

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

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

RENEW MISSOURI'S INITIAL BRIEF

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COMES NOW Renew Missouri Advocates (“Renew Missouri”) and submits its *Initial Brief*.

Introduction

1. "The Commission's principle interest is to serve and protect ratepayers[.]" State ex rel. Capital City Water Co. v. PSC, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993). In fulfilling its purpose the Commission also must balance the interests of the ratepayers, the utility shareholders, and the general public. The Missouri Court of Appeals has explained:

The PSC is charged with considering and protecting the interests of the general public as well as the customers and investors of a regulated utility. It must balance those interests on a statewide basis, not merely considering a particular utility's operating area in isolation. See id. at 30 (noting that "uniform regulation of utility service territories, ratemaking, and adequacy of customer service is an important statewide governmental function"). This function requires a balancing of the needs and interests of ratepayers and investors.¹

¹ *Cass County v. Public Service Com'n*, 259 S.W.3d 544 (Mo. App. 2008)

2. Accomplishing this principle function is done in all manner of cases including rate cases, MEEIA applications, petitions for Certificates of Convenience and Necessity, and – as this case shows – Accounting Authority Orders (“AAO”). When a regulated utility asks for an AAO it is seeking to protect the shareholders from financial impact of some unexpected and significant cost that was already included in its existing cost of service rates. As the Commission considers this case, it should seek to balance the needs and interests of customers and the company in its deliberations and eventual order in this case.

3. Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West Evergy (collectively referred to as “Evergy” or “Company”) seeks an order from the Commission permitting it to record and preserve costs incurred due to the on-going COVID-19 pandemic. Several parties entered into a Stipulation and Agreement which was objected-to by the Office of Public Counsel (“OPC”) and the National Housing Trust (“NHT”) because the Stipulation focused on financial protection for the Company and did not adequately balance or address the needs of customers impacted by the COVID-19 pandemic.

4. The Commission should adopt, as conditions for an AAO, the extension of the moratorium on nonpayment service disconnections, adoption of an arrearage management program, adoption of long-term payment plans, expansion of the Economic Relief Program, suspend credit reporting, and suspend the disconnection and reconnection fees. Including these conditions brings balance to any order issued in this case and would be consistent with the Commission’s Orders approving the COVID-19 AAOs requested by other utilities in Missouri. Consistency in AAO conditions will advance the uniform regulation of utility service territories, ratemaking, and adequacy of customer service.

Legal Authority to issue AAOs

5. The Commission has the authority to grant AAOs stemming from Section 393.140 RSMo. In a recent AAO case, the Western District Court of Appeals described the Commissions AAO powers:

The general powers of the Commission are set forth in § 393.140, RSMo. State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n, 858 S.W.2d 806, 808 (Mo. App. W.D. 1993). Pursuant to § 393.140(4), the Commission has the power "to prescribe uniform methods of keeping accounts." KCP&L, 509 S.W.3d at 769.²

In addition to establishing the uniform methods to keep accounting records, the Commission can issue specific orders:

[Section] 393.140(8), RSMo expressly gives the Commission the power “to examine the accounts” of any regulated utility, and “after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.” Our caselaw holds that the determination of whether an AAO is appropriate is for *the Commission* to make, in *its* expert discretion. KCP&L, 509 S.W.3d at 770 (“The PSC . . . remains the authority that determines when an item may be included in a different accounting period for the purpose of developing authorized rates.”).³

6. Courts have repeatedly held that the Commission “remains the authority that determines when an item may be included in a different accounting period for the purpose of developing

² *Office of Pub. Counsel v. Evergy Mo.* WD83319, Order Iss’d July 28, 2020 p. 11 (Mo. App. 2020).

³ *Office of Pub. Counsel v. Evergy Mo.* WD83319, Order Iss’d July 28, 2020 p. 18 (Mo. App. 2020).

authorized rates.”⁴ This authority includes the ability to place conditions upon the AAO in order to balance the interests of the Company and the Public while protecting customers.

Conditions on Commission Orders

7. The Commission has the statutory authority to regulate public utilities in Missouri.⁵ Within that role, the Commission is tasked with acting in the public interest.⁶ “The Commission’s powers to regulate in the public interest are “broad and comprehensive” and include the authority “to order improvements[.]”⁷ “It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served.”⁸ This discretion extends to the issuance of AAOs when balancing the interests of the public and the utility requires conditions.

8. In balancing the interests of stakeholders and advancing the public interest the Commission regularly considers and attaches conditions on its orders. Prominent examples include the landowner protections included in granting a CCN to Grain Belt Express⁹ and the requirement to pursue a PAYS® program in Evergy’s recent MEEIA filing.¹⁰ The Commission has also attached conditions when issuing AAOs to defer costs.

9. In Case No. ET-2018-0132, Ameren Missouri sought approval of new “Charge Ahead” programs and deferral accounting for program costs. In approving part of the application the

⁴ *Kan. City Power & Light Co.’s Request v. Mo. Pub. Serv. Comm’n*, 509 S.W.3d 757, 770

⁵ Section 386.250 RSMo.

⁶ *State ex rel. Gulf Transport Co. v. Public Service Com’n*, 658 S.W.2d 448, 456 (Mo. App. 1983).

⁷ *In the Matter of the Application of KCP&L Greater Missouri Operations Company*, 515 S.W.3d 745, 758 (Mo. App. W.D. 2016) (citing *StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 34-35 (Mo. App. W.D. 2005).

⁸ Case No. EA-2016-0208, *Report and Order* pp.18-19)(citing *State ex rel. Intercon Gas, Inc. v. Public Service Com’n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993).

⁹ *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage and Maintain a High Voltage, Direct Current Transmission Line and an Associated Converter Station Providing an Interconnection on the Maywood-Montgomery 345kV Transmission Line*, Case No. EA-2016-0358, *Report and Order on Remand* p. 48.

¹⁰ *In the Matter of Evergy Missouri Metro and Evergy Missouri West’s Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism*, Case No. EO-2019-0132, *Amended Report and Order*, pp. 28-30.

Commission found that the Charging Corridor Sub-Program is just, reasonable, and in the public interest since it promotes electric vehicles, which can have positive benefits to customers and the environment. In authorizing the deferral accounting mechanism, the Commission reasoned that Ameren Missouri would be able to implement the program sooner and recover the program costs if it was approved. In this way the Commission used its discretion to consider that deferral would be good public policy.

10. In WU-2017-0296, the Commission examined another AAO through a lens of good public policy. Granting Missouri American Water Company's ("MAWC") requested AAO related to its Lead Service Line Replacement program ("LSLR") the Commission determined:

The costs for the LSLR are material, unusual and infrequent and, therefore, extraordinary. Thus, those costs meet the traditional standard the Commission has applied in deciding AAO cases. **The public policy related to lead in drinking water and its adverse health effects is particularly persuasive in this case.**

(emphasis added).¹¹ In these COVID-19 cases, the public health is again at the forefront of considerations that the Commission should take into account when determining the conditions under which it will allow the utility to receive special accounting treatment.

11. In ET-2018-0063, Ameren Missouri sought Approval of an AAO and a tariff authorizing the Renewable Choice Program. The Commission issued an order approving detailed the terms of a Stipulation and Agreement which included an AAO. Because the Stipulation terms were interdependent the various detailed conditions related to the new program are properly viewed as conditions of the AAO. Although the circumstances are different in this case – here, Evergy does

¹¹ *In the Matter of the Application of Missouri-American Water Company for an Accounting Order Concerning MAWC's Lead Service Line Replacement Program*, Case No. WU-2017-0296, Report and Order, p. 9.

not want to implement programs proposed by witnesses for OPC and NHT – the Commission still has the power to attach conditions to the AAO.

12. However informative these cases are, perhaps the most illustrative examples of the Commission’s ability to issue conditions on an AAO are the COVID-19 orders issued for Spire Missouri¹² and Missouri American Water.¹³ Each of those orders approved new customer relief programs. With its AAO, Spire Missouri now has an arrearage-matching program with 1 million dollars of investor money and 1 million dollars re-directed form other customer-supported programs. In its AAO, Missouri American Water added additional money to its bill credit program. Evergy’s refusal to consider customer assistance programs as part of its AAO request is the outlier among Missouri’s investor-owned utilities.

