

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

In the Matter of the Application of Evergy )  
Metro, Inc. d/b/a Evergy Missouri Metro )  
and Evergy Missouri West, Inc. d/b/a )  
Evergy Missouri West for an Accounting ) File No. EU-2020-0350  
Authority Order Allowing the Companies to )  
Record and Preserve Costs Related to )  
COVID-19 Expenses )

**INITIAL POST-HEARING BRIEF OF  
THE NATIONAL HOUSING TRUST**

Submitted December 4, 2020

/s/ Andrew J. Linhares  
Andrew J. Linhares, MBE #63973  
Renew Missouri Advocates  
3115 South Grand Blvd, Suite 600  
St. Louis, MO 63118  
(T) (314) 471-9973  
[andrew@renewmo.org](mailto:andrew@renewmo.org)

COUNSEL FOR THE  
NATIONAL HOUSING TRUST

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COMES NOW the National Housing Trust (“NHT”), pursuant to rule 4 CSR 240-2.140 and the Commission’s October 28, 2020 *Order Setting Hearing Date and Resuming Procedural Schedule*, and hereby submits its Initial Post-Hearing Brief in the above-captioned case. For its brief, NHT states the following:

**Background**

Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively “Evergy” or “the Company”) submitted a request for an Authorized Accounting Order (“AAO”) to defer for later recovery the expenses it had incurred as a result of the COVID-19 pandemic. After several rounds of testimony and negotiations, the Company along with other parties (the Staff for the Commission, Midwest Energy Consumers Group, Missouri Industrial Energy Consumers, and Sierra Club) entered into a Non-Unanimous Stipulation and Agreement, while two parties (the Office of Public Counsel and NHT) filed objections to the Stipulation. A formal hearing followed on November 12-13, 2020.

In this brief, NHT respectfully requests that the Commission approve Evergy's Application for an AAO with several conditions, or, in the alternative, deny Evergy's Application and clearly articulate the conditions by which the Commission would approve an AAO. NHT's request in this case is rooted in the regulations and caselaw surrounding AAO's in Missouri, as well as in the specific needs of Evergy customers that come with the particular historical situation in which we find ourselves today.

The current COVID-19 pandemic is an unprecedented pressure on Missouri utility customers, with record numbers of people experiencing unemployment, eviction, and mounting debt due to no fault of their own. Recent spikes in COVID-19 infection are leading experts to predict severe impacts on the American economy in the coming months before a viable vaccine can reach full deployment. Without action to ensure that Evergy customers stay connected and without unmanageable amounts of utility debt, Evergy may see massive drops in customers and increases in uncollectable expenses. In addition to the severe human suffering, this may well lead to a situation where Evergy ratepayers see significantly higher cost impacts than they would have if proper steps were taken. For reasons of achieving a least-cost outcome and for basic public policy and moral reasons, the Commission should grant the relief NHT requests.

In the course of this brief, NHT will not be addressing each and every issue in the Commission-approved List of Issues in this case. Rather NHT's brief focuses on the issues which Judge Jacobs requested the parties brief, namely: whether the Commission has authority to place conditions on their approval of an AAO. In addition, the brief clarifies the conditions NHT requests and provides justification for those conditions.

## Authority

The Commission's authority to grant AAOs stems from its general authority under Sections 393.140, which states, in relevant parts:

The commission shall:... (1) Have general supervision of all gas corporations, electrical corporations, water corporations, or sewer corporations... (4) Have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations, electrical corporations, water corporations and sewer corporations... (5) Examine all persons and corporations under its supervision and keep informed as to their methods, practices, regulations and property by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished... (8) Have power to examine the accounts, books, contracts, records, documents and papers of any such corporation or person, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

Under this authority, “[t]he PSC has adopted a rule that requires utilities to use the [Uniform System of Accounts (‘USOA’) prescribed by the Federal Energy Regulatory Commission] to maintain their books and records.”<sup>1</sup>

The Missouri courts have long judged AAOs on the “extraordinary” standard, articulated in the so-called *Sibley* case, where the Commission determined that AAO’s are to be approved only when the event is extraordinary, unusual and unique, and not recurring.<sup>2</sup> This standard has been affirmed and reaffirmed by the Western District Court of Appeals.<sup>3</sup>

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<sup>1</sup> *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm’n*, 858 S.W.2d 806, 808 (Mo. App. W.D. 1993) (citing 4 CSR 240-20.030, which has been transferred to 20 CSR 240-20.030); see also *Office of Pub. Counsel*, 858 S.W.2d at 808.

<sup>2</sup> *In the Matter of Missouri Public Service*, 1 Mo. P.S.C. 3d 200, at 205 (1991).

<sup>3</sup> See *Kansas City Power & Light Co.’s Request v. Mo. Pub. Serv. Commission*, 509 S.W.3d 757, 770 (Mo. App. WD 2016). See also *Office of Pub. Counsel v. Evergy Mo. W.*, (Mo. App. WD 2020).

## Argument

NHT chooses to refrain from briefing the issues of whether the COVID-19 pandemic meets the initial hurdle of an “extraordinary, unusual and unique, and not recurring” event, whether resulting economic impact material is within the scope of the Uniform System of Accounts, and whether the Commission should adopt a sunset provision for the AAO. We defer to parties with more experience and knowledge on these matters of law.

Should the Commission approve the Application for an accounting authority order (“AAO”) permitting Evergy to accumulate and defer to a regulatory asset for consideration of recovery in future rate case proceedings before the Missouri Public Service Commission (“Commission”) extraordinary costs and financial impacts incurred as a result of the coronavirus disease (“COVID-19”) pandemic?

Assuming the Commission decides that COVID-19 is an extraordinary event, the Commission then has the choice of whether to approve the requested AAO application, deny it, or approve it with conditions. This brief requests that the Commission take the third option and approve the Company’s AAO application with certain conditions. NHT requests that the following conditions accompany the Commission’s approval of an AAO in this case:

1. Create a best-practices Arrearage Management Program (AMP) for income-eligible customers through which they can earn credits to retire their arrears over a 12-month period, with eligibility set at 200% of the Federal poverty level, along with allowance for long-term deferred payment plans. Such a program should be funded at roughly \$2 million, split evenly between ratepayers and Evergy shareholders, following the framework agreed to in File No. GU-2020-0376.

2. Expand Evergy's Economic Relief Pilot Program, targeting relief to the extremely poor, using "Express Lane Eligibility," and expanding use of grassroots outreach through community organizations and non-profits.

3. Enact a moratorium on disconnections for nonpayment until 180 days have passed beyond the date on which COVID-19 has resulted in the public availability of a vaccine, along with a suspension of late fees for the same period.

4. Expend all approved income-eligible energy efficiency funds and contribute new usage reduction funds to weatherization service providers in order to assist customers in arrears.

5. Adopt certain administrative procedures, such as suspending the credit reporting of unpaid utility bills, meeting the needs of Limited English-Proficient Customers, and engaging in proper data collection and public reporting practices.

6. Defer those savings enumerated in paragraph 7 the October 8, 2020 Non-Uniform Stipulation and Agreement filed in this case, and refrain from deferring from collection those revenues lost due to changes in consumption during the pandemic.

In the event that the Commission decides it lacks the authority to attach certain conditions to Evergy's requested AAO, it may deny Evergy's Application for an AAO, and in its Order clearly articulate what conditions the Commission would accept in order to approve an AAO. This alternative may avoid legal controversies on appeal, but may have the same impact – albeit delayed – as approving the AAO while attaching certain conditions.

Does the Commission have the authority to place conditions on its approval of an Authorized Accounting Order?

As a preliminary matter, it should be noted that the Commission routinely approves AAOs with conditions beyond those found in the application. The Commission has approved various Stipulations and Agreement that modify or add to the initial AAO application, such as in the recent Ameren Missouri case involving an electric vehicle charging infrastructure tariff (“Ameren EV case”).<sup>4</sup> In fact, in our case at hand, several parties have filed a Non-Unanimous Stipulation and Agreement that modifies the costs to be deferred and other terms, and the signatory parties are now asking the Commission to approve that Stipulation. Approval of that Non-Unanimous Stipulation would amount to granting conditions to the Company’s AAO Application. Therefore, a more accurate and relevant question for our case may be: does the Commission have authority to impose its own conditions as part of approving an AAO application, even where the Company opposes such conditions? NHT asserts that the Commission does indeed possess this authority.

As stated above, Section 393.140 confers on the Commission broad authority to supervise utilities and to prescribe just and reasonable rates and other accounts and procedures. The statutory language certainly appears to clarify that the Commission may rely on its own “opinion”, whether “after a hearing” or “upon its own motion,” etc. Section 393.140(5), RSMo. states:

Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges...

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<sup>4</sup> *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of Efficient Electrification Program*, File No. ET-2018-0132.

A recent decision of the Missouri Western District Court of Appeals is instructive here.<sup>5</sup> The Court affirmed the Commission's decision to grant the AAO over the Company's objection, stating: "We have emphasized that, because establishment of an AAO deviates from the Commission's general ratemaking methodology, the Commission has substantial discretion in determining whether an AAO is appropriate in a particular case."<sup>6</sup> The Court recalled that the Commission had noted the unusual nature of the case in that the AAO was being sought at the urging of parties other than the utility,<sup>7</sup> but the Court affirmed nevertheless. Thus, the Western District clarified that it will not second guess the Commission's substantial discretion in deciding whether and how to order an AAO, and this includes AAO terms even when not sought by the Company.

Section 393.140, RSMo's grant of authority is of course not limited to AAOs, but extends to all types of proceedings before the Commission. For a recent example of the Commission ordering conditions to an Order approving a utility application, we may refer to Evergy's most recent application under the Missouri Energy Efficiency Investment Act ("Evergy MEEIA 3 case").<sup>8</sup> In the Commission's "Amended Report and Order," the Commission chose to "approve Evergy Missouri's MEEIA Cycle 3 subject to certain conditions...", one of those conditions being the implementation of a Pay As You Save® ("PAYS") program.<sup>9</sup> The Commission ordered the adoption of the PAYS program as recommended in the testimony of OPC witness Dr. Geoff Marke, over the objection of the Company, but with the Commission's own modifications to the program's budget, stating:<sup>10</sup>

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<sup>5</sup> *Office of Pub. Counsel v. Evergy Mo. W.*, WD83319 (Mo. App. WD 2020).

<sup>6</sup> *Id.* at 12.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> *In the Matter of Evergy Missouri Metro and Evergy Missouri West's Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism*, File No. EO-2019-0132.

<sup>9</sup> File No. EO-2019-0132, "Amended Report and Order," March 11, 2020, pg. 26-27.

<sup>10</sup> *Id.* at 27



Evergy has stated that it has no interest in having a PAYS program as part of its MEEIA Cycle 3 portfolio. However, the Commission finds that the PAYS program offers unique opportunities to broaden participation in MEEIA programs to customers who might not otherwise engage in energy efficiency programs. The PAYS pilot program appropriately belongs in MEEIA Cycle 3 because the Commission wants to give Evergy an appropriate earnings opportunity for offering the program, as proposed by Dr. Marke in rebuttal testimony. Evergy may not find offering a PAYS program to be an acceptable condition for approval of the Companies' MEEIA Cycle 3 applications, and Evergy may exercise its prerogative and not offer a MEEIA Cycle 3 portfolio if it does not find this addition acceptable.

Whereas the MEEIA statute is voluntary and provides utilities with the ability to not participate in a portfolio if it finds the Commission's conditions unacceptable,<sup>11</sup> AAOs do not carry such a voluntary aspect. Therefore, the caution the Commission showed in the above case is not needed here, and its authority should be viewed even more broadly in the case of an AAO.

Does the Commission have the authority to place certain conditions on an AAO approval, such as those conditions requested by NHT and OPC, or paragraphs 16, 17 and 18 of the Non-Unanimous Stipulation and Agreement, or similar conditions?

If the Commission decides it has the authority to include conditions with its approval of Evergy's AAO, what is the scope of those potential conditions? Specifically, can the Commission attach conditions like those found in paragraphs 16-18 in the Non-Unanimous Stipulation and Agreement or those conditions requested by NHT and OPC, such as a customer arrearage payment plan, additional customer protections and support, and other administrative steps? NHT asserts that the Commission has wide discretion on the types of conditions it attaches, based on its statutory authority, its previous actions, and its obligations to provide just and reasonable rates and to act in the public interest.

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<sup>11</sup> While Evergy's MEEIA 3 case is on appeal before the Western District upon the motion of the Office of Public Counsel for different causes, Evergy has not challenged the Commission's Order with respect to the PAYS program, indicating acceptance of the condition.

First, we must note that the Commission has already approved conditions for a utility AAO related to COVID this year, as part of Spire’s AAO case related to COVID-19.<sup>12</sup> In the Commission’s Order Approving the Amended Unanimous Stipulation and Agreement on October 22, 2020, the Commission approved several conditions that altered Spire’s original AAO application. These conditions included, but were not limited to: 1) a Customer Arrearage Payment Plan program, with matching funding from both Spire shareholders and Spire ratepayers; 2) customer protections including the cessation of credit reporting and the option of an 18-month payment plan; 3) the deletion of “lost revenues” from the list of costs to be deferred; and 4) the enumeration of certain data to be reported.<sup>13</sup> Both NHT and OPC are seeking similar conditions in this current case, and we strongly urge the Commission to maintain a consistent approach across all utilities seeking a COVID-19 related AAO.

