

**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

**SECOND MOTION FOR CLARIFICATION AND SECOND APPLICATION FOR
REHEARING**

COMES NOW the Office of the Public Counsel (the “OPC”) and submits this Second Motion for Clarification and Second Application for Rehearing, concerning the Amended Report and Order issued by the Missouri Public Service Commission (the “Commission”) in the above-captioned matter on November 17, 2022 (the “Amended Report and Order”). (Doc. 156).¹ In support, the OPC respectfully states as follows:

The OPC brings this Second Motion for Clarification and Second Application for Rehearing to address several issues with the Amended Report and Order. As to the Second Motion for Clarification, the OPC requests that the Commission clarify two issues related to the Commission’s decision to deny the OPC’s proposed adjustment to account for the tax deduction that Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy West”) received associated with the costs related to Storm Uri (the “Proposed Adjustment for Taxes”). The first issue is how Evergy West may recover the amount necessary to pay the taxes due on the revenue generated from its collection of the securitized utility tariff charges and the legal basis for the Commission’s decision. The second issue is clarification as to whether Evergy West must also return to its

¹ References to document numbers represent the document numbers assigned in the Electronic Filing Information System (“EFIS”).

customers the amount of additional interest the ratepayers must pay due to the higher amount of qualified extraordinary costs.

As to the Second Application for Rehearing, the OPC requests rehearing on a number of issues. Regarding the Commission's decision to reject the OPC's Proposed Adjustment for Taxes, this decision is unlawful, unjust and unreasonable because the Commission failed to acknowledge the existence of the approximately \$30 million more in interest that Evergy West's ratepayers must pay or provide a justification for its decision to impose this additional burden. Further, the Commission has unjustly and unreasonably failed to provide any details as to how in practice Evergy West must return the amount of the tax deduction to its ratepayers over time, including whether Evergy West must also return the amount of additional interest its ratepayers must pay. Finally, the Commission has unlawfully, unjustly, and unreasonably failed to adequately describe any reconciliation process that may be used in future rate cases to recognize the tax deduction that Evergy West received.

Further, the Amended Report and Order is unlawful, unjust, and unreasonable as to the Commission's decisions regarding the rate used to calculate carrying costs because the Commission has allowed Evergy West to profit on its recovery of the Storm Uri costs.

Finally, as to the discount rate, the Commission included a finding of fact that does not comport with the decision it ultimately reached. The Commission unreasonably failed to explain how it reconciled this contradictory fact in reaching its decision.

Before turning to the substance of its Second Motion for Clarification and the Second Application for Rehearing, the OPC will first provide clarification on two of the issues that exist in the background of its argument in support of the Proposed Adjustment for Taxes. It will then turn to the Second Motion for Clarification, and, finally, the Second Application for Rehearing.

I. Background: The Tax Deduction and the Taxes Owed on the Revenues Generated from the Collection of the Securitized Utility Tariff Charges

The OPC wishes to provide clarity regarding two separate issues that exist in the background of its argument in support of its Proposed Adjustment for Taxes.

The first issue is how to ensure that Evergy West’s customers receive the benefit of the tax deduction that Evergy West received due to the increased fuel and purchased power costs Evergy West incurred related to Storm Uri.

The second issue is how Evergy West may generate the funds necessary to pay the taxes associated with the revenues generated from its collection of the securitized utility tariff charges (the “Revenue Taxes”).

A. Evergy West’s Tax Deduction

1. Evergy West Admits that It Was Entitled to a Tax Deduction

As to the tax deduction, Evergy West admits that it “was entitled to a tax deduction when the costs were incurred.” (Ex. 5 “Hardesty Surrebuttal Testimony” 3, Doc. 89). Evergy West also admits that it deducted the Storm Uri costs for tax purposes. (*Id.* 5 (stating, “[w]hen the Winter Storm Uri expenses were deducted for tax purposes at Evergy Missouri West . . .”).

