
**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) **File No. EF-2022-0155**
West for a Financing Order Authorizing the)
Financing of Extraordinary Storm Costs)
Through an Issuance of Securitized Utility)
Tariff Bonds)

REPLY BRIEF OF STAFF

Respectfully Submitted,

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REPLY BRIEF OF STAFF

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REPLY BRIEF OF STAFF

COMES NOW Staff of the Missouri Public Service Commission and submits the following Reply Brief in reply to the initial briefs of Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy,” “EMW,” or “Company”), the Office of the Public Counsel (“OPC”), Velvet Tech Services, LLC (“Velvet”), and Midwest Energy Consumers Group (“MECG”) pursuant to the schedule previously ordered by the Commission.

SUMMARY

Missouri policy and precedent support sharing of costs between EMW and its ratepayers for Winter Storm Uri costs.¹ Courts have affirmed previous Commission decisions that “economic risks are part of the utility business,” and “even the risk of economic catastrophe may be properly assigned to owners of the utility rather than to its customers.” *State ex rel. Union Elec. Co. v. Pub. Serv. Comm’n*, 765 S.W.2d 618, 626 (Mo. App. W.D. 1988).

The record in this case supports involvement by a Commission Finance Team consisting of designated Commission Staff representative(s) and financial advisors advised by bond counsel.

¹ Initial Brief of Staff, pp 5-9.

Every expert witness who testified on the issue supported recovery of the Winter Storm Uri securitized utility tariff charge from all applicable customers on the basis of loss-adjusted energy sales.

ARGUMENT

Rather than replying to every individual statement made by the other parties in their initial briefs, having presented and argued its positions in its initial brief, Staff is limiting its replies to those matters which Staff believes will most aid the Commission. Accordingly, unless expressly stated below, the Commission should not infer that Staff agrees with an argument raised in another party's initial brief.

1) What amount of qualified extraordinary costs caused by Winter Storm Uri should the Commission authorize EMW to finance using securitized utility tariff bonds?

As set forth in Staff's initial brief, the Commission should authorize EMW to finance an estimated \$303,040,898 using securitized utility tariff bonds.² Unlike EMW, which erroneously applied a single jurisdictional factor,³ this amount reflects Staff's application of the updated jurisdictional allocation factors to the fuel and purchased power amount and to all of Staff's adjustments to the total fuel and purchased power costs.⁴ The estimated costs Staff recommends be included in the bond financing are as follows:

² Bolin Surrebuttal at page 5, lines 19-21; page 6, Table 1; and Tr. Vol. 3 page 331 line 18 through page 332 line 7. Fortson Surrebuttal at page 1, lines 15-17.

³ Fortson Rebuttal at page 9, lines 11-21.

⁴ Bolin Surrebuttal at page 5, lines 12-15.

Staff's Current Estimate of Storm Uri Bond Issuance Costs⁵

Description of Cost	Current Estimate
Fuel and Purchased Power	\$ 295,433,153+
95%/5% Sharing	\$ (14,771,977)+
Excess Revenues	\$ (8,609,978)*+
Schedule SIL Adjustment	\$ (1,226,571)*+
Accrued Carrying Costs	\$ 26,189,699
Estimated Up-Front Financing Costs	\$ 6,026,573
Total	\$ 303,040,898

*Staff applied the 95/5% ratio to determine these adjustment amounts.

+Staff applied the retail energy allocator

e. Should EMW's recovery through securitized bonds include more than 95% of fuel and purchased power costs?

In its brief, EMW claims that "there is no provision in the Securitization Law that permits the Commission to deny recovery of 5% of the Qualified Extraordinary Costs." However, EMW overlooks those provisions of the statute (393.1700 RSMo) which provide that the Commission may issue a financing order "subject to conditions"⁶ and that a "financing order issued by the commission, after a hearing, to an electrical corporation shall include . . . any other conditions that the commission considers appropriate and that

⁵ Bolin Surrebuttal at page 5, lines 19-21; page 6, Table 1; and Tr. Vol. 3 page 331 line 18 through page 332 line 7. Fortson Surrebuttal at page 1, lines 15-17.

⁶ 393.1700.2(3)(a)b and 393.1700.2(3)(b).

are not inconsistent with this section.”⁷ EMW also overlooks those provisions of the statute which require the Commission’s order to include a finding “that recovery of such costs is just and reasonable and in the public interest”⁸ and a finding “that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds.”⁹ Allowing recovery of more than 95% of fuel and purchased power costs – as would be permitted under the FAC, the customary method of ratemaking for fuel and purchased power costs – can hardly be said to be “just and reasonable and in the public interest.”

