

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

In the Matter of the Application of)
Evergy Missouri West, Inc. d/b/a)
Evergy Missouri West for Authority to)
Implement Rate Adjustments)
Required by 20 CSR 4240-20.090(8))
and the Company's Approved Fuel and)
Purchased Power Cost Recovery)
Mechanism)

Case No. ER-2023-0011

**MOTION FOR SUMMARY DETERMINATION AND RULE VARIANCE OR, IN
THE ALTERNATIVE, REQUEST FOR EXPEDITED PROCEDURAL SCHEDULE**

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Motion for Summary Determination and Rule Variance or, in the alternative, Request for Expedited Procedural Schedule*, states as follows:

1. Pursuant to rule 20 CSR 4240-2.117(1), the OPC seeks summary determination on the question of whether any portion of the fuel and purchased power costs incurred by Evergy Missouri West, Inc. (“Evergy”) during the fuel adjustment clause (“FAC”) accumulation period under review in this case should be deferred.
2. Summary determination is warranted because there is no lawful basis for Evergy to seek deferral of any portion of the fuel and purchased power costs it incurred during the FAC accumulation period under review in this case.
3. Due to the restrictions on summary determination included in Commission rule 20 CSR 4240-2.117(1), the OPC further seeks a variance from certain provisions of the rule for good cause pursuant to 20 CSR 4240-2.205.

4. Finally, should the Commission deny the grant of summary determination, the OPC requests, in the alternative, that the Commission order any procedural schedule for this case be conducted on an expedited basis.

Motion for Summary Determination

5. The OPC requests a summary determination that Evergy may not defer any portion of the fuel and purchased power costs it incurred during the FAC accumulation period under review in this case.

6. Commission rule 20 CSR 4240-2.117(1)(B) states as follows:

Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

7. Pursuant to the requirements of this rule, the OPC lists the following material facts as to which the OPC claims there is no genuine issue.¹

8. **Undisputed Fact 1:** the revised tariff sheets filed by Evergy on July 1, 2022, bear a proposed effective date of September 1, 2022. (Tariff Revision (JE-2023-

¹ The listing of material facts as to which the OPC claims there is no genuine issue has been limited to only those facts that are material to the issue in question (*i.e.* whether the requested deferral should be granted) there remain other facts that are not in dispute but that are also not germane to this issue.

0005) (Public and Confidential), “127.23_fac tariff eff 9-1-2022.pdf” pg. 1, ER-2023-0011, EFIS Item No. 1).

9. **Undisputed Fact 2:** as of September 1, 2022, the 3% compound annual growth rate cap imposed on Evergy by § 393.1655.3 RSMo. will be 11.6887%. (Tariff Revision (JE-2023-0005) (Public and Confidential), “west pisa calc cagr - may 2022.pdf” pg. 1 lns. 25 – 27, ER-2023-0011, EFIS Item No. 1 (“For rates effective September 2022 (30th AP) 3% Average Overall Rate Cap is actually: 11.6887%”), pg. 3 (showing 11.68875 under the 3.00% overall cap as of 09/01/22); *see also* Staff Recommendation, “er-2023-0011 staff memo.pdf” pg. 2, ER-2023-0011, EFIS Item No. 5 (“the 3% average overall rate cap computation required by PISA, which for this accumulation period is a CAGR cap of 11.6887% . . .”).

10. **Undisputed Fact 3:** the fuel and purchase power adjustment subject to recovery for this accumulation period (absent any deferral) is \$44,604,020. (Tariff Revision (JE-2023-0005) (Public and Confidential), “127.23_fac tariff eff 9-1-2022.pdf” pg. 1 ln 11, ER-2023-0011, EFIS Item No. 1).

11. **Undisputed Fact 4:** using the same math employed by Evergy in its filing, if the \$44,604,020 fuel and purchase power adjustment subject to recovery for this accumulation period is fully recovered (*i.e.* without any deferral), then Evergy’s average overall rates will be increased to 9.14% above Evergy’s average overall rate as of the date new base rates were set in Evergy's most recent general rate proceeding concluded prior to the date Evergy elected PISA deferral. (Memorandum of Lena M. Mantle and Supporting Workpapers, ER-2023-0011, Attachment to Memo).

12. **Undisputed Fact 5:** a 9.14% increase in Evergy’s average overall rates is less than the 11.6887% compound annual growth rate cap imposed on Evergy by § 393.1655.3 RSMo. as of September 1, 2022. (*compare* Undisputed Fact 4 (9.14%) *and* Undisputed Fact 2 (11.6887%)).

13. **Undisputed Fact 6:** the fuel and purchase power adjustment subject to recovery for Evergy’s previous FAC accumulation period (the 29th accumulation period) was \$47,488,718. (Tariff Revision (JE-2023-0005) (Public and Confidential), “west pisa calc cagr - may 2022.pdf” pg. 1 ln 13, ER-2023-0011, EFIS Item No. 1; *see also*, Evergy Missouri West, Inc. d/b/a Evergy Missouri West Commission Approved Tariff, P.S.C. Mo. No. 1 6th Revised Sheet No. 127.23 lns. 11 – 11.2).

14. **Undisputed Fact 7:** the \$44,604,020 fuel and purchase power adjustment subject to recovery for the current (30th) FAC accumulation period is less than the \$47,488,718 fuel and purchase power adjustment subject to recovery for Evergy’s previous (29th) FAC accumulation period. (*compare* Undisputed Fact 3 (\$44,604,020) *and* Undisputed Fact 6 (\$47,488,718)).

15. **Undisputed Fact 8:** Evergy did not seek a deferral for extraordinary costs during its previous (29th) accumulation period. (*compare* Tariff Revision (JE-2022-0193) (Public and Confidential), “127.23_fac tariff eff 3-1-2022.pdf” pg. 1 lns. 11 – 11.2, ER-2022-0174, EFIS Item No. 1, *and* Tariff Revision (JE-2023-0005) (Public and Confidential), “127.23_fac tariff eff 9-1-2022.pdf” pg. 1 lns. 11 – 11.2, ER-2023-0011, EFIS Item No. 1; *see generally* Direct Testimony of Lisa A. Starkebaum, ER-2022-0174, EFIS Item No. 2).

16. Pursuant to Commission rule 20 CSR 4240-2.117(1)(B), a separate legal memorandum explaining why summary determination should be granted and the testimony, discovery, or affidavits not previously filed that are relied on in this motion have been included as an attachment to this motion.

Request for Rule Variance

17. Commission rule 20 CSR 4240-2.117(1)(A) states that a motion for summary determination may be sought in any case “[e]xcept in a case seeking a rate increase or which is subject to an operation of law date”

18. Because the present case concerns Evergy seeking an increase to the rates being charged pursuant to its current FAC rider, the language of this rule would imply that the OPC may not request summary determination in this case.

19. To the extent that the Commission determines that the foregoing issue precludes summary determination under the rule as written, the OPC further requests the Commission grant a variance to the rule to allow for summary determination in this case, pursuant to rule 20 CSR 4240-2.205.

20. Commission rule 20 CSR 4240-2.205 states that the Commission may “grant variance from or waive any rule or provision of a rule promulgated by the commission upon a finding of good cause.”

21. There exists good cause for the Commission to grant a variance from rule 20 CSR 4240-2.117(1)(A) to the extent that it prohibits a motion for summary judgement in any case “seeking a rate increase or which is subject to an operation of law date” because the circumstances of the present case are not consistent with the

purpose of this provision and a failure to grant such a variance may potentially result in irreversible harm to ratepayers.

