory standard for prudence and responds
5 specifically to OPC Witness Geoff Marke’s testimony arguing that it was
6 imprudent to retire Sibley just a few months ahead of the dates as published
7 in most recent Evergy IRP and prior announcements.
- 8 3. Section 4 responds to the recommendations of Staff Witness Keith Majors.
9 Both the adjustments made by Mr. Majors and the removal of the return on
10 the unrecovered investment are addressed.
- 11 4. Section 5 responds to the testimony of MECG Witness Greg Meyer that the
12 value of the unrecovered investment in Sibley is understated.

13 II. RETIREMENTS OF COAL FIRED GENERATION

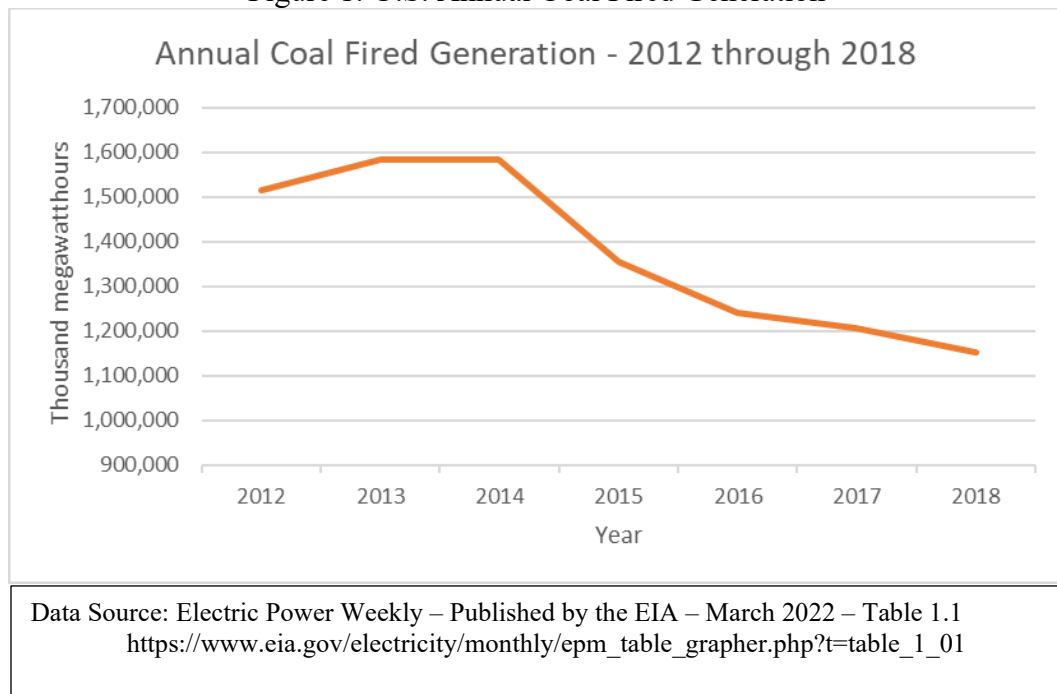
14 **Q: The testimony of the three witnesses identified above indicate that any return on the**
15 **unrecovered investment in Sibley from Evergy Missouri West’s customers should not**
16 **be allowed. Please provide an overview of national trends on the retirement of coal**
17 **plants as a backdrop to the Company’s decision to retire Sibley.**

18 **A:** The Company’s decision to retire Sibley station is consistent with nationwide trends. As I
19 discussed in my Direct Testimony, approximately 119 GW of coal fired capacity is
20 expected to be retired over the 2010 to 2025 time period. In Missouri alone, at least six
21 more coal plants, in addition to Sibley, are expected to be retired by 2028.

22 Clean energy policies, with a growing focus on overall decarbonization of the
23 electric power sector, have contributed to this trend. The majority of states have either a

1 clean energy standard or goal. Decarbonization objectives or requirements have
2 contributed to, many regulated utilities across the nation determining that the continued
3 use of coal fired generation is no longer economic and, as a result, retiring plants early.
4 These decisions have resulted in the dramatic decrease in coal-fired generation as shown
5 in Figure 1, below. I have only presented this chart through 2018, the retirement date of
6 the last Sibley generating unit, but the trend forward has definitely maintained a similar
7 trajectory.

