BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro 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	)))))	File No. ER-2022-0025 Tariff No. JE-2022-0024

REPLY BRIEF OF THE MIDWEST ENERGY CONSUMERS GROUP

COMES NOW the Midwest Energy Consumers Group ("MECG") and files its *Reply Brief*, pursuant to the Commission's *Order Setting Procedural Schedule* issued December 2, 2021. In support thereof, MECG states as follows:

A. CLARIFICATION

In its Initial Brief, MECG was under the impression that Staff's position was that Evergy should split the extraordinary revenues associated with the February 2021 winter storm ($200,803,656)[1] from the extraordinary costs resulting from that same event ($166,098,173).[2] Given this impression, MECG believed that Staff wanted to include the extraordinary revenues in the current FAC period, while the extraordinary costs would be treated in a future rate case. This confusion resulted from Staff's use of the overly simplistic term "revenues" in its previous pleadings. At the most basic level, "revenues" would refer to the dollars received from SPP for sales into the wholesale market and would not refer to "costs".

From its brief it now appears that Staff does not want to segregate costs and revenues. Instead, Staff appears to want to utilize the current FAC to treat both the extraordinary revenues AND extraordinary costs from the February 2021 winter storm. Therefore, Staff's position should more properly refer to "net revenues" – that is the extraordinary revenues less the extraordinary costs. Given the figures then, net revenues would result in an FAC credit of $34,705,483, or

[1] Evergy Initial Brief, Exhibit A.
[2] For this reason, MECG stated in its Initial Brief that "while all parties agree that extraordinary costs should be deferred, Staff believes that extraordinary revenues should be treated in the fuel adjustment clause."

$56,830,775 more than the $22,125,292 charge currently being recovered in the FAC through the interim FAC tariff.[3]

MECG provides this clarification to explain any confusion raised when reading the MECG Initial Brief especially when read in conjunction with the Staff and Evergy briefs. Importantly, MECG's position is not changed by this clarification. That is, in order to prevent Evergy from reaping undeserved profits in the form of the 5% sharing included in the FAC, the Commission should defer net revenues (both the extraordinary revenues and the extraordinary costs) for consideration in the pending Evergy Metro rate case (ER-2022-0129).

B. RESPONSE TO STAFF

In its Initial Brief, Staff suggests that the Commission should interpret 20 CSR 4240-20.090(8)(A)2.A(XI) in a vacuum. In this way, Staff asserts that the Commission rule only allows for the deferral of "extraordinary costs, but not extraordinary revenues."[4] It is well established, however, that regulations and statutes should be read "in the whole context of a law."[5]

Read in the context of the Commission's entire FAC rule, it is clear that extraordinary costs, as well as revenues, should be deferred for treatment outside of the FAC. As mentioned in MECG's Initial Brief, the FAC rule does not limit itself to just the treatment of costs. Rather, the rule repeatedly discusses the treatment of costs as well as revenues.

> Accumulation period means the time period set by the commission in the general rate proceeding over which historical fuel and purchased power costs ***and fuel-related revenues*** are accumulated for purposes of determining the actual net energy costs (ANEC).[6]

[3] Recognizing that February normal operations would have led to an FAC charge of $22,125,292, the difference at issue is $56,803,775. (Evergy Initial Brief, Exhibit A).
[4] Staff Initial Brief, page 3.
[5] *City of St. Louis v. Speck*, 4 Mo.App. 244 (1877).
[6] 4 CSR 4240-20.090(1)(A) (emphasis added).

> Actual net energy costs (ANEC) means prudently incurred fuel and purchased power costs ***net of fuel-related revenues*** of a rate adjustment mechanism (RAM) during the accumulation period.[7]

> Base energy costs means the fuel and purchased power costs ***net of fuel-related revenues*** determined by the commission to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case.[8]

In fact, the Commission has previously held that costs and revenues are "inextricably joined" within the Evergy Metro fuel adjustment clause.

> KCPL [now known as Evergy Metro] sells and purchases power '24 hours a day, 7 days a week.' This demonstrates how all of the SPP IM costs and revenues are "***inextricably joined***" to permit purchase power and sales to be reflected in the FAC.[9]

Given that costs and revenues are "intricably joined" in the Evergy FAC, and recognizing that Missouri courts have held that a statute / regulation should be read in the "whole context of a law", the Commission should defer the net revenues (both the extraordinary costs and extraordinary revenues) resulting from the February winter storm for recovery in the pending Evergy rate case.

C. RESPONSE TO EVERGY

In its Initial Brief, Evergy agrees with MECG. Specifically, Evergy asserts that the FAC rule does not limit itself solely to the treatment of costs. Rather, the rule repeatedly contemplates both the treatment of costs and revenues. Recognizing that the rule broadly treats revenues and costs, Evergy asserts that the Commission should defer the net revenues resulting from the February winter storm.

That said, however, there are 2 important distinctions between the positions advanced by Evergy and Staff. ***First***, while MECG recommends that the extraordinary net revenues should be deferred into the pending Evergy rate case, Evergy suggests that the extraordinary net revenues be

[7] 4 CSR 4240-20.090(1)(B) (emphasis added).
[8] 4 CSR 4240-20.090(1)(C) (emphasis added).
[9] *Report and Order*, Case No. ER-2016-0285, issued May 3, 2017, pages 26-27 (emphasis added).

deferred into a subsequent FAC period.[10] Evergy's recommended approach (to defer to a subsequent FAC period) is disconcerting in that it raises the possibility that Evergy will be allowed to keep 5% of the net revenues. Specifically, recognizing that the Evergy FAC includes a 95% / 5% sharing mechanism, customers are concerned that Evergy may seek to keep 5% of the net revenues when those extraordinary net revenues eventually are reflected in the subsequent FAC period.[11] MECG is unaware of any instance in which the Commission has deferred costs or revenues for recovery in a subsequent FAC period. For this reason, MECG suggests that the Commission reject Evergy's request to defer these net revenues to a subsequent FAC period and, instead, defer the extraordinary net revenues to the pending Evergy Metro rate case (ER-2022-0129).

The ***second*** area of disagreement relates to Evergy's suggestion that it be allowed to keep a significant amount of the extraordinary net revenues to reflect an Evergy's jurisdictional allocation that arises as a result of the differing allocation methodologies used by the Evergy's Missouri and Kansas regulatory authorities. As an overarching issue, MECG is disturbed by Evergy's deliberate attempt to litigate this issue, which is properly raised in the pending AAO case, in the immediate docket. Specifically, while Evergy agreed that this case presented a single issue, Evergy now seeks to introduce an issue from a pending AAO docket (EU-2021-0283). In fact, after stipulating to facts, Evergy then blatantly goes outside the stipulated evidence and cites to testimony from that AAO case. Putting aside Evergy's inappropriate introduction of the jurisdictional issue into this case, it is important for the Commission to understand that history of the jurisdictional "conflict"

[10] Evergy Initial Brief, page 4 ("the Company is seeking an AAO to accumulate and defer 100% of Winter Storm Uri's extraordinary costs and revenues until the next FAC accumulation period."). See also, "Metro proposes to use the next FAC accumulation period after the conclusion of its requested Winter Storm URI AAO to flow back the benefits exceeding costs that have accumulated from off-system sales related to the storm.").

[11] Allowing Evergy Metro to keep 5% of the extraordinary net revenues is particularly disconcerting when one recognizes that Evergy West seeks to require ratepayers to pay 100% of the extraordinary costs that it incurred during the same extraordinary event.

that Evergy now bemoans.[12]

Prior to 2006, both Kansas and Missouri used the energy allocator to allocate off-system sales revenues to the two jurisdictions. Therefore, prior to 2006, there was no "conflict." For every dollar generated in off-system sales, there was a perfect split between the jurisdictions.

In 2006, however, Evergy (then KCPL) sought to entice the Kansas Commission to approve its regulatory plan to support the construction of the Iatan 2 generating station. This enticement took the form of the "unused energy allocator." This unused energy allocator sought to assign off-system sales revenues to either Missouri or Kansas based upon some misguided quantification of whether the off-system sales were made out of the Missouri or Kansas share of each generating unit. Importantly, the unused energy allocator was a methodology of Evergy's own creation, had never been used by any other jurisdiction, and was not recognized by the NARUC allocation manual.[13]

As described in Staff's testimony at the time, since Missouri had a higher load factor, the unused energy allocator would allocate more off-system sales revenues to Kansas. Therefore, the unused energy allocator was beneficial to Kansas, but severely detrimental to Missouri ratepayers. Recognizing its beneficial nature, the Kansas Commission eagerly adopted the unused energy allocator. The Missouri Commission, however, gave the unused allocator a more thorough consideration and ultimately rejected the flawed request.

> Staff recommends that the Commission continue to use the energy allocator for revenues from non-firm off-system sales of energy, including the margin component thereof. This is the time-tested and widely accepted method for allocating such revenues in this state because it is appropriate for allocating revenues and associated costs that are purely variable with the amount of energy sold.

[12] Recognizing that the jurisdictional "conflict" is not an issue to this case, the briefing on this issue, like Evergy's brief, does not rely on any evidence as the evidence in this case is expressly limited to that contained in the Joint Stipulation of Facts.

[13] Featherstone Rebuttal, Case No. ER-2006-0314, page 6.

> The Staff opposes the Company's proposal, which would shift some $4.4 million in revenues from KCPL's Missouri jurisdiction to its Kansas jurisdiction. Other parties, such as OPC, Praxair, MIEC, and DOE, support the traditional energy allocation mechanism proposed by the Staff.
>
> The Commission finds that the competent and substantial evidence supports Staff's position, and finds this issue in favor of Staff. A primary concern is the underlying philosophy implied by utilization of the unused energy allocator. Specifically, the unused energy allocator rewards the lower load factor of KCPL's Kansas retail jurisdiction by allocating a greater percentage of the profit from non-firm off-system sales to that jurisdiction. Load Factor is average energy usage divided by peak demand. The higher the load factor, the closer the average load is to peak demand. The lower load factor of KCPL's Kansas jurisdiction causes the Company to build higher energy cost combustion turbines, which provide KCPL with less opportunity to make off-system sales.
>
> In KCPL's recent Regulatory Plan case (Case No. EO-2005-0329), some $14 million in expenditures was authorized for demand response programs that should result in increasing KCPL's load factor, and hence, reducing KCPL's need to acquire higher energy cost combustion turbines. Yet, KCPL proposes to allocate a greater proportion of the off-system sales margin to the lower load factor Kansas jurisdiction. Thus, use of the unused energy allocator creates a possible disincentive to implement projects aimed at increasing load factor. Furthermore, application of the unused energy allocator ignores the fact that, thanks to Missouri's higher load factor, Kansas is already benefiting to a greater extent than Missouri from a lower overall cost of energy.
>
> The only costs assigned to non-firm off-system sales is the fuel and purchased power costs – the variable costs – hence the appropriateness of using the energy allocator. This is consistent with the way KCPL itself allocates the costs relating to the energy portion of firm capacity contracts – using the energy allocator. The reason is simple – the energy allocator is used to allocate variable costs of fuel and purchased power costs relating to retail sales. Using the same rationale, the energy allocator is equally appropriate to use as the allocation factor for both energy of firm (as KCPL does) and non-firm off-system sales. The demand based unused energy allocator should not be used to allocate off-system sales – either energy from firm capacity sale contracts or non-firm off-system sales. Because plant is not dedicated to support non-firm off-system sales, there is no associated demand charge.[14]

Bottom line, the Missouri Commission held that the <u>energy allocator</u> was "time tested and widely accepted." In contrast, the Commission held that Evergy's <u>unused energy allocator</u> would: (1) shift revenues to Kansas at the detriment of Missouri customers and (2) reward the low load factor Kansas jurisdiction that utilizes the Evergy system less efficiently then Missouri. Additionally, the

[14] *Report and Order*, Case No. ER-2006-0314, pages 37-40.

Missouri Commission pointed out that the lower load factor Kansas jurisdiction causes Evergy to construct additional generating resources, of which a significant portion of the costs are then allocated to Missouri. Finally, the unused energy allocator would punish Missouri, which has implemented huge amounts of energy efficiency through the MEEIA surcharge, which increases the Missouri load factor, as compared to Kansas which has not even passed energy efficiency legislation. For all these reasons the Commission determined that the unused energy allocator was flawed and rejected its use in Missouri.

The flawed nature of the unused energy allocator was subsequently recognized by Evergy itself. In 2010, Evergy asked the Kansas Commission to retreat from its continued use and return back to the "time tested and widely accepted" energy allocator. In fact, Evergy's witness in that 2010 rate case admitted that Evergy proposed the allocator "without sufficient study." As such, it is "not an appropriate method for allocating off-system sales margins."

> I believe that KCP&L proposed the unused energy allocator without sufficient study of its implications and reasonableness. Since the unused energy allocator allocates more off-system sales margins (and hence, lower overall costs) to the Kansas jurisdiction, the other parties may not have devoted the resources to study its reasonableness. Based on the analysis that I present here, ***I believe that the unused energy allocator is not an appropriate method for allocating off-system sales margins***.[15]

While Evergy did ask the Kansas Commission to remedy this problem, the KCC nevertheless held firmly to the faulty allocator and rejected KCPL's request to eliminate the unused energy allocator. The practical effect of Evergy's development of an allocator "without sufficient study" is that Missouri and Kansas now allocate off-system sales margins in different manners. Thus, the "conflict" that Evergy now bemoans and uses as justification for it to be allowed to keep a significant percent of the net revenues from the February winter storm was a "conflict" of its own making and proposed "without sufficient study." It is not appropriate for Missouri ratepayers to be expected to provide a solution for Evergy's screw up and inability to subsequently resolve through the Kansas Commission.

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[15] Tr. 3367-3368, Case No. ER-2010-0355 (emphasis added).

D. CONCLUSION

Given all of the reasons expressed in its Initial and Reply Briefs, MECG respectfully requests that the Commission:

(1) Defer the extraordinary net revenues (extraordinary revenues net of extraordinary costs) associated with the February 2021 winter storm out of the FAC and into the pending Evergy rate case (ER-2022-0129); and

(2) To the extent the issue is determined in this case, reject Evergy's request to allocate those extraordinary net revenues pursuant to the unused energy allocator – a methodology that Evergy admits was proposed "without sufficient study" and "is not an appropriate method for allocating off-system sales margins."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

____/s/_David Woodsmall_____
David L. Woodsmall

Dated: January 12, 2022