

**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 Electric) **Case No. ER-2022-0129**
Service)

In the Matter of Evergy Missouri West Inc. d/b/a)
Evergy Missouri West’s Request for Authorization to) **Case No. ER-2022-0130**
Implement A General Rate Increase for Electric)

STAFF’S REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Reply Brief*, states as follows:

INTRODUCTION

The purpose of a *Reply Brief* is to respond to the arguments made by parties’ opponent. Rather than replying to every argument other party’s make in their initial briefs, having presented and argued its positions in its *Initial Brief*, Staff is limiting its replies to where it views further explanation will most aid the Commission in its deliberations. Therefore Staff will not address each and every sub-issue or argument made by parties. Staff stands on its argument made in its *Initial Brief*, and silence on any argument or position should not be taken as acceptance.

In determining each contested issue, the Commission should be ever mindful that the law places the burden of proof on Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Metro”, “Metro”, or “EMM”) and Evergy Missouri West Inc. d/b/a Evergy Missouri

West (“Evergy West”, “West”, or “EMW”) (collectively, “Evergy” or the “Company”).

Section 393.150.2, RSMo., provides:

At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the . . . electrical corporation . . . and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

In its most basic sense, the burden of proof is “that of establishing the affirmative of the ultimate issue[.]”¹ In practical terms, it means that the Company must prove that rates should be increased and any failure of proof means that the Company loses. This burden never shifts away from the Company.²

-Nicole Mers

II. Sibley AAO and Net Book Value

- A. Was the retirement of the Sibley generating facility before the end of its useful life prudent?
 - i. If no, what if any disallowance should the Commission order?
- B. What is the appropriate value for the regulatory liability from Case No. EC-2019-0200?
- C. What is the amount of unrecovered investment associated with the Sibley Unit Retirements?
- D. What reserve balances should be used for purposes of determining depreciation expense for Evergy West steam production units, consistent with the Commission’s determination of Sibley’s unrecovered investment?
- E. What is the proper amortization period for the regulatory liability related to Sibley?
- F. What is the proper amortization period for the unrecovered depreciation investment from the Sibley retirement?
- G. Should the net book value be included in rate base?
- H. Should the Regulatory liability for Sibley include a rate of return on the undepreciated balance from the time of retirement through the rates effective in this rate case?
- I. Should the unrecovered investment in Sibley earn a weighted average cost of capital return on a going forward basis?

¹ *Been v. Jolly*, 247 S.W.2d 840, 854 (Mo. 1952).

² *Id.*

Staff reaffirms its argument on the issues as presented in its *Initial Brief*. Herein Staff will focus its rebuttal on the issues of the appropriate net book value (NBV) and the inappropriateness of Evergy earning a rate of return or weighted average cost of capital (WACC) on the remaining Sibley investment.

Staff's expert evaluation and examination supports the \$145 million NBV determination.

Staff witnesses testified in their expert opinion the \$145 million is supportable by the record in this case, based upon review of calculations, the data requests, Evergy witness Mr. John Spanos' work papers in both the complaint case and the current rate case, and the depreciation studies.³ The Office of Public Counsel (OPC) flippantly dismisses the testimony in this case provided by Staff's expert witnesses by saying Staff was "somehow convinced".⁴ This statement abruptly brushes aside the description of Staff's process in evaluating and back casting results to check for reasonableness.⁵ OPC does not refute or rebut any of the work Staff witnesses perform, instead states it will "reserve" those arguments for reply brief,⁶ which deprives Staff a fair and full opportunity to respond to claims made. Although Staff is deprived of an opportunity to respond to OPC's criticism of its review of Evergy's work, Staff will note that OPC's witness admitted on the standing that he only had a general understanding of Mr. Spanos' and Mr. Spano's calculations,⁷ did not **specifically review** Evergy's testimony and methodology.⁸ That same witness also could not explain his decisions and methodologies used to determine

³ Tr. Vol. 8, p. 200, lines 15-20 and p. 242, lines 3-7.

⁴ *Initial Brief of the Office of the Public Counsel* ("OPC Brief"), p. 34.

⁵ Tr. Vol. 8, p. 194, lines 16-23 and p. 212, lines 17-20.

⁶ OPC Brief p. 34.

⁷ Tr. Vol. 8, p. 200, lines 15-20 and p. 242, lines 3-7.

⁸ *Id.* at p. 299, lines 13-17.

the different scenarios he used in his own testimony.⁹ In contrast, Midwest Energy Consumers Group (MECG) seems to acknowledge Staff did examine and calculate values, but accuses Staff, a neutral party who unlike any other party in the proceedings advocates for fact based outcomes, and not for the interests of any special group, of manipulating results.¹⁰ That allegation is preposterous, and ignores the common sense notion that a 50 year old power plant that had an initial investment level of \$400 million would retain a net book value of \$300 million.¹¹ Even with improvements, a 2/3 depreciated plant does not make sense.¹² Although allegedly aligned, OPC acknowledges that there is a “gap of information”,¹³ MECG’s brief seems to allege that arguing for any NBV figure that is not MECG’s \$300 million is a direct contradiction to the Commission’s *Report and Order* in Case No. EC-2019-0200, The Office of the Public Counsel and the Midwest Energy Consumers Group, Complainants v. KCP&L Greater Missouri Operations Company.¹⁴ However, the Commission did not order an NBV in that case.¹⁵ The Commission was not required to make that determination at that point, and in that case, much like this one, there were competing positions on the appropriate NBV.¹⁶ It should be noted, that much like that case, the 2018 Evergy rates cases, and the current case, that Staff and Evergy were the only parties to calculate and provide depreciation

⁹ *Id.* at p. 301, line 22 – p. 302, line 2.

¹⁰ *Initial Brief of the Midwest Consumers Group* (MECG Brief), p. 3.

¹¹ Tr. Vol. 8 at p. 139, lines 2-19 and p. 143, line 22- p.144, line 22.

¹² *Id.* at p. 217, line 12- p. 218, line 12.

¹³ OPC Brief, p. 29.

¹⁴ MECG Brief, p. 3.

¹⁵ File No. EC-2019-0200, The Office of the Public Counsel and the Midwest Energy Consumers Group, Complainants v. KCP&L Greater Missouri Operations Company, *Report and Order*.

¹⁶ *Id.* at p. 9.

rates and accounting schedules.¹⁷ Thus, any party claiming to understand and know better than Staff and Evergy how its own accounting schedules or rates were calculated or what was included, when those claims in direction opposition to the producing party's statements, can be easily dismissed. Doubly so in light that these parties cannot be set to have the same expertise in producing accounting schedules and depreciation rates as it historically appears to be outside the norm of their practice and experience.

MECG's claims can also be dismissed as they seem to misunderstand, or misrepresent, Staff's position. For instance, MEC discusses statements Staff witness Keith Majors made in rebuttal testimony, but does not address Mr. Major's clarification on his position, made in surrebuttal and at hearing.¹⁸ However, MECG witness Greg Meyer agrees that one of the benefits of multiple rounds of testimony is the ability to develop and refine positions based on information provided and justifications given or not given for positions.¹⁹ Mr. Majors himself also stepped the Commission through his process in re-evaluating positions to ultimately come to the \$145 million conclusion in direct and surrebuttal.²⁰ MECG misunderstands Staff's position a second time when they state Staff is supporting Evergy receiving a return on the unrecovered investment in Sibley.²¹ As explained in Staff pre-filed and hearing testimony, and addressed again below, Staff does not support Evergy receiving a return on the remaining NBV of Sibley.²²

¹⁷ Tr. Vol. 8, p. 258, lines 17-19.

¹⁸ MECG Brief, p. 7.

¹⁹ Tr. Vol. 8, p. 313, lines 1-6.

²⁰ *Id.* at p. 214, line 25 – p. 218, line 12.

²¹ MECG brief, p. 3.

²² Ex. 218, *Direct Testimony of Keith Majors*, p. 15.

A specific imprudence finding is not required to remove items that would cause rates to not be just and reasonable.

Evergy suggests that since Staff has not suggested imprudence, the Commission should dismiss Staff's recommendation to allow return of, but not on, Sibley.²³ However, this ignores the long standing proposition that

[t]he utility property upon which a rate of return can be earned must be utilized to provide service to its customers. That is, it must be used and useful. This used and useful concept provides a well-defined standard for determining what properties of a utility can be included in its rate base.²⁴

Missouri law is clear that the Commission is within its discretion to not include the Sibley investment in ratebase or otherwise allow WACC or a return.²⁵ The Commission itself has recently recognized this in the recent securitization cases. In File No. EO-2022-0040 In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Qualified Extraordinary Costs and File No. EO-2022-0193 In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Energy Transition Costs Related to the Asbury Plant, the Commission stated the costs and unrecovered investment related to the retirement of Asbury would not be includible in Liberty's ratebase and thus Liberty may not recover a return on those investments.²⁶

The Commission should apply the same logic here, and fairly apportion risk between shareholders and ratepayers by allowing return of but not on Sibley. Evergy's

²³ Evergy Missouri Metro's And Evergy Missouri West's Initial Post-Hearing Brief (Evergy Brief), p. 21.

²⁴ State ex rel. Mo. Office of the Pub. Counsel v. PSC of Mo., 293 S.W.3d 63, 75 (Mo. App. S.D. 2009) (citing State ex rel. Union Elec. Co. v. Pub. Serv. Com., 765 S.W.2d 618, 622 (Mo. App. W.D. 1988).

²⁵ *Id.*

²⁶ *Amended Report and Order*, p. 67.

arguments that “such investment was made on behalf of customers, and that customers in fact benefitted from the Company retiring an uneconomic plant”²⁷ ignores that customers will also have to pay the costs to replace Sibley’s generation.²⁸ OPC witness Dr. Marke discusses increased costs Evergy ratepayers may face due to replacement generation costs or increased purchased power from the Southwest Power Pool (SPP).²⁹ Evergy witness Darrin Ives discusses a capacity contract that West entered into with Metro to meet SPP capacity requirements upon the closure of Sibley.³⁰ It is only equitable that customers not pay for both the return of a retired plant, and the replacement generation for it.³¹ Utilities are not entitled to recover all prudent expenditures in its rates.³² The Courts have found “the PSC has broad discretion to include or exclude expenditures to arrive at rates it deems to be “just and reasonable.”³³ The Commission should exercise that discretion in this case, and deny Evergy’s request for return on the NBV of Sibley.

As a final note, Staff reminds parties and the Commission that Steam Production Plant reserves, depreciation rates, and expense would need to be recalculated for all locations using a different net book value for Sibley, and that no party is sure at this time of what the net effect would actually be on these items.³⁴

-Nicole Mers

²⁷ Evergy Brief p. 22.

²⁸ Ex. 218, *Direct Testimony of Keith Majors*, p. 15.

²⁹ Tr. Vol. 8, p. 291, lines 1-8 and 22-23

³⁰ *Id.* p. 163, lines 12-17.

³¹ Ex. 218, *Direct Testimony of Keith Majors*, p. 15.

³² Spire Missouri, Inc. v. Pub. Serv. Comm'n, 618 S.W.3d 225 (Mo. 2021).

³³ *Id.*

³⁴ Ex. 261, *Surrebuttal Testimony of Cedric Cunigan*, p. 7-9.

IV. Advanced Meter Infrastructure (“AMI”)

Staff reaffirms its argument on the issues as presented in its *Initial Brief*. Evergy stated in its Post Hearing Brief that “[T]he Company has embarked on a thoughtful and prudent approach to deploy AMI technology over time to our customers.”³⁵ Evergy's arguments fall flat on three counts. Orders must be supported by substantial and competent evidence on the whole record.³⁶ Many of Evergy's testimony allegations are not supported by evidence. Evergy made its conclusion based on faulty assumptions. Consequently, customers will pay costs for AMI-Meters and Evergy will benefit from savings. Evergy has not meet its burden in proving all its AMI SD meter replacements were prudent.³⁷ Just and reasonable rates can set on prudent and proper investments and expenses. Further, Evergy cannot earn a return on property that is not used or useful or benefiting its customers.³⁸ Evergy, has replaced operational meters with years of design life remaining for AMI-SD meters with a few extra capabilities. Evergy failed to carry its burden of proving that those benefits justify the additional costs.

Under Evergy’s Proposal, ratepayers will pay for the cost of AMI-SD technology, while Evergy will reap the savings

Customers will pay costs for AMI-Meters and Evergy will benefit from savings.

The first problem with Evergy’s net benefit argument is that in this case, Evergy is asking its ratepayers to pay for the costs of AMI-SD now, while justifying those costs citing

³⁵ Evergy Initial Post-Hearing Brief at pp. 28

³⁶ *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 397 S.W.3d 441, 447 (Mo.App.W.D.2013)

³⁷ § 393.150.2, RSMo (2016) (“At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the [electrical corporation].. . .”) (emphasis added).

³⁸ *State ex rel. Union Elec. v. Pub. Serv. Comm'n*, 765 S.W.2d 618 (Mo. App. W.D. 1988)

to potential future savings that are not reflected in Evergy's revenue requirement calculations.³⁹ Consequently, Evergy's customers would pay the costs of AMI-SD, but customers would not see the supposed savings of AMI-SD in rates.⁴⁰ To the extent Evergy's supposed savings do materialize, Evergy alone would benefit from the cost savings until it files another rate case. Requiring ratepayers to shoulder the costs of AMI-SD while Evergy reaps the future savings is neither just nor reasonable.

Evergy's financial reviews were unreasonable and the cost to customers unjustified.

Evergy's proposed O&M assumed savings, described at pages 28 through 32 of its brief, are not reasonable because they are based on faulty analysis and incorrect assumptions.⁴¹ Evergy cites the testimony of Mr. Caisley for the proposition that Evergy's analysis shows that AMI-SD meters "were at minimum cost neutral to customers."⁴² Contrary to Evergy's assertion, Staff witness Claire Eubanks reviewed Evergy's calculations and found that Evergy's analysis "does not demonstrate that there are net cost savings to the AMI-SD meter rollout."⁴³ Moreover, the assumptions underlying Evergy's analysis are not reasonable.⁴⁴ If Evergy had made more reasonable assumptions in its calculations, Evergy's analysis would have shown significant

³⁹ Tr. Vol. 9 at pp. 419, lines 2-8.

⁴⁰ Id.

⁴¹ Exhibit 262c at pp. 7, lines 11-20 and pp 8, lines 1-14 (Surrebuttal and True-Up Direct Testimony of Claire M. Eubanks)

⁴² Evergy Initial Post-Hearing Brief at pp. 29.

⁴³ Exhibit 262p at pp. 6, lines 6-8. (Surrebuttal and True-Up Direct Testimony of Claire M. Eubanks)

⁴⁴ Exhibit 262p at pp. 7, lines 11-13 and pp. 8, lines 1-3 (Surrebuttal and True-Up Direct Testimony of Claire M. Eubanks)

detrimental costs to ratepayers.⁴⁵ Finally, Evergy's financial review does not consider that the existing AMI meters have useful life remaining.⁴⁶

Evergy contradicts its own arguments

Evergy contradicts its own arguments in several locations. For instance, in citing customer benefits of AMI-SD to customers at page 35, Evergy points out that "Evergy still complies with every aspect of Chapter 13 rules." Yet at page 30 of its brief, Evergy argues that for customers to "fully access the benefits of AMI-SD technology, it will be necessary to obtain a waiver of the Chapter 13 rules that require a premises visit for a disconnection." The rules Evergy wishes to waive pertain to customer protections.⁴⁷ In other instances, Staff has recommended waiving chapter 13 regulations for companies that had agreed to stipulations, but with significant notification requirements put in place to protect customers in the absence of the Chapter 13 in-person notice requirements.⁴⁸ Evergy is still subject to Chapter 13 rules so its customers are not receiving the purported cost savings due to the disconnect features they are currently paying for.⁴⁹

Evergy Raises Arguments not Supported by Evidence

Evergy's claims are unsubstantiated in evidence. Evergy cites no record evidence at page 34 of its brief to justify its assertion that it discussed its plan with both Staff and

⁴⁵ Id. at pp. 9, lines 14; exact figures are at 262c at pp. 9, line 11 and Schedule CME-s1C.