8 Figure 1: U.S. Annual Coal Fired Generation



9
10
11
12 **Q: Given these trends and the analysis conducted by the Company, was the decision to**
13 **retire Sibley imprudent ?**

14 **A:** No, it was not. The decision was part of a larger local and nationwide trend and is entirely
15 consistent with the range of behavior of other electric utilities across the nation. At the
16 time of the decision to retire Sibley, a dramatic drop in coal-fired generation was continuing

1 and was expected to continue.¹ As discussed by Company witness Kayla Messamore, the
2 Company's integrated resource planning ("IRP") process clearly demonstrated that retiring
3 Sibley was the least cost option for Evergy Missouri West's customers. The decision to
4 retire Sibley was prudent based on the facts and information available to management at
5 the time the decision was made.

6 **Q: How have state commissions addressed the accelerated retirement of coal-fired**
7 **generation from a ratemaking perspective?**

8 A: There has been an increasing trend of state commissions approving the recovery of
9 undepreciated original investment in coal fired generation plants as well as a return on
10 undepreciated investment. The methods of cost recovery that have been approved are
11 amortization of a regulatory asset, securitization, or through depreciation adjustments in
12 accordance with traditional mass accounting and retirement practices.²

13 **Q: Please provide an example of the amortization of a regulatory asset to provide for the**
14 **recovery of and on the undepreciated investment in a plant that was retired early**
15 **similar to the Company's proposal for Sibley.**

16 A: On September 2, 2015 East Kentucky Power Cooperative ("EKPC") filed an application
17 before the Kentucky Public Service Commission ("Kentucky PSC") in Case No. 2015-
18 00302, seeking authorization to establish a regulatory asset for the undepreciated plant in
19 service balance of the William C. Dale Generation Station ("Dale Station"), due to the early
20 retirement of the Dale Station. In a decision dated February 11, 2016, the Kentucky PSC
21 ordered that EKPC is authorized to establish a regulatory asset for the estimated

¹ Kennedy Direct Testimony at 8 – 10.

² Accelerated depreciation is only relevant and available before a plant is retired.

1 undepreciated plant in service balance (separating two specific environmental projects into
2 a separate authorized regulatory asset). The Order also authorized EKPC to record a return
3 on the unamortized balances. The regulatory assets were approved for accounting purposes
4 only, with the regulatory disposition of the balances recorded into the regulatory assets
5 being subject to a future regulatory proceeding.

6 On April 21, 2021, EKPC filed an application before the Kentucky PSC (Case No.
7 2021-00103) for approval of the above regulatory assets to be amortized into and recovered
8 through future revenue requirements. With some minor adjustments, the Kentucky PSC
9 approved the amortization of the regulatory assets related to the undepreciated plant
10 balances into the revenue requirement over a period of ten years. Additionally, the
11 Commission approved the amortization of the two environmental projects into the revenue
12 requirement over a two-year period. No adjustments were made to either of the regulatory
13 assets to remove the return on the undepreciated investment in those assets.

14 **Q: Based on your review of industry trends and your direct experience, is the Company's**
15 **proposal to recover its undepreciated investment in Sibley, including a return on that**
16 **investment, appropriate?**

17 A: Yes, it is. The Company made a prudent decision to construct Sibley which then provided
18 service to customers since the 1960s. The Company then made a prudent decision to retire
19 Sibley after approximately 60 years of operation based on the economics of the plant and
20 recognizing the importance of decarbonizing its generation portfolio. The Company
21 should not be penalized for making these prudent decisions by withholding the return of
22 and the return on the investments it made on behalf of its customers.