22. The purpose of the provision that prohibits summary determination “in a case seeking a rate increase or which is subject to an operation of law date” was to prevent a utility from using summary determination as a litigation tactic to overwhelm non-utility parties who might not otherwise have time to perform sufficient discovery to establish the existence of a material fact in dispute. This is explained in the comments provided by the OPC during the original rulemaking workshop:

Public Counsel opposes this proposed rule in its present form. The ten (10) day period of time is unreasonable given the nature of the cases and complexity of the issues. By timing the filing of the motion, the utility can use the rule as a tactical weapon to overwhelm the opposition and limit the ability of the other parties to be heard. It shifts the burden of proof from the company to Public Counsel, Staff, and other parties to come forward with evidence on a very short time frame to demonstrate factual disputes. The proposed rule does not give a non-moving party a right to discovery, but rather requires a non-moving party to show good cause to delay the response to the motion for summary judgment and conduct discovery. The PSC must allow reasonable time for discovery for non-moving parties. Public Counsel suggests that if the Commission adopts a summary judgment rule that it exclude rate making and tariff filings or any changes in rates from the scope of the rule. This summary motion practice for most of the cases before this Commission works an unreasonable hardship on the ratepayers and is a fundamentally unfair and oppressive procedure. Public Counsel is concerned that this proposed rule will lead to an attempt to deprive ratepayers of its rights to full and fair hearings. Public Counsel also suggests that summary judgment be limited to a few purposes where a preliminary legal issue should be resolved prior to further action. It could be used to determine the legal scope of a proceeding or even if a proceeding is proper as a matter of law.

(Memorandum of Ratemaking pg. 2, AX-2002-159, EFIS Item No. 22).

23. The Commission found these issues persuasive and subsequently modified the rule to include the language regarding summary determination not being available in general rate cases or where there is an operation of law date:

The Commission is also persuaded by this and other comments to provide that summary determination shall not be available in rate cases or in other cases with operation of law dates.

(Memorandum of Ratemaking pg. 2, AX-2002-159, EFIS Item No. 22).

24. However, the rationale for the language preventing summary determination during a rate increase case is not applicable in the present case.

25. In this case, the motion for summary determination is not being made by the utility and cannot be used as a litigation tactic to overwhelm non-utility parties by denying them an opportunity for meaningful discovery.

26. Instead, the OPC is requesting summary determination to foreclose a meritless argument that Evergy is making in order to delay timely adjudication of this matter and thereby nullify certain statutory protections for ratepayers.

27. The reason for Evergy's meritless argument and its impact on this case and the Company's concurrent general rate case are as follows:

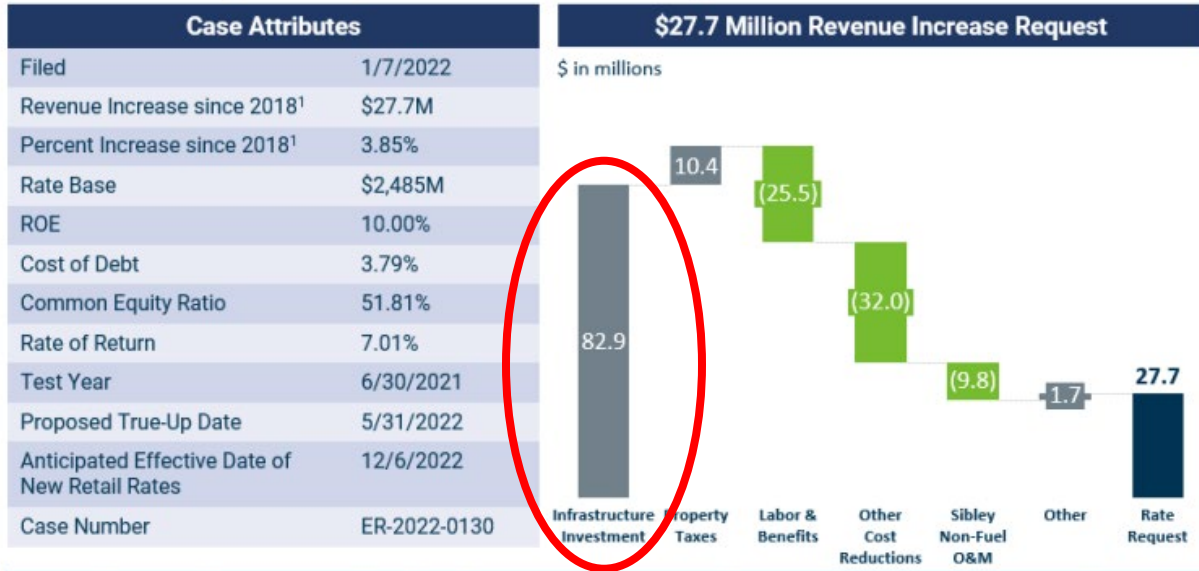
- a. Evergy has elected for plant in service accounting treatment (commonly known as "PISA") under Missouri Revised Statutes section 393.1400.

(Notice pg. 1, EO-2019-0045, EFIS Item No. 4).

- b. As a result, the rates that Evergy may charge for electric service is subject to the caps imposed by RSMo. §§ 393.1655.3 and 393.1655.5.
- c. Section 393.1655.3 RSMo. states that if the average overall rate of an electrical corporation that has elected PISA ever exceeds a compound annual growth rate of 3%, the electric utility is denied the excess as a performance penalty.
- d. Section 393.1655.5 RSMo., by contrast, states that if the charges applied through an FAC rider (“a rate adjustment mechanism approved by the commission under sections 386.266”) would cause an electric corporation’s average overall rate to exceed a compound annual growth rate of 3%, then the electric utility must defer the amount that would have been charged through the FAC rider that cause said excess for later recovery through the Company’s PISA mechanism.
- e. Evergy is currently before the Commission seeking an increase to its general rates. (*See* Commission docket number ER-2022-0130).
- f. The rate increase Evergy is seeking is driven primarily by infrastructure investments made pursuant to the PISA election.

Evergy Missouri West Rate Request

- Revenue request includes infrastructure investment to improve reliability, enhance customer service and enable transition to cleaner resources
- Substantially offset by ~\$57M of customer savings and cost reductions



Ongoing savings exceed projections; reduce rate increase request by more than 60%

³ 1. Excludes 95% of net fuel costs, or \$32.1 million; unlike other elements of base rates, fuel costs will be subject to adjustment (up or down) through a fuel recovery mechanism every six months based on incurred costs. Total requested increase including net fuel is \$59.8 million or 8.31%.

(Direct Testimony of Darrin R. Ives Figure 1: Rate Request Highlights pg. 9 ln. 1, ER-2022-0130, EFIS Item No. 5 (red circle added by OPC)).

- g. Evergy is also seeking to increase the rates to be charged through its FAC in the present case.
- h. Evergy’s FAC rate increase will not **itself** cause Evergy’s average overall rate to exceed the 3% compound annual growth rate cap imposed by § 393.1655.5 RSMo.
- i. In the same manner, Evergy’s PISA investments would not **themselves** cause Evergy’s average overall rate to exceed the 3% compound annual growth rate cap imposed by § 393.1655.3 RSMo.

- j. However, there is a *potential* that the fuel and purchase power costs to be recovered through the FAC and the cost related to the PISA investments **when combined** may push Evergy above the 3% compound annual growth rate cap.²
- k. Under the FAC rule, absent a dispute, the FAC rate increase would go into effect before the rates approved in Evergy’s general rate case went into effect.³
- l. Evergy is therefore concerned that if the FAC rate increase goes into effect **before** the general rate case has concluded, the addition of the PISA investments in the general rate case would potentially push Evergy’s average overall rate over the 3% compound annual growth rate cap imposed by § 393.1655.3 RSMo., thereby exposing Evergy to the statutory performance penalty.

² This is a potential risk only in as far as it depends on the amount the Commission permits Evergy to recover in its general rate case. If the Commission allows Evergy to collect all that it has requested in the general rate case, then the combination of the FAC increase and the PISA investment recovery would push Evergy above the 3% compound annual growth cap.

³ Under Commission rule 20 CSR 4240-20.090(8)(G), an electric utility’s request to modify its existing fuel adjustment rate mechanism will either be approved by the Commission or the proposed tariff sheets will take effect without Commission order 60 days from the date the electric utility files both its testimony and proposed tariff sheets, provided that the Commission does not determine the proposed adjustment is not in accordance with the provisions of the rule. Evergy filed its proposed tariff sheets and testimony in this case on July 1, 2022. (Tariff Revision (JE-2023-0005) (Public and Confidential), “127.23_fac tariff eff 9-1-2022.pdf” pg. 1, ER-2023-0011, EFIS Item No. 1). Absent a dispute, the Commission would therefore have either issued an order approving the proposed tariff sheets or allowed them to go into effect August 30, 2022. For Evergy’s general rate case, on the other hand, the Commission has suspended the Company’s proposed tariff sheets until December 6, 2022. (Order Suspending Tariff, Giving Notice of Contested Case Status, Delegating Authority, and Scheduling an Evidentiary Hearing, pg. 2, ER-2022-0130, EFIS item No. 28).

- m. If the inverse occurs and the FAC rate increase goes into effect **after** the general rate case has concluded (and the PISA investments are placed into rates), then it would be the FAC increase that potentially pushes Evergy's average overall rate over the 3% compound annual growth rate cap. This would allow Evergy to defer the excess to its PISA account by operation of section 393.1655.5 RSMo. and avoid a statutory penalty under § 393.1655.3 RSMo.
- n. Thus, in order to avoid the potential for a penalty imposed by § 393.1655.3 RSMo., Evergy needs to delay the adjudication of the FAC rate increase case until after new rates are set in its currently ongoing general rate case.
- o. In order to accomplish that delay, Evergy has presented a meritless argument that clearly misrepresents the plain language of § 393.1655.5 RSMo. but that will nevertheless likely have the practical effect of delaying a Commission determination in the FAC rate increase case until after the conclusion of the general rate increase case, which will thereby render the issue in dispute in this case moot.

28. For the reasons set forth, if the Commission's final determination of the issue now presented in this case is delayed until after the conclusion of Evergy's current general rate case, then the issue in dispute in this case will be rendered moot and ratepayers will be denied the benefit of the statutory rate caps imposed by RSMo. § 393.1655.3.

29. To reiterate, if the Commission does not grant a variance to allow for summary determination in this case and this case is consequently subjected to a prolonged adjudication process, then the question of whether there should be a deferral under § 393.1655.5 RSMo. may be rendered moot. In that instance, ratepayers will be denied the benefit of the statutory rate cap imposed by § 393.1655.3 RSMo. that might otherwise have reduce Evergy's rates in the general rate case.

30. A failure to grant a variance to allow for summary determination in this case therefore has the potential to irreversibly harm ratepayers by forcing them to pay rates that might otherwise have been reduced by the RSMo. § 393.1655.3 rate cap.

31. The potential for irreversible harm – coupled with the reality that the rule 20 CSR 4240-2.117(1)(A) provision for which a variance is sought was never intended to apply under the current circumstances anyway – presents the necessary good cause for the Commission to grant the OPC's requested variance.

Request for Expedited Procedural Schedule in the alternative

32. As explained at length in the preceding section, the speed of the Commission's decision in this case is exceptionally important.

33. If the Commission decides Evergy's current general rate increase case before deciding the present case, then the issue in dispute in this case will be rendered moot and ratepayers may be irreversibly harmed as a result.

34. Consequently, the OPC implores the Commission to ensure that the present case is decided before December 6, 2022, which is the date to which the tariff

sheets offered in Evergy's current rate case have been suspended. (Order Suspending Tariff, Giving Notice of Contested Case Status, Delegating Authority, and Scheduling an Evidentiary Hearing, pg. 2, ER-2022-0130, EFIS item No. 28).

35. Should the Commission deny the OPC's request for summary determination, then the OPC further requests that the Commission order that the procedural schedule for the present case ensures that this case is fully submitted to the Commission no later than October 14th and that new tariff sheets go into effect no later than November 30th.

36. Once again, the OPC notes that such a request is necessary because if the Commission allows this case to linger beyond the end of Evergy's current general rate case, the issue at hand will be rendered moot and Evergy's ratepayers may be irreversibly harmed solely by virtue of the Commission's inaction. (*see* ¶ 27, *supra*).

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission grant a summary determination that Evergy may not defer any portion of the fuel and purchased power costs it incurred during the FAC accumulation period under review in this case along with any rule waiver the Commission finds necessary to provide this relief. Should the Commission deny the OPC's request for summary determination, the OPC requests in the alternative that the Commission order that the procedural schedule for the present case ensures that the case is fully submitted to the Commission no later than October 14th and that new tariff sheets go into effect no later than November 30th.

in past FAC increase request cases demonstrate that the Company does not legitimately consider the costs that it is now seeking to defer to be extraordinary and thus should not be allowed to defer said costs on that basis.

This case represents an attempt by Evergy to avoid the statutory protections that were built into the PISA legislation in the form of rate caps imposed on the utility. Should the Commission allow the deferral Evergy now requests, or otherwise allow this case to linger unresolved beyond the end of Evergy's current general rate case, then the Commission will have effectively nullified those statutory caps. In doing so, the Commission will be depriving customers of the protection the legislature promised them when passing the PISA legislation. The OPC requests the Commission protect the integrity of the PISA rate caps by denying Evergy its requested deferral.

This Memorandum is broken down into four parts. First is a review of the applicable statutory law. Then an application of that law to the undisputed facts in this case that demonstrates why summary determination should be granted. Next is a direct response to Evergy's arguments to demonstrate why they are legally flawed. This includes a repudiation of Evergy's misguided policy claim. Finally, this memorandum will demonstrate how the undisputed facts show that Evergy's claim that costs incurred during this accumulation period are extraordinary is untrue and further contradicted by the Company's own past actions.

Interpretation of Relevant Statutory Law

Evergy elected to make deferrals through Plant in Service Accounting (commonly known as “PISA”) provided for under RSMo. section 393.1400 effective January 1, 2019. (Notice pg. 1, EO-2019-0045, EFIS Item No. 4 (“The Company provides notice that both KCP&L and GMO elect to make the deferrals set forth in §393.1400 RSMo. (Plant in Service Accounting or “PISA”) as of January 1, 2019.”)). As such, Evergy is subject to the provisions of RSMo. section 393.1655, which “applies to an electrical corporation that has elected to exercise any option under section 393.1400 and that has more than two hundred thousand Missouri retail customers in 2018”¹ Of particular importance to this case is subsection 5 of section 393.1655. The full text of section 393.1655.5 reads as follows:

If a change in any rates charged under a rate adjustment mechanism approved by the commission under sections 386.266 and 393.1030 would cause an electrical corporation's average overall rate to exceed the compound annual growth rate limitation set forth in subsection 3 or 4 of this section, the electrical corporation shall reduce the rates charged under that rate adjustment mechanism in an amount sufficient to ensure that the compound annual growth rate limitation set forth in subsection 3 or 4 of this section is not exceeded due to the application of the rate charged under such mechanism and the performance penalties under such subsections are not triggered. Sums not recovered under any such mechanism because of any reduction in rates under such a mechanism pursuant to this subsection shall be deferred to and included in the regulatory asset arising under section 393.1400 or, if applicable, under the regulatory and ratemaking treatment ordered by the commission under section 393.1400, and recovered through an

¹ Evergy, then doing business as KCP&L Greater Missouri Operations Company, indicated that it had 286,741 residential customers and 39,886 “other” customers in its annual report for the calendar year 2018 as filed with the Commission. (2018 KCP&L GMO Annual Report pg. 2).

amortization in base rates in the same manner as deferrals under that section or order are recovered in base rates.

This provision begin with an “if . . .” statement that forms a triggering mechanism for the application of the subsection. Stated a different way, this statute provision is written such that **if** a certain condition is met, a resulting action is taken. The central dispute in this case is simply and solely whether the triggering condition for this statute has been met.

As stated, the triggering mechanism for the application of section 393.1655.5 is the conditional clause that begins with the word “If” and continues until the clause is ended with a comma after the word “section.” The full triggering mechanism is thus:

If a change in any rates charged under a rate adjustment mechanism approved by the commission under sections 386.266 and 393.1030 would cause an electrical corporation's average overall rate to exceed the compound annual growth rate limitation set forth in subsection 3 or 4 of this section, . . .

§ 393.1030.5. The “rate adjustment mechanism[s]” referenced in this clause correspond to RSMo. sections 386.266 and 393.1030. The first of these allows the Commission to “to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation.” RSMo. § 386.266. Evergy has requested and received Commission approval of a rate adjustment mechanism under this provision, which is found in the

form of Evergy's Fuel Adjustment Clause ("FAC") rider. (See Evergy Missouri West, Inc. d/b/a Evergy Missouri West Commission Approved Tariff, P.S.C. Mo. No. 1 Sheet No. 127.13 through 6th Revised Sheet 127.23).

The second provision referenced in the triggering clause requires the Commission to "prescribe by rule a portfolio requirement for all electric utilities to generate or purchase electricity generated from renewable energy resources." RSMo. § 393.1030.1. Subsection 2(4) further requires the Commission to promulgate rules to allow 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." RSMo. § 393.1030.2(4). Evergy has requested and received Commission approval of a rate adjustment mechanism pursuant to the rules promulgated by the Commission in response to this statutory requirement in the form of a Renewable Energy Standard Rate Adjustment Mechanism ("RESRAM") rider. (See Evergy Missouri West, Inc. d/b/a Evergy Missouri West Commission Approved Tariff, P.S.C. Mo. No. 1 2nd Revised Sheet No. 137 through 9th Revised Sheet 137.3).

Given the analysis of sections 386.266 and 393.1030, it is now possible to translate the statutory provision to more directly apply to Evergy. Specifically, the phrase "under a rate adjustment mechanism approved by the commission under sections 386.266 and 393.1030" can be translated to "through the FAC or RESRAM riders" when discussing Evergy. The next point to consider is whether the compound annual growth rate ("CAGR") limitation set forth in subsection 3 or 4 of section

393.1655 would apply. Section 393.1655.3 applies only “to electrical corporations that have a general rate proceeding pending before the commission as of the later of February 1, 2018, or August 28, 2018.” RSMo. § 393.1030.3. By contrast, Section 393.1655.4 applies only “to electrical corporations that do **not** have a general rate proceeding pending before the commission as of the later of February 1, 2018, or August 28, 2018.” RSMo. § 393.1030.4 (emphasis added). Evergy filed notice for a general rate increase on November 22, 2017. (Notice of Intended Case Filing, ER-2018-0146, EFIS Item No. 1). The Commission issued its *Order Approving Tariffs* In that same case on November 26, 2018.² (Order Approving Tariffs, ER-2018-0146, EFIS Item No. 487). Evergy therefore had a rate case pending before the Commission on both February 1, 2018, and August 28, 2018. Thus, it is the CAGR limitation imposed by Section 393.1655.3 that applies for Evergy.

Subsection 3 of section 393.1655 imposes a CAGR limitation of 3%. RSMo. § 393.1030.3. The rates Evergy charges thus cannot exceed 3% compound annual growth over “the electrical corporation's average overall rate as of the date new base rates are set in the electrical corporation's most recent general rate proceeding concluded prior to the date the electrical corporation gave notice under section 393.1400[.]” *Id.* It is now possible to complete the application of the triggering mechanism of section 393.1655.5 to Evergy. Translating the statutory provision to make it Evergy specific yields the following:

² The Order became effective December 6, 2018. (Order Approving Tariffs, ER-2018-0146, EFIS Item No. 487).

If a change in any rates charged [through the FAC or RESRAM riders] would cause [Evergy]'s average overall rate to exceed the [3%] compound annual growth rate limitation set forth in subsection 3 [. . .] of this section, . . .

This is the triggering mechanism that determines whether Evergy should defer any portion of the sums not recovered through the FAC as outlined in the remainder of section 393.1655.5. Now it is necessary to apply the facts of this case to the provision to see if the triggering mechanism has been met.

Application of Relevant Law

This case concerns Evergy's request to increase the rates charged through its FAC. The critical question is therefore simply: would an increase to the rates charged through its FAC cause Evergy's average overall rate to exceed the 3% CAGR limitation? Evergy is arguing that the answer is yes, and thus seeks a deferral pursuant to the statute. The undisputed facts show that the answer is no, which is why summary determination should be granted in this case.

To answer the question posed requires three steps:

1. determine what the 3% CAGR limitation is as of the date the FAC is changed;
2. determine what effect Evergy's FAC rate increase would have on its average overall rates; and
3. determine if the effect Evergy's FAC rate increase would have on its average overall rates is more or less than the 3% CAGR limitation as of the date the FAC is changed.

The OPC will walk through each of these three points and show how they are answered in an undisputed fashion.

Determining what the 3% CAGR limitation is as of the date the FAC is changed

Evergy's filed tariffs bear an effective date of September 1, 2022. (Tariff Revision (JE-2023-0005) (Public and Confidential), "127.23_fac tariff eff 9-1-2022.pdf" pg. 1, ER-2023-0011, EFIS Item No. 1). This is undisputed because Evergy filed the tariff. *Id.* As of September 1, 2022, the 3% annual compound annual growth rate cap imposed on Evergy by section 393.1655.3 will be 11.6887%. (Tariff Revision (JE-2023-0005) (Public and Confidential), "west pisa calc cagr - may 2022.pdf" pg. 1 lns. 25 – 27, ER-2023-0011, EFIS Item No. 1 ("For rates effective September 2022 (30th AP) 3% Average Overall Rate Cap is actually: 11.6887%"), pg. 3 (showing 11.68875 under the 3.00% overall cap as of 09/01/22); *see also* Staff Recommendation, "er-2023-0011 staff memo.pdf" pg. 2, ER-2023-0011, EFIS Item No. 5 ("the 3% average overall rate cap computation required by PISA, which for this accumulation period is a CAGR cap of 11.6887% . . ."). This is undisputed because Evergy admits it in its filed case. *Id.* The 3% CAGR limitation is therefore indisputably 11.6887% as of the date the FAC would be changed.

Determining what effect Evergy's FAC rate increase would have on its average overall rate

The full amount of Fuel and Purchase Power Adjustment ("FPA") that would otherwise be collected through the FAC absent any deferral is \$44,604,020. (Tariff

Revision (JE-2023-0005) (Public and Confidential), "127.23_fac tariff eff 9-1-2022.pdf" pg. 1 ln. 11, ER-2023-0011, EFIS Item No. 1). This is undisputed because Evergy admits it in its filed case. *Id.* Unfortunately, Evergy chose not to include any calculations in its filed case to demonstrate what impact the recovery of this full amount would have on Evergy's average overall rates so that it could be compared to the CAGR limitation. However, Evergy did include calculations in its filed case that showed what impact the recovery of the FPA remaining *after* taking Evergy's deferral would have on rates. By using the same math employed by Evergy in those calculations and simply substituting the full amount of the FPA for Evergy's amount after deferral, it is possible to show what impact the full recovery of the \$44,604,020 FPA amount would have on Evergy's rates. (See Memorandum of Lena M. Mantle and Supporting Workpapers, ER-2023-0011, Attachment to Memo). Moreover, because this analysis would apply a number offered by Evergy to the math performed by Evergy, the Company cannot dispute its veracity.

The calculations for this analysis are found on the first page of the file labeled "west pisa calc cagr - may 2022.pdf" uploaded into EFIS as an attachment to what is titled "Tariff Revision (JE-2023-0005) (Public and Confidential)" and designated EFIS item no. 1. Specifically, the analysis will focus primarily on the section labeled "Proposed Revenue for Recovery with semi-annual FAC rate update (30th Accumulation)" under the "Overall 3% Cap (Section 393.1655.3)" heading. A snapshot of the relevant section is included as Figure 1 below.

Figure 1: Evergy Filed Support Snapshot

Proposed Revenue for Recovery with semi-annual FAC rate update (30th Accumulation)					
		Total Revenue	Total Sales kWh	Tariff Rate	Tariff w/Avg VAF
Base Revenue					
2018 Rate Case Revenue per Stipulation		\$ 744,758,135			
2018 Rate Case Revenue Decrease		(23,981,212)			
Total Revenue Required	effective 12/6/2018 ER-2018-0146	\$ 720,776,923	7,957,355,672	\$ 0.09058	\$ 0.09058
Rider Revenue					
RESRAM	effective 12/1/2021 ET-2022-0092	\$ 7,207,581	8,091,385,105	\$ 0.00089	\$ 0.00089
FAC					
29th Accumulation					
Recovered March 2022 - August 2022					
Total FPA includes true-up	ER-2022-0174	\$ 47,488,718	8,632,897,538	\$ 0.00550	\$ 0.00556
Weighted Avg VAF using Rate Case ER-2018-0146			0.010398		
30th Accumulation					
Recovered September 2022 - February 2023					
Total FPA includes true-up		\$ 13,604,020	8,659,609,098	\$ 0.00157	\$ 0.00159
Weighted Avg VAF using Rate Case ER-2018-0146			0.010398		
Proposed Projected Revenue to Recover		\$ 789,077,242			\$ 0.09861
Rate Incr / (Decr) over Avg Overall Rate					\$ 0.00494
Projected Rate Change					5.27%
Adjustment amount in excess of Avg Overall Rate Cap: 11.69%					
Amount Deferred (393.1655.5)					
Proposed Projected Revenue to Recover		\$ 789,077,242			\$ 0.09861
Rate Incr / (Decr) over Avg Overall Rate					\$ 0.00494
Projected Rate Change					5.27%

(Tariff Revision (JE-2023-0005) (Public and Confidential), “west pisa calc cagr - may 2022.pdf” pg. 1, ER-2023-0011, EFIS Item No. 1). To facilitate easier understanding, the relevant information has been translated to Table 1 below:

Table 1: Evergy Filed Support Data

	Total Revenue	Total Sales kWh	Tariff Rate	Tariff w/ Avg VAF
Base Revenue				
Total Revenue Required effective 12/6/2018	\$720,776,923	7,957,355,672	\$0.09058	\$0.09058
RESRAM effective 12/1/2021	\$7,207,581	8,091,385,105	\$0.00089	\$0.00089
FAC 29th Accumulation				
Total FPA includes true-up ER-2022-0174	\$47,488,718	8,632,897,538	\$0.00550	\$0.00556

FAC 30 th Accumulation Total FPA includes true-up	\$13,604,020	8,659,609,098	\$0.00157	\$0.00159
Proposed Projected Revenue to Recover	\$789,077,242			\$0.09861
Rate Incr / (Decr) over Avg Overall Rate				\$0.00494
Projected Rate Change				5.27%

Id. As can plainly be seen from this table, Evergy projects that the inclusion of the \$13,604,020 FPA that remains after its requested deferral³ will result in a projected rate change of 5.27%, which is well below the 11.6887% CAGR limit imposed by section 393.1655.3. But what happens if the full \$44,604,020 FPA amount is substituted for the \$13,604,020 amount included in this calculation?

In order to understand how changing the entry for “Total Revenue” of “FAC 30th Accumulation Total FPA includes true-up” from \$13,604,020 to \$44,604,020 would effect this table, it is necessary to understand how the “Tariff Rate” and “Tariff Rate w/Avg VAF” is calculated.⁴ First, the “Tariff Rate” column is the result of dividing the “Total Revenue” by the “Total Sales kWh” rounded to the nearest 5th decimal point. So, for example, the “Total Revenue” for “Base Revenue Total Revenue Required effective 12/6/2018” is \$720,776,923. Dividing this number by the “Total Sales kWh” of 7,957,355,672 and rounding to the nearest 5th decimal point yields the

³ This number can be cross-referenced with the proposed tariff sheet where it appears at line 11.2 (Tariff Revision (JE-2023-0005) (Public and Confidential), “127.23_fac tariff eff 9-1-2022.pdf” pg. 1 ln 11.2, ER-2023-0011, EFIS Item No. 1). The \$13,604,020 value is equal to the full FPA amount of \$44,604,020 less a deferral of \$31,000,000. *Id.*

⁴ The “Total Sales kWh” column is independent of the “Total Revenue” column and would thus remain unchanged regardless of the proposed substitution.

\$0.09058 found in Evergy's table. The same holds true for the remainder of the entries found in the "Tariff Rate" column.

The "Tariff Rate w/Avg VAF" is itself the result of multiplying the "Tariff Rate" column by an amount equal to 1 plus the "Weighted Avg VAF using Rate Case ER-2018-0146" found in Figure 1 but not reproduced in Table 1.⁵ However, this mathematical operation is only applied to the FAC tariff rates. The Base Revenue and RESRAM values are unchanged between the "Tariff Rate" and the "Tariff w/Avg VAF" values. As an example, the calculation for the "Tariff w/Avg VAF" value for the FAC 29th accumulation period is equal to the "Tariff Rate" of \$0.00550 multiplied by $(1 + 0.010398)$ to yield the \$0.00556 found in Evergy's table.

Having now examined how the "Tariff Rate" and "Tariff Rate w/Avg VAF" is calculated, it is possible to substitute the full \$44,604,020 FPA amount for the \$13,604,020 FPA after deferral amount found in Evergy's supporting calculations. As a result of this substitution, the amount in the "Total Revenue" column for the "FAC 30th Accumulation Total FPA includes true-up" row changes from \$13,604,020 to \$44,604,020. (Memorandum of Lena M. Mantle and Supporting Workpapers, ER-2023-0011, Attachment to Memo). The amount under the "Tariff Rate" column must now be recalculated by taking the \$44,604,020 in "Total Revenue" and dividing it by the 8,659,609,098 in "Total Sales kWh" to yield a new "Tariff Rate" value of \$0.00515. *Id.* This will also change the value under the "Tariff Rate w/Avg VAF" for that row as the new "Tariff Rate" will need to be multiplied by $(1 + 0.010398)$ to give the new

⁵ Stated another way, it is the result of multiplying the "Tariff Rate" column by 1.010398.

“Tariff Rate w/Avg VAF” value of \$0.00520. *Id.* The results of these changes can be found in Table 2 below:

Table 2: Evergy Filed Support with Substitutions

	Total Revenue	Total Sales kWh	Tariff Rate	Tariff w/ Avg VAF
<u>Base Revenue</u> Total Revenue Required effective 12/6/2018	\$720,776,923	7,957,355,672	\$0.09058	\$0.09058
RESRAM effective 12/1/2021	\$7,207,581	8,091,385,105	\$0.00089	\$0.00089
FAC 29 th Accumulation Total FPA includes true-up ER-2022-0174	\$47,488,718	8,632,897,538	\$0.00550	\$0.00556
FAC 30 th Accumulation Total FPA includes true-up	\$13,604,020 \$44,604,020	8,659,609,098	\$0.00157 \$0.00515	\$0.00159 \$0.00520

It is now necessary to discuss the last three rows from Evergy’s original table. The first is the “Proposed Projected Revenue to Recover” value. This value is equivalent to the sum of the preceding values for the two columns where entries appear. For example, in Evergy’s workpaper the “Proposed Projected Revenue to Recover” value for the “Total Revenue” column is \$789,077,242, which is the sum of the four values above it in the same column (\$720,776,923; \$7,207,581; \$47,488,718; and \$13,604,020). The value under the “Tariff Rate w/Avg VAF” column is similarly shown as \$0.09861, which is the sum of four values above it in the same column (\$0.09058; \$0.00089; \$0.00556; and \$0.00159).⁶ By substituting the full \$44,604,020 FPA amount for the \$13,604,020 amount found in Evergy’s supporting calculations,

⁶ There appears to be a rounding error of 0.00001 in the calculations performed by Evergy. This does not materially alter the effect of this exercise.

the values for the “Proposed Projected Revenue to Recover” are changed to \$820,077,242 and \$0.10223 for the “Total Revenue” and “Tariff Rate w/Avg VAF” columns, respectively. *Id.*

