

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

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	
vs.	)	<b><u>Case No. EC-2022-XXXX</u></b>
	)	
Evergy Missouri West, Inc.,	)	
	)	
Respondent.	)	

**Staff Complaint**

**COMES NOW** the Staff of the Missouri Public Service Commission and for its *Complaint*, states as follows:

**Introduction:**

1. This matter concerns Evergy Missouri West’s evasion of its obligations under a Commission-approved *Stipulation and Agreement* and, therefore, its violation of the Commission’s order approving that *Stipulation and Agreement*.

**Complainant:**

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Staff Counsel as authorized by Commission Rule 20 CSR 4240-2.070(1).

**Respondent:**

3. Evergy Missouri West, Inc., is a Delaware general business corporation in good standing, duly authorized to do business in Missouri and headquartered at 1200 Main Street, Kansas City, Missouri 64105.<sup>1</sup> Its registered agent is CSC-Lawyers

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<sup>1</sup> It was created in 1987 as Utilicorp United, Inc. Its name was subsequently changed to Aquila, Inc., and, after its acquisition by Kansas City Power and Light Company, changed again to KCP&L Greater

Incorporating Service Company, 221 Bolivar St., Jefferson City, Missouri 65101. Evergy Missouri West is a vertically-integrated electric utility company and a wholly-owned subsidiary of Evergy, Inc., a publicly-traded utility holding company.

### **Jurisdiction**

4. Evergy Missouri West is in the business of generating, transmitting, and distributing electricity to customers in Missouri for light, heat and power using electric plant that it owns, operates and controls. Evergy Missouri West is thus an “electric corporation” and a “public utility” as defined in Section 386.020(15), (43), RSMo., and is subject to the regulatory jurisdiction of this Commission under chapters 386 and 393, RSMo.

5. Section 386.390.1, RSMo., authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission . . . .

6. The Commission has jurisdiction over the subject matter of this Complaint as it involves the violation of a Commission order by Evergy Missouri West. Section 386.390.1, RSMo.

7. The Commission has by rule authorized the Staff Counsel's Office to bring complaints on the behalf of the Staff: "A complaint may also be filed by ... the commission staff through the staff counsel ..."<sup>2</sup>

### **Facts**

8. On July 12, 2019, Evergy Missouri West, then known as KCP&L Greater Missouri Operations Company, filed an application seeking authority from the Commission to implement a special incremental load rate for a steel production facility in Sedalia, Missouri.<sup>3</sup> The application explained that Evergy Missouri West and Nucor Steel Sedalia, LLC ("Nucor"), the owner of the steel production facility, have signed a *Special Incremental Load Rate Contract* that establishes the rate and terms of service by which Evergy Missouri West intends to serve Nucor.<sup>4</sup>

9. On September 19, 2019, Evergy Missouri West, the Staff of the Commission, and Nucor filed a non-unanimous stipulation and agreement.<sup>5</sup> After the withdrawal of the only objection made to that non-unanimous stipulation and agreement, the Commission determined that it was entitled to treat it as unanimous.<sup>6</sup> That stipulation and agreement resolved all pending issues and provided for Commission approval of the contract between Evergy Missouri West and Nucor, as well as a *Special Incremental Load Tariff*.<sup>7</sup>

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<sup>2</sup> Rule 20 CSR 4240-2.070(1).

<sup>3</sup> ***In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval of a Special Rate for a Facility Whose Primary Industry Is the Production or Fabrication of Steel in or Around Sedalia, Missouri***, Case No. EO-2019-0244 (***Report & Order***, issued Nov. 13, 2019) p. 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*, p. 4.

<sup>6</sup> *Id.*, pp. 9, 10.