In addition, there are numerous legal and public policy reasons for granting the relief requested by NHT in this case (see below for the specific relief requested). NHT witness Roger Colton articulated three principles that would guide PSC decision-making in this proceeding. According to Colton, those principles include:<sup>14</sup>

1. Evergy’s obligation to engage in least-cost decision-making;
2. Evergy’s obligation to mitigate the “damages” or “harms” of inability-to-pay; and
3. Evergy’s obligation to engage in “efficient and economic” management to control costs.

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<sup>12</sup> *In the Matter of Spire Missouri Inc.’s Verified Application for an Accounting Authority Order Related to COVID-19 Impacts*, File No. GU-2020-0376

<sup>13</sup> *Id.* at ¶ 9, 16-18.

<sup>14</sup> File No. GU-2020-0376, “Rebuttal Testimony of Roger Colton on Behalf of the National Housing Trust,” August 17, 2020, pg. 23-28.

These principles are so well embedded in Missouri law and American utility law as to be indisputable in their applicability to this proceeding. Section 393.140, RSMo. confers an ability on the Commission to ensure “just and reasonable rates” in the case of an AAO, and Section 393.130 places the duty on every utility to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” The principles of achieving a least-cost outcome, mitigating harm, and efficient and economic management are embedded within the concept of “just and reasonable” and the other statutes governing the duties of the Commission and Missouri utilities.

The obligation to pursue least cost service is a general obligation of Missouri public utilities. The Commission has long held that the concern of achieving least cost is indispensable to its ratemaking duties, explicitly stating:<sup>15</sup> (emphasis added)

This commission, since its report and order issued in Case Nos. ER-82-39 and WR-82-50, *supra*, has included in its rate case suspension orders directives requiring the parties to present evidence on issues this commission finds indispensable to its ratemaking duties. One of those issues is management efficiency. *The commission believes that company performance in providing the most efficient least cost energy to customers is a factor to be recognized in the rate-making process.*”

The obligation to provide least-cost service applies to the full gamut of utility service, including customer programs and responding to economic recessions or drops in demand. Least-cost service is at the heart of much of the regulatory debate regarding utility investments in energy efficiency over the past several decades. In Missouri, the requirement for least-cost analysis is incorporated into the Commission’s regulations, which provides in relevant part that a utility “use minimization of present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan.”<sup>16</sup>

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<sup>15</sup> *Re Kansas City Power and Light Company*, Case Nos. ER-83-49 et al, “Report and Order, “(July 8, 1983). (emphasis added).

<sup>16</sup> 4 CSR 240-22.010(2)(B)

In this proceeding, Evergy presented no evidence that its approach to responding to its customers' mounting inability to pay would yield least-cost service. Evergy and Staff have argued that NHT's evidence was not relevant to an AAO, but have not attempted to show that taking no further action on customer arrearages would result in least-cost service.

In addition to concerns of achieving least-cost and economic management of Evergy's resources during this pandemic, the Commission should consider the public interest and the aim of mitigating harm to ratepayers. "The Commission's principal interest is to serve and protect ratepayers..."<sup>17</sup> In fulfilling its purpose the Commission also must balance the interests of the ratepayers, the utility shareholders, and the general public. The Missouri Court of Appeals has explained:

The PSC is charged with considering and protecting the interests of the general public as well as the customers and investors of a regulated utility. It must balance those interests on a statewide basis, not merely considering a particular utility's operating area in isolation. See *id.* at 30 (noting that "uniform regulation of utility service territories, ratemaking, and adequacy of customer service is an important statewide governmental function"). This function requires a balancing of the needs and interests of ratepayers and investors.<sup>18</sup>

Evergy and the Commission have obligations to act in the public interest. The Commission's regulations in Chapter 22 state:<sup>19</sup> (emphasis added)

The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, *and in a manner that serves the public interest* and is consistent with state energy and environmental policies.

In this case, the public interest is most served by adopting the conditions of NHT and OPC. Without additional arrearage payment plans with a significant commitment of resources,

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<sup>17</sup> State ex rel. Capital City Water Co. v. PSC, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993).

<sup>18</sup> *Cass County v. Public Service Com'n*, 259 S.W.3d 544 (Mo. App. 2008)

<sup>19</sup> 4 CSR 240-22.010(2)

thousands of Evergy customers could fall into level of debt from which they will never recover. The Federal government has yet to indicate whether a second round of stimulus or unemployment insurance extensions will be forthcoming, as our country enters the most severe stage of this pandemic to date. The most vulnerable customers are making hard choices between rent, food, healthcare costs, and utilities. The modest conditions proposed by NHT and OPC would provide relief to these customers, in addition to providing a pathway toward a least-cost scenario.

The Commission should look to the example of other comparable Midwestern Investor-Owned Utilities, most of which have committed millions or of dollars in efforts to minimize customer arrearages during the pandemic. In Minnesota, Xcel Energy, recently proposed \$17.5 million in bill credits for its most indebted customers.<sup>20</sup> In Illinois, ComEd (Commonwealth Edison) signed an agreement with parties over the summer that includes a new COVID-19 Bill Payment Assistance Program with \$18 million in funding and partial arrearage forgiveness.<sup>21</sup> DTE, Michigan's largest utility, recently pledged \$13 million to help customers struggling with the COVID pandemic, including direct relief for customers with high arrears during the crisis.<sup>22</sup> And as already mentioned above, the Commission recently approved a Unanimous Stipulation and Agreement in Spire's AAO that includes long-term deferred payment plans, and an arrearage management program and bill assistance program paid for by both utility shareholders and ratepayers.<sup>23</sup> The conditions proposed by NHT and OPC would still leave Evergy well behind these industry peers, but would

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<sup>20</sup> Mike Hughlett, "Xcel Proposes Program to Help Folks Who Can't Pay Their Utility Bills," Star Tribune, Oct. 3, 2020: [https://www.startribune.com/xcel-proposes-program-for-those-hard-hit-economically-by-pandemic/572615802/?ref=nl&om\\_rid=89023283657&om\\_mid=1605394889](https://www.startribune.com/xcel-proposes-program-for-those-hard-hit-economically-by-pandemic/572615802/?ref=nl&om_rid=89023283657&om_mid=1605394889)

<sup>21</sup> "Stipulation," Docket No. 20-0309, Illinois Commerce Commission, July 15, 2020.

<sup>22</sup> "DTE Creates New Assistance Programs, Pledges \$13 million to Help Customers Struggling During Pandemic," October 5, 2020: <https://www.globenewswire.com/news-release/2020/10/05/2103626/0/en/DTE-Energy-creates-new-assistance-programs-pledges-13-million-to-help-customers-struggling-during-pandemic.html>

<sup>23</sup> "Amended Unanimous Stipulation and Agreement," File No. GU-2020-0376, Missouri Public Service Commission, September 19, 2020.

be conceptually in keeping with the steps they have taken to respond to the pandemic. Failing to including the proposed conditions would leave Evergy as an extreme outlier among this group.

### **Conclusions**

The Commission should approve Evergy's Application for an Authorized Accounting Order in this case, and in so doing attach the conditions requested by the National Housing Trust in order to ensure just and reasonable rates, safe and reliable service, and the furtherance of the public interest during this historic pandemic. The Commission's statutory authority to use its discretion to prescribe accounting procedures and just and reasonable rates is broad, and the Missouri Western District Court of Appeals has repeatedly affirmed they will not second guess the Commission's appropriate use of this authority. This authority is sufficient to allow the Commission to attached conditions to its AAO approval, including conditions not directly related to accounting such as customer arrearage payment plans. Alternatively, the Commission could deny Evergy's AAO and indicate what conditions it would require in order to grant approval.

We will face a very serious crisis for Evergy customers in the coming months. The Non-Uniform Stipulation in this case fails to include any additional bill assistance, arrearage management program, payment plan, or debt forgiveness. Failure to commit funds toward an arrearage management program in this case will not only leave Evergy customers exposed during a crucial emergency, but may lead to the accrual of huge amounts of uncollectible debt, which may needlessly fall on the backs of ratepayers. The Commission should take its opportunity to place conditions on the approval of Evergy's requested AAO. The relief requested by NHT in this case will help customers maintain their service, limit mounting customer debts, and ultimately lead to least-cost service across Evergy's territory.

Respectfully Submitted,

/s/ Andrew J. Linhares

Andrew J. Linhares, MBE #63973

Renew Missouri Advocates

3115 Grand Blvd, Suite 600

St. Louis, MO 63118

(314) 471-9973

[andrew@renewmo.org](mailto:andrew@renewmo.org)

ATTORNEY FOR THE  
NATIONAL HOUSING TRUST

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 4<sup>th</sup> day of December 2020.

/s/ Andrew Linhares