2. Two Proposals Exist to Ensure Evergy West’s Customers Receive the Benefit of the Tax Deduction Evergy West Received

Evergy West’s ratepayers should receive a benefit related to the tax deduction that Evergy West received. (*See* Ex. 205 “Riley Rebuttal Testimony” 3, Doc. 116 (stating “[i]ncome tax recognition is inescapable in the context of utility ratemaking.”)). Two proposals exist in the record to ensure that Evergy West’s customers receive this benefit. On the one hand, Evergy West requests to flow the benefit back to customers over time. Staff appears to agree with Evergy West’s proposal. On the other hand, the OPC requests that Evergy West’s ratepayers receive the benefit

of this tax deduction up front, in the form of a one-time reduction to the amount of qualified extraordinary costs that Evergy West may recover through securitized utility tariff bonds. The OPC will provide more explanation of both of these methods in turn.

Evergy West wishes to recognize the tax deduction by carrying a deferred tax liability² on its books that will be given back to its customers over time. (*See Hardesty Surrebuttal Test. 5; Tr. 229. V. II pdf 173, Doc. 81*³). To accomplish this, Evergy West requests that the Commission not reduce the amount of qualified extraordinary costs to reflect the tax deduction that Evergy West received. (*See Hardesty Surrebuttal Test. 2*). Evergy West then asserts that it “fully expects to continue to include the[] deferred taxes in rate base until all the Winter Storm Uri costs are collected, whether it is through the fuel adjustment clause or through the securitization financing.” (*Id. 5*).

Staff, which appears to support Evergy West’s proposed method of recognizing the tax deduction, provides further explanation. Specifically, Staff witness, Ms. Kimberly Bolin asks in her pre-filed testimony “[w]ill the deferred tax liability be included as an offset to rate base in future Evergy Missouri West general rate cases?” (Ex. 101 “Bolin Surrebuttal Testimony” 4, Doc. 105). She answers this question saying “[y]es. In 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 bond.” (*Id.*). Based on this, it appears that Evergy West, and Staff, request to flow the

² Evergy West explains the creation of this deferred tax liability saying

When the Winter Storm Uri expenses were deducted for tax purposes at Evergy Missouri West, a tax timing difference was created. The tax timing difference is because the costs are either included in the fuel clause or securitized as bond proceeds, but not deducted for book purposes. At this time, the Company recorded deferred taxes on the tax timing difference.

(*Hardesty Surrebuttal Test. 5*).

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.

benefit of the tax deduction back to customers over the life of the securitized utility tariff bonds. (See Hardesty Surrebuttal Test. 5; Bolin Surrebuttal Test. 4).

Alternatively, the OPC requests that the Commission recognize this tax deduction through a one-time, up-front reduction of the amount of qualified extraordinary costs. (Riley Rebuttal Test. 3, 7). The OPC's witness, Mr. John Riley, explains that to accept Evergy West and Staff's proposal and flow the tax benefit back to ratepayers over time would cost Evergy West's ratepayers an additional \$30 million in interest expense. (See, e.g., Tr. 502-03, V. IV pdf 90-91, Doc. 83; see also Ex. 209 "John Riley's Calculation" 1,⁴ Doc. 120).⁵

As an initial matter, the Commission must determine how to recognize this tax deduction. Two proposals exist in the record to ensure that Evergy West's ratepayers recognize a benefit due to the tax deduction Evergy West received. These proposals are to either (1) return the amount to customers over time by including the deferred tax liability in Evergy West's future rate cases as an offset to rate base, or (2) include a one-time, up-front reduction to the amount of qualified extraordinary costs.

⁴ During the hearing in this matter, Judge Clark admitted Exhibit 209 as a demonstrative exhibit that was representative of the mathematical calculation that Mr. Riley used to arrive at his approximately \$30 million interest expense calculation. (See Tr. 517, V. IV pdf 105). The OPC relies on Exhibit 209 here only in its capacity as a demonstrative exhibit, specifically as one reflecting Mr. Riley's mathematical calculations.