<sup>7</sup> *Id.*

10. On November 13, 2019, the Commission issued its *Report and Order*, resolving the matter Evergy Missouri West's application.<sup>8</sup>

11. In that *Report and Order*, the Commission approved the stipulation and agreement, making it binding on the parties, saying "[t]he provisions of the unopposed stipulation and agreement, which the Commission will treat as unanimous, provide further protections to [Evergy Missouri West's] other ratepayers. In particular, the stipulation and agreement will protect those ratepayers from the risk of having to pay any under-recovery of [Evergy Missouri West's] incremental costs in a future rate case."

12. Paragraph 7 of the *Stipulation and Agreement* approved in Case No. EO-2019-0244 provides:<sup>9</sup>

**7. Cost and Revenue Tracking** - GMO will monitor and report to Staff and OPC<sup>10</sup> whether the revenues received under the special contract rate cover the incremental cost of providing service to Nucor. This reporting will be submitted quarterly for the first year following the effective date of the SIL<sup>11</sup> tariff and the associated contract with Nucor, bi-annually for the second and third year, and annually thereafter. The Company will solicit feedback from Staff and the Office of Public Counsel up to and including meetings to evaluate and assess the content of the reports and any changes that may be needed to Exhibit 1 as a result of that feedback. The reporting will be submitted within 15 days after each of Evergy's SEC<sup>12</sup> 10-Q or 10-K filings are made and will detail Nucor-related transactions on a rolling twelve-month basis. GMO will uniquely identify and track for reporting and general rate case purposes all incremental costs associated with serving Nucor. An example of the anticipated reporting format is provided in Exhibit 1 to this Stipulation.

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<sup>8</sup> *Supra*, note 3.

<sup>9</sup> *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval of a Special Rate for a Facility Whose Primary Industry Is the Production or Fabrication of Steel in or Around Sedalia, Missouri*, Case No. EO-2019-0244 (*Ex. 5, Non-Unanimous Stipulation and Agreement*). References to "GMO" throughout this excerpt are references to Evergy Missouri West under an abbreviation of its former name, KCP&L Greater Missouri Operations Company.

<sup>10</sup> "OPC" means "Office of the Public Counsel."

<sup>11</sup> "SIL" means "Special Incremental Load."

<sup>12</sup> "SEC" means "United States Securities and Exchange Commission."

a. GMO will identify and isolate the plant costs to provide service to Nucor.

b. GMO will identify and isolate supply costs attributable to Nucor. At this time these costs are expected to consist of:

i. energy as obtained through the SPP<sup>13</sup> integrated marketplace including applicable ancillary services and transmission costs, and all transactions associated with the renewable supply source obtained via a Power Purchase Agreement ("PPA").

ii. Incremental capacity costs acquired from third parties, including affiliates, will be determined annually in the assessment of GMO capacity requirements. The portion of GMO capacity acquired attributable to Nucor will be separately identified for inclusion in Exhibit 1. Similarly, if GMO constructs or acquires capacity during the term of the contract rather than purchasing capacity, or otherwise modifies its capacity source, capacity costs to Nucor will be calculated annually using prices as follows and be separately identified for inclusion in Exhibit 1. The accredited capacity attributable to Nucor's share of the PPA, will be netted against the capacity requirements of the Nucor load, including the SPP reserve margin requirements, prior to pricing as described above for inclusion in Exhibit 1.

[Confidential chart omitted.]

c. GMO will modify its Fuel Adjustment Clause ("FAC") accounting to ensure Nucor-related costs are not included in the FAC charge recovered from other customers. Exhibit 2 to this Stipulation details the expected modifications, including:

i. **Power Purchase Agreement Cost** - Costs to follow conventional PPA accounting, with Nucor portion tracked separately from other PPA transactions completed by the Company. Costs to be recorded to a SIL-specific 555 subaccount and identifiable to Nucor. These costs will be specifically identified in the FAC monthly reports submitted to the Commission.

ii. **Production Market Cost** - Revenue from the sale of the energy from the PPA will be tracked in a separate SIL-specific 447 subaccount and identifiable to Nucor. These revenues will be specifically identified in the FAC monthly reports submitted to the Commission. The net effect of the sale of PPA purchase and the

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<sup>13</sup> "SPP" means "Southwest Power Pool."

Nucor load are to be recorded within the SIL-specific 447 and 555 subaccounts and identifiable to Nucor.

iii. **Transmission Market Cost-** If occurring, costs would accompany the associated Southwest Power Pool ("SPP") sale or purchase transactions and are to be recorded within SIL-specific 561, 565, and 575 subaccounts and identifiable to Nucor and created for the purpose of tracking these costs. These costs will be specifically identified in the FAC monthly reports submitted to the Commission. Load purchased for Nucor will be calculated at the five minute level, aggregated to the hour as demonstrated in Exhibit 3. Based upon GMO load node locational marginal price.

d. GMO will monitor Nucor operations and will identify additional SPP-related costs resulting from unexpected operational events. If actual Nucor load experiences a 25% deviation from the expected Nucor load for more than 4 hours and that load change is not reflected in the GMO day-ahead commitments, GMO will quantify the balancing relationship between the hourly and day-ahead prices to identify the effect of the unplanned load change to apportion any additional SPP balancing charges and will incorporate the effect attributed to Nucor into the tracking of Nucor costs. If the effect of this relationship increases costs to non-Nucor customers, the amount will be reflected in a subsequent FAC rate change filing and the portion attributed to Nucor will be identified with supporting work papers and removed from the Actual Net Energy Cost prior to the calculation of the FAC rates.

For any incremental Nucor costs not specifically listed in Exhibit I, including GMO internal costs attributable [sic] to Nucor, the costs will be uniquely recorded after they are incurred consistent with the cause of the cost and identified as contingency cost category within Exhibit 1.

### **Count One**

#### **Evergy's Violation of Paragraph 7 of the Stipulation and Agreement Approved by the Commission in Case No. EO-2019-0244**

13. Staff hereby realleges and adopts by reference the allegations contained in Paragraphs 1 through 12, above, as though the same were herein set out in full.

14. Contrary to its obligations under Paragraph 7.b of the *Stipulation and Agreement* approved in Case No. EO-2019-0244 and set out in Paragraph 12, above, Evergy Missouri West is not accounting for any capacity costs incurred to serve Nucor

and is not accounting for Nucor load as required by Paragraph 7.b of the *Stipulation and Agreement*.

15. Contrary to its obligations under Paragraph 7.d of the *Stipulation and Agreement* approved in Case No. EO-2019-0244 and set out in Paragraph 12, above, Evergy Missouri West has assumed Nucor's hourly expected load as a "load band" equivalent to roughly 0-100% of potential demand and therefore no "additional costs resulting from unexpected operational events" were identified or included in the cost to serve, thereby evading its obligations under Paragraph 7.d of the *Stipulation and Agreement* to the detriment of all its non-Nucor customers.

16. The conduct set out in Paragraphs 14 and 15, above, violates the Commission's *Report and Order* issued in Case No. EO-2019-0244.

**WHEREFORE**, Staff prays that the Commission will provide notice to the Respondent as required by law and, after due hearing, find that Respondent Evergy Missouri West has violated the Commission's order as set out above; and grant such other and further relief as is just in the circumstances.

## **Count Two**

### **Authority to Seek Penalties**

17. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 16, above, as though the same were herein set out in full.

18. Section 386.570, RSMo., provides:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility,

is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense .

2 . Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3 . In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

19. Section 386.600, RSMo., provides :

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

20. Every Missouri West's conduct described in Paragraphs 14 and 15, above, was unreasonable, not required for any legitimate operational or business reason, and violated the Commission's order as explained above.

21. Every Missouri West's conduct described in Paragraphs 14 and 15 was



willful and was intended to evade the financial impacts that Evergy Missouri West agreed to in Case No. EO-2019-0244.

**WHEREFORE**, Staff prays that the Commission will give such notice to Respondent as is required by law and, after hearing, authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

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