

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

In the Matter of the Application of)	
Evergy Missouri West, Inc. d/b/a)	
Evergy Missouri West for Authority to)	
Implement Rate Adjustments)	
Required by 20 CSR 4240-20.090(8))	Case No. ER-2023-0210
and the Company's Approved Fuel)	
and Purchased Power Cost Recovery)	
Mechanism)	

**REPLY TO EVERGY MISSOURI WEST’S REPLY AND REQUEST FOR A
HEARING**

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

1. On February 8, 2023, OPC filed its *Response to Filed Tariffs and Staff Recommendation* in the above styled case.
2. On February 9, 2023, the Commission issued an *Order Establishing Time to Respond* that stated “Any party wishing to respond to *OPC’s Response to Filed Tariffs and Staff Recommendation* shall do so no later than February 16, 2023.”
3. Pursuant to the Commission’s *Order*, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy West” or “the Company”) filed a *Reply* to the OPC’s *Response* on February 16, 2023.
4. Evergy West’s *Reply* attempts to mislead the Commission by presenting an argument that directly contradicts the Company’s own prior position (and expert witness testimony) and should therefore be dismissed out of hand.

Evergy West's Reply contradicts the Company's own prior position

5. As was explained by the OPC in its initial *Response*, Evergy West previously sought and received deferral of “extraordinary” costs that would otherwise have been recovered through the company’s FAC in case ER-2022-0005.

6. It is important for the Commission to be cognizant of the facts of that case and how they relate to the present case.

7. Evergy West witness Lisa A. Starkebaum, who appears to be the same witness who filed testimony in the present case, filed testimony in case ER-2022-0005 that explained the situation faced by Evergy at the time:

Q: Please explain why Evergy Missouri West is adjusting actual costs in this filing.

A: Since the inception of the Company’s FAC, the actual cost of fuel and purchased power has varied from the FAC base fuel amount included in base rates. **During this 28th accumulation period covering December 2020 through May 2021, Actual Net Energy Costs (“ANEC”) incurred amounted to \$304.7 million over base rates, or \$303.6 million Missouri jurisdictional.** Under normal circumstances, Evergy Missouri West would include 95% of these cost differences, or \$288.4 million (before true-up, interest and ordered adjustments), for recovery in its semi-annual Fuel Adjustment Rate (“FAR”) filing, subject to the provisions of Missouri law provided in Section 393.1655.5 relating to PISA rate cap limitations. In this instance, approximately \$78.4 million of the \$288.9 million in costs (after true-up and adjustments) identified by the Company related to Winter Storm Uri, could be included in this FAR filing and still be within the rate caps imposed by Section 393.1655.5. **Under PISA legislation, the remaining \$210.5 million would be recorded to a deferred PISA regulatory asset account arising under Section 393.1400 and included for consideration and recovery through an amortization in base rates in the Company’s next general rate case.** If Evergy Missouri West were to include \$78.4 million for recovery in this FAR filing, that would result in a significant increase of \$11.08 per month to an average residential customers’ bill.

Direct Testimony of Lisa A. Starkebaum, pg. 4 ln. 22 – pg. 5 ln. 18, ER-2022-0005, EFIS Item No. 2 (emphasis added).

8. What is absolutely essential for the Commission to understand from this excerpt is that the Company clearly identified that a large portion of the “extraordinary” costs at issue in ER-2022-0005 would **normally** be deferred through the application of RSMo. section 393.1655 (the Plant in Service Accounting or “PISA” legislation) and thus not be included in the Company’s FAC. *Id.* Yet, Evergy West nevertheless chose to seek an AAO deferral through the application of 20 CSR 4240-20.090(8)(A)2.A(XI) **instead** of relying on the PISA legislation mechanism. *Id.* at pg. 5 ln. 19 – pg. 6 ln. 14.

9. Ms. Starkebaum’s filed testimony from case ER-2022-0005 goes on to explain exactly how Evergy made that deferral, stating as follows:

Q: Please explain the adjustment to February 2021 actual costs incurred as a result of Winter Storm Uri.

