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 Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing It to Purchase, Own, Operate, Maintain and Otherwise Control and Manage an Existing Wind Generation Facility in Oklahoma	)))))))))	Case No. EA-2022-0328

<u>The Office of the Public Counsel's Initial Brief</u>

Respectfully submitted,

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1. Introduction

One hundred and forty-one million dollars.[1] That is the price that Evergy Missouri West ("Evergy West," "EMW," or the "Company") customers have paid since 2015 due to EMW's inability enter into wind agreements that benefit those customers.[2] For years, Evergy West has entered into power purchase agreements ("PPAs") for wind projects, claiming the agreements were economically beneficial for customers.[3] For years, the Company has touted its "green" *bono fides*, while their customers are stuck scrubbing the red from their books. Now, after years of wasting captive customer money on uneconomic wind project PPAs, Evergy West wants to buy an unprofitable wind project and earn a return on a bad investment.

Whether it is on accident or with intent, the Company has shown that its decision-making around generation assets rests on a foundation of unpredictable

[1] Transcript ("Tr.") pg. 327, line 16 to pg. 328 line 2.
[2] *Id*.

asset plans and one (1) exceedingly limited metric. Evergy West uses it's manipulated, ever-changing integrated resource plan ("IRP") to choose a type of asset. Then, EMW looks solely at the levelized cost of energy ("LCOE") and picks the cheapest option of that asset type.

Evergy West has no incentive to seek effective generation for the captive customer base. For years, EMW entered into the uneconomic PPAs to tout "green energy" while protecting shareholders from losing money, but did not receive a return on investment (ROI). Here, shareholders will get protection from the project's generation and economic inefficiency, ROI for that project, and millions in production tax credits (PTCs). The Company's captive customers get to spend a quarter billion dollars over twenty (20) years on an unreliable, undispatchable asset that runs at night, but not in the summer, when they need it most. Plus, the captive customers get the economic risks.

When EMW signed the PPAs, the Office of the Public Counsel ("OPC") did not have the opportunity to prevent EMW from entering agreements that would waste consumer money. Now, the OPC can highlight this asset's inefficiency, the Company's problematic decision-making methods, and the tactics Evergy West is currently employing to convince the Commission that this asset is a good choice. Evergy Missouri West must prove that granting a certificate of convenience and necessity ("CCN") for the Persimmon Creek wind project ("Persimmon Creek") both fulfills the Tartan Factors and is not detrimental to the public interest. However, when shareholders get the benefits of a generation asset and leave captive customers with the risk, the public harm is hard to miss.

Caveat emptor. Let the buyer beware. The buyers—the captive customers—have no power here, they rely on the Commission. Thus, the question remains: How much more captive-customer money will Evergy West be allowed to lose before they are held to account? The OPC urges the Commission to hold electric companies to a higher, customer-focused generation planning standard and deny this CCN.

2. Guide to the Brief

The Commission's *Order Setting Procedural Schedule* filed on December 8, 2022, included a requirement that "[b]riefs shall follow the same list of issues as filed in the case and must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission."[4] . The OPC intends to follow this order. However, the list of issues filed by the parties does not put the remaining issues in this case in an order that is conducive to sound legal analysis. Therefore, while the OPC will address the issues presented in the list of issues filed, the OPC will not address them in the same order that they are presented in that list of issues. Instead, the OPC will break down this initial brief in the order that flows the cleanest, chronologically.

The OPC will first highlight the facts relevant to the central issues. First, breaking down both Persimmon Creek's qualities as a wind farm, and some aspects

[4] *Order Amending Procedural Schedule*, pg. 3 § 3.(d), EA-2022-0328, EFIS Item No. 18.

of the technical environment that pertains to it, as a renewable generation asset. Then, addressing the relevant aspects of the search, sale, and case filing itself. Next, the OPC will address the Tartan Factors need, both physical and as an economic hedge, and economic feasibility. The OPC will move on to discuss the issues with EMW's current resource-specific analysis, and focus in on project-specific analysis requirements for future CCNs. Next, the OPC will address how both Persimmon Creek, and Evergy West's attempt to sell Persimmon Creek as a good generation source, is detrimental to the public interest. Finally, the OPC will explain the various conditions the Commission can put in place that may slow the bleed of captive customers' bank accounts into EMW shareholder pockets if the Commission grants this CCN.

3. The Facts

A. The Wind Project

In August of 2018, GSQ, LLC ("GSQ")[5] began operating a $270,000,000 wind project as part of the SPP grid, Persimmon Creek, located in parts of Woodward, Ellis, and Dewey counties in Oklahoma. Once the project was in operation, the owners of that asset began receiving the production tax credits ("PTCs") that would continue for ten (10) years, until 2028. Persimmon Creek, which spans approximately 17,000 acres, is currently operating in SPP, the regional transmission organization (RTO) of which Evergy West is a member. This project has a nameplate capacity of 198.6

[5] GSQ is a joint venture between Scout Clean Energy ("Scout") and Elawan Energy ("Elawan")

megawatts ("MW") that is made up of eighty (80) wind turbines, seven (7) with a 2.3 MW capacity and seventy-three (73) with a 2.5 MW capacity. The asset's current accredited capacity in SPP is estimated to be approximately ten percent (10%) of its nameplate capacity, or 20 MW. This asset's capacity is expected to be affected by SPP's transition to effective load carrying capabilities ("ELCC") accreditation.

Persimmon Creek has a recorded net capacity factor ("NCF") of 50.5%. This means that of the megawatt hours ("MWh") the project's nameplate capacity can generate in a year, in this case 1,739,736[6], it only produces 878,566.68 MWh. While this metric may seem strong, *when* the wind project is creating that energy counterbalances any benefits that NCF creates. Unfortunately, Persimmon Creek generates the most energy at night, when people are using less energy. Persimmon Creek's generation efficiency is lowest during summer days, when energy need is at its highest, because that is when the wind is not blowing. The Company deals with this exact problem with its other wind project PPAs, creating EMW's generation capacity need in the first place.

Further, Persimmon Creek is neither a dispatchable resource nor a reliable one. This wind project does not have battery storage. Currently, battery storage is both expensive and short-term, holding the stored energy for four (4) hours at most.

