

**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 Permission)
and Approval of a Certificate of Public)
Convenience and Necessity) Case No. EA-2022-0328
Authorizing It to Purchase, Own,)
Operate, Maintain and Otherwise)
Control and Manage an Existing Wind)
Generation Facility in Oklahoma)

The Office of the Public Counsel's Reply Brief

Respectfully submitted,

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Introduction

“[T]he Commission shares Staff’s concern . . . that adding large amounts of renewable generation that are not required to meet [a Regional Transmission Organization’s (RTO)] resource adequacy requirements or Missouri statutory or rule requirements, including providing safe and adequate service, may place an undue level of risk on ratepayers based on the speculation that market revenues will exceed the overall cost of the assets.”¹

One-and-a-half (1.5) years ago, this Commission made the above statement, concerned that a company would shift too quickly to renewable generation, putting captive ratepayers at risk. On August 17, 2022, Midcontinent Independent Systems Operator (“MISO”) gave a presentation on resource adequacy and market reliability to this Commission.² Two (2) weeks later, Southwest Power Pool (SPP) updated the Commission on changes they were making to resource adequacy.³

For years, Evergy Missouri West ⁴ has run full steam ahead with renewable resources. For years, the Company has failed to acquire an adequate capacity of generation assets that are either renewable or fossil fuel. Now EMW wants to use the condition of its generation fleet, as well as the statutes and regulations created to

¹ *Order Regarding 2020 Integrated Resource Plan*, Case No. EO-2021-0021, August 18, 2021, at pg.s 3 & 4.

² MISO, MISO UPDATE ON RESOURCE ADEQUACY (Aug. 17, 2022), <https://psc.mo.gov/CMSInternetData/Agenda%20Presentations/2022%20Presentations/8-17-2022%20MISO%20Update%20on%20Resource%20Adequacy.pdf>

³ SPP, SPP Update (Aug. 31, 2022), <https://psc.mo.gov/CMSInternetData/Agenda%20Presentations/2022%20Presentations/8-31-2022%20SPP%20Update.pdf>.

⁴ “Evergy West,” “EMW,” or “the Company”

protect captive consumers, in order to influence this Commission’s handling of the Persimmon Creek operating CCN. However, permitting EMW to take advantage of the regulatory system as proposed will not help the public, will not help the Company, and will not help the future of renewable generation.

I. The Reality of Persimmon Creek

A. The Wind Project, Itself

Throughout this case, Evergy West has not been interested in presenting the true nature of this asset. The Company touts Persimmon Creek’s “environmental benefits,”⁵ “economic benefits for customers,”⁶ and “eligib[ility] for 100% PTC⁷ benefits through the first ten years of life[.]”⁸ However, in reality, all three (3) listed benefits deserve an asterisk, because the real beneficiaries, where any exist, are EMW’s shareholders.

a. Environmental Benefits and the Renewable Movement

In its brief, the Company repeatedly reminds the Commission that Persimmon Creek is a renewable resource that is currently in operation, and is currently part of the Southwest Power Pool (SPP).⁹ The Company shows pride at the fact that this is a renewable generation asset that is already part of the SPP, and has been for four-and-one-half (4 ½) years. The Company uses Persimmon Creek’s operational status as a benefit, asserts that this asset already operating means the Company does not

⁵ Ex. 1, Dority Direct Testimony, pg. 9, line 22.

⁶ Ex. 3, Messamore Direct Testimony, pg. 6, line 15.

⁷ Production Tax Credit

⁸ Ex. 2, Humphrey Direct Testimony, pg. 10, lines 12 & 13.

⁹ In fact, the Company mentions Persimmon Creek’s currently operating status ten (10) times in the brief, alone, *Evergy Initial Brief*, pg.s 6, 7, 12, 23, 32, 36, and 44.

have to worry about engineering, procurement, and construction (EPC) costs.¹⁰

However, Evergy West simultaneously attempts to divert the Commission's attention from the fact that Persimmon Creek does not create any new renewable generation for the SPP market.¹¹

Evergy West insists that ensuring renewable assets are economically beneficial prevents the Company's transition to a "clean" generation fleet.¹² However, EMW ignores the fact that removing a renewable generation resource from the competitive market would remove the inherent incentive to increase Persimmon Creek's efficiency. On the open market, the independent power producer (IPP) must innovate to make this asset profitable. When Evergy West owns it, the Company's customers will be obligated to pay shareholders for both the asset itself and a return on investment (ROI). The only incentive EMW has to increase the asset's economic and generation efficiency is the Commission itself.

Finally, it is essential for the Commission to take into account the impact approval of Persimmon Creek may have on the politics of renewables as a whole. While the Company insists that Persimmon Creek is "a very robust and successful operating asset,"¹³ the evidence suggests differently. Forcing captive customers to

¹⁰ *Id.* at pg. 36.

¹¹ EMW has successfully confused even other parties to this hearing with the suggestion that Persimmon Creek will increase the amount of renewable energy on the market. *See* Initial Post-Hearing Brief for Renew Missouri, In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing It to Purchase, Own, Operate, Maintain and Otherwise Control and Manage an Existing Wind Generation Facility in Oklahoma, Case No. EA-2022-0328, EFIS Item No. 95, at pg.s 9 & 10.

¹² *Evergy Missouri West Initial Brief*, pg. 21.

¹³ *Id.* at pg. 7

pay for a renewable asset that is inefficient with regard to economics and generation is unlikely to push the movement towards renewables forward. Moreover, the politics around renewable generation is changing.

Less than one (1) month ago, the state legislature of Ohio began drastically restricting renewable developments, beginning with the passage of a ten-year (10-year) ban on wind generation.¹⁴ In November, Michigan voters rejected a wind project in the center of the state and voted supporters of that project out of office.¹⁵ In New Jersey, environmental activists requested that the state stop approving *offshore* wind projects due to the lack of information on its environmental impacts.¹⁶ Even environmental activist, Greta Thunberg, is protesting *against* the operation of several wind turbines in Oslo, Norway, due to the effects those turbines are having on the local habitat for animals and indigenous tribes.¹⁷ In fact, during this hearing Mr. James Owen stated, “I would keep in mind [that] Renew Missouri is not advocating for 100 percent renewable energy at this time. We do not believe that’s something that utilities should be able to do.”¹⁸ Individuals across the political

¹⁴ Robert Zullo, Across the Country, A BIG BACKLASH TO NEW RENEWABLES IS MOUNTING (Feb. 18, 2023), <https://iowacapitaldispatch.com/2023/02/18/across-the-country-a-big-backlash-to-new-renewables-is-mounting/>

¹⁵ Garret Ellison, VOTERS DEFEAT MICHIGAN WIND ENERGY PROJECT, TOSS SUPPORTIVE Officials (Nov. 9, 2022), <https://www.mlive.com/public-interest/2022/11/voters-defeat-michigan-wind-energy-project-toss-supportive-officials.html>

¹⁶ Amanda Oglesby, OPPOSITION TO NJ OFFSHORE WIND PROJECTS DOMINATE DEP HEARING (Dec. 8, 2022), <https://www.app.com/story/news/local/land-environment/2022/12/08/nj-offshore-wind-projects-face-pushback-hearings-planned-for-december/69708849007/>.

¹⁷ Laura Paddison, GRETA THUNBERG HAS JOINED A PROTEST AGAINST WIND FARMS. HERE’S WHY. (Mar. 2, 2023), <https://www.cnn.com/2023/03/01/europe/greta-thunberg-wind-farm-norway-sami-climate-intl/index.html>.

¹⁸ Tr., pg 214, lines 1-4.

spectrum are fighting against projects like Persimmon Creek due to the impact those projects have on biodiversity, and a real lack of reliability and dispatchability.

If Evergy West were truly looking to move the renewable market forward, the focus would be on ensuring they control a *dispatchable asset*, first.¹⁹ For years, the Company has placed far too much import on cheap generation from a *shareholder's* point of view without considering the impact to captive customers. Evergy West's desire to tout its focus on "green energy sources" has shifted its focus from reliability, to captive consumers' detriment.

Today, even the most environmentally-focused citizens view renewable generation with a bit more nuance, especially when they see negative impacts renewable energy can have on the surrounding eco-system. Despite the Company's claims, eco-system impact *is* a concern here. As it stands, Evergy West is advocating to acquire a resource that will not generate during the times it is needed and does not add renewable generation to SPP's market. At the same time, this purchase will cause a price hike for ratepayers who get **no additional benefits, environmentally**. Adding Persimmon Creek will hurt the Company's alleged renewable goals, but will also enrich EMW's shareholders.

b. Economic Benefits for Who?

Regarding the alleged economic benefits to customers, the Company refers again to its claim that "the revenues from the wind farm [will] begin to flow through

¹⁹ While EMW does have some ownership in a few dispatchable resources, it does not have enough ownership to *control* the dispatchability of those resources.

to customers through the FAC and sales of renewable energy credits (“RECs”)[.]”²⁰ However, there is no proof that market revenues *can* flow through the Company’s fuel adjustment clause (“FAC”) before the asset is added in rate base in its current tariff.²¹ While EMW insists Persimmon Creek’s revenues will flow through the FAC,²² it does so as an afterthought and with little explanation. The purpose of the FAC is to permit electric utilities to increase or decrease the monetary charges consumers owe for power per kilowatt-hour due to changes in fuel costs.²³ Therefore, EMW’s stated plan is already on shaky legal ground. Further, the Company is moving for the Commission to make the economic determinations, without a chance to analyze what is best for *customers*.

As it stands, the Company’s current plan is merely another way to undermine the Commission’s attempts at accountability. While avoiding regulatory scrutiny, Evergy West also earns another five percent (5%) on Persimmon Creek’s revenues due to the 95/5 sharing mechanism. Finally, if revenues flow through the FAC rather than going towards offsetting Persimmon Creek’s capital costs, then shareholders will earn a higher ROI. Other companies, such as Empire, will use an asset’s revenues to decrease capital costs on that asset, and decrease the amount customers owe shareholders. Here, the focus is on shareholder benefits, not customer loss, so

²⁰ *Evergy Missouri West Initial Brief*, pg. 26.

²¹ Evergy West’s current tariff likely would not permit this suggested use of revenues for the same reasons Ms. Lena Mantle gave for why PTCs could not flow through the FAC; Tr., pg. 263, lines 15-22.

²² Transcript (“Tr.”), pg. 22, line 18; *Id.* at pg. 21, lines 18 & 19; *Id.* at pg. 60, line 23 to pg. 61, line 3; *Id.* at pg. 61, lines 21 & 22; *Id.* at pg. 62, lines 23-25; *Id.* at pg. 88, lines 4-7; *Id.* at pg. 127, lines 1-4; *Id.* at pg. 131, lines 12-16; *Id.* at pg. 131 lines 18-20; and *Id.* at pg. 170, lines 11-15.

²³ *State ex rel. Utility Consumers Council, Inc. v. Public Serv. Comm’n*, 585 S.W.2d 41, 44 (1979).

the Company did not contemplate any such solution, even after Ms. Mantle suggested just that on the stand.²⁴

EMW's approach to the legal guardrails imposed by the state legislature and by this Commission is dangerous. The Company is stretching these statutes beyond recognition to fit its purposes and reward its shareholders. This Commission is the last hope for Evergy West customers.

c. PTCs for You, Not Me

In its initial brief Evergy West continues a notable pattern of referring to PTC eligibility²⁵ and diverting the focus on its plans for those PTCs.²⁶ Throughout the case, the Company repeatedly highlights that one reason it chose Persimmon Creek is because it is currently eligible for 100% of the available PTCs.²⁷ However, the Company rarely mentions its plan to keep PTCs for shareholders until the asset is included in rate base.²⁸ In fact, Staff and the Office of the Public Counsel ("OPC") addressed Evergy West's plan for the PTCs more often²⁹ during the hearing than the Company in either written testimony or during the hearing. It is clear to see why.

²⁴ Tr., pg. 264, lines 7-10.

²⁵ *Evergy Missouri West Initial Brief*, pg.s 24, 29, & 44.

²⁶ *Id.* at pg. 28.