⁴⁶ Id. at pp. 6, lines 15-17

⁴⁷ Tr. Vol. 9 at pp. 404-406, lines 11-6.

⁴⁸ Id.

⁴⁹ Evergy Initial Post-Hearing Brief at pp. 30

OPC in at least one meeting regarding pandemic payment plans and relief.⁵⁰ Regardless, whether or not Evergy discussed those plans does not demonstrate in any manner why Evergy's plans to prioritize customers in arrears for meters with remote disconnect capability was proper. Nothing in Evergy's brief suggests that Staff agreed with Evergy's strategy to focus on remote disconnect capabilities for low-income customers.

Similarly, Evergy cites no record evidence at pages 34 through 35 of its brief to support its assertions about the number of customers in arrears after disconnection moratoria were concluded, nothing to support its assertions about what drives "service order volume," and nothing to support its assertions about savings from avoiding a "truck roll." In summary, Evergy's arguments here are not based on competent and substantial evidence on the record.

Evergy is responsible for its records.

Evergy did not adequately explain why certain meters tagged as unknown were replaced. Evergy indicated that they were unable to provide accurate information to Staff because their field personnel failed to properly document the reasons for meter replacements and due to limitations in their PCAD.⁵¹ Evergy sought to recover for AMI meters that were discarded before they failed. Staff requested records for meters tagged as unknown in order to make recommendations to the Commission based on credible evidence. Evergy is seeking recovery for AMI meters that were replaced, and therefore no longer used and useful. Because Evergy failed to submit records explaining why all meters were replaced, Staff is forced to propose a disallowance. Where Evergy personnel

⁵⁰ Id. at pp. 34

⁵¹ Evergy Initial Post-Hearing Brief at pp. 33

are unable to properly document and justify meter replacement, the consequences of that failure must be borne by Evergy and not its ratepayers.

Conclusion

Thus, the Commission should apply a disallowance of (\$6,321,846) from Evergy Missouri Metro's and (\$2,957,124) from Evergy Missouri West's plant account 381, and a corresponding reserve adjustment of (\$781,163) and (\$288,367)⁵² to adjust the revenue requirement agreed to by parties in the four stipulations and agreements, approved by the Commission on September 22, 2022.⁵³ Evergy cannot earn a return on property that is not used or useful or benefiting its customers and failed to meet its burden of proof showing that the replaced meters are just and reasonable.

-Eric Vandergriff

V. FUEL ADJUSTMENT CLAUSE

HYDRO PPA IS NOT USED AND USEFUL OR JUST AND REASONABLE, AS IT IS NOT NEEDED NOR PROVIDES ANY BENEFIT TO MISSOURI CUSTOMERS.

In determining the rates that Evergy Metro may charge its customers, the Commission is required to determine that the proposed rate is just and reasonable. The property upon which a rate of return can be earned must be utilized to provide service to its customers. That is, it must be used and useful. This used and useful concept provides a well-defined standard for determining what properties of a utility can be included in rate

⁵² Exhibit 285; Eubanks Work Papers and Exhibit 282 (True-up Rebuttal Testimony Staff Accounting Schedules for Evergy Missouri Metro) this issue. EFIS Item number 299 in ER-2022-0130, True-up Rebuttal Testimony Staff Accounting Schedules, prepared August 25, 2022.

⁵³ *Order Approving Four Partial Stipulations And Agreements*, issued September 22, 2022.

base.⁵⁴ Evergy Metro has the burden of proving that its proposed increase is just and reasonable.⁵⁵

Evergy claims that Mr. Shawn Lange testified that he included the Hydro PPA in his fuel run workpapers in the 2018 EMM rate case.⁵⁶ This is a misstatement, as Mr. Lange clearly stated that he did not prepare an EMS fuel run nor could he speak to an EMS run in that case.⁵⁷ EMS is Staff's Exhibit Management System, which is done/kept by auditing and the EMS producing Staff's accounting schedules and overall revenue requirement. Mr. Lange's fuel model results are provided to auditing and additional adjustments are made to it by auditing. The EMS fuel adjustments are determined by Mr. Lange's fuel model as well as adjustments made by Auditing. Even though Mr. Lange prepared a fuel run as part of his fuel model, he did not prepare the EMS run/accounting schedules, so he could not speak to what was or was not included.

Mr. Shawn Lange of Staff testified at the hearing that he performed a fuel model and that Evergy Metro's generation exceeded their load requirements as modeled with the Hydro PPA and would still have generation in excess of its load requirements without the Hydro PPA.⁵⁸ He further testified that he prepared the same type of fuel model in this case as he did in the previous case, which would indicate that Evergy Metro's generation exceeded their load requirements as modeled with the Hydro PPA and would still have generation in excess of its load requirements without the Hydro PPA.⁵⁹

⁵⁴ *In Re Missouri Gas Energy*, 256 P.U.R.4th 250 (Mar. 22, 2007).

