



determining whether Evergy has lawfully excluded its wind PPAs from its 1% rate cap calculation.

2. Public Counsel's July 28, 2022 response to Evergy's RES filings explains the basis for Public Counsel's position that Evergy cannot lawfully exclude its wind PPAs from the 1% retail rate impact calculation. This provides sufficient basis for the Commission to direct Evergy to recalculate its retail rate impact using all renewable energy costs used by Evergy to comply with the RES.

3. In its August 24, 2022 response, Evergy's position on this issue is best summarized by Evergy when it states, "because the Company did not wholly enter these PPAs in order to achieve RES compliance, the cost of wind PPAs entered into for economic reasons...has not been included in its RES Compliance Reports and Plans." In other words, Evergy interprets the RES statute to limit the 1% retail rate impact cap to only renewable costs where RES compliance was the *only* reason for the company entering into those PPAs. However, the law contains no such limitation, stated or implied.

4. A significant problem with Evergy's argument is that the only renewable energy generation that would qualify for the RES cap under Evergy's interpretation would be those agreements Evergy entered into that it thought would be *uneconomic*. The problem with this argument is that the Missouri Legislature did not contemplate electric companies subject to the RES requirements entering into imprudent or uneconomic PPAs. In fact, the Legislature included in §393.1030.2(4) RSMo the requirement that compliance costs must be "prudent," which shows it anticipated including RES compliance

costs in the calculation from PPAs the electric company believed would be economic.<sup>1</sup> It would be imprudent for Evergy to enter into a PPA that it believes would be uneconomic; therefore, the statute contemplates that all RES compliance costs are for PPAs and other renewable energy costs that the electric utility believes will be economic. Evergy's interpretation of the 1% cap, where an electric utility can easily avoid the cap by simply claiming it thought the agreements would be economic, would render the 1% cap meaningless, and is an incorrect interpretation of this important ratepayer protection.

5. To resolve this disagreement, Public Counsel requests the Commission make a determination on the legal issue of whether renewable energy PPAs that a company uses for RES compliance, and where the company at some point asserted those agreements would be economic, are excluded from the 1% RES cap. If further briefing and/or fact gathering are necessary for the Commission to make this determination, Public Counsel suggests the Commission schedule a procedural conference so that the parties may discuss with the Commission's regulatory law judge the best procedure for resolution.

WHEREFORE, the Office of the Public Counsel respectfully offers this response and requests the Commission determine whether Evergy's 1% retail rate impact calculation is consistent with Missouri law.

Respectfully submitted,

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<sup>1</sup> Section 393.1030.2(4) states, "Provision for recovery outside the context of a regular rate case of prudently incurred costs and the pass-through of benefits to customers of any savings achieved by an electrical corporation in meeting the requirements of this section".

**/s/ Marc Poston**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 6<sup>th</sup> day of September, 2022.

**/s/ Marc Poston**

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