⁵ Evergy West argues in its Opposition to the OPC's original Motion for Clarification, and, Conditionally Application for Rehearing that the Commission should reject this argument because the OPC failed to raise it in pre-filed testimony. (See Opposition to Mot. for Clarification 4-5, Doc. 155). However, this argument ignores Mr. Riley's surrebuttal testimony and his testimony at the hearing in this matter. In Schedule JSR-S-02, Mr. Riley identifies an additional tax burden. (See Ex. 206 "Riley Surrebuttal Testimony" Schedule JSR-S-02., Doc. 117). Similarly, during his testimony at the hearing, Mr. Riley thoroughly explained the origin of this \$30 million in response to questions from both Midwest Energy Consumers Group and the regulatory law judge. (See Tr. 502-03, 504-07, V. IV pdf 90-91, 92-95). Therefore, the OPC previously raised this argument. The Commission must ignore Evergy West's contention that the OPC failed to previously address this argument.

B. The Taxes Associated with the Revenues Generated from Evergy West's Collection of the Securitized Utility Tariff Charges

Separately, the Commission must determine how Evergy West will generate the funds necessary to pay the taxes associated with the revenue produced from Evergy West's collection of the securitized utility tariff charges (the "Revenue Taxes). Internal Revenue Service Revenue Procedure 2005-62 ("IRS Revenue Procedure 2005-62") recognizes that the collection of the securitized utility tariff charges results in income to the electrical corporation. The Securitization Law, § 393.1700 RSMo., recognizes the existence of the Revenue Taxes.

1. IRS Revenue Procedure 2005-62 and the Securitization Law

Specifically, IRS Revenue Procedure 2005-62, in describing its application, states in full:

- .01 The utility will be treated as not recognizing gross income upon—
 - (1) The receipt of a financing order that creates an intangible property right in the amount of the specified costs that may be recovered through securitization;
 - (2) The receipt of cash or other valuable consideration in exchange for the transfer of that property right to a financing entity that is wholly owned, directly or indirectly, by the utility; or
 - (3) The receipt of cash or other valuable consideration in exchange for securitized instruments issued by the financing entity that is wholly owned, directly or indirectly, by the utility.
- .02 The securitized instruments described in Section 5.04 will be treated as obligations of the utility.
- .03 *The non-bypassable charges are gross income to the utility recognized under the utility's usual method of accounting.*

(Ex. 19 "IRS Revenue Procedure 2005-62" § 6, Doc. 103 (emphasis added)).

The Securitization Law then includes the Revenue Taxes in the definition of financing costs, saying

"Financing costs" includes all of the following: . . .

- (d) *Any 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. (emphasis added).

Therefore, it seems clear that Evergy West must pay taxes on the securitized utility tariff charge revenues collected from its customers. (See IRS Revenue Procedure 2005-62 § 6); § 393.1700.1(8)(d) RSMo. The question then becomes, how will Evergy West generate the funds necessary to pay the Revenue Taxes?

2. At Least Two Proposals Exist Explaining How Evergy West May Generate the Amount Necessary to Pay the Revenue Taxes

Separately from deciding how to recognize the tax deduction that Evergy West received, the Commission must determine how Evergy West will generate the amount necessary to pay the Revenue Taxes. There appears to be at least two proposals in the record to accomplish this goal.

First, if the OPC understands Evergy West’s argument correctly, Evergy West appears to argue that it will use funds from the deferred tax liability that it created to pay the Revenue Taxes. (See Hardesty Surrebuttal Test. 4 (explaining that “[i]f the calculation does not include the taxes incurred at the [special purpose entity],⁶ the Company will not recover all of the Winter Storm Uri costs and the taxes associated with the recovery”); see also Tr. 229, V. II pdf 173 (Ms. Hardesty explaining that “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 Missouri 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.*” (emphasis added))).

