

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

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

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

Public Counsel’s Response to Evergy Missouri Metro and Evergy Missouri West’s Motion to Limit Scope of Proceeding

The Office of the Public Counsel (OPC) responds to Evergy Missouri Metro and Evergy Missouri West’s (collectively Evergy) Motion to Limit Scope of Proceeding as follows:

1. On July 29, 2020, Evergy requested that the Public Service Commission (Commission) limit the scope of the above captioned proceedings by ordering that the Staff of the Public Service Commission (Staff) not be permitted to make certain disallowance recommendations. Staff’s Report of Second MEEIA Prudence Review of Cycle 2 Costs Related to the Missouri Energy Efficiency Investment Act (MEEIA) recommends certain disallowances related to Cycle 2 program costs, annual energy and demand savings, throughput disincentive, and interest. Evergy invokes its interpretation of Commission Rule 20 CSR 4240-20.093 to argue that Staff’s recommendations go beyond the scope of a MEEIA prudence review.

2. 20 CSR 4240-20.093(11) provides that a “prudence review of costs subject to the DSIM [demand-side investment mechanism surcharge] shall be conducted no less frequently than at twenty-four (24) month intervals.” Accordingly, Staff is to “submit a recommendation regarding its examination and analysis” to the Commission.

3. Evergy's Motion argues that Staff's recommendation involving capacity sales contracts and Southwest Power Pool (SPP) costs are not subject to DSIM, and therefore the Commission should dismiss them now before these cases reach the testimony stage. If successful, Evergy's request would effectively force Staff to voice an altered recommendation and limit the scope of evidence it may wish to present. As such, Evergy's Motion is analogous to a motion in limine.

4. A motion in limine is proper to exclude evidence that is wholly irrelevant to a proceeding. *E.g., Kerr v. Mo. Veterans Comm'n*, 537 S.W.3d 865, 877 (Mo. App. W.D. 2017) (describing a lower court's decision to deny a motion in limine as to a voice mail tape that could be relevant to a witness' credibility). Evidence is relevant if it "tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence, or if it tends to corroborate evidence which itself is relevant and bears on the principle issue of the case." *Cox v. Kan. City Chiefs Football Club, Inc.*, 473 S.W.3d 107, 116 (Mo. banc 2015) (quoting *State v. Tisius*, 92 S.W.3d 751, 760 (Mo. banc 2002)).

5. The capacity sales contract that Evergy Missouri Metro did not enter into and SPP fees that Evergy Missouri West did not avoid are relevant to the prudence of Evergy's demand response programs. Staff maintains that Evergy incurred costs covered by the DSIM to distribute smart-thermostats to residential customers and to "contract demand response capacity from commercial and industrial customers." *Second Prudence Review of Cycle 2 Costs Related to the Missouri Energy Efficiency Investment Act*, EO-2020-0228 p. 28-31, EO-2020-0227 p. 28-31 (Jun. 30, 2020). Evergy offers demand response to customers under the auspices of being able to curtail and utilize customer demand as an energy resource. The available resource through successful

demand response then provides utilities with available capacity for sale and the ability to reduce regional transmission operator fees.

6. Staff's argument is that because the demand response programs did not produce savings or avoid SPP fees, the costs incurred to set up the demand response programs were imprudent. Staff explains that:

“The [Evergy] demand response programs were not implemented in a manner that would maximize benefits at least cost due to managerial decision making; thus, the costs associated with those programs are not justified. MEEIA was never intended to be a blank check.”

Prudence Review, EO-2020-0227 p. 25, EO-2020-0228 p. 24-25. Restated, Evergy would have avoided these costs if Evergy operated its programs funded by the DSIM prudently.

7. Evergy's SPP fees and alleged foregone benefits from capacity sales contracts corroborates Staff's position as to the imprudence of costs expended and charged to customers through the DSIM, and bears upon the principle issue of Evergy's prudence as to its DSIM. Evergy's SPP fees and alleged foregone savings also speak to the extent of Evergy's alleged imprudence. Staff's recommended disallowances related to capacity sales contracts and SPP fees are then wholly relevant and proper for the Commission to consider in these proceedings.

8. Given the relevance of Staff's recommendation, it would be improper to circumscribe Staff's recommendation by granting Evergy's Motion. The Commission should be free to consider Staff's analyses and recommendations against the eventual testimony offered by Evergy.

WHEREFORE, the OPC responds to Evergy's Motion to Limit Scope of Proceeding and requests that the Commission deny said Motion.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 7th Day of August, 2020, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall