BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro's Request for Authority to Implement A General Rate Increase for Electric Service	))))))	Case No. ER-2022-0129
In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's Request for Authority to Implement A General Rate Increase for Electric Service	))))))	Case No. ER-2022-0130

REPLY BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

John A. Clizer (# 69043)
Senior Counsel
Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5324
Facsimile: (573) 751-5562
E-mail: john.clizer@opc.mo.gov

October 21, 2021

Table of Contents

Table of Contents 2

Introduction 3

Sibley 4

AMI 15

Central Nebraska Public Power and Irrigation District ("CNPPID") hydro purchased power agreement ("PPA") 24

Plant-in-Service Accounting ("PISA") deferral 37

Rate Design and Class Cost of Service 44

Subscription Pricing 50

Introduction

Nothing in the initial briefs filed by either the Staff of the Commission ("Staff") or Evergy Missouri West ("Evergy" or "the Company") have demonstrated any error in the OPC's positions as they were laid out in its own initial brief. At the same time, this reply brief will demonstrate the abundance of errors, misstatements of fact, and misapplication of legal principles relied upon primarily by Evergy and, in one instance, Staff in support of their respective positions. Before moving on to the discussion of those points, however, the OPC wishes to take one moment to remind the Commission that it is Evergy who bears the burden of proving that its proposed rates are just and reasonable. RSMo. § 393.150.2 ("At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation"). It is incumbent on the Commission to internalize that point when weighing the evidence presented. Should, at any time, the Commission find itself "on the fence" so to speak, the burden of proof dictates that Commission should err against the utility. *White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) ("When the burden of proof is placed on a party for a claim that is denied, the trier of fact has the right to believe or disbelieve that party's uncontradicted or uncontroverted evidence. If the trier of fact does not believe the evidence of the party bearing the burden, it properly can find for the other party. Generally, the party not having the burden of proof on an issue need not offer any evidence concerning it." (internal citations omitted)). With that in mind, let us now turn to the issues.

Sibley

As explained in the OPC's initial brief, there are effectively two major points to this issue. The first concerns the prudence of the decision to retire Sibley prematurely, and the second concerns the amounts to still be collected for Sibley. On the first point, the OPC stands alone in arguing that it was imprudent to shut down a generating facility 22 years early and Evergy stands alone in contesting that point.

Evergy's initial brief relies heavily on the argument that OPC is guilty of hindsight analysis and any prudence disallowance should be dismissed out-of-hand. (Evergy Initial Post-Hearing Brief, pg. 11, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 11, ER-2022-0130, EFIS Item No. 646). As articulated in OPC's initial brief, for approximately five years, OPC has been documenting the risk ratepayers would be exposed to and the excess cost likely to be incurred from Evergy's IRP modeling exercise that failed to account for changing SPP market conditions across multiple dockets. (*see* Initial Brief of the Missouri Office of the Public Counsel (Public & Confidential), pgs. 9 – 25, ER-2022-0129, EFIS Item No. 629; Initial Brief of the Missouri Office of the Public Counsel (Public & Confidential), pgs. 9 – 25, ER-2022-0130, EFIS Item No. 643). To suggest that OPC's recommendations are dependent on hindsight analysis is patently false.

Evergy also continues to claim that the premature stranding of Sibley meets the prudence standard by maintaining its decision was reasonable at the time considering the information that was available to them. Evergy failed to meet the

prudency standard from any reasonable perspective given the facts that were known at the time.

- Evergy was the only utility in Missouri with increasing load growth
- Evergy West was prematurely retiring its largest, dispatchable, baseload power plant with 22 remaining years of useful life;
- Sibley had hundreds of millions of dollars in remaining undepreciated balance on its books due to large-scale environmental investments meant to make it both in compliance and extend its useful life.
- Evergy would not replace the loss in generation caused by the premature retirement with Company owned accredited and dispatchable capacity but instead rely on take-or-pay contracts with SPP IM; and
- Evergy's support for its decision relied on a modeling exercise that assumed the retirement occurred in a vacuum without consideration of the interdependent actions of other SPP market actors.

(Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 6 ln. 8 – pg. 8 ln. 79, ER-2022-0130, EFIS Item No. 570). Given these facts, the copious amounts of filed imprudent warnings from OPC both pre and post retirement, it is clear that the Company acted imprudently. This fact was succinctly captured in the surrebuttal testimony of Dr. Geoff Marke:

> Prudence is frequently judged in risk-management terms, as the prudence test centers on whether utility managers make good decisions based on what is "known and knowable" at the time, that is, with due diligence. Prudence is an especially pertinent regulatory standard with regard to risk and risk allocation as prudence calls for anticipating and managing risk with regard to investments and expenditures.
>
> With that in mind, imagine Evergy wanted to take out an insurance policy against volatile SPP market fuel prices for its two Missouri affiliates. The first affiliate (Evergy West) is experiencing increased load with new, large "economic" customers but is short on capacity. It has

> exposure to market volatility—exactly what this insurance policy is supposed to cover. The second affiliate (Evergy Metro) is experiencing stagnant growth but is long on capacity. The risk to market volatility is comparatively much lower. Which one do you believe would receive a better deal from the agent charged with assessing risk? The answer is obviously the affiliate that is short on capacity. Any reasonable person can see that. Of course in the real world scenario Evergy ratepayers are the insurance policy. They are the ones Evergy is asking regulators to absorb all of the risk.
>
> There is of course a legitimate argument for the Commission to disallow fuel costs related to Evergy West's inability to properly manage its resource adequacy in the securitization case and to disallow capital costs related to the Sibley stranded investment in this case, but I fail to see how management can be deemed to be prudent in both cases.

(Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 72 ln. 16 – pg. 73 ln. 7, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 72 ln. 16 – pg. 73 ln. 7, ER-2022-0130, EFIS Item No. 572). A cost disallowance related to the self-imposed stranding of Sibley is justified under the prudence standard, the "used and useful" standard, and it is aligned with sound ratemaking undermining the regulatory compact. The Commission also has a large discretion as to how much of a cost-disallowance is reasonable related to the managerial conduct and actions across multiple dockets. Such an outcome would be both just and reasonable for the captive ratepayers the Commission is charged with protecting.

With regard to the second half of the Sibley Issue, there is really only one factual issue that predominates as the main point of contention among the parties. That is the correct net book value of the Sibley Investment. (*See* Staff's Post-Hearing Brief, pgs. 13 – 18, ER-2022-0129, EFIS Item No. 630; Staff's Post-Hearing Brief, pgs.

13 - 18, ER-2022-0130, EFIS Item No. 645; Evergy Initial Post-Hearing Brief, pgs. 13 – 17, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pgs. 13 – 17, ER-2022-0130, EFIS Item No. 646; Initial Brief of Midwest Energy Consumers Group, pgs. 2 – 8, ER-2022-0129, EFIS Item No. 633; Initial Brief of Midwest Energy Consumers Group, pgs. 2 – 8, ER-2022-0130, EFIS Item No. 648). The lines drawn are fairly straightforward. One the one side is the OPC and MECG arguing that the net book value of Sibley is $300 million and on the other is Staff and Evergy arguing $145 million. What is the cause of this gulf? Well to put the matter simply, Evergy is attempting to shift plant in reserve accounts around to protect what was previously Sibley plant from being denied a return on investment and Staff has unfortunately gotten mislead into agreeing. Let us take a moment to account for how.

First, let us start with the basics. There is no question that both the true-up accounting run filed in the prior Evergy West case (ER-2018-0146) and the workpapers filed by Evergy West to support its position in that same case provide a net book value for the Sibley investment of $300 million dollars. (Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 15 ln. 4 – pg. 16 ln. 3, ER-2022-0130, EFIS Item No. 574). That is where we begin and where we *should* have ended. Staff's true-up accounting schedules and the workpapers filed by Evergy West are the **only** evidence that existed **as of June 30, 2022,** that stated

what the net book value of Sibley was.[1] Evergy, however, decided to make the situation much more confusing.

Shortly after the conclusion of the end of the ER-2018-0146 rate case, the OPC and MECG initiated a complaint case (EC-2019-0200). During that complaint case, "Evergy witness John Spanos calculated an undepreciated investment balance of approximately $145.7 million for the Sibley units." (<u>Exhibit No. 400 - Direct Testimony of Greg R. Meyer (Public and Confidential)</u>, pg. 12 lns. 14 – 16, ER-2022-0130, EFIS Item No. 602). "Mr. Spanos stated that this balance was derived from a theoretical depreciation calculation." *Id.* at lns. 16 – 17. It is important to note that these calculations had <u>**never**</u> been presented before the complaint case and were never accepted by the Commission. (<u>Exhibit No. 402 - Surrebuttal Testimony and Schedules of Greg R. Meyer (Public and Confidential)</u>, pg. 3 lns. 13 – 14, ER-2022-0130, EFIS Item No. 604) ("Nowhere in that Commission Order was there any endorsement of a specific party's unrecovered investment total.").

Sadly, the Commission's Staff appears to have been ignorant of the fact that Evergy had attempted to change its plant balances mid-stream, so it blindly accepted what Evergy proffered to it at the beginning of this rate case. (*See* <u>Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential)</u>, pg. 12 lns. 13 - 14, ER-2022-0130, EFIS Item No. 574). Staff did not perform its own independent calculations for this amount, it just started with what the Company presented.

---

[1] No other party has presented <u>**any**</u> contemporaneous determination of the net book value of Sibley that disputes these two pieces of evidence.

(Exhibit No. 254 - Rebuttal Testimony of Keith Majors (Public and Confidential), pg. 4 lns. 11 – 12, ER-2022-0130, EFIS Item No. 533). Staff witness Mr. Majors explains, again, how this number was developed:

> Evergy West witness Kennedy used the same $145.6 million NBV as calculated in the AAO Case by Evergy West witness John J. Spanos. His sponsored NBV is not related to the amount that was included in the cost of service for the Sibley plant in the Case No. 2018 Rate Case and is based on a "theoretical reserve" calculation. Although Mr. Spanos briefly explains the method of calculating this amount, **there is no clear reasoning why this method is superior to the allocated reserve amount include in the 2018 Rate Case**. **This amount was $300 million and formed the basis of the depreciation expense and rate of return calculation which was ultimately included in the cost of service in the 2018 Rate Case**. The Commission did not determine the Sibley NBV in the AAO Case.

Id. at pg.4 lns. 18 – pg. 5 ln. 5 (emphasis added). There are two important things to take away here, both of which have been highlighted. The first is the simple fact that Staff on its face had no reason to believe that the method Evergy's witness (John J. Spanos) used was any better than "the allocated reserve amount include in the 2018 Rate Case." *Id*. Apparently, Staff decided to just disregard its workpapers from the previous Evergy general rate proceeding for what Staff itself describes as "no clear reason." The second is that Staff's own witness openly admits that the amount that formed the basis of the rates for the 2018 rate case was $300 million.

This second point is of considerable importance. The Commission ordered Evergy to "record as a regulatory liability . . . the revenue **and the return on the Sibley unit investments** collected in rates" and further explicitly stated that "[t]he regulatory liability should quantify separately dollars related to return and other cost

of service expense savings" in the EC-20190200 complaint case. (Report and Order, pg. 15 ¶2, EC- 2019-0200, EFIS Item No. 96; *see also* Exhibit No. 402 - Surrebuttal Testimony and Schedules of Greg R. Meyer (Public and Confidential), pg. 6 lns. 16 – 22, ER-2022-010, EFIS Item No. 604 (stating same)). As to that issue alone, it should be clear that the return calculated should be based on the net book value of Sibley found in **Evergy's own workpapers** as filed in that case. (Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 15 ln. 4 – pg. 16 ln. 3, ER-2022-0130, EFIS Item No. 574). Staff's witness literally agreed on this point in written testimony: "I can conclude that the NBV of $300 million is the amount upon which the AAO "return on" deferrals should be calculated as that amount was the basis of the rate of return and depreciation calculation." (Exhibit No. 254 - Rebuttal Testimony of Keith Majors (Public and Confidential), pg. 5 lns. 7 – 9, ER-2022-0130, EFIS Item No. 533). During the evidentiary hearing, this witness was expressly asked if he (1) had any corrections or changes to the testimony; (2) If his answers would be the same is asked the same questions; and (3) if the information was correct to the best of his knowledge and belief and he re-affirmed his testimony every single time. Tr. Vol. 8 pg. 185 ln. 20 – pg. 186 ln. 3.

