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

INITIAL POST-HEARING BRIEF

COMES NOW the Office of the Public Counsel (the "OPC") and offers this initial post-hearing brief addressing the issues in this matter.

Introduction

Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy West" or "EMW") brings this case seeking to recover certain costs related to Winter Storm Uri ("Storm Uri") through securitized utility tariff bonds as allowed by § 393.1700 RSMo. (the "securitization statute"). (Ex. 8 "Ives Direct Testimony" 2-3, 20, Doc. 92).[1] The OPC does not oppose the Public Service Commission of the State of Missouri (the "Commission") authorizing Evergy West to issue securitized utility tariff bonds to recover these costs should the Commission find quantifiable net present value benefits to customers, as required by § 393.1700.2(3)(c)b RSMo. However, the Commission should allow Evergy West to recover only those financing costs as described in the securitization statute and those qualified extraordinary costs that are just and reasonable and in the public interest. *See* § 393.1700.1(8)(d), .2(3)(c)a RSMo. In determining this amount, the Commission should adjust the amount of qualified extraordinary costs that Evergy West seeks to securitize to reflect each of the OPC's proposed adjustments.

[1] References to document numbers represent the document numbers assigned in the Electronic Filing Information System ("EFIS").

A. Relevant Background

Storm Uri "brought frigid temperatures, snow and ice to the northern Plains down to southern Texas." (Ives Direct Test. 6). The storm lasted from February 10, 2021, through February 19, 2021. (*Id.*). No party to this matter disputes that Storm Uri was an anomalous weather event.

Originally, Evergy West sought to securitize approximately $356.8 million related to Storm Uri. (*Id.* 20). This amount included fuel and purchased power costs, carrying costs, and up-front financing costs. (*Id.* 14, 20). Evergy West included in its original request a draft financing order and proposed that the Commission allocate the costs associated with the securitized utility tariff charge that will appear on customers' bills using a class-based approach. (*See* Ex. 13 "Lunde Direct Testimony," Schedule SL-2 "Draft Financing Order," Doc. 97; Ex. 15 "Lutz Direct Testimony" 8-9, Doc. 99).

The OPC and the Staff of the Commission ("Staff") proposed a number of adjustments and changes to Evergy West's original requests. (*See* Docs. 104-10, 112-19). Specifically, the OPC proposed five adjustments to the amount Evergy West seeks to securitize, including:

> (1) an adjustment to the proposed securitization amount to account for imprudent resource planning (*See* Ex. 201 "Mantle Rebuttal Testimony" 2-27, Doc. 112);
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> (2) an adjustment to the proposed securitization amount to account for application of the 95%/5% cost-sharing mechanism (*id.* 27-31);
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> (3) an adjustment to the proposed securitization amount to account for the tax deduction Evergy Missouri West received related to the fuel and purchased power costs (*see generally* Ex. 205 "Riley Rebuttal Testimony," Doc. 116);
>
> (4) an adjustment to the proposed securitization amount to account for the tax deduction Evergy West received related to the carrying charges on the Storm Uri costs (Ex. 206 "Riley Surrebuttal Testimony" 4-6, Doc. 117); and
>
> (5) an adjustment to the proposed securitization amount to account for the use of a different rate than that proposed by Staff and Evergy West to calculate carrying costs (*see generally* Ex. 203 "Murray Rebuttal Testimony" 2-11, Doc. 114).

The OPC also proposed the use of a different rate to determine quantifiable net present value benefits to customers. (*Id.* 11-15). Further, the OPC supported Staff's suggestion to allocate the securitized utility tariff charge using a loss-adjusted energy-based design. (Ex. 208 "Marke Surrebuttal Testimony" 1-2, Doc. 119).

Following the filing of all testimony and on the first day of the scheduled hearing, Evergy West, Staff, and the OPC (collectively, the "Signatories") filed a Non-Unanimous Stipulation and Agreement (the "Stipulation"). (Doc. 74). The remaining parties in this matter—Midwest Energy Consumers Group ("MECG"); Velvet Tech Services, LLC ("Velvet Tech"); and Nucor Steel Sedalia, LLC ("Nucor")[2]—did not oppose the Stipulation. (*See* Stipulation 6; Tr. 13, V. I pdf 14, Doc. 80[3]).

The Stipulation resolves a number of issues in this matter. (*see* Tr. 16-18, V. I pdf 17-19). Aside from application of the 95%/5% cost-sharing mechanism and the change in allocation method—both of which the Stipulation resolves, the Stipulation preserves each of the OPC's issues. (*See* Stipulation 3-4). MECG and Velvet Tech also reserve the right to argue the proper method of allocating the costs, as well as the proper rate to use to calculate carrying charges. (*See id.* 2, 4-5).

As a part of the Stipulation, the Signatories agree to an estimated total of Qualified Extraordinary Costs: $306,103,442. (*Id.* 1-2). The Signatories agree that this amount represents the agreed to amount before the Commission decides any of the preserved issues. (*Id.* 3). The Signatories agree that this amount includes $278,511,691 for fuel and purchased power costs; $0

[2] Missouri Industrial Energy Consumers ("MIEC") also intervened in this matter. (Docs. 15, 26). Before the hearing began, MIEC asked to be excused from the hearing and stated its intention to withdraw from the case. (Tr. 7, V. I pdf 8, Doc. 80).

[3] The hearing transcript was filed as four documents, Documents 80 through 83. The transcript is continuously paginated between the documents. For ease of reference, the OPC provides a citation to the page of the transcript as well as the volume of the transcript and the pdf page number of that volume.

for non-fuel operation and maintenance, $20,951,820 for carrying costs, and $6,639,931 for upfront financing costs. (*Id.* 2). The Commission has not yet ruled upon the Stipulation.

The Commission requested that the Parties submit briefs addressing their full cases and the Stipulation. (Tr. 522, V. IV pdf 110, Doc. 83). Because the OPC supports the Stipulation and requests that the Commission approve it, in this brief, the OPC addresses those issues resolved by the Stipulation only briefly. In signing the Stipulation, the OPC preserved most of the issues it raised in testimony. (*See* Stipulation 3-4). Therefore, it addresses those issues more robustly.

Issue 1: What amount of costs related to Winter Storm Uri should the Commission authorize EMW to finance as qualified extraordinary costs using securitized utility tariff bonds?[4]

In setting the amount of qualified extraordinary costs related to Storm Uri that Evergy West is authorized to recover using securitized utility tariff bonds, the Commission should reflect each of the five adjustments proposed by the OPC. Because several of these adjustments are calculated using the amount of costs authorized by the Commission, the ultimate amount the Commission should allow Evergy West to recover is fluid. The OPC will address each of its proposed adjustments in response to the corresponding issue.

I. Generally Applicable Legal Standard: Securitization

Section 393.1700 of the Revised Statutes of Missouri governs securitized utility tariff bonds. *See generally* § 393.1700 RSMo.

The statute allows an "electrical corporation" to "petition the commission for a financing order to finance qualified extraordinary costs." § 393.1700.2(2) RSMo. It defines "qualified extraordinary costs" as

> costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail

[4] The List of Issues alternatively lists this issue as "What amount of qualified extraordinary costs caused by Winter Storm Uri should the Commission authorize EMW to finance using securitized utility tariff bonds?" (List of Issues & Proposed Hearing Schedule 1, Doc. 66).

> customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events.

§ 393.1700.1(13) RSMo.

In pertinent part, the securitization statute defines "financing costs" as including "[a]ny taxes and license fees or other fees imposed on the revenues generated from the collection of the securitized utility tariff charge or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued . . . ." § 393.1700.1(8)(d) RSMo.

To recover the qualified extraordinary costs, the statute requires the Commission to issue a financing order. § 393.1700.2(3)(a)b RSMo. This financing order "authorizes the issuance of securitized utility tariff bonds; the imposition, collection, and periodic adjustments of a securitized utility tariff charge; the creation of securitized utility tariff property; and the sale, assignment, or transfer of securitized utility tariff property to an assignee." § 393.1700.1(9) RSMo. The financing order must include several findings, including:

> (1) The amount of securitized utility tariff costs to be financed using securitized utility tariff bonds and a finding that *recovery of such costs is just and reasonable and in the public interest*. The commission shall describe and estimate the amount of financing costs that may be recovered through securitized utility tariff charges and specify the period over which securitized utility tariff costs and financing costs may be recovered;
>
> (2) 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 . . . .

§§ 393.1700.2(3)(c)a, b RSMo. (emphasis added).

To recover the qualified extraordinary costs and the financing costs, the statute allows for a securitized utility tariff charge to be placed on customers' bills. § 393.1700.1(16) RSMo.; *see*

§ 393.1700.1(17) RSMo. (defining "securitized utility tariff costs" as "either energy transition costs or qualified extraordinary costs as the case may be"); *see* § 393.1700.1(9) RSMo. A securitized utility tariff charge is defined in full as:

> the amounts authorized by the commission to repay, finance, or refinance securitized utility tariff costs and financing costs and that are, except as otherwise provided for in this section, nonbypassable charges imposed on and part of all retail customer bills, collected by an electrical corporation or its successors or assignees, or a collection agent, in full, separate and apart from the electrical corporation's base rates, and paid by all existing or 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 as of August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state.

§ 393.1700.1(16) RSMo.

The securitization statute took effect on August 28, 2021 and this case represents the Commission's second opportunity to decide what qualifies as "qualified extraordinary costs" and "financing costs." *See generally* § 393.1700 RSMo.; (Case No. EO-2022-0040). As such, little exists in the way of Commission or court guidance as to what may be included as a qualified extraordinary costs.

Issue 1a: What amount of the costs, if any, that EMW is seeking to securitize would EMW recover through customary ratemaking?

As represented during the hearing, the Signatories agree that the Stipulation resolves this issue. (*See* Tr. 16-18, V. I pdf 17-19 (identifying those issues that remain unresolved by the Stipulation and not identifying issue 1a)).

Alternatively, the OPC takes no position on this issue at this time.

Issue 1b: What is the appropriate method of customary ratemaking absent securitization?

As represented during the hearing, the Signatories agree that the Stipulation resolves this issue. (*See* Tr. 16-18, V. I pdf 17-19 (identifying those issues that remain unresolved by the Stipulation and not identifying issue 1b)).

Alternatively, the appropriate method of customary ratemaking absent securitization would be recovery through Evergy West's fuel adjustment clause ("FAC") or through an accounting authority order ("AAO"). (Ex. 106 "Davis Rebuttal Testimony" 3, Doc. 110).[5]

Issue 1c: Under Section 393.1700.2(2)(e), what is the "customary method of financing"? What are the costs that would result "from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates"?

As represented during the hearing, the Signatories agree that the Stipulation resolves this issue. (*See* Tr. 16-18, V. I pdf 17-19 (identifying those issues that remain unresolved by the Stipulation and not identifying issue 1c)).

Alternatively, the OPC takes no position on this issue at this time.

Issue 1d: What is the appropriate adjustment related to non-fuel operations and maintenance ("NFOM") costs?

In the Stipulation, the Signatories agree that Evergy West "has removed its NFOM costs from the agreed upon Qualified Extraordinary Costs and will seek recovery of those costs in its general rate case as recommended by Staff." (Stipulation 2). As a signatory to the Stipulation, the OPC supports this position.

Alternatively, in determining the amount of qualified extraordinary costs that Evergy West may recover through securitized utility tariff bonds, the Commission should reduce the amount by

[5] In its Statement of Positions, the OPC did not take a position on this issue, but it reserved the right to do so after the close of evidence. (Statement of Positions 2, Doc. 70). Based on this reservation of rights, the OPC now takes the position reflected herein.

$274,934—the amount of NFOM costs identified by Evergy West. (Ex. 100 "Bolin Rebuttal Testimony" 7, Doc. 104; Ex. 12 "Klote Surrebuttal Testimony" 5-6, Doc. 96).

The securitization statute defines "qualified extraordinary costs" as those "costs incurred prudently . . . of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events." § 393.1700.1(13) RSMo. The Commission's financing order must identify the amount of qualified extraordinary costs and find that the recovery of those costs "is just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo; *see* § 393.1700.1(17) RSMo.

The NFOM costs at issue include "contractor costs, overtime for [Evergy West's] employees and associated payroll taxes, damage claims and additional materials and supplies." (Bolin Rebuttal Test. 7). Staff asserts that it has included these costs "in Staff's normalized costs included in Staff's cost of service in Evergy . . . West's current rate case, Case No. ER-2022-0130." (*Id.*). Therefore, these costs "do not require additional treatment through the securitization request." (*Id.*).

Evergy West agreed with Staff's proposed treatment of the NFOM costs and removed those costs from the amount to be recovered through securitized bonds. (Klote Surrebuttal Test. 5-6).

Because Staff has included the NFOM costs in Evergy West's pending rate case and Evergy West removed these costs from its request in this case, allowing Evergy West to recover the NFOM as qualified extraordinary costs is not just and reasonable nor is it in the public interest. (Bolin Rebuttal Test. 7; Klote Surrebuttal Testimony 5-6); *see* § 393.1700.2(c)(3)a RSMo. The Commission should reduce the amount of qualified extraordinary costs to be recovered through

securitized bonds by $274,934—the amount of NFOM costs identified by Evergy West. (Bolin Rebuttal Test. 7; Ex. 11 "Klote Direct Testimony" 5-6, Doc. 95).

Issue 1e: Should EMW's recovery through securitized bonds include more than 95% of fuel and purchased power costs?

The Signatories agree that the Stipulation resolves this issue. (Stipulation 3-4 (stating "the $306.1 million resolves Staff identified cost issues of 1) 95/5 on total Evergy Missouri West submitted fuel and purchased power costs . . . ." and "The Signatories agree that if the Commission orders any further disallowance of fuel and purchased power costs . . . that disallowance of fuel and purchased power costs ordered by the Commission will be reduced by 5% in recognition that this Stipulation resolves the 95/5 issue.").

Alternatively, Evergy West's recovery through securitized bonds should not include more than 95% of the fuel and purchased power costs the Commission finds to be qualified extraordinary costs because the Commission should apply the 95%/5% cost sharing mechanism. (Mantle Rebuttal Test. 27-28; Ex. 102 "Fortson Rebuttal Testimony" 7, Doc. 106; Bolin Rebuttal Test. 8). Both Staff and the OPC support this adjustment. (*Id.*). The Commission should apply the 95%/5% cost sharing mechanism for at least three reasons:

(1) Evergy West would typically recover the fuel and purchased power costs through its fuel adjustment clause ("FAC") and recovery through the FAC includes application of the 95%/5% cost sharing mechanism (Mantle Rebuttal Test. 28; Fortson Rebuttal Test. 7, 11);

(2) allowing Evergy West to recover 100% of the fuel and purchased power costs would fail to incentivize Evergy West to prudently incur fuel and purchased power costs during anomalous weather events (Mantle Rebuttal Test. 27; Fortson Rebuttal Test. 13);

(3) requiring Evergy West to shoulder 5% of the fuel and purchased power costs mirrors the Commission's treatment of Evergy West's sister company, Evergy Metro, where the Commission allowed Evergy Metro to retain 5% of its earnings related to Storm Uri (Mantle Rebuttal Test. 27-28; Fortson Rebuttal Test. 13-14); and

> (4) applying the 95%/5% cost sharing mechanism mirrors the Commission's decision in the recent The Empire District Electric Company d/b/a Liberty ("Liberty") Storm Uri securitization case, EO-2022-0040 (Report & Order 21, Case No. EO-2022-0040).

The OPC will address each reason in turn.

First, the Commission should reduce the amount of fuel and purchased power that Evergy West may recover related to Storm Uri by 5% because this mirrors the treatment of those costs if recovered through the FAC. (Mantle Rebuttal Test. 28 (explaining the reason for the 5% incentive); Fortson Rebuttal Test. 7, 11). The majority of costs that Evergy West seeks to securitize here include costs for fuel and purchased power. (Ex. 16 "Lutz Surrebuttal Testimony" 3, Doc.100). No party appears to dispute that Evergy West would typically recover these costs through its FAC. (*Id.*; Fortson Rebuttal Test. 7, 11; Mantle Rebuttal Test. 28; *see* Tr. 16-18, V. I pdf 17-19). If Evergy West recovered these fuel and purchased power costs through its FAC it would recover only 95% of those costs. (Fortson Rebuttal Test. 7; *see* Mantle Rebuttal Test. 28). Because Evergy West would typically have recovered these fuel and purchased power costs through its FAC and the FAC includes application of the 95%/5% cost sharing mechanism, the Commission should maintain application of the cost sharing mechanism here by allowing Evergy West to recover 95% of its fuel and purchased power costs only. (Lutz Surrebuttal Test. 3; Fortson Rebuttal Test. 7, 11; Mantle Rebuttal Test. 28; *see* Tr. 16-18, V. I pdf 17-19).

Second, in determining the amount of fuel and purchased power costs that Evergy West may recover here, the Commission should include a 5% reduction because to do otherwise would remove the incentive for Evergy West to prudently incur these costs during anomalous weather events. (Mantle Rebuttal Test. 27, Fortson Rebuttal Test. 13). Staff witness Mr. Brad Fortson recognized that the Commission imposed the 95%/5% cost sharing mechanism in the FAC as a

way to incentivize utilities to "take all reasonable ac[ti]ons to keep its fuel and purchased power costs as low as possible, and still have an opportunity to earn a fair return on its investment." (Fortson Rebuttal Test. 12-13 (citing Report & Order 4-5, Case No. ER-2007-0004); Mantle Rebuttal Test. 27-29). Mr. Fortson also pointed out that the Commission has applied this cost sharing mechanism since it approved Evergy West's[6] FAC in 2007. (Fortson Rebuttal Test. 10). Allowing Evergy West to recover the full amount of its fuel and purchased power costs without applying the cost sharing mechanism will effectively nullify this incentive. (*See id.* 13; Mantle Rebuttal Test. 27). Rather, the Commission will incentivize Evergy West to move as much fuel and purchased power costs out of the FAC as possible and to seek securitization of those costs. (Fortson Rebuttal Test. 13). The Commission should continue to incentivize Evergy West to efficiently manage its fuel and purchased power costs by applying the 95%/5% cost sharing mechanism in this securitization case as well as in recovery of these costs through the FAC.

Third, the Commission should apply the cost sharing mechanism in this case because it mirrors the Commission's decision regarding the profits Evergy West's sister company, Evergy Metro, enjoyed related to Storm Uri. (Mantle Rebuttal Test. 27-28; Fortson Rebuttal Test. 13-14). As will be discussed further below in response to issue 1g, Evergy Metro generated increased profits related to Storm Uri. (Mantle Rebuttal Test. 3, 12; Fortson Rebuttal Test. 13-14). The Commission ordered Evergy Metro to return those increased profits to customers through its FAC. (Mantle Rebuttal Test. 3, 27-28; Fortson Rebuttal Test. 13-14). However, in doing so, the Commission applied the cost-sharing mechanism and allowed Evergy Metro to retain 5% of those earnings. (*Id.*). The Commission should maintain consistency between the two companies—which

[6] At the time the Commission first approved Evergy West's FAC, Aquila, Inc. was the electric utility company operating in Evergy West's territory. (Fortson Rebuttal Test. 10). Through mergers and renaming, Aquila, Inc. eventually became Evergy West. (*See id.*).

operate under the same parent company—and require Evergy West to share in the extraordinary costs it incurred. (*See id.*). For this reason as well, the Commission should allow Evergy West to recover no more than 95% of the fuel and purchased power costs related to Storm Uri.

Finally, the Commission should apply the cost-sharing mechanism here because to do so would maintain consistency with the Commission's recently issued Report and Order in Liberty's Storm Uri securitization case, EO-2022-0040. In that case, the Commission concluded 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." (Report and Order 21, Case No. EO-2022-0040). In this respect, the Commission should maintain consistency between these two similar Storm Uri securitization requests and apply the 95%/5% cost sharing mechanism to Evergy West's Storm Uri securitization request as well.

For at least these four reasons, should the Commission reject the Stipulation, it should reduce the amount of fuel and purchased power costs it concludes that Evergy West may recover by 5% to reflect application of the 95%/5% cost sharing mechanism.

Issue 1f: 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?

The Signatories agree that the Stipulation "resolves Staff identified cost issues of . . . excess revenues." (Stipulation 3). As a Signatory to the Stipulation, the OPC supports this position.

Alternatively, the Commission should reduce the amount of qualified extraordinary costs that Evergy West may recover through securitized utility tariff bonds by $8,609,978, the amount that Staff identified as excess revenues. (Bolin Surrebuttal Test. 6).

The securitization statute defines "qualified extraordinary costs" as those "costs incurred prudently . . . of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events." § 393.1700.1(13) RSMo. The Commission's financing order must identify the amount of qualified extraordinary costs and find that the recovery of those costs "is just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo; *see* § 393.1700.1(17) RSMo.

In her testimony, Ms. Bolin explains that in addition to increased costs, Evergy West received a "material amount of additional (excess) revenues" during Storm Uri. (Bolin Rebuttal Test. 12). Evergy West "has already received the benefit of these revenues." (*Id.* 13). Staff calculated the amount of excess revenues using the same method employed by Evergy West in calculating extraordinary costs, "by calculating a three-year average baseline of revenues received from retail customers and comparing the February 2021 retail revenues to the baseline." (*Id.*). Staff considered "the amount of February 2021 retail revenues that exceeded the three-year average as excess revenues." (*Id.*). To "reflect updated jurisdictional allocation factors," Staff updated its proposed reduction in Ms. Bolin's Surrebuttal Test. (Bolin Surrebuttal Test. 5-6).

Allowing Evergy West to recover its Storm Uri costs as qualified extraordinary costs without recognizing the extraordinary revenues that it received related to the same "anomalous weather event[]," is not "just and reasonable and in the public interest." *See* §§ 393.1700.1(13), .2(3)(c)a RSMo. Should the Commission conclude that Evergy West's fuel and purchased power costs related to Storm Uri are qualified extraordinary costs and allow Evergy West to securitize those costs, the Commission should reduce the qualified extraordinary costs by $8,609,978, the amount of excess revenues Evergy West received. (Bolin Surrebuttal Test. 6).

Issue 1g: Should EMW's recovery through securitized bonds reflect a disallowance based on EMW's resource planning?

Yes, because Evergy West did not prudently plan what generating resources it had available to provide energy to its customers and these decisions resulted in increased costs incurred during Storm Uri, in determining the amount that Evergy West may recover through securitized bonds, the Commission should include a reduction to reflect Evergy West's imprudent resource planning. (*See generally* Mantle Rebuttal Test.). The OPC's witness, Ms. Lena Mantle provides a range of recovery that reflects this adjustment. (*Id.* 5-6).

In the Stipulation, the Signatories agree that the OPC's issues that remain open for Commission resolution include an "adjustment to the proposed securitization amount to account for imprudent resource planning." (Stipulation 3). The Signatories also agree "any amounts identified [in the Stipulation] . . . may change as a result of the Commission's determination of the OPC's issues." (*Id.*). Therefore, this issue remains a live issue for Commission consideration even if the Commission approves the Stipulation.

I. Applicable Legal Standards

The OPC relies on several interconnected legal standards to support its imprudence adjustment. First, the securitization statute, which allows recovery of prudent costs. Second, the prudence standard, which the Commission first articulated in 1985. Finally, the Commission's resource planning rules. The OPC will address each standard in turn.

A. Securitization

The securitization statute allows an electrical corporation to recover qualified extraordinary costs, which it defines, in part, as "costs incurred *prudently* . . . of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking . . . ." § 393.1700.1(13) RSMo.

The securitization statute also requires the financing order the Commission issues to identify "[t]he amount of securitized utility tariff costs to be financed . . . and a finding that recovery of such costs is just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo. Securitized utility tariff costs, include qualified extraordinary costs. § 393.1700.1(17) RSMo.

Putting these provisions of the securitization statute together, the Commission's financing order must include a finding that the recovery of prudent qualified extraordinary costs is just and reasonable and in the public interest. *See* §§ 393.1700.1(13), (17), .2(3)(c)a RSMo.

B. <u>Prudence</u>

Knowing that the securitization statute requires qualified extraordinary costs to be incurred prudently, the OPC now turns to the prudence standard. The Commission first addressed the prudence standard in the 1985 Union Electric case addressing costs associated with the Callaway Nuclear Power Plant. *In re Determination of In-Serv. Criteria for the Union Elec. Co.'s Callaway Nuclear Plant & Callaway Rate Base & Related Issues*, 27 Mo. P.S.C. (N.S.) 183, 66 Pub. Util. Rep. 4th 202 (1985) (hereinafter "*Union Elec. Callaway*").

In that case, the Commission recognized a rebuttable presumption that the costs a utility incurs are prudent.[7] *Id.* at 192-93. This presumption may be rebutted "where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure." *Id.* at 193 (quoting *Anaheim, Riverside, Banning, Colton, & Azusa v. Fed. Energy Regulatory Comm'n*, 669 F.2d 799, 809 (D.C. Cir. 1981) (hereinafter "*Anaheim*")). Once the case participant has made that showing, "the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent." *Id.* (quoting *Anaheim*, 669 F.2d at 809).

[7] The Supreme Court of Missouri, *en banc*, recognized this presumption "is not a creature of statute or regulation," rather, it arises from Commission precedent. *Office of the Pub. Counsel v. Mo. Pub. Serv. Comm'n*, 409 S.W.3d 371, 376 (Mo. banc 2013).

In evaluating whether a utility's decision qualifies as prudent, the Commission adopted a reasonableness standard. *Id.* at 194. Specifically, the Commission stated

> . . . the company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.

Id. (quoting *In re Consol. Edison Co. of N.Y., Inc.,* 45 PUR 4th 325 (N.Y. 1982)).

In making this decision, the Commission does not rely on hindsight. *Id.* Rather, the Commission assesses "management decisions at the time they are made . . . ." *Id.* The relevant question becomes "[g]iven all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?" *Id.*

The Commission further noted that the reasonableness standard does not require perfection. *Id.* Rather, "relevant factors" under the reasonableness standard include "the manner and timeliness in which problems were recognized and addressed." *Id.*

The Commission recognized the inherent elements of public utility regulation, in which the public utility is granted a state-sanctioned monopoly in return for accepting the "duty to serve all customers." *Id.* "To avoid monopoly pricing the state regulates the public utility to ensure reasonable rates." *Id.*

"Because of the grave financial consequences which could accrue to captive monopoly ratepayers if a utility's investments were to prove uneconomic," the Commission applies "a standard of reasonable care requiring due diligence." *Id.*

C. Commission Rules Governing Electric Utility Resource Planning

Having discussed the securitization statute and the applicable prudence standard, the OPC now turns to the Commission's rules governing electric utility resource planning.

In setting forth the policy objectives of the electric utility resource planning rules, the rules describe the "fundamental objective of the resource planning process at electric utilities" and specifically reference the provision of "safe, reliable, and efficient" energy services at "just and reasonable rates." 20 CSR 4240-22.010(2). Specifically, the rules provide:

> The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies.

Id. The rule continues to discuss what the "fundamental objective" requires from the utility. *Id.*

Further, these rules state that Commission "[a]cknowledgment shall not be construed to mean or constitute a finding as to the prudence, pre-approval, or prior commission authorization of any specific project or group of projects." 20 CSR 4240-22.080(17). The rule also specifies that "[c]onsistency with an acknowledged preferred resource plan or resource acquisition strategy does not create a rebuttable presumption of prudence and shall not be considered to be dispositive of the issue." *Id.*

II. Analysis: Because Evergy West Did Not Prudently Plan its Resources, in Determining the Amount of Qualified Extraordinary Costs that Evergy West May Securitize, the Commission Should Include an Adjustment to Account for Imprudent Resource Planning

The securitization statute allows Evergy West to recover prudent costs that meet the requirements of qualified extraordinary costs. § 393.1700.1(13) RSMo. In determining the amount of qualified extraordinary costs that Evergy West may recover, the Commission must find that the

qualified extraordinary costs are "just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo; *see* § 393.1700.1(17) RSMo.