Furthermore, the Commission has recently rejected the argument made by EMW in deciding the Empire d/b/a Liberty securitization case. There the Commission stated that “The Commission finds that allowing Liberty to use securitization to recover the five percent of its fuel and purchased power costs related to Winter Storm Uri that it would not be permitted to recover under traditional methods of rate making is not just and reasonable, nor is it in the public interest.”¹⁰ The Commission should find likewise in this case.

⁷ 393.1700.2(3)(c)o.

⁸ 393.1700.2(3)(c)a.

⁹ 393.1700.2(3)(c)b.

¹⁰ In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty, Case Nos. EO-2022-0040 and EO-2022-0193, Report and Order issued August 18, 2022, page 21.

f. Should EMW’s recovery through securitized bonds reflect an offset based on certain higher than normal customer revenues received by EMW during Winter Storm Uri?

In its initial brief, EMW claims that reflecting an offset to costs based on the higher revenues that EMW received due to Winter Storm Uri would be a “deviation” from the securitization statute. However, as discussed above, under the securitization statute, the Commission must identify amounts that are just and reasonable and in the public interest for Every to recover.¹¹ In setting just and reasonable rates, the Commission must consider “all relevant factors.”¹² The securitization statute requires the Commission to consider the “retail customer rate impact that would result from customary ratemaking treatment” of qualified extraordinary costs.¹³ The securitization statute then requires the Commission to compare the cost of recovery through securitization and the cost of recovery that would have been incurred absent the issuance of securitized utility tariff bonds.¹⁴ Only upon a finding that the issuance of securitized utility tariff bonds and collection of securitized utility tariff charges “are expected to provide quantifiable net present value benefits to customers” compared to customary ratemaking treatment may the Commission authorize a utility to issue securitized utility tariff bonds.¹⁵ Offsetting the extraordinary costs with extraordinary revenues would not “deviate” from the statute; rather, it would be entirely consistent.

¹¹ § 393.1700.2(3)(c)a, RSMo (Cum. Supp. 2021).

¹² *State ex rel. Utility Consumers’ Council of Mo., Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 49 (Mo. Banc 1979) (superseded by statute on other grounds by Section 386.266, RSMo, as recognized in *State ex rel. Union Elec. Co. v. Pub. Serv. Comm’n*, 399 S.W.3d 467, 481 (Mo. App. W.D. 2013)).

¹³ § 393.1700.2(2)(a), RSMo (Cum. Supp. 2021).

¹⁴ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

¹⁵ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

k. What are the appropriate carrying costs for Winter Storm Uri?

Evergy should be allowed to securitize approximately \$26,189,699¹⁶ in accrued carrying costs associated with Winter Storm Uri qualified extraordinary costs. As stated in Staff's initial brief, the Commission should use the long-term debt rate because these costs are not capital normally included in the rate base. Also, by using the long-term debt rate instead of the WACC, this would effectively provide a means of sharing between the ratepayers and the shareholder of the extraordinary costs incurred. Using the WACC would insulate Evergy Missouri West from the risk of an unanticipated event.¹⁷

l. What is the appropriate adjustment to the amount of Winter Storm Uri costs to be recovered through securitized bonds, if any, regarding EMW's administration of the Special Incremental Load (SIL) tariff?

Staff recommends the Commission disallow \$1,231,553 (before jurisdictional allocation is applied) from the securitization amount related to the implementation of Schedule SIL.¹⁸ In its initial brief, EMW claims Staff's calculation is flawed because it was based on a static set-point estimate. However, as Mr. Luebbert testified, "Staff relied upon a proxy expected load, or set-point, **due to EMW's failure to provide expected hourly loads for Nucor**. Absent the data necessary to determine a more finite cost impact, the proxy expected load coupled with the calculation methodology utilized to quantify the disallowance results in a conservative estimate of the non-Nucor ratepayer harm that will occur if the costs incurred in February 2021 due to the imbalance are passed on to non-Nucor ratepayers through the SUTC."¹⁹ (Emphasis added) EMW should not be allowed to escape responsibility based on its own failure to provide

¹⁶ Bolin Surrebuttal at page 6, Table 1; and Tr. Vol. 3 page 331 line 18 through page 332 line 7.

¹⁷ Bolin Rebuttal at page 7, lines 6-11.

¹⁸ Tr. Vol. 3, p. 303 line 3.

¹⁹ Luebbert Rebuttal, p. 27 line 21 through p. 28 line 4.

needed information. Staff's recommended adjustment is a conservative calculation based on the information available and should be adopted by the Commission.

