

**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 Electrical)
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 Electrical Service)

Case No. ER-2022-0130

SIERRA CLUB'S REPLY POST-HEARING BRIEF

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I. Introduction

In its opening brief, instead of pointing to evidence supporting the economics of its coal units, Evergy (the “Company”) argues that Sierra Club is merely dissatisfied with the Company’s Integrated Resource Plan (“IRP”), and that there is no credible evidence supporting the requested disallowance in this case. In support of its arguments, and in a misguided attempt to castigate Sierra Club’s position, Evergy sidesteps the evidence presented in this case in favor of concocting strawperson arguments that Sierra Club never articulated, such as the claim that all of Evergy’s coal units should immediately retire. While it is indeed easier for Evergy to rebut arguments that the Company itself fabricated, that is not the relevant legal standard, and the Commission should not fall for Evergy’s antics. Sierra Club provided ample evidence—using Evergy’s own data—to show that Evergy acted imprudently with respect to its resource planning and coal plant spending. Once Sierra Club provided this data-driven information, creating a serious doubt as to the prudence of Evergy’s expenditures, the Company never substantively rebutted it. Accordingly, Evergy’s inability to support its coal plant spending in this case should result in a disallowance. And, to limit future uneconomic Company decisions, the Commission should order Evergy to conduct a full, optimized capacity expansion modeling analysis to analytically test the fundamental economics of retaining versus retiring its coal units, including the optimized selection of replacement resources. In sum, the Commission should favor Sierra Club’s positions on Issue No. III (Resource Planning) and Issue No. XV (Rate Base). And, as Sierra Club explained in its opening brief, such a ruling is now even more warranted given that the Inflation Reduction Act has provided significantly increased federal tax incentives for clean energy alternatives to maintaining Evergy’s coal units.

II. Evergy’s Inability to Support the Prudence of Its Coal Plant Spending Has a Logical Consequence—a Disallowance, and the Commission Should Further Order a Complete, Economic Analysis of the Company’s Coal Fleet.

Under the relevant legal standard, a utility’s costs of providing service are presumed to be prudently incurred unless a party provides evidence that creates a “serious doubt as to the prudence of an expenditure.”¹ Upon a showing of serious doubt, the burden of providing substantial evidence shifts to the utility to prove the prudence of a questioned expenditure.² In evaluating the prudence of a utility’s expenditures, the Commission reviews “whether the utility’s conduct was reasonable at the time, under all of the circumstances.”³ A disallowance is appropriate if the Commission finds that the utility acted imprudently and that its imprudence harmed ratepayers.⁴

a. Sierra Club Provided Evidence Creating a Serious Doubt About the Prudence of Evergy’s Coal Plant Expenditures.

As detailed in Sierra Club’s initial post-hearing brief, Evergy provided no testimony supporting the prudence of its coal plant test year spending in this case.⁵ Meanwhile, Sierra Club produced substantive evidence casting serious doubt about the prudence of Evergy’s coal plant

¹ *Office of Pub. Counsel v. Mo. Pub. Serv. Comm’n*, 409 S.W.3d 371, 376 (Mo. 2013), citing *Anaheim, Riverside, Etc. v. Fed. Energy Reg. Comm’n*, 669 F.2d 799, 809 (D.C. Cir. 1981).

² *Id.* at 376, 379.

³ *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm’n of State of Mo.*, 116 S.W.3d 680, 694 (Mo. App. W.D. 2003).

⁴ *State ex rel. KCP & L Greater Mo. Operations Co. v. Mo. Pub. Serv. Comm’n*, 408 S.W.3d 153, 163 (Mo. App. W.D. 2013).

⁵ See Exhibit 451, Revenue Requirement Direct Testimony of Devi Glick at 15 (“Q: Has Evergy presented any evidence as part of its direct case in this proceeding to demonstrate the value of retaining its coal units? A: No.”); see also Evergy Initial Post-Hearing Brief at 23-28.

expenditures. Sierra Club showed, using Evergy's own cost and revenue data, that the Company's coal units have generally been higher cost than available alternatives.⁶ Specifically, aside from 2021 (due to winter storm Uri's anomalously high market prices), each of Evergy's coal plants incurred costs in excess of the value of its energy and capacity over the past five years.⁷ Sierra Club's analysis confirmed Evergy's IRP findings that there is likely benefit to retiring coal units in the near-term, and Evergy's own data showed that the Company's coal units are projected to perform poorly going forward. The evidence showed that the near-term retirement of one or more coal units, especially La Cygne Units 1 and 2 and the Jeffrey Units, would likely save customers money.⁸ Evergy's decision to ignore the economic results in favor of early retirement dates is perplexing because the Company currently has a surplus of generation capacity such that if it retired one or two of its existing coal units, it would not need to replace the capacity for at least another decade. In short, it makes no economic sense for the Company to continue to operate its entire coal fleet, and Evergy does so at ratepayers' expense.

b. Evergy Did Not Rebut Sierra Club's Evidence and Thus Did Not Prove the Prudence of Its Coal Plant Expenditures.

Nowhere in its Initial Brief does Evergy point to evidence demonstrating the value of its coal units today,⁹ and thus the reasonableness of its test year spending on them. Instead, Evergy offers a series of unavailing arguments that distract from the record evidence.

⁶ Exhibit 451, Revenue Requirement Direct Testimony of Devi Glick at 21-36.

⁷ *Id.* at 21.

⁸ *Id.* at 38, Table 11; *see also* Sierra Club's Initial Post-Hearing Brief at 7-9.

⁹ *See* Evergy Initial Post-Hearing Brief at 23-28.

First, Evergy argues that “only seven years ago” the Commission found some of Evergy’s coal plant expenditures at La Cygne to be reasonable and prudent.¹⁰ Moreover, Evergy argues that the Commission’s approval of the Company’s coal plant operations in prior rate cases “over the past decade”¹¹ somehow prevents a showing of serious doubt now, despite the fact that, in one of the cited rate cases, the Commission concluded that Sierra Club did, in fact, raise a serious doubt about Evergy’s actions.¹² Evergy assuredly knows that it must *continue* to demonstrate that its expenses are prudently incurred, and relying on years-old examples only serves to show that Evergy, stuck in the past, has failed to meet its burden in this case. In addition, Evergy offers no evidence to prove that the energy market or that the economics of its coal units has not changed during the seven years (or longer) since the Commission last ruled on their value. In fact, as Ms. Glick’s testimony shows and as the Commission is well-aware, the utility industry has changed significantly over the last decade, and the cost of renewable energy has dropped precipitously, often making renewables the least-cost option for power plant additions.

Next, Evergy complains that Sierra Club’s critiques about the Company’s IRP are offered in the wrong venue.¹³ First, as the Commission has previously concluded, a rate case is the appropriate venue in which to test the prudence of a utility’s power plant spending.¹⁴ Second,

¹⁰ Evergy Initial Post-Hearing Brief at 26.

¹¹ *Id.* at 59.

¹² *In re Kansas City Power & Light Co.*, File No. ER-2014-0370, Report and Order at 63, (Sept. 2, 2015), stating “Testimony on behalf of Sierra Club . . . raised a serious doubt about KCPL’s decision to proceed with the La Cygne retrofit project following authorization of the project by the Kansas Corporation Commission.”).

¹³ Evergy Initial Post-Hearing Brief at 27.

¹⁴ *In re Union Electric Co. 2011 Util. Res. Filing*, File No. EO-2011-0271, Report and Order at 10, (March 28, 2012) (“The Commission’s determination of whether Ameren Missouri is in fact ‘providing the public with energy services that are safe, reliable and efficient, at just and

Evergy—not Sierra Club—affirmatively offered its own IRP, via discovery and testimony,¹⁵ in response to data requests regarding Evergy’s coal units. Evergy’s complaints that Sierra Club’s analysis is “narrow and incomplete” belies the fact that Evergy’s own IRP, on which Evergy relies to meet its burden, does not support its coal plant test year spending.¹⁶ It is unreasonable to suggest, as Evergy does, that Sierra Club, an intervenor, should have produced a full-fledged economic analysis that would meet the standards Evergy seemingly demands, a standard the Company itself has not met. This is precisely what Evergy’s resource planning process should be designed to do. Although Evergy relies on its IRP in an attempt to support its coal plant spending, the flawed IRP is not sufficient to support Evergy’s coal plant spending in this case. Allowing Evergy to assert that Sierra Club’s analysis is insufficient gets the legal standard backwards, as it is Evergy’s burden alone to prove the prudence of its actions.

Further, Evergy attacks Sierra Club Witness Glick’s economic analysis, calling it “unreasonably narrow”¹⁷ and alleging that Sierra Club failed to consider capacity needs and capacity costs.¹⁸ Evergy is simply incorrect. Here, Evergy reasserts its misrepresentations from the testimony stage, to which Sierra Club responded via surrebuttal.¹⁹ Perplexingly, Evergy

reasonable rates, in a manner that serves the public interest’ must wait for the appropriate rate case in which the Commission can consider all relevant factors.”).

¹⁵ Exhibit 451, Revenue Requirement Direct Testimony of Devi Glick at 15; Exhibit 55, Rebuttal Testimony of Kayla Messamore at 12.

¹⁶ *E.g.*, Sierra Club’s Initial Post-Hearing Brief at 7-9.

¹⁷ Evergy’s Initial Post-Hearing Brief at 23.

¹⁸ Rebuttal Testimony of Kayla Messamore, pages 11–12, Evergy Initial Brief at 24.

¹⁹ Exhibit 454, Surrebuttal Testimony of Devi Glick at 2-4 (responding to Evergy’s false statement in testimony that Ms. Glick did not include a capacity cost in her replacement analysis and explaining how Ms. Glick used Evergy’s own data to value capacity replacement).

simultaneously claims that Sierra Club *failed* to consider capacity costs yet then cites to the Company's own testimony that criticizes the capacity costs that Sierra Club *included* in its analysis.²⁰ Frankly, Evergy's critique makes no sense, particularly since Sierra Club valued capacity using the same methodology that Evergy itself uses. Evergy then argues that Sierra Club's analysis failed to consider replacement costs, "especially over the long-term," going so far as to say that withholding such an analysis was "ridiculous."²¹ The problem, again, is that Evergy's assertion is untrue. Ms. Glick valued capacity at the cost of Evergy's median-priced capacity contract. Further, Ms. Glick notes that her consideration of capacity is overly conservative because Evergy is projected to have between 286 MW and 198 MW of excess capacity *through 2041*.²² Accordingly, Sierra Club noted that Evergy could retire at least 198 MW of capacity without any additions while still meeting its reserve margin through 2041. In any case, Evergy's argument in briefing that Sierra Club's analysis did not consider capacity costs is incorrect and rebutted by Evergy's own testimony.

Next, in its Initial Brief, Evergy spends a few paragraphs discussing how Ms. Glick failed to consider generation types, base load alternatives, and land use issues.²³ This is another exercise in misdirection. First, this type of commentary ignores the negative externalities of maintaining Evergy's coal units. Further, nowhere did Sierra Club suggest that Evergy should retire all its coal units immediately or that all the coal units should be entirely replaced with solar. Evergy's commentary on land use issues ignores the fact that the Company could retire

²⁰ Exhibit 55, Rebuttal Testimony of Kayla Messamore at 11-13.

²¹ Evergy Initial Post-Hearing Brief at 24.

²² Exhibit 454, Revenue Requirement Surrebuttal Testimony of Devi Glick at 4-5.

²³ Evergy Initial Post-Hearing Brief at 25.

units—at a savings to ratepayers—without any additions whatsoever, obviating this land-use exercise altogether.

In its Initial Brief, the Company argues that a disallowance for the coal units would “hinder the ability of Evergy to operate these plants and serve its customers.”²⁴ This claim is not substantiated by any citation to record evidence. Further, after Evergy completes an optimized retire-and-replacement study for its coal units, the Company can come back to the Commission and recover costs associated with the coal units that it shows have value for customers.