⁵⁵ § 393.150.2, RSMo.

⁵⁶ Tr. 13, pp.. 979-980.

⁵⁷ *Id.*

⁵⁸ Tr. 13, pp. 975-977.

⁵⁹ *Id.*

Mr. Lange further testified that Staff prepared a model that includes certain levels of forced outages and planned outages in Staff's fuel model. When asked if the Nebraska Hydro PPA would benefit the grid, Mr. Lange testified that the modeled costs for the hydro is in excess of the revenues that Staff modeled for the Hydro PPA.⁶⁰ Therefore, the Hydro PPA was not needed to provide generation or use by customers even with planned and potential outages.

Evergy Metro only states that the Hydro PPA should be included in its general rate case, as it allegedly was fully included in the cost of service in the rate cases filed in 2014 (ER-2014-0370) and 2016 (ER-2016-0285), and that the settlement agreement entered into in 2018 did not exclude recovery of the contract in base rates. Then they state in their brief "the underlying workpapers that produces the FAC tariff and the FAR tariff calculation that happens every six months demonstrates the inclusion of the Hydro PPA in base rates."⁶¹ Evergy also claims that Staff's own workpapers in the current EMM rate case show that EMM must be compensated for the Hydro PPA as it is used to serve load.⁶²

Evergy's statement in its brief that the tariff says the Hydro PPA is included in the base rates⁶³ is thwarted by Evergy's own witness, Ms. Nunn; wherein, she states there is nothing in the tariff she filed that says the Hydro PPA is in the base.⁶⁴

⁶⁰ Tr. 13, p. 982.

⁶¹ *Id.*, pp. 924-925.

⁶² Evergy Missouri Metro's and Evergy Missouri West's Initial Post-Hearing Brief, p. 38; and Ex. 335.

⁶³ *Id.*

⁶⁴ Tr. 13, p. 923.

As stated previously, Staff did not state in its workpapers that EMM must be compensated because the Hydro PPA is used to serve load. In fact, the model stated that Evergy Metro's generation exceeded their load requirements as modeled with the Hydro PPA and would still have generation in excess of its load requirements without the Hydro PPA. Just because EMM may have placed the Hydro PPA on the grid and may be used, it is being placed on the EMM grid that is already over-generating; and, therefore is in further excess and not needed to serve Missouri customers. This is not just and reasonable, as it is not useful or needed for Missouri customers.

This Hydro PPA is not used and useful to Missouri customers as Missouri customers are not receiving a service or benefit from it. Staff recommends that the Commission not include the Hydro PPA in Evergy Metro's base rates or flow through its FAC.

PREVIOUS RATE CASES AND BLACKBOX AGREEMENTS ARE NOT PRECEDENT

Evergy continues to rely on 2014, 2016, and 2018 rate cases to bolster this current rate case, by stating: "the Hydro PPA should be included in its general rate case, as it allegedly was fully included in the cost of service in the rate cases filed in 2014 (ER-2014-0370) and 2016 (ER-2016-0285), and that the settlement agreement entered into in 2018 did not exclude recovery of the contract in base rates." The 2014 and 2016 cases were already decided and do not set precedent in this matter. The 2018 matter was a "black box" settled matter and again does not set precedent in this matter. In fact the 2018 settlement agreement clearly states that the agreement does not set precedent and is not to be used in future proceedings as precedent.⁶⁵ Jessica Tucker of Evergy also admitted

⁶⁵ Tr. 13, pp. 921-922.

that the 2018 Agreement says no signatory shall assert the terms of this agreement as a precedent in any future proceeding and that Evergy was a signatory on that Agreement.⁶⁶

Evergy Metro has not met their burden of proving that the inclusion of the Hydro PPA is just and reasonable. In fact, it is quite the opposite as this Hydro PPA has been shown by Staff and OPC that is not useful nor needed to provide service or benefit to Missouri customers. Again, this Hydro PPA was entered into to meet a Kansas requirement and not for a Missouri requirement. Kansas customers may receive some benefit from this Hydro PPA; however, Missouri customers do not. To include the Hydro PPA in Evergy's rate base would be unjust and unreasonable.

-Scott Stacey

Plant in Service Accounting ("PISA") deferral

26. If the Commission allows deferment of the FAC costs in Case No. ER-2023-0011, should that deferral be recovered in this rate case?

a) If yes, how would it be treated?

Staff's argument on appropriate treatment of the FAC costs at issue is contained in its briefing in Case No. ER-2023-0011.

XVIII. Rate Design/Class Cost of Service

In its Initial Brief, Evergy states,

The Company's Rate Modernization Plan strives towards key rate design objectives which include, but are not limited to, cross jurisdiction alignment, rate simplification, and developing meaningful price signals. The Rate Modernization

⁶⁶ Id., p. 931.

Plan is part of a broader strategy by the Company that considers customer choice, customer satisfaction, simplification, efficiency, and a number of other goals.⁶⁷

Staff agrees that this case should be taken as an opportunity to modernize the rate design of both EMM and EMW, but disagrees with the Company's approach.

While Evergy wishes to continue implementing ToU rates solely on an opt-in basis.⁶⁸ Evergy asserts that Staff's proposed low-differential ToU rates "defeat the fundamental purpose of a TOU rate" and "would not send any meaningful price signal to a customer."⁶⁹ As stated in Staff's Initial Brief, Staff's goal with low-differential ToU rates is to introduce all customers to the complex concept of ToU rates with a plan to implement rates with larger differentials in the future.⁷⁰ Staff does not disagree that that its proposed rates are not likely to change consumer behavior, but, at the outset, that is not the goal. Staff does not agree with the Company's concern that low-differential ToU rates are risky and likely to lead to customer confusion.⁷¹ Rather, Staff hopes to introduce ToU rates to customers who might not have otherwise elected them without large increases to their bills.

Some policy makers may view short-term absolute bill reductions as a goal of time-based rates. However, for a regulated utility, those short-term bill reductions will be incorporated into a future rate case as reduced billing determinants, and the rates will be factored up to negate the bill reductions that exceeded avoided revenue requirement.

⁶⁷ *Evergy's Initial Brief*, p. 61.

⁶⁸ *Id.* at p. 68-69.

⁶⁹ *Id.* at p. 72.

⁷⁰ *Staff's Initial Brief*, p. 32-33.

⁷¹ *Evergy's Initial Brief*, p. 75

The only revenue requirement that can reasonably be expected to be avoided is that associated with energy acquisition at wholesale, so it is not reasonable to transfer additional allocated costs from non-participants to participants. Non-participating ratepayers should not bear any cost in the form of avoided revenues or otherwise from these non-cost-based optional rate schedules.⁷²

In its Initial Brief, Evergy points to the fact that they were the only party to these cases that completed a full CCOS study as a primary reason to support their proposed \$16.00 residential customer charge.⁷³ However, as explained by Staff witness Sarah L.K. Lange,

A CCOS Study is a guide, and you shouldn't try to set customer charges down to the penny based on CCOS results...because of the rate structure and rate design changes contemplated in this case, customer impact considerations indicate it would be reasonable to increase the customer charge, so that the proportion of residential revenue that is recovered through the customer charges stays about the same.⁷⁴

Ms. Lange continues to explain why, even if it were cost-justified, a \$16.00 would not be reasonable in this case:

Given the intra-class residential rate redesigns recommended by Staff and Evergy, and the expectation that the residential classes will receive an above-average rate increase, it is reasonable to limit the residential customer charge to the percentage of residential class revenue increase. Staff does not oppose maintaining

⁷² Ex. 243, *Rebuttal Testimony of Sarah L.K. Lange*, p. 45.

⁷³ *Evergy's Initial Brief*, p. 65

⁷⁴ Ex. 265, *Surrebuttal Testimony of Sarah L.K. Lange*, p. 32.

consistency between the EMW and EMM residential customer charges, even if the applicable residential rate increases differ. Rounding to the nearest quarter will likely ensure this consistency, but Staff is not opposed if further adjustment is required to achieve consistency between EMM and EMW.⁷⁵

Staff's recommended residential customer charge calculation takes into consideration multiple factors, including rate design in this case as a whole, the fact that CCOS studies should not be viewed in vacuum, and Evergy's desire for constancy between EMW and EMM rate payers.

-Casi Aslin

XXIII. Subscription Pricing Pilot Program

1. Should the Commission approve the proposed Subscription Pricing Pilot Program?
2. Should the Commission grant Evergy's request for variances to Chapter 13.020 Billing and Payment Standards, which the Company states is needed to implement Evergy's proposed Subscription Pricing Pilot Program?

As presented in its *Initial Brief*, Staff recommends the Commission reject the Subscription Pricing Pilot Program and the associated variances.

Netflix and Gold's Gym do not have captive customer bases, and are inappropriate business model analogies.

Evergy starts its brief describing the subscription models of several competitive, unregulated profit driven businesses to justify its request for the subscription pricing pilot.⁷⁶ This comparisons fall flat however. Evergy is a monopoly that has a duty to serve

⁷⁵ *Id.*

⁷⁶ Evergy Brief, p. 77-78.

and provide necessary and essential services.⁷⁷ Evergy does not need to offer bundles, flat pricing, or other deals to compete with other providers of service.⁷⁸ So Evergy's statistics about the percentage of customers on subscription plans for non-essential service is a red herring.⁷⁹ Evergy has 100% of its relevant customer market share.⁸⁰ Besides Evergy comparing non-essential, non-necessary services like gym memberships and movies to heating, cooling, and power,⁸¹ Evergy fails to distinguish the differences in servicing power versus gym memberships, Netflix, or even telephone service.⁸² As Staff's expert Sarah Lange explains, "electricity pricing has a strong-time based component, seasonal component, and a capacity component," making other analogies inappropriate.⁸³ After all, Netflix does not need to pay actors more in the summer versus the winter, Gold's Gym isn't more expensive during the morning versus the late evening, and telecomm companies did not need to purchase minutes from each other if usage was high.⁸⁴ Evergy's reliance on non-regulated, non-utility business models should be disregarded.⁸⁵

Other utility offerings can be distinguished from Evergy's and are not persuasive.

⁷⁷ Tr. Vol. 10, p. 556, line 24 – p. 557, line 3.

⁷⁸ *Id.*

⁷⁹ Evergy Brief, p. 77-78.

⁸⁰ Tr. Vol. 10, p. 649, lines 10-13.