Although Evergy West is entitled to a presumption that it prudently incurred its Storm Uri costs, the OPC will create "a serious doubt as to the prudence of [this] . . . expenditure." *Union Elec. Callaway*, 27 Mo. P.S.C. (N.S.) at 193. This serious doubt arises from the fact that Evergy West has imprudently planned its resources. This can be shown through the testimony of the OPC's witness, Ms. Lena Mantle's explanation of how a utility prudently plans its resources and how Evergy West does not meet that standard. The fact that Evergy West does not meet the SPP's resource adequacy requirements further supports that doubt. Finally, a comparison between Storm Uri's effects on Evergy West and its sister company, Evergy Missouri Metro, exemplifies the differences in costs between a utility that prudently plans its resources and one that does not. The OPC need not rely on hindsight to raise these issues because it has raised concerns with Evergy West's resource plan since at least 2017. (*See* Ex. 207 "Robinett Rebuttal Testimony" 3, Doc. 118; Mantle Rebuttal Test. 9).

Because the OPC has met its burden to create a serious doubt as to the prudency of the Storm Uri costs, the burden switches to Evergy West to "dispel[] these doubts and prov[e]" that the Storm Uri costs are prudent. *Union Elec. Callaway*, 27 Mo. P.S.C. (N.S.) at 193. Because Evergy West has imprudently planned its resources and those decisions resulted in greater costs incurred during Storm Uri, Evergy West cannot meet that burden. (Mantle Rebuttal Test. 3).

To recognize that Evergy West incurred greater costs related to Storm Uri as a result of its imprudent resource planning, the Commission should include an adjustment in the amount of qualified extraordinary costs that Evergy West may securitize to account for the effect of that

imprudence. Ms. Mantle has included a range of recovery that recognizes this adjustment.[8] (*See id.* 5-6).

A. A Serious Doubt Exists as to the Prudence of Evergy West's Storm Uri Costs

Evergy West experienced increased costs related to Storm Uri due to its imprudent resource planning. To overcome the presumption of prudence as to the Storm Uri costs,[9] the OPC must create a serious doubt as to the prudence of those costs. *Union Elec. Callaway,* 27 Mo. P.S.C. (N.S.) at 193. Ms. Mantle's testimony regarding a prudent utility's resource planning and Evergy West's resource planning supports this doubt. Evergy West's failure to meet the SPP's resource adequacy requirements based on its own resources further supports it. Finally, a comparison between Storm Uri's effects on Evergy West and its effect on Evergy Missouri Metro fuels this doubt even further. The OPC will discuss each in turn.

1. Ms. Mantle Explains How Evergy West's Resource Plan is Not Prudent

Ms. Mantle, a Senior Analyst with the OPC, who has nearly thirty years of experience working with public utilities, sponsored testimony supporting the OPC's adjustment to account for Evergy West's imprudent resource planning. (*See generally* Mantle Rebuttal Test.). Ms. Mantle served for nearly twenty years in various roles with Staff—including as an Economist, Engineer,

[8] In his Surrebuttal Testimony, Evergy West witness, Mr. John Reed, appears to characterize the OPC's argument as asking the Commission to allow Evergy West to recovery *none* of its Storm Uri costs. (Ex. 18 "Reed Surrebuttal Testimony" 5, Doc. 102 (stating "it should not be able to securitize its Winter Storm Uri costs")). This mischaracterizes the OPC's requested adjustment. The OPC does not oppose securitization as long as the Commission finds quantifiable net present value benefits to customers, as required by the § 393.1700.2(3)(c)b RSMo. Rather, the OPC requests that the Commission not allow Evergy West to recover *a portion* of its costs related to Storm Uri to account for its imprudent resource planning. (*See* Mantle Rebuttal Test. 5-6).

[9] The Commission has adopted Mr. John J. Reed's description of the prudence standard. (Report & Order 28-29, Case No. EO-2022-0040). Mr. Reed also recognizes the presumption of prudence and that the presumption may be overcome. (*See id.* 28 (stating "[t]he second feature is a presumption of prudence which is often referred to as a rebuttable presumption. The burden of showing that a decision is outside of the reasonable bounds falls, at least initially, on the party challenging the utility's actions.")). The OPC does not dispute the presumption of prudence. Rather, it asserts that it has met its burden to show that the full amount of Evergy West's costs related to Storm Uri are imprudent and has overcome the presumption of prudence.

Engineering Supervisor, and Manager of the Energy Unit—before retiring and later joining the OPC. (*Id.*). Perhaps most applicable to the instant matter, during her career, Ms. Mantle, served as a part of the team that "researched the resource planning practices of the electric utilities in the late 1980s and developed the Commission's Chapter 22 Electric Utility Resource Planning rules." (*Id.* 7). She also "supervised the revision of Chapter 22 that became effective in 2010." (*Id.*). Ms. Mantle has extensive experience reviewing the resource plans of Missouri's electric investor-owned utilities, including reviewing Evergy West's generation resources and resource planning process for the last thirty years. (*Id.* 7, 19). Therefore, her understanding of what constitutes a prudent resource plan cannot be understated. (*See id.*).

a. Electric Utility Prudent Resource Planning

In her whitepaper, *Resource Planning of a Vertically Integrated Utility in the RTO World*, Ms. Mantle explains what constitutes a prudent utility. (Ex. 201P Schedule 2 "Mantle Whitepaper" 7[10], Doc. 112). Ms. Mantle explains that "[t]he resource planning objective of the prudent utility is to meet its customers' loads 8,760 hours of the year at a reasonable cost that minimizes risks and values flexibility across a variety of various futures—some of which include extreme market prices." (*Id.*). Ms. Mantle continues to say that a prudent utility "sees value in being a part of a market where it can sell generation when it is not needed by its customers and being able to take advantage of other utilities' diversity of energy resources and loads." (*Id.*). A prudent utility, Ms. Mantle states "does not build to meet the [regional transmission organizations ('RTO')] planning reserve margin but meets the RTO planning reserve margin because it builds to meet its customers' needs." (*Id.*).

[10] As filed in EFIS, Ms. Mantle's whitepaper includes two different sets of page numbers. One set is associated with the whitepaper itself and appears in the bottom center of the page. The second is associated with the schedule as filed in EFIS and appears in the bottom left corner after the identifier "LMM-R-2 Page." For clarity, the OPC refers to the set of page numbers associated with the schedule as filed, the number appearing in the bottom left corner.

In her Rebuttal Testimony, Ms. Mantle further explains that a utility may be considered prudent even if it does not have sufficient generating resources to satisfy its customers' load at all times including all extreme events. (Mantle Rebuttal Test. 10). Rather, she states that "[a]dding generation resources should be a balance between cost and reliability." (*Id.*). She clarifies that "[a] proper balance in the resource planning process will mitigate any volatility in the energy market." (*Id.* 11). A prudent utility considers the "availability of fuel and the dispatchability of the resource, along with meeting environmental regulations." (*Id.* 18). A "diverse portfolio of resources will" meet all of the requirements of a prudent resource plan. (*Id.*).

As to membership in a RTO, such as the Southwest Power Pool ("SPP"), Ms. Mantle explains that a utility that is part of a RTO must still have sufficient generating resources to protect its customers from high energy price risk. (*Id.* 25). Specifically, "[i]f a utility has adequate resources, the cost of extreme weather events such as Storm Uri will be significantly lower." (*Id.*). Further, as Storm Uri showed, "[a]n assumption that energy will be available for all members of a RTO at any time is unrealistic." (*Id.*).

b. <u>Evergy West's Resource Planning</u>

Evergy West, however, is not a prudent utility. Rather, its resource plan to rely heavily on energy purchased from the SPP market is imprudent. (Mantle Rebuttal Test. 13).

In completing its resource planning process before the Commission, Evergy, Inc. (Evergy West's parent company) combines the resources of Evergy West, Evergy Metro, and Evergy Kansas Central. (*Id.* 3, 16). Evergy West does not have sufficient generating capacity to meet its customers' load. (*Id.* 16). Evergy Metro, however, has more than enough generation resources to meet its customers' capacity and energy requirements. (*Id.* 16).

Although Evergy, Inc. submits combined resource plans to the Commission that appear to treat all utilities as one company, the utilities are each separate entities. (*See id.* 4, 16). Each utility seeks different rates from their customers, which are based on an allocation of shared costs and those costs that can be directly attributed to one entity are attributed to that entity. (*Id.* 4). "For instance, the cost of plants that were built by Evergy Metro are assigned to Evergy Metro." (*Id.*). Similarly, the expected revenues generated from selling the energy produced by the generating plants reduces the rates charged to Evergy Metro's customers. (*Id.*).

As a result of this separation, Evergy West cannot draw on Evergy Missouri Metro's excess *energy*.[11] (*See* 17 (explaining Evergy West's capacity-only purchased power agreements)). Rather Evergy West must purchase a large amount of the energy needed to meet its load from the SPP market. (*Id.* 4, 17). "The consistent amount of energy Evergy West purchases above the amount of energy it sells into the market demonstrates that Evergy West's generation resources cannot meet its customers' load and therefore its resource planning is imprudent." (*Id.* 13).

Because of Evergy West's fuel adjustment clause ("FAC"), which allows for cost recovery from customers of Evergy West's market purchases, Evergy West's captive ratepayers bear the

[11] An important distinction exists here. Ms. Mantle defines "energy" as the "amount of electricity generated across time." (Tr. 391, V. III pdf 122 (Mantle Testimony)). Capacity, on the other hand, is the "amount of resources able to generate at peak max." (*Id.*). Capacity is "commonly referred to as kW. [A g]eneration resource is typically measured in size by kW. So it's the available amount of energy that's from that plant or that unit." (*Id.*).

As explained in Ms. Mantle's testimony, Evergy West has entered into capacity-only purchase power agreements with Evergy Metro. (Mantle Rebuttal Test. 17). These capacity-only purchase power agreements "transfer[] the capacity of generation resources for a payment." (*Id.*). They do not, however, "include any *energy* from that generation." (*Id.* (emphasis added)). Therefore, while Evergy West can report *capacity* that it has purchased from Evergy Metro, it cannot rely on the *energy* generated from that capacity. (*See id.*). For this reason, these capacity-only purchased power agreements provided Evergy West with no benefit during February 2021. (*Id.*).

This is also an important distinction between this case and the facts the Commission considered in Liberty's request to securitize its Storm Uri costs. In that case, the Commission found that Liberty "planned to have sufficient capacity to meet all requirements established by SPP." (Report & Order 33, Case No. EO-2020-0040). However, here, Evergy West does not plan to have sufficient *generation* capacity to meet all requirements established by SPP based on its own resources. (Mantle Rebuttal Test. 24).

risk of this strategy. (*Id.* 4-5). "When market costs are low and stable the cost of this risk is low." (*Id.* 5). However, when market costs increase, the cost of the risk born by the ratepayers also increases. (*Id.*). The Commission stands as the only protection Evergy West's customers have against Evergy West's imprudent resource plan. (*Id.*).

Evergy West's imprudent resource planning resulted in Evergy West incurring greater costs related to Storm Uri. (*Id.* 3). This imprudent resource planning raises a serious doubt as to the prudence of the full amount of Storm Uri costs.[12]

2. Evergy West Cannot Meet the SPP's Resource Adequacy Requirements Based on its Own Resources

Having explained how Evergy West imprudently plans its resources, the OPC now turns to the fact that Evergy West cannot meet the SPP's resource adequacy requirements based on its own resources to further support the doubt it must raise to overcome the presumption of prudence.

As explained above, as a part of its resource plan, Evergy West must purchase a large amount of energy from the SPP market. (Mantle Rebuttal Test. 4). The "SPP requires its load serving entities ('LSE') to have a reserve margin of 12%," which means "that each LSE has to have enough capacity to meet 1.12 times its projected summer and winter peak demands." (Mantle Rebuttal Test. 23). Evergy West asserts that due to the SPP's Open Access Transmission Tariff, Evergy Inc. may comply with the SPP resource adequacy requirement to serve the combined loads of Evergy West and Evergy Metro with a combined set of designated resources. (*Id.* 23-24 (citing Schedule LMM-R-4 "Evergy West's Response to OPC DR 8535 in Case No. ER-2018-0146")).

[12] Mr. Reed's prudence description, which the Commission adopted, recognizes that "prudence relates to actions and decisions," as opposed to the costs themselves. (Report & Order 28, Case No, EO-2022-0040). Mr. Reed explains that "[i]t is the decision or action that led to cost incurrence that must be reviewed and assessed, not the results of those decisions." (*Id.*). Here, the OPC asks that the Commission examine Evergy West's actions and decisions in choosing an imprudent resource plan.

Therefore, "since 2018, Evergy West and Evergy Metro have combined their resources to meet the 12% reserve margin requirement." (*Id.* 23).

Evergy West explains that the "combined view reduces the chances that [Evergy West] or [Evergy Metro] on an individual basis would fail to meet the SPP resource adequacy requirement." (*Id.* 24 (quoting Evergy West's Response to OPC DR 8535 in Case No. ER-2018-0146)). Again, such a plan suggests that Evergy Missouri Metro and Evergy West operate as one utility. (*See id.*). However, that is not the case. (*Id.* 4).

Although Evergy West had sufficient resources on its own to meet the 12% reserve margin in 2017 and 2018, starting in 2019, it did not have sufficient resources. (*Id.* 24).

Whether Evergy West has sufficient generation to meet the SPP resource adequacy requirement on its own is important for at least two reasons. (*Id.* 25). First, although the RTO is likely to have available the energy its members need, relying on the market exposes customers to high energy price risk. (*Id.*). If a utility has adequate generating resources though, the cost of extreme weather events such as Storm Uri, will be significantly lower. (*Id.*). Second, as was shown by Storm Uri, "[a]n assumption that energy will be available for all members of a RTO at any time is unrealistic." (*Id.*). As Ms. Mantle points out, "SPP came very close to not having enough generation to supply the need" during Storm Uri. (*Id.*).