B. The Search and the Sale

Throughout Spring 2021, the Company performed and completed an All Source Request for Proposal ("RPF") and, after viewing the results, Ms. Kayla

[6] 8,760 hours per year x 198.6 MW nameplate capacity = 1,-739,736 MWh

Messamore manually changed the Company's IRP inputs in Plexos[7] from solar generation to wind generation by 2024[8].

From October 18, 2021, to November 23, 2021, Evergy Missouri West conducted a wind RFP, resulting in EMW choosing the Persimmon Creek wind project as its best option. Seven (7) months later, the Company filed an *"Intent to File"* notice in this case[9] with the Commission, indicating its intent to obtain a CCN that would allow it to operate, own, and manage Persimmon Creek.

EMW filed an annual IRP update[10] on June 10, 2022, informing the Commission of changes in the Company's resource acquisition schedule from the 120 MW of solar generation in its 2021 IRP to 150 MW of wind generation in 2024. This change resulted from Ms. Messamore manually adjusting the inputs in Evergy West's capacity expansion modeling program, Plexos.[11]

On August 8, 2022, Evergy West entered into a Membership Interest and Purchase Agreement ("MIPA") to purchase Persimmon Creek for $245,700,000 plus working capital adjustments and adjustments for the production tax credit value.[12] The Inflation Reduction Act ("IRA")[13] passed on August 16, 2022,[14] and EMW filed its CCN application two (2) days later.[15] On September 26, 2022, EMW filed a notice of

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[7] Plexos is the program that creates capacity expansion models that are designed to optimize a utility's acquisition of assets.
[8] EO-2021-0036.
[9] Case No. EO-2022-0328.
[10] Case No. EO-2022-0202.
[11] Ex. 6, Messamore Supplemental Direct Testimony, pg. 18, lines 1-5.
[12] *Application* pg. 5, n. 14, EA-2022-0328, EFIS Item No. 2.
[13] Inflation Reduction Act of 2022 Pub. L. 117-169 (Aug. 16, 2022).
[14] *Id.*
[15] Case No. EO-2022-0329.

changes to its preferred resource plan along with its analysis after changing this IRP to reflect its planned acquisition of Persimmon Creek.[16]

On December 6, 2022, Evergy West's new rates went into effect.[17] Evergy West must file the next rate case, required by the fuel adjustment clause ("FAC"), in one (1) to three (3) years. Until Persimmon Creek is added to EMW's rate base, the Company will use the Plant-In Service Accounting (PISA) statute[18] to defer eighty-five percent (85%) of Persimmon Creek's depreciation expense.[19] Moreover, the Company has clearly signaled its intent to keep the PTCs received between the asset's acquisition and its addition to rate base for shareholders to offset regulatory lag.[20]

4. Evergy West Does Need Generation Assets, but Its Captive Customers do Not Need an Uneconomic and Unreliable Resource.

A. Persimmon Creek's Inefficient Energy Generation

As noted in the introduction, while Persimmon Creek does generate energy, the issue is *when* the generation occurs. Historically, Persimmon Creek's peak generation has been at night, because that is when the wind is blowing in western Oklahoma.[21] Persimmon Creek's generation during summer days, when the Company needs generation the most, is low because of the lack of wind.[22]

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[16] Case No. EO-2023-0115
[17] Case No. ER-2022-0130
[18] RSMo § 393.1400.
[19] Ex. 7, Dority Surrebuttal Testimony, pg. 26, lines 8 & 9.
[20] *Id.* at pg. 26, lines 10-13; Ex. 8, Humphrey Surrebuttal Testimony, pg. 13, lines 18 & 19; Tr., pg. 22, lines 20 & 21.
[21] Ex. 104, Luebbert Rebuttal Testimony, pg. 13, lines 3 & 4.
[22] Ex. 201, Mantle Surrebuttal Testimony, pg. 14, line 24 to pg. 15, line 1.

As Ms. Claire Eubanks stated in her rebuttal testimony, electric utilities must ensure that their assets are producing and delivering enough power to meet the demands of consumers.[23] Ms. Messamore stated that the company's capacity need over the next twenty (20) years is planned to meet 100% of the utility's peak *summer* load, plus the twelve percent (12%)[24] planning reserve margin SPP requires of its load-serving utility members.[25] However, again, the summer months are when the load is at its peak, so it is concerning that this new generation asset, which Evergy West is claiming produces the highest benefits for customers, is least effective at that time.

Ms. Messamore did state that Persimmon Creek is still an effective generation source during the summer.[26] When the project is the least efficient, it still has an NCF of thirty (30) to thirty-five (35) percent.[27] However, again, looking at the net capacity factor of a project, even during a limited period of time, does not address the *time of day* during which that energy is being produced. A thirty-five percent (35%) NCF sounds impressive, until that asset's generation is broken down by the hour, showing that energy is generated when no one is awake to use it.[28]

Evergy West is intent on purchasing Persimmon Creek, in part, to meet SPP capacity requirements and consumers' capacity needs[29]. However, because this asset

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[23] Ex. 100, Eubanks Rebuttal Testimony, pg. 3, lines 8 & 9.
[24] Which the SPP is expected to transition to fifteen percent (15%) in summer 2023.
[25] Ex. 6 Messamore Supplemental Testimony, pg. 5, lines 18-22.
[26] Tr., pg. 162, lines 10-12
[27] *Ibid.*
[28] Ex. 104, Luebbert Rebuttal Testimony pg. 48, lines 5-10.
[29] Ex. 3, Messamore Direct Testimony pg. 5 lines 19 & 20.

is dependent upon wind, it only has an accredited capacity of ten percent (10%) of its listed nameplate capacity.[30] Further, because this asset is wind it will provide little energy in the summer, when Evergy West ratepayers most need it.[31]

Because this asset is wind and has been placed in an area with a higher mortality rate for a certain bat species,[32] curtailment is a foreseeable concern, even if it has not happened yet. Mr. Humphrey's response to Staff's concern is that a "technical team ranked Persimmon Creek's environmental attributes 'low' relative to other, speculative options on the RFP short list." [33] EMW's technical team's ranking aside, the Company has been informed of this concern and the possibility of curtailment, but ignore the risk. Further, Evergy West rebukes any suggestion its shareholders bear the possible burden related to its risky project decisions.[34]

B. Persimmon Creek as an Economic Hedge

The Company insists that the Commission must approve this CCN not only to fulfill some of its physical need for capacity, but as a hedge against market forces. However, though Persimmon Creek is being touted as an asset that will allow EMW to rely less on the SPP market, "the biggest risk for wind is it's not there when customers need it" or when market prices are high.[35] If Evergy West's goal is to rely less on the market, then wind is not the most reliable, cost-effective resource. Even

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[30] Ex 6. Messamore Supplemental Testimony, pg. 13, line 13.
[31] Ex. 104, Luebbert Rebuttal Testimony, pg. 13, lines 3 & 4
[32] Ex. 8 Humphrey Surrebuttal Testimony, pg. 8, lines 7 & 8.
[33] *Id.* at lines 9-11.
[34] Ex. 7, Dority Surrebuttal Testimony, pg. 20, lines 11 & 12.
[35] Tr., pg. 306.

taking into account Persimmon Creek's status as a renewable resource protecting it from a future carbon tax, customers and market buyers will be looking for the same thing as Ms. Mantle, "having energy at the time it's needed."[36]

Ms. Messamore has claimed that Persimmon Creek would help offset EMW's exposure to energy prices in the SPP market.[37] However, to be an effective market hedge a resource would have a high energy production when nodal prices are high which typically occurs when there is a high demand among ratepayers. That is not the case for Persimmon Creek.[38]

To make matters worse, energy is generated at Persimmon Creek when the wind is blowing. However, if the wind is blowing, other wind projects across the SPP grid are also producing energy and at a time when load is low.[39] High energy supply during times of low demand cause low or even negative, locational marginal prices ("LMPs").[40] In addition, transmission congestion can drive generation node prices even lower.[41]

C. The Dispatchability Issue

At the center of the problem around Persimmon Creek's economic and generation issues is dispatchability. Dispatchability is the ability to control when a generation resource is producing energy.[42] If an asset is dispatchable, that asset has

[36] Tr., pg 309.
[37] Ex. 9, Messamore Surrebuttal Testimony, pg. 15, lines 5 & 6.
[38] Ex. 201, Mantle Surrebuttal Testimony, pg. 6 line 3 to pg. 7 line 3.
[39] *Ibid.*
[40] Tr., pg. 304 lines 11-19.
[41] Tr., pg. 289 lines 15 & 16.
[42] Ex. 201, Mantle Surrebuttal, pg. 6, FN 7.

the ability to send its available energy into the market when the generation node price is above variable cost.[43] Wind resources' ability to reduce or turn off energy production are their only dispatchable quality.[44] Wind-generated energy's availability, thus its dispatchability, is not determined by market prices, but by whether the wind is blowing.

During the hearing, Ms. Mantle spoke multiple times about Evergy West's need for dispatchable resources.[45] Through the decades, EMW has created the economic and capacity concerns within its generation fleet by signing PPAs and avoiding the addition of a new generation source.[46] To avert captive customer catastrophe, the Company must pause the search for undispatchable resources, and make sure the fleet it owns is economically reliable and dispatchable.[47]

5. Persimmon Creek is not an Economically Feasible Generation Asset *For Ratepayers*

The concept of economic feasibility is really about whether the proposed asset is worth the price a company is paying for it. To that end, EMW has repeatedly hyped Persimmon Creek as a "low-cost" generation source, including seven (7) different times in its opening to this case.[48] In reality, Evergy West means that Persimmon Creek is cheap, in both price and quality. Persimmon Creek is an asset that was built

[43] Tr., pg. 300, lines 24 & 25.
[44] Ex. 201, Mantle Surrebuttal Testimony, pg. 6, FN 7.
[45] Tr., pg. 281 lines 7-9; pg. 283, lines 3-5.
[46] Tr., pg. 257, lines 16-18.
[47] Tr., pg.s 282 & 300.
[48] Tr., pg. 14, line 1; *Id.* at line 2; *Id.* at line 18; Tr. pg. 16, line 20; Tr. pg. 18, line 21; *Id.* at lines 24 & 25; Tr., pg. 22, lines 17 & 18.

for $270 million dollars in 2018[49] and is now being sold for about $245.7 million[50]. Evergy West repeatedly highlights the fact that Persimmon Creek was project with the lowest bid, but rarely speaks on the project's economic efficiency.

To be clear, EMW may see Persimmon Creek as an economically feasible wind resource. However, EMW is not looking at the economic feasibility of this project *for its captive customers*. For a quarter of a billion dollars, Evergy West is purchasing a resource with low accredited capacity[51], that does not generate when customers need energy[52], and is not a good hedge for the energy market[53].

The economic feasibility that concerns the Company is for *shareholders*. Shareholders gain the ability to say they are purchasing a $245.7 million *renewable* asset. All the while, shareholders also get the ability to defer eighty-five percent (85%) of the project's depreciation until it is added into rate base due to PISA that Evergy Wet has elected to take advantage of.[54] Shareholders get an ROI. Finally, if the Commission permits it, shareholders get millions of savings through PTCs until the time that Persimmon Creek is added to rates, in the next two (2) to four (4) years.

Viewing Persimmon Creek as an economically feasible asset equates to viewing a $500 car without a transmission as an economically feasible asset. The seller of that car, in this case Evergy West and its shareholders, focuses on the shiny exterior, while avoiding any discussion around whether the car can move. In return for this sale, the

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[49] Tr. pg. 134, line 20.
[50] *Application*, pg. 4, n. 14, , EA-2022-0328, EFIS Item No. 2.
[51] Ex. 6, Messamore Supplemental Testimony, pg. 13, line 13.
[52] Ex. 201, Mantle Surrebuttal Testimony, pg. 14 line 24 to pg. 15, line 1.
[53] *Id*. at pg. 6 line 3 to pg. 7 line 3.
[54] Ex. 7, Dority Surrebuttal Testimony, pg. 26, lines 8 & 9.

seller gets paid and unloads a relatively useless resource onto its ratepayers, with the Commission providing an assist. The captive customers get burdened with the useless item, wondering how they ended up with a twenty-year burden that appears pretty, but is actually providing more harm than good to customers. If the Commission approves this CCN, all of the risk goes to EMW's consumers and the reward goes to the Company's shareholders, sending a dangerous message to public utilities in the future.

