

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

In the Matter of the Second Prudence )  
Review of the Missouri Energy Efficiency )  
Investment Act (MEEIA) Cycle 2 Energy ) File No. EO-2020-0227  
Efficiency Programs of Evergy Metro, Inc. )  
d/b/a Evergy Missouri Metro )

In the Matter of the Second Prudence )  
Review of the Missouri Energy Efficiency )  
Investment Act (MEEIA) Cycle 2 Energy ) File No. EO-2020-0228  
Efficiency Programs of Evergy Missouri )  
West, Inc. d/b/a Evergy Missouri West )

**Public Counsel’s Response to Evergy Missouri Metro and Evergy Missouri West’s Motion  
to Strike Portions of Rebuttal Testimony**

The Office of the Public Counsel (OPC) responds to Evergy Missouri Metro and Evergy Missouri West’s (collectively Evergy) Motion to Strike Portions of Rebuttal Testimony of the OPC as follows:

1. On September 21, 2020, Evergy filed a motion to strike a portion of OPC witness Dr. Geoff Marke’s rebuttal testimony, arguing that OPC was required to file its testimony as direct testimony, and that Section II of Dr. Marke’s testimony is not responsive to direct testimony. Alternatively, Evergy asks for leave to respond to Dr. Marke’s testimony in sur-surrebuttal. Evergy’s motion to strike testimony is improper, and its request for leave is unnecessary.

2. The Public Service Commission (Commission) issued its own procedural schedule based on competing inputs from Evergy, OPC, and Staff of the Public Service Commission (Staff). The Commission’s Order setting the procedural schedule noted twice “all parties [are] allowed” to file rebuttal testimony. OPC is a party and so Evergy should have considered the possibility of OPC filing rebuttal testimony.

3. Commission Rule provides that rebuttal testimony is proper when it is responsive to direct. 20 CSR 4240-2.130(7)(B)(C). Furthermore, Commission Rule clearly states, “a party need not file direct testimony to be able to file rebuttal testimony.” *Id.*

4. Despite Commission Rule and Order Setting Procedural Schedule making it clear that OPC could file rebuttal testimony, Evergy admonishes OPC for not filing direct testimony, and characterizes Staff and OPC as “joining parties” given that both Staff and OPC supported the same procedural schedule.

5. Evergy seems to be neglecting to consider the very Commission Rule it quotes in its Motion to Strike. Commission Rule 20 CSR 4240-2.130(7)(C) states that “where only the moving party files direct testimony, rebuttal testimony shall include testimony which explains why a party rejects, disagrees, or proposes an alternative to the moving party’s direct case.” Evergy quoted this rule verbatim in its Motion. The “moving party” in this case, the one that initiated the whole proceeding, is Staff. Staff initiated this docket with a notice of the start of its Missouri Energy Efficiency Investment Act (MEEIA) prudence review and subsequent report. Dr. Marke then filed rebuttal testimony with two sections; one explaining his support for Staff’s prudence report and a second explaining reported administrative costs in Staff’s report.

6. Section I of Dr. Marke’s testimony provides his introduction and states his support for Staff’s proposed disallowances. Section II provides “alternative” considerations of the administrative cost data Staff’s report contains. Staff’s report includes the data Dr. Marke uses for his calculation of spending ratios of administrative to energy efficiency incentive costs, and Staff did not emphasize its numbers. 20 CSR 4240-2.130(7)(C). Evergy is just wrong when it claims that Dr. Marke raises a “new argument outside of anything set forth in direct testimony.” The costs Dr. Marke testifies to are right there in Staff’s report.

7. Despite this mistake, Evergy's Motion to Strike targets Section II of Dr. Marke's testimony, but not Section I. Paraphrasing Dr. Marke's testimony, it can be summarized as follows:

Section I: "Staff is right."

Section II: "Staff's report failed to emphasize this point."

According to Evergy, the first part is responsive, but the second is not because Dr. Marke supposedly "used rebuttal testimony to posit a new argument outside of anything set forth in direct." Evergy's complaint is without merit because it misses points raised in Staff's direct, and Commission Rule explicitly provides that rebuttal testimony can respond with reasons why a party rejects, agrees, or provides alternatives to direct testimony. 20 CSR 4240-2.130(7)(B)(C).

8. Perhaps Evergy's Motion would be warranted if it did not have the opportunity to respond to Dr. Marke's rebuttal, but that is not the case. Evergy's Motion complains about "common sense" and "fairness" when arguing, "Evergy must be allowed to respond" to Dr. Marke's testimony in sur-surrebuttal testimony. Evergy appears to believe that the Commission's currently ordered procedural schedule prevents it from filing testimony against the OPC. OPC does not read the Commission's Order Consolidating and Setting Procedural Schedule as such.

9. The Commission's Order repeatedly states, "All parties will be permitted to file rebuttal." The Commission's Order then provides a subsequent surrebuttal testimony stage for Staff and OPC, and a sur-surrebuttal stage for Evergy. Evergy would have us believe that the Commission, while contemplating a schedule where "all parties," including OPC, could file rebuttal testimony, did not envision the surrebuttal and sur-surrebuttal stages as providing the opportunity for Staff and Evergy to respond to OPC's rebuttal. OPC does not believe that the Commission intended, or actually created, a schedule where a party's rebuttal testimony is effectively shielded from scrutiny despite two subsequent surrebuttal avenues existing. Evergy's

fears about not being able to respond to Dr. Marke are unfounded, and its Motion requesting leave is not necessary.

**WHEREFORE**, the OPC responds to Evergy's Motion to Strike Portions of Rebuttal Testimony, asks that the Commission reject Evergy's request to strike portions of Dr. Marke's testimony, and offers, if the Commission believes it proper, to clarify that Evergy has the ability to respond to Dr. Marke's rebuttal testimony just as the procedural schedule already provides.

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 22nd Day of September, 2020, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall