

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

In the Matter of the Application of )	
Evergy Missouri West, Inc. d/b/a )	
Evergy Missouri West For Authority to )	Case No. EF-2022-0103
Encumber Assets )	
)	

**RESPONSE TO EVERGY MISSOURI WEST’S RESPONSE TO THE OPC’S  
OBJECTION**

**COMES NOW** the Office of the Public Counsel (“OPC”) and for its *Response to Evergy Missouri West’s Response to the OPC’s Objection*, states as follows:

**Evergy misrepresentation of pertinent legal issues and arguments**

1. Evergy Missouri West (“Evergy” or “the Company”) filed a response to the OPC’s *Objection* that misconstrues the nature of the OPC’s objection and misrepresents the legal issue that the OPC has raised.
2. The request made by the Company in this case is to encumber assets under section 393.190.
3. Evergy is seeking an “indefinite” grant of authority by the Commission, meaning that Evergy is seeking authority to encumber its Missouri utility assets for purposes of not only its outstanding unsecured debt but also all subsequent debt that may be issued moving forward indefinitely.
4. The OPC is objecting on the basis that the Commission should not grant such encumbrance authority on an “indefinite” basis.

5. Instead, the OPC argues that the Commission should grant Evergy the authority to encumber assets for purposes of any current and identified series of bonds. For any unidentified series of bonds, Evergy should seek Commission authorization for Supplemental Indentures pursuant to Section 393.180 and 393.190.

6. Once again, the OPC notes that this is consistent with past Commission practice, in that, the Empire District Electric Company, a Kansas corporation, has routinely filed for Commission authority, pursuant to Section 393.180 and 393.190, to issue Supplemental Indentures despite receiving Commission approval for its original mortgage indenture in 1944. *See* Case Nos. EF-2014-0195, EF-2011-0393, EF-2009-0180, EF-2006-0263, EF-2004-0109, *etc.*

7. Thus, the OPC is seeking nothing more than to maintain the *status quo* with regard to the treatment of electric utilities before this Commission.

8. At no point in its *Objection* did the OPC invoke section 393.200, nor is any part of its *Objection* related to the same.

9. Evergy's attempts to argue the Commission lacks jurisdiction over its debt issuances under 393.200 is an irrelevant straw-man argument that the Company has raised to mislead the Commission.

10. The question the OPC has placed before the Commission is simply and solely this: should the authority to encumber the Company's Missouri utility assets be granted to Evergy on an indefinite or limited basis.

11. This question is directed exclusively to the proper application of section 393.190 and in no way involves the application of section 393.200.

12. There is no dispute that this Commission has jurisdiction over the application of section 393.190 and the scope of any authority it grants to Evergy pursuant to the same.

13. Evergy has misrepresented this issue by attempting to graft questions related to section 393.200 in an effort to confuse the Commission.

**Request for a hearing in lieu of further discussions**

14. The OPC's objection did not contain the full extent of its legal argument nor was it required to.

15. Moreover, the OPC has not been permitted an opportunity to support its position by introducing facts into the evidentiary record.

16. For the Commission to deny the OPC the opportunity to fully present its case in a meaningful time and manner is a violation of due process. *State ex rel. Fischer v. Pub. Serv. Com.*, 645 S.W.2d 39, 43 (Mo. App. W.D. 1982) (“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.”).

17. In its initial objection, the OPC requested the Commission merely order the parties to file a joint status report within 30 days of the effective date of the Commission's order to give the parties time to further discuss the issue and hopefully reach an amicable solution.

18. If the Commission does not grant such relief, then the OPC formally requests a hearing on this matter.

19. Again, the OPC stresses that it believes that a resolution may be reached and would ask that the Commission first order a joint status report as requested in the OPC's original objection so as allow for further discussions to occur. A hearing is requested only in the alternative if the Commission does not issue an order for a joint status report as the OPC originally requested.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission reject the *Stipulation and Agreement* filed by Staff and Evergy and order the parties to this case to file a joint status report within 30 days from the effective date of the Commission's order regarding the case, or, in the alternative, schedule a hearing to be held in this case.

Respectfully submitted,

By:           /s/ John Clizer            
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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 seventh day of February.

          /s/ John Clizer