The next issue to consider is the “Rate Incr / (Decr) over Avg Overall Rate” row. The calculation in this row is simply the value found in the “Proposed Projected Revenue to Recover” row, “Tariff Rate w/Avg VAF” column less the \$0.09367 “Avg Overall Rate” value in effect on December 6, 2018, that is found on the immediately adjacent table in the same workpaper. In Evergy’s original, this value is \$0.09861 less \$0.09367 to yield \$0.00494. By substituting the full \$44,604,020 FPA amount for the \$13,604,020 amount found in Evergy’s supporting calculations, the value calculation changes to \$0.10223 less \$0.09367 to yield \$0.00856. *Id.*

The last and final calculation is the “Projected Rate Change” value. This calculation is performed using the following mathematical formula:

$$\text{Percentage Increase} = (100\%) \times \frac{(\text{final value} - \text{initial value})}{\text{initial value}}$$

In this instance, the final value is found in the “Proposed Projected Revenue to Recover” row, “Tariff Rate w/Avg VAF” column and the initial value is found in the same place in the adjacent “Average Overall Rate Effective December 6, 2018” table in Evergy’s filed calculations. Because the initial value is taken from the same “Average Overall Rate Effective December 6, 2018” table, it is always \$0.09367. In Evergy’s original, the final value was \$0.09861 and the whole calculation looks as such:

$$5.27\% = (100\%) \times \frac{(0.09861 - 0.09367)}{0.09367}$$

After substituting the full \$44,604,020 FPA amount for the \$13,604,020 amount found in Evergy's supporting calculations, the final value changes to \$0.10223, which changes the calculation to this:

$$9.14\% = (100\%) \times \frac{(0.10223 - 0.09367)}{0.09367}$$

From this, the final determination of what the percentage change in rates if the full \$44,604,020 FPA is collected through the FAC is found to be 9.14%. *Id.*

After substituting the full \$44,604,020 FPA amount for the \$13,604,020 FPA after deferral amount found in Evergy's supporting calculations, the final table is thus:

	Total Revenue	Total Sales kWh	Tariff Rate	Tariff w/ Avg VAF
<u>Base Revenue</u>				
Total Revenue Required effective 12/6/2018	\$720,776,923	7,957,355,672	\$0.09058	\$0.09058
RESRAM effective 12/1/2021	\$7,207,581	8,091,385,105	\$0.00089	\$0.00089
FAC 29 th Accumulation				
Total FPA includes true-up ER-2022-0174	\$47,488,718	8,632,897,538	\$0.00550	\$0.00556
FAC 30 th Accumulation				
Total FPA includes true-up	\$13,604,020 \$44,604,020	8,659,609,098	\$0.00157 \$0.00515	\$0.00159 \$0.00520
Proposed Projected Revenue to Recover	\$789,077,242 \$820,077,242			\$0.09861 \$0.10223

Rate Incr / (Decr) over Avg Overall Rate				\$0.00494 \$0.00856
Projected Rate Change				5.27% 9.14%

Id. This now establishes what effect the recovery of the whole and complete \$44,604,020 FPA amount through Evergy’s FAC would have on customer’s average overall rates. The answer is that complete recovery of the \$44,604,020 FPA amount through the FAC would result in a 9.14% increase in average overall rates compared to the average overall rates that were in effect at the time of Evergy’s most recent general rate proceeding concluded prior to when it elected PISA. *Id.* This number – 9.14% – is what must now be compared against the 11.6887% CAGR limit imposed by section 393.1655.3 to determine if the change in rates charged through Evergy’s FAC would trigger the effect of section 393.1655.5. Moreover, because the value was determined using Evergy’s number with Evergy’s math, the value cannot be disputed by Evergy.

Determining if the effect Evergy’s FAC rate increase would have on its average overall rates is more or less than the 3% CAGR limitation as of the date the FAC is changed

The effect of Evergy’s FAC rate increase on its average overall rates if the full \$44,604,020 FPA amount is included is an increase of 9.14%. (Memorandum of Lena M. Mantle and Supporting Workpaper, ER-2023-0011, Attachment to Memo). This is less than the 11.6887% CAGR limit imposed by RSMo. § 393.1655.3 as of the date the

FAC is changed. The fact that 9.14% is less than 11.6887% is based on simple arithmetic and not in dispute. Because Evergy's average overall rate does not exceed the CAGR imposed by RSMo. § 393.1655.3 as of the date the FAC is changed, the effect of § 393.1655.5 is not triggered.

Conclusion

The undisputed facts clearly and unavoidably establish that, if the full \$44,604,020 FPA amount identified in Evergy's filing is included in rates to be recovered through Evergy's FAC, the change in rates charged through Evergy's FAC will **not** cause Evergy's average overall rate to exceed the 3% CAGR limitation set forth in subsection 3 of section 393.1655.3. To reiterate, the inclusion of the full \$44,604,020 FPA amount would result in a change in the rates charged through Evergy's FAC that would cause Evergy's average overall rate to increase by 9.14% above the average overall rates that were in effect at the time of Evergy's most recent general rate proceeding concluded prior to when it elected PISA. This is substantially less than the 11.6887% CAGR rate cap that the Company itself identifies. Further, this is established exclusively relying on the assertions, values, and mathematical operations presented by Evergy in its filed case. As such, these conclusions are completely beyond dispute.

Because it is completely beyond dispute that the inclusion of the full \$44,604,020 FPA amount in Evergy's FAC rate will not cause Evergy's average overall rates to rise above the CAGR limit of 393.1655.3, the conditional clause of 393.1655.5 is not triggered. Because Evergy will not trigger the conditional clause of

section 393.1655.5, Evergy's attempt to defer costs based on section 393.1655.5 is a violation of the plain language of the statute. Because Evergy's attempt to defer costs based on section 393.1655.5 is a violation of the plain language of the statute, a grant of summary determination denying that deferral is warranted.

Responding to Evergy's argument regarding deferral under 393.1655.5

This memorandum has so far focused simply on explaining why the undisputed facts show that no deferral under 393.1655.5 is warranted without directly addressing Evergy's argument. It is now time to directly address the error in Evergy's argument. The easiest point to begin is the statement found in paragraph 6 of the Company's response to Staff's *Recommendation*. Evergy states "The plant-in-service accounting [] legislation enacted in 2018 (393.1655.3 RSMo. is particularly relevant here) clearly establishes that increases in fuel and purchased power costs that cause a utility to exceed its compound annual growth rate [] cap can be deferred to the PISA regulatory asset." (Response to Staff Recommendation and Request for Hearing pg. 2 ¶ 6, ER-2023-0011, EFIS Item No. 6). This is a clearly false statement. First, section 393.1655.3 states nothing of deferral. RSMo. § 393.1655.3. What Evergy is really referring to is section 393.1655.5. Even then, however, the statement is still wrong. Section 393.1655.5 provides that **FAC and RESRAM** costs that cause a utility to exceed its CAGR cap can be deferred to the PISA regulatory asset. RSMo. § 393.1655.5. The problem, put simply, is that Evergy is conflating costs recovered through the FAC with **all** fuel and purchased power cost increases, which is not remotely accurate.

An electric utility recovers the cost of fuel and purchased power through base rates. This can be seen in Evergy's currently filed rate case. (*See, e.g., Direct Testimony of Ronald A. Klote Schedule RAK-5 pg. 1 of 1, ER-2022-0130, EFIS Item No. 15 (showing Iatan - Coal & Freight, Purchased Gas & Oil, and Purchased Power listed among Operation and Maintenance Expenses for purpose of cash working capital calculations)*). The FAC mechanism is only to account for "**increases and decreases**" in prudently incurred fuel and purchased-power costs that occur "**outside of general rate proceedings**" and does not account for all fuel and purchase power. RSMo. § 386.266.1 (emphasis added). Therefore, changes to fuel and purchase power that occur inside (*i.e.* during) a general rate proceeding do not flow through the FAC, they flow through base rates. This is a critical problem because Evergy is attempting to argue for a deferral based on fuel and purchase power that will be put into base rates in its current general rate case, Case No. ER-2022-0130.