The fact that Evergy West relies heavily on the SPP market to supply it with energy, yet it does not meet the resource adequacy requirements based on its own generation resources further supports the serious doubt the OPC must show to overcome the rebuttable presumption of prudence.

3. A Comparison of Storm Uri's Effect on Evergy Metro and Evergy West Raises Serious Doubt

Should the Commission require more evidence to find that the OPC raises a serious doubt as to the full amount of the Storm Uri costs, it need look no further than a comparison between Storm Uri's effect on Evergy Metro and its effect on Evergy West.[13] This single storm had vastly different consequences on the two utilities—resulting in a delta of more than $350 million.

No party disputes that Storm Uri was an anomalous weather event. Its frigid temperatures over several days "had a major impact on prices during February." (Ives Direct Test. 6, 11). The storm also impacted Evergy Missouri Metro, which also operates under Evergy, Inc. (Mantle Rebuttal Test. 3, 12). However, "due to its excess of generation resources," Evergy Metro "actually generated enough revenues during Storm Uri to cover its load costs, the fuel costs of its generation, and an extra $58.2 million in revenue." (*Id.* 12).

Evergy West, on the other hand, claims that it suffered nearly $295.6 million in costs related to Storm Uri. (Ives Direct Test. 20).

Based on these two numbers, a delta of over $350 million separates Storm Uri's effect on these two utilities. (*Compare* Mantle Rebuttal Test. 12, *with* Ives Direct Test. 20). This delta further supports the serious doubt the OPC must raise.

4. The OPC Need Not Rely on Hindsight to Meet its Burden to Establish "Serious Doubt as to the Prudence of" the Storm Uri Costs

In arguing imprudence, the OPC need not rely on hindsight to meet its burden to overcome the presumption of prudence.

[13] Mr. Reed's prudence description states that "decisions being reviewed need to be compared to a range of reasonable behavior . . . ." (Report & Order 29, Case No. EO-2020-0040). Here, the OPC provides a comparison between Storm Uri's effect on Evergy Metro and its effect on Evergy West.

As a part of the prudence standard, the Commission has recognized that it will not rely on hindsight. *See Union Elec. Callaway*, 27 Mo. P.S.C. (N.S.) at 193. In concluding that parties to Union Electric's Callaway case had overcome the presumption of prudence, the Commission looked to the amount of costs overruns related to the Callaway project. *Id.* The Commission recognized that its prudence standard does not demand perfection. *Id.*

The OPC is not asking the Commission to demand perfection from Evergy West. Nor is it relying on hindsight to support its contention that Evergy West imprudently planned its resources. Rather, the OPC has been raising issues with Evergy West's resource planning decisions, including Evergy West's increased reliance on energy purchased from the SPP market, since at least 2017. (*See* Robinett Rebuttal Test. 3; Mantle Rebuttal Test. 9). Staff has also expressed concerns regarding Evergy West's resource plan and its placement of undue risk on Evergy West's ratepayers. (Ex. 202 "Mantle Surrebuttal Testimony" 2, Doc. 113 (citing Staff's concern found on page 4 of the Joint Filing, filed in Case No. EO-2021-0036)). Staff's concern focused on "Evergy West's addition of renewable resources outside of the resource planning process." (*Id.*).

However, even knowing these concerns it appears that Evergy West did nothing to address these concerns. (*See* Mantle Rebuttal Test. 15). Focusing on the time period of June 2020 through May 2021, Ms. Mantle explains that Evergy West purchases "a large percentage of its customers' energy requirements from the SPP." (*Id.*).

As a result of this resource planning strategy, Evergy West claims that it has suffered approximately $295.6 million in costs related to Storm Uri.[14] (Ives Direct Test. 20). This compares

[14] In his description of the regulatory prudence standard, Mr. Reed states that "subsequent information on 'how things turned out' cannot influence the evaluation of the prudence of a decision." (Report & Order 29, Case No. EO-2022-0040). However, in its *Union Electric Callaway* decision, in which the Commission adopted the prudence standard, the Commission looked to the amount of cost overruns of the Callaway project to determine that a serious doubt had been raised as to the prudence of the costs. *Union Elec. Callaway*, 27 Mo. P.S.C. (N.S.) at 193. Therefore, this description by Mr. Reed appears at odds with the Missouri Commission's prior prudence determinations.

to $58.2 million in *profits* that Evergy Metro—which operates under the same parent company—enjoyed as a result of the storm. (Mantle Rebuttal Test. 3, 12).

To make its argument that a serious doubt exists as to the prudence of the full amount of Evergy West's Storm Uri costs, the OPC need not rely on hindsight.[15]

5. Conclusion: The Commission Should Determine that the OPC Has Raised a Serious Doubt as to the Prudence of the Full Amount of Evergy West's Storm Uri Costs

As explained by Ms. Mantle, Evergy West has not prudently planned its resources and, as a result of that imprudent planning, it suffered greater costs related to Storm Uri. (*See generally* Mantle Rebuttal Test.). Further, even though Evergy West relies heavily on the SPP market to supply its customers with energy, it cannot meet the SPP's resource adequacy requirements based on its own generation resources. (Mantle Rebuttal Test. 4, 20). Finally, comparing Storm Uri's effect on Evergy Metro and Evergy West shows that a delta of over $350 million exists between the two utilities. (*Compare* Mantle Rebuttal Test. 12, *with* Ives Direct Test. 20). For these reasons, the Commission should determine that the OPC has raised a serious doubt as to the prudence of Evergy West's Storm Uri costs due to its imprudent resource plan and require Evergy West to carry the burden of dispelling these doubts and proving that the full amount of its Storm Uri costs are prudent.

[15] Mr. Reed's description of the regulatory prudence standard, which the Commission has adopted, references the "total exclusion of hindsight from a properly constructed prudence review." (Report & Order 28-29, Case No. EO-2020-0040). Specifically, he states that "[i]nformation that was not known or reasonably knowable at the time of the decision being made cannot be considered in evaluating the reasonableness of a decision . . . ." (*Id.* 29). As explained above, the OPC has been raising concerns with Evergy West's resource planning decisions since at least 2017. (*See* Robinett Rebuttal Test. 3, Mantle Rebuttal Test. 9). Evergy West, therefore, cannot claim that it did not know of these concerns in the time leading up to Storm Uri. (*See id.*). The OPC need not rely on hindsight in making this argument.

B. Evergy West Cannot Prove that it Prudently Incurred the Full Amount of its Claimed Storm Uri Costs

If the Commission determines that the OPC raises a serious doubt as to the prudence of the full amount of Evergy West's claimed Storm Uri costs, the burden shifts to Evergy West to prove that it prudently incurred the costs. *Union Elec. Callaway*, 27 Mo. P.S.C. (N.S.) at 193. Evergy West cannot carry that burden.

As explained above, Evergy West has imprudently planned its resources. (*See generally* Mantle Rebuttal Test.). To account for the effect of the imprudent resource plan, the Commission should include an adjustment to the amount of fuel and purchased power costs that Evergy West may securitize as qualified extraordinary costs. (*See* Mantle Rebuttal Test. 5-6). In her Rebuttal Testimony, Ms. Mantle has provided a range of recovery that accounts for this effect.[16] (*Id.*). In fairness to Evergy West's ratepayers, the Commission should not require those ratepayers to bear the full burden of Evergy West's Storm Uri costs and should recognize this adjustment.

Issue 1h: Were the costs incurred by EMW related to Winter Storm Uri as a result of its resource planning process just and reasonable?

No, as explained in greater detail in response to issue 1g, if Evergy West had prudently planned its resources, it would have had generation resources that would have mitigated the cost of energy and avoided much of the cost Evergy West incurred during Storm Uri. (*See* Mantle Rebuttal Test. 2-6, 8-27; Mantle Surrebuttal Test. 2, 4-5; Robinett Rebuttal Test. 3). Because Evergy West did not prudently plan its resources, many of the costs it incurred related to Winter Storm Uri are not just and reasonable. (*See id.*); *see* § 393.1700.2(3)(c)a RSMo. (requiring the Commission to include in its financing order a finding that the recovery of the qualified extraordinary costs are "just and reasonable"). The Commission need look no further than to

[16] Ms. Mantle's range accounts for application of the 95%/5% cost sharing mechanism. (Ex. 201C Schedule 1 "LMM-R-1C," Doc. 112).

Evergy Metro as a utility that prudently planned its resources and made a profit as a result of Storm Uri. (Mantle Rebuttal Test. 3).

Issue 1h(i): If no, should EMW's recovery through securitized bonds reflect a disallowance?

Yes, as explained in greater detail in response to issue 1g, the Commission should only allow Evergy West to recover prudent fuel and purchased power costs. *See* § 393.1700.1(13) RSMo. (defining qualified extraordinary costs as "costs incurred *prudently* . . . ." (emphasis added)); (Mantle Rebuttal Test. 2-6, 8-27; Mantle Surrebuttal Test. 2, 4-5; Robinett Rebuttal Test. 3). Here, Evergy West did not prudently plan its generation resources and because of that incurred greater costs related to Storm Uri. (Mantle Rebuttal Test. 3). The Commission should reduce the amount of fuel and purchased power costs Evergy West may recover to account for that imprudence. (*Id.* 5-6).

Issue 1h(i)(1): If yes, what amount should the Commission disallow?

To account for the imprudence of Evergy West's resource planning, the Commission should include a disallowance up to $250,524,777 of the fuel and purchased power costs Evergy West seeks to securitize. (Mantle Rebuttal Test. 6, Schedule LMM-R-1C; Mantle Surrebuttal Test. 1-2).

Issue 1i: Should EMW's recovery through securitized bonds reflect a disallowance for income tax deductions for Winter Storm Uri costs?

Yes, because Evergy West received[17] an income tax deduction for Winter Storm Uri costs, the Commission should reduce the amount of fuel and purchased power costs to be securitized to

[17] As Mr. Riley explained in his Surrebuttal Testimony, "[t]he reduction will be on the Company's 2021 consolidated federal and state income tax returns . . . ." (Riley Surrebuttal Test. 4). Evergy West's 2021 income tax returns "were due to be filed April 18 of this year, however, the Company submitted a filing extension so the return won't be filed until October 15, 2022." (*Id.*). Although "Evergy made the management decision to delay filing . . . the benefits are already available." (*Id.*). Because the benefits are already available, the OPC refers to the income tax deductions as if Evergy West had already received the deductions.

account for this deduction. (*See generally* Riley Rebuttal Testimony). To calculate this adjustment, the Commission should multiply the amount of fuel and purchased power it deems prudent by the composite tax rate: 23.84%. (*Id.* 3). Allowing Evergy West to return this amount to ratepayers over time is not in the public interest because it will require ratepayers to pay even more. (*See* Tr. 502-03, V.IV pdf 90-91 (Riley Testimony)). Further, if the Commission recognizes the reduction, Evergy West should have sufficient funds to pay the taxes associated with the revenues generated from its collection of the securitized utility tariff charge. *See* § 393.1700.1(8)(d) RSMo.

In the Stipulation, the Signatories agreed that the OPC's issues that remain open for Commission resolution include an "adjustment to the proposed securitization amount to account for the tax deduction Evergy . . . West will receive . . . ." (Stipulation 3). The Signatories also agree "any amounts identified [in the Stipulation] . . . may change as a result of the Commission's determination of the OPC's issues." (*Id.*). Therefore, this issue remains a live issue for Commission consideration even if the Commission approves the Stipulation.

I. The Commission Should Recognize the True Cost of Storm Uri in Determining the Amount of Qualified Extraordinary Costs Evergy West Can Securitize

Because Evergy West received an income tax deduction for its Storm Uri fuel and purchased power costs and that deduction reduces the true cost Evergy West experienced related to Storm Uri, the Commission should include an adjustment to recognize the tax deduction.

A. Applicable Legal Standard

The securitization statute defines qualified extraordinary costs, in pertinent part, as "costs incurred prudently . . . of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking." § 393.1700.1(13) RSMo. In issuing its financing order, the Commission must find that the

recovery of the qualified extraordinary costs "is just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo; *see* § 393.1700.1(17) RSMo.

B. Because Evergy West Received a Tax Deduction Related to its Storm Uri Fuel and Purchased Power Costs, it is not Just and Reasonable to Include the Amount of that Deduction in the Amount of Qualified Extraordinary Costs

In determining the proper amount of qualified extraordinary costs that Evergy West may recover through securitized utility tariff bonds, the Commission should recognize the tax deduction that Evergy West received related to the fuel and purchased power costs. Such recognition will result in the Commission allowing Evergy West to recover only its true costs related to Storm Uri.

Evergy West does not dispute that it will get a tax deduction related to the Storm Uri fuel and purchased power costs. (*See* Ex. 5 "Hardesty Surrebuttal Testimony" 3, Doc. 89; Tr. 230, V. II pdf 174 (Hardesty Testimony)). Evergy West also admitted that it does not have to pay back that income tax deduction. (Tr. 230-31, V. II pdf 174-75 (Hardesty Testimony)).

Evergy West further admitted that it will not pay taxes when it receives the bond proceeds from the Special Purpose Entity ("SPE"). (Hardesty Surrebuttal Test. 3; Tr. 230, V. II pdf 174 (Hardesty Testimony)).

No party disputes that Evergy West incurred increased costs related to Storm Uri. However, Evergy West also realized an offset to those costs through the income tax deduction it received related to the fuel and purchased power costs. (*See* Riley Rebuttal Test. 3). As Mr. Riley explains "[i]ncome tax recognition is inescapable in the context of utility ratemaking. The tax effect is always considered when calculating a company's revenues or expenses." (*Id.*). To ensure that Evergy West's ratepayers realize the benefit of the income tax deduction that Evergy West received, the Commission should recognize the tax benefit in determining the amount of qualified extraordinary costs Evergy West may recover through securitization. (*See id.* 7). This ensures that

the amount of qualified extraordinary costs is "just and reasonable and in the public interest," as required by the securitization statute. § 393.1700.2(3)(c)a RSMo.