⁸¹ *Id.* line 17- p. 650, line 3.

⁸² *Id.* at p. 577, lines 1-16.

⁸³ *Id.*

⁸⁴ *Id.* p. 599, lines 15-24.

⁸⁵ *Id.* p. 643, line 20- p. 644,

Evergy next tries to justify the program request by repeating the testimony of paid consultant Ryan Hledik.⁸⁶ Evergy discusses some other utilities that offer subscription programs, but fails to note some important distinctions.⁸⁷ For instance the Xcel program that Mr. Hledik touted at hearing⁸⁸ is more rightly is considered a time of use (TOU) program. As OPC witness Dr. Geoff Marke explains,

Xcel Energy, which I would consider is a fairly progressive utility, that example is so far different than the one we're talking about here. That example is really limited to just a meter for EV cars. That's it. Not the EV on the home – not the meter on the home on your consumption but just the EV cars. That's designed really just to have customers use energy during non-peak periods. Again, not an issue here. There's nothing temporal about what we're doing.⁸⁹

That is nothing like the unlimited energy usage program Evergy advertises.⁹⁰ The other states shown on Evergy's map aren't necessarily advocating the same strategies and policies such as the Missouri Energy Efficiency Act (MEEIA) that Missouri has.⁹¹ The following exchange with OPC witness Dr. Marke highlights the differences between Missouri's policy goals and the states implanting subscription pricing plans.

Q.- Are you also familiar with his testimony,⁹² and I believe it was also mentioned today at the hearing and even in the opening statements, the map of the other states and the similar programs to this around the nation?

A.- Yeah.- I'm looking at it now on page 7 of his testimony.- That's the same map.

Q.- Yes.- Are you aware of any trends or contexts that would make this program inappropriate for the state at this time?

A.- Well, I mean, let's look at that map.- What you see is a concentration largely southeast states. You'd have a handful of Duke Energy related states. I think Mr. Hledik characterized it as two buckets. There's a legacy bucket and then there's an adder bucket.- Legacy bucket is largely your southeast utilities right there, your Georgia Power, your Alabama Power.- These are large coal-generated, large nuclear, large huge

⁸⁶ Evergy Brief, p. 78.

⁸⁷ *Id.*

⁸⁸ Tr. Vol. 10, p. 522, line 15-p. 523, line 8.

⁸⁹ *Id.* at p. 606, lines 4-12.

⁹⁰ *Id.* at p. 638, lines 19-22.

⁹¹ Evergy Brief, p. 79.

⁹² The testimony of Ryan Hledik.

capital investment intensive utilities that are not winning any Triple E awards, I'll tell you that, in terms of energy efficiency or push for that. If you look at trends across the United States, you'll note that there is no western states that are utilizing this. There's no eastern states that are utilizing this.⁹³

States with strong renewable or energy efficiency goals are not advocating for similar programs.⁹⁴

Another consideration is the timing aspect of when those legacy programs started and now. In references to considerations of Covid and current economic conditions, Dr. Marke agreed that those more recent developments should give the Commission pause when evaluating this program.⁹⁵ He further explains those legacy utility subscription programs in other states did not just predate Covid and recession concerns, stating, "Timing definitely matters. I mean, the legacy programs that we're talking about have been in place for decades I mean really that predate a lot of what we're talking about here in terms of grid modernization, a more carbon -- less intensive carbon environment. So yeah, timing matters."⁹⁶ The Commission should not be persuaded by what utilities offer in states with dissimilar conditions or programs to Missouri's environment.

Subscription Pricing is contrary to conservation and energy efficiency pursuits.

Evergy dedicates a portion of its brief to discussing its belief "Subscription Pricing Pilot Program May Facilitate Energy Efficiency and Sustainability Goals."⁹⁷ Evergy caveats with *may*, because there is no evidence in the record this would enhance energy

⁹³ Tr. Vol. 10, p. 605, line 3-p. 606, line 2.

⁹⁴ *Id.*

⁹⁵ *Id.* p. 607, lines 1-10.

⁹⁶ *Id.*

⁹⁷ Evergy Brief, p. 82.

efficiency efforts at all.⁹⁸ In fact, there is overwhelming evidence that it would undermine these efforts. For instance, OPC witness Dr. Marke explains how Evergy's proposal would actually discourage energy efficiency programs in the below exchange.

Q.-To the extent that that program is currently being offered, would it be more enticing to a customer on what I'll term traditional rates or to a customer on subscription rates?

A.-Traditional rates most definitely.

Q.-Why is that?