6. Evergy West's Wet-Sand Decision-Making Process Does Not Create a Solid Economic Foundation for Captive Customers.

Evergy West's argument that Persimmon Creek is an economically friendly generation asset relies solely upon its IRP and the asset's LCOE, perhaps with its NCF sprinkled on top. This method of assessment is deeply flawed.[55] Even ignoring Evergy West's "discrete, manual moves"[56] when inserting inputs into Plexos, EMW's IRP process is not a good tool for making generation asset decisions. Specifically, the variability of Evergy West's IRP is an issue.[57] It is difficult to see how the Company can adequately choose a 20-year generation asset based off of a planning method that changes at least annually, if not multiple times a year. While it is important for any company to maintain flexibility in its planning process, EMW's process is so fluid that it essentially eliminates any meaningful forward-looking planning.

[55] Ex. 104, Luebbert Rebuttal Testimony, pg. 6, lines 1 & 2.
[56] Ex. 6, Messamore Supplemental Direct Testimony, pg. 18, line 17.
[57] Tr., pg 383, lines 2-13

The Company attempts to support its decision for this project by narrowing down its RFP options by comparing each asset's LCOE[58]. However, like Evergy West's IRP process, there are multiple issues with this metric's use to choose a generation source. The problem with LCOE as a metric itself is that it does not take into account reliability, accredited capacity, when an asset is generating, dispatchability, and a myriad of other important factors that should be taken into account when choosing a resource.[59] LCOE merely informs the user of the cheapest option based on the asset's cost as well as the amount of energy it produces.

With Evergy West's use of LCOE, specifically, the information used to determine the cheapest asset was itself incorrect.[60] Ms. Messamore stated that Evergy West utilized a "perfect ratemaking"[61] standard when comparing assets' LCOEs.[62] Therefore, Ms. Messamore's assessment did not address the fact that PTCs would go solely to shareholders for the one (1) to four (4) years that Persimmon Creek is not included in rate base. Further, Ms. Messamore failed to include the conclusion of the PTCs in her assessment of Persimmon Creek's NCF, creating an evaluative assumption that this level of generation would continue for the life of the asset.[63] However, that implication is false and the PTCs will last for only about five and a half (5 ½) more years.

[58] Ex. 5, Humphrey Supplemental Direct Testimony, pg. 7 lines 13 & 14.
[59] Tr., pg. 333 line 24 to pg. 335 line 1; pg. 435, line 6 to pg. 437, line 4.
[60] Ex. 103, Luebbert Rebuttal Testimony, pg. 41, lines 2-4.
[61] As Ms. Messamore states in her testimony, perfect ratemaking assumes that all of the costs and benefits derived from an asset flow through a utility's FAC contemporaneously.
[62] Tr., pg. 170 lines 21-24
[63] Tr., pg. 198, lines 9-12 & pg. 482, lines 1-5.

The variability of EMW's IRP process creates an unstable base of support for its conclusions. On top of that variability is an LCOE analysis that ignores several important factors regarding an asset's quality and focuses instead on cost-savings. On top of the issues related to EMW's reliance on its IRP and LCOE analyses, data manipulations have removed any objectivity from the Company's capacity expansion modeling and has created an economic outlook that is significantly more optimistic than reality.

7. Solidifying the Foundation for EMW's Future Asset Decisions Requires Additional Project-Specific Analysis Requirements.

Addressing the problematic nature of the analysis EMW used to choose a generation asset does not, in and of itself, fix Evergy West's project-choosing problem. While it is vital for Evergy West to correctly utilize data tools to choose generation, the Company's limited metrics used to choose its generational asset choice is just as deleterious.

As mentioned during the LCOE discussion, using that metric in order to determine what asset to acquire merely means that the Company is going to choose whatever is cheapest. To further enhance Persimmon Creek's attractiveness, EMW can point to facts that make the project seem wonderful—a 50.5% NCF;[64] a prime location for wind generation;[65] the 198.6 MW nameplate capacity;[66] a zero-marginal

[64] Ex. 2, Humphrey Direct Testimony, pg. 8, lines 6 & 7.
[65] Ex. 6, Messamore Supplemental Testimony, pg. 28 lines 14-16.
[66] *Application*, pg. 3, n. 8, EA-2022-0328, EFIS Item No. 2.

cost fuel source in wind;[67] and the ability to tout the asset's *renewable* status, and more.

However, the NCF does not address when the asset is generating energy. The location, while normally a good source of wind generation, has known environmental curtailments that may occur in the foreseeable future.[68] The nearly 200 MW nameplate capacity does not address the fact that Persimmon Creek's accredited capacity is a mere 20 MW[69] and, with the introduction of ELCC accreditation in the summer of this year,[70] that could get even lower. The low cost of "fuel" is nullified by the asset's inability act as an effective economic hedge for EMW;[71] the $245.7 million price tag;[72] and the extravagant costs required if EMW wanted to upgrade transmission or add storage to increase Persimmon Creek's accredited capacity in SPP.[73]

Finally, the Company is using this asset's renewable status as a distraction from all of the negative aspects of this project. If the Commission is skeptical of this assertion, look no further than Evergy West's pivot on Persimmon Creek's ability to act as a hedge in Ms. Messamore's direct testimony[74] to the benefits of Persimmon Creek being a renewable resource in Ms. Messamore's surrebuttal.[75]

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[67] Ex. 6, Messamore Supplemental Direct Testimony, pg. 21, lines 16 & 17.
[68] Restrictions from this environmental curtailment typically occur at night when Persimmon Creek, a wind generation project, is the most active.
[69] Ex. 6, Messamore Supplemental Direct Testimony, pg. 10 lines 11-13.
[70] Tr., pg. 319, lines 9-23.
[71] Tr., pg. 255, lines 5 & 6.
[72] *Application,* pg. 4, n. 14, EA-2022-0328, EFIS Item No. 2.
[73] Tr., pg. 290, lines 12-14.
[74] Ex. 3, Messamore Direct Testimony, pg. 5, lines 16-19.
[75] *See generally* Ex. 9, Messamore Surrebuttal Testimony.