⁶ In her pre-filed testimony, Ms. Hardesty suggests that the special purpose entity will pay the Revenue Taxes. (See Hardesty Surrebuttal Test. 3 (stating, “the revenue collected from customers to repay the bonds will also be taxable and the [special purpose entity] will have to pay tax on those revenues.”)). However, IRS Revenue Procedure 2005-62 suggests that it is the electrical corporation—here Evergy West—that must recognize revenue when collecting the securitized utility tariff charge. (See IRS Revenue Procedure 2005-62 §6.03 (stating, “The non-bypassable charges are gross income to the utility recognized under the utility’s usual method of accounting.”)). Ms. Hardesty appears to have recognized that Evergy West must pay the Revenue Taxes during her testimony at the hearing. (Tr. 228, V. II pdf 172 (Ms. Hardesty stating “when the revenues are collected in order to pay back that bond financing *the utility will pick up that income and pay taxes on it* at that time under the IRS revenue procedures.” (emphasis added))).

Second, if the OPC understands Staff's position correctly, Staff agrees that Evergy West will use only funds from the deferred tax liability to pay the Revenue Taxes. (*See* Bolin Surrebuttal Test. 4 (recognizing the existence of the deferred tax liability, stating that the deferred tax liability will be "included as an offset to rate base in future Evergy Missouri West general rate cases," and stating "[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.")). Importantly though, Staff explicitly states that it is Staff's understanding that Evergy West's ratepayers will *not* be responsible for the Revenue Taxes. (*See id.* 4-5 (stating that "Staff's understanding is that these taxes will not be charged to Evergy Missouri West retail customers in future rate cases or other regulatory proceedings.")). Ms. Bolin explains that "[i]f Evergy Missouri West's customers were to also be responsible for the taxes, the amount of taxes should be directly built into the securitized amount. This is *not* how Evergy or Staff has calculated the securitized amount." (*Id.* 3 (emphasis added)).

Alternatively, the OPC argues that Evergy West should recover the amount necessary to pay the Revenue Taxes by calculating taxes on the securitized utility tariff charges themselves as Evergy West's customers pay the charges on each month's bill. (*See* Riley Rebuttal Test. 5 (explaining, "when the actual securitization is implemented, taxes will be applied to the line item that ratepayers will see on their monthly bill, the revenues from which are earmarked for the securitization bond repayment. These taxes will be the responsibility of the ratepayer and not the Company;" *see also* Tr. 502-03, V. IV pdf 90-91 (Mr. Riley explaining at the hearing that "tax is going to have to be collected and it's going to have to be collected from the customer as far as I'm concerned at the billing"))).

C. **Conclusion: The Commission Must Separately Decide How Evergy West's Customers Receive the Benefit Related to the Tax Deduction Evergy West Received and How Evergy West Will Generate the Funds Necessary to Pay the Revenue Taxes**

In reaching its decision on the OPC's Proposed Adjustment for Taxes, the Commission must confront two, separate issues—(1) how to ensure that Evergy West's customers receive the benefit of the tax deduction Evergy West received, and (2) how Evergy West will generate the funds necessary to pay the Revenue Taxes. Several proposals exist in the record as to how to address both of these issues.

II. Second Motion for Clarification

Having separated these two important issues underlying the OPC's argument in support of its Proposed Adjustment for Taxes, the OPC now turns to its Second Motion for Clarification.

In this Second Motion for Clarification, the OPC requests that the Commission clarify certain portions of its Amended Report and Order related to the OPC's Proposed Adjustment for Taxes. Specifically, the OPC requests that the Commission clarify how it envisions that Evergy West will generate the amount necessary to pay the Revenue Taxes and the legal basis for that decision—this corresponds to the second issue explained above. Second, the OPC requests clarification as to whether Evergy West must also return to its customers the amount of additional interest they will pay due to the higher amount of qualified extraordinary costs. The higher amount of qualified extraordinary costs resulted from the Commission's decision to not reduce the amount of qualified extraordinary costs to reflect the tax deduction that Evergy West received—this corresponds to the first issue addressed above. The OPC will address each ground in turn.

