

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

In the Matter of the Ninth Prudence)
Review of Costs Subject to the)
Commission-Approved Fuel) Case No. EO-2020-0262
Adjustment Clause of Evergy Missouri)
West, Inc. d/b/a Evergy Missouri West)

In the Matter of the Third Prudence)
Review of Costs Subject to the)
Commission-Approved Fuel) Case No. EO-2020-0263
Adjustment Clause of Evergy Metro,)
Inc. d/b/a Evergy Missouri Metro)

STATEMENT OF POSITIONS

COMES NOW the Office of the Public Counsel (“OPC”) to provide its *Statement of Positions* regarding all issues left to be addressed in this case. The OPC will provide its position on each issue found in the *List of Issues, Order of Witnesses, Order of Opening Statements, Order of Cross-Examination and Joint Stipulation of Facts* filed in this case in the same order they appear therein.

**1. Was Evergy imprudent by virtue of the assumptions it included in
the integrated resource planning process?**

Yes. Evergy acted imprudently when it included the assumed sale of excess capacity in the 2017 update to its integrated resource plan because Evergy knew or should have known, at the time that plan was developed, that it would not be able to actually make such sales. Mantle, *Direct*, pg. 12 – 19. Greater detail regarding this point is addressed in the next two issues and so will not be repeated here. Please note

that, while this is the only imprudent assumption the OPC has identified with Evergy's IRP thus far, there may be other assumptions made by the Company in its IRP that were also imprudent.

2. Was the decision by Evergy to include capacity sales in its assumptions for its IRP imprudent?

Yes. It was imprudent for Evergy to have included the assumed sale of excess capacity in the 2017 update to its integrated resource plan because Evergy knew or should have known, at the time that plan was developed, that it would not be able to actually make such sales. Mantle, *Direct*, pg. 12 – 19. “Evergy Metro’s 2017 Resource Plan update filed in EO-2017-0229[] shows that Evergy assumed[] in its resource planning process that it would enter into contracts to sell, to a yet to be determined purchaser, [a significant quantity of excess]¹ capacity.” *Id.* pg. 12 ln. 23 – pg. 13 ln. 2. At the same time that Evergy was making this plan, however, Evergy knew or should have known that SPP was already oversaturated with capacity, so the chance of actually making any such sale was effectively non-existent. The OPC witness Ms. Lena Mantle explained the situation as such:

It was common knowledge that the SPP had enormous excess capacity in 2017 and that SPP would maintain that excess capacity position for at least the next five years. The previously mentioned SPP 2017 Resource Adequacy Report, attached as Schedule LMM-D-4, shows that for the six-year timeframe of 2017 through 2022, SPP expected to have a reserve margin from 25.9% to over 30%. This equated to between 7,100 MW to 9,200 MW of capacity above what it estimated was needed. Of the 58 load responsible entities in SPP listed in the report, only seven

¹ The exact amount is stated in the *Direct Testimony* of OPC witness Ms. Lena Mantle. Because it has been designated highly confidential by the Company, however, the OPC has omitted the exact amount from this filing.

were going to be short in 2018 through 2019. One of these seven was Evergy West and Evergy Metro has already covered its shortage. This means that there were only six entities in SPP that needed capacity and that total capacity need was 380 MW. This also means that the other 51 entities had about 10,000 MW of excess capacity. From just this report alone, it should have been obvious to Evergy that it was very unlikely to enter into any capacity contract sales.

Id. at pg. 14 lns. 3 – 16. The chance of entering into capacity sales outside of SPP, meanwhile, was even smaller. *Id.* at pg. 14 lns. 19 – 21. Given that there was effectively no market for the sale of excess capacity, it should be unsurprising that “Evergy Metro did not enter into any new capacity sales contracts – short or long-term - for the sale of capacity in this prudence period[,]” “[d]espite modeling additional capacity contracts.” *Id.* at pg. 13 lns. 5 – 7.

The decision of Evergy to model excess capacity sales in the 2017 update to its integrated resource plan at the time when it knew or should have known that such sales would be virtually impossible was imprudent.

3. Was it imprudent for Evergy to not include FAC cost reductions arising from capacity sale contracts in its FAC rate calculations as modeled in its IRP?

Yes. As already explained in regards to issue two, it was imprudent for Evergy to have included the modeling of these excess capacity sales in its integrated resource plan because, at the time those plans were made, the Company knew or should have known that such sales would be virtually impossible. Unfortunately, there is effectively no review mechanism in place to address this imprudence in the course of the integrated resource planning process itself. *Mantle, Surrebuttal*, pg. 22 lns. 10 –

16. Moreover, the existence of the FAC exacerbates the problem “by removing much, if not all, of the risk from Evergy for failing to follow through on what it modeled.” Mantle, *Direct*, pg. 17 lns. 18 – 19. The OPC witness Ms. Lena Mantle explains why in her direct testimony:

In the absence of its FAC, there would be an incentive for Evergy to enter into short-term capacity contracts between rate cases. The revenues from such contracts would increase earnings since the income was not included in setting the rates resulting in the revenue from the contracts flowing directly to Evergy. Therefore, absent its FAC, Evergy would have a strong incentive to enter into these short-term capacity contracts contemplated in its preferred resources plan.

Because Evergy does have an FAC, however, it is required to flow the revenues generated between rate cases from any short-term capacity contracts it enters into back to its customers through its FAC. This removes 95% of the “reward” and hence the incentive for Evergy to work diligently to sell its excess capacity in short-term contracts as modeled in its resource planning process. Evergy recovers its cost whether it enters into a short-term contract or not. If it does not enter into a contract, its only exposure is the 5% sharing of the revenues it might receive. However, the customers do not receive their 95% share - which is 19 times the amount that Evergy would have received.

With its FAC, therefore, Evergy essentially loses all risk that these excess sales will not occur because the revenues that would have come from these[] sales would just have passed through to the customers anyway. The only way for Evergy to bear more risk for not entering into the type of short-term capacity contracts it contemplated in its preferred plan is for the Commission to, in a FAC prudence case, find Evergy was imprudent by not entering into those contracts, and ordering a prudence adjustment amount equal to the lost revenues that result from that decision.

Id. at pg. 17 ln. 20 – pg. 18 ln. 15. For this reason, the Commission should do as Ms. Mantle suggests and “order a prudence adjustment amount, using the amount of capacity shown in the 2017 resource plan capacity balance sheet provided in Evergy’s 2017 resource plan update . . . [in order to make] Evergy accountable for the

unrealistic assumptions regarding capacity sales that it put in [that] plan model . . .
.” *Id.* at pg. 19 lns. 2 – 8.

4. Was Evergy imprudent in the management of its demand response programs?

Yes. It was imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs. *See, e.g., Mantle Surrebuttal*, pgs. 3 – 22. Greater detail regarding this point is addressed in the next two issues and so will not be repeated here. It is important to note that this act of imprudence is related solely to the FAC case. Evergy may have been further imprudent in its management of its demand response programs as it relates to the prudence of its MEEIA program.

5. Was it imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs?

Yes. Evergy’s tariffs permitted demand response programs to be called for economic reasons, which means that the demand response programs could be called when it would have result in reduced energy costs. *Mantle, Surrebuttal*, pg. 7 ln. 18 – pg. 8 ln. 7. There is effectively no downside to the Company for calling demand response events in this fashion. *See Id.* pg. 10 ln. 1 – pg. 12 ln. 9. Evergy’s own witness identified that the demand response program was designed to allow for 15 residential and commercial events and 10 large customer events to be called each year. *Id.* pg. 14 lns. 4 – 5. Despite this, Evergy called only 5 residential and commercial and 5 large

customer events over the combined two year audit period. *Id.* pg. 7 lns. 7 – 9. This was imprudent.

Calling more demand response programs would have reduced the energy costs and SPP schedule 11 fees that otherwise flow through the FAC. *Id.* pg. 5 ln 13 – pg. 6 ln. 5. Evergy had no good reason not to call as many events as the demand response programs were designed to call. This failure to call all the events that the programs were designed to call was therefore imprudent. *See, e.g.,* pg. 7 lns. 4 – 11. This imprudence resulted in Evergy’s customers paying more than was required. The OPC’s expert witness, Ms. Lena Mantle, has computed a rough estimate of the costs that Evergy’s customers could have avoided paying had the Company employed its demand response program prudently. *See Id.* pg. 2. This is a very conservative estimate, and the actual value would almost certainly be much higher. *Id.* pg. 17 ln. 17 – pg. 18 ln. 21. The Commission should therefore find Evergy imprudent for failing to reduce FAC costs by calling as many demand response program events as the Company claims its programs were designed to call and order a prudence adjustment amount to be applied in this case to account for these imprudently incurred FAC costs.

6. If it was imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs, is it more appropriate to address the imprudent implementation of the programs through an ordered FAC adjustment or an ordered DSIM adjustment?

It is more appropriate for the FAC costs that Evergy imprudently incurred to be addressed through an FAC adjustment than through an ordered DSIM adjustment. As Ms. Mantle explained in her surrebuttal testimony:

[T]he utilization of Evergy's demand response programs can have a direct impact on the FAC. It is therefore reasonable and necessary that an FAC prudence review should include a review of the utilization of the available demand response programs.

Mantle, *Surrebuttal*, pg. 4 lns. 4 – 7. It is *very* important that the Commission understand this one fact: the arguments that Evergy acted imprudently with regard to the MEEIA and the FAC are **separate and distinct**. This is because the MEEIA and the FAC serve different purposes. This dichotomy of purpose is even reflected in Evergy's own tariffs, which outline two distinct and separate grounds for calling a demand response program event. Mantle, *Surrebuttal*, pg. 7 ln. 18 – pg. 8 ln. 7. It is therefore entirely possible that Evergy could have acted prudently with regard to its MEEIA program by only calling 5 events over two years, but simultaneously acted imprudently with regard to its FAC by only calling 5 events over two years. The Commission should thus consider the question of Evergy's imprudence with regard to the FAC and its imprudence with regard to the MEEIA in separate cases and deal with them through separate remedies.

7. Evergy's Self Scheduling Practices.

This issue was resolved by mutual agreement of the parties through the unanimous partial stipulation and agreement filed on January 15, 2021. The

