

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

In the Matter of the Second Prudence Review)
of the Missouri Energy Efficiency Investment)
Act (MEEIA) Cycle 2 Energy Efficiency) Case No. EO-2020-0227
Programs of Evergy Metro, Inc. d/b/a Evergy)
Missouri Metro)

In the Matter of the Second Prudence Review)
of the Missouri Energy Efficiency Investment)
Act (MEEIA) Cycle 2 Energy Efficiency) Case No. EO-2020-0228
Programs of Evergy Missouri West, Inc. d/b/a)
Evergy Missouri West)

Public Counsel’s Reply Brief

The initial briefs and evidence presented by the Office of the Public Counsel and the Public Service Commission’s Staff demonstrate that Evergy Missouri Metro/Evergy Missouri West (collectively “Evergy” or “Company”) imprudently disregarded easily achievable customer benefits available through its Missouri Energy Efficiency Investment Act (MEEIA) programs, and mismanaged its programs by overspending on overhead, further diminishing ratepayer benefits.

Evergy’s customers deserve better, and they rely entirely upon their Public Service Commission to hold a company accountable when such programs are imprudently mismanaged. The best way to protect ratepayers and alter company behavior is to hold those companies accountable. Only then will utilities such as Evergy believe the Commission is serious about wanting utilities to pursue reasonable and achievable MEEIA benefits as aggressively and sensibly as they would if the companies themselves were the recipients of those benefits.

The OPC’s initial brief thoroughly covered the argument and evidence necessary to issue an order finding Evergy acted imprudently for all adjustments proposed by Public Counsel and the

Commission’s Staff. Public Counsel’s initial brief anticipated and responded to most of the argument made in Evergy’s initial brief, and we will not repeat those arguments. However, a few Evergy arguments warrant an additional response.

1. Are Staff and OPC’s proposed prudence adjustments within the scope of a MEEIA prudence review as defined by 20 CSR 4240-20.093?

No party disputes that the prudence adjustments for MEEIA program costs and MEEIA administrative costs recovered through the Demand Side Investment Mechanism (DSIM) are properly within the scope of this prudence review. Evergy concedes this point in its brief by not challenging those costs as being outside the scope of this case.

Regarding the prudency adjustments for the foregone ratepayer benefits that Evergy could have achieved but failed to achieve when it underutilized its demand-side measures, the Commission has the discretion to consider adjustments for imprudence in this MEEIA case, in the related fuel adjustment clause (FAC) prudence review case (Case No. EO-2020-0262), or both. From the perspective of Evergy’s captive ratepayers, the case heading under which the Commission issues a finding of imprudence is not important, so long as the adjustments are made, Evergy is held accountable, and the adjustments are meaningful enough to protect ratepayers and correct Evergy’s mismanagement of its MEEIA programs going forward.

2. Did Evergy act imprudently in its implementation of the Residential Programmable Thermostat program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Evergy’s argument is essentially that its program goal was “maximizing participation in the program” and explains, “[t]he maximum number of enrolled customers means fewer curtailment events necessary to achieve cost-effectiveness.” This argument highlights the problem

with Evergy's entire approach. The Company intentionally chose *not* to attempt to maximize possible benefits by calling more curtailment events, and instead only sought to enroll enough customers so that it did not *need* to call events. Here Evergy acknowledges it sought to call as few events as possible, despite knowing benefits are achieved only by calling events, and the more events called, the more benefits achieved. A prudent administrator of the program would have pursued *both* objectives of enrolling more customers *and* calling more events.

If the Company were the beneficiary of the program, one would expect the failure of program administrators to call more curtailment events and achieve more benefits to result in the termination of those employees responsible. Because Evergy has no "skin-in-the-game" absent a finding of imprudence, Evergy's objectives are not in line with maximizing ratepayer benefits; and its goal of achieving the *minimum* benefits possible, is clearly imprudent.

Furthermore, Evergy's tariff says that Cycle 2 was intended to use demand-response to help defer the need for future supply-side resources and to alleviate peak demand. However, Evergy did not utilize its demand-response programs to defer a future investment, and the best way to alleviate peak demand would have been to call more curtailment events in the summer months. Given Evergy's regular internal meetings, and operation in Missouri as a summer peaking electric utility, it knew or should have known how to meet the intent of its tariff.