²⁷ The Company mentions the eligibility for PTCs a total of thirteen (13) additional times in written testimony & during its opening. Ex. 1, Dority Direct Testimony, pg. 6, lines 2 & 3; *Id.* at pg. 10, lines 12-14; *Id.* at pg. 11, lines 8 & 9; Ex. 2, Humphrey Direct Testimony, pg. 9, lines 16 & 17; *Id.* at pg. 10, lines 12 & 13; *Id.* at pg. 17, lines 12 & 13; Ex. 3, Messamore Direct Testimony, pg. 4, lines 7-10; Ex. 5, Humphrey Supplemental Direct Testimony, pg. 3, lines 8 & 9; *Id.* at pg. 13, line 16; *Id.* at pg. 15, lines 2, 15 & 16; *Id.* at pg. 16, lines 6 & 7; *Id.* at pg. 18, line 20; Ex. 6, Messamore Supplemental Direct Testimony, pg. 25, line 9; Ex. 7, Dority Surrebuttal Testimony, pg. 12, line 19; and Tr. at pg. 14, lines 6 & 7.

²⁸ The Company itself only mentions its plan for PTCs three (3) times in written testimony and Counsel's opening Ex. 7, Dority Surrebuttal Testimony, pg. 26, lines 10-13; Ex. 8, Humphrey Surrebuttal Testimony pg. 14, lines 10-14; Tr., pg. 22, lines 19-23

²⁹ Staff and the OPC mention EMW's plans for PTCs before Persimmon Creek is added into rate base nine (9) times, three (3) times the amount mentioned by the Company. Tr., pg. 32, lines 8 & 9

Mr. Matthew Young did a negative/positive comparison of the effect regulatory lag would have on shareholders per year. The negative lag was the fifteen percent (15%) depreciation the PISA³⁰ statute does not defer and the asset's operation and maintenance (O&M) expenses.³¹ The positive lag was the eighty-five percent (85%) depreciation PISA does defer, deferred property tax, and PTCs.³² All together, the negative lag is approximately *** _____ *** per year Persimmon Creek is not in rate base and positive lag is *** _____ *** *per year*.³³ Therefore, following EMW's plan, shareholders will annually earn³⁴ approximately four-and-one-half times (4.5x) what that fifteen percent (15%) depreciation and O&M will cost put together.

While PTC allocation is a continuation of the economic benefit issue, it is also much more. In bringing in the issues of revenue and PTC allocation in this case, the Company is attempting to change the very nature of this case itself. Evergy West acknowledges that this is not a rate case, as its stated plan is to keep PTCs “[b]etween the closing of the acquisition and the conclusion of EMW's next rate case[.]”³⁵ However, by treating this portion of the CCN proceed as though it *is* a rate

(counsel for OPC inadvertently stated that “ratepayers” were getting PTCs and a return on Persimmon Creek when she meant to say “shareholders” were getting those benefits.); *Id.* at page 38, lines 6-11; *Id.* at pg. 62, line 20; *Id.* at pg. 271, lines 21-23; *Id.* at pg. 279, lines 12 & 13; *Id.* at pg. 330, lines 11-15; *Id.* at page 340, lines 4-9; *Id.* at pg. 380, lines 5-7, lines 14 & 15; and *Id.* at pg. 497, lines 15-20.

³⁰ Plant In Service Accounting; RSMo § 393.1400

³¹ Tr., pg. 374, lines 2-8.

³² *Id.* at lines 9-16

³³ *Id.* at lines 15 & 16.

³⁴ Also, PTCs incentivize energy companies to continue generation during times of negative pricing at nodes. In this case, shareholders will be earning the benefit, while ninety-five percent (95%) of the negative revenues will be borne by ratepayers.

³⁵ *Evergy Initial Brief*, pg. 30.

case, EMW is essentially attempting to bypass the Commission by usurping its authority and informing the Commission of its plans, not asking. In this way, Evergy West is actively undermining the purpose of the Commission, itself, and challenging the Commissioners to act.

B. This Proceeding

Evergy West repeatedly pointed out,³⁶ this case is merely regarding the approval or denial of the CCN of Persimmon Creek. Mr. Zobrist, an attorney for EMW, specifically asked Mr. Luebbert if this case dealt with ratemaking, which Mr. Luebbert denied.³⁷ Post hearing, the Company even argued the OPC and Staff “have attempted to transform this CCN proceeding” into either an attack on EMW’s Integrated Resource Planning (“IRP”) process or an informal rulemaking proceeding.³⁸ Therefore, it is very clear that the Company does not believe that the economics in relation to “just and reasonable rates” are appropriately addressed here.³⁹

The OPC does not dispute the fact that the case before the Commission should only be consider a CCN.. Most of the concerns the OPC and Staff highlighted during this hearing concerned the methods that EMW used to choose this generation asset. The other issues Staff and the OPC brought attention to concerned how the economic benefits of this resource would be tracked until Persimmon Creek was in rate base. Meanwhile, the Company has already decided how it believes it will handle

³⁶ Tr., pg. 80, lines 6-9; *Id.* at page 351, line 14.

³⁷ *Id.* at pg. 457, lines 15-19.

³⁸ *Evergy Missouri West Initial Brief*, pg.s 3 & 40.

³⁹ Tr., pg 457, lines 20-23.

generated revenues and PTCs without any input from the Commission, stating those plans as if they are decided. This hearing is an inappropriate arena to address the handling of those economic benefits, which is already on a condensed timeline.

EMW characterizes its arguments as indisputable facts and hopes the Commission will not question it—whether those arguments regard the asset’s efficiency or the nature of this hearing, itself. When informing the Commission of its plans for PTCs and revenues, the Company does not explain how it will flow revenues through the FAC without violating its current tariff or Missouri law.⁴⁰ Mr. Zobrist even entered⁴¹ EMW’s response to the OPC⁴² stating its plan to keep PTCs until Persimmon Creek is included in rates.⁴³ However, the response does not explain the mechanisms the Company intends to utilize to properly dispatch revenues and PTCs.

Ms. Mantle pointed out that Evergy West’s FAC does not permit PTCs to flow to customers immediately as the Company’s tariff does not permit it.⁴⁴ Further, Missouri law does not permit the Company to change its FAC between rate cases, including the handling of PTCs and revenues.⁴⁵ EMW declared how it would allocate Persimmon Creek’s revenues and tax credits before it is in rate base without the

⁴⁰ RSMO § 386.266.5 states, “The Commission shall have the power to approve, modify, or reject [FACs] only after providing the opportunity for a full hearing in a general rate proceeding[.]”

⁴¹ While EMW did make this filing prior to Mr. Dority and Mr. Humphrey’s surrebuttal, court filings **are not subject** to any rules regarding accuracy. Thus, the OPC took the stance that EMW’s counsel’s legal filing should not be asserted as fact until the employees either signed an affidavit or spoke to an issue under oath.

⁴² Ex. 14, EA-2022-0328 – Reply of Evergy Missouri West, pg. 2 § 7.

⁴³ Mr. Zobrist also asserted that page 20 of Ms. Messamore’s Supplemental Direct Testimony also explained Evergy West’s plan, but the OPC’s search for this alleged explanation was unsuccessful.

⁴⁴ Tr., pg. 263, lines 17 & 18.

⁴⁵ See *Ibid.*; RSMO § 386.266.5.

Commission's approval. However, the issue before the Commission is whether to deny or approve the Persimmon Creek acquisition, and these issues should be properly addressed in a future rate case.

If this CCN is approved as Evergy West drafted and presented it, shareholders will receive deferred property tax, eighty-five percent (85%) of the asset's depreciation due to PISA, repayment of the asset, a return on their investment, PTCs, and five percent (5%) of the revenues Persimmon Creek. Staff calculated that the benefits shareholders receive while this asset is not in rate base is four-and-one-half times (4.5x) higher than after it is added to rate base. Letting Evergy West keep PTCs as compensation for the fifteen percent (15%) lag permitted by PISA perverts that law and provides an incentive to delay adding Persimmon Creek to rate base.

If Evergy West truly intends for this case to focus on the Commission's decision to approve or deny the operating CCN for Persimmon Creek, then let that be the only focus. Persimmon Creek's federal PTCs and its revenues, should be put to the side for the Commission to consider at a later date, with a full general rate case.

However, what the Company claims is the focus, and what the Company wants to be the focus appear to diverge in interesting ways. EMW wants to treat this case as a rate case to be able to allocate the economic benefits of this asset before it is added to rate base. However, this case is only a CCN proceeding in relation to "so many of the issues"⁴⁶ the OPC and Staff brought up. The Company's counsel did not believe that this CCN hearing was the appropriate venue for cost benefit analysis,

⁴⁶ Tr., pg. 272, lines 10-12.

despite courts determining the exact opposite. Specifically, the Commission has held that economic feasibility focuses on whether a CCN applicant can recover an asset's construction costs "without placing an undue burden on its customers."⁴⁷ In another case, the Commission has said "[an acquisition] is not detrimental to the public interest where the transaction *will confer a benefit of equal or greater value* or remedy a deficiency that threatens the safety or adequacy of the service."⁴⁸ Those cases, in two (2) different ways, support a finding that the cost/benefit analysis of a CCN acquisition is essential to the decision to approve or deny that CCN.

Every West's alleged concern about whether this proceeding is really the correct venue for the OPC and Staff's legitimate issues is an attempt to divert Commission attention away from "bad facts." The Company is using the venue justification to avoid discussing any negative facts about this asset, while flouting this same "concern" in relation to the asset's economic allocation. This red-herring argument prevented the parties from delving more deeply into questions about this asset than they otherwise might have.

⁴⁷ *In the matter of the application of Mid-Missouri Sanitation Company for permission, approval and a certificate of convenience and necessity authorizing it to construct, install, own, operate, control, manage and maintain a sewer system in an unincorporated area of Boone County, Missouri*, Case No. SA-83-281, Report and Order, pg. 24, December 16, 1983.

⁴⁸ *In the Matter of the Application of Union Electric Company, Doing Business as AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, Doing Business as AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions*, Case No. EO-2004-0108, Report and Order, pg. 43, October 16, 2004. (emphasis added).

II. The Reality of Evergy Missouri West

A. Accountability? It Rarely Knows Thee.

When referring to Staff and the OPC's positions on almost every aspect of this case, the word Evergy West trots out is "unprecedented."⁴⁹ From EMW's Statement of Positions onward, if the Company vehemently disagrees with a provision designed to mitigate the harm of this asset, the condition is labeled "unprecedented." The fact is, just about everything around this CCN case is unprecedented, as *this is the first hearing for an operating CCN in Missouri*.⁵⁰ Further, it is unprecedented that a company with a history of inefficient energy agreements,⁵¹ and a lack of control in dispatchable assets⁵² would insist on acquiring a generation resource with no dispatchability and minimal accredited capacity.

The OPC and Staff are seeking specific guardrails be added for Evergy Missouri West because Evergy Missouri West does not have a history of choosing positive, economic generation to add to its fleet. The Company's history shows "economic" agreement after "economic" agreement falling deeper into the red, and the shaky foundation upon which it bases asset choices is a clear indication why. Evergy West insists that Staff and the OPC are merely attacking "Evergy's [IRP] process and its use of the well-respected levelized cost of energy ("LCOE") financial tool."⁵³ However, this assertion is incorrect and misses the point.

⁴⁹ *Evergy Missouri West Reply Brief*, pg. 4.

⁵⁰ Tr., pg. 11, lines 18-20.

⁵¹ *Id.* at pg. 301, lines 17-24.

⁵² *Id.* at pg. 281, lines 7-9.

⁵³ *Evergy Missouri West Reply Brief*, pg. 3.

The role of the Commission is to regulate companies and ensure Missourians receive safe and adequate service at just and reasonable rates. The Company seeks to diminish that role stating, “the Commission has the regulatory power to correct the abuse of any property right by a public utility, it does not have the power to direct the use of its property or exercise the general power of management incident to ownership.”⁵⁴ This argument is irrelevant to the present hearing.

An integral issue with EMW’s view of Commission regulatory power is that this view ignores the simple fact that the Commission is legally able to decide whether to approve or reject a CCN. Notably, approving or denying a CCN *would not apply to a utility’s current property ownership*. Moreover, the concerns highlighted by the OPC and Staff both involve the processes involved with EMW’s analysis in choosing an asset they *do not currently own*. However, the Company seems to imply that ensuring that utility companies do not abuse their acquisition processes is outside of the bounds of the Commission’s regulatory power. According to the Company, *preventing* abuse equates to managing the utility.