II. Giving Ratepayers the Benefit of the Tax Deduction Over Time is Not Just and Reasonable Nor is it in the Public Interest

It appears that Staff would have the amount of the income tax deduction returned to ratepayers over the life of the securitized bonds. (*See* Bolin Surrebuttal Test. 4). However, to do so is not just and reasonable nor is it in the public interest because returning the benefit to customers over time will cost ratepayers more. (*See* Tr. 502-03, V. IV pdf 90-91 (Riley Testimony)).

Throughout the tax discussion in this case both Evergy West and Staff have referred to a "deferred tax." (*See* Hardesty Surrebuttal Test. 5; Bolin Surrebuttal Test. 4). Evergy West's witness, Ms. Melissa Hardesty asserts that this deferred tax arose when a "timing difference" took place. (Hardesty Surrebuttal Test. 5; Tr. 229, V. II pdf 173 (Hardesty Testimony)). During her testimony at the hearing, Ms. Hardesty explained:

> when the costs were incurred, [Evergy West] was able to take a tax deduction. So it got a tax deduction on the return. We did not take a deduction for book purposes. So it created a timing difference which created deferred taxes which are sitting on [Evergy West's] books. It's a deferred tax liability. . . .
>
> However, when the revenues are collected at the special purpose entity, the non-bypassable charge, those revenues, the Company has to pick up that revenue on [Evergy West's] taxable income and pay the deferred tax liability as it's collected back to the IRS. So deferred taxes reverse as those revenues are collected.

(Tr. 229, V. II pdf 173 (Hardesty Testimony)).

Similarly, Ms. Bolin states in her Surrebuttal Testimony that Evergy West has recorded a deferred tax liability for the Winter Storm Uri costs. (Bolin Surrebuttal Test. 4). She asserts that the deferred tax liability will be included as "an offset to rate base in future" Evergy West general rate cases. (*Id.*). She continues saying that "[i]n this manner, the tax benefits associated with Storm

Uri costs will be given to customers in future general rate cases over the life of the securitized bonds." (*Id.*).

However, as Mr. Riley explains, to recognize the tax benefit in this manner over time comes at a great cost to ratepayers, approximately $30 million. (Tr. 505-07, V. IV pdf 93-95 (Riley Testimony)). This increased costs results from the additional interest that ratepayers must pay if the amount of the tax deduction is included in the amount of qualified extraordinary costs that ratepayers must pay. (*Id.* at 507, V. IV pdf 95 (Riley Testimony)).

Similarly, because Evergy West is entitled to the tax deduction up front, the amount to be securitized should be reduced up front as well. (Tr. 504, V. IV pdf 92 (Riley Testimony)).

The Commission must fine that the amount of qualified extraordinary costs to be recovered through securitized utility tariff bonds is "just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo; *see* § 393.1700.1(17) RSMo. The public interest simply cannot require ratepayers to pay an additional $30 million for a benefit that they should receive upfront. (*See* Tr. 505-07, V. IV pdf 93-95 (Riley Testimony)). Similarly, it is neither just nor reasonable to require ratepayers to pay this additional amount. *See* § 393.1700.2(3)(c)a RSMo. For these reasons, the Commission should recognize the tax deduction Evergy West received associated with the Storm Uri costs in setting the amount of qualified extraordinary costs Evergy West may recover.

III. The Commission's Reduction of Qualified Extraordinary Costs to Account for the Income Tax Deduction Should Have No Bearing on Evergy West's Ability to Pay the Taxes Associated with the Revenues Generated from Evergy West's Collection of the Securitized Utility Tariff Charge, Because Evergy West's Ratepayers Must Pay that Amount as Financing Costs

In both her Surrebuttal Testimony and in her testimony during the hearing, Evergy witness Ms. Hardesty asserted that if the Commission accepts the OPC's proposed reduction, Evergy West

will not have sufficient funds to pay the income taxes associated with the revenues generated from the collection of the securitized utility tariff charge. (Hardesty Surrebuttal Test. 2; Tr. 236, V. II pdf 180). However, this argument is fundamentally flawed. Although the securitization statute requires Evergy West's ratepayers to pay the taxes associated with the revenues generated from Evergy West's collection of the securitized utility tariff charge, it must collect those amounts as financing costs. *See* § 393.1700.1(8)(d) RSMo. Because the financing costs are separate from qualified extraordinary costs, the Commission can both recognize the tax deduction and Evergy West should have sufficient funds to pay the taxes. *See* §§ 393.1700.1(8)(d), (13) RSMo.

A. Applicable Legal Standards

Four definitions found in the securitization statute are necessary here: (1) securitized utility tariff charge; (2) financing costs; (3) securitized utility tariff costs; and (4) qualified extraordinary costs. Additionally, the requirements of the Commission's financing order affect this argument.

First, the securitization statute defines a securitized utility tariff charge, in pertinent part, as "the amounts authorized by the commission to repay, finance, or refinance securitized utility tariff costs and financing costs . . . ." § 393.1700.1(16) RSMo.

The statute defines financing costs, in pertinent part, as "[a]ny taxes and license fees or other fees imposed on the revenues generated from the collection of the securitized utility tariff charge or otherwise resulting from the collection of securitized utility tariff charge, in any such case whether paid, payable, or accrued." § 393.1700.1(8)(d) RSMo.

A securitized utility tariff cost is defined as "either energy transition costs[18] or qualified extraordinary costs as the case may be." § 393.1700.1(17) RSMo.

[18] The OPC notes that Evergy West has not sought to securitize any costs as energy transition costs.

Finally, a qualified extraordinary cost are those "costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power inclusive of carrying charges, during anomalous weather events." § 393.1700.1(13) RSMo.

Putting all of these definitions together, the statute defines for purposes of this argument a securitized utility tariff charge as "the amount authorized by the commission to repay, finance, or refinance [qualified extraordinary costs] and [any taxes and license fees or other fees imposed on the revenues generated from the collection of the securitized utility tariff charge . . .]." *See* § 393.1700.1(8)(d), (13), (16), (17) RSMo.

The Commission's financing order must include a finding that the recovery of qualified extraordinary costs are "just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo. The Commission must also "describe and estimate the amount of financing costs that may be recovered through securitized utility tariff charge and specify the period over which securitized utility tariff costs and financing costs may be recovered." *Id.*

B. The Securitization Statute Requires Evergy West's Customers to Pay the Taxes Associated with the Revenues Generated from the Collection of the Securitized Utility Tariff Charge

Staff appears to assert that Evergy West's customers will not pay the taxes associated with Evergy West's collection of the securitized utility tariff charge. However, as a part of the nobypassable securitized utility tariff charge, the securitization statute requires that Evergy West's ratepayers pay these taxes as financing costs.

In her surrebuttal testimony, Ms. Bolin claims that "[i]f [Evergy West's] customers were to also be responsible for the taxes, the amount of taxes should be directly built into the securitized

amount." (Bolin Surrebuttal Test. 3). She asserts "[t]his is *not* how [Evergy West] or Staff has calculated the securitized amount. (*Id.* (emphasis added)).

Ms. Bolin later continues saying that "[t]axes will be paid once any revenue is received by the [special purpose entity]." (Bolin Surrebuttal Test. 4). Ms. Bolin claims that the special purpose entity "will file a tax return as part of the consolidated income tax return filed by Evergy Inc." (*Id.* (citing Evergy West Response to Staff Data Request No. 96)). She asserts that it is "Staff's understanding . . . that these taxes will not be charged to [Evergy West's] retail customers in future rate cases or other regulatory proceedings."[19] (*Id.* 4-5).

However, the assertion that Evergy West's customers will not pay the taxes associated with the revenues does not comply with the securitization statute. Rather, the statute requires Evergy West's customers to pay the taxes associated with the revenues generated by Evergy West's collection of the securitized utility tariff charge. *See* § 393.1700.1(8)(d) RSMo. It requires the ratepayers to make these payments as financing costs included as a part of the securitized utility tariff charge. § 393.1700.1(16) RSMo.

Therefore, Staff's assertion that Evergy West's ratepayers will not pay the taxes associated with the revenues generated by Evergy West's collection of the securitized utility tariff charge cannot be correct. The Commission should disregard this argument.

[19] An inconsistency exists in Ms. Bolin's surrebuttal testimony. On page 4, Ms. Bolin states that "Staff will not include the bond repayments in revenues for calculating the cost of service in a general rate proceeding. The securitized utility tariff charges will be excluded from revenues . . . ." (Bolin Surrebuttal Test. 4). Similarly, on pages 4 and 5, Ms. Bolin states that it is Staff's "understanding . . . that these taxes will not be charged to [Evergy West's] retail customers in future rate cases or other regulatory proceedings." (*Id.* 4-5).

However, on page 2, Ms. Bolin, after saying that if Evergy West's customers were to be responsible for the taxes associated with the revenues that amount should be included in the securitized utility tariff charge, states that "[i]n a rate case, the amount of taxes associated with the revenue the company will collect is included in the base rates." (*Id.* 2). Therefore, this sentence seems to suggest that Staff will include the revenues in Evergy West's next rate case. (*Compare id.* 4, *with id.* 2). Ms. Bolin does not explain this inconsistency.

C. The Securitization Statute Requires that the Taxes Associated with the Revenues Generated from the Collection of the Securitized Utility Tariff Charge be Included as Financing Costs Not as Qualified Extraordinary Costs

Although the securitization statute requires Evergy West's customers to pay the taxes associated with the revenues generated by Evergy West's collection of the securitized utility tariff charge from its customers, the statute requires Evergy West to collect those amounts as financing costs, not as qualified extraordinary costs. This classification of the costs changes the finding the Commission must include in its financing order.

The definition of securitized utility tariff charge references both "securitized utility tariff costs" and "financing costs." *See* § 393.1700.1(16) RSMo. A securitized utility tariff cost includes qualified extraordinary costs, which, in turn, include "purchases of fuel or power . . . during anomalous weather events." § 393.1700.1(13), (17) RSMo. Financing costs, on the other hand, include, in part, "[a]ny taxes . . . imposed on the revenues generated from the collection of the securitized utility tariff charge . . . ." § 393.1700.1(8)(d) RSMo.

In its financing order, the Commission must specify the amount of qualified extraordinary costs to be financed using securitized utility tariff bonds and find that recovery of those costs is "just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo. As to financing costs, the Commission must "describe and estimate the amount of financing costs that may be recovered through securitized utility tariff charge and specify the period over which securitized utility tariff costs and financing costs may be recovered." *Id.*

Simply putting these definitions together and looking to the financing order's requirements, shows that the Commission may both recognize an adjustment to account for the income tax deduction Evergy West received while still allowing Evergy West to recover the amount necessary to pay the taxes associated with the revenues. However, the Commission cannot allow Evergy

West to pay those taxes using amounts included in the securitized utility tariff bonds as qualified extraordinary costs. *Compare* § 393.1700.1(8)(d) RSMo.; *with* § 393.1700.1(13) RSMo. Rather, the securitization statute specifically mandates that the Commission include the amount necessary to pay tax as financing costs. § 393.1700.1(8)(d) RSMo.

Therefore, Evergy West's assertion that it will not have sufficient funds to pay taxes if the Commission reduces the amount of fuel and purchased power by the amount of the tax deduction it received cannot be correct. Costs associated with fuel and purchased power are qualified extraordinary costs. § 393.1700.1(13) RSMo. The amount of taxes imposed on the revenues generated from the collection of the securitized utility tariff charge, on the other hand, are part of the financing costs. § 393.1700.1(8)(d) RSMo. Because these amounts are entirely separate, according to the securitization statute, the Commission's reduction to the amount of fuel and purchased power costs should have no effect on Evergy West's ability to pay the taxes associated with the revenues.

IV. Conclusion: The Commission Should Reduce the Amount of Fuel and Purchased Power that Evergy West May Securitize by the Amount of the Tax Deduction it Received to Ensure that Evergy West May Recover Only its True Cost of Storm Uri

The Commission should reduce the amount of fuel and purchased power costs related to Storm Uri that Evergy West may recover through securitized utility tariff bonds to account for the income tax deduction that Evergy West received due to these costs. To do otherwise would allow Evergy West to enjoy both a tax benefit and fully recover all of its costs, essentially allowing it to over recover. (*See* Riley Rebuttal Test. 7; Riley Surrebuttal Test. 2). Allowing Evergy West to recover more than its true cost of Storm Uri cannot be in the public interest, nor can it be just and reasonable. *See* § 393.1700.2(3)(c)a RSMo.

Similarly, the Commission should recognize this amount in the amount to of qualified extraordinary costs because returning it to customers over time will result in ratepayers paying approximately $30 million more. (Tr. 506-07, V. IV pdf 94-95 (Riley Testimony)). Again, requiring ratepayers to pay even more cannot be in the public interest, nor can it be just and reasonable. *See* § 393.1700.2(3)(c)a RSMo.

Finally, although Evergy West's ratepayers will have to pay the income taxes associated with the revenues generated from Evergy West's collection of the securitized utility tariff charge, the securitization statute requires that this amount be included as financing costs, not as qualified extraordinary costs. *See* §§ 393.1700.1(8)(d), (13) RSMo. Therefore, the Commission's reduction of the amount of fuel and purchased power costs to account for the income tax deduction should have no effect on Evergy West's ability to pay the taxes associated with the revenues from the collection of the securitized utility tariff charge.

For these reasons, in determining the amount of qualified extraordinary costs that Evergy West may recover through securitized utility tariff bonds, the Commission should recognize a reduction equal to the amount of the tax deduction that Evergy West received for the fuel and purchased power costs. To calculate this adjustment, the Commission should multiply the amount of fuel and purchased power it deems prudent by the composite tax rate: 23.84%. (Riley Rebuttal Test. 3).

Issue 1j: Should Evergy's recovery through securitized bonds reflect a disallowance for the income tax deduction on the carrying costs for Winter Storm Uri costs?

Yes, to account for the income tax deduction that Evergy West received[20] as a result of the carrying charges associated with the Storm Uri costs, the Commission should reduce the amount

[20] Mr. Riley explains that the expenses that give rise to the tax deduction related to carrying charges "will be spread over both the 2021 and 2022 tax returns." (Riley Surrebuttal Test. 4). Because Evergy West is already entitled to the

of fuel and purchased power costs by an amount equal to the carrying charges authorized by the Commission multiplied by the composite tax rate, 23.84%. (Riley Surrebuttal Test. 4-6). The OPC recommends this reduction for at least one of the same reasons that it recommends a reduction based on the income tax deduction Evergy West received as a result of its Storm Uri fuel and purchased power costs.

I. The Commission Should Recognize the True Cost of Storm Uri in Determining the Amount Evergy West Can Securitize

Because Evergy West received an income tax deduction related to the carrying charges associated with the Storm Uri costs, which further reduces Evergy West's true cost of Storm Uri, the Commission should include an adjustment to recognize this tax deduction as well.

A. Applicable Legal Standard

The securitization statute defines qualified extraordinary costs, in pertinent part, as "costs incurred prudently . . . of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking." § 393.1700.1(13) RSMo. In issuing its financing order, the Commission must find that the recovery of the qualified extraordinary costs "is just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo.

B. Because Evergy West Received a Tax Deduction Related to Carrying Costs Associated with the Storm Uri Costs, it is not Just and Reasonable to Allow it to Recover that Amount as Qualified Extraordinary Costs

In determining the proper amount of qualified extraordinary costs, the Commission should reduce the amount of fuel and purchased power costs to account for the income tax deduction that Evergy West received related to carrying charges associated with the Storm Uri costs.

deduction for its 2021 tax returns, the OPC will refer to this tax deduction as a deduction Evergy West has received. (*See id.*).

Although Evergy West incurred increased costs related to Storm Uri, it realized an additional offset to those costs through the tax deduction it received associated with the carrying charges related to these costs. (*See* Riley Surrebuttal Test. 4-5). As Mr. Riley explains, "any interest associated with Storm Uri costs would not be a long term debt in the cost of service and would not be in any Staff general rate making calculation going forward." (*Id.* 4). Therefore, "[t]he company tax windfall on the Storm Uri costs and the carrying charges will be a stand-alone calculation and will not be in the next rate case." (*Id.*). To ensure that the Commission allows Evergy West's ratepayers to take advantage of the income tax deduction Evergy West received associated with the carrying charges related to the Storm Uri costs, Mr. Riley states that "whatever the Commission decides should be included as a carrying charge, that amount should be recognized as a tax deduction." (*Id.* 5). Mr. Riley further explains that "if the Company can claim these costs as ongoing and accumulating specifically to Storm Uri, then the costs can be claimed on its tax return and a composite tax rate can be applied." (*Id.*).

Importantly, Evergy West will not be denied recovery of this amount. (*Id.* 6). As Mr. Riley asserts "[t]his is just a shift in payment responsibility." (*Id.*). "The estimated tax reduction to the proposed securitization amount will save the Company in tax liability. The remaining amount will be reimbursed through the securitized bonds." (*Id.*). In recognizing this reduction, the Commission will be providing savings to the ratepayers because they will not have to "fund the tax savings and the interest associated with those tax savings for 15 years." (*Id.*).

The Commission's financing order must include a finding that the amount of qualified extraordinary costs are "just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo. Recognizing a reduction to the amount of qualified extraordinary costs that Evergy West may recover to account for the tax deduction Evergy West will receive related to the carrying charges

associated with the Storm Uri costs ensures that the amount of qualified extraordinary costs meets this standard. *See id.*

Issue 1k: What are the appropriate carrying costs for Winter Storm Uri?

To determine the appropriate carrying costs Evergy West may recover, the Commission should use a rate equal to Evergy West's cost of short-term debt, which is consistent with the A2/P2 cost of commercial paper assigned to Evergy West's commercial paper program. (Murray Rebuttal Test. 7-8, 11; Murray Surrebuttal Test. 2, 4). A short-term debt rate complies with how Evergy West is currently financing its Storm Uri costs and comports with customary ratemaking principles. (*See* Murray Rebuttal Test. 7-11). To calculate the appropriate amount of carrying charges, the Commission should multiply the amount of fuel and purchased power that it deems prudent by this short term debt rate. (*See* Riley Surrebuttal Test. 5).

Using a rate equal to an embedded cost of long-term debt, such as 5.06% recommended by Staff and Evergy West in the Stipulation or a rate equal to Evergy West's assumed weighted average cost of capital as recommended by Evergy West in its pre-filed testimony is inappropriate.

In the Stipulation, the Signatories agree that the OPC, MECG, and Velvet Tech preserve their rights to advocate for the use of a different rate to determine carrying costs. (Stipulation 2-3). The Signatories also agree that the OPC's issues that remain open for Commission resolution include an "adjustment to the proposed securitization amount to account for the use of a different rate than that proposed by Staff and the Company to calculate carrying costs." (*Id.* 3). Further, the Signatories acknowledge that "any amounts identified [in the Stipulation] . . . may change as a result of the Commission's determination of the OPC's issues." (*Id.*). Therefore, this issue remains a live issue for Commission consideration even if the Commission approves the Stipulation.

I. Applicable Legal Standard

The securitization statute allows Evergy West to recover carrying costs associated with its qualified extraordinary costs. *See* § 393.1700.1(13) RSMo. (defining "qualified extraordinary costs," in part as "costs incurred prudently . . . of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel and power, *inclusive of carrying charges* . . . ."). However, beyond acknowledging that an electrical corporation may recover carrying charges associated with qualified extraordinary costs, the securitization statute does not identify how the Commission must calculate carrying costs. *See generally* § 393.1700 RSMo.

II. Calculating Carrying Costs Using a Long-Term Debt Rate as Recommended by Staff and Evergy West in the Stipulation is Inappropriate

The long-term cost of debt identified by Staff and Evergy West in the Stipulation is based on Evergy West's *embedded* cost of long-term debt as of June 30, 2018. (Bolin Rebuttal Test. 4; Murray Surrebuttal Test. 1-2). Using a rate equal to this embedded cost of long-term debt is inappropriate for at least three reasons: (1) the rate is calculated using dated debt issuances that do not reflect current market conditions; (2) the rate includes costs other than the coupon rate/interest rate of the debt, which leads to a higher debt rate; and (3) a majority of the debt upon which this particular rate is based has matured.

A. Staff and Evergy West Recommend the Use of 5.06% in the Stipulation

In the Stipulation, Staff and Evergy West agree that the Commission should calculate carrying costs by "utilizing an average commercial paper rate of 0.20% for the first six months post February 2021 then the 5.06% long-term debt . . . rate recommended by Staff, for the period following the first six months post February 2021 until the issuance of securitized bonds."

(Stipulation 2-3). Staff and Evergy West also agree that the "carrying costs included in the $306.1 million of Qualified Extraordinary Costs include carrying costs through January 2023 assuming a February 2023 bond issuance utilizing this methodology . . . ."[21] (*Id.* 3).

The 5.06% agreed to by Staff and Evergy West is Evergy West's cost of long-term debt from its 2018 rate case, Case Number ER-2018-0146. (Bolin Rebuttal Test. 4; Murray Surrebuttal Test. 1-2). Importantly, this is an *embedded* cost of long-term debt as of June 30, 2018. (Murray Surrebuttal Test. 2). An embedded cost of long-term debt "is based on the cost of past debt issuances." (*Id.*). As Mr. Murray explains "[b]ecause utility companies consistently issue long-term debt with tenors of up to 30-years, this can cause an embedded cost of long-term debt to be based in part on debt issued in the 1990s . . . ." (*Id.*).

B. Problems Associated with the 5.06% Rate

The first problem with Staff and Evergy West's 5.06% cost of long-term debt is that it is based, at least in part, on debt issued in the 1990s. (*Id.*). This debt "is not reflective of current required returns on debt." (*Id.*). For instance, one of the debt issuances included in this embedded cost of long-term debt is a debt issuance from February 1, 1991, with a cost of 9.56%. (*Id.* 3). Such a rate does not reflect current market conditions. (*See id.* 2).

Second, the embedded cost of debt calculation includes costs other than the coupon/interest payments on the debt, which leads to a higher cost of debt. (*Id.* 2-3). For instance, it "factors in the upfront cost of issuing the debt, which typically includes legal fees, underwriting expenses, etc." (*Id.*). As Mr. Murray explains, this "typically causes the embedded rate to be higher than the coupon rate/interest rate assigned to the debt." (*Id.*).

[21] The OPC does not oppose calculating carrying costs through January 2023, assuming a February 2023 bond issuance.

Finally, a majority of the debt upon which the 5.06% is based has since matured. (*Id.*). Originally, the 5.06% embedded cost of long-term debt consisted of nine debt issuances. (*Id.*). However, as of June 30, 2022, "four of the debt issuances included in [Evergy West's] . . . embedded cost of long-term debt at June 30, 2018 have matured." (*Id.*). These four issuances accounted for "approximately 66% of [Evergy West's] . . . debt outstanding at June 30, 2018." (*Id.*).

Perhaps the most telling indication that use of Evergy West's 2018 embedded cost of long-term debt is inappropriate is a comparison with its estimated current embedded cost of debt, as of May 31, 2022. In Evergy West's concurrent general rate case, ER-2022-0130, its witness, Kirkland B. Andrews, estimated Evergy West's "embedded cost of long-term debt at 3.787% as of May 31, 2022." (*Id.* (citing Andrews Direct Test., Schedule KBA-1, Case No. ER-2022-0130)). This is 1.273% *lower* than the embedded cost of debt as of June 30, 2018. (*Compare id.* 2 (identifying the embedded cost of long-term debt as of June 30, 2018, as 5.06%); *with id.* 3 (identifying the estimated embedded cost of long-term debt as of May 31, 2022, as 3.787%)).

Because the 2018 embedded cost of long-term debt recommended by Staff is based on dated debt issuances, the majority of which have now matured, and includes costs other than the coupon/interest payments associated with the debt, the use of this debt rate is inappropriate in calculating carrying charges in this case.

III. Calculating Carrying Costs Using a Weighted Average Cost of Capital Rate as Recommended by Evergy West is Inappropriate

Use of a rate equal to Evergy West's implied weighted average cost of capital ("WACC") as recommended by Evergy West in its pre-filed testimony[22] is also inappropriate. The WACC

[22] Importantly, Evergy West agreed in the Stipulation to calculate carrying costs using Staff's identified long-term debt rate of 5.06%. (Stipulation 2-3). After the hearing, the Regulatory Law Judge, in response to a question, stated

rate Evergy West proposes is not based on numbers identified in Evergy West's 2018 rate case, but are the numbers Evergy West believes are implied by the Stipulation and Agreement in that case. (*See* Murray Rebuttal Test. 3). Similarly, Evergy West's statutory argument fails based on both a reading of the statutes and for equity purposes.

In its pre-filed testimony, Evergy West requests that the Commission calculate carrying charges using a rate equal to its *assumed* WACC plus applicable taxes, which it calculates as 8.9%. (Klote Direct Test. 14). Evergy West asserts that this rate is appropriate because it "is consistent with the recovery that would occur if these costs remained in the fuel clause and the majority of the costs were ultimately deferred due to the plant-in-service accounting ('PISA') rate caps established in Sections 393.1655.5 and 393.1400.2(3) which provide for the use of the [WACC] on amounts deferred in excess of established rate caps." (*Id.*). In its Surrebuttal Testimony, Evergy West asserts that the long-term debt rate "proposed by Staff will not fully or fairly compensate the Company for the capital costs it has incurred for the lengthy period of time . . ." it will carry the costs. (Klote Surrebuttal Test. 6). At least two problems exist with Evergy West's request for the use of WACC.

First, the WACC rate identified by Evergy West is not calculated using specified amounts and percentages identified in Evergy West's 2018 general rate case. (Murray Rebuttal Test. 3; *see* Bolin Rebuttal Test. 10 (stating that "[t]he WACC issue was an item that was settled without parties agreeing to a specific rate. The 8.9% was Staff's recommended pre-tax WACC in that case.")). Rather, Evergy West appears to have calculated this rate using its "opinion of the implied return components from the revenue requirement settlement" in the 2018 rate case because the Stipulation and Agreement in that case "was silent as to the specific rate of return/cost of capital

that the Parties should brief their full cases. (Tr. 522, V. IV pdf 110). Therefore, the OPC briefly addresses the position Evergy West took in its pre-filed testimony in addition to the position taken in the Stipulation.

components related to any party's determination of a fair and reasonable revenue requirement." (Murray Rebuttal Test. 3).

Second, due to both a clear reading of the statutes and equity, the Commission should disregard Evergy West's argument that a rate based on a WACC is appropriate because WACC is required due to the rate caps and procedures established in §§ 393.1655.5 and 393.1400.2(3) RSMo.

A clear reading of the statutes show that the deferral provision that leads to calculating carrying costs using a rate based on WACC applies only if Evergy West seeks recovery through its FAC or Renewable Energy Standard Rate Adjustment Mechanism ("RESRAM"). § 393.1655.5 RSMo. (stating "[i]f a change in any rates charged under a rate adjustment mechanism approved by the commission *under sections 386.266 [the FAC] and 393.1030 [RESRAM]* . . . ."). Because Evergy West does not seek to recover the Storm Uri costs through its FAC or RESRAM, the Commission is not bound to calculate carrying costs using a WACC. *See id.*

Similarly, equity prohibits Evergy West's contention that WACC is appropriate. If Evergy West were to utilize these statutory provisions, it would recover the costs over a twenty (20) year period. § 393.1400.2(3) RSMo. (stating "[r]egulatory asset balances arising under this section and included in rate base shall be recovered in rates through a twenty-year amortization beginning on the date new rates reflecting such amortization take effect."). In seeking to recover the costs through securitized utility tariff bonds, Evergy West will recover these costs upon the issuance of the bonds, a significantly shorter time period than the twenty-year time period recognized in § 393.1400.2(3) RSMo. (*See* Murray Rebuttal Test. 6). In fairness to Evergy West's ratepayers, the Commission should not compensate Evergy West at the same rate it would receive if it recovered the costs over a twenty-year period when it will recover the costs over a significantly

shorter period. (*See id.*). Therefore, neither the statute nor equity support Evergy West's statutory argument.