So far we have seen how the OPC, MECG, and Staff have all agreed (at one point) that the amount on which the rate of return for the Sibley AAO should be calculated was the $300 million net book value of Sibley presented **by Evergy** in the last rate case. Instead of belaboring this point any further, the OPC wishes to take a moment to explain just *why* Evergy is so afraid of using this number. Evergy no-doubt

would like the Commission to assume that this is nothing but a run-of-the-mill depreciation re-allocation that the Company needed to perform. (*see* Evergy Initial Post-Hearing Brief, pgs. 14, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 14, ER-2022-0130, EFIS Item No. 646). But the reality is much more troubling. To explain, please consider the following dialogue between Staff witness and counsel for OPC:

> MR. CLIZER: Let's for the sake of this, let's assume a hypothetical, right. Let's assume that the utility has two generating plants.
>
> MR. MAJORS: Yes.
>
> MR. CLIZER: We'll call net original costs for both of them 6 million. We'll keep it simple.
>
> MR. MAJORS: Each?
>
> MR. CLIZER: Each. And we'll say accumulated reserve at 4 million each. All right. So the unrecovered balance, the net book value is 2 million each for these, right?
>
> MR. MAJORS: Yes.
>
> MR. CLIZER: But the total net book value is 4 million?
>
> MR. MAJORS: Yes.
>
> MR. CLIZER: What happens if the Commission were to order that you couldn't earn a return on plant A? How much would you earn a return on at that point?
>
> MR. MAJORS: I believe it would be the $2 million net book value of the second plant.
>
> MR. CLIZER: Which I'll refer to as plant B, to keep things simple.

MR. MAJORS: Plant B. Yes.

MR. CLIZER: And if we reallocate the depreciation reserve, so that we take 2 million from plant B and put it into plant A -- sorry, I have to move closer to the mic. We reallocate that reserve, so we take 2 million from B and put it into A. So as I figure it, it would be 6 million total depreciation reserve for A and 2 million total depreciation reserve for B.

MR. MAJORS: I'm going to say yes, but I think one of those you said they couldn't earn a return.

MR. CLIZER: Sorry. Let's say that they're earning a return on both at the moment.

MR. MAJORS: Okay.

MR. CLIZER: Under that scenario, the total amount of plant on which they would earn a return -- if they could earn a return on both, if still 4 million, right?

MR. MAJORS: Yes.

MR. CLIZER: And that's consistent with what you said. As long as you can earn a return on both plants, shifting the depreciation doesn't affect the aggregate plant that you earn a return on.

MR. MAJORS: Right. Nor does it affect (audio cuts out).

MR. CLIZER: But if I again come back and say they can't earn a return on plant A, in the second scenario, you would agree with me that they're now earning a return on $4 million worth of remaining plant.

MR. MAJORS: This is assuming you moved the two million from A to B?

MR. CLIZER: Correct.

MR. MAJORS: Yes.

MR. CLIZER: So by shifting the reserve from plant A to plant B, you increase the amount on which you can earn a return, if you assume that there is no return earned on plant A.

MR. MAJORS: If you did those transfers, yes.

Tr. Vol. 8. Pg. 225 ln. 2 – pg. 227 ln. 10. This exchange shows Evergy's real goal in this case: to shift depreciation reserve away from Sibley (on which they legally cannot earn a return) to other utility plant that remains in service and upon which the Company can earn a return. The witness for MECG explained the same:

> The importance of this issue deals with the recovery of the undepreciated (stranded) investment in the Sibley units. Staff and other parties to this case have argued that the unrecovered investment in the Sibley units should not be allowed to earn a return. By significantly understating the Sibley units' unrecovered balance, Evergy is essentially preserving its earnings by shifting the unrecovered investment to other generating plants. By shifting accumulated depreciation balances away from other steam production facilities, Evergy may then earn a greater return on these other investments, and protect its profits should the Commission agree with me that it would be inappropriate to grant a return on a plant that is neither used or useful. If the Commission permits this shift, it allows Evergy to earn a return on plant that is no longer used and useful.

(Exhibit No. 402 - Surrebuttal Testimony and Schedules of Greg R. Meyer (Public and Confidential), pg. 7 lns. 10 – 20, ER-2022-0130, EFIS Item No. 604).

As explained in the excerpt above, allowing the shift in depreciation reserves that Evergy is now attempting to finagle will allow the Company to earn a return on plant that is no longer used and useful. As explained in the OPC's initial brief, this is contrary to Missouri law. *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo.*, 293 S.W.3d 63, 75 (Mo. App. S.D. 2009) (citing *State ex rel. Union Elec. Co. v. Pub. Serv. Com.*, 765 S.W.2d 618, 622 (Mo. App. W.D. 1988)). The Commission needs to understand and avoid Evergy's attempted deception. As Staff's own witness explained: the net book value "of $300 million is the amount upon which the AAO

'return on' deferrals should be calculated as that amount was the basis of the rate of return and depreciation calculation." (Exhibit No. 254 - Rebuttal Testimony of Keith Majors (Public and Confidential), pg. 5 lns. 7 – 9, ER-2022-0130, EFIS Item No. 533). This is the conclusion the Commission should adopt.

Outside of the issue related to the net book value of Sibley, there is little else that is in significant dispute. Evergy makes a claim that it should be allowed to earn a return on the decommissioning costs of Sibley. Again, Missouri law requires that plant be used and useful in order for it to earn a return. *State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo.*, 293 S.W.3d 63, 75 (Mo. App. S.D. 2009) ("The utility property upon which a rate of return can be earned must be utilized to provide service to its customers.") (citing *State ex rel. Union Elec. Co. v. Pub. Serv. Com.*, 765 S.W.2d 618, 622 (Mo. App. W.D. 1988)). As such, Evergy cannot earn a return on these decommissioning costs because Sibley is no longer used and useful. Tr. Vol. 8 pg. 208 lns. 2 – 20. Every party has agreed, however, that Evergy **can** recover these costs as an expense related to the Sibley investment. Even the OPC included it in their calculations, after being the **first** party to bring up the issue. (Exhibit No. 310 - Rebuttal Testimony of John A. Robinett (Public and Confidential), pg. 19 ln. 11, ER-2022-0130, EFIS Item No. 574).

AMI

As with many other issues in this case, the only parties to address this issue were Staff, Evergy, and the OPC. Again, as with all the other issues to be addressed in this brief, the OPC and Staff are effectively in complete agreement. Therefore, the OPC will contain its reply only to the points addressed by Evergy in its initial brief. In particular, the OPC will focus on the claim made by Evergy's brief that the Company embarked on a thoughtful and prudent approach to deploy AMI technology over time to its customers (Evergy Initial Post-Hearing Brief, pg. 28, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 28, ER-2022-0130, EFIS Item No. 646). Neither sentiment is true.

The Company points to two financial reviews to suggest its approach was prudent. *Id.* at pg. 29. The first financial review compared the incremental cost to purchase and install the new AMI-SD meters against certain assumed O&M savings. *Id*. Evergy contends this would leave customers indifferent financially. *Id*. OPC witness Dr. Marke articulated the obvious flaw in this methodology in his surrebuttal:

> Q. Have you evaluated the first financial review and drawn any conclusions?
>
> A. Yes. Without going into great detail about my issues regarding the assumptions surrounding O&M savings and assumed capital relative to Mr. Caisley's projected deployment, there is one critically omitted variable the Commission needs to be aware of in assessing the validity of this analysis—the undepreciated balance of the existing meters is not considered as a cost or an input in the review. That is, if we assume ratepayers don't have to pay a return on and of the remaining AMI

> meter investments than the AMI Service Disconnect meter investment "might be" revenue neutral over a twenty-year period. Of course this is not the filed position of the Company. The Company wants all of the meters and software in rate base, and provide no measurable benefits or hope to be achieved benchmarks customers will receive in return.

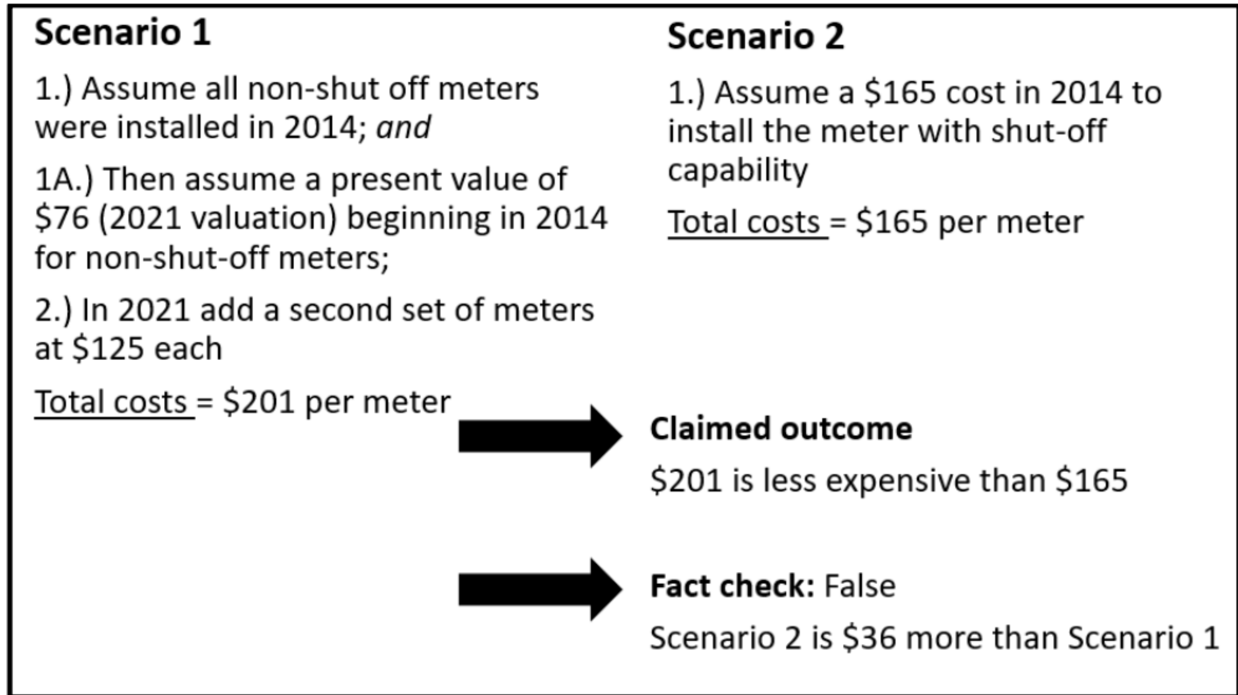
(Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 31 lns. 15 – 25, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 31 lns. 15 – 25, ER-2022-0130, EFIS Item No. 572).

Putting aside the glaring omission of the undepreciated costs associated with the 1st set of AMI meters, Dr. Marke articulated another flaw in Evergy's 2nd financial review that incorporated a purported net present calculation methodology on the witness stand:

> [I]n any sort of analysis like this, reasonable minds I guess can differ over some of the assumptions that are placed into this. But I'll just point out just one quick thing, and I had just said this before with counsel for Missouri Public Service Commission staff, if you go to the second to last page. So the analysis ends in 2034, and if you look at the column labeled -- it would be Column 7 under 2021, you'll note that that's the first year. Let's cross-reference this so we've got it. It's Column 7, Row 27, where you've got a $201 million increase, and that would be the combination of both meters that are going into place. So the years that preceded it are AMI, the years that follow that are two AMIs, and that extends out to 2034, which would account for a 20-year lifespan in total between 2014 and 2034. A full analysis of this would extend seven additional years to account for the AMI-SD.
>
> Q. And that would drastically change the results?
>
> A. That would flip the cost benefit, and all of a sudden, it wouldn't be neutral. Now you have more of a cost to customers. So you can torture data in a lot of different ways to get the result that you want, and in this case it's just expanding and contracting the parameters to get in this case a neutral outcome.

