

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

In the Matter of Evergy Metro, Inc.)	
d/b/a Evergy Missouri Metro's)	
Request for Authority to Implement A)	Case No. ER-2022-0129
General Rate Increase for Electric)	
Service)	

In the Matter of Evergy Missouri)	
West, Inc. d/b/a Evergy Missouri)	
West's Request for Authority to)	Case No. ER-2022-0130
Implement A General Rate Increase)	
for Electric Service)	

**OFFICE OF THE PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION OR
IN THE ALTERNATIVE, APPLICATION FOR REHEARING**

COMES NOW the Office of the Public Counsel ("OPC") and for its *Motion for Reconsideration or in the Alternative, Application for Rehearing*, states as follows:

1. The Missouri Public Service Commission ("the Commission") issued a joint *Report and Order* in the above styled cases on November 21, 2022. (Report and Order, pg. 1, ER-2022-0130, EFIS Item No. 663).

2. The *Report and Order* ordered, among many other things, that "the amortization period for the unrecovered investment in the Sibley Units" be set "at four years to mirror the amortization period of the regulatory liability account." *Id.* at pg. 42.

3. On December 5, 2022, Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("Evergy Metro") and Evergy Missouri West, Inc. d/b/a Evergy Missouri West

(“Evergy West”) (collectively “Evergy” or “the Company”) filed a joint *Motion for Reconsideration or in the Alternative, Application for Rehearing* in both the above styled cases that raised – for the first time **ever** in these cases – a request for the amortization period for the unrecovered investment in the Sibley Units to be set at eight years. This request was made for the **sole** purpose of allowing the Company to avoid legislatively enacted rate limitations (or “caps”) imposed by RSMo. section 393.1655; a law to which Evergy has voluntarily subjected itself.

4. Three days later, the Commission issued an *Amended Report and Order* in the above styled cases that changed the amortization period for the unrecovered investment in the Sibley Units from four years to eight years, as requested by the Company. (Amended Report and Order, pg. 1, 43, ER-2022-0130, EFIS Item No. 673).

5. This last-minute change in the Commission’s decision is manifestly unjust and unreasonable, a clear abuse of discretion, not supported by competent and substantial evidence, a violation of the Commission’s own rules, and a violation of the OPC’s right to due process of law.

6. Pursuant to Commission rule 20 CSR 4240-2.160, the OPC now requests the Commission reconsider its December 8, 2022, *Amended Report and Order*, or, in the alternative, order a rehearing to address those specific issues raised herein.

7. The remainder of this filing shall address the specific issues of fact and law that serve as grounds for which the Commission should grant the OPC’s request for reconsideration or rehearing.

The Commission’s modification of the Sibley amortization period is unjust and unreasonable, in that, the sole offered rationale for the Commission’s manipulation of the Sibley amortization period is to allow Evergy to avoid legislatively established consumer protections, which thereby nullifies those protections in clear contravention of legislative intent.

8. The Commission’s original *Report and Order* held that “Evergy should be allowed a return of [the unrecovered Sibley Unit investment] amounts as quickly as practicable.” (Report and Order, pg. 41, ER-2022-0130, EFIS Item No. 663).

9. The Commission’s original *Report and Order* consequently ordered that “the amortization period for the unrecovered investment in the Sibley Units [be set] at four years[.]” *Id.* at 42.

10. The Commission’s original *Report and Order* justified a four-year amortization period for the unrecovered investment in the Sibley Units by finding that it would “mirror the amortization period of the regulatory liability account.” *Id.*

11. Evergy did not dispute any of these findings in its *Application for Rehearing* but instead argued that setting a four-year amortization period for the unrecovered investment in the Sibley Units would subject the Company to “a ‘performance penalty’ of approximately \$22.0 million annually under Section 393.1655.3 of the plant-in-service accounting (“PISA”) statute.” (Evergy Motion for Reconsideration, or in the Alternative, Application For Rehearing, pg. 3 ¶ 6. ER-2022-0130, EFIS Item No. 670).

12. Evergy identified that this performance penalty represented “the overarching issue that the Company now faces[.]” *Id.* at pg. 4 ¶ 9.

13. The Company therefore requested the Commission change the amortization period from four years to eight years noting that, by doing so, “it would decrease the revenue requirement and have the collateral impact of . . . alleviating the performance penalty.” *Id.* at pg. 5 ¶ 10.¹

14. The Commission acquiesced to the Company’s request.

15. In the Amended *Report and Order*, the Commission changed the amortization period for the unrecovered investment in the Sibley Units from four years to eight years. (Amended Report and Order, pg. 43, ER-2022-0130, EFIS Item No. 673).

16. In doing so, the Commission considerably shortened the section explaining its rationale for choosing eight years by removing its discussion of matching the four-year amortization period and simply declaring the amortization period to be eight years. *Id.*

17. This is followed by a new paragraph that states “Evergy's concern that the revenue requirement authorized in this case might push it over its PISA cap warrants consideration” and that “extending the recovery of the regulatory asset over

¹ Evergy’s *Motion for Reconsideration, or in the Alternative, Application For Rehearing* attempts to insinuate that the reduction in the Company’s revenue requirement would benefit its customers. This is transparently dishonest. While it is true that shifting from a four-year amortization period to an eight-year amortization period will reduce the revenue requirement of Evergy West, the Company’s customers will not see any real benefit from this reduction in revenue requirement due to the effect of the revenue cap imposed by section 393.1655.3. This revenue cap already ensures Evergy’s customers **do not have to pay** that portion of the revenue requirement that Evergy now seeks to reduce. Stated another way, the reduction in revenue requirement that will come from the change in amortization period will not decrease the amount that Evergy’s customers will ultimately be required to pay in rates as those customers are already foreclosed from having to pay that same amount given the Section 393.1655.3 performance penalty. Instead, the change from a four-year amortization period to an eight-year amortization period actively **harms** customers by eliminating the customer protections built into section 393.1655.3 and ultimately forcing customers to pay more than they otherwise would.

a period greater than the regulatory liability recovery period will decrease the risk of Evergy surpassing the PISA cap.” *Id.*

18. Given the full context of this situation as expressed above, it is undeniable that the change from a four-year to an eight-year amortization period for the unrecovered Sibley Unit investments was done solely and exclusively to allow Evergy West to avoid the revenue caps imposed by the state legislature following Evergy’s willing adoption of PISA treatment.

19. By purposefully altering the Sibley Units’ amortization period in this manner, the Commission has effectively eliminated the existence of those same performance penalties from the statute.

20. The Commission’s decision therefore amounts to the regulatory nullification of enacted statute.

21. It is manifestly unjust and unreasonable for the Commission to purposefully change the Sibley Unit amortization period for the sole and express reason of ensuring that Evergy West can avoid legislatively enacted consumer protections and thereby nullify those protections in clear contravention of legislative intent.

22. In addition, the attempt at regulatory nullification of an enacted statute shows a clear abuse of the Commission’s discretion.

23. To whatever extent the Commission has the discretion to set an amortization period, it clearly abuses that discretion when it specifically determines the amortization period solely to protect a utility from the operation of law that would

otherwise save customer's from having to pay more in rates, which is precisely what has occurred in this case.

24. The patently unjust and unreasonable nature of the Commission's modification coupled with the evident abuse of discretion that comes from altering the amortization period at Evergy's behest – and to the detriment of the Company's ratepayers – renders the Commission's decision unjust and unreasonable. *State ex rel. Union Elec. Co. v. PSC*, 399 S.W.3d 467, 476 (Mo. App. W.D. 2013) ("Reasonableness depends on whether or not '(i) the [PSC's] order is supported by substantial and competent evidence on the whole record, (ii) the decision is arbitrary, capricious or unreasonable, or (iii) the [PSC] abused its discretion.'" (quoting *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n'n*, 328 S.W.3d 316, 318 (Mo. App. W.D. 2010))).