A. The OPC Requests Clarification of How Evergy West May Generate the Funds Necessary to Pay the Revenue Taxes and the Legal Authority for that Decision

The first issue on which the OPC seeks clarification is how Evergy West may generate the funds necessary to pay the Revenue Taxes and the legal authority for that decision. Here, it appears that the Commission has decided that Evergy West must generate the funds necessary to pay the Revenue Taxes using the deferred tax liability. (*See* Amended Report & Order 39). However, in light of the Securitization Law’s prohibition on the Commission’s ability to “consider the securitized utility tariff charges paid under the financing order to be the revenue of the electrical corporation for any purpose,” the OPC requests the Commission clarify the legal basis for that decision. § 393.1700.3(1) RSMo. If the Commission determines that Evergy West may use an alternative method—aside from only the deferred tax liability—to generate the funds necessary to pay the Revenue Taxes, the OPC further requests the Commission clearly specify that alternative method and the legal basis for that method.

1. The Language of the Commission’s Amended Report and Order

The OPC first addresses the language of the Amended Report and Order that gives rise to its request for clarification. In doing so, the OPC also explains its interpretation of the language.

In its Amended Report and Order, the Commission included in its “Findings of Fact” addressing Issues 1I and 1J—those issues pertaining to the OPC’s Proposed Adjustment for Taxes—the following language

Public Counsel states that when securitization is implemented, taxes will be applied to the line item that ratepayers will see on their monthly bill, the revenues from which are for the securitization bond repayment, and these taxes will be the responsibility of the ratepayer and not the Company. This is *incorrect*.

(Amended Report & Order 36 (emphasis added)).⁷

The OPC interprets this finding of fact as suggesting that the securitized utility tariff charges that Evergy West’s customers see on their monthly bills will not include an amount to pay the Revenue Taxes.

Then, under the heading “Decision” addressing those same issues, the Commission included a sentence that states “All revenues collected from Evergy West customers as part of the [securitized utility tariff charge] will be taxed in the tax periods received or recognized.” (*Id.* 39). The Commission continues saying, “[t]he deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit^[8] to Evergy West’s rate base over the life of the securitization bonds corresponding to the income tax periods in which the revenues are recognized.” (*Id.*)

The OPC interprets these sentences as suggesting that the Commission will consider the revenues generated by Evergy West’s collection of the securitized utility tariff charges and the corresponding taxes due on those revenues—the Revenue Taxes—in Evergy West’s future rate cases.

2. The Securitization Law

The Securitization Law, however, appears to prohibit the Commission from considering the revenues generated by Evergy West’s collection of the securitized utility tariff charges as revenues of the company in Evergy West’s future rate cases. *See* § 393.1700.3(1) RSMo.

⁷ The Commission also included language that “[i]ncome taxes applicable to revenues collected from customers were not included in the calculation of the securitization amount by Staff or Evergy.” (Amended Report & Order 36). The OPC agrees that the Commission should not include an amount necessary to pay the Revenue Taxes in the amount of qualified extraordinary costs that will be securitized. (*See* Tr. 502, V. IV pdf 90 (in reference to the Revenue Taxes, Mr. Riley explaining: “I certainly don’t want it to be included in the securitization.”)).

⁸ Although the Commission uses the word “debit,” the OPC interprets this statement as saying that deferred tax liability will be included as a *reduction* to rate base in future Evergy West rate cases. (*See* Bolin Surrebuttal Test. 4 (answering “[y]es” in response to a question that asked “[w]ill the deferred tax liability be included as an *offset* to rate base in future Evergy Missouri West general rate cases.” (emphasis added))).

Specifically, the Securitization Law states, in pertinent part, “[t]he commission may *not*, in exercising its powers and carrying out its duties regarding any matter within its authority . . . consider the securitized utility tariff charges paid under the financing order to be the revenue of the electrical corporation for any purpose . . .” *Id.* (emphasis added).