Tr. Vol 9. pg. 434 ln. 14 – pg. 435 ln. 13. Furthermore, Evergy's calculations assumed the original AMI meters were **all** deployed in 2014. This is a factually incorrect statement as the original AMI meters were deployed through 2020. (Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 15 ln. 1, ER-2022-0129, EFIS Item No. 556; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 15 ln. 1, ER-2022-0130, EFIS Item No. 570). Failure to account for actual deployment dates renders any analysis the Company undertook as flawed and unreliable.

The litany of errors found in the Company's attempt to justify its expenditures comes to a head with Evergy's explanation of the math found in Mr. Caisely's rebuttal testimony. (Evergy Initial Post-Hearing Brief, pg. 29, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 29, ER-2022-0130, EFIS Item No. 646). In response, the OPC offers this simple diagram developed by its expert witness in surrebuttal:



(Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 33 lns. 1 – 2, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 33 lns. 1 – 2, ER-2022-0130, EFIS Item No. 572). What this diagram clearly shows is that Evergy's math is unbelievably flawed. Contrary to what the Company asserts, their current meter replacement strategy is going to be far more expensive than if the Company had simply installed the more advanced AMI meters initially.

Issues with the mathematics being employed by the Company notwithstanding, OPC witness Dr. Marke also raised larger concerns about Evergy's managerial actions within the context of these two financial reviews. *Id*. at pg. 34 lns. 7 – 19. In particular, Dr. Marke stated:

> I struggle to believe that these two spreadsheet models were the basis for management making the decision to move ahead with prematurely retiring assets that were only in operation, at most, a quarter of their useful life in exchange for the benefit of remote disconnection. The "financial reviews" look like after-the-fact spreadsheets that were produced in response to OPC and Staff's calls for disallowance in this rate case. The problem here is that I don't know which scenario is actually worse. If the spreadsheets were put together after-the-fact to provide a rationale for blatant gold plating than I at least understand the perverse financial motivation for the Company. The Averch-Johnson Effect is inherent in cost-of-service regulation. However, if these two spreadsheets really were the intellectual underpinning behind such a large, unnecessary capital investment beginning in 2020, than that would appear to fly in the face of any rational regulatory prudence standard and we should all have a much greater fear for this Company's ability to make sound management decisions.

Id. As can plainly be seen, Evergy's decision with regard to the AMI meter deployment was imprudent from both an inherent mathematical *and* managerial perspective. That, however, is not the only problem with the arguments presented in Evergy's brief.

Evergy's brief also continues to make blanket unsubstantiated generalizations about the many benefits associated with the Service-Disconnect Meters and then fails to provide any evidence empirical or anecdotal outside of the ability to disconnect a customer. The OPC maintains that customers have not realized any meaningful benefits from the original AMI deployment and are now being asked to pay for another meter on top of the first one. OPC witness Dr. Marke defined the sort of meaningful benefits customers should expect and which Evergy failed to provide:

> Q. How do you define meaningful benefits?

A. By meaningful benefits I mean any empirical evidence to substantiate cost savings or other tangible benefits. Examples include but are not limited to:

- Better reliability scores due to "quicker" insights on outages?—no;
- Energy savings quantified from right-sizing voltages?—no;
- Mandatory or double digit adoption of TOU rates?—no;
- Improved customer satisfaction scores—no; and
- Investments that are at least future proofed (i.e., we won't need to upgrade for twenty 9 years)—no.

Id. at pg. 35 lns. 1 – 9. Evergy's brief also continues to double-down on the flawed narrative that it is appropriate and non-discriminatory to target customer accounts with arrearages for AMI replacement because these customers will receive "the benefit" of being reconnected quicker. (Evergy Initial Post-Hearing Brief, pg. 34, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 34, ER-2022-0130, EFIS Item No. 646). This argument immediately fails when one considers that these customers would not need "the benefit" of being reconnected quicker in the absence of receiving a detriment in the form of being disconnected quicker. Evergy then goes on to quickly show its hand by admitting that it prioritized multi-tenant families in arrears because these generated the highest volume of "truck rolls" needed for disconnections. *Id*. at pg. 35. The goal is obvious, if the Company wishes to save money by being able to shut-off those struggling the most to meet their high energy bills. This is not a practice the Commission should support.

Finally, Evergy's brief attempts to dismiss its violation of PISA legislation governing AMI meter deployment. *Id.* at 36. Specifically at issue is RSMo Section 393.1400.4 which states:

> For each of the first five years that an electrical corporation is allowed to make the deferrals provided for by subsection 2 of this section, the purchase and installation of smart meters shall constitute no more than six percent of the electrical corporation's total capital expenditures during any given year under the corporation's specific capital investment plan

RSMo. § 393.1400.4. Evergy boldly claims that "there is absolutely no competent and substantial evidence in the record to support" Dr. Marke's assertion that Evergy has violated this statutory provision. (Evergy Initial Post-Hearing Brief, pg. 36, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 36, ER-2022-0130, EFIS Item No. 646). This is obviously false. As Dr. Marke's surrebuttal clearly states, Evergy Metro exceeded its annual AMI percentage cap in 2020 and Evergy West exceeded its annual AMI percentage cap in 2019:

Table 3: Evergy Metro AMI investments (in $millions) relative to annual PISA to date

Evergy Metro	AMI	Total Spend	%
2021	$14.32M	$378	3.78%
2020	$17M	$228	7.45%
2019	$8.653M	$199	4.3%

Table 4: Evergy West AMI investments (in $millions) relative to annual PISA to date

Evergy West	AMI	Total Spend	%
2021	$5.52	$504	1.1%
2020	$8.005	$287	2.8%
2019	$21.843	$169.7	12.87%

(Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 42 lns. 18 – pg. 43 ln. 2, ER-2022-0129, EFIS Item No. 558; Exhibit No. 308 - Surrebuttal Testimony of Geoff Marke (Public and Confidential), pg. 42 lns. 18 – pg. 43 ln. 2, ER-2022-0130, EFIS Item No. 572).

Making sure PISA expenditures are prudent, in compliance with law and beneficial to ratepayers are the exact responsibilities of the Missouri Public Service Commission articulated by MO PSC Chairman Ryan Silvey in the July 2019 Public Utilities Fortnightly article. Chairman Silvey's interview response specifically called out the AMI percentage cap:

> We also check that it is in compliance with chapter 393, which Senate Bill 564 addresses. We'll make sure for example; they don't spend any more than six percent on smart meters or that they spend at least twenty-five percent on grid modernization and during that time they haven't gone beyond the rate caps that were set forth in the legislation.

Michael Moehn, Ryan Silvey et al., *Ameren Missouri Grid Modernization*, PUBLIC UTILITIES FORTNIGHTLY (July 2019).[2]

[2] Available at https://www.fortnightly.com/fortnightly/2019/07/ameren-missouri-grid-modernization?authkey=4cdbbf956a2f4e9eb4346c8f3ea19f174bb88b5c503aff3771fe5897b3daeb28.

For all these reasons and those articulated previously in the OPC's initial brief, the Commission should disallow the recovery of AMI meters that were replaced prematurely. Moreover, it is important to understand that Evergy has already indicated that this will not disrupt its decision to deploy AMI meters with shut off capabilities:

> Q. If the Commission disallowed for the old meters, would you still continue to move forward with the new ones?
>
> A. If I understand your question correctly, if the Commission were to disallow for the depreciating life of the FOCUS AL or the existing meters but granted recovery for the ones that we have put into service to date, yes, we'd continue to deploy those meters.

Tr. Vol. 9 pg. 382 lns. 18 – 25. Therefore, if the Commission is swayed even slightly by the claimed benefits of the new AMI meters Evergy is installing, it can rest easy knowing that customers will still be receiving those benefits even if the Commission does the right thing by disallowing the recovery of the old AMI meters that have unquestionably been replaced before the end of their normal, useful service life.

Central Nebraska Public Power and Irrigation District (“CNPPID”) hydro purchased power agreement (“PPA”)

Once again, only Evergy and Staff briefed this issue. Staff’s initial brief concludes that the CNPPID hydro PPA “is not used and useful to Missouri customers as Missouri customers are not receiving a service or benefit from it.” (Staff's Post-Hearing Brief, pg. 32, ER-2022-0129, EFIS Item No. 630; Staff's Post-Hearing Brief, pg. 32, ER-2022-0130, EFIS Item No. 645). Based on this conclusion, Staff recommended “the Commission not include the Hydro PPA in Evergy Metro’s base rates or [allow it to] flow through its FAC.” *Id*. The OPC agrees with both Staff’s argument and conclusion and so will not provide any further response to Staff in this reply brief.

Evergy’s initial brief argues that the Commission should include the CNPPID hydro PPA in the Company’s base rates and FAC base factor. (Evergy Initial Post-Hearing Brief, pg. 40, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 40, ER-2022-0130, EFIS Item No. 646). Evergy is wrong. The Commission should instead order that the costs and revenues associated with the CNPPID hydro PPA not be included in the Company’s revenue requirement, calculation of the FAC base factor, and/or the actual FAC costs incurred during a future accumulation period. (Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 ln. 5 – pg. 9 ln. 2, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 ln. 5 – pg. 9 ln. 2, ER-2022-0130, EFIS Item No. 567). The

remainder of this portion of the reply brief will address why the arguments presented by Evergy are wrong.

Evergy's argument for why the CNPPID Hydro PPA should be included in base rates and the FAC base factor can be broken down into two distinct parts. First, Evergy argues that CNPPID was included in base rates following the Company's last general rate case. *Id.* at pgs. 37 – 38. Second, the Company argues the costs and revenues for the PPA must be included in base rates because the MWhs for the PPA are included in Staff's fuel run. *Id.* at pgs. 38 – 40. The OPC will address each of these arguments in turn.

Evergy's brief spends the better part of a page and half attempting to prove that the CNPPID Hydro PPA was included in the base rates set during its last rate case. *Id.* at pgs. 37 – 38. However, the evidence that the Company cites is irrelevant for two reasons. The first reason concerns the fact that the prior Evergy Metro rate case (ER-2018-0145) was resolved through a Stipulation and Agreement entered into between the parties. (*see* <u>Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement</u>, ER-2022-0129, EFIS Item No. 582; <u>Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement</u>, ER-2022-0130, EFIS Item No. 596). This agreement specifically resolved the issue of what costs were included in both base rates and the FAC base factor through what is known as a "black box" settlement. *Id.* at pg. 1 ¶ 1, pg. 7 ¶ 13; TR. Vol. 13 pg. 919 lns. 14 – 16. A "black box" settlement is one where parties agree "to a number without necessarily delineating what all was included in that number." Tr. Vol. 13 pg. 936 lns. 19 – 20, pg. 952 ln. 24 – pg. 953 ln.

1. This is an extremely important feature to settlement agreements and the settlement process in general.

The reason that parties utilize a "black box" settlement is that it allows parties to reach a compromise on an ultimate issue in a rate case (such as the total revenue requirement) **without** having to come to an agreement on any one specific issue. In other words, it allows parties to retain their individually filed positions on specific issues without prejudice but still move forward on settlement. One of the key components of this kind of settlement are the provisions often found in Stipulations and Agreements that are designed to ensure that only "the issues decided by a settlement agreement are binding on parties and issues not addressed are not." Tt. Vol. 13 pg. 953 lns. 10 – 15. This language, in conjunction with the "black box" nature of the settlement, ensures that no one party will be forced to concede their position or be prejudiced in future rate proceedings in light of the compromises reached.

The exact language just referred to can be found in the settlement agreement in Evergy's last rate case. More specifically, the stipulation and agreement entered into to settle the last Evergy rate case stated:

> This Stipulation is being entered into solely for the purpose of settling the issues/adjustments in this case explicitly set forth above. Unless otherwise explicitly provided herein, none of the Signatories to this Stipulation shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any cost of service methodology or determination, method of cost determination or cost allocation or revenue-related methodology.

> This Stipulation is a negotiated settlement. Except as specified herein, the Signatories to this Stipulation shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation, or in any way condition its approval of same. No Signatory shall assert the terms of this agreement as a precedent in any future proceeding.

(Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement, pg. 12 ¶ 24, 25, ER-2022-0129, EFIS Item No. 582; Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement, pg. 12 ¶ 24, 25, ER-2022-0130, EFIS Item No. 596). It should also be noted at this point that the same Non-Unanimous Partial Stipulation and Agreement does **not** explicitly state whether the CNPPID hydro PPA was included in the agreed revenue requirement. *Id.* at 7 ¶ 13. Based on these two pieces of information, it should be clear that the ultimate question of whether the CNPPID hydro PPA was included in Evergy's base rates was not decided and each party was free to retain their own position without fear of prejudice. This is of immense importance to this case.

Evergy has made it very clear that **the Company's** position in the last rate case was that the CNPPID hydro PPA was included in base rates. (*see* Evergy Initial Post-Hearing Brief, pg. 37 – 38, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 37 – 38, ER-2022-0130, EFIS Item No. 646). However, that is **not** the position that had been expressed by the OPC in the previous case:

> Q. And with regard to the OPC's position in the 2018 case as it relates to the hydro PPA, how is your position -- how did you understand the OPC's position with regard to that stipulation?

> A. The OPC's position was that the hydro PPA costs were not included in revenue requirement and not included in the FAC.

Tr. Vol. 13 pg. 996 lns. 19 – 25. The OPC entered into the Stipulation and Agreement that ended the last Evergy general rate case operating on the good faith belief that its position would be respected and protected despite compromising on the ultimate numbers for both the revenue requirement and the FAC base factor. That belief was founded on the OPC's reliance on the contractual provisions cited above that explicitly stated the OPC would "not be prejudiced, bound by, or in any way affected by the terms of this Stipulation . . . in any future proceeding" and that Evergy would not "assert the terms of this agreement as a precedent in any future proceeding." (<u>Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement</u>, pg. 12 ¶ 25, ER-2022-0129, EFIS Item No. 582; <u>Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement</u>, pg. 12 ¶ 25, ER-2022-0130, EFIS Item No. 596). Evergy now seeks to openly and aggressively violate these terms of that same Stipulation and Agreement.

If the Commission accepts the Company's argument that terms that were previously settled by a black box stipulation – one that **<u>expressly and explicitly</u>** prevented its terms from prejudicing signatories or being used as precedent in future rate cases – can now be used to prejudice a signatory and be used as precedent in a future rate case, **<u>that will spell the end of settlements before this Commission</u>**. This was touched upon by the witness for the Commission's Staff:

> Q. From your personal perspective, if you were responsible for settling cases, would you feel comfortable entering into settlement agreements in future if the Commission were to determine that items that had been black boxed were, in fact, actually decided in future cases?

A. Personally I would feel very uncomfortable doing that.

Tr. Vol. 13 pg. 953 lns. 16 – 23. Please allow the OPC to take this one-step further. We will **not** enter into Stipulation and Agreements with companies that refuse to honor the terms of those same Stipulation and Agreements. Moreover, if the Commission does not enforce the terms preventing parties from being prejudiced by prior Stipulations and Agreements, then it will become significantly more difficult if not downright impossible, to settle cases moving forward. If the Commission values the adjudicative relief that comes from settling cases instead of trying them, the Commission must respect the terms included in the settlement agreements reached by parties.

What was decided in the last Evergy general rate case was decided through compromise by all parties. It is irrelevant to this case because the parties expressly stated that it would not be relevant. (Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement, pg. 12 ¶ 25, ER-2022-0129, EFIS Item No. 582; Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement, pg. 12 ¶ 25, ER-2022-0130, EFIS Item No. 596). Evergy's massive reliance on the argument that the CNPPID hydro PPA had been treated one way or another in the last rate case is wholly meaningless. What is more, this is true even if one ignores the foregoing. This brings us to the second reason for why the evidence that the Company cites is irrelevant: The Commission is not bound to follow the prior decision in any regards whatsoever.

The PSC "is not bound by *stare decisis*" based on prior administrative decisions, so long as its current decision is not otherwise unreasonable or unlawful. *State ex rel. Praxair, Inc. v. PSC*, 328 S.W.3d 329, 340 (Mo. App. W.D. 2010) (quoting *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003)). "The mere fact that an administrative agency departs from a policy expressed in prior cases which it has decided is no ground alone for a reviewing court to reverse the decision." *State ex rel. Laclede Gas Co. v. PSC*, 392 S.W.3d 24, 36 (Mo. App. W.D. 2012) (quoting *State ex rel. Churchill Truck Lines, Inc. v. Pub. Serv. Com.*, 734 S.W.2d 586, 593 (Mo. App. W.D. 1987)). The OPC has presented a new legal theory for why the CNPPID hydro PPA should not be included in Evergy's revenue requirement or base factor in this case. (*see* Initial Brief of the Missouri Office of the Public Counsel (Public & Confidential), pgs. 55 – 64, ER-2022-0129, EFIS Item No. 629; Initial Brief of the Missouri Office of the Public Counsel (Public & Confidential), pgs. 55 – 64, ER-2022-0130, EFIS Item No. 643). That theory was not presented to the Commission for determination in the previous Evergy general rate case because the previous case was ultimately settled. As such, the Commission now needs to address this new legal theory. Moreover, if the Commission ultimately agrees with the new legal theory presented by the OPC, it can simply disregard the question of whether the CNPPID hydro PPA was included in base rates in the last rate case as meaningless. As the Courts of this State have made clear, they "are not concerned with alleged inconsistency between current and prior decisions of an administrative agency" because "[i]t is the impact of the rate order which counts; the methodology is

not significant." *Praxair*, 328 S.W.3d at 340 (quoting *State ex rel. GTE N., Inc. v. Mo. Pub. Serv. Comm'n*, 835 S.W.2d 356, 371 (Mo. App. W.D. 1992)).

For both the reasons set forth above, the Commission should simply ignore everything the Company has to say regarding whether the CNPPID hydro PPA was or was not included in the Company's revenue requirement during the last general rate case. It is a meaningless question because the last rate case was disposed of by a Stipulation and Agreement that expressly prohibits its terms from being cited as precedent. (Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement, pg. 12 ¶ 25, ER-2022-0129, EFIS Item No. 582; Exhibit No. 332 - Non-Unanimous Partial Stipulation and Agreement, pg. 12 ¶ 25, ER-2022-0130, EFIS Item No. 596). Moreover, the Commission is not bound to follow its prior decision under any circumstances regardless. *Praxair, Inc.*, 328 S.W.3d at 340; *Laclede Gas Co.*, 392 S.W.3d at 36.

The second argument raised by the Company concerns the idea that the Company must be compensated for the CNPPID hydro PPA if it is used to serve load. (*see* Evergy Initial Post-Hearing Brief, pg. 38, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 38, ER-2022-0130, EFIS Item No. 646). In particular, the Company argues as such:

> . . . Staff took out both the costs and the revenues associated with the Hydro PPA MWhs and therefore EMM receives no compensation in base rates for any of the MWhs contributed by the Hydro PPA. The Staff's fuel run should include all costs and revenues needed to serve the total EMM load. By leaving the Hydro PPA costs out while retaining the MWhs to serve EMM customer load, the Staff has shortchanged EMM of net PPA costs used to set EMM rates.

Id. at pg. 39. There are several problems here that need to be discussed. To start, consider Evergy's claim that "[t]he Staff's fuel run should include all costs and revenues needed to serve the total [Evergy Missouri Metro] load." *Id.* Surprisingly, the OPC completely agrees. The problem for Evergy is that the CNPPID hydro PPA is **not** needed to meet Evergy Metro customer's load. Tr. Vol. 13 pg. 986 ln. 24 – pg. 987 ln. 1 ("Q. Now, is the hydro PPA needed to meet Evergy Metro customer load? A. No.").

This was already explained by the OPC in its initial brief, but it bears repeating here. During the evidentiary hearing, the OPC discussed Staff's fuel run with the Staff witness who had prepared them. *See* Tr. Vol. 13 pg. 973 lns. 11 – 13. Those discussions showed that Evergy Metro had, rounding down, 21 million MWh worth of energy that had "been modeled as being sold into the SPP market over the period that was looked at[.]" *Id.* pg. 975 ln. 8 – pg. 976 ln. 4; (Exhibit No. 335 - Surrebuttal Workpapers of Shawn Lange (Public and Confidential), Summary Tab Cell B91, ER-2022-0129 EFIS Item No. 585; Exhibit No. 335 - Surrebuttal Workpapers of Shawn Lange (Public and Confidential), Summary Tab Cell B91, ER-2022-0130 EFIS Item No. 599). However, the Company's total load was only 15 million MWh. Tr. Vol. 13 pg. 976 lns. 5 – 8; (Exhibit No. 335 - Surrebuttal Workpapers of Shawn Lange (Public and Confidential), Summary Tab Cell B94, ER-2022-0129 EFIS Item No. 585; Exhibit No. 335 - Surrebuttal Workpapers of Shawn Lange (Public and Confidential), Summary Tab Cell B94, ER-2022-0130 EFIS Item No. 599). That leaves an excess of approximately 6 million MWh. Tr. Vol. 13 pg. 976 lns. 9 –

12; (Exhibit No. 335 - Surrebuttal Workpapers of Shawn Lange (Public and Confidential), Summary Tab Cell B96, ER-2022-0129 EFIS Item No. 585; Exhibit No. 335 - Surrebuttal Workpapers of Shawn Lange (Public and Confidential), Summary Tab Cell B96, ER-2022-0130 EFIS Item No. 599). How much of that 6 million MWh did the CNPPID hydro PPA account for? According to Staff's fuel run, the CNPPID hydro PPA accounted for only 300,000 MWh, rounding down to the nearest thousandth. Tr. Vol. 13 pg. 977 lns. 5 – 12; (Exhibit No. 335 - Surrebuttal Workpapers of Shawn Lange (Public and Confidential), Summary Tab Cell B71, ER-2022-0129 EFIS Item No. 585; Exhibit No. 335 - Surrebuttal Workpapers of Shawn Lange (Public and Confidential), Summary Tab Cell B71, ER-2022-0130 EFIS Item No. 599). That means that it is **unquestionable** that if the CNPPID hydro PPA were removed from Staff's model, Evergy would still have generation in excess of its load. Tr. Vol. 13 pg. 977 lns. 13 – 17. Stated differently, the CNPPID hydro PPA can be **completely** removed from the Staff's fuel model and the Company will still have more than enough generation to meet its load requirements. Tr. Vol. 13 pg. 978 lns. 2 – 6. For this reason, the CNPPID hydro PPA is **not** needed to meet Evergy Metro customer's load.

Evergy by absolutely no means requires the CNPPID hydro PPA to serve its customers. Even if the CNPPID hydro PPA is completely removed, the Company still has over 5 **million** MWhs worth of energy **in excess** of what it currently needs. (*see* Exhibit No. 335 - Surrebuttal Workpapers of Shawn Lange (Public and Confidential), Summary Tab, ER-2022-0129 EFIS Item No. 585; Exhibit No. 335 - Surrebuttal

Workpapers of Shawn Lange (Public and Confidential), Summary Tab Cell, ER-2022-0130 EFIS Item No. 599). Evergy's claim that "[t]he Staff's fuel run should include all costs and revenues needed to serve the total EMM load[,]" while technically true, is therefore inapposite. The witness for Staff described the situation best: "[t]he PPA is not needed to serve load. If the company chooses to serve Missouri customers with that PPA, that's their choice, but it's not needed to serve Missouri customers." Tr. Vol. 13 pg. 961 lns. 9 – 12.

We now turn to the second problem with the Company's second argument, which is the idea that Evergy would receive no compensation for the CNPPID hydro PPA. This is a false statement because it assumes that the Company can only receive compensation for the PPA from Missouri customers. In reality, Evergy can fully recover the cost of the CNPPID hydro PPA from its Kansas customers.

The OPC will not dwell on this point long as the issue was addressed at length in the OPC's initial brief. The short version is that Kansas statute section 66-1259 allows Evergy "to recover reasonable costs incurred or committed to be incurred as a result of compliance with the renewable energy resource requirements required in K.S.A. 66-1258, prior to its repeal." K.S.A. § 66-1259. The CNPPID Hydro PPA was entered into to meet the statutory requirements of K.S.A. § 66-1258. (*See*, *e.g.*, Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 12 – 15, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 12 – 15, ER-2022-0130, EFIS Item No. 567). Further, the CNPPID Hydro PPA came into effect January 1, 2014 at 12:01 a.m. Tr. Vol. 13 pg. 951 lns. 3 – 9. Therefore,

the PPA would have been "incurred as a result of compliance with the renewable energy resource requirements required in K.S.A. § 66-1258, prior to its repeal" and thus Evergy is permitted by law to recover the entire amount of the CNPPID Hydro PPA from its Kansas customers.

It is at this point that it would be wise to remind the Commission just *why* Kansas customers should pay for the CNPPID Hydro PPA. To reiterate a point made earlier, the CNPPID Hydro PPA was entered into in order to meet renewable energy requirements set by the state of Kansas. (Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 12 – 15, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 12 – 15, ER-2022-0130, EFIS Item No. 567); Tr. Vol 13, pg. 945 ln. 21 – pg. 946 ln. 1; pg. 959 lns. 9 – 14; Exhibit No. 333 - Data Request 8002 (Public and Confidential Attachments), pg. 1, ER-2022-0129, EFIS Item No. 583; Exhibit No. 333 - Data Request 8002 (Public and Confidential Attachments), pg. 1, ER-2022-0130, EFIS Item No. 597). This means that it was Kansas statutory requirements that caused the costs to be incurred. This is relevant because, under the well-known "cost causation principle," costs should be borne by those who cause them to be incurred. Tr. Vol 13, pg. 943 lns. 17 – pg. 944 ln. 3. Thus Kansas customers, for whom the costs were incurred, should be the ones who have to bear those costs.

In conclusion, neither of the arguments that Evergy presents in its brief provide any justification for why the CNPPID Hydro PPA should be included in the base rates charged to Evergy's Missouri customers. This PPA "cannot be used to meet

the Missouri RES statutes." (Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 15 – 16, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 15 – 16, ER-2022-0130, EFIS Item No. 567; Tr. Vol. 13. Pg. 986 lns. 20 – 23). It is further "not needed for Evergy Metro to meet the SPP resource adequacy requirement." (Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 16 – 18, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 16 – 18, ER-2022-0130, EFIS Item No. 567). It is also not needed to meet Evergy Metro customer's load requirements. Tr. Vol. 13 pg. 986 ln. 24 – pg. 987 ln. 1. Therefore, "the PPA is not needed to serve Missouri customers." Tr. Vol. 13. pg. 960 ln. 7. Nor does it offer any benefits to Missouri customers. Tr. Vol. pg. 959 lns. 19 – 20, pg. 987 lns. 2 – 5. For all these reasons, and all those not addressed here but raised in the OPC's initial brief, the costs and revenues associated with the CNPPID hydro PPA should not be included in the Company's revenue requirement, calculation of the FAC base factor, and/or the actual FAC costs incurred during a future accumulation period. (Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 ln. 5 – pg. 9 ln. 2, ER-2022-0129, EFIS Item No. 553; Exhibit No. 303 - Surrebuttal Testimony of Lena M. Mantle, pg. 6 ln. 5 – pg. 9 ln. 2, ER-2022-0130, EFIS Item No. 567).

Plant-in-Service Accounting ("PISA") deferral

Evergy brief begins the discussion of this issue with the statement: "[f]or reasons stated herein, the appropriate docket to authorize the deferral of the fuel and purchased power ("FPP") costs that exceed the PISA statutory cap is in File No. ER-2023-0011." (Evergy Initial Post-Hearing Brief, pg. 40, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 40, ER-2022-0130, EFIS Item No. 646). The OPC agrees with the Company that the appropriate docket for discussing whether there should or should not be any deferral of fuel and purchase power costs related to Evergy's 30th FAC accumulation period is File No. ER-2023-0011, which has been the OPC's consistent position throughout this case. The OPC is therefore extremely confused as to why Evergy decided to spend roughly sixteen additional pages of its brief attempting to litigate the ER-2023-0011 case. *Id.* at pgs. 40 – 56. The OPC will not follow suit.

The ER-2023-0011 case has been subject to a full hearing and two rounds of briefing. The OPC has already presented its arguments for why Evergy's claim (that it can defer fuel and purchase power costs that would otherwise be collected through its FAC under RSMo. section 393.1655.5) is legally wrong in that case. If the Commission would like to see the OPC's response to the arguments presented by Evergy's initial brief in this case, please review the Initial and Reply briefs filed by the OPC in case ER-2023-0011. Otherwise, the Commission should just ignore the entirety of pages forty through fifty-six of Evergy's initial brief.

All that being said, the OPC did raise an issue *related* to case ER-2023-0011 in this case. That issue had to do with how the Commission should treat a deferral in this case **if** a deferral was ordered in case ER-2023-0011. The OPC will at this point reiterate that its position in ER-2023-0011 is that the Commission should **not** permit a deferral of Evergy West's fuel and purchase power costs. To repeat, the OPC is arguing that there should be **no** deferral of fuel and purchase power costs granted in ER-2023-0011. However, if the Commission ultimately disagrees with the OPC in case ER-2023-0011 and orders a deferral, **which the OPC argues would be illegal**, then that deferral should be taken care of in this case.

Evergy is seeking a deferral of fuel and purchase power costs recovered through its FAC in case ER-2023-0011 under the provisions of section 393.1655.5. (*see generally* Evergy Initial Post-Hearing Brief, pg. 43, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 43, ER-2022-0130, EFIS Item No. 646). The pertinent part of that statute (for our purposes here) reads:

> Sums not recovered under any such mechanism because of any reduction in rates under such a mechanism pursuant to this subsection shall be deferred to and included in the regulatory asset arising under section 393.1400 or, if applicable, under the regulatory and ratemaking treatment ordered by the commission under section 393.1400, and recovered through an amortization in base rates in the same manner as deferrals under that section or order are recovered in base rates.

RSMo. § 393.1655.5. This is pretty easy to follow: if a deferral is ordered by the Commission in case ER-2023-0011, it needs to be recovered through "the regulatory asset arising under section 393.1400[.]" *Id.* The next step is thus to turn to section

393.1400 and find the regulatory asset referred to. To simplify matters, the OPC will quote only the relevant passage:

> In each general rate proceeding concluded after August 28, 2018, the balance of the regulatory asset as of the rate-base cutoff date shall, subject only to the cap provided for in section 393.1655 or section 393.1656, as applicable, be included in the electrical corporation's rate base without any offset, reduction, or adjustment based upon consideration of any other factor, other than as provided for in subdivision (2) of this subsection, with the regulatory asset balance arising from deferrals associated with qualifying electric plant placed in service after the rate-base cutoff date to be included in rate base in the next general rate proceeding.

RSMo. § 393.1400.2(1). To further clarify this passage, it is necessary to also consider the definition of "rate-base cutoff date" which is defined as "the date rate-base additions are accounted for in a general rate proceeding" with the additional caveat that "[i]n the absence of a commission order that specifies the rate-base cutoff date, such date as reflected in any jointly proposed procedural schedule submitted by the parties in the applicable general rate proceeding, or as otherwise agreed to by such parties, shall be used[.]" RSMo. § 393.1400.1(4).

Taken together, the above referenced legal passages create a simple system: if a deferral is ordered by the Commission under section 393.1655.5, then the amount deferred is put into the regulatory asset created in 393.1400, which is then included in the electric corporations base rates during a general rate proceeding. RSMo. §§ 393.1655.5, 393.1400.2(1). Whether a cost is included in the current general rate proceeding or a future general rate proceeding depends on whether the costs was incurred before or after the "rate-base cutoff date." *Id.* In this case, while the

Commission did not expressly identify a "rate-base cutoff date," it did order a test year that was "the twelve month period ending June 30, 2021, updated through December 31, 2021, to be trued-up through May 31, 2022." (Order Establishing Test Year, pg. 1, ER-2022-0130, EFIS Item No. 57). Thus, the best way for the Commission to comply with the statute is to find that any costs that would be included in the regulatory asset established under section 393.1400 that were incurred prior to the end of the true-up period for the test year ordered in the Company's current general rate proceeding (*i.e.* May 31, 2022) should be included in the Company's base rates as calculated in the same, current general rate proceeding (*i.e.* this case).

As the OPC explained in its initial brief, the fuel and purchase power costs subject to a potential illegal deferral in this case were incurred before the end of the true-up period for this case. (Exhibit No. 304 - True-Up Direct Testimony of Lena M. Mantle (Public and Confidential), pg. 3 lns. 5 – 8, ER-2022-0129, EFIS Item No. 554; Exhibit No. 304 - True-Up Direct Testimony of Lena M. Mantle (Public and Confidential), pg. 3 lns. 5 – 8, ER-2022-0130, EFIS Item No. 568) ("The fuel and purchased power costs Evergy West is requesting be deferred were incurred December 1, 2021 through May 31, 2022. The true-up period for this case is through May 31, 2022."). As such, "[i]f the Commission agrees that these costs are to be deferred, then the deferral should be done in this case." *Id.* This is consistent with the statutory language as can best be interpreted in light of the Commission's order in this case. *see* RSMo. §§ 393.1655.5, 393.1400.2(1).

Having explored all of that, what does Evergy have to say directly on this point? On page forty of its brief, the Company lays out the following:

> However, if the Commission decides not to authorize the deferral in File No. ER-2023-0011, then it should authorize the deferral of fuel and purchased power costs in this rate case to a regulatory asset. The second alternative (i.e., deferral in the rate case) is not a preferable solution for implementing the required deferral under Section 393.1655(5) because it will artificially lower the base energy cost in base rates which, pursuant to the operation of EMW's FAC, will result in higher fuel adjustment rates subsequent to the rate case and correspondingly higher fuel cost disallowances under the 95/5 mechanism in the Company's FAC. Deferral in the general rate case will therefore have an adverse impact on the Company by lowering the expected earnings, and as a result, it will be detrimental to the financial condition of the Company.

(Evergy Initial Post-Hearing Brief, pg. 40, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 40, ER-2022-0130, EFIS Item No. 646). To begin with, the Commission's objective in this matter should be to follow the statutory law and not engage in what the Company finds "preferable." Second, and more importantly, the scaremongering Evergy attempts to employ by suggesting that dealing with the deferral in this rate case will affect the "base energy cost in base rates" is unsupported and just plain wrong.

The base energy costs included in base rates (which are known as the FAC base factors) were established by agreement of the parties. (Stipulation and Agreement (Public & Confidential), pg. 4 ¶ 6a, ER-2022-0130, EFIS Item No. 312). The FAC base factor for Evergy Missouri West is set at $0.02983, and that number is not subject to

change based on the Commission's decision on the undecided issues.[3] *Id.* at ¶ 6a(1). This *Stipulation and Agreement* has already been approved by the Commission. (Order Approving Four Partial Stipulations and Agreements, pg. 7, ER-2022-0130, EFIS Item NO. 340). This means Evergy's claim that this deferral will somehow change the base factor is wrong simply because that would violate the approved *Stipulation and Agreement*.[4] Moreover, even if the base factors had not been set by stipulation, Evergy would still be wrong.

Amounts deferred under the PISA legislation are included as a regulatory asset in a company's plant in service accounts. (*See*, *e.g.*, Exhibit No. 282 - Staff Accounting Schedules, pg. 3 ln. 16, ER-2022-0130, EFIS Item No. 561) (Recognizing Evergy Missouri West's plant in service increased by $44,841,354 associated with "PISA Deferral – regulatory asset[.]"). As such, those deferred amounts are no longer considered fuel and purchase power costs and would no longer be recognized in the fuel run used to calculate the FAC base factor. (*see* Exhibit No. 335 - Surrebuttal Workpapers of Shawn Lange (Public and Confidential), ER-2022-0130 EFIS Item No. 599 (which contain no mention of PISA)). From a basic accounting standpoint, there is no logical way that an increase in PISA costs booked to Evergy's plant in service

[3] Compare this to the FAC base factor for Evergy Missouri Metro, which is set at $0.01829 but contains the express provision "EMM Base factor will be adjusted, if needed, based on Commission order in this case on the Central Nebraska Public Power and Irrigation District ("CNPPID") hydro issue as identified in the attached **Exhibit 1**." (Stipulation and Agreement (Public & Confidential), pg. 4 ¶ 6a(2), ER-2022-0130, EFIS Item No. 312).

[4] Which is becoming an apparent theme with Evergy.

accounts would somehow effect the base energy costs included in base rates because those two concepts just never interact in the Company's books.

To conclude, the OPC will reiterate that its position in case ER-2023-0011 is that the deferral requested by Evergy West is inconsistent with the plain language of the relevant statutory provisions. If the Commission wishes to know more, the OPC kindly requests the Commission read the Initial and Reply briefs filed by the OPC in that case. If, however, the Commission disregards the OPC's argument in case ER-2023-0011 and orders an illegal deferral, the application of RSMo. § 393.1655.5 and 393.1400 would require those costs be included in base rates in this rate case.

Rate Design and Class Cost of Service

The OPC's initial brief broke down this issue into three parts. (*see* Initial Brief of the Missouri Office of the Public Counsel (Public & Confidential), pg. 67, ER-2022-0129, EFIS Item No. 629; Initial Brief of the Missouri Office of the Public Counsel (Public & Confidential), pg. 67, ER-2022-0130, EFIS Item No. 643). The first dealt with the non-TOU rate design issues. The vast majority of these have already been approved by the Commission. (Order Approving Four Partial Stipulations and Agreements, pg. 7, ER-2022-0129, EFIS Item No. 326; Order Approving Four Partial Stipulations and Agreements, pg. 7, ER-2022-0130, EFIS Item No. 340). The only issue outstanding that the OPC is concerned about is the customer charge Issue.

Only Evergy appears to have addressed the customer charge in its brief. (Evergy Initial Post-Hearing Brief, pg. 65, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 65, ER-2022-0130, EFIS Item No. 646). All the Company manages to say is that their class cost of study survey supports changing the charge. *Id*. the Company offers no rebuttal of the OPC's position whatsoever. *Id*. The OPC will only briefly reiterate the point here by citation to the statements made by its witness during the evidentiary hearing:

> [T]he customer charge is an automatic fixed fee that you're going to pay every month. Well, if we just jack that customer charge up to save 40 bucks or 50 bucks, which is not out of the realm of issues or examples in the past, you're just diminishing that variable component which means that I've got less incentive to be more energy efficient.

Tr. Vol. 10 pg. 619 lns. 6 – 12. Increasing the customer charge not only directly harms low-income customers, it also disincentivizes energy efficiency polices and distributed generation like rooftop solar. (Exhibit No. 307 - Rebuttal Testimony of Geoff Marke (Public and Confidential), pg. 28 ln. 24 – pg. 29 ln. 3, ER-2022-0129, EFIS Item No. 557; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 28 ln. 24 – pg. 29 ln. 3, ER-2022-0130, EFIS Item No. 571). For this reason, the Commission should leave Evergy's customer charge where it currently is.

The next issue to discuss is time of use ("TOU") rates. There are two proposals here. The first is the Company's proposal for "several opt-in TOU rates with various price differentials." *Id.* at pg. 13 ln. 3. The Company makes its case for these proposals on pages sixty-nine through seventy-one of its brief. (Evergy Initial Post-Hearing Brief, pgs. 69 – 71, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pgs. 69 - 71, ER-2022-0130, EFIS Item No. 646). The OPC has only one issue with the Company's proposal, and that is its request to lose more than $150 per participant. As explained by Staff during the evidentiary hearing:

> Q. Evergy is currently proposing to include a promotional cost for each of its optional rates including the optional TOU rate, correct?
>
> A. That is my understanding of Ms. Winslow's testimony, correct.
>
> Q. And I believe either you or Ms. Winslow has testified that that would work out to about $150 per individual?
>
> A. I believe her testimony is that Evergy is requesting to defer up to $150 per participant, but that $150 is determined by the company net of any savings realized by the company. And I'm not aware of any further detail on how that calculation would be done, who would do it, when they would do it. It appears from that testimony that the company's

> intent is that they would like the Commission to find it prudent to lose up to -- I'm sorry, more than $150 per TOU participant on their opt-in TOU rates.

Tr. Vol 11 pg. 752 lns. 6 – 23. It is important here to realize that Evergy is seeking $150 **net** of "any savings realized by the company." *Id.*; Tr. Vol 11 pg. 784 lns. 19 – 22 ("And since it is a net proposal, you are saying that Evergy is prepared to spend $150 more than it saves, and saves is in quotation marks because we don't know how they're going to measure that."). This is completely unnecessary and unacceptable request that should not be allowed. Other than this one issue, the OPC has no problem with Evergy offering its higher differential optional TOU rates.

After building up its own TOU rate proposal, Evergy then goes on the attack by arguing against Staff's default TOU rate proposal with one-cent differentials. (Evergy Initial Post-Hearing Brief, pgs. 72 – 76, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pgs. 72 - 76, ER-2022-0130, EFIS Item No. 646). Despite spending roughly four pages on the issue, Evergy can really only manage to raise one argument: Staff's differentials are too small. *Id*. For example, at one point, Evergy goes as far as to say that "Staff's ultra-low differential (only a penny differential) TOU rate is not really a TOU rate at all, judged by industry standards." *Id*. at pg. 74. This raises a very interesting and important question: If Evergy does not think that the $0.01 differentials will have an impact, why is the Company fighting so hard against them?

Evergy's argument against Staff's proposal makes no sense. The Company complains loudly about protecting "customer choice" and that Staff is depriving

customers of the ability to choose TOU rates, but then argues that Staff has not really even proposed TOU rates at all when "judged by industry standards." *Id*. at pg. 68, 74. Obviously both of these positions cannot be simultaneously true. So why is Evergy making such a fuss? The Company tries at one point to argue that the problem will come from the fact that it has educated its customers on the benefits of TOU rates and those benefits will not exist if the differentials are so low. *Id*. at pg. 74. But this is false. As the OPC's witness pointed out, Evergy has spent "over $3M dollars on undefined customer education that has resulted in no party being confident that Evergy customers could handle larger price differentials than what Staff is proposing in this case on a system-wide basis." (<u>Exhibit No. 307 - Rebuttal Testimony of Geoff Marke (Public and Confidential)</u>, pg. 14 ln. 25 – pg. 15 ln. 3, ER-2022-0129, EFIS Item No. 557; <u>Exhibit No. 306 - Direct Testimony of Geoff Marke</u>, pg. 14 ln. 25 – pg. 15 ln. 3, ER-2022-0130, EFIS Item No. 571). Given Evergy's argument, there is literally no downside to adopting the Staff's proposal, but there is a big upside.

The OPC has consistently referred to the current Staff proposal as the "training wheels" approach. *See Id*. at pg. 13 ln. 16. This is because it is designed to ease customers into a new experience, like a child learning to ride a bike with training wheels. It is, as the OPC's witness explained, "a reasonable path forward given the present circumstances in which Evergy customers are not prepared to experience large differentials." It is also worth pointing out also that this is consistent with what was adopted "for both Ameren Missouri and Empire District Electric and builds off of Evergy's "Wait 'til 8!" campaign. "On-Peak" hours include 4:00 pm to 8:00 pm and

"Super Off-Peak" hours of midnight until 6:00 am." *Id.* at pg. 13 lns. 12 – 14. For all these reasons, Staff's proffered default TOU rates should be approved by the Commission.

As one penultimate note, the OPC points to the statement in Evergy's brief that attempts to paint this issue as "a policy choice between one-size fits all, which is just a new variation on what we have done for 100 years in electric rate design or giving consumers additional choice of rate structures." (Evergy Initial Post-Hearing Brief, pgs. 76, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pgs. 76, ER-2022-0130, EFIS Item No. 646). This is a bogus claim. The issue now before this Commission does not present a mutually exclusive choice. The Commission can, if it so chooses, opt for **both** options that have been presented. Evergy says its wants to give customers choice. Great. The Commission should let the Company offer its optional TOU rates, but then also order Evergy to adopt Staff's proposed default TOU rates for the rest of Evergy's customer class. Moreover, the Commission should explicitly order Evergy to propose higher differentials for the default TOU rates in its next case because "there is very little hope that we will be in a place to move beyond Staff's proposed training wheel approach absent explicit Commission directive to do so." (Exhibit No. 307 - Rebuttal Testimony of Geoff Marke (Public and Confidential), pg. 15 lns. 4 - 5, ER-2022-0129, EFIS Item No. 557; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 15 lns. 4 - 53, ER-2022-0130, EFIS Item No. 571). Otherwise, "the Company can continue to kick the can down the road on TOU rates indefinitely by dragging its feet on ineffective or half-hearted customer

education and re-litigate everything all over again in the next rate case after stakeholders look at the 14th (or more) ratepayer-funded study on Evergy TOU rates." *Id.* at lns. 5 – 9.

Finally, Evergy responds to issues F and G under the Rate Design list of issues by claiming that "No party has disputed this position, and there is nothing in the record that would require the Commission to address this issue." (Evergy Initial Post-Hearing Brief, pgs. 76, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pgs. 76, ER-2022-0130, EFIS Item No. 646). This is flatly false. The OPC has disputed both of these issues and made recommendations regarding the same. (*see* Initial Brief of the Missouri Office of the Public Counsel (Public & Confidential), pgs. 78 – 79, ER-2022-0129, EFIS Item No. 629; Initial Brief of the Missouri Office of the Public Counsel (Public & Confidential), pgs. 78 – 79, ER-2022-0130, EFIS Item No. 643). Because Evergy has chosen not to address the OPC's arguments, the OPC has nothing to respond to other than to urge the Commission to read the OPC's initial brief on this issue.

<u>Subscription Pricing</u>

Only the OPC, Staff, and Evergy discussed this issue in their briefs. Once again, The OPC and Staff are in agreement as to this issue, so the OPC will not respond to Staff's brief. Instead, as with other issues, the OPC will respond exclusively to Evergy.

Evergy begins the discussion of this issue with a comparison between its subscription pricing proposal and other subscription based services offered for things "such as television and music streaming, gym memberships, and cell phone data plans." (<u>Evergy Initial Post-Hearing Brief</u>, pg. 77, ER-2022-0129, EFIS Item No. 631; <u>Evergy Initial Post-Hearing Brief</u>, pg. 77, ER-2022-0130, EFIS Item No. 646). The Company then goes on to point to a handful of random news surveys and articles that discuss how subscription pricing, as a business model, is a rising trend in certain retail sectors. *Id*. at pgs. 77 – 78. The fact that certain, competitive industries have been encouraged to consider subscription pricing may certainly be of interest to those who conduct business in a competitive market, but that should not dictate what the Commission should consider when contemplating proposals offered by a regulated monopoly necessary for life, health, and safety. As the witness for the OPC stated in testimony:

> Substantial caution should be taken when comparing regulated electric service necessary for life, health, and safety to music streaming services, gym memberships, and cell phone plans. Such comparisons teeter on dis-service to captive customers that cannot choose nor abandon their electric provider in the same manner as a streaming service, gym, or cell phone service provider.

(Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 14 lns. 17 – 21, ER-2022-0129, EFIS Item No. 573; Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 14 lns. 17 – 21, ER-2022-0130, EFIS Item No. 587). A similar sentiment was expressed by the witness for Staff during the hearing. Tr. Vol 10 pg. 556 ln. 12 – pg. 557 ln. 3. The major point here is that the businesses that Evergy refers to when discussing the increases in subscription pricing are very different from the view of both a business risk and service provided to a regulated electric utility. It is the intellectual equivalent of arguing that a clothing retailer should open a drive-through window by just pointing to the success of the McDonalds franchise. Such arguments should not sway this Commission.