Evergy states that it should be allowed to defer costs under section 393.1655.5 "[b]ecause the combined increase in fuel and purchased power costs from this accumulation period plus the immediately preceding recovery period **plus the re-base of fuel and purchased power costs that will occur in the ongoing general rate case** is likely to cause the Company to exceed the CAGR cap that will apply in its ongoing general rate proceeding." (Response to Staff Recommendation and Request for Hearing pg. 2 ¶ 6, ER-2023-0011, EFIS Item No. 6 (emphasis added); *see also* Direct Testimony of Darrin R. Ives pg. 10 lns. 8 – 13, ER-2023-0011, EFIS Item No. 3). The re-base of fuel and purchased power costs that will occur in Evergy's

ongoing general rate case are not costs that will be collected through the FAC. Therefore, these charges are not included in the calculation to determine whether the deferral provision of section 393.1655.5 is triggered under the plain language of the statute.⁷ Evergy's attempt to include these costs in its calculations to determine if section 393.1655.5 is triggered thus contradicts the very language of the statute on which the Company relies.

Evergy is seeking to illegally expand the provision of section 393.1655.5 to go from “a change in any rates charged under a rate adjustment mechanism approved by the commission under sections 386.266 and 393.1030” to “a change in rates charged to recover fuel and purchase power cost recovered through any mechanism and by any means whatsoever.” However, this Commission “is a creature of statute and can function only in accordance with’ its enabling statutes.” *State ex rel. Mogas Pipeline LLC v. Mo. PSC*, 366 S.W.3d 493, 496 (Mo. banc 2012) (quoting *State ex rel. Monsanto Co. v. Pub. Serv. Comm'n*, 716 S.W.2d 791, 796 (Mo. banc 1986)). The Commission should therefore deny this unwarranted and grossly unsupported expansion of statutory language. As soon as the issue is viewed in the proper frame, meaning that only those costs that actually flow through the FAC are considered when determining whether deferral under section 393.1655.5 is warranted, the answer to this issue is rendered indisputably clear as the OPC has already shown. That answer, again, is that no deferral is warranted.

⁷ To reiterate the essential point, section 393.1655.5 considers only whether a change to the charges imposed by the FAC or RESRAM would cause the CAGR to be exceeded. RSMo. §393.1655.5. It does not consider a change to base rates. *Id.*

In addition to the simple yet critical fact that the fuel re-basing costs that Evergy is relying upon to support its argument are not recovered through the FAC, there are two other considerations that should be made. The first is that the fuel re-basing costs are not presently being charged to customers in base rates. As such, changing the FAC **now** would not cause Evergy's average overall rates to exceed the 3% CAGR under any circumstances. Instead, the FAC rate change could only potentially cause Evergy's average overall rates to exceed the 3% CAGR if it occurred **after** the general rate case had been completed and the re-base of fuel costs included in rates. However, this fact once again does not give either Evergy or the Commission the leeway to ignore the plain text of the statute.

The second consideration is that the amount of the fuel and purchase power costs to be re-based in Evergy's general rate case is currently in dispute in that rate case along with the rest of the rate increase Evergy is seeking. That amount is therefore only speculative. The Commission should not grant a deferral based on a speculative future amount. This is especially true when it is quite possible that no deferral would be warranted – timing issues notwithstanding – simply because the Commission does not grant Evergy a sufficient increase in base rates as part of the general rate case to trigger the deferral.

For all three of the reasons thus laid out, Evergy's argument for a deferral of any part of the fuel and purchase power costs to be collected in relation to this FAC accumulation period must be denied. Evergy's argument misrepresents the relevant statute and is based on assumed costs that are neither guaranteed nor even currently

being charged to ratepayers. Moreover, none of these arguments depend on any fact in dispute. They are all based on undisputed truths and legal arguments regarding statutory interpretation. This further demonstrates why the Commission should grant summary determination in this case.

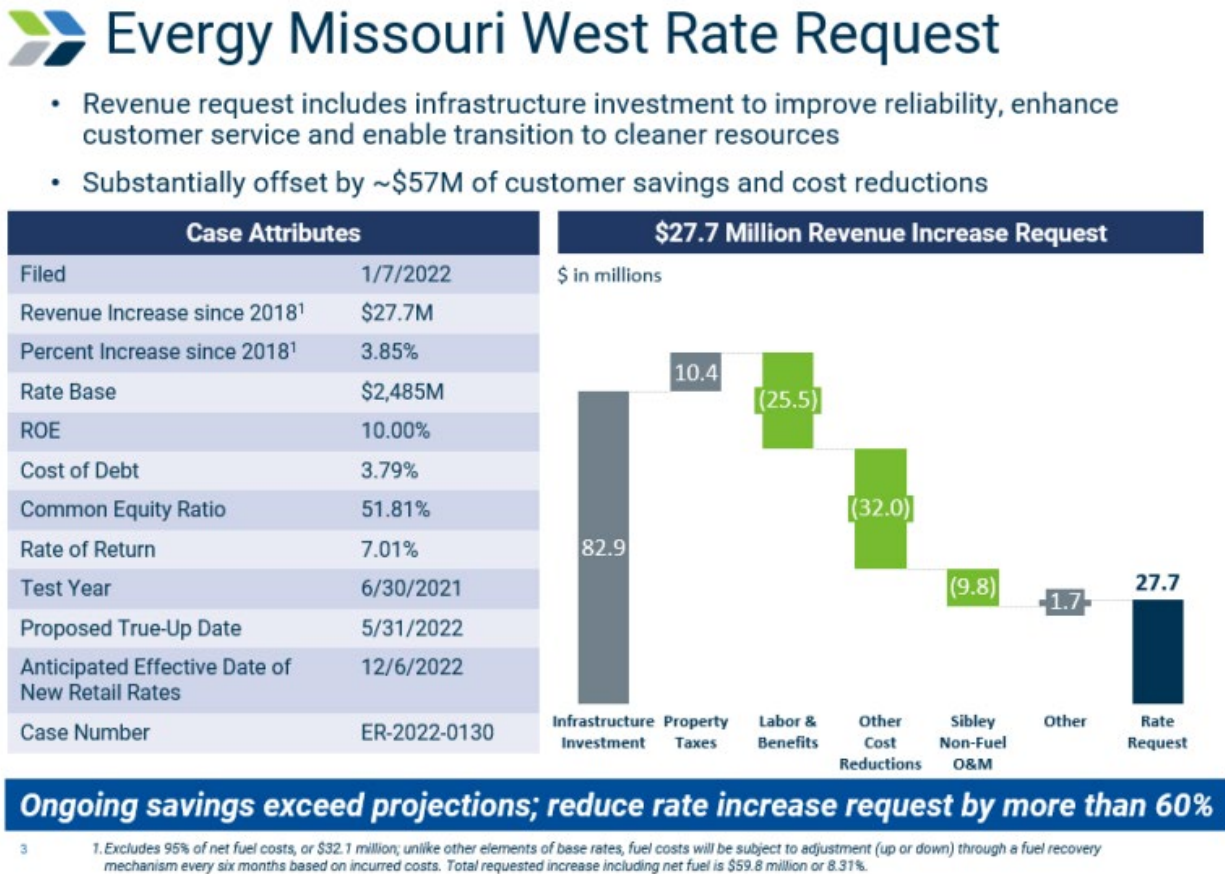
Response to Evergy's Policy Argument

Evergy attempts to make a policy argument by claiming it would be “unreasonable and unfair” not to grant a deferral because Evergy “does not control fuel and purchased power prices[.]” (Response to Staff Recommendation and Request for Hearing pg. 3 ¶ 6, ER-2023-0011, EFIS Item No. 6 (emphasis added)). This is part of Evergy's larger attempt to color this issue by suggesting that the deferral is only necessary due to fuel re-basing in the rate case. Evergy witness Darrin R. Ives goes as far as to claim that the rate increase being sought in Evergy's current general rate proceeding is “driven primarily by the rebase of fuel and purchased power in base rates.” (Direct Testimony of Darrin R. Ives pg. 10 lns. 10 – 13, ER-2023-0011, EFIS Item No. 3). This is blatantly untrue.

