

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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)

Public Counsel’s Response to Motion for Leave to File Sur-Surrebuttal Testimony

The Office of the Public Counsel (OPC) responds to Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively Evergy)’s Motion for Leave to File Sur-Surrebuttal Testimony as follows:

1. On September 11, 2020, Evergy filed its Motion requesting leave to file the entitled sur-surrebuttal testimony of Darrin Ives. Ives’ sur-surrebuttal testimony responds solely to OPC witness Geoff Marke’s surrebuttal testimony. The Public Service Commission (Commission) should reject Evergy’s Motion and supplemental testimony because it violates a prior Commission order, Evergy has no proper basis to present this testimony, and it is unnecessarily redundant.

2. The Commission’s Order Setting Procedural Schedule clearly set three rounds of filed testimony: direct, rebuttal, and surrebuttal. So long as parties comply with applicable Commission rules, all parties were entitled to file testimony at each stage, including surrebuttal. The Commission’s Order considered parties other than Evergy filing surrebuttal testimony, and expressly did not provide an additional sur-surrebuttal opportunity for Evergy. Evergy’s attempt to file sur-surrebuttal testimony therefore contradicts this Commission’s prior Order.

3. Evergy’s own proposed procedural schedule, which the Commission used as a basis for its Order Setting Procedural Schedule, also did not include a sur-surrebuttal testimony opportunity. Given that Evergy proposed a schedule without a sur-surrebuttal testimony stage, and

did not propose that certain parties be barred from filing surrebuttal in order for Evergy to “get the last word,” it must have considered that it did not need one to make its case.

4. Evergy also lacks a proper basis for its Motion and sur-surrebuttal testimony.

Evergy’s claim of right to file sur-surrebuttal testimony is that:

As the Commission has long recognized, any utility company bears the burden of proving that requests for an accounting authority order or other trackers meet the standards for approval of such projects. The public utility therefore should have the last word and should have the opportunity to address countervailing proposals filed by opposing parties.

Evergy’s syllogism fails though because, although it employs “therefore” language, it fails to include the antecedent bases for why a utility, merely because it has the burden of proof, is entitled to file additional testimony beyond what the Commission ordered. Nothing about bearing the burden of proof means that a party can file additional testimony not called for in a procedural schedule.

5. Evergy’s argument is that because it has a burden to support its application, the Commission should afford it every additional opportunity to meet that burden. Evergy does not support its argument with case law, Commission rule, or other authority beyond citations to past Commission decisions holding that the applicant utility bears the burden of proof in an accounting order case. The omission for authority specifically on the filing of sur-surrebuttal testimony is because there is no such authority. Evergy is not entitled to file sur-surrebuttal testimony merely because another party exercised its right to file surrebuttal testimony.

6. The Commission should also deny Evergy’s Motion because Ives’ testimony is redundant. Ives’ sur-surrebuttal testimony against Marke’s surrebuttal is two pronged: Marke’s recommendations are 1) not reasonable for reasons “stated in [his] surrebuttal testimony,” and 2) beyond the Commission’s authority. Evergy has already argued the first point, as admitted by Ives, and need not be echoed again in sur-surrebuttal. The second point is a legal argument that Evergy

can adequately advance through briefing and oral advocacy. There is no reason why fact witness testimony should or must advance Evergy's claim that the Commission cannot enforce a particular recommendation.

7. Furthermore, even without sur-surrebuttal Evergy still has the opportunity to cross-examine Marke and other witnesses to contest the reasonableness of Marke's surrebuttal claims. Evergy's requested sur-surrebuttal is simply cumulative and unwarranted.

WHEREFORE, the OPC responds to Evergy's Motion for Leave to File Sur-Surrebuttal Testimony and prays that the Commission deny it.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 14th Day of September, 2020, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall