

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

In the Matter of Evergy Metro, Inc.)
d/b/a Evergy Missouri Metro’s)
Submission of Its 2022 Renewable)
Energy Standard Compliance Report.)

AND)
)

In the Matter of Evergy Missouri West,)
Inc. d/b/a Evergy Missouri West’s)
Submission of Its 2022 Renewable)
Energy Standard Compliance Report)

Case No. EO-2023-0361
EO-2023-0362
EO-2023-0363
EO-2023-0364

AND)
)

In the Matter of Evergy Metro, Inc.)
d/b/a Evergy Missouri Metro’s)
Submission of its 2023 Renewable)
Energy Standard Compliance)

AND)
)

In the Matter of Evergy Missouri West)
Inc. d/b/a Evergy Missouri West’s 2023)
Renewable Energy Standard)
Compliance Plan)
)

**Office of the Public Counsel’s Response to Evergy’s Reply Regarding Its
2022 Compliance Reports and Its 2023-2025 Compliance Plans**

COMES NOW the Office of the Public Counsel (“OPC” or “Office”) and for its Comments on the Revised Renewable Energy Standard (“RES”) Compliance Reports (“Reports”) and Plans (“Plans”)¹ of Evergy Missouri Metro (“EMM” or “Evergy Metro”) and Evergy Missouri West (“EMW” or “Evergy West”),² states:

¹ Addressed jointly as “Filings”.

² Addressed jointly as “Evergy” or “Company”

I. Regulatory Issues

A. General RES Compliance

Evergy's fraught history with renewable energy is defined by the thread of content inertia that weaves throughout these Filings.³ The Company will acknowledge the OPC's consistent, years-long battle to address the inadequate work put into the documents it submits for regulatory oversight.⁴ However, Evergy sees no need to improve its output. Evergy's apathy towards its regulatory requirements limits the ability of the Public Service Commission ("PSC" or "Commission"), PSC Staff ("Staff"), the OPC, and the public to keep and hold the Company accountable.

The Company's apathy towards Missouri's binding regulatory requirements shines brightest in Evergy's insistence that the OPC's concerns are unfounded because these Filings are the same as past Filings.⁵ However, the Company's assertion that these Filings must be accepted due to the Commission's past acceptance of similar Filings stagnates the Commission's ability to progress as a regulatory body. The Supreme Court has faced this same issue in relation to the concept of *stare decisis*⁶:

“the [] *stare decisis* doctrine exacerbates that temptation [for commissioners to confuse their preferences with the requirements of the law] by giving the

³ *Reply to OPC Responses*, pg. 3, EO-2023-0361, EFIS Item No. 14; *Reply to OPC Responses*, pg. 3, EO-2023-0362, EFIS Item No. 14; *Reply to OPC Responses*, pg. 3, EO-2023-0363, EFIS Item No. 10; *Reply to OPC Responses*, pg. 3, EO-2023-0364, EFIS Item No. 10.

⁴ *Id.* at pg. 2 § 1.

⁵ *Id.* at pg. 2-3 § 5; *Id.* at pg. 3 § 7.

⁶ *Stare Decisis* means “Let the decision stand” in Latin. Legally, it is a principle courts have used in the past to support their decisions to stand by decisions that either that court, or a higher court, has made previously.

vener of respectability to our continued application of demonstrably incorrect precedents.”⁷

Preventing this Commission from re-examining issues that resurface in future cases, especially around complex matters such as the purpose of RES compliance filings, is both detrimental and against the public interest.

Moreover, the Company’s *stare decisis*-esque argument against the Commission reassessing its Filings unduly preempts any comprehensive conversation around Evergy’s method of creating the Filings. The Commission is disallowed from understanding *why* Evergy’s Filings lacked the detail and specificity 20 C.S.R. 4240-20.100(8)(A) and (B) requires. The public is prohibited from truly understanding the monetary benefits they may gain from Evergy’s march towards a renewable future. Finally, Staff and the OPC are precluded from getting the in-depth view into the Company’s renewable generation choices that their regulatory positions require.

It is difficult to understand the logic behind a regulatory process’s methodology, when the only reason given is “because that’s how it has worked in the past.”

B. The Report

1. *The Missing Calculation*

A major issue with Evergy’s Filings is that their retail rate impact is both

⁷ *Gamble v. United States*, 578 U.S. ___, 139 S. Ct. 1960, 1981 (2019)(Thomas, J., concurring)(quoting *Obergefell v. Hodges*, 576 U.S. 644, 687, (2015) (Roberts, J., dissenting)).

opaque and inaccurate. The Company and the OPC have both identified the requirement of “[a] calculation of its actual calendar year retail rate impact”⁸ as a point of contention in Evergy’s Reports. In Evergy’s first Reports, the Company merely gave a number for the identified section.⁹ After the OPC identified the lack of clarity regarding this number in Comments responding to the Company’s Filings,¹⁰ Evergy responded by refileing Reports in each case and increasing the relevant section to a table, rather than a number without context. However, as the OPC has stated,¹¹ the Company has yet to provide a *calculation* as required by 20 C.S.R. 4240-20.100(8)(A)1.P, despite its assertion otherwise.¹²

A “calculation” is “[a demonstration of] *the process of* using information you already have by adding, taking away, multiplying, or dividing numbers to just the number or amount of something.”¹³ The requirement that Evergy’s Report (and Plan) is missing is that *process*. Evergy’s assertion that its Filings encapsulate 20 C.S.R. 4240-20.100(8)(A)1.P’s requirements equates to taking some pictures en route to a location, then calling those pictures—without context—a map.

⁸ MO. CODE REGS. ANN. tit. 20 4240-20.100(8)(A)1.P (2019).

⁹ *2022 Renewable Energy Standard Compliance Report and Request for Variance*, pg. 10, EO-2023-0361, EFIS Item No. 1; *2022 Renewable Energy Standard Compliance Report and Request for Variance*, pg. 10, EO-2023-0362, EFIS Item No. 1.

¹⁰ *Office of the Public Counsel Comments*, pg. 3-4, EO-2023-0361, EFIS Item No. 11; *Office of the Public Counsel Comments*, pg. 3-4, EO-2023-0362, EFIS Item No. 11.

¹¹ *Office of the Public Counsel Comments*, pg. 3, EO-2023-0361, EFIS Item No. 11; *Office of the Public Counsel Comments*, pg. 2, EO-2023-0361, EFIS Item No. 13; *Office of the Public Counsel Comments*, pg. 3, EO-2023-0362, EFIS Item No. 11; *Office of the Public Counsel Comments*, pg. 2, EO-2023-0362, EFIS Item No. 13.

¹² *Reply to OPC Responses*, pg. 2 § 2, EO-2023-0361, EFIS Item No. 14; *Reply to OPC Responses*, pg. 2 § 2, EO-2023-0362, EFIS Item No. 14.

¹³ *Calculation*, CAMBRIDGE DICTIONARY, [Dictionary.cambridge.org/us/dictionary/english/calculation](https://dictionary.cambridge.org/us/dictionary/english/calculation) (Last visited Aug. 21, 2023) (emphasis added).

2. RRI Calculation Components

When the OPC discussed its concern around the metaphorical map that is Evergy's RRI "calculation", Evergy responded with two contentions, one interesting and one classic. The Company first claims that its provision of the RRI calculations' components in response to data requests equate to the fulfillment of 20 C.S.R. 4240-20.100(8)(A)P.1. Yet this argument ignores the fact that these data request responses do not automatically amount to those responses' inclusion in its Report.

If Evergy had to provide the components of its RRI number in a data request response, that information clearly was not in the Report to begin with. It is integral that regulating bodies such as the OPC, Staff, and the Commission have the ability to review the Company's records regarding its RES compliance. However, the public has a right to review the Filings, as well, if members so desire. There is a reason that 20 C.S.R. 4240-20.100(8)(A)1.P requires "[a] calculation of [a utility's] actual calendar year retail rate impact" rather than the RRI, alone. All interested parties should be able to review the Report on its own to gain a basic understanding of the Company's activities. Evergy apparently supports the idea of a normal citizen going on a treasure hunt for relevant information if that Missourian wants to gain better insight on Evergy's RRI.

However, the lack of the Company's RRI *calculation*, and its components, is only part of the issue. The other concern is what Evergy believes is or is not a cost they should attribute to the RES requirement.

3. Wind Contracts

The OPC is deeply concerned about Evergy’s choice to omit the cost of its numerous power purchase agreements (“PPAs”) in its listed RRI. Evergy insists the Company entered the agreements due to “favorable economics” so the costs are not “directly attributable” to RES compliance.¹⁴ Ignoring the fact that these “favorable economics” have led to customers losing about \$468 million,¹⁵ the Company’s understanding of what constitutes “directly attributable” is excessively narrow.

Evergy seems to believe that “directly attributable” costs are analogous to “solely attributable” costs, demonstrated through the Company’s favorite method of skirting around the “directly attributable” designation for RES compliance costs. To avoid the “directly attributable” designation, the Company routinely insists that the agreement¹⁶ was entered into due to favorable pricing conditions *and* to meet RES compliance. Despite Evergy’s assertion, a renewable resource need not be purchased for RES compliance alone for its related expenses to be directly attributable.

To be clear, the OPC fully supports Evergy’s stated intent to find renewable resources that both help them meet Missouri’s RES requirements and are economically favorable to customers. In fact, the OPC firmly believes that public utilities should be seeking assets and agreements that can both economically benefit customers and help utilities meet regulatory requirements. What the OPC

¹⁴ *Reply to OPC Responses*, page 2 § 2, EO-2023-0361, EFIS Item No. 14; *Reply to OPC Responses*, page 2 § 2, EO-2023-0362, EFIS Item No. 14.

¹⁵ Ex. 302, *Mantle Rebuttal Testimony*, pg. 23, ER-2022-0129, EFIS Item No. 552; Ex. 302, *Mantle Rebuttal Testimony*, pg. 23, ER-2022-0130, EFIS Item No. 566.

¹⁶ “Agreement” in this instance refers to PPAs, asset contracts, etc.

does not support is Evergy's unstated intent to obscure the burden of the corporate renewable goals that it surreptitiously shifts onto the shoulders of ratepayers.

The argument that a public utility is not required to acknowledge the economic cost of PPAs because the utility believed the PPAs were economic is dangerous. This logic creates a permission structure for the electric utility to assert any pretext to enter RES-related agreements, without divulging the true cost of their actions to customers.

C. The Plan¹⁷

The Plan and the Report both suffer from the same general issue, a lack of pivotal information to determine the Company's compliance with RES. However, the character of Evergy's response the OPC's transparency concerns indicates the Company's view of the Filing process that it benefits the Commission to discuss the response separately. One concern the OPC noted was that Evergy's Filings did not provide the resources from which the Company met RES compliance.¹⁸ In response, the Company simply stated that the rule does not require any estimation of the

¹⁷ It should be noted that both EMM and EWM responded to the OPC's concerns regarding the Companies' filed Plans thirty-nine (39) days after the OPC filed their comments. Thus, these responses should both be considered untimely in accordance with 20 C.S.R. 4240-2.080(13), which permits a ten (10) day response time.

¹⁸ LENA M. MANTLE, *Response to Evergy Metro, Inc.'s 2022 Renewable Energy Standard Report and Plan filed with the Missouri Public Service Commission*, EO-2023-0361, EFIS Item No. 11; LENA M. MANTLE, *Response to Evergy Missouri West, Inc.'s 2022 Renewable Energy Standard Report and Plan filed with the Missouri Public Service Commission*, EO-2023-0362, EFIS Item No. 11; LENA M. MANTLE, *Response to Evergy Metro, Inc.'s 2022 Renewable Energy Standard Report and Plan filed with the Missouri Public Service Commission*, EO-2023-0361, EFIS Item No. 11; LENA M. MANTLE, *Response to Evergy Missouri West, Inc.'s 2022 Renewable Energy Standard Report and Plan filed with the Missouri Public Service Commission*, EO-2023-0364, EFIS Item No. 11.

future assets Evergy will utilize to meet RES compliance.¹⁹ Evergy’s claim that the rule does not require an estimate of the future resources to meet RES ignores the underlying implications of 20 C.S.R. 4240-20.100(8)(B)1.A. The rule is clear: the Plan “shall include, *at a minimum* [a] specific description of the electric utility’s planned actions to comply with the RES.”²⁰

The Company’s response to the OPC’s concern around the vague nature of its Filings encapsulates the OPC’s concern with Evergy’s general attitude towards RES requirements. Time and again, Evergy uses RES requirements as a reason to support acquiring assets of varying quality, then refuses to respect the RES process itself. In essence, Evergy is mutilating RES and avoiding regulatory accountability. The Company interprets the RES statute and regulation the way many view tax requirements, focusing on how to give away as little as possible, while attaining the most benefit.