A: In order to identify the extraordinary costs associated with Winter Storm Uri, Evergy Missouri West established a baseline to approximate the normal conditions for the month of February 2021. In order to approximate more historic normal conditions in the month of February, the Company calculated a three-year average baseline using actual February costs for the years 2018, 2019 and 2020 for fuel, purchased power costs, emissions, transmission expense and off-system sales revenues and compared the actual costs and revenues that were incurred for February 2021 to that three-year average. When compared to the three-year historic average for the month of February, Evergy Missouri West incurred approximately \$297.3 million of extraordinary costs in excess of the three-year average. **This amount has been excluded from the FAR calculation and is the amount that Evergy will request to be deferred through the AAO.** The three-year historic average baseline replaces the February 2021 actual costs in this six-month accumulation period of December 2020 through May 2021 for purposes of this FAR filing and is more reflective of the amount

of fuel and purchased power costs that would have been expected absent Winter Storm Uri.

Id. at pg. 7 lns. 1 – 18 (emphasis added).

10. To bring the facts full circle, Ms. Starkebaum then goes on to describe how the PISA calculations were performed **after** the Company had removed the “extraordinary” costs from the FAC:

[A]fter removing the extraordinary costs associated with Winter Storm Uri, the Company performed the plant in service accounting (“PISA”) calculations to determine the impact, if any, of this adjusted semi-annual FAR filing on the Average Overall Rate and Class Average Overall Rate for the Large Power customer class as set forth in the rule under the provisions of section 393.1655 RSMo, rate cap limitations. The compound annual growth rate (“CAGR”) cap provisions of section 393.1655 RSMo. applied to this FAR filing are 8.4356% for the average overall rate cap and 5.5735% for the class average overall rate cap for Large Power customers. The change in the FAC charge proposed in this filing does not exceed the average overall rate by more than 8.4356% and, as such, **the provisions of section 393.1655.5 do not affect this FAR filing.**

Id. at pg. 8 ln. 17 – pg. 9 ln. 4 (emphasis added).

11. The Commission acknowledged this deferral in its *Order Approving Fuel Adjustment True-Up and Approving Tariff to Change Fuel Adjustment Rates* issued in the same case:

Staff notes that because of the effects of the cold weather event of February 2021, Evergy West’s actual total energy costs eligible for recovery through its FAC were significantly higher than the base energy costs included in its rates. **Evergy West has elected to seek approval to defer \$297,316,445 in “extraordinary costs” for future recovery through an Accounting Authority Order.** That application is pending in File No. EU-2021-0283.

Order Approving Fuel Adjustment True-Up and Approving Tariff to Change Fuel Adjustment Rates, pg. 2 n. 1, ER-2022-0005, EFIS Item No. 6 (emphasis added).

12. Given the above excerpts taken directly from Evergy's own witness in the prior ER-2022-0005 case, which the OPC again notes appears to be the same witness who filed testimony in this case, three inescapable facts can be drawn:

- a. Evergy claimed it had extraordinary costs in case ER-2022-0005 that would have caused the Company to exceed the PISA legislative caps;
- b. Evergy did **not** employ the PISA deferral mechanism in ER-2022-0005, and **instead** requested an AAO to remove the extraordinary costs from the FAC calculation altogether; and
- c. By removing the extraordinary costs from the FAC calculation altogether, the Company avoided the application of the PISA deferral mechanism in case ER-2022-0005.

13. The OPC's argument in the present case is nothing more and nothing less than a simple demand that the Company remain consistent.

14. Stated differently, the OPC is simply asking the Company to employ the exact same treatment it employed in ER-2022-0005 in the present case.

15. The argument put forward in Evergy's *Reply* to the OPC's *Response* is a direct contradiction and repudiation of the Company's own position in case ER-2022-0005 and of the testimony of its own witness in that same case.

16. The legal position the Company now fronts is incurably irreconcilable with the Company's own prior position in case ER-2022-0005 and should therefore be dismissed by this Commission.