The Company’s broad view of inappropriate Commission management is also not supported by Missouri regulation. The Commission can approve or deny “alternative vegetation management plan[s]”⁵⁵ and require utilities to analyze their demand-side resources and provide the resulting analysis.⁵⁶ Under Evergy West’s broad view of inappropriate management, neither of these regulations are

⁵⁴ *Id.* at pg.s 41 & 42.

⁵⁵ 20 CSR 4240-23.030(11).

⁵⁶ 20 CSR 4240-22.050(1) & (2).

enforceable. For these reasons alone, Evergy West's interpretation of the Commission's regulatory powers over public utilities is both incorrect and dangerous.

The Company makes a bad-faith argument that "Any changes to CCN requirements are more appropriate for consideration in a rulemaking proceeding[.]"⁵⁷ Yet, EMW's claim ignores the Commission's power to add any reasonable condition onto a CCN.⁵⁸ Further, the Company refuses to acknowledge the role that Evergy West, itself, has played in creating the problems this acquisition is allegedly working to solve.

The chickens are finally coming home to roost and the Company is using the lack of generation it has created as an argument for buying a poorly performing asset.⁵⁹ Then, EMW pushes the blame onto the OPC and Staff for Evergy West's market risk, insisting that these parties opposition to this CCN expose customers, diverting all culpability.⁶⁰ Evergy West insists that because it has not had to consider these suggested standards for asset acquisition in the past, no such standards should be applied here. This mindset rejects the inherent benefits of societal progress, while continuing the permission structure that has put Evergy West in this position to begin with.

EMW's revulsion with accountability shines the most brightly through its strong opposition towards two (2) conditions. The first condition requires shareholders to be responsible for the future losses due to losing tax benefits or

⁵⁷ *Evergy Missouri West Reply Brief*, pg. 40.

⁵⁸ RSMo § 393.170.

⁵⁹ Tr., pg. 17, lines 2 & 3.

⁶⁰ *Evergy Missouri West Reply Brief*, pg. 4.

environmental compliance.⁶¹ The second condition is a provision holding customers harmless if Persimmon Creek ends up being uneconomic.⁶² When facing these conditions, Evergy West either asserts that it “*would not be able to proceed* with acquiring Persimmon Creek”⁶³ or that it simply “*will not proceed* to acquire Persimmon Creek[.]”⁶⁴ The reasons Evergy gave for opposing these conditions was that utilities must “earn a reasonable return on its investments and to recover reasonable expenses”⁶⁵ and that both conditions rely, simultaneously, on speculation and hindsight.⁶⁶

The Company states “[I]t is unclear what, if any, risks would be ‘shared.’”⁶⁷ The OPC agrees with EMW’s statement. As Evergy West’s current acquisition plans read, most—if not all—of the risk will be borne by ratepayers. At the same time, shareholders get nearly every benefit. The shifting of benefits to shareholders and risk to consumers is a feature of Persimmon Creek’s acquisition, not a bug.

B. Pay No Attention to the Company Behind the Acquisition

The Company’s responses in its initial reply brief range from unintentional misunderstandings to outright falsehoods. Evergy West continues to misrepresent arguments made by Staff and the OPC, as described in the OPC’s initial brief. At

⁶¹ *Id.* at § B.4.

⁶² *Id.* at § B.5.

⁶³ *Id.* at pg. 33 (emphasis added).

⁶⁴ *Id.* at pg. 35 (emphasis added).

⁶⁵ *Id.* at pg.s 33 & 35.

⁶⁶ *Id.* at pg.s 33-35.

⁶⁷ *Id.* at pg. 34.

the same time, EMW continues to use logical fallacies and intentional or accidental information manipulation to support its viewpoints.

Evergy West disregards the OPC and Staff's request that the Commission order a more extensive resource-specific analysis using reasonable assumptions for future CCN applications.⁶⁸ However, EMW's arguments are 1) that Evergy West is already following this condition with its current process, 2) that Staff and the OPC "provided no details on what type of analysis it is seeking in its proposed requirement," or 3) whether it is appropriate to discuss the reliability of EMW's acquisition data at this hearing.⁶⁹ The OPC will focus on argument number 2.