Evergy's next point is very similar as the Company pivots to arguing that subscription pricing is supposedly "becoming more widespread in the Electric Industry." (Evergy Initial Post-Hearing Brief, pg. 78, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 78, ER-2022-0130, EFIS Item No. 646). The Company even provides a helpful map to show the small handful of utilities that actually have adopted subscription pricing. *Id.* at pg. 79. This map is misleading, however, as the OPC's witness explained during the evidentiary hearing:

> Q. Yes. Are you aware of any trends or contexts that would make this program inappropriate for the state at this time?
>
> A. Well, I mean, let's look at that map. What you see is a concentration largely southeast states. You'd have a handful of Duke Energy related states. I think Mr. Hledik characterized it as two buckets. There's a legacy bucket and then there's an adder bucket. Legacy bucket is largely

> your southeast utilities right there, your Georgia Power, your Alabama Power. These are large coal-generated, large nuclear, large huge capital investment intensive utilities that are not winning any Triple E awards, I'll tell you that, in terms of energy efficiency or push for that. If you look at trends across the United States, you'll note that there is no western states that are utilizing this. There's no eastern states that are utilizing this. I would venture to say, and I know his testimony doesn't go into any detail about this, but the example that he did give, Xcel Energy, which I would consider is a fairly progressive utility, that example is so far different than the one we're talking about here. That example is really limited to just a meter for EV cars. That's it. Not . . . the meter on the home [or] your consumption but just the EV cars. That's designed really just to have customers use energy during non-peak periods. Again, not an issue here.

Tr. Vol 10 pg. 605 ln. 10 – pg. 606 ln. 12. As the OPC's witness explained, not all of the other utilitiess that Evergy relies upon are offering programs remotely similar to Evergy's and many are large, coal-focused utilities from the central and south-east region who do not share a strong interest in promoting energy efficiency. *Id*. The concept of subscription pricing is thus not "becoming more widespread" as Evergy claims, but rather, is being actively avoided by most utilities across the country, especially those on the east and west coasts. *Id*.

Evergy has and no doubt will continue to push the proposed subscription pricing program under the guise of promoting "customer choice" and arguing that it is consistent with trends in other competitive markets. Apart from the problems previously delineated, this line of reasoning fails to address the fact that_the Company's own subscription pricing model would never survive in that same competitive market. This is because Evergy is proposing to charge customers more than they otherwise would have for the **exact same** service. *See*, *e.g.*, Tr. Vol 10 pg. 642 lns. 18 – 24. This can be seen, for example, in the Company's response to OPC's

data request 5050, wherein Evergy openly admits that "[o]n average, customers are expected to pay more under subscription pricing than they otherwise would under the standard rate. (Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), LAK-R-6 pg. 1, ER-2022-0129, EFIS Item No. 573; Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), LAK-R-6 pg. 1, ER-2022-0130, EFIS Item No. 587). That data request response further explains that this higher cost of service it to account for "participants . . . shifting financial risk to Evergy by paying an entirely fixed bill." *Id*.

The argument that the Company is assuming some financial risk in this program and deserves compensation for it through a risk premium adder is non-sensical. If Evergy is assuming so much risk on behalf of its shareholders, why would it propose such a program like subscription pricing in the first place? Common sense dictates that the Company would not propose something like subscription pricing if it truly believed it was a risky venture and one that unnecessarily resulted in Company financial exposure. A Company with a captive customer base and a regulatory structure that returns to it prudently incurred expenses and permits an opportunity to earn a reasonable return for its shareholders has no incentive whatsoever, to pursue such a program. Why would a Company put itself "out there" in such a manner if it was not going to be profitable for it? The answer is that it clearly would not. Regardless of its reasons, this program represents a clear detriment to Evergy's customers for an option that is effectively already available to them through

the Company's Average Payment Plan. A more detailed discussion of that option will follow shortly.

After attempting to justify the subscription pricing program by pointing to the massive windfalls that have been reaped by other, more competitive business using such a pricing model, Evergy's brief spends the next roughly three pages just laying out how its subscription pricing program would work. (Evergy Initial Post-Hearing Brief, pgs. 79 - 82, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pgs. 79 - 82, ER-2022-0130, EFIS Item No. 646). This discussion is mostly benign, so the OPC will not address it. Picking up on page eighty-two, however, the Company begins an argument that its subscription pricing program will somehow facilitate energy efficiency and sustainability goals. Let us consider for a moment why the Company is clearly wrong.

Evergy first argues that "[s]ubscription pricing can facilitate achievement of energy efficiency goals and sustainability goals by packaging the fixed bill offer with other customer offers, such as energy efficiency and demand response incentives, green pricing offers, or EV charging services." *Id*. at pg. 82. To see why that is nonsense, one need only understand that it is possible to replace the phrase "subscription pricing" with pretty much anything and the Company's logic will still make sense. Consider, for example, if Evergy decided to just give away free toaster ovens to customers. However, the Company tried to sell this free gift as prudent to the Commission by arguing that these free toaster ovens could "facilitate achievement of energy efficiency goals and sustainability goals by packaging the [free toaster oven]

with other customer offers, such as energy efficiency and demand response incentives, green pricing offers, or EV charging services." *Id*. Is the Commission really prepared to accept this type of logic? Is the Commission really ready to just accept that **anything** can promote "energy efficiency goals and sustainability goals" if packaged with other customer offers? The OPC certainly hopes that is not true. To be safe, however, the OPC will provide a more detailed explanation of the problem with Evergy's argument.

During the evidentiary hearing, one of the witnesses explained how, contrary to the Company's assertions, the proposed subscription pricing model would make energy efficiency programs **less** enticing:

> Q. To the extent that [a particular energy efficiency] program is currently being offered, would it be more enticing to a customer on what I'll term traditional rates or to a customer on subscription rates?
>
> A. Traditional rates most definitely.
>
> Q. Why is that?
>
> A. Your payback period. Think of it this way. Whether it's a thermostat or an HVAC or anything else, it's really difficult, first of all, I can't stress this enough. If I were to get an Energy Star HVAC in my house, I know intuitively that . . . if given my current consumption over a long enough period, say, five, six, seven years, it will pay for itself. Right? The problem is I might have to drop $25,000 to go ahead and install that correctly and to get that up and running. That's a lot of money for most families. That's a huge investment. Most families will wait until that HVAC actually fails before they actually put something in operation. If I go to subscription pricing to a fixed price where I'm guaranteed that I'm going to get a certain, whatever, it doesn't matter how much energy I consume I'm going to pay this fixed fee, why would I go ahead and get an Energy Star? Why would I drop the additional ten grand or whatever to get the best model, the most efficient model? I'm going to pay the exact same dollar amount regardless. Now, Mr. Hledik says that well, we

> would rebase it a year from now. I tell you, a year from now I'll probably just go ahead and drop off the rate. I'll go on to something else, if I'm really that savvy about this. But at a minimum I won't buy it, I won't purchase that stuff. So when we look at cost effective test under MIEAA, when we look at -- one of the principles that we look is what's that payback period, what's that payback period for an investment, right, when my return on my investment. And you're not seeing that with subscription pricing.

Tr. Vol. 10 pg. 617 ln. 14 – pg. 619 ln. 3. Let us take a moment to consider the payback period issue Dr. Marke was explaining.

Assume that you are a customer of Evergy who is considering making an energy efficiency investment, say installing a high-performance furnace as Dr. Marke mentioned. The problem if you're on the subscription pricing plan is that you don't see any benefits from that investment until **after** your bill has been reset in the next year. Tr. Vol 10 pg. 517 lns. 7 – 15. In the interim, however, Evergy would get to keep any savings generated by the difference between what that customer is paying under the subscription pricing program and what it actually costs to serve them. *Id.* at lns.16 – 21 ("Q. . . . But in the interim in that first year the company would keep the difference, correct? A. Yes. If there's a customer who signs up for subscription pricing and then immediately reduces their -- decides to invest in energy efficiency, that would be the case."). A customer on non-subscription pricing rates (*i.e.* standard rates), by contrast, would see the benefit of the new investment as soon as the energy savings appeared. *Id.* at pg. 518 lns. 5 – 8 ("For customers who continue to accept the risk associated with the standard rate, their bill would drop when the energy efficiency investment was made and those energy savings appeared."). Thus we can see how, counter to what Evergy suggests, a customer on standard rates who pursues

energy efficiency will save more money and save money sooner than a customer on subscription pricing.

The foregoing is not the only problem with Evergy's claim that subscription pricing will promote energy efficiency. The Company also makes a nonsensical claim regarding the so-called "efficiency incentive" included in its plan. The OPC will let Evergy speak for itself to describe how this works:

> The primary incentive for efficient energy use is an "efficiency incentive". As noted above, Evergy's estimate of each customer's expected usage will include a five percent "behavioral usage adder" to the customer's weather-normalized historical usage. That five percent adjustment accounts for a potential increase in usage that may result from the change in rate design (i.e., no longer being billed on a volumetric rate that charges per kilowatt-hour of consumption). If the customer's weather-normalized usage does not **increase**, the behavioral usage adder will be **paid back** to the customer as the efficiency incentive.

(Evergy Initial Post-Hearing Brief, pg. 83, ER-2022-0129, EFIS Item No. 631 (emphasis added); Evergy Initial Post-Hearing Brief, pg. 83, ER-2022-0130, EFIS Item No. 646 (emphasis added)). There are two major problems here. The first is that this purported "efficiency incentive" does not actually promote efficiency. The adder is paid back so long as the usage does not **increase**. *Id*. That means a highly ineffective house that **remains** highly ineffective can still get the so-called "efficiency incentive" as long as it maintains a **consistent** level of inefficiency and thus does not see any increase above prior years. If Evergy truly wanted to make a "efficiency incentive" it would need to reward customers whose usage **decreased**, thus showing that the end user has consumed less energy (*i.e.* become more efficient). To add insult

to injury, the Company proposes to **remove** the customers' usage from their monthly billing statements so customers have **no idea** how much energy they are using because the Company says customers will no longer **need** to know this information. (Evergy Initial Post-Hearing Brief, pg 89, ER-2022-0129, EFIS Item No. 631 (emphasis added); Evergy Initial Post-Hearing Brief, pg. 89, ER-2022-0130, EFIS Item No. 646 (emphasis added)).

The second problem with the "efficiency incentive" is that Evergy is trying to spin it as a "reward." to customers. Specifically, Evergy claims "[t]he incentive **rewards** customers if they are able to limit their usage, without penalizing them if they fail to do so." *Id.* (emphasis added). This is very misleading because what the "efficiency incentive" is actually doing is paying **back** an adder that the Company already imposed on customers' bills. Evergy Initial Post-Hearing Brief, pg. 83, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 83, ER-2022-0130, EFIS Item No. 646). It is not a "reward" to return to the customer the money they already paid just as it would not be a "reward" for victims of a robbery to have the items stolen from their home returned by the police after arresting the perpetrator. The "efficiency incentive" is therefore really a pre-paid penalty being held in abeyance by the Company to keep customer's usage in check. Thus, when the Company states "[t]he simple message to the customer is that continuing to consume energy at least as efficiently as they have in the past will position them to earn the incentive[,]" what it really should be saying is that "[t]he simple message to the

customer is that continuing to consume energy at least as **<u>inefficiently</u>** as they have in the past will position them to **<u>get their money back</u>**." *Id.*

As one final note on energy efficiency, it is important to discuss Evergy's claim that "the potential for the customer's fixed bill offer to increase after the 12-month term if their usage increased is an additional distinct reason for customers to manage their usage." *Id.* at pg. 84. Do you know which other customers will see their bill increase if their usage increases? All of them. Any customer on a standard rate has just as much of an incentive to keep their usage low as a customer on a subscription pricing plan. In fact, they have a stronger incentive, as the OPC's witness explained:

> There's nothing temporal about what we're doing. All of the headache that we dealt with [] Storm Uri, all the headache that we're dealing with [] fuel costs. Any time you get . . . any news that you get in the media that talks about the importance of . . . the increase in the energy costs that we're attributing to it is really a byproduct of that temporal period, what's that cost of energy during that peak period. That's the impact. That's the impact that we're talking about. And you're getting a muted price signal. That's what's taking place with a fixed bill.

Tr. Vol 10 pg. 606 lns. 12 – 22. As with the energy efficiency investments discussed previously, a customer on standard rates will actually see the effects of increased usage **<u>faster</u>** than the customer on subscription pricing, who will not see their bill increased until the next billing year. That is why Dr. Marke describes subscription pricing as sending "a muted price signal." *Id.* Everything about this program does not help energy efficiency; it actively hurts it.