Mr. Ives filed direct testimony in the same rate case he references in this case. In the rate case, however, Mr. Ives gave a very different account of the major drivers for the general rate case. Specifically, Mr. Ives describes the main drivers of the general rate case as being “investments to improve reliability, enhance customer service and enable the Company's transition to cleaner energy resources,” (Direct Testimony of Darrin R. Ives pg. 2 lns. 20 – 21, ER-2022-0130, EFIS Item No. 5). He

further includes the following figure which he claims highlights “major drivers and key attributes of the case[.]” *Id.* at pg. 8 ln. 12.

Figure 2: Darrin Ives Testimony Figure 1



Id. at pg. 9 ln. 1. As can plainly be seen, the real main driver for the rate increase being sought in the general rate case is the \$82.9 million dollars that Evergy invested in PISA related Infrastructure Investments. This completely dwarfs the \$32.1 million in fuel costs that Evergy hides in a footnote.⁸

⁸ The OPC would stress the inherent duplicity of claiming that the general rate case is being “driven” by fuel re-basing costs while simultaneously trying to minimize the visibility of those same fuel costs in testimony for the general rate case by relegating the information to a footnote in a graphical illustration.

The very purpose of section 393.1655 is to establish rate caps to protect ratepayers from overreach by utilities that have elected to defer infrastructure investment costs under the PISA legislation (RSMo. 393.1400). *See* RSMo. § 393.1655.3. This is important because the Company’s own witness demonstrates that it is these same PISA related infrastructure investment costs, not fuel and purchase power costs, that are bringing Evergy within striking distance of hitting the rate caps imposed by section 393.1655.3. (Direct Testimony of Darrin R. Ives pg. 9 ln. 1, ER-2022-0130, EFIS Item No. 5). If the rate caps are hit in the general rate case, it is Evergy’s PISA spending – not the Company’s fuel costs – that are to blame. If the Commission now allows Evergy to just defer fuel costs based on a clear misreading of the PISA legislation in order to avoid the rate caps, then the Commission will be effectively stripping customers of the very protections that were built into that legislation. The OPC asks that the Commission act to preserve the meaning of the PISA caps by not allowing Evergy to surreptitiously shift costs in order to side-step those restrictions.

Responding to Evergy’s Argument regarding Extraordinary Costs

Potentially realizing the weakness of its faulty legal argument based on the PISA statute, Evergy developed one other scheme to defer its fuel costs and avoid the PISA rate caps. Evergy is attempting to claim that the costs incurred during the current FAC accumulation period were “extraordinary” in nature and should therefore be deferred. (Response to Staff Recommendation and Request for Hearing pg. 3 ¶ 6, ER-2023-0011, EFIS Item No. 6). Evergy Witness Mr. Ives even offers seven

pages of testimony to argue why these costs are extraordinary. (Direct Testimony of Darrin R. Ives pgs. 3 – 9, ER-2023-0011, EFIS Item No. 3). However, the reality is that Evergy does not really consider these costs extraordinary and would not be making this argument were it not for the Company's fear of hitting the statutory rate caps. This can be established quite easily and readily through one simple, undisputed fact: Evergy's last FAC accumulation period resulted in even higher fuel and purchase power costs than the present one, yet Evergy did not argue those costs were extraordinary.

Once again, it is undisputed that the fuel and purchase power adjustment subject to recovery for this accumulation period (absent any deferral) is \$44,604,020. (Tariff Revision (JE-2023-0005) (Public and Confidential), "127.23_fac tariff eff 9-1-2022.pdf" pg. 1 ln 11, ER-2023-0011, EFIS Item No. 1). It is further undisputed that the fuel and purchase power adjustment subject to recovery for Evergy's last FAC accumulation period (the 29th accumulation period) was \$47,488,718. (Tariff Revision (JE-2023-0005) (Public and Confidential), "west pisa calc cagr - may 2022.pdf" pg. 1 ln 13, ER-2023-0011, EFIS Item No. 1; *see also*, Evergy Missouri West, Inc. d/b/a Evergy Missouri West Commission Approved Tariff, P.S.C. Mo. No. 1 6th Revised Sheet No. 127.23 lns. 11 – 11.2). Given these two factors, no one can dispute that the \$44,604,020 fuel and purchase power adjustment subject to recovery for the current (30th) FAC accumulation period is less than the \$47,488,718 fuel and purchase power adjustment subject to recovery for Evergy's previous (29th) FAC accumulation period.

Despite having higher fuel and purchase power costs in its last accumulation period than the present one, Evergy made no effort to seek a deferral for extraordinary costs during its last accumulation period. This can be seen, for example, by comparing the currently effective FAC tariff sheet filed for the previous FAC accumulation period (which does not contain a deferral at line 11.1) to the proposed tariff sheet in this case (which does contain such a deferral). (*compare Tariff Revision (JE-2022-0193) (Public and Confidential), “127.23_fac tariff eff 3-1-2022.pdf”* pg. 1 lns. 11 – 11.2, ER-2022-0174, EFIS Item No. 1, *and Tariff Revision (JE-2023-0005) (Public and Confidential), “127.23_fac tariff eff 9-1-2022.pdf”* pg. 1 lns. 11 – 11.2, ER-2023-0011, EFIS Item No. 1; *see also Evergy Missouri West, Inc. d/b/a Evergy Missouri West Commission Approved Tariff, P.S.C. Mo. No. 1 6nd Revised Sheet No. 127.23*). Further evidence can be found in the testimony filed in the previous accumulation period by Evergy witness Ms. Lisa A. Starkebaum, who makes no reference to fuel costs in the 29th accumulation period being deferred because they were extraordinary.⁹ (*see Direct Testimony of Lisa A. Starkebaum, ER-2022-0174, EFIS Item No. 2*). Instead, Ms. Starkebaum sought to justify the higher costs:

When compared to the prior 28th accumulation period, the [Actual Net Energy Costs (“ANEC”)] are \$52 million higher in the 29th accumulation period than the previous 28th accumulation period primarily due to a 54% increase in purchased power expense of \$46.4 million. Fuel costs are higher in the 29th accumulation period by \$10.9 million driven by 29% more generation as well as higher natural gas prices. For June through November 2021, the published natural gas contract settlement price averaged \$4.51, which is 64% higher than the \$2.75 averaged in

⁹ Ms. Starkebaum does make reference to extraordinary costs related to Winter Storm Uri, but these are costs that were deferred from previous accumulation periods. (*see, e.g., Direct Testimony of Lisa A. Starkebaum pg. 5 lns. 3 – 4, ER-2022-0174, EFIS Item No. 2* (“As explained in the Company’s last FAR filing, in order to identify the extraordinary costs associated with Winter Storm Uri . . .”).

December 2020 through May 2021. The 29th accumulation period of June through November is naturally warmer than the previous 28th accumulation period of December through May resulting in a 10% increase in demand.

(Direct Testimony of Lisa A. Starkebaum pg. 6 lns. 6 – 16, ER-2022-0174, EFIS Item No. 2). It should be extremely clear that Evergy did not consider the \$47,488,718 fuel and purchase power adjustment subject to recovery from its last FAC accumulation period to be extraordinary. Evergy should not be permitted to now repudiate that prior decision and claim **lower** costs are extraordinary just because it is suddenly in Evergy's financial interest to do so.

Evergy's blatant hypocrisy in claiming the lower fuel and purchase power costs of its 30th FAC accumulation period are extraordinary compared to the higher fuel and purchase power costs of its 29th accumulation period should be sufficient on its face for the Commission to grant summary determination as to this point. It is inherently inequitable to let Evergy defer costs when it is in its own financial interest to do so (at the expense of its ratepayers no less) while otherwise forcing ratepayers to pay higher fuel costs in other accumulation periods. The undisputed facts establishing Evergy's behavior in the last accumulation period warrant the granting of a summary determination that the lower costs incurred in this accumulation period are not extraordinary and should not be deferred.

Conclusion

For all the reasons laid out in this memorandum, the Commission should grant the OPC's request for a summary determination that Evergy should not defer any

portion of the fuel and purchase power costs subject to recovery that were accrued in this FAC accumulation period and order Evergy to issue new tariff sheets consistent with that result.

Respectfully submitted,

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