The Commission's modification of the Sibley amortization period is arbitrary and capricious, in that, the Commission has offered no justification for the eight-year amortization period and there is nothing in the record to support that finding.

25. Many of the issues related to this point were addressed in the preceding discussion and will not be reiterated here.

26. In its analysis of the regulatory amortization period, the Commission's *Amended Report and Order* correctly states:

Evergy seeks recovery over a 20-year amortization period with the assumption it will be earning a return on the unamortized balance over that time frame. OPC and MECG would have recovery over a 17- or 20-year period, without allowing a return on the unamortized balance.

(Amended Report and Order, pg. 41, ER-2022-0130, EFIS Item No. 673).

27. What the Commission fails to consider it **why** these parties chose those numbers.

28. All three parties the Commission cites proposed amortization periods consistent with the remaining life of the asset to be recovered. (*see, e.g., Exhibit No. 125 Direct Testimony of John Spanos*, pg. 19 lns. 12 – 17, ER-2022-0130, EFIS Item No. 466 (“Q. Has the recovery of the Sibley Generating facility been addressed in the Depreciation Study? A. Yes. As shown on page VI-5 of Schedule JJS-1, there is approximately \$104 million in unrecovered service value of the three units at Sibley. These amounts will be amortized over 20 years **to be consistent with the original remaining life of the last unit at Sibley.**” (emphasis added))).²

29. Thus, the recommendation of all the parties who opined on this issue *except for the Commission’s Staff*, used the actual remaining life of the investment as the guideline for establishing the amortization period of that investment.

30. The Commission’s Staff, as the Commission’s *Amended Report and Order* correctly notes, is the only other party to advance a competing position on this issue. (Amended Report and Order, pg. 41, ER-2022-0130, EFIS Item No. 673).

31. The Commission’s Staff “recommended first netting the asset and liability accounts before amortizing the resulting unrecovered asset balance over a five-year period.” *Id.*

² The OPC’s proposal of 17 years was calculated as the difference between the original slated retirement date of the Sibley facility (2040) and the expected date of new rates (which was assumed to occur sometime near the beginning of 2023), This difference (seventeen years) constitutes the remaining life of the Sibley plant as of the effective date of rates for this case.

32. The Commission specifically rejected the Staff's effort to net the Sibley related regulatory asset and liability, thus undermining the only proffered justification for the difference between Staff and the other three parties who provided testimony on this point. *Id.*

33. Moreover, no party to this case recommended or requested an eight-year amortization period before Evergy filed its own *Motion for Reconsideration*, and no witness offered any testimony to support an eight-year amortization period.

34. Thus, the Commission's decision regarding an eight-year amortization period does not rely on any objective data point related to the asset being amortized, but rather, has been chosen simply because the Commission has surmised that moving to eight years "will decrease the risk of Evergy surpassing the PISA cap." (Amended Report and Order, pg. 43, ER-2022-0130, EFIS Item No. 673).

35. Making the decision to change the amortization period from four to eight years in an attempt to avoid a statutory performance penalty is not rational, as it has no connection to the asset itself. The Commission is thus acting in an impulsive and unpredictable manner based on its subjective whims without basing its decision on any substantial evidence.

36. As such, the Commission decision is both arbitrary and capricious:

An administrative agency acts unreasonably and arbitrarily if its decision is not based on substantial evidence. Whether an action is arbitrary focuses on whether an agency had a rational basis for its decision. Capriciousness concerns whether the agency's action was whimsical, impulsive, or unpredictable. To meet basic standards of due process and to avoid being arbitrary, unreasonable, or capricious, an agency's decision must be made using some kind of objective data rather

than mere surmise, guesswork, or "gut feeling." An agency must not act in a totally subjective manner without any guidelines or criteria.

Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1, 11 (Mo. banc 2008).

The Commission's modification of the Sibley amortization period is not supported by competent and substantial evidence, in that, there is nothing in the record to support the Commission's finding of an eight-year amortization period.

37. Many of the issues related to this point were addressed in the preceding discussion and will not be reiterated here.

38. As previously stated, no party to this case recommended or requested an eight-year amortization period before Evergy filed its own *Motion for Reconsideration*, and no witness offered any testimony to support an eight-year amortization period.

39. Consequently, there is no evidence in the record to support the eight-year amortization period, just Evergy's last-minute request for one.

40. As such, there is not competent and substantial evidence to support the decision and the decision is thus unreasonable. *Spire Mo., Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 231 (Mo. banc 2021).

The Commission's modification of the Sibley amortization period is unjust and unreasonable, in that, the Commission violated the terms of its own rules by denying the OPC the ten days entitled to respond to Evergy's Motion for Reconsideration or in the Alternative, Application for Rehearing.

41. Commission rule 20 CSR 4240-2.080(13) provides that "Parties shall be allowed ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission."

42. Evergy filed its *Motion for Reconsideration or in the Alternative, Application for Rehearing* on December 5, 2022.

43. The Commission ruled on that same *Motion for Reconsideration* three days later on December 8, 2022.

44. Because only three days elapsed between when the motion was filed and when the Commission ruled on it, the OPC was not provided the full ten days set forth by the Commission's rules to respond to Evergy's motion.

45. Prior to the Commission's ruling, the OPC had been in the process of drafting a response to the Company's *Motion for Reconsideration* that intended to expressly address the requested change in amortization period.

46. The Commission's speed in agreeing to the Company's request has injured the ability of the OPC to present its case and argue on behalf of its clients to such a degree that it has rendered the Commission's decision unjust and unreasonable. *See State ex rel. Office of the Pub. Counsel*, 409 S.W.3d 522, 529 (Mo. App. W.D. 2013) ("By issuing its January 23 order with an effective date of January 26 without any extraordinary circumstances that could justify such a truncated

period, the PSC abused its discretion by failing to allow the parties a reasonable time in which to petition for rehearing and/or appeal that order.”).

The Commission’s modification of the Sibley amortization period has violated the OPC’s right to due process of law, in that, the Commission allowed Evergy to advance a new position for the first time in this case after the close of the evidentiary hearing and then ruled on that request without giving the OPC an opportunity to present any factual evidence or provide any legal arguments related to it.

47. This final argument represents the culmination of those issues presented and discussed above.

48. To reiterate the facts, Evergy originally requested a twenty-year amortization of the remaining balance of the Sibley generating units. (Amended Report and Order, pg. 42, ER-2022-0130, EFIS Item No. 673; Exhibit No. 125 Direct Testimony of John Spanos, pg. 19 lns. 12 – 17, ER-2022-0130, EFIS Item No. 466).

49. The Commission ordered a four-year amortization period instead. (Amended Report and Order, pg. 42, ER-2022-0130, EFIS Item No. 673).

50. In its *Motion for Reconsideration or in the Alternative, Application for Rehearing* filed on December 5, 2022, Evergy raised for the very first time **ever** in this case a request for an eight-year amortization period.

51. The Commission granted the Company’s request for an eight-year amortization period three days later on December 8, 2022.

52. Evergy offered no evidence to support its request for an eight-day amortization period in either its filed case or in its *Motion for Reconsideration*.

53. The OPC was afforded no opportunity to present evidence regarding Evergy's requested eight-day amortization period following the filing of the *Motion for Reconsideration*.

54. The OPC was not given sufficient time to file any response to Evergy's requested eight-day amortization period in contravention of the Commission's rules.

55. Consequently, the OPC has not been permitted a full and fair opportunity to be heard with regard to Evergy's new request for an eight-year amortization period.