A.-Your payback period. Think of it this way. Whether it's a thermostat or an HVAC or anything else, it's really difficult, first of all, I can't stress this enough. If I were to get an Energy Star HVAC in my house, I know intuitively that okay, maybe not intuitively, I know that, you know, if given my current consumption over a long enough period, say, five, six, seven years, it will pay for itself. Right? The problem is I might have to drop \$25,000 to go ahead and install that correctly and to get that up and running. That's a lot of money for most families. That's a huge investment. Most families will wait until that HVAC actually fails before they actually put something in operation. If I go to subscription pricing to a fixed price where I'm guaranteed that I'm going to get a certain, whatever, it doesn't matter how much energy I consume I'm going to pay this fixed fee, why would I go ahead and get an Energy Star? Why would I drop the additional ten grand or whatever to get the best model, the most efficient model? I'm going to pay the exact same dollar amount regardless. Now, Mr. Hledik says that well, we would rebase it a year from now. I tell you, a year from now I'll probably just go ahead and drop off the rate. I'll go on to something else, if I'm really that savvy about this. But at a minimum I won't buy it, I won't purchase that stuff. So when we look at cost effective test under M[ET]AA, when we look at -- one of the principles that we look is what's that payback period, what's that payback period for an investment, right, when my return on my investment. And you're not seeing that with subscription pricing. It's the same fundamental argument we have, and you're going to hear this tomorrow when we talk about the customer charge, that the customer charge is an automatic fixed fee that you're going to pay every month. Well, if we just jack that customer charge up to save 40 bucks or 50 bucks, which is not out of the realm of issues or examples in the past, you're just diminishing that variable component which means that I've got less incentive to be more energy efficient. So having some consistency, everything is interdependent. So rate design, rate offerings are very interdependent with these program offerings that we're having simultaneously. The company is going to come up, you know, a year from now or within the next year for its next M[ET]AA application. I guarantee, I mean, if this were an approved rate, if we were moving toward subscription pricing, we would need to reevaluate how we look at M[ET]AA and how that makes sense with supporting a program where you're getting these muted price signals. It would impact everything. So, yes, traditional rates.⁹⁹

⁹⁸ Tr. Vol. 10 at p. 604, lines 3-5.

⁹⁹ Tr. Vol. 10, p. 617, line 14 – p. 619, line 23.

It is important to keep this in mind when evaluating Evergy's argument about the design of its energy efficiency incentive in its brief.¹⁰⁰ As Evergy describes, if a customer's usage does not increase, that meets the conservation goal and is rewarded with the return of the customer "behavioral usage adder".¹⁰¹ But as OPC witness Lisa Kremer explains, this can hardly be considered conservation.

Efficiency should be about working to reduce consumption, understanding your consumption, let's see, reducing waste, maximizing productivity, and I don't think that that kind of a giving a customer back a behavioral usage adder for doing the same thing is really a very clear signal about what true efficiency is when it comes to electricity.¹⁰²

Lastly, Evergy can and does offer demand response, smart thermostats, and other energy efficiency programs without this subscription program.¹⁰³ Staff will note however that Staff and other stakeholders like OPC have raised concerns about how Evergy utilizes its demand response programs.¹⁰⁴ As Evergy may not currently be utilizing its current demand response in the most effective and prudent way even with MEEIA incentives like the earnings opportunity, Staff is not hopeful that demand response will be leveraged effectively or efficiently in this context.

Non-participants will not be isolated from impacts of Evergy's program.

Evergy in its briefing makes the claim that "non-participants will be virtually unaffected by the subscription pricing pilot because any net changes in revenues (positive or negative) resulting from the subscription pricing pilot will be borne by Evergy's

¹⁰⁰ Evergy Brief, p. 83.

¹⁰¹ *Id.*

¹⁰² Tr. Vol. 10, p. 653, lines 4-10.

¹⁰³ *Id.* at p. 580, lines 18-21.

¹⁰⁴ *Id.* at p. 612, lines 17-22.

shareholders.”¹⁰⁵ However, this statement ignores the interplay of how usage impacts utility costs, and how those cost increases flow through rate adjustment mechanisms.¹⁰⁶ Participating customers increasing usage increases costs that flow through the fuel adjustment clause (FAC) or the renewable energy standard rate adjustment mechanism (RESRAM).¹⁰⁷ However, as the participating customer’s bill is not changed nor trued up during the 12 month plan term, essentially the subscription pricing customer gets to shift a portion of the costs Evergy incurs to serve them onto all non-subscription customers.¹⁰⁸ Not only are non-participants not held harmless, they face unreasonable prejudice or disadvantage, which violates the prohibition against discriminatory rates. The Courts have found “the Commission lacks statutory authority to approve discriminatory rates,”¹⁰⁹ under 393.130.3. Because the subscription pricing pilot would grant a substantial and unreasonable preference or advantage to participants and unreasonable prejudice or disadvantage to nonparticipants, the rate would therefore violate the prohibition on discriminatory rates.¹¹⁰ Another legal hurdle the subscription program faces is that it section 393.1700 requires that any financing order issued by the commission for securitization include:

A requirement that, for so long as the securitized utility tariff bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of securitized utility tariff charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission approved rate schedules except for customers receiving

¹⁰⁵ Evergy Brief, p. 81.

¹⁰⁶ Tr. Vol. 10, p. 574 line 1 – p. 575 line 7.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ State ex rel. City of Joplin v. PSC of Mo., 186 S.W.3d 290, 296 (Mo. App. W.D. 2005).

electrical service under special contracts on August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this state. Currently, it appears customers would be bypassing the securitization charge as part of this program.¹¹¹

For all of the foregoing reasons Staff has provided in its testimony on this issue, and in its *Initial Brief* and this *Reply Brief*, the Commission should reject the subscription pilot program and the associated variances.

-Nicole Mers

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will issue its findings of fact and conclusions of law, determining just and reasonable rates and charges for Evergy as recommended by the Staff herein; and granting such other and further relief as is just in the circumstances.

¹¹¹ Tr. Vol. 10 p. 575 lines 8 – 16.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on October 21, 2022 to all counsel of record.

/s/ Nicole Mers