2) What are the estimated up-front and ongoing financing costs associated with securitizing qualified extraordinary costs associated with Winter Storm Uri?

Staff currently estimates the up-front financing costs to be approximately \$6,026,573, based on Evergy's testimony, updated for staff's adjustments to the size of the securitization. This amount excludes Commission Staff's costs, which will be borne by Evergy regardless of whether the securitization is ultimately approved, for a consistent comparison between traditional rate making and securitization. Although EMW claims in its brief that "Staff did not provide a specific reason" for the difference between Staff's number and EMW's estimated number, Tab MD3 on Confidential Exhibit 107 shows Staff's calculation of both upfront cost and ongoing cost as of the date of filing rebuttal testimony in this case.

4) How should the SUTC be allocated?

Neither MEEG nor Velvet presented any witnesses on this, or any other, issue. In fact, every expert witness who testified on this issue supported Staff's position that the Winter Storm Uri SUTC should be recovered from all applicable customers *on the basis of loss-adjusted energy sales*. Despite presenting no witnesses, and therefore no expert witness testimony, MEEG and Velvet oppose the method supported by expert testimony.

In their initial briefs, both MEEG and Velvet rely upon the direct testimony filed by Mr. Lutz of Evergy. However, when he filed surrebuttal testimony, Mr. Lutz effectively abandoned the position he had taken in direct testimony and supported the position set

forth by Staff witness Lange.²⁰ Therefore, the direct testimony of Mr. Lutz is of little aid to MECG and Velvet.

In its initial brief, MECG includes tables based on Exhibits 301 and 302 to allegedly support its position. However, at the hearing, Exhibits 301 and 302 were shown to be flawed, at least for the purposes for which MECG seeks to use them. As Mr. Lutz testified, the “classes” reflected on Exhibit 301 are not EMW’s customer classes pursuant to its tariffs.²¹ In fact, the categories on Exhibits 301 and 302 do not reflect the same things.²² Furthermore, the information on Exhibit 302 was based on the test year for the Company’s 2018 rate case, ending somewhere around mid-year 2017, approximately four years prior to Winter Storm Uri in February 2021.²³ Therefore any reliance on Exhibits 301 or 302, or the tables contained in MECG’s brief, is completely misplaced for purposes of this case. As the Commission decided in the recent Empire d/b/a Liberty securitization case:²⁴

Cost allocation to the various customer classes is an important issue for the Midwest Energy Consumers Group, which advocated strongly for the sort of class allocation proposed by Liberty. Their concern is that Staff’s proposal will result in higher rates for industrial customers who use a lot of energy per customer. **Nevertheless, the Commission finds that Staff’s proposal to allocate costs on the basis of loss-adjusted energy sales is appropriate, and that allocation methodology will be implemented.** (Emphasis added)

²⁰ Lutz Surrebuttal, p. 3, lines 18-19.

²¹ Tr. Vol. 2, p. 193.

²² Id. at p. 194.

²³ Id. at p. 196.

²⁴ In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty, Case Nos. EO-2022-0040 and EO-2022-0193, Report and Order issued August 18, 2022, page 89.

Furthermore, the positions taken by MEEG and Velvet are contrary to how fuel expenses are traditionally and consistently allocated. As Mr. Lutz testified:²⁵

Q. Let me try this. Would you agree that – or is it fair to generally characterize the costs at issue in this case as fuel expense and net purchased power expense?

A. Yes, I would agree with that.

Q. Okay. In your experience, how would fuel expense and net purchased power expense be allocated in a general rate case?

A. On an energy basis. . . .

Q. In the pending rate case, I believe it's ER-2022-0130 --

A. Correct.

Q.-- how did Evergy Missouri West allocate fuel expense and net purchased power expense?

A. On an energy basis.

Q. In that rate case, did MEEG's Witness Maini adopt the same allocation of fuel expense and net purchased power expense on loss adjusted energy sales?

A. I think she accepted the study more holistically but in effect, yes.

Q. If fuel and purchased -- excuse me -- if fuel expense and net purchased power expense go through the fuel adjustment clause, they're going to go to customers on the basis of loss-adjusted energy sales, correct?

A. Correct.

Q. Okay. And I think you just testified that it's your experience that if they go through a general rate case they're going to get allocated to the classes on the basis of loss-adjusted energy sales?

A. On an energy basis, yes.

Q. Mr. Opitz talked about class allocations and allocations under the statute. Would you agree that under the Company and Staff approach the securitized balance and associated costs are implicitly being allocated to the classes on the basis of projected loss-adjusted energy consumption?