1 It is important to recognize that prudence relates to actions and decisions. The decision or
2 action that led to a cost is what should be assessed, not how the decisions turned out.
3 Hindsight, information that was not known or reasonably knowable at the time of the
4 decision being made, including later information about “how things turned out” are not
5 relevant to evaluating the prudence of a decision. Finally, reasonable parties can differ.
6 There is a range of reasonable actions and decisions that are prudent, and a decision can
7 only be labelled as imprudent if it can be shown that it was outside the bounds of what a
8 reasonable person would have done.

9 This is the prudence standard adopted in national precedent. For example, in 1935
10 Supreme Court Justice Benjamin N. Cardozo stated in West Ohio Gas Co. v. Public Util.
11 Comm’n of Ohio, 294 U.S. 62, 72 (1935):

12 Good faith is to be presumed on the part of managers of a business. ... In
13 the absence of a showing of inefficiency or improvidence, a court will not
14 substitute its judgment for theirs as to the measure of a prudent outlay.

15 In New England Power Co., 31 FERC ¶ 61,047 (1985) the Federal Energy Regulatory
16 Commission (“FERC”) offered its view of the prudent investment test:

17 We note that while in hindsight it may be clear that a management decision
18 was wrong, our task is to review the prudence of the utility’s actions and
19 the cost resulting therefrom based on the particular circumstances existing
20 either at the time the challenged costs were actually incurred, or the time
21 the utility became committed to incur those expenses.

22 The National Regulatory Research Institute (“NRRI”), the research arm of the National
23 Association of Regulatory Utility Commissioners (“NARUC”), advocated for similar
24 principles including the following four guidelines:

- 25 ■ “... a presumption that the investment decisions of the utilities are prudent
- 26 ...”
- 27 ■ “... the standard of reasonableness under the circumstances ...”

- 1 ▪ “... a proscription against the use of hindsight in determining prudence
- 2 ...”
- 3 ▪ “... determine prudence in a retrospective, factual inquiry. Testimony
- 4 must present facts, not merely opinion, about the elements that did or
- 5 could have entered into the decision at the time.”⁵

6 Further, as discussed in my Direct Testimony, when considering the distinction between
7 the prudence of a retirement decision for rate recovery purposes and accounting deferral
8 issues, the FERC guidance on anticipation of retirement, the guidance of NARUC
9 regarding plant retirements, and authoritative textbooks on this topic are relevant in
10 assessing the prudence of the Company’s decision to retire Sibley.

11 Finally, if after applying the prudence standard an action is ruled imprudent, the
12 next steps for the regulator are to: (1) define the range of reasonable behavior; (2)
13 consider what the costs would have been if a minimally prudent course of action had
14 been followed; and (3) disallow only the amount of costs that are above those which
15 would have been produced by a minimally prudent level of decision making.

16 *No prudence standard* *was considered by Dr. Marke.* He simply asserts that
17 retiring Sibley was imprudent without any regard for the prudence standard. He goes on
18 to recommend complete disallowance of costs with no regard for the range of reasonable
19 behavior and what would have been “minimally prudent.”

⁵ National Regulatory Research Institute, The Prudent Investment Test in the 1980s (April 1985).

1 **Q: Do Dr. Marke’s arguments that it was imprudent for EMW to retire Sibley satisfy**
2 **the prudence standard?**

3 A: No, they do not. The Sibley retirement cannot be considered imprudent simply because
4 the plant’s depreciable life extended beyond its early retirement date. By that rationale,
5 there is virtually no circumstance – economic, environmental, operational - where a plant
6 should be retired before the end of its depreciable life as long as capital improvements have
7 continued to be made to the plant during operations. That is simply not reasonable. The
8 impact of the extraordinary Winter Storm Uri on the Company’s costs in February 2021 –
9 over two years after the retirement of Sibley in November 2018 – is the definition of
10 hindsight review and completely violates the prudence standard. As discussed by Ms.
11 Messamore, IRP analyses clearly showed that retiring Sibley was the least cost plan.
12 Please see the Rebuttal Testimony of Ms. Messamore and Mr. Ives for additional
13 discussion of Dr. Marke’s misplaced “reasons.”