In stating that Staff and the OPC are simply requesting generic analysis, without further direction, the Company ignores the concerns raised with EMW's acquisition process throughout the hearing. Throughout the hearing the OPC and Staff mentioned concerns about this asset's dispatchability,⁷⁰ reliability, environmental risks,⁷¹ and *when* it produces energy. In fact, counsel for the OPC asked both Ms. Mantle and Mr. Luebbert a series of questions regarding LCOE and data ignored by that metric.⁷²

Further, the Company completely ignores the "reasonable assumptions" portion of this condition. Yet, throughout this case the OPC and Staff questioned the reliability of the conclusions EMW came to with the assumptions it made. The

⁶⁸ *Evergy Missouri West Reply Brief*, pg. 38.

⁶⁹ *Id.* at § C.

⁷⁰ Tr., pg. 281.

⁷¹ *Id.* at pg. 236, lines 4-12.

⁷² *Id.* from pg. 333, line 24 to pg. 335, line 1; *Id.* from pg. 435, line 4 to pg. 436, line 20.

main concern shared by Staff and the OPC was Evergy West’s use of “perfect ratemaking” to determine different assets’ LCOE and the economic benefits to the Company and to customers.⁷³

Rather than assessing the methods it uses to choose generation assets, and finding a more efficient approach, Evergy West listed the research it *did* do. The Company did not provide any *realistic* plan to introduce dispatchability, reliability, or environmental mitigation (which it insists ratepayers pay for). Though, providing a realistic plan to fix these three (3) issues with this asset would require renewable technology to be at a point where possible suggestions would exist. Not only is renewable technology unable to make a reliable, dispatchable resource, but the resources that come the closest to those solutions are unduly expensive.⁷⁴

At another point, Evergy West states that “[n]o party opposes EMW’s request to acquire Persimmon Creek for” the reasons the Commission has considered when denying CCN cases in the past.⁷⁵ However, one of the reasons the Company alleges the OPC and Staff do not oppose is “its ability to operate the asset safely and efficiently.”⁷⁶ This argument is contrary to the significant portion of the evidence focused on the efficiency of Persimmon Creek and the incentives EMW has to ignore the asset’s economic inefficiency in order to benefit shareholders.

One (1) reference the Company uses in its brief is remarkably telling. While arguing that “Staff and [the] OPC’s position violates the traditional regulatory

⁷³ *Id.* at pg. 380, lines 8-15.

⁷⁴ *Id.* at pg. 290, lines 12 & 13.

⁷⁵ *Evergy Missouri West Reply Brief*, at pg. 42.

⁷⁶ *State ex rel. Harline v. Pub. Serv. Comm’n*, 343 S.W.2d 177, 181 (1960).

construct in Missouri”, EMW quotes from *State ex. Rel. Harline v. Public Service Com.* in a parenthetical.⁷⁷ However, Evergy West removed “The corporate charter is a contract with impliedly obligates the corporation to furnish the service for which it was created to render. Section 393.130 specifically requires that ‘every electrical corporation’ [. . .] shall furnish and provide such service instrumentalities [. . .] as shall be [. . .] adequate [. . .]”⁷⁸ There is an obvious reason that Evergy West would choose to remove the section discussing the adequacy of the service it provides to its customers. EMW knows that its service is inadequate.

Conclusion

Evergy West has been avoiding accountability for repeatedly choosing generation assets that hurt captive customers. It is clear that EMW’s parent company, Evergy, can successfully choose generation that is economic and provides capacity, because of the success of Evergy Metro. However, Evergy does not seem interested in ensuring its affiliates are treated the same, and it is not clear why.

After years of entering into uneconomic power purchase agreements (“PPAs”) for wind resources, EMW is looking to acquire generation that it does not have due to the way it has been managed for years. Nevertheless, this acquisition of Persimmon Creek is a bad choice for generation. This asset is not economic, it is not efficient, and the only individuals who will benefit from Evergy acquiring it are

⁷⁷ *Evergy Missouri West Reply Brief*, at pg.s 21-22.

⁷⁸ 343 S.W.2d 177, 181 (1960).

shareholders. For these reasons, the OPC *strongly* encourages the Commission to deny this CCN.

WHEREFORE, the Office of the Public Counsel respectfully offers this statement of its position on the issues before the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 17th day of March 2023.

/s/ Anna Kathryn Martin