A. Yes.

Q. And if the Commission was concerned with the language that Mr. Opitz has talked about from the statute, is it fair to say that the same result as the Company and Staff approach could be obtained by stating in the Commission's order that the securitized balance and

²⁵ Tr. Vol. 2, pp. 204-206 (Questions by Mr. Keevil, Answers by Mr. Lutz).

associated costs are allocated to the classes on the basis of projected loss-adjusted energy consumption and that true-ups should be conducted on a system-wide basis?

A. Sorry. Could you read that one more time.

Q. Sure. Is it fair to say that the same result --let me back up. If the Commission is concerned about the language from the statute that Mr. Opitz has discussed, is it fair to say that the same result as the Company and Staff approach could be obtained by stating in the Commission's order that the securitized balance and associated costs are allocated to the classes on the basis of projected loss-adjusted energy consumption and that the true-ups shall be conducted on a system-wide basis?

A. Yes, I would agree with that.

The foregoing testimony also shows that any argument of MECG or Velvet concerning compliance with the securitization statute's "allocation" language is simply a red herring.

Like MECG, Velvet presented no witnesses in this proceeding. Even in its position statement, Velvet stated that "With respect to all issues, Velvet Tech Services takes no position at this time, but reserves the right to do so based on the evidence presented at hearing." However, for the first time in the proceeding, in its initial brief Velvet raises the concept of a "rate cap," in violation of the Commission's rules on testimony. If Velvet wanted to propose rate caps, Velvet should have done so in testimony.²⁶ The Commission should not permit this type of sandbagging, and all references to rate caps in Velvet's brief should be stricken. However, even if it is not stricken it must be recognized for what it is – an attempt to bypass the securitization charge on all energy used above a certain amount. And the securitization statute states that the Commission's order must 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

²⁶ See 20 CSR 4240-2.130(7).

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 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.”²⁷ (Emphasis added) Velvet’s rate cap argument must be rejected.

Velvet’s brief also states that the “legislature has shown a preference for limiting the burden of securitization charges on the state’s largest customers,” presumable on the basis of the statute’s stated exception for “customers receiving electrical service under special contracts on August 28, 2021.” However, this so-called “preference” is by its own terms limited to those customers on special contracts on August 28, 2021 – which does not include Velvet. If the legislature had intended for this exception to apply to all special contract customers, or all future special contract customers, it would not have included the August 28, 2021 date restriction. Velvet’s attempt to bootstrap this exception into anything more than it is should therefore be rejected.

5) What, if any, additions or changes should be made to the Storm Securitized Utility Tariff Rider proposed by EMW?

The specimen exemplar tariff which was developed by Ms. Lange and Mr. Lutz, and which was late-filed as Exhibit No. 108 per the judge’s request, makes the necessary changes to the tariff originally proposed by EMW.

²⁷ 393.1700.2(3)(c)d

6) Regarding any designated Staff representatives who may be advised by a financial advisor or advisors, what provisions or procedures should the Commission order to implement the requirements of Section 393.1700.2(3)?

Although EMW's brief states it "is committed to a process that will be collaborative and interactive," and "the goal should be for Evergy to secure a final structure of securitized utility tariff bonds with pricing, terms and conditions that result in the lowest charges to customers," EMW's proposed financing order, and previous testimony herein, call into question how truly committed EMW is. Staff would therefore direct the Commission to Staff's proposed financing order (particularly paragraphs 63-66), as well as its initial brief, and to the Commission's resolution of this same issue in the recent Empire d/b/a Liberty securitization case.²⁸

8) Should the Commission grant a waiver under Section 10(A)(1) of the Affiliate Transactions Rule between EMW and the special purpose entity?

Staff does not oppose EMW's request for a waiver of the section of the affiliate transaction rules pertaining to asymmetrical pricing of the financial advantage standard requirement.²⁹ However, for the reasons stated in Staff's initial brief, the remaining applicable sections of the affiliate transactions rule, which applies to record keeping, should not be waived.³⁰

WHEREFORE, Staff respectfully submits this Reply Brief of Staff for the Commission's consideration, and for the reasons set forth in its initial brief and this reply brief, Staff requests the Commission issue an order adopting Staff's position on each of

²⁸ In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty, Case Nos. EO-2022-0040 and EO-2022-0193, Report and Order issued August 18, 2022.

²⁹ Bolin Surrebuttal, p. 2 lines 3-5.

³⁰ Bolin Surrebuttal, p. 3 lines 4-5.

the issues in this case, in substantially the form set forth in Staff's proposed financing order filed the same date as Staff's initial brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 12th day of September, 2022.

/s/ Jeffrey A. Keevil