The next segment of Evergy's brief discusses the Company's much-touted "Rate Modernization Plan." (<u>Evergy Initial Post-Hearing Brief</u>, pgs. 83 – 84, ER-2022-0129,

EFIS Item No. 631 (emphasis added); Evergy Initial Post-Hearing Brief, pgs. 83 – 84, ER-2022-0130, EFIS Item No. 646 (emphasis added)). Evergy spends a seemingly large amount of time describing the difference between qualitative and quantitative research before proudly announcing that it performed two studies of its customers: one with 39 people, the other using "Evergy's Customer Advisory Panel of nearly 2,000 customers." *Id*. This would be a good time to remind the Commission that Evergy Metro reported 266,662 residential customers in its 2021 annual report and that Evergy West reported 295, 895 residential customers in its 2021 annual report. (2021 Evergy Metro Annual Report, pg. 2; 2021 Evergy West Annual Report, pg. 2). That would be 500,000 residential customers between the two after rounding down to the nearest hundred-thousandth. In light of this fact, Evergy can successfully say that its "qualitative" research involved 0.00008% of its residential base and its "quantitative" research examined 0.004% of its residential customers.

Notwithstanding what should be the obvious flaw with Evergy' sample size, there is another problem in that all the Company managed to determine is "that most customers appreciate rate plan options." Except even this is not true. A careful review of the Findings of Evergy's surveys showed that the number of customers who either did not know if Evergy should offer more rate plans or did not want Evergy to offer more rate plans, when combined, was greater than the number who though Evergy should offer more rate plans. (Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), LAK-R-1 pg. 1, ER-2022-0129, EFIS Item No. 573; Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public,

Confidential and Highly Confidential), LAK-R-1 pg. 1, ER-2022-0130, EFIS Item No. 587). So, to re-cap, Evergy interviewed less than half of one tenth of one percent of its customers and more than half of those asked told the Company that they did not need more rate plans, yet Evergy wants the Commission to conclude from this that "[t]he research reiterates that customers want options and not one plan to fit all." (Evergy Initial Post-Hearing Brief, pg. 85, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 85, ER-2022-0130, EFIS Item No. 646). What the Commission should do instead is dismiss the discussion of Evergy's "Rate Modernization Plan" as meaningless.

Turning to the next section of Evergy's brief, the Company argues that "subscription pricing is different than Evergy's Average Payment Plan." *Id.* Specifically, Evergy argues that "[w]hile the Average Payment Plan does reduce monthly bill volatility relative to the standard rate, its participants are still exposed to the financial risk associated with any weather-related changes in usage, and any fluctuations in the standard rate." To be clear, the **reason** that customers on the Average Payment Plan are still exposed to the financial risk associated with any weather-related changes in usage is because Evergy has an FAC. Evergy's supposed benefit that "subscription pricing insulates customers from this risk for the full 12-month term of the offer" comes from subscription pricing customers not having to pay for any change to the FAC and instead forcing these costs on to non-subscription pricing customers. Tr. Vol. 10 pg. 574 ln. 1 – pg. 575 ln. 7. This is discriminatory and hence illegal, as explained thoroughly in the Initial Brief of the OPC. (*see* Initial Brief

of the Missouri Office of the Public Counsel (Public & Confidential), pg. 81 – 85, ER-2022-0129, EFIS Item No. 629; Initial Brief of the Missouri Office of the Public Counsel (Public & Confidential), pgs. 81 – 85, ER-2022-0130, EFIS Item No. 643).

The foregoing legal problems notwithstanding, it should be noted that no party to this case argued that Evergy's subscription payment program was the same as the Average Payment Plan option. Rather, the position of the OPC was that the Average Payment Plan Option could be used to achieve the same goals using only slight modifications. The witness for the OPC explained:

> Q. What comparisons can be drawn between the Company's Average Payment Plan and the Subscription Pricing Pilot?
>
> A. The goal of a budget bill or average pay plan are the same goals purported by the Company for a Subscription Pricing Plan. Budget Billing or Average Pay provides predictability and consistency, and those goals are currently achievable by the customer and offered by the Company. Other than the probability of customers paying more under a Subscription Pricing program, any differences between the Subscription Pricing and the Company's Average Payment Plan are de-minimis. Opportunities to 'tweak' the company's Average Pay Plan may exist and the Office of the Public Counsel is open to and would welcome the opportunity to participate in such discussions.
>
> For example, my understanding is that Evergy's current Average Pay Plan includes a monthly adjustment to reflect actual usage and the amount due may vary slightly month to month. Ameren, by comparison, offers two budget billing options that permit the customer's energy bill to remain the same regardless of temperature and at the end of 12 months the customer may pay or receive a credit for any difference in the cost of their energy for the year or may rollover any unpaid balance divided across 12 months. Please see Schedule LAK-R-8. Evergy could do the same.

Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 16 ln. 21 – pg. 17 ln. 11, ER-2022-0129, EFIS Item No. 573;

Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 16 ln. 21 – pg. 17 ln. 11, ER-2022-0130, EFIS Item No. 587). Witness for Staff stated the same while testifying at the evidentiary hearing.

> Q. Do you believe it would be possible to make changes to the existing average level pay system that could solve or bring that payment program closer or more similar to what Evergy is proposing here?
>
> A. Yes. I mean, the company is stating that one of the reasons they want to offer this program to their customers is because customers want predictability and they want choice. So they could look at their existing average payment plan and redesign it in a way in which customers would get that predictability and they can also design it in a way where there's choices that customers can make along the way within that 12-month period. For example, giving them the choice to true up maybe at six months or at the end of the 12-month period allowing them to roll over any remaining balance into the next 12 months. So they can achieve the predictability that they're touting as well as customer choice by simply redesigning an existing program, and OPC witness Ms. Lisa Kremer, she mentions that in her testimony as well.

Tr. Vol 10 pg. 555 ln. 17 – pg. 556 ln. 11. That is what is so ridiculous about this issue. Evergy could offer a plan that accomplishes all the goals of their proposed subscription pricing program if they really wanted to. The problem is that the Company has no desire to offer such a program, because their current proposal stands to let them charge customers more than necessary for the same service.

At page eighty-six of its brief, Evergy starts referring to specific statements made by Staff and OPC witnesses. (Evergy Initial Post-Hearing Brief, pg. 86, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 86, ER-2022-0130, EFIS Item No. 646). The first is the idea that customers will be "overcharged" under the subscription pricing program. *Id*. The OPC will not even bother to respond

to what Evergy has said on this issue because Evergy has itself not presented a genuine response to the OPC's argument. When the OPC says that Evergy is going to "overcharge" its ratepayers using the subscription pricing program, what the OPC means is that customers will pay more than they normally would under standard rates. Evergy openly admits this is true in its response to OPC's data request 5050, wherein the Company states: "[o]n average, customers are expected to pay more under subscription pricing than they otherwise would under the standard rate. (Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), LAK-R-6 pg. 1, ER-2022-0129, EFIS Item No. 573; Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), LAK-R-6 pg. 1, ER-2022-0130, EFIS Item No. 587). This open admission, left unanswered by the Company, explains the true reason why Evergy appears to have no interest in working with Staff and the OPC to re-design its existing Average Payment Plan option to achieve the goals of its proposed subscription pricing program.

There are several other issues raised in this section of the brief that the OPC will quickly address. Evergy seeks to respond to Staff concerns that "COVID-19, inflation, and economic uncertainty" make it a poor idea to "remove[] protections and disclosures mandated in 13.020 Billing and Payment Standards" by arguing that issues related to rate certainty "are exactly what will make subscription pricing an attractive offer to customers." (Evergy Initial Post-Hearing Brief, pg. 86, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 86, ER-2022-0130,

EFIS Item No. 646). Evergy has missed the point. The problem here is not the potential benefit that subscription pricing may give in economically uncertain times.[5] The problem is making vast changes to existing customer protections in order to launch a completely untested rate-mechanism in uncertain times. Evergy then seeks to address Staff's concerns "that it would be too complicated to explain every charge underlying the subscription pricing offer to customers" by just declaring that they will not bother explaining them. *Id*. at 87. This is a very bizarre stance to take given that Evergy has stressed "Simplicity and Transparency" as supposed benefits of this program. Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 16 ln. 8, ER-2022-0129, EFIS Item No. 573; Exhibit No. 323 - Rebuttal Testimony of Lisa A. Kremer (Public, Confidential and Highly Confidential), pg. 16 ln. 8, ER-2022-0130, EFIS Item No. 587). It is obviously not going to be a very transparent rate if Evergy is adopting the position that "it is not necessary to explain the[] nuanced details of how the fixed bill is determined in customer outreach materials." (Evergy Initial Post-Hearing Brief, pg. 87, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 87, ER-2022-0130, EFIS Item No. 646).

The last point Evergy seeks to rebut is the OPC's witness Dr. Marke's issue that subscription pricing does not leverage AMI meters. *Id*. The Company's response is that "AMI meters and CIS systems as well as its other analytics software will be a critical part of the Subscription Pricing Pilot Program." This statement is true only

[5] And those supposed benefits are suspect at best given everything else discussed in this brief.

in as far as it is critical to have a meter of any kind to indicate how much energy has been used. Tr. Vol. 10 pg. 610 lns. 22 – 25 ("Q. Does this program require AMI technology? A. No. It requires a meter. It requires a meter just to tell you how much kWh you've consumed at the end of the year. That's it."). The Company's claim that the AMI will somehow help them "determine how customers in the Pilot are using the electric system and how their behaviors may be changing" would be laughable if so much customer detriment and risk was not at stake in the consideration of this program. (Evergy Initial Post-Hearing Brief, pg. 87, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pg. 87, ER-2022-0130, EFIS Item No. 646). It is unnecessary to determine how customers in the subscription pricing program are using the electric system because they are being billed on an average basis. That is the whole point. There can be no denying that subscription pricing "did not need AMI technology to be offered." (Exhibit No. 307 - Rebuttal Testimony of Geoff Marke (Public and Confidential), pg. 19 lns. 11 – 12, ER-2022-0129, EFIS Item No. 557; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 19 lns. 11 – 12, ER-2022-0130, EFIS Item No. 571).

In summation, the Company's arguments related to subscription pricing are all useless. Contrary to what Evergy claims, subscription pricing will actually hurt energy efficiency, not help it. Their customer surveys represent a small percentage of their residential customer population and do not even support the conclusions the Company wishes to draw. In fact, the Company appears to try to hide aspects of their survey results that are unfavorable to their positions. The shame in this approach is

that customers pay for such surveys while the Company distorts or cherry picks survey sound bites that support its agendas. Finally, Evergy's Average Payment Plan option would allow Evergy to meet all the goals it wants with the subscription pricing proposal (save for overcharging customers) without the legal failures their proposal creates. For all these reasons, Evergy's subscription pricing program should be denied.

As one last point, the Company argues that the consultant fees associated with Evergy's Subscription offering should not be disallowed. (Evergy Initial Post-Hearing Brief, pgs. 88 – 89, ER-2022-0129, EFIS Item No. 631; Evergy Initial Post-Hearing Brief, pgs. 88 – 89, ER-2022-0130, EFIS Item No. 646). In particular, the Company just claims "[t]here is no competent and substantial evidence in the record to support such a disallowance of consultant fees[.]" *Id.* at pg. 88. This is false. The competent and substantial evidence is the recommendation of the OPC's expert who noted that "Ratepayers should not have to pay any costs associated with a rate design so out-of-line with Commission policy." (Exhibit No. 307 - Rebuttal Testimony of Geoff Marke (Public and Confidential), pg. 21 lns. 6 – 7, ER-2022-0129, EFIS Item No. 557; Exhibit No. 306 - Direct Testimony of Geoff Marke, pg. 21 lns. 6 – 7, ER-2022-0130, EFIS Item No. 571). As Staff's witness put it during the evidentiary hearing, Evergy's proposal "is inherently unreasonable" and that it is "a bad idea with bad design for no real end goal." Tr. Vol. 10 pg. 585 lns. 15 – 18. Mr. Hledik's testimony offered nothing of merit in this case and his consulting fees should be disallowed.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Reply Brief* and rule in the Office of the Public Counsel's favor on all matters addressed herein.

Respectfully submitted,

By: /s/ John Clizer
John Clizer (#69043)
Senior Counsel
Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5324
Facsimile: (573) 751-5562
E-mail: john.clizer@opc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this twenty-first day of October, 2022.

/s/ John Clizer