14 **Q: You respond to Dr. Marke’s testimony that “absent government-sanctioned**
15 **intervention or a categorical loss in load,” a regulated asset should not be**
16 **“stranded”?**⁶

17 A: Dr. Marke’s testimony is essentially that there are no facts or circumstances other than
18 government intervention or a “death spiral” where the decision to retire a plant early would
19 be prudent. By that rationale, absent his limited circumstances, Dr. Marke would have a
20 utility operate a plant potentially for decades with no regard for the facts and circumstances
21 of its economics, environmental attributes, and/or operational performance. This is simply
22 not reasonable and is clearly contrary to well-established prudence standards. The

⁶ Direct Testimony of Geoff Marke at 8-9.

1 Company did not decide to voluntarily strand an asset, as Dr. Marke asserts. Rather, EMW
2 decided to retire an uneconomic coal plant after much analysis based on the facts and
3 circumstances known or knowable at that time. This decision was founded on analyses
4 regarding the resource plan that best met the objectives of reliability, affordability and
5 environmental stewardship. The Company’s decision was also consistent with the larger
6 industry trend in the declining reliance on coal-fired generation and retirement of coal
7 plants in Missouri and nationwide. Dr. Marke’s “stranded asset” arguments would prevent
8 a utility from recovering the unrecovered costs of virtually every coal plant that was retired
9 before the end of its depreciable life. Accepting such a radical argument would necessarily
10 require increased depreciation rates through the shortening of the economic lives of such
11 plants to remove this risk of non-recovery and a corresponding burden on utility customers.

12 **Q: Please respond to Dr. Marke’s recommendation that the return on and of Sibley’s net**
13 **book balances should be denied by the Commission and the Company’s shareholders**
14 **should “bear the consequences” of the decision to retire the plant.⁷**

15 A: Under traditional cost-based ratemaking, a utility is permitted to include prudently-
16 incurred costs in the revenue requirement used to set its rates. Dr. Marke has not
17 demonstrated that the Company’s decision to retire Sibley was imprudent. In fact, he has
18 not even attempted to analyze the decision under the prudence standards utilized by this
19 Commission. There is no basis for his recommendation for a total remaining cost
20 disallowance.

21 In response to Dr. Marke’s testimony about competitive markets as a justification
22 for his recommended disallowance, Evergy Missouri West is a regulated utility with an

⁷ Direct Testimony of Geoff Marke, at 13-14.

1 obligation to serve providing its customers with an essential service at regulated rates.
2 EMW does not manufacture and sell light duty pickup trucks at whatever price the market
3 will bear, which is the example Dr. Marke offers at page 12 of his Direct Testimony to
4 justify his proposed disallowance. What Dr. Marke characterizes as a “feedback loop”
5 intended to act as an “inducement to operate efficiently” is nothing more than an attempt
6 to penalize the Company for making a prudent decision on behalf of its customers to retire
7 Sibley. His view, which calls for a “taking” of EMW’s property without just compensation,
8 is not appropriate under a cost-based regulatory regime with the well-established standard
9 for cost recovery being the prudence standard.

10 IV. REBUTTAL TO STAFF WITNESS KEITH MAJORS

11 **Q: At page 14 of Mr. Majors’ Direct Testimony, he recommends that the net book value**
12 **of Sibley be offset by the deferred depreciation expense and the AAO, which includes**
13 **the offset of all of the return on the undepreciated investment as of the retirement**
14 **date and the labor and non-labor NFOM (non-fuel operating and maintenance)**
15 **expense. Do you agree?**

16 **A:** No. First, the Company has already agreed to offset the deferred depreciation to the plant
17 reserve, and to return to customers the amounts collected since the last base rate case for
18 labor and non-labor NFOM costs that were not incurred after the retirement of Sibley.
19 This would occur over a four-year period consistent with the period over which the
20 amounts were collected from customers. While I agree that the labor and non-labor NFOM
21 costs should be refunded over a four-year period, I disagree with the recommendation to
22 penalize the Company for making a prudent retirement decision by denying any return on
23 the undepreciated investment. The Company has established the prudence of the decision

1 to retire Sibley and has demonstrated that the decision is consistent with well-established
2 prudence standards that have been applied by the Commission.