The fact that Evergy West is finally attempting to acquire its own generation assets after being on the brink of catastrophe since the mid-nineties should be applauded. However, in those years of avoiding generation acquisition it seems Evergy West has forgotten how to take a holistic view of its fleet and the best assets to acquire for customers. In order to get a generation asset that is efficient economically and with energy production, there are several questions the Company must take into account:

When does this asset produce energy?;

> Persimmon Creek produces the most energy at night[76] and when other wind resources are generating, as well.[77] Therefore, *when* this asset runs is a large problem.

Is the energy production dispatchable?;

> Persimmon Creek, a renewable wind project, is not a dispatchable resource.[78]

Is this asset reliable?;

> Persimmon Creek's ability to generate energy depends on when the wind is blowing.[79] Since when the wind blows varies, the asset is unreliable.

What is the *purpose* of this acquisition?;

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[76] Ex. 104, Luebbert Rebuttal Testimony, pg. 13, lines 3 & 4.
[77] Tr., pg. 289, lines 16-18.
[78] Ex. 201, Mantle Surrebuttal Testimony, pg. 4, lines 8-10.
[79] Tr, pg. 288, lines 5 & 6.

EMW claims that it is getting Persimmon Creek as an economic hedge,[80] but it is ineffective in that regard. EMW claims it is getting Persimmon Creek as a way to fulfill their capacity need,[81] but this wind project has only 20 MW of accredited capacity.[82] EMW claims it is getting Persimmon Creek to promote renewable generation in SPP,[83] but Persimmon Creek is an asset that has been operating since 2018 in SPP, so it does not add any new renewable generation.[84]

Are there temporary economic benefits connected to this asset that might skew data results during a certain time period? If so, is the data different enough that the economic viability of this project is put into question?; and

In this case, PTCs "fall[ing] off" of the Persimmon Creek wind project will likely decrease and decrease how active the asset is, but that was not taken into account.[85]

What is the balance of risk retained by shareholders versus captive ratepayers?

For Persimmon Creek, Ms. Mantle said it best "[t]he risk . . . will completely lay on the customers[.]"[86]

Whenever Evergy West enters into a generation agreement, be it a MIPA or a PPA, it must have answers to these questions and must see how this potential

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[80] Ex. 3, Messamore Direct Testimony, pg. 5, lines 16-19**.**
[81] *Id*. at lines 19 & 20.
[82] Ex. 6, Messamore Supplemental Testimony, pg. 10 lines 11-13.
[83] *See generally* Ex. 9, Messamore Surrebuttal Testimony; Tr. pg. 496, line 21.
[84] Tr., pg. 417, lines 10-12.
[85] Tr., pg. 482.
[86] Tr., pg. 271, lines 20 & 21.

generation asset acquisition fits with its current fleet. These questions alone may not be able to address EMWs consistent inability to choose efficient projects, but it is a big start.

8. The Purchase of Persimmon Creek is Not in the Public Interest and is, in Fact, Detrimental to the Interest of the Public.

There are three (3) aspects of Evergy West's argument that demonstrate the true weakness of this generation asset. The first area of concern is around questions relating to the asset sale, itself. The concerning second aspect of EMW's argument is the protest against shifting any risk related to this purchase of Persimmon Creek to shareholders. Finally, EMW's tactics to argue this case, in and of itself.

A. Concerning Sale Facts

The sale of Persimmon Creek to the Company is the first red flag in this case. The sellers here, Scout and Elawan, are independent power producers ("IPP"). As stated in Mr. J Leubbert's testimony, IPPs rely on investing in assets that make a profit, as those entities do not have captive customers to cover profit loss.[87] As Evergy West argued, the IPPs are also not burdened with the requirement to ensure service to every member of the area they cover.[88] Therefore, selling Persimmon Creek, an asset with nearly six (6) remaining years of PTCs, comes down to basic economics. This generation source is not making money.

[87] Tr., pg. 479, lines 22 & 23.
[88] Ex. 9, Messamore Surrebuttal Testimony, pg. 18, lines 22 & 23.

The shareholders at GSQ are not protected by a captive consumer base that must pay them for new assets no matter the asset quality. There is no PISA statute that protects them, there is no ROI provision for the assets they invest in. Any money an IPP receives results from sales of energy to RTOs like SPP. If the generation asset is not producing energy at times that benefit the IPP, then the IPP is not making money, including with the addition of PTCs. The force driving this concerning sale is Persimmon Creek's lack of economic or generation efficiency, which is why it is not in the public interest.

B. Rebuking Accountability

The other concerning aspect, which will be discussed at a greater length in the next section, is the Company's indignant responses to any form of accountability for shareholders. As it stands, all of the benefits related to this wind project are provided for shareholders right away, specifically the PTCs, and at prices above the lost investment caused by regulatory lag. However, the pitfalls of this asset will hit captive customers the hardest.[89] The lack of accredited capacity connected to Persimmon Creek, the unreliability of this asset, and the inability to dispatch generation all come together to create a tornado of economic risk. This asset will not provide protection from SPP's energy market, as it does not generate energy when necessary, and—even if it did provide energy at the correct times—it does not produce enough energy to be an effective hedge.

[89] Tr., pg. 492 lines 6-12.

Ms. Mantle pointed out her request to the Commission during her testimony: she wants the Commission to assess which party is taking on the risk associated with an asset acquisition. "The risk in this case will completely lay on the customers if the Commission approves Persimmon Creek and . . . allows Evergy West to receive PTCs before it goes into rates."[90] However, Evergy West argues against tracking either revenues or PTCs merely because that is not a condition that the Commission has used in the past.

Further, with two (2) other conditions, EMW goes as far as to say that if they were imposed with the approval of a CCN, it would not pursue the project.[91] The two conditions the Company opposes so strongly are 1) shifting potential risk related to future wildlife mitigation efforts to shareholders and 2) holding captive ratepayers harmless if this asset proves to be unprofitable. Evergy West insists that the wildlife mitigation provision is merely "unprecedented" and "unnecessary."[92] However, the Company argues that Staff's proposal of a hold harmless provision "would be unreasonable, unlawful and confiscatory." Notably, both conditions shift some risk from captive consumers to EMW shareholders.

Ms. Messamore's surrebuttal points out that "[t]here is longstanding Commission precedent for determining prudence at the time the decision is made."[93] Then, Ms. Messamore continues, pointing out "[t]he hindsight review of resource

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[90] Tr., pg. 271, lines 20-23.
[91] Ex. 9, Messamore Surrebuttal Testimony, pg. 4 lines 19-21;
[92] Ex. 7, Dority Surrebuttal Testimony, pg. 20, lines 10 & 11.
[93] Ex. 9, Messamore Surrebuttal Testimony pg. 22, line 23 to pg. 23, line 1.

decisions violates the prudence standard and is inappropriate[.]”[94] However, Staff and the OPC are not using hindsight to create these conditions. Instead, Staff and the OPC are actively using the data and information about this wind project that both they and the Company received prior to this hearing ever taking place.

The reason EMW does not want to shift any of the risk related to this project to their shareholders is because the Company *knows* that it is unprofitable and may hit other regulatory snags in the future. When Evergy West is looking for a generation project, there are two (2) stipulations that they have in mind. The first stipulation is to make sure the generation asset will produce *shareholder* profits, to keep the shareholders happy. The second stipulation is to make sure the asset is *renewable* to keep the Commission happy. For the Company, generation that *seems* good and line shareholders' pockets is its central goal. If Evergy West manages to protect customers from arbitrary and expensive acquisitions it is simply coincidental.

The one hundred and forty-one million ($141,000,000) cost to ratepayers is a figure that has come up repeatedly throughout this case.[95] EMW has been able to enter uneconomic PPAs for years, knowing that ratepayers will cover any resulting costs. Because the Company and its shareholders have not been held accountable with those agreements, it now believes the Commission will permit acquisition of an inefficient generation asset and give shareholders an ROI and PTCs. For that reason alone, it is clear that this purchase is detrimental to the public interest.

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[94] Ex. 9, Messamore Surrebuttal Testimony, pg 23, lines 2 & 3.
[95] Tr., pg. 327 line 18 to pg. 328 line 9.

C. Evergy West's Manipulation

The clearest sign that Evergy West is not looking to acquire this asset for the benefit of public interest is the manner members of the Company address legitimate Staff and the OPC concerns. EMW uses a combination of salesman tactics, logical fallacies, and renewable generation bias to respond to legitimate concerns highlighted by Staff and the OPC.

a. Marketing Tactics

In her opening, Evergy's counsel, Ms. Jacqueline Whipple, emphasizes the need to approve this project *now*. For his part, Mr. Jason Humphrey testifies that "the time is now" in a conversation about generation storage. Further, the Company has emphasized the need for the Commission to decide this CCN by April 6, 2023, so much so that the procedural schedule was condensed for the Company's benefit. However, Evergy West's 2022 IRP did not have any resource acquisitions before 2024 until Persimmon Creek was chosen as a project.

The question becomes, what about this project induces the speed requisite? While the Company will insist that a speedy decision is required due to the April 29, 2023, sunset provision, this asset's abundant issues lead to a different conclusion. A common sales tactic for goods is pushing market urgency. Market urgency benefits EMW twofold. One, condensing the timeline to review the proffered sale reduces how much time Staff and the OPC have to review it in its entirety. Two, condensing the timeline to review the proffered sale for the Commission to review CCN details may drive the Commission to make a hasty decision to approve it despite its issues. Evergy

West is choosing projects with this mindset, and allowing its executives to use manipulative sales tactics to push its goals through the Commission.

Continuing to permit this deception, and acting under its influence, will cause the Commission to approve problematic CCNs, which will hurt the utilities' captive customers. Therefore, it is detrimental to the public interest.

b. Logical Fallacies

Throughout this case, Evergy West has focused on two (2) main logical fallacies to discredit Staff and the OPC's legitimate concerns regarding both the asset itself and the Company's method for choosing a new asset. The first fallacy is the "Straw Man" fallacy, where the Company intentionally misrepresents and distorts Staff and the OPCs stated concern to a position that is more comfortable to argue against. The second fallacy is the "Slippery Slope" fallacy, where the Company pushes the narrative that denying a CCN for Persimmon Creek will ultimately result in corporations avoiding renewable generation assets in the future.

Ms. Messamore effectively uses the Straw Man fallacy throughout her surrebuttal, making bold claims such as "Staff implies that a financial need for energy is not a legitimate need."[96] Ms. Messamore also characterizes Staff's claim that Persimmon Creek is not an effective hedge as merely focusing on the fact that this asset is not a *perfect* hedge. Mr. Humphrey assertion is that Staff believes LCOE is not an appropriate evaluation metric.[97]

[96] Ex. 9, Messamore Surrebuttal Testimony, pg. 21.
[97] Ex. 8, Humphrey Surrebuttal Testimony, pg. 16.

However, in extending Staff's positions to these extremes, EMW avoids addressing the legitimate concerns held by Staff and the OPC. The real argument that OPC had put forth by this point was that the Evergy West's financial need did exist, [98] but the conditions surrounding Persimmon Creek did not allow for mitigating revenues to flow to captive customers.[99] Ms. Mantle discussed with this asset's role as an economic hedge is that Persimmon Creek is not an *effective* economic hedge. [100] Finally, there was no argument against using LCOE as a metric. The argument was that the Company is using LCOE alone to choose generation projects rather than assessing each potential fleet addition in a holistic way.[101]

Throughout the hearing, and inherent of Evergy West's arguments against CCN conditions, the implication was that rejecting this CCN would cause public utilities end renewable acquisitions. However, a moment between Ms. Nicole Mers and Ms. Mantle highlighted the real effect that denying Persimmon Creek would have:

> *Ms. Mers*: Do you think rejection of the [Persimmon Creek] application might signal that utilities need to provide better justification for large acquisitions?
>
> *Ms. Mantle*: I would hope that it did.[102]

Evergy claims that holding public utilities accountable for poor renewable generation projects would end investment in renewables. At the same time, the

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[98] Ex. 201, Mantle Surrebuttal Testimony, pg. 3, lines 8-12.
[99] *Id.* at pg. 4, lines 1-5.
[100] *Ibid.*
[101] Tr., pg. 333 line 24 to pg. 335 line 1; pg. 435, line 6 to pg. 437, line 4.
[102] Tr., pg. 309.