For at least these reasons, the Commission should reject Evergy West's argument to calculate carrying costs using its implied WACC.[23]

IV. The Commission Should Calculate Carrying Costs Using Evergy West's Short-Term Debt Rate

Although it is inappropriate to calculate carrying charges using Staff's recommended embedded cost of long-term debt or Evergy West's recommended implied WACC, it is appropriate to calculate carrying charges using Evergy West's cost of short-term debt. This rate matches how Evergy West is currently financing its Storm Uri costs and complies with customary ratemaking principles. (*See* Murray Rebuttal Test. 7-9).

Mr. David Murray, Chartered Financial Analyst, with over twenty years of experience, including ten years as the Utility Regulatory Manager of the Financial Analysis Department for Staff and three years as a Utility Regulatory Manager for the OPC, explains "it is customary to fund short-term assets with short-to-intermediate-term debt." (*Id.* 9). Similarly it is "customary financial practice . . . to use short-term financing to fund short-term costs." (*Id.* 6).

Here, Evergy West "projects that it will carry these costs less than two years." (*Id.* 7 (citing Klote Direct Test., Schedule RAK-3)). Although, "for accounting purposes, an obligation longer than 364 days is considered long-term, from a practical perspective . . . this [should not] trigger[] [Evergy West's] cost of long-term debt as the appropriate carrying cost rate." (Murray Surrebuttal Test. 2). As Mr. Murray explained, utilities "consistently issue long-term debt with tenors of up

[23] In its Report and Order in the Liberty Storm Uri securitization case, the Commission concluded that calculating carrying costs "at Liberty's long-term debt rate . . . is most appropriate because the costs to be securitized are not capital costs and there is no reason Liberty should be allowed to earn a profit on those costs." (Report & Order 36, Case No. EO-2022-0040).

to 30-years . . . ." (*Id.*). In fairness to Evergy West's ratepayers, Evergy West should not be compensated at the same rate that it would be compensated for carrying debt over a 30 year period when it expects to carry the Storm Uri costs for less than two years. (*See* Murray Rebuttal Test. 6).

Most importantly, calculating carrying charges using a short-term debt rate matches how Evergy West is currently funding the Storm Uri costs. (*See id.* 8; Murray Surrebuttal Test. 2). In its response to a Staff Data Request in the general rate case Evergy West "attributes its recent significant balances and proportions of short-term debt in its capital structure to supporting [construction work in progress ("CWIP")] . . . and Storm Uri costs." (Murray Rebuttal Test. 8, Schedule DM-R-2; *see* Murray Surrebuttal Test. 2). The Commission should compensate Evergy West for how it has *actually* been funding its Storm Uri costs. It can do so by utilizing a short-term debt rate, consistent with the rating of Evergy West's commercial paper program that is rated A2/P2. (Murray Rebuttal Test. 7).

V. Conclusion: The Commission Should Utilize a Short-Term Debt Rate to Calculate Carrying Costs in This Matter

Although the securitization statute allows Evergy West to recover carrying costs on its qualified extraordinary costs, it does not specify how the Commission must calculate those costs. *See* § 393.1700.1(13) RSMo. In determining how it will calculate carrying costs in this case, it is inappropriate for the Commission to use a long-term debt rate, such as the rate Staff and Evergy West agreed to in the Stipulation. (*See* Murray Surrebuttal Test. 2-4). It is also inappropriate for the Commission to utilize a rate equivalent to Evergy West's implied WACC from the 2018 rate case. (*See* Murray Rebuttal Test. 3-6). Rather, the Commission should compensate Evergy West for how it is actually funding the Storm Uri costs, by utilizing a rate based on Evergy West's cost of short-term debt, consistent with the rating of Evergy West's commercial paper program, which is rated A2/P2. (Murray Rebuttal Test. 7). To calculate the appropriate amount of carrying charges,

the Commission should multiply the amount of fuel and purchased power that it deems prudent by this short term debt rate. (*See* Riley Surrebuttal Test. 5).

Issue 1l: 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?

The Signatories agree that the Stipulation "resolves Staff identified cost issues of . . . Schedule Special Incremental Load ('SIL') adjustment." (Stipulation 3).

Alternatively, in determining the amount of qualified extraordinary costs that Evergy West may recover through securitized bonds, the OPC supports Staff's recommended adjust to account for problems with Evergy West's administration of the SIL tariff. (Ex. 105 "Luebbert Rebuttal Testimony" 3, Doc. 109 (as corrected by testimony during the August 3, 2022 Hearing); Tr. 302-04, V. III pdf 33-35[24]).[25]

Issue 1m: What is the appropriate discount rate or rates to use to calculate the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking?

Issue 3a: What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri through securitization?[26]

In determining whether quantifiable net present value benefits exist for Evergy West's ratepayers, the Commission must ensure that it utilizes appropriate discount rates for each of the ratemaking scenarios, including recovery through securitized utility tariff bonds. The use of an

[24] During the August 3, 2022 Hearing, Mr. Luebbert updated his testimony and identified a new amount of his adjustment. (Tr. 303-05, V. III pdf 34-36). These changes resulted from updated load information Staff received from Evergy West and an updated requirement that the event exceed four hours. (Tr. 306, V. III pdf 37).

[25] In its Statement of Positions, the OPC did not take a position on this issue, but it reserved the right to do so after the close of evidence. (Statement of Positions 5). Based on this reservation of rights, the OPC now takes the position reflected herein.

[26] Given the similarity in the analysis of issues 1m and 3a, the OPC addresses both issues here.

inappropriate discount rate may dramatically affect a net present value determination. (*See* Murray Rebuttal Test. 13).

As to recovery through customary ratemaking—either through Evergy West's FAC or through an accounting authority order ("AAO")—the appropriate discount rate or rates in this case is a rate higher than that used to analyze recovery through securitization. (*Id.* 12-15; Murray Surrebuttal Test. 5). For recovery through customary ratemaking, the OPC recommends a range of discount rates based on Evergy West's current after-tax cost of capital, such as 6.08% to 7%. (Murray Rebuttal Test. 15; Murray Surrebuttal Test. 6-8).

As to recovery through securitized utility tariff bonds, the Commission should use a rate equal to the rate/coupon of the securitized debt. (Murray Rebuttal Test. 13-14; Murray Surrebuttal Test. 5).

In the Stipulation, Staff and Evergy West agree to "8.9% as recommended by Evergy . . . West" as the appropriate rate to determine quantifiable net present value benefits to customers. (Stipulation 4). However, the OPC "preserve[d] its right to advocate for the use of a different rate to determine quantifiable [net present value] benefits to customers." (*Id.*). Therefore, this issue remains a live issue for Commission consideration even if the Commission approves the Stipulation.

I. Applicable Legal Standards & Descriptions

In its financing order, the Commission must include a finding regarding the quantifiable net present value benefits to customers. *See* § 393.1700.2(3)(c)b RSMo. Specifically, the financing order must contain

> 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.

Id.

Although the securitization statute does not define net present value, Mr. Murray, Chartered Financial Analyst, explains the purpose of a net present value analysis under "traditional corporate finance." (Murray Rebuttal Test. 11; DM-R-1 1). He states that a net present value analysis "is typically used in the capital budgeting process to determine if an investment is expected to create value for the corporation's shareholders. If an investment/project creates a positive [net present value], then this investment/project may be approved for funding." (*Id.*).

Mr. Murray further explains that a net present value determination "anticipates the initial investment and potential costs to maintain the investment as cash outflows and revenues from sales as cash inflows." (*Id.* 12). "These cash outflows and inflows are netted over the expected period of the investment and are discounted by a discount rate back to the present to determine the" net present value. (*Id.*).

A discount rate "in the context of a [net present value] analysis is the rate used to discount estimated future cash flows to the present." (*Id.*). A reasonable discount rate, is determined "by the risk of the cash flows, the interval of the cash flows, and the term of the cash flows." (*Id.*). "The discount rate should be commensurate with the risk and term of the investment." (*Id.*).

II. The 8.9% Discount Rate Agreed to by Staff and Evergy West in the Stipulation is Inappropriate

In the Stipulation, Staff and Evergy West agree to use 8.9% as the discount rate to determine quantifiable net present value benefits to customers. (Stipulation 4). However, the use of this rate is inappropriate because it assumes that the Commission should use the same discount rate for recovery through each of the identified scenarios—(1) securitization, (2) FAC, and (3)

AAO. (*See id.*; Murray Rebuttal Test. 12-13). This analysis does not take into account the differences between the methods of recovery, a critical inquiry when determining a reasonable discount rate. (Murray Rebuttal Test. 12).

The Commission must find that securitization provides "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." § 393.1700.2(3)(c)b RSMo. As Mr. Murray explains, to make this finding, the Commission must employ a discount rate, which requires the Commission to consider "the risk and term of the investment." (Murray Rebuttal Test. 12).

Using the same discount rate for each of the three scenarios is inappropriate. (*Id.* 13). This is because "[e]ach scenario presents its own risk factors as it relates to [Evergy West's] . . . recovery of its extraordinary costs." (*Id.* 13-14). To determine a reasonable discount rate, the Commission must look to "the risk of the cash flows, the interval of the cash flows, and the term of the cash flows." (*Id.* 12). Use of the same discount rate for each scenario neglects this determination.

For instance, recovery through securitization is nearly guaranteed. (*See* Murray Surrebuttal Test. 5 (stating that "[b]ecause of the certainty or near-certainty of the recovery of principal and return on the principal, investors in the securitized bond will require a much lower return.")). However, recovery through Evergy West's rates, which include either the FAC or the AAO presents a different risk profile. (*Id.* (stating that the process of disaggregating the regulatory asset in securitization "causes the risk profile of expected cash flows from the securitization of the asset to be different from [Evergy West's] expected cash flows related to recovery of its investment through general rates.")). The Commission must recognize this difference in determining the appropriate discount rate. (Murray Rebuttal Test. 12).

As explained in greater detail below, the Commission also should not use Evergy West and Staff's recommended 8.9% discount rate when analyzing recovery through either the FAC, AAO, or securitized utility tariff bonds. (*See id.* 15). This rate is too high for recovery through any mechanism. (*Id.*; Murray Surrebuttal Test. 5-6).

The discount rate Evergy West and Staff agreed to in the Stipulation is inappropriate not only because the Stipulation appears to suggest that the Commission should utilize the same discount rate when analyzing recovery under each of the three scenarios, but also because it is not an appropriate rate to utilize when analyzing recovery under any of the scenarios.

III. The Commission Must Use an Appropriate Discount Rate When Determining Quantifiable Net Present Value Benefits to Customers

In determining whether quantifiable net present value benefits exist for customers, the Commission must ensure that it utilizes an appropriate discount rate to analyze recovery under any of the ratemaking scenarios. At a minimum, this requires the Commission to use a different discount rate to analyze recovery through the FAC or AAO from that used to analyze recovery through securitization. (Murray Surrebuttal Test. 5). More specifically, the Commission should use a rate or range of rates premised on Evergy West's current cost of capital to analyze recovery through the FAC and AAO. (Murray Rebuttal Test. 15, Murray Surrebuttal Test. 6-8). As to securitization, the Commission should utilize a rate equal to the expected interest rate on the bonds. (Murray Rebuttal Test. 15; Murray Surrebuttal Test. 8).

An appropriate discount rate requires the Commission to look to "the risk of the cash flows, the interval of the cash flows, and the term of the cash flows." (Murray Rebuttal Test. 12). "The discount rate should be commensurate with the risk and term of the investment." (*Id.*).

A. The Appropriate Discount Rates To Analyze Recovery Through the FAC or an AAO

Evergy West and Staff's recommendation to use an 8.9% discount rate when analyzing recovery through the FAC or AAO is inappropriate. (Murray Rebuttal Test. 14-15). As Mr. Murray explains, because the Commission-authorized return on equity is higher than the cost of equity to the utility, the Commission should use a discount rate "that more closely approximates the current cost of capital to utilities . . . ." (*Id.*).

The discount rate used to analyze recovery through either the FAC or the AAO is "subject to more subjectivity" than that used to analyze recovery through securitization. (Murray Rebuttal Test. 15). Here, the Commission should utilize a rate that is "premised on [Evergy West's] . . . current cost of capital." (*Id.*; Murray Surrebuttal Test. 8). The Commission's use of a range of discount rates is also appropriate. (Murray Surrebuttal Test. 7). A range of 6.08% to 7% is a reasonable range of discount rates. (*See id.* 6-8). At a minimum though, the rate used to analyze recovery through either the FAC or the AAO should be higher than the rate used to analyze recovery through securitization. (Murray Rebuttal Test. 15; Murray Surrebuttal Test. 5).

B. The Appropriate Discount Rate to Analyze Recovery Through Securitization

Similar to recovery through either the FAC or an AAO, the 8.9% discount rate identified by Staff and Evergy West in the Stipulation is inappropriate to use when analyzing recovery through securitization. (*See* Murray Rebuttal Test. 13; Murray Surrebuttal Test. 5). This rate is too high to be used to calculate the net present value benefits to customers of securitization and does not recognize the unique aspects of securitization. (*See* Murray Rebuttal Test. 13-14; Murray Surrebuttal Test. 5, 8).

Rather, the Commission should use a discount rate equal to "the required return on the bond." (Murray Rebuttal Test. 15; Murray Surrebuttal Test. 5). This takes into account the greater

certainty of recovery. (*See* Murray Surrebuttal Test. 5 (stating that "[b]ecause of the certainty or near-certainty of the recovery of principal and return on the principal, investors in the securitized bond will require a much lower return.")). Using this rate—which is different than that used to analyze recovery through either the FAC or the AAO—recognizes the purpose of securitization and how it results in a different risk profile of expected cash flows. (*Id.*). Therefore, the Commission should utilize a rate equal to "the required return on the bond" in determining the net present value benefits to customers of securitizing the Storm Uri costs (*Id.*).