3 **Q: Why is the return on the Company’s undepreciated investment in Sibley reasonable?**

4 A: The retirement of Sibley was a prudent decision that was made after consideration of a
5 variety of factors including current and projected economic costs, technological advances,
6 changes in the social attitudes of customers, and other economic and policy considerations.
7 Mr. Majors’ testimony that shareholders should bear the risk of early plant retirements and
8 that the removal of the return on investment is an appropriate “sharing mechanism”
9 between Evergy Missouri West and its customers ignores the fact that the retirement of the
10 Sibley plant was prudent. Like OPC’s Dr. Marke, Mr. Majors fails to apply the standard
11 of prudence.

12 **Q: Mr. Majors suggests that: “As a general rule in Missouri, recovery of plant assets that
13 are not ‘used and useful’ in rates has not been allowed” What is your response?**

14 A: Missouri, like most regulatory jurisdictions, treats the retirement of assets in accordance
15 with normal regulatory accounting procedures. Such regulatory accounting procedures
16 prescribe that the full original cost of investment should be credited to the plant in service
17 account and be debited to the accumulated depreciation account⁸. This practice recognizes
18 that asset retirements follow an expected retirement dispersion pattern with some
19 components retiring prior to the estimated life and others lasting longer than the estimated
20 life. I note that the Sibley plant was constructed in the 1960’s and therefore the original
21 installation costs have lasted for likely longer than the originally estimated life. Therefore,

⁸ FERC Part 101, Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act,, Electric Plant Instructions, Balance Sheet Accounts, Account 110 (C).

1 these assets have lived or have exceeded most of their estimated lives. Generally, the net
2 book value of the Sibley plant as of the date of retirement related to the installation of
3 scrubbers over the period of 2005 through 2009 which were required for the continued
4 operation of the plant and have provided substantial used and useful service to customers.

5 **Q: Please outline the specific treatment that you recommend with regard to the**
6 **retirement of the Sibley plant and disposition of the AAO.**

7 A: I agree with Mr. Majors that the \$41.7 million of labor and non-labor NFOM costs should
8 be refunded, as discussed in my Direct Testimony. However, in contrast to the immediate
9 refund of these amounts as recommended by Mr. Majors, I recommend a four-year refund
10 period, as this period would align with the four-year period over which the funds were
11 collected.

12 I also agree with Mr. Majors that deferred accumulated depreciation should be
13 transferred back into the accumulated depreciation account, which the Company has
14 already reflected this in its direct case. Any net book value remaining should be recovered
15 through future depreciation periods.

16 However, I disagree with Mr. Majors that the net book value (“NBV”) should be
17 reduced by the regulatory liabilities established in response to the Sibley AAO complaint
18 case, particularly the \$49.6 million of return on investment that has been deferred in the
19 AAO. The return on this investment is supported by the Company’s demonstration that it
20 considered and met the criteria of the well-established prudence standards. The return on
21 investment should not be subjected to the same refund as the labor and non-labor NFOM
22 deferred costs.

1 In summary, I recommend that the NBV of \$145.2 million be returned to rate base
2 and amortized over the next 20 years. The net book value of the Sibley plant, after
3 adjusting for the depreciation expense recovered from 2019 through 2022, will be \$103.7
4 million. Following these adjustments, the deferred operating costs of \$41.7 million will be
5 refunded over the next four years, and the appropriate remaining net book value of \$103.7
6 million will be amortized into the revenue requirement over the next 20 years. This 20-
7 year amortization of the NBV will provide a return on the undepreciated value over this
8 same period.

9 **V. REBUTTAL TO MECG WITNESS GREG MEYER**

10 **Q: Mr. Meyer testifies in his Direct Testimony at page 10 that the net book value of the**
11 **Sibley Plant has been significantly understated. Do you agree?**

12 A: No. I agree with the procedure used by Mr. Spanos in the calculation of the NBV for the
13 Sibley. I understand that Mr. Spanos is providing rebuttal testimony on this issue.