Company repeatedly states that the current goal for its own generation fleet is to have a "70% reduction in [carbon] emissions from 2005 levels by 2030" and "achieve net-zero CO2 emissions by 2045."[103] Like Evergy, many other public utilities are seeking investments in the renewable generation market. Setting a standard for owning and operating that renewable generation will not decrease that interest.

In resorting to logical fallacies, EMW is actively working to avoid addressing real questions and concerns related to both the way generation projects are chosen and this generation project in particular. Distorting legitimate concerns to the point that they become illogical means the Company does not answer or address real issues. Evergy West's lack of transparency and casual diminishing of real problems is detrimental to the public interest. EMW's resistance against the imposition of any real standards for renewable generation assets is detrimental to the public interest.

c. "The Renewable Halo"

When EMW boasts about Persimmon Creeks' "renewable" status, it is important to remember that this asset does not add new renewable generation to the Southwest Power Pool ("SPP").[104] When the Company asserts that this asset is the cheapest option, that applies to both its price and its quality.

When all else fails, Evergy West falls back to the argument that Persimmon Creek's status as a renewable asset makes it the right asset. Using the asset's renewable status as a shield, the Company boosts the fact that Persimmon Creek

[103] Ex. 7, Dority Surrebuttal Testimony, pg. 13, lines 7-9.
[104] Tr., pg. 416, lines 7-11.

"aligns with Missouri's renewable energy policies."[105] EMW then uses the wind project's renewable status as a sword during lines of questioning such as Mr. Karl Zobrist's cross-examination of Ms. Claire Eubanks.[106]

The Company hopes that the Commission will take the asset's renewable status and use it to gloss over Staff and the OPC concerns. The response to Persimmon Creek's poor generation history and low accredited capacity is "focusing on the low accredited capacity ignores this asset's benefits, like how it is renewable!" When Staff or the OPC underlines the wind project's poor economic performance, the Company replies, "but the asset has a zero-cost fuel, because it is renewable!" When Staff and the OPC point out potential environmental concerns that may cause curtailment, Evergy West responds with "but this generation source is renewable!"

At the same time, any critique levied at this project is waived off as Staff and the OPC being "anti-renewables." However, throughout the hearing multiple members of Staff and the OPC pointed out that the concerns they were raising did not relate to the asset's status as a renewable resource. Staff and the OPC's expert witnesses even said as much, with Ms. Mantle stating "wind is a great resource."[107] Both RTOs that Missouri utilities are part of, SPP and Midcontinent Independent Operator (MISO), have highlighted utilities' hasty transition to renewable energy negatively effecting grid reliability, which is why SPP is switching to ELCC accreditation in the first place.

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[105] Tr., pg. 15
[106] Tr., pg. 417-421
[107] Tr., pg. 281

Like many of their other argumentation tactics, EMW is using Persimmon Creek's "renewable" status as a diversion from the real issues related to this asset. What's worse, the Company's witnesses all claim that adding Persimmon Creek to the generation fleet will provide customers with "environmental benefits." However, Evergy West customers do not receive any more renewable generation either way. Persimmon Creek is an operational wind-generation asset that already exists in SPP. Approving this CCN effects EMW customers' ability to receive renewable energy generation just as much as denying it will, not at all. The only difference is that if this CCN is approved, captive customers will have to pay more and shareholders will receive an economic windfall. Therefore, the Company's use of Persimmon Creek's asset status is, once again, detrimental to the public interest.

9. While the OPC Firmly Believes the Commission Should Deny this CCN Application, if Approved, Conditions Should be Put in Place to Mitigate Captive Customer Loss.

The position of the OPC is clear, protecting captive consumers requires the Commission to deny Evergy West's CCN application for Persimmon Creek. There is no question that approving this CCN will hurt EMW's ratepayers at the sole benefit of Evergy West shareholders. However, if the Commission does see fit to approve this application, there are some conditions that may mitigate some of the damage this CCN creates.

A. Revenue Tracker

In her filed testimony, Ms. Mantle recommended that the Company track the revenues EMW customers earned due to the operation of Persimmon Creek.[108] The Company's resistance to this condition is notable because Staff and OPC testified that they do not believe that the revenues Persimmon Creek produces will outweigh the costs of this project.[109] Further, multiple witnesses expressed concern regarding the viability of Persimmon Creek's role as an *effective* hedge against the SPP market.[110] Finally, if EMW is planning to request both a return of and a return on shareholder investment, it is important to see the economic costs and benefits this asset created for customers.

Due to Ms. Mantle's request that Evergy West track Persimmon Creek's revenues not being introduced until she submitted surrebuttal testimony in this case, there is not much information about Evergy West's opinion on this condition. What the Company has expressed can be found in Ms. Whipple's opening. In that opening Ms. Whipple asserts that this tracker should not apply because "[t]rackers should apply to costs that are volatile in nature" but that Persimmon Creek's[111] revenues are not sufficiently volatile to meet that standard.[112] However, despite Evergy West's

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[108] Ex. 201, Mantle Surrebuttal Testimony, pg. 2, lines 19-23.
[109] *Id*. at pg. 2, lines 16-22; Tr. pg. 500, lines 12-14.
[110] Ex. 201, Mantle Surrebuttal Testimony, pg. 6 lines 19 & 20; Tr. pg. 491, lines 18-22.
[111] It should be noted that Ms. Whipple stated that EMW's revenues did not meet the volatility requirement, but Ms. Mantle's filed testimony recommended a revenue tracker only for Persimmon Creek, so this was most likely a mere oratorical error.
[112] Tr., pg. 22.

claims, Persimmon Creek's revenue stream is extremely volatile, and will become more unpredictable as more wind generation comes online.

Highlighting yet another expressed concern of Ms. Mantle's, multiple Evergy West witnesses insisted that consumers would be receiving the revenues generated by Persimmon Creek as soon as the asset sale was completed, as those funds would flow through the FAC.[113] However, if the revenues are flowing through the FAC, consumers would only receive ninety-five percent (95%) of that money, with the other five percent (5%) flowing back to EMW shareholders. The Company's intent to flow revenue through the FAC before an asset is added into rate base is highly unusual.[114] Normally, any revenue generated by an asset before it is added to rate base goes 100% towards offsetting the asset's capital cost and saving the customers more money over time.[115] Both EMW's staunch view that Persimmon Creek's revenues would immediately flow to customers through the FAC, and the Company's resistance towards a revenue tracker for this project show where its loyalty lies. Evergy West is not interested in the safety, reliability, or affordability of its utility, but in profits for its shareholders.

C. Moneys Lost and Wildlife Mitigation Provision

Mr. Shawn Lange and Mr. Matthew Young recommended that monies lost due to the loss of PTCs or market energy sales related to curtailment, and upgrades required for resource adequacy and wildlife mitigation efforts be borne by

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[113] Ex. 8, Humphrey Surrebuttal Testimony, pg. 13, lines 12-14.
[114] Tr., pg. 264, line 3; pg. 331, lines 21-23.
[115] Tr., pg. 264, lines 7-14; pg. 332, lines 1-5 .

shareholders.[116] In response to this condition, Mr. Dority hid under the cover of hindsight, stating that the condition was inappropriate because "[a]ll [acquisition] decisions are based upon the information known at the time of the decision."[117]

What Mr. Dority's assertion ignores is the fact that EMW does know about the possible future wildlife mitigation efforts in Oklahoma. The reason Staff and the OPC have knowledge of the possibility of future costs related to environmental issues is because a confidential study that *Evergy West requested*.[118] This study warned about the real possibility of the Company needing to get an Incidental Take Permit ("ITP") or come up with a Habitat Conservation Plan ("HCP") related to a bat species of high concern.[119]

According to the Company, the Commission is not permitted to assess the risk of future wildlife mitigation efforts because Persimmon Creek currently complies with all environmental laws and regulations.[120] However, if Staff and the OPC highlight the wildlife mitigation costs in a future prudence review of Persimmon Creek, the Company has already asserted it intends to claim hindsight.[121] These two (2) positions, taken together, mean that shareholders may not bear the risk of even foreseeable curtailment or upgrade requirements because those policies are not in place at the time the asset changed hands.

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[116] Ex. 7, Dority Surrebuttal Testimony pg. 2, lines 6-9.
[117] *Id*. at pg. 17, lines 13 & 14.
[118] Tr., pg. 128, lines 18-20.
[119] Ex. 8, Humphrey Surrebuttal Testimony, pg. 9, lines 9 & 10; Ex. 7, Dority Surrebuttal Testimony pg. 17, lines 5 & 6.
[120] Ex. 7, Dority Surrebuttal Testimony, pg. 20, lines 11 & 12
[121] *Id*. at pg. 17, lines 12 & 13.

D. Hold Harmless Provision

The Company's most concerning reaction to a condition recommended by Staff was towards the hold harmless provision suggested by Mr. Luebbert. As discussed in his rebuttal testimony, "a hold harmless provision [] would shift some of the risk of an uneconomic outcome back to shareholders and away from the captive customers."[122] In his surrebuttal, Mr. Dority asserted that a hold harmless provision was "[a]bsolutely not" appropriate and called it "both unreasonable and unjust[.]"[123] Ms. Whipple goes further in her opening, calling the condition "unreasonable, unlawful, and confiscatory."[124] It appears that EMW views its duty as beginning and ending with providing their captive ratepayers a utility service, in this case electricity, and the customers are obligated to pay the utility for that service.[125]

However, the Company's simplistic view of the freedoms and duties of a public utility in its relationship with ratepayers is flawed. If the Commission did not have the ability to limit the utilities' recoupment of asset investment, there would be no reason to have prudence reviews. The term "disallowance" would have no meaning in public utility law.

Moreover, if this wind project is as economically favorable as Evergy West attests, then there should not be a concern that this project would require implementation of the hold harmless provision. The Company's intense aversion to this particular condition, along with the wildlife mitigation provision discussed

[122] Ex. 104, Luebbert Rebuttal Testimony, pg. 11.
[123] Ex. 7, Dority Surrebuttal Testimony, pg. 19.
[124] Tr., pg. 23.
[125] Ex. 9, Messamore Surrebuttal Testimony, pg. 18, lines 20-22; Tr. pg. 99, lines 17-19.

above, diminishes EMW's standing as a credible public utility that is simply looking out for their customers.

<u>10. Conclusion</u>

The reasonable expectation for investors in public utilities is two-fold. One (1) those investors should be able to recover their investment on the investor-owned utility ("IOU") asset itself. Two (2) those investors should earn a reasonable return on that investment, which they receive from ratepayers. The risk that a utility investment turns out to be uneconomic should be borne by shareholders, who were able to choose to invest in the public utility choosing that asset.

For years Evergy West has been able to waste ratepayer money, ensuring shareholders were protected as any risk would fall on consumers. For years the OPC has pled with this Commission to hold Evergy West accountable for repeatedly entering uneconomic agreements, avoiding generation ownership, and permitting the SPP grid to become more and more unstable. After years without that accountability, the Company has chosen to raise the stakes. No longer interested in merely entering agreements that cost captive customers money, Evergy West is now seeking approval to earn a return on that cost.

The Company is not interested in adding renewable generation to the SPP grid, Persimmon Creek has existed and run in SPP for nearly five (5) years. The Company is not interested in adding generation assets that provide safe and reliable service to customers. The Company is not even looking for assets that will keep rates affordable for the consumers who rely on them.

What Evergy West cares about is shareholders. EMW knows that the best way to ensure that the Company runs smoothly, and without protest from shareholders, is continuing to put money in investors' pockets. Evergy West further knows that the other requirement to keep investors happy is to ensure that the Company image is positive, is focused on the future, is "green."

The CCN application for Persimmon Creek is the perfect encapsulation of the Company. This asset does not make money effectively. This asset does not make energy effectively. This asset does not advance the movement towards renewable energy effectively. For those reasons alone EMW's CCN application for Persimmon Creek must be denied.

The time has come to hold Evergy Missouri West accountable for its decisions.

WHEREFORE, the Office of the Public Counsel respectfully offers this statement of its position on the issues before the Commission.

Respectfully submitted,

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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 9th day of March 2023.

/s/ Anna Kathryn Martin