IV. Conclusion: The Appropriate Discount Rates the Commission Should Use When Determining the Net Present Value Benefits to Customers

The Commission's decision regarding the appropriate discount rate to apply when completing its net present value benefits calculation is important. (*See* Murray Rebuttal Test. 13-14). Although this amount does not affect the amount that Evergy West may recover through securitized utility tariff bonds, it affects the Commission's determination as to whether recovery through securitization results in quantifiable net present value benefits to customers—a finding that must be included in the Commission's financing order. *See* § 393.1700.2(3)(c)b RSMo. Therefore, the Commission must ensure it uses appropriate discount rates to complete this analysis. (*See* Murray Rebuttal Test. 12 (explaining the role of a discount rate)).

When analyzing recovery through either the FAC or an AAO—the customary ratemaking scenarios—the Commission should use a range of discount rates that is "premised on [Evergy West's] . . . current cost of capital." (Murray Rebuttal Test. 15; Murray Surrebuttal Test. 6-8). At a minimum the discount rate used to analyze each of these scenarios, should be higher than the rate used to analyze recovery through securitization. (Murray Rebuttal Test. 15; Murray Surrebuttal Test. 5).

When analyzing recovery through securitization, the Commission should simply use the "required return on the bond." (Murray Rebuttal Test. 15; Murray Surrebuttal Test. 5).

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

The Stipulation includes the Signatories' agreement regarding the estimated upfront financing costs. (*See* Stipulation 2). Specifically, "[t]he Signatories agree that the estimated upfront financing costs included in the Qualified Extraordinary Costs will reflect those identified by [Evergy West] in its Direct testimony in this case at $6.6 million and will be finally adjusted through the Issuance Advice Letter . . . process and designated representative(s) review." (*Id.*). Further, the Signatories agree "Staff and its designated representatives and advisors will work collaboratively with [Evergy West] . . . to establish and verify upfront financing costs." (*Id.*).

Alternatively, the OPC takes no position on the upfront financing costs associated with securitizing qualified extraordinary costs associated with Winter Storm Uri.

As to the ongoing financing costs, as discussed in response to issue 1i, the amounts necessary to pay the taxes associated with the revenues generated by Evergy West's collection of the securitized utility tariff charge should be included as ongoing financing costs. § 393.1700.1(8)(d) RSMo. To ensure that Evergy West does not doubly recover this amount, the Commission must recognize a reduction to the amount of qualified extraordinary costs equal to the amount of the tax deductions Evergy West received. (*See* Riley Rebuttal Test. 7, Riley Surrebuttal Test. 6).[27]

[27] In its Statement of Positions, the OPC did not take a position on this issue, but it reserved the right to do so after the close of evidence. (Statement of Positions 5). Based on this reservation of rights, the OPC now takes the position reflected herein.

Issue 2a: What is the appropriate return on investment and treatment of earnings in the capital subaccount?

As represented during the hearing, the Signatories agree that the Stipulation resolves this issue. (*See* Tr. 16-18, V. I pdf 17-19 (identifying those issues that remain unresolved by the Stipulation and not identifying issue 2a)).

Alternatively, the OPC takes no position on this issue at this time.

Issue 2b: Is the issuance of multiple series appropriate?

As represented during the hearing, the Signatories agree that the Stipulation resolves this issue. (*See* Tr. 16-18, V. I pdf 17-19 (identifying those issues that remain unresolved by the Stipulation and not identifying issue 2b)).

Alternatively, the OPC takes no position on this issue at this time.

Issue 3: Would the issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges provide quantifiable net present value benefits to customers as compared to recovery of the securitized utility tariff costs that would be incurred absent the issuance of bonds?

The OPC takes no position on whether the issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges provide quantifiable net present value benefits to customers as compared to recovery of the securitized utility tariff costs that would be incurred absent the issuance of bonds. However, as explained above in response to issues 1m and 3a, the Commission should ensure the use of an appropriate discount rate in making this determination. (*See* Murray Rebuttal Test. 13-15: Murray Surrebuttal Test. 4-8).

Issue 3a: What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri through securitization?

Because this issue requires an analysis similar to the analysis necessary to decide issue 1m, the OPC has addressed issue 3a above in conjunction with issue 1m.

Issue 3b: What is the appropriate term and coupon rate for securitization of qualified extraordinary costs related to Winter Storm Uri?

As represented during the hearing, the Signatories agree that the Stipulation resolves this issue. (*See* Tr. 16-18, V. I pdf 17-19 (identifying those issues that remain unresolved by the Stipulation and not identifying issue 3b)).

Alternatively, the OPC takes no position on this issue at this time.

Issue 4: How should the SUTC be allocated?

In the Stipulation, the Signatories agree to accept "Staff's loss-adjusted, energy-based allocation and related tariff provisions."[28] (Stipulation 5). As a Signatory to the Stipulation, the OPC supports this position.

Alternatively, the Commission should allocate the securitized utility tariff charge ("SUTC") on the basis of loss-adjusted energy sales. (Ex. 104 "Lange Rebuttal Testimony" 20, Doc. 108; Marke Surrebuttal Testimony 1-2).

The securitization statute requires that a financing order specify how the SUTC "will be allocated among retail customer classes." § 393.1700.2(3)(c)h RSMo. The statute does not specify the method the Commission must use in allocating the charge to an electrical corporation's customers. *See generally* § 393.1700 RSMo.

Although the statute does not specify the allocation method the Commission must use, it specifies that the SUTC is a "nonbypassable charge[] . . . ." § 393.1700.1(13) RSMo. All "existing or future retail customers . . . except for customers receiving electrical service under special contracts as of August 28, 2021" must pay the SUTC. *Id.*

[28] Both MECG and Velvet Tech "reserve their rights to argue that the Commission should allocate the securitized costs among the retail customer classes using the method proposed in the Direct testimony of Bradley Lutz." (Stipulation 5).

Evergy West initially requested that the Commission allocate the SUTC using a class-based rate design approach. (Lunde Direct Test. 8-9). Staff, on the other hand, proposed that the SUTC be "recovered from all applicable customers on the basis of loss-adjusted energy sales." (Lange Rebuttal Test. 20). Evergy West, through Mr. Brad Lutz's Surrebuttal Testimony, changed its suggested allocation method and adopted Staff's suggested allocation approach. (Ex. 16 "Lutz Surrebuttal Testimony" 3-5, Doc. 100). The OPC also agrees with Staff's proposal to allocate the SUTC using a loss-adjusted energy sale approach. (Marke Surrebuttal Test. 1-2). At this time, therefore, Evergy West, Staff, and the OPC all agree that the Commission should allocate the SUTC using a loss-adjusted energy sales approach. (Lutz Surrebuttal Test. 3-5; Lange Rebuttal Test. 20; Marke Surrebuttal Test. 1-2).

This approach is appropriate for at least four reasons: (1) it mirrors the allocation method used for costs recovered through the FAC; (2) it complies with the statutory requirement that all customers pay the SUTC except those explicitly exempted by the definition of qualified extraordinary costs in the securitization statute; (3) it reduces the possibility of rate switching; and (4) it mirrors the Commission's recent decision in Liberty's securitization request in Case Number EO-2022-0040.

First, the loss-adjusted energy sales method matches the approach that would be used if Evergy West recovered these fuel and purchased power costs through its FAC. (Lange Rebuttal Test. 20; Lutz Surrebuttal Test. 3). The majority of costs that Evergy West seeks to securitize here include costs for fuel and purchased power. (Lutz Surrebuttal Test. 3). No party appears to dispute that Evergy West would typically recover these costs through its FAC. (*Id.*; *see* Tr. 16-18, V. I pdf 17-19). Evergy West recovers costs through its FAC on the basis of energy consumption, as adjusted for losses. (Lange Rebuttal Test. 20; Lutz Surrebuttal Test. 3). Because the loss-adjusted

energy sales approach matches the recovery method used to recover costs through the FAC—the mechanism through which Evergy West would have typically recovered these costs—the Commission should adopt this same loss-adjusted energy sales approach in allocating the SUTC. (Lange Rebuttal Test. 20).

Second, this approach ensures that all of Evergy West's customers who are not explicitly exempted by the statute will pay their portion of the SUTC, as required by § 393.1700 RSMo. Ms. Lange states that under Evergy West's initial class-based allocation method, customers taking service under the Electric Vehicle ("EV"), Special High Load Factor Market Rate Tariff ("MKT"), and Clean Charge Network ("CCN") tariffs would be subject to a SUTC rate of $0.00/kWh. (Lange Rebuttal Test. 20-21). The securitization statute prohibits this. *See* § 393.1700.1(13) RSMo. Rather, the securitization statute mandates that the SUTC is a "nonbypassable charge[] . . . paid by all existing or future retail customers receiving electrical service . . . ." *Id.* Because it ensures that customers receiving service under the EV, MKT, and CCN tariffs pay their portion of the SUTC, the loss-adjusted energy-sales method assures compliance with the securitization statute. For this reason too, the Commission should adopt the loss-adjusted energy-sales allocation method.

Third, the loss-adjusted energy-sales method will minimize the possibility and effect of rate switching. (*See* Marke Surrebuttal Test. 2). In making its recommendation, Staff recognizes the problems associated with rate switching if the Commission were to adopt Evergy West's initial class-based allocation method. (Lange Rebuttal Test. 15). Specifically, Staff explains that "[a]s a class experiences growth, the customers within that class will pay lower SUTC charges; however, a large customer changing rate schedules or ceasing service could cause wild fluctuations in customer bills within the subject classes." (*Id.*). The OPC recognized this problem as well.[29]

[29] In rejecting Liberty's class-based allocation method, the Commission recognized this problem as well. (*See* Report & Order 87, Case No. EO-2022-0040).

(Marke Surrebuttal Test. 2). Because the loss-adjusted energy-sales approach is based upon the amount of energy sold, it negates this concern. (*See* Lange Rebuttal 15, 20; Marke Surrebuttal 2). The Commission should adopt the loss-adjusted energy-sales allocation method for this reason as well.

Finally, the loss-adjusted energy-sales approach comports with the Commission's recently issued Report and Order in Liberty's securitization request. (*See* Report & Order 89, Case No. EO-2022-0040). In that Report and Order, the Commission rejected Liberty's requested class-based allocation method and implemented Staff's proposed loss-adjusted energy sales method. (*Id.*). Here, unlike Liberty, Evergy West now agrees to implement the loss-adjusted energy-sales allocation method both in the Stipulation and in Mr. Lutz's Surrebuttal Testimony. (Stipulation 5; Lutz Surrebuttal Test. 3). Because it comports with the Commission's Report and Order in a similar case, the Commission should adopt the loss-adjusted energy-sales allocation method.

For at least these four reasons, the Commission should allocate the SUTC using a loss-adjusted energy-sales allocation method as proposed by Staff and accepted by Evergy West and the OPC.

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

In the Stipulation, the Signatories agree that "[s]ubject to the commitment to collaborate on the development of agreed-upon tariff language as provided in paragraph 11.i below, Signatories agree to accept the following as detailed in Staff witness Lange's rebuttal testimony." (Stipulation 5). The Stipulation includes eight items on which the Signatories agree, including items pertaining to changes in the securitized utility tariff charge tariff sheets. (*Id.* 5-6). As a signatory to the Stipulation, the OPC supports the items identified in the Stipulation.

Alternatively, the OPC supports the positions taken by Staff witness Ms. Sarah L. K. Lange in her rebuttal testimony and as reflected in Schedule SLKL-r2. (*See generally* Lange Rebuttal Test., Schedule SLKL-r2; *see* Marke Surrebuttal Test. 2).

Issue 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)?

In the Stipulation, the Signatories agree "that the issuance process will be accomplished through collaboration of the Staff's designated representative and advisors with" Evergy West. (Stipulation 4). Further, the Signatories agree that "[t]he statutory imperative required by section 393.1700.2(3)(c) . . . will be achieved through an interactive process in which, while Evergy . . . West has the final decision on placement of the bonds, Staff's designated representative(s) and advisor(s) will collaborate with and provide input to Evergy . . . West in all facets of structuring, marketing, and pricing the bonds." (*Id.*).

Alternatively, the OPC takes no position on this issue.

Issue 7: What other conditions, if any, are appropriate and not inconsistent with Section 393.1700 that should be included in the financing order?

As represented during the hearing, the Signatories agree that the Stipulation resolves this issue. (*See* Tr. 18, V. I pdf 19 (in response to the Regulatory Law Judge's question about whether issue 7 remains, Mr. Steiner, counsel for Evergy West, answered "I don't believe so" and no party objected)).

Alternatively, the OPC takes no position on this issue at this time.

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

In the Stipulation, the Signatories agree that "the Commission should grant a variance of the asymmetrical provisions of the Affiliate Transactions Rule (20 CSR 4240-20.015) for

transactions between Evergy . . . West and the special purpose entity as well as any additional affiliate transaction rule variance deemed appropriate by the Commission." (Stipulation 4).

Alternatively, the OPC takes no position on this issue at this time.

Conclusion

For the foregoing reasons, the OPC requests that the Commission accept the Stipulation signed by Evergy West, Staff, and the OPC and which MECG, Velvet Tech, and Nucor did not oppose. Further, in determining the amount that Evergy West may recover through securitized bonds, the Commission should include the five adjustments proposed by the OPC: (1) a reduction to account for application of the 95%/5% cost sharing mechanism; (2) a reduction to account for Evergy West's imprudent resource planning; (3) a reduction to account for the income tax deduction that Evergy West received related to fuel and purchased power costs; (4) a reduction to account for the income tax deduction that Evergy West received related to the carrying charges; (5) a reduction to account for the use of a lower rate to determine the applicable carrying charges. In determining the net present value benefits to customers, the Commission should use a discount rate equal to the rate/coupon on the bonds when considering securitization and a rate higher than that used to analyze recovery through securitization when considering recovery through customary ratemaking. Finally, in allocating the SUTC, the Commission should utilize a loss-adjusted energy sales method.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission accept the Stipulation and find in favor of the OPC on each of its preserved issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 31st day of August 2022.

/s/ Lindsay VanGerpen