14 **Q: Mr. Meyer states that “To require ratepayers to continue to provide a profit return**
15 **on plants that are not used and useful is wrong.” Do you agree?**

16 A: No. As discussed in the Rebuttal Testimony in response to Mr. Majors, the standard
17 regulatory accounting practices prescribe that in the circumstances of a prudent and
18 planned retirement, the total original cost of the investment should be credited to the asset
19 account and the same amount should be debited to the accumulated depreciation account.
20 Only in the circumstance of an imprudent retirement decision would a reduced return on
21 investment be considered. The Company has met its burden under the prudence standard
22 while the other parties in this case have chosen to provide unsupported arguments for
23 disallowance that ignore the prudence standard.

1 **Q: Did Mr. Meyer provide any discussion on the prudence of the decision to retire**
2 **Sibley?**

3 A: No. Mr. Meyer, in line with Dr. Marke and Mr. Majors, simply argues that the Company
4 was imprudent with no consideration of the prudence standard, or any analysis of the facts
5 and circumstances considered by EMW at the time it decided to retire the plant.

6 **Q: Do you believe that the scrubbers and other environmental equipment that was**
7 **installed over the last 20 years to permit the continued operation of Sibley have lived**
8 **their expected lives?**

9 A: Yes. At the time the scrubbers and other equipment was installed, the life of that
10 investment was set to match the estimated remaining life of the plant. As such, the
11 estimated life of the scrubber equipment specifically installed to meet new environmental
12 mandates, was always anticipated to have a remaining life equal to the life of the plant. In
13 other words, the scrubbers and other environmental equipment cannot have a life longer
14 than the generating plant to which they are attached. Taking a simple example, if the engine
15 in a car is replaced half-way through the total life of the vehicle, the estimated life of that
16 replacement engine is equal to the remaining life of the vehicle.

17 The scrubber equipment added to Sibley provided used and useful service over
18 the remaining operating period of the plant. To my knowledge there is no evidence
19 disputing the prudence of the installation of the scrubber equipment. Therefore, it is
20 reasonable that the Company be allowed the full return of and return on this investment.

1 **Q: Please summarize your key conclusions in response to Staff witness Keith Majors,**
2 **OPC witness Geoff Marke and MECCG witness Greg Meyer regarding Sibley station.**

3 A: In contrast to the extensive direct testimony that I provided regarding the prudence of the
4 decision to retire Sibley Unit 3 based on long standing Missouri and national regulatory
5 standards, the testimony of Mr. Majors, Dr. Marke, and Mr. Meyer ignored any discussion
6 of the prudence standard. Even worse, Dr. Marke leaps from an unsubstantiated and broad
7 argument that the decision to retire the plant after approximately 60 years of used and
8 useful service were not prudent to recommending a retroactive “punishment” of EMW.
9 Dr. Marke completely by-passes the standard requirement that a regulatory commission
10 must first determine whether the decision to retire was prudent. If the decision was not
11 prudent, then the Commission must determine what the minimally prudent decision would
12 have been and disallow only those costs in excess of the minimally prudent action. Dr.
13 Marke ignores these important steps in his quest to punish EMW.

14 Based on my 40 plus years of regulatory experience, I believe the retirement of
15 Sibley met all of the standards and requirements of a prudent decision based on the facts
16 and circumstances existing at the time of the decision. I also note that the retirement
17 decision is consistent with the decisions to retire aging coal-fired generating units that were
18 made at the same time by many electric utilities across the nation.

19 Refunding the labor and non-labor NFOM costs that have accumulated over the last
20 four years over the next four-year period is fair and reasonable. Finally, given that the
21 retirement of Sibley was a reasonable and prudent decision, EMW should be allowed a
22 return of and a return on the original investment, consistent with standard regulatory
23 practices.

1 Q: Does this conclude your Rebuttal Testimony?

2 A: Yes, it does.