Further, Evergy references a Southwest Power Pool (“SPP”) decision to increase planning reserve margin in an apparent attempt to scare the Commission while distracting from the fact that Evergy’s decisions are costing ratepayers more money than if Evergy would methodically retire its expensive coal units. This July SPP decision and the resulting documents on which Evergy now relies, available well before the evidentiary hearing, were never introduced into evidence.²⁵ However, even assuming the information was properly admitted into evidence, no party has argued that Evergy should immediately cease the operation of 1,700 MW of capacity. Instead, Sierra Club argued that Evergy can and should retire one or more coal units in the near future—without any capacity issues—specifically because ratepayers would save money, and more fundamentally that Evergy has not met its burden of proof for its coal units. Instead of engaging with this valid argument, Evergy simply attempts to scare the Commission away from reviewing the prudence of its test-year spending. Evergy further states that a disallowance would hinder the ability of the utility to operate its uneconomic coal plants and

²⁴ Evergy Initial Post-Hearing Brief at 23.

²⁵ *See Id.* at 53.

serve its customers. At some point, Evergy must stop pouring good money after bad into its aging and uneconomic coal fleet. Because Evergy cannot seem to move on itself, it's up to the Commission to show that there are consequences for imprudent actions.

Last, Evergy points to an EMW Securitization Order to purport to support its test year coal spending.²⁶ But that Order is generally irrelevant to the coal spending at units other than Sibley. If anything, the Commission's finding that the retirement of Sibley was prudent would tend to support a finding that customers could benefit from the retirement of other coal units. No where does the EMW Securitization Order discuss the economics of the La Cygne or Jeffrey units (or even mention the name of those coal units).²⁷

As a regulated utility that is entitled to a guaranteed rate of return and a monopoly in its service territory, Evergy bears the responsibility to demonstrate that its significant resource planning decisions are reasonable. But the fact remains that Evergy failed to perform an adequate analysis to justify keeping its coal units online. Given the chance to correct its failure, Evergy declined. A disallowance is the only justifiable response. Despite the Company having not demonstrated the prudence of its test year spending, if the Commission believes a full disallowance is unwarranted, it could issue a percentage disallowance to encourage better planning.

- c. The Commission Should Require Evergy to Conduct a Full Retirement Study of Its Coal Fleet Using Optimized Capacity Expansion Software, Which Identifies the Optimal Retirement Date for Each of Its Coal-Burning Units.**

²⁶ *Id.* at 26 (EMW Securitization Order at 32-33).

²⁷ *In re Evergy Mo. West, Inc. Petition for a Financing Order Authorizing the Issuance of Securitized Util. Tariff Bonds*, File No. EF-2022-0155, Report and Order at 28-33 (Oct. 7, 2022)

Evergy states that it is “already using optimized capacity expansion software to analyze its generating units and will continue to do so.”²⁸ Unfortunately, Evergy omits that it biased the model by hand-selecting retirement dates rather than letting the model run and optimally choose what resources are most economic to meet resource requirements. Hand-selecting retirement dates, of course, defeats the purpose of running an economic modeling exercise. Fundamentally, Evergy’s commitments are meaningless because the Commission must base its ruling on the prudence of test year spending on evidence that is in the record, and cannot rely on Evergy’s unsubstantiated pledges do better in the future. Accordingly, the Commission should order Evergy to conduct a thorough, optimized retirement study.

III. Conclusion

The best evidence that Evergy has been able to produce to support its “significant”²⁹ ongoing coal spending is a Commission ruling from 2015 that reviewed the economics of the La Cygne plant based on economic evidence from a decade ago. Sierra Club respectfully submits that decade-old evidence is not sufficient to support the retention of La Cygne or the other Evergy coal units. Evergy’s straw arguments that a disallowance here would lead to immediate calamity is unavailing, as the Company could come back to the Commission to seek a ruling on the prudence of this spending after it has evaluated the economics of coal units, perhaps accelerated the retirement of some units, and justified the retention of others. Evergy’s attempt to distract the Commission’s attention from the economics of its coal units should be seen for what

²⁸ Evergy Initial Post-Hearing Brief at 26.

²⁹ *See Id.* at 23.

it is: an acknowledgment that there is no evidence in the record supporting the retention of the coal units. Commission supervision is therefore warranted.

* * *

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Sierra Club Reply Post-Hearing Brief was electronically filed on this date via the Missouri PSC's electronic filing system. Notice of this filing will be served upon all parties of record who have registered through this electronic filing system.

Date: October 21, 2022

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