Issue Number 5: If the Commission adopts an AAO for some or all of the costs and revenues associated with the COVID-19, should the Commission order periodic reporting of information associated with the deferral? If so, what information should be reported and how often?

13. Periodic reporting should be required. Any future review of Evergy’s COVID-19 initiatives would be hampered by the lack of collection of critical data on the part of Evergy.¹⁴ On a monthly basis the Commission should require Evergy to report the metrics associated with its COVID-19 programs including:

- The amount of billed revenue;
- The amount of receipts actually collected;
- The number of accounts in arrears;
- The dollars of arrears;
- The number of accounts paid in-full and on-time;

¹² Case No. GU-2020-0376, Order *Iss’d* Oct. 21, 2020.
¹³ Case No. WU-2020-0417, Order *Iss’d* Oct. 28, 2020.
¹⁴ Ex. 1000, p. 115

- The number of accounts disconnected for nonpayment;
- The number of accounts receiving a notice of disconnection for nonpayment;
- The average income of ERPP participants by agreed-upon poverty ranges (e.g., 0-50% FPL; 51-100% FPL; 101-150% FPL);
- The number of ERPP participants who entered the bill discount program with unpaid account balances;
- The dollars of unpaid account balances for ERPP participants at the time those participants entered the ERP;
- The number of ERPP participants by agreed-upon poverty ranges;
- The aging of arrears (both in terms of number of accounts; and number of dollars);
- Average usage (along with average bills;
- The number of final bills;
- The number of final bills disaggregated by those with unpaid balances and those with no unpaid balance.
- The number of customers receiving an Evergy hardship grant;
- A distribution of hardship grants by \$50 ranges;
- The average arrearage of Evergy customers receiving a hardship grant;
- A distribution of arrearages of customers receiving a hardship grant in \$50 ranges;
- The number of customers receiving a hardship grant for whom the arrearage was \$0 after receiving the grant; and
- The number of customers who were denied a hardship grant because the grant, or any combination of grant and payments, would not reduce the arrearage to \$0.

- The number of each of these occurring at a multifamily property OR at the same number address (e.g. at 1234 Main Street exclusive of any apartment number) as an indicator that these accounts are likely at a multifamily property.¹⁵

Issue Number 6: Should the Commission adopt the recommendations of NHT related to extension of the moratorium on nonpayment service disconnections, arrearage management programs, long-term payment deferment plans, expansion of the Economic Relief Program, income-eligible energy efficiency plans, suspend credit reporting, suspend disconnection and reconnection fees, or other customer programs?

14. The COVID-19 pandemic continues to present extraordinary and unprecedented health, economic, and social challenges. As this Commission is aware, in March of 2020, Governor Parson declared a State of Emergency arising from the COVID-19 pandemic.¹⁶ Through Executive Orders 20-09 and 20-12, Executive Order 20-02 has been extended until December 30, 2020.

15. NHT's Roger Colton testified to the myriad of negative impacts of COVID-19 on low-income customers and why relief is necessary and equitable.¹⁷ Specific to the impact COVID-19 has on electric customers he warns:

The utility industry will not escape the economic impacts of the COVID-19 pandemic affecting Missouri and the rest of the nation. That population which has the least ability to respond to the economic catastrophe caused by COVID-19 is the same population that is being hardest hit with the public health and economic consequences. The economic hardship is not simply caused by the loss of jobs, though that is a huge part of it. The hardship is caused by the loss of income, which includes loss of jobs, a reduction of hours, and a reduction of work-related income. Since lower-income, low-wage employees also are the least likely to have paid

¹⁵ Ex. No. 1000, pp. 114-116.

¹⁶ See Executive Order No. 20-02 (Mar. 13, 2020)

¹⁷ Ex. No. 1000, pp. 4-17.

leave time, not only personal illness, but also family illness requiring workers to take time off to be caretakers, suffer adverse economic impacts. Substantial research shows that one consequence of these economic harms is the inability to pay monthly bills, including utility bills.