**Excluding extraordinary costs from the FAC calculation under 20 CSR
4240-20.090(8)(A)2.A(XI) is not "optional"**

17. At paragraph 11 of its *Reply to the OPC's Response*, Evergy makes the following statement:

OPC suggests that the Commission can rely on Paragraph XI of the Fuel Adjustment Clause Rule because it mentions "extraordinary costs not to be passed through" the FAC. See 20 CSR 4240-20.090(8)2.A(XI) ("FAC Rule"). However, that provision is only an option available to the electric utility that is filing for a periodic change to its fuel adjustment rates. Moreover, the option offered to the utility under Paragraph XI to propose that costs "not be passed through" the FAC that relate to "an insured loss, or subject to reduction due to litigation or for any other reason" must yield to the statutory deferral mandate of Section 393.1655.5 when the CAGR cap will be breached.

Reply to OPC Response, pg. 5 ¶ 11, ER-2023-0210, EFIS Item No. 9.

18. There are several things wrong with this statement, but the OPC would like to focus on the claim that 20 CSR 4240-20.090(8)(A)2.A(XI) "is only an **option** available to the electric utility that is filing for a periodic change to its fuel adjustment rates." *Id.*

19. Evergy offers no legal support for this statement, which is because it is simply not true.

20. The language of the rule in question reads as follows: “When an electric utility files with the commission tariff sheet(s) to change its fuel adjustment rates and serves it upon parties, the filed tariff sheet(s) shall be accompanied by— . . . [t]he following information in electronic format, where available, with formulas intact: . . . [f]or the period of historical costs which are being used to propose the fuel adjustment rates— . . . [e]xtraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation or for any other reason[.]” 20 CSR 4240-20.090(8)(A)2.A(XI).

21. Of noted importance, the rule does not state “extraordinary costs **that the electric corporation has decided** not to be passed through” or anything similar.

22. Instead, the rule simply states that costs deemed “extraordinary” are not to be passed through the FAC.

23. Once again, we find this is consistent with Evergy West’s own witness statements from case ER-2022-0005:

Q: Does the FAC Rule mention “extraordinary” costs?

A: Yes, the Commission’s FAC Rule provides guidance in Subsection (8)(A)2.A(XI) of 20 CSR 4240-20.090. Section (8)(A)2.A(I-X) provides specific guidance on the historical costs to be used to propose the fuel adjustment rates and goes on to state in (8)(A)2.A(XI) that “Extraordinary costs not be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation or for any other reason”. This **requires** a utility to identify extraordinary costs not to be passed through the FPA **which appears to indicate deferral treatment**. Deferral treatment has been afforded utilities in past instances where there have been extraordinary costs incurred due to various acts of nature such as ice storms and tornadoes. The extreme

cold temperatures experienced in mid-February that lasted for days is yet another example of a severe weather event outside of human control.

Direct Testimony of Lisa A. Starkebaum, pg. 6 lns. 3 – 14, ER-2022-0005, EFIS Item No. 2 (emphasis added).

24. Evergy’s attempt to paint the requirement of 20 CSR 4240-20.090(8)(A)2.A(XI) as anything other than a requirement to defer extraordinary costs flies in the face of both the plain language of the rule and its own witness’s sworn testimony and should therefore be ignored by this Commission.

25. Moreover, the Company’s claim that the provision must “yield to the statutory deferral mandate of Section 393.1655.5 when the CAGR cap will be breached” is directly controverted by the Company’s filed position in ER-2022-0005, where Evergy’s witness **acknowledged** that the CAGR cap will be breached yet still argued for a deferral under 20 CSR 4240-20.090(8)(A)2.A(XI). *Id.* at pg.5 lns. 5 – 9; pg. 6 lns. 3 – 14.

Request for an Evidentiary Hearing

26. Given Evergy’s obvious willingness to mislead the Commission by advancing a legal theory that opposes its own prior position, as well as making several false statements that have not been discussed in this pleading, the OPC requests the Commission determine Evergy West’s adjustments to its FAC is not in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established in the electric utility’s most recent general rate proceeding and therefore

“suspend the timeline of the FAR adjustment filing, set a prehearing date, and order the parties to propose a procedural schedule” pursuant to 20 CSR 4240-20.090(8)(H)3.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission to determine Evergy West’s adjustment to its FAC is not in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established in the electric utility’s most recent general rate proceeding and therefore “suspend the timeline of the FAR adjustment filing, set a prehearing date, and order the parties to propose a procedural schedule” pursuant to 20 CSR 4240-20.090(8)(H)3.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this twenty-first day of February, 2023.

 /s/ John Clizer