3. Did Evergy act imprudently in its implementation of its Demand Response Incentive Program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Evergy believes that by simply claiming the program is barely cost-effective that a finding of prudence is a given assumption. Evergy is once again assuming the Commission will find it prudent for a company to aim to achieve the bare minimum. This behavior suggests the Company's

focus is achieving numbers that will allow it to maximize its earning incentive for shareholders, with little regard for achieving actual benefits for the customers that pay for the program and pay Evergy to maximize ratepayer benefits under the program by avoiding supply-side costs.

Evergy's argument also implies that the program the Company designed and uses to collect an earnings incentive for shareholders is incapable of achieving the benefits it was purported to achieve when initially approved. Evergy argues that if it were to call more events, more customers would opt out. If this were the case, why did Evergy design the program to call far more events than were called? From a ratepayers perspective it seems highly misleading for Evergy to gain Commission approval of a program designed to call far more curtailment events, while at the same time the Company fails to disclose that it only intended to call a few events due to its belief that the program would fall apart if used as written. This behavior is contrary to Evergy's admittance that it produces benefits for customers "every time" it calls demand-response events.¹

4. Did Evergy act imprudently by not calling more demand response events for the purpose of reducing Southwest Power Pool (SPP) fees? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Evergy acknowledges reducing SPP fees is a benefit of its demand-response programs. However, Evergy seeks to take no responsibility for managing its demand response programs in an imprudent manner by arguing that reducing SPP fees are "ancillary" benefits and not "primary" benefits, as if this is a meaningful distinction. The meaningful fact is that more demand response curtailment events could have reduced SPP fees. As pointed out by the Staff, the Commission recognized this benefit of demand response programs when it cited to Evergy's own assertion of

¹ Cross Examination of John Carlson, Tr. 58-59.

that benefit of its programs.² Leaving these known ratepayer savings on the table is a clear example of imprudent management of its MEEIA programs.

Evergy also argues, as it did in its FAC prudence case, that the prior agreement in EO-2019-0132 essentially *prohibited* Evergy from calling more than five events. In other words, Evergy argues that when the Commission approved and ordered the terms of the agreement requiring Evergy to call five events, an agreement meant to ensure Evergy *increased* the number of curtailment events it called, that the Commission's intention was to *limit* the amount of ratepayer benefits that Evergy could achieve through curtailment. Such an interpretation is directly contrary to the entire purpose of MEEIA, which is to find ratepayer benefits, and should be dismissed outright because it was never the Commission's intention to arbitrarily limit ratepayer benefits without any basis for doing so.

After calling five demand response events in 2019, Evergy resumed calling only two in 2020. This pattern demonstrates that, despite asking the Commission for demand-side resource tools, Evergy will not effectively use them unless compelled by an outside legal obligation. This is not prudent. This means that Evergy's customers must continue to pay for energy resources that Evergy does not see real capacity value in. If Evergy's thermostat and DRI programs were a supply-side resource such as a coal facility, and this Commission saw how little Evergy used it, the Commission would rightfully consider striking the coal facility from base rates. In the spirit of "equally valuing" demand and supply-side resources, the Commission should hold Evergy's demand-side programs to the same standard and find it imprudent to build a resource and not use it. See Mo. Rev. Stat. § 393.1075.3.

² Amended Report and Order, Case No. EO-2019-0132, p. 12.

5. Did Evergy act imprudently by not calling more demand response events for the purpose of reducing the costs associated with day-ahead locational marginal prices? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

On this point Evergy makes the same argument as it did in the prior issue regarding the SPP fees, and simply states that the demand response programs “were not designed” to achieve cost savings associated with day-ahead locational marginal prices. From a ratepayer perspective, the programs were designed to achieve all benefits associated with reducing demand. To the extent the Commission agrees that Evergy was imprudent by not calling more curtailment events under its demand-response programs, the impact on customers of Evergy’s imprudence should include all forgone benefits that were the result of Evergy’s inaction. Without question, one such foregone ratepayer benefit was cost savings associated with day-ahead locational marginal prices. Accordingly, this adjustment is necessary to fully capture the ratepayer harm caused by Evergy’s mismanagement of its program.