We should also be cognizant of the clear racial implications of the conclusions that I reach above. In Missouri, as elsewhere, COVID-19 has a disparately adverse impact on population demarcated by race. In particular, not only is a higher proportion of Missouri's Black population getting sick, but, in addition, a higher proportion of Missouri's Black population is dying as a result of COVID-19, than is warranted by the percentage of Black individuals in the population as a whole.¹⁸

16. Given the dire situation that many customers will face as a result of COVID-19, it is the Commissions duty to balance whatever relief it decides to provide to the utility with relief the utility should be providing to its customers due to the same pandemic.

17. Based on the evidence presented at hearing, the Commission should impose conditions to the grant of any AAO in this case. Renew Missouri supports the conditions advocated for in the testimony of Roger Colton offered on behalf of NHT.¹⁹ These include:

- re-implementing and extending the moratorium on nonpayment service disconnections;
- adopting an arrearage management program;
- adopting a long-term payment plan;

¹⁸ Ex. No. 1000, p. 21.

¹⁹ Ex. No. 1000.

- expanding the Economic Relief Program;
- suspending credit reporting; and
- suspending disconnection and reconnection fees.

18. Re-implementing and extending the moratorium on nonpayment service disconnections should be implemented and can reduce certain costs the utility may incur if it were to disconnect service. Mr. Colton testified:

Costs associated with termination include: transaction costs of notice, disconnecting service, engaging in collection activity and writing off uncollectible debt. In addition, utility terminations generate hidden costs as terminated customers go underground --changing names on accounts, moving to new addresses, whether within or without the jurisdiction of the utility, and the like-- or enlist advocates to fight the termination. **All these activities impose costs on the utility, in the form of increased legal, transaction and monitoring costs.**

(emphasis added).²⁰ The moratorium is justified on the basis of mitigating the costs, burdens, and injustices of COVID-19 and preserving revenues from unnecessary loss. Moreover, utility shutoffs are an ineffective, an inefficient, and an unjust collection device upon which to rely during the economic crisis related to COVID-19.²¹

19. Renew Missouri supports requiring the Company to adopt an arrearage management program as a way to help customers stay on the system or possibly make payments once service is reconnected. In his testimony NHT's Colton offered one program in his testimony wherein Evergy should allow income-eligible customers to enter into an Arrearage Management Program (AMP)

²⁰ Ex. No. 1000, p. 26.

²¹ Ex. No. 1000, pp. 42-43.

through which they can earn credits to retire their arrears over a twelve- month period. Income-eligibility should be set at 200% of the Federal Poverty Level. Arrearage credits should be earned for arrearage balances exceeding \$300 on a pro rata basis for each complete payment a customer makes over a twelve-month period.²²

20. Another framework that the Commission should consider implementing would be a program that aligns with the structure included in the Spire Missouri COVID-19 AAO. Within that program, income-eligible customers can retire their arrears with help from the utility. If the Spire Missouri template is followed, the program should be funded at \$2 million, split evenly between ratepayers and Evergy shareholders. Mr. Colton testified “an AMP addresses unpaid balances in an efficient, least-cost manner...” and is “the most appropriate way for Evergy to address low-income arrearages while minimizing and mitigating total costs that it will eventually bear.”²³ Following the template of the Spire Missouri COVID-19 AAO would facilitate uniform regulation across the state’s investor-owned utilities and ensure balance between customers and the Company.

21. Adopting a long-term payment plan is necessary and reasonable condition long-term to adopt for customers who do not qualify for participation in the AMP recommended by Mr. Colton. Renew Missouri supports Mr. Colton’s recommendation that a customer who does not qualify for the AMP should be required to repay all COVID-19 arrearages over at least a 12-month period or longer. Allowing flexibility for customers to pay arrearages and stay on the system as they make payments over a longer period of time will increase the likelihood that the bill is ultimately paid.²⁴ This would benefit the customers and the utility.

²² Ex. No. 1000, pp. 62-67.

²³ Ex. No. 1000, p. 67.