While Evergy’s other argument regarding the OPC’s analysis of 20 C.S.R. 4240-20.100(8)(B) is less disconcerting, this office believes the argument does merit a response, as well. The Company states that providing a specific, resource-focused Plan to meet RES “would be of limited value due to the fact that RECs from the resources could be sold at any time.”²¹ Using Evergy’s same logic, integrated resource plans (“IRPs”)—especially the triennial IRP—are of limited value due to

¹⁹ *Reply to OPC Responses*, pg. 5, EO-2023-0361, EFIS Item No. 14; *Reply to OPC Responses*, pg. 5, EO-2023-0362, EFIS Item No. 14; *Reply to OPC Responses*, pg. 5, EO-2023-0363, EFIS Item No. 10; *Reply to OPC Responses*, pg. 5, EO-2023-0364, EFIS Item No. 10.

²⁰ MO. CODE REGS. ANN. tit. 20 4240-20.100(8)(B)1.A (2019) (emphasis added).

²¹ *Reply to OPC Responses*, pg. 5, EO-2023-0361, EFIS Item No. 14; *Reply to OPC Responses*, pg. 5, EO-2023-0362, EFIS Item No. 14; *Reply to OPC Responses*, pg. 5, EO-2023-0363, EFIS Item No. 10; *Reply to OPC Responses*, pg. 5, EO-2023-0364, EFIS Item No. 10.

the fact that IRPs can (and do) change “at any time” after that plan is filed. If Evergy finds any value in the IRP process, which it has supported in the past,²² that support does not comport with the argument advanced in this instance.

D. Addressing the Elephant

When the OPC highlighted concerns with Evergy’s RES Filings in the past, the Commission cited 20 C.S.R. 4240-20.100(9)(A), which requires interested parties to file a complaint if that party believes an electricity does not meet the RES requirement. The PSC ultimately concluded that the OPC should file a complaint to create the proper forum for the Commission to address any RES compliance concerns.²³ However, in this instance, 20 C.S.R. 4240-20.100(9)(A) does not apply because the main crux of the OPC’s argument relates to the form and function of Evergy’s attempt to comply with RES requirements. The provided section of the PSC regulation states “any allegation of *a failure to comply with the RES* shall be filed as a complaint[.]”²⁴ That is not the case here. If the OPC is not permitted to address concerns it has with even the format of Evergy’s RES Filings in this docket, that leads to a question of the docket’s central purpose.

II. Legal Issues

The final issue Evergy addressed in its response to the OPC’s concerns

²² Ex. 9, *Messamore Surrebuttal Testimony*, pg 22, EA-2022-0328, EFIS Item No. 65.

²³ *Notice Regarding 2021 RES Compliance Report and 2022 RES Compliance Plan, and Order Granting Variance*, pg. 3, EO-2022-0285, EFIS Item No. 16; *Notice Regarding 2021 RES Compliance Report and 2022 RES Compliance Plan, and Order Granting Variance*, pg. 3, EO-2022-0287, EFIS Item No. 17.

²⁴ MO. CODE REGS. ANN. tit. 20 § 4240-20.100(3)(B) (2019).

regarding its RES Filings focuses on the Company's compliance with RES, itself. An OPC concern cited in the response to Evergy's Filings was that ninety-three percent (93%) of the renewable energy credits (RECs) the Company used to fulfill its RES requirement were expired, according to Missouri statute. The Company's response to the OPC's comment was that 20 C.S.R. 4240-20.100(3)(B) permitted credits to comply with RES requirements for the calendar year.²⁵ Evergy further asserts that the Commission's "clear regulation" that permits a REC to be used in the compliance year it expired negates the OPC's concern around Evergy's credit use.²⁶ Unfortunately, the state regulation does not address the OPC's concern, and actually has constitutional concerns of its own.