3. The OPC’s Request for Clarification

As the OPC explained above, one of the issues that exists in the background of the OPC’s Proposed Adjustment for Taxes is how Evergy West may generate the funds necessary to pay the Revenue Taxes. At least two proposals exist in the record. From the language used in the Amended Report and Order it appears that the Commission finds that it will consider the revenue generated from Evergy West’s collection of the securitized utility tariff charges and the taxes due on those revenues in future Evergy West rate cases. (*See* Amended Report & Order 39). However, the Securitization Law prohibits the Commission from considering “the securitized utility tariff charges paid under the financing order to be the revenue of the electrical corporation for any purpose.” § 393.1700.3(1) RSMo. Therefore, the OPC requests that the Commission clarify its legal authority to consider the revenues associated with Evergy West’s collection of the securitized utility tariff charges and the corresponding amount of Revenue Taxes due in Evergy West’s future rate cases.⁹ Should the Commission conclude that Evergy West may collect the funds necessary

⁹ The OPC notes that considering the revenues generated from Evergy West’s collection of the securitized utility tariff charges also does not comport with findings of fact that the Commission made in the Amended Report and Order and also does not comply with Staff’s understanding.

First, in setting forth its findings of fact when addressing the OPC’s Proposed Adjustment for Taxes, the Commission found that “[t]he [securitized utility tariff charge] will be excluded from Evergy West’s revenues in a general rate case for calculating the cost of service.” (Amended Report & Order 37 (footnote omitted)).

Second, assuming that the Commission intended to adopt Staff’s understanding of how the tax benefits will be returned to customers, Staff witness, Ms. Bolin, included in her testimony a question that asked whether “Staff will include the additional revenues associated with the bond repayments with the rate revenue to calculate income taxes in a general rate proceeding.” (Bolin Surrebuttal Test. 3). As her answer, Ms. Bolin said

No. 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 just as Staff excludes Infrastructure System Replacement Surcharge (ISRS) revenue, Water and Sewer

to pay the Revenue Taxes through an alternative method, the OPC requests that the Commission clearly specify that method and the legal authority for its decision.

For this reason, the OPC requests that the Commission clarify how Evergy West may generate the funds necessary to pay the Revenue Taxes and the legal authority for that decision. In providing this clarification, the Commission will help to avoid future disagreements amongst the parties as Evergy West's ratepayers repay the securitized utility tariff bonds over the next 15 to 17 years.¹⁰

B. The Commission Must Clarify Whether, in Returning the Amount of the Tax Deduction to its Customers Over Time, Evergy West Must Also Return the Additional Interest its Customers Will Pay

As its second ground for clarification, the OPC requests that the Commission clarify whether Evergy West must return the additional interest its customers must pay due to the increased amount of qualified extraordinary costs, as well as the amount of the tax deduction itself.

Evergy West admits that it received a tax deduction due to the increased fuel and purchase power costs it incurred related to Storm Uri. (Hardesty Surrebuttal Test. 3). The Commission rejected the OPC's request to reduce the amount of qualified extraordinary costs that Evergy West may recover through securitized utility tariff bonds in an amount equal to that tax deduction. (Riley Rebuttal Test. 3; Amended Report & Order 34-39). Therefore, a higher amount of qualified extraordinary costs resulted than that which would have resulted if the Commission recognized the

Infrastructure Rate Adjustment (WSIRA) revenue, Fuel Adjustment Clause (FAC) revenue and Purchased Gas Adjustment (PGA) revenue from the cost of service.

(*Id.* 4 (emphasis added)).

In order to consider the amount of Revenue Taxes due, presumably the Commission must also consider the amount of revenue generated from Evergy West's collection of the securitized utility tariff charges. However, to do so does not comport with the Commission's findings of fact on these issues and Staff's understanding of the issue.

¹⁰ The Commission ordered that the securitized utility tariff bonds have a 15-year term with a final legal maturity date of 17 years. (Amended Report and Order 60).

OPC’s Proposed Adjustment for Taxes. This higher amount of qualified extraordinary costs will result in ratepayers paying additional amounts in interest. (*See, e.g.*, Tr. 502-03, V. IV pdf 90-91 (Mr. Riley explaining the additional interest)). Mr. Riley quantified this amount of additional interest as approximately \$30 million more. (*See id.*).

In the “Findings of Fact” related to the issues associated with the OPC’s Proposed Adjustment for Taxes, the Commission explains, “[t]he deferred tax liability record by Evergy West allows for the tax benefits associated with Storm Uri to be given to customers in future general rate cases over the life of the securitized bond.” (Amended Report & Order 35). In its decision on these issues, the