²⁴ Ex. No. 1000, p. 70.

22. The Economic Relief Program offered by Evergy is one opportunity for customers to weather the negative impacts from COVID-19. However, Mr. Colton offered testimony that this is a good program, but should be expanded.²⁵ According to Mr. Colton, the data shows that 53% of low-income households during the COVID-19 pandemic cannot pay their bills, as compared to 26% of middle-income households.²⁶ 27.5% of low-income households with income below 100% of Poverty could not pay their utility bills during the COVID-19 pandemic, as compared to 13.9% of households with income at 100% to 250% of Poverty (and 8.2% of households with income at 250% to 400% of Poverty).²⁷ Given the increase in low-income customers being unable to pay their bills attributable to the pandemic, the company should make expanding this program to reach more people a priority during the duration of the AAO it seeks.

23. Suspending credit reporting is reasonable way to reduce some impacts of the pandemic customers struggling to pay their bills will face. Mr. Colton testified:

Households have not only lost work, they have suffered from reduced work hours and lost work income. Households who are low wage workers are least able to work from home. They are also least likely to have paid leave time, whether it be paid sick time, or paid family time (needed in the event a household member becomes ill). Combined with the fact that low wage employees are frequently, if not generally, in the highest risk jobs (coming face-to-face with the public), they are also most likely to become ill. Given that low-wage workers are less likely to have paid health insurance, they are least able to respond to an illness by seeking medical

²⁵ Ex. No. 1000, p. 75.

²⁶ Ex. No. 1000, p. 77.

²⁷ *Id.*

care. As a result of this confluence of factors, lower-income households have been found, as I document above, to not only more frequently face circumstances where they miss utility bill payments, but also more frequently face circumstances where they miss housing payments and debt payments, as well as face food insecurity.²⁸

24. Under such circumstances, to report utility bill non-payments in a “bad” credit report in such circumstances serves no legitimate function. Notwithstanding the extent to which Evergy would otherwise report late or nonpayment of bills to credit reporting agencies, they should suspend such reports during the pendency of the COVID-19 health pandemic and associated economic crisis.²⁹

25. Suspending disconnection and reconnection fees is a natural corollary to the moratorium on disconnections. But even if the Commission conditions the AAO on an extension of the disconnection moratorium, that alone would not provide relief to customers who have been disconnected since Evergy has resumed disconnecting customers. Evergy should be taking steps to try and reconnect customers who had service disconnected for nonpayment and remain off the system. One way to facilitate reconnection is to waive reconnection fees that would serve as a barrier.³⁰

Issue Number 7: Should the Commission adopt any of the customer-specific recommendations of OPC including: 1) waiving disconnection and reconnection fees; 2) ceasing full credit reporting; 3) waiving late payment fees and deposits; 4) expanding payment plans to 12 months or greater; and 5) establishing an arrearage matching program, dollar-for-dollar on bad debt for eligible customers.

26. As discussed above, the Commission should adopt, as conditions for an AAO, the extension of the moratorium on nonpayment service disconnections, adoption of an arrearage

²⁸ Ex. No. 1000, pp. 107-108.

²⁹ *Id.*

³⁰ Ex. No. 1000, p. 54.

management program, adoption of long-term payment plans, expansion of the Economic Relief Program, suspend credit reporting, and suspend the disconnection and reconnection fees.

Conclusion

27. The Commission can “prescribe uniform methods of keeping accounts, records and books, to be observed by ... electrical corporations[.]” (Section 393.140(4) RSMo). The Commission can also “prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited” (Section 393.140(8) RSMo). The Commission has the power to condition its approval of the requested AAO. Moreover, the Commission has an obligation to balance the needs of customers and the company. Adopting, as conditions for an AAO, the extension of the moratorium on nonpayment service disconnections, an arrearage management program, long-term payment plans, expansion of the Economic Relief Program, suspension of credit reporting, and suspension of disconnection and reconnection fees brings balance to any order issued in this case and would advance the public interest.

WHEREFORE, Renew Missouri submits its *Initial Brief*.

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Certificate of Service

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

/s/ Tim Opitz