56. This is a violation of the OPC's right to due process of law. *Laclede Gas Co. v. Mo. PSC*, 593 S.W.3d 582, 597 (Mo. App. W.D. 2019) ("Due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner." (quoting *State ex rel. Fischer v. Pub. Serv. Comm'n of Missouri*, 645 S.W.2d 39, 43 (Mo. App. W.D. 1982))).

An Obvious Solution to the Present Error

57. There is a simple and effective solution that will alleviate the errors addressed in this pleading without retreating to the Commission's previous decision, which would no doubt draw objection by Evergy.

58. That solution is to set the amortization period for the unrecovered balance of the Sibley Units at twenty years.

59. This solution represents an obvious best choice for three simple reason.

A twenty-year amortization period would leave no party to the case with a meritorious argument upon which to seek judicial review

60. Of the four parties who presented evidence and arguments on this point, all but one argued for a twenty-year or nearly twenty-year amortization.³

61. The one party who did not advocate for a twenty-year amortization period is the Commission's own Staff, who is incapable of appealing the Commission's decisions.

62. Of the three remaining parties, only the Company itself could realistically be expected to have any desire to challenge the twenty-year amortization.⁴

63. Evergy, however, cannot muster a serious argument that a twenty-year amortization period represents an error on the part of the Commission for two indisputable reasons:

- 1) Evergy itself requested a twenty-year amortization period (Evergy Statement of Position, pg. 6, ER-2022-0130, EFIS Item No. 274); and
- 2) Evergy's own witness provided evidence in support of the twenty-year amortization period. (see, e.g., Exhibit No. 125 Direct

³ The OPC would not oppose the Commission adopting its proffered seventeen-year amortization period. In order to vastly simplify this pleading, however, the OPC will proceed with the discussion as it concerns the twenty-year amortization period.

⁴ This is owing to the simple fact that the twenty-year amortization inures to the benefit of ratepayers more than the eight-year amortization period now ordered.

Testimony of John Spanos, pg. 19 lns. 12 – 17, ER-2022-0130, EFIS Item No. 466).

64. There is effectively no legal or rational basis for the Company to argue that the Commission erred in issuing an order on the amortization period for the Sibley Units that is consistent with what the Company itself requested.⁵

65. Consequently, the fastest and most assured way to resolve the pending case, satisfy the interests of both shareholders and customers, and issue an order that would leave no party to the case with a meritorious argument upon which to seek judicial review is to order a twenty-year amortization period consistent with the Company's own request.

A twenty-year amortization period is the most consistent with both the factual record and procedural posture of this case.

66. As has been stated repeatedly, Evergy itself both requested a twenty-year amortization period and presented evidence to support one. (Evergy Statement of Position, pg. 6, ER-2022-0130, EFIS Item No. 274; Exhibit No. 125 Direct Testimony of John Spanos, pg. 19 lns. 12 – 17, ER-2022-0130, EFIS Item No. 466).

67. The twenty-year amortization period is tied directly to the remaining life of the Sibley asset and thus presents both a logical and sound period over which

⁵ Nor does Evergy have any real hope of arguing that a change in the amortization period from eight years to twenty years would constitute reversible error for any of the same or similar reasons to those set forth in **this** motion without coincidentally agreeing that it was an error to change from a four-year to an eight-year amortization period, which the Company would clearly not accept. In other words, there is no way to argue that the first change in amortization period was acceptable but that a second would not be acceptable.

to amortize the asset. (Exhibit No. 125 Direct Testimony of John Spanos, pg. 19 lns. 12 – 17, ER-2022-0130, EFIS Item No. 466).

68. The only reason that the eight-year amortization period presently ordered exists **at all** is because the Company rejected its own prior position at the last minute – after the close of the evidentiary hearing, after the Company had submitted briefing, and after the Commission issued its initial *Report and Order* – in an attempt to maximize its revenues while avoiding a performance penalty.

69. If Evergy had remained internally consistent, its *Motion for Rehearing* would have requested the Commission to change the four-year amortization period to a twenty-year amortization period so as to be both consistent with its prior position and avoid the performance penalty imposed by section 393.1655.3.

70. Had the Company done so, and the Commission acquiesced, the present filing would not exist and this case would be settled.

71. Instead, the Company decided to abandon the position it had held consistently through three rounds of testimony, the course of the entire hearing, and its briefs in order to request something entirely new, at the last minute, based solely on the outcome of Commission's decision.

72. The Commission, meanwhile, appears to consider this behavior to be somehow acceptable based, as can best be surmised, on its conclusion that the Company's request for a twenty-year amortization period was founded on "the assumption [Evergy] will be earning a return on the unamortized balance over that time frame." *Amended Report and Order* pg. 41.

73. The principle problem here is that even if the Commission is correct in its hypothesis regarding Evergy's position, Evergy's assumption was itself entirely unjustified.

74. Missouri Courts have expressly held that a utility may not earn a return on property that is not used and useful. *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo.*, 293 S.W.3d 63, 75 (Mo. App. S.D. 2009) ("The utility property upon which a rate of return can be earned must be utilized to provide service to its customers. That is, it must be used and useful.") (citing *State ex rel. Union Elec. Co. v. Pub. Serv. Com.*, 765 S.W.2d 618, 622 (Mo. App. W.D. 1988)).

75. There is absolutely no question in the record whatsoever that the Sibley Units are no longer used and useful. *See* Tr. Vol. 8 pg. 208 lns. 2 – 20.⁶

76. Under these well-established holdings, Evergy was not legally entitled to earn a return on the Sibley Units, which the Company either knew or should have known before the case was filed.

77. For the Commission to thus now allow Evergy to radically change its position, post hearing, based on the Commission's conjecture that the Company assumed a legal standard that is directly contradicted by case law (which, indecently, is over thirty years old) is absurd.

78. The Commission should both expect and require Evergy to stand by its own stated position (*i.e.* a twenty-year amortization period for the Sibley Units based on the remaining life of the assets) notwithstanding whatever illogical legal position

⁶ To be clear, the Sibley Generating facility has been completely dismantled and thus quite literally cannot be used for generating electricity. Tr. Vol. 8 pg. 208 lns. 2 – 20.

the Company may have had regarding its ability to earn a return on plant that was no longer used and useful.

79. The only decision for the Commission that is consistent both factually and procedurally with the Company's request is the adoption of the twenty-year amortization period because that is exactly what Evergy initially requested.

A twenty-year amortization period best balances the competing interests of Evergy and its ratepayers.

80. As previously stated, Evergy itself identified that avoiding the performance penalty that would result from the Commission's initial *Report and Order* represented "the overarching issue that the Company now faces[.]" (Evergy Motion for Reconsideration, or in the Alternative, Application For Rehearing, pg. 4 ¶ 96. ER-2022-0130, EFIS Item No. 670).

81. Because a switch from a four-year amortization period to a twenty-year amortization period would result in a reduction in Evergy West's revenue requirement that is greater than the switch from a four-year amortization period to an eight-year amortization period, a twenty-year amortization period would be equally if not more effective at preventing Evergy West from being subject to the performance penalty imposed by section 393.1655.3 than the Commission's current *Amended Report and Order*.

82. Adopting a twenty-year amortization period would thus resolve the "overarching issue" that the Company addressed in its own *Motion for Rehearing*.

83. It would also, however, provide much needed relief for Evergy's ratepayers who are presently being asked to pay more than they otherwise would, had the Commission not manipulated the Sibley amortization period as explained above.

84. The OPC asks the Commission to take a moment to consider what has transpired in this case so far.

85. Despite the Company's initial request for a twenty-year amortization period, the Commission graciously decided *sua sponte* to give the Company a more expedient return and thus higher revenue requirement than Evergy had initially requested.

86. For Evergy, this meant that the Company was literally making **too much money** and had to seek redress.

87. Yet, instead of arguing for its original twenty-year amortization period, Evergy decided to abandon its prior position and request an entirely novel eight-year period. This eight-year amortization period is specifically designed to ensure that Evergy's customers pay the maximum amount possible without leaving Evergy subject to the penalty.

88. The Commission then rescues the Company a second time by agreeing to the requested eight-year amortization period, without giving any other party to the case a meaningful opportunity to respond in any manner.

89. In doing so, the Commission has created a "worst case scenario" for Evergy customers who are now being hit with both ends of the stick. First, the

Commission has decided, of its own accord, to significantly increase the recovery period for the Sibley Units despite the Company's own request to the contrary. Then, the Commission decides to eliminate the statutory protection that stood as the one positive aspect to the first injustice in order to expose customers to the largest rate increase possible under the existing laws.

90. Yet the greatest irony of all is how Evergy itself attempted to justify the original switch from a four-year amortization period to an eight-year amortization period by claiming that the reduced revenue requirement would be "a significant benefit to customers, particularly during this period of high inflation." (Evergy Motion for Reconsideration, or in the Alternative, Application For Rehearing, pg. 3 ¶ 7, ER-2022-0130, EFIS Item No. 670).

91. This is dishonest, of course, as the switch from four years to eight years saves customers no money and instead will ultimately increase the amount customers will pay in the aggregate due to the elimination of the performance penalty. This is because Evergy will be able to charge what is effectively the same amount the Company would have been permitted to charge before the switch **and** recover the portion that would otherwise have been lost due to the performance penalty albeit over a longer period.⁷

92. A switch to a twenty-year amortization period, on the other hand, *would* result in a meaningful change to Evergy's revenue requirement and thus actually

⁷ As demonstrated by Staff's filed reconciliation, the change in the amortization period has placed Evergy West within only \$ 815,946 of hitting the revenue cap. This is consistent with the Company's request in its *Motion for Rehearing* for an amortization period just short enough to allow the Company to slip under the revenue cap while still maximizing revenues.

constitute “a significant benefit to customers, particularly during this period of high inflation.” *Id.*

93. The simple and easy way to correct this imbalance and provide a measure of real justice, given the Commission’s decision to eliminate the performance penalty by regulatory *fiat*, is to adopt the amortization period consistent with the Company’s **original** request.

94. Doing this will marry the competing interests of both the Company and ratepayers by providing a **meaningful** revenue requirement reduction for customers in exchange for allowing Evergy to avoid the performance penalty.

95. Given the current situation, setting the amortization period to twenty years is the least this Commission can do to maintain genuine impartiality and fairness to both the Company and its customers.

Conclusion

96. The Commission has before it now a means to end the present rate case in a manner that is consistent with the facts and arguments raised by the parties, provides meaningful benefits to both the Company and its customers, and forestalls the need and ability of any party to further challenge the decision.

97. Ordering a twenty-year amortization period for the unrecovered balance of the Sibley investments is clearly the most just, reasonable, and factually supportable outcome.

98. The Commission should therefore reconsider its prior *Amended Report and Order* and issue a new *Amended Report and Order* that sets the amortization

period for the unrecovered investment in the Sibley Units at twenty years as requested by the Company itself.

99. In the alternative, the Commission should order the parties to prepare a procedural schedule to allow for new evidence and arguments to be presented with regard to the issue of the proper amortization period of the unrecovered balance of the Sibley investments only.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission reconsider the *Amended Report and Order* issued on December 8, 2022, and issue a new *Amended Report and Order* that sets the amortization period for the unrecovered investment in the Sibley Units at twenty years, or, in the alternative, orders a new hearing to address the issues raised herein, as well as any other relief that is just and reasonable under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this sixteenth day of December, 2022.

/s/ John Clizer