6. Did Evergy Missouri Metro act imprudently by not entering into more bi-lateral capacity contracts? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Evergy does not deny that it could have entered into more bi-lateral capacity contracts to the benefit of its ratepayers, and instead argues one should not assume “that capacity sales are easily made, and that extra capacity can be sold into the market at any time.” Evergy goes on to complain that to sell its capacity it “must canvass the market and find a counterparty that is interested in buying or selling capacity as needed.” However, the reasonableness of Evergy’s actions should not be limited to what is “easy,” and should instead look at all actions and inactions related to the

MEEIA programs, recognizing that Evergy is a monopoly provider of an essential service and should be held to a much higher degree of responsibility and prudence. The Missouri ratepayers that rely upon Evergy to make reasonable decisions that help offset their energy costs expect Evergy to work diligently towards managing the cost of their energy burden. This includes selling excess capacity, regardless of whether it is “easy” or not. On this point, Evergy once again demonstrates the separation of interests between those responsible for paying the costs (ratepayers) and the utility that expects to earn its MEEIA “incentive” regardless of the level of work it puts into finding additional revenue streams that would flow to the benefit of its captive customers.

7. Did Evergy act imprudently by virtue of its MEEIA programs’ incentive to non-incentive costs ratios?

Evergy argues that it is “arbitrary” to expect the Company’s MEEIA programs to charge customers no more in administrative overhead paid to Evergy than the amounts Evergy puts into actual program benefits for customers. Limiting Evergy to this 50/50 demarcation point is far from arbitrary, and instead provides a very conservative recognition that at a minimum the MEEIA should not be set up from the start as a loss for ratepayers. Holding Evergy to no more in administrative fees going to the Company than the benefits that it flows to its customers ensures that ratepayers get back what they put into the program – that they at least break even.

Evergy states that Energy Information Administration (EIA) data “cannot be the basis for a Commission prudence adjustment.” However, EIA data, and in particular, comparisons with data of comparable utilities, is a longstanding practice of this Commission and utility regulatory commissions across the country. Providing such comparisons across utilities is the entire *purpose* of EIA providing such data – it helps form the basis for decisions by utilities and regulatory agencies as to whether what is occurring at a particular utility or in a particular state is reasonable.

Evergy has the burden to demonstrate prudence at this stage, and yet Evergy does not attempt to show how its ratio of administrative to program spend compares to other utilities on an apples to apples basis. Dr. Marke's numbers that form the basis for his recommended adjustment come directly from EIA that were self-reported by Evergy. Evergy's excuse of inconsistent classification fails to account for why Evergy's ratio of administrative costs to total program costs increased during the prudence review period relative to the first part of Cycle 2, and all of Cycle 3. The evidence in the case does not demonstrate any policy change within Evergy that would explain this significant uptick in administrative costs relative to the entire MEEIA budget. Given Evergy's sunk costs and prior investment in MEEIA, we should expect the administrative portion of Evergy's budget to decrease or at least remain stable. A decrease is certainly warranted given the minimal curtailment events called over the review period. Absent an order from this Commission that holds the Company accountable through a prudence adjustment, Evergy will continue to call minimal curtailment events, while inflating overhead.

Evergy also argues that Dr. Marke's analysis is "flawed because it is not conducted on a "per device" basis." This is a non-sequitur argument and obvious attempt to divert the Commission's attention from the marked increase in Evergy's devotion of MEEIA dollars to overhead and non-incentive costs. When Evergy calculates its cost per savings or cost per energy figures, it limits its tables to 2018 and 2019, and is thus obscuring any changes in Evergy's results from MEEIA 1 to MEEIA 2. Dr. Marke, on the other hand, presents a full picture of Evergy's MEEIA experience, and that picture portrays a Company that has become content inflating administrative expenses even as budgets increase and demand-side resources are used less.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ **Marc D. Poston**

Marc D. Poston (#45722)

Public Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5318

(573) 751-5562 FAX

marc.poston@opc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 25th day of June 2021.

/s/ Marc Poston