The statutory section that caused the OPC's alarm around Evergy's REC usage says that "[a]n unused credit may *exist* for up to three years from the *date* of its creation."²⁷ The two (2) notable words in that portion of the statute, emphasized above, are "exist" and "date." The definition of "exist" is "to be; have the ability to be known, recognized, or understood."²⁸ The definition of "date" is "a numbered day in a month, often given with a combination of the name of the day, the month, and the year."²⁹ Therefore, the statute is maintaining, unequivocally, that an unused REC ceases to be three (3) years and one (1) day after the numbered day, month, and

²⁵ *Reply to OPC Responses*, pg. 3-4, EO-2023-0361, EFIS Item No. 14; *Reply to OPC Responses*, pg. 3-4, EO-2023-0362, EFIS Item No. 14; *Reply to OPC Responses*, pg. 3-4, EO-2023-0363, EFIS Item No. 10; *Reply to OPC Responses*, pg. 3-4, EO-2023-0364, EFIS Item No. 10.

²⁶ *Id.* at Pg. 4

²⁷ MO. REV. STAT. § 393.1030.2 (emphasis added).

²⁸ *Exist*, CAMBRIDGE DICTIONARY, [Dictionary.cambridge.org/us/dictionary/english/exist](https://dictionary.cambridge.org/us/dictionary/english/exist) (last visited Aug. 21, 2023).

²⁹ *Date*, CAMBRIDGE DICTIONARY, [Dictionary.cambridge.org/us/dictionary/english/date](https://dictionary.cambridge.org/us/dictionary/english/date) (last visited Aug. 10, 2023).

year of its creation.

Everygy accurately points out that 20 C.S.R. 4240-20.100(3)(B) states that a REC may be used for RES requirements for the calendar year the REC expired. However, if a REC is no longer statutorily recognized, provisions of the PSC regulation cannot revive it. The Supreme Court has held that “[i]f the intent of Congress is clear, that is the end of the matter for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”³⁰ In the present instance, Section 393.1030.2 RSMo is clear. The lifespan of a RECs *existence* is limited to three (3) years from its *date* of creation. If the general assembly has limited a RECs “lifespan” to three (3) years from the date it was created, then the utility can use that credit for three (3) years before its applicability departs.

III. Why This Matters

On November 4, 2008, Missourians were asked the following question:

“Shall Missouri law be amended to require investor-owned electric utilities to generate or purchase electricity from renewable energy sources such as solar, wind, biomass and hydropower with the renewable energy sources equaling at least 2% of retail sales by 2011 increasing incrementally to at least 15% by 2021, including at least 2% from solar energy; *and restricting to no more than 1% any rate increase to consumers for this renewable energy?*”³¹

The people of Missouri approved Prop. C by an overwhelming sixty-six percent (66%)

³⁰ *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 843 (1984).

³¹ Prop. C, 2008 MO. STAT. (codified as MO. REV. STAT. § 393.1030 (Nov. 4, 2008)), <https://www.sos.mo.gov/elections/2008ballot> (emphasis added).

margin.³² Prop. C's large margin of victory showed that Missourians were ready to move towards a renewable future, but still wanted that one percent (1%) rate-impact limit. Notably, the one percent (1%) rate-impact limit has remained part of the renewable energy standard ("RES") compliance statute through three (3) subsequent legislative updates.

In effect, the entire reason that Missouri has a renewable energy standard today is because the citizens of this state showed up to the ballot box and voted for it. It may be understandable to view the complexity with which these bodies grapple as too cumbersome for the general public, but those people still have the right to view the available information. A benefit engaged members of American society gain is the ability to attempt to review and understand information related to their public utility's regulation requirements. The ability to act effectively as a check on a company without competition requires the ability to understand regulatory requirements and the utilities attempts to meet those requirements. When the utilities actively hide the information the public would seek to provide accountability, the utility is actively depriving the public.

³² Melissa K. Hope, *Missouri's Prop C Clean Energy Initiative Passed With 66% Of Vote*, SIERRASCAPE (Dec. 2008 – Jan. 2009), https://www.sierraclub.org/missouri/eastern-missouri/sierrascape/s2008m12/05_prop_c.

WHEREFORE, the OPC requests that the Commission find Evergy non-compliant with RES requirements in form and order Evergy to amend and refile its Reports and Plans. The OPC also requests that the Commission order Evergy to provide a plan to decrease its RRI to the statutory one percent (1%).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this Twenty-First of August, 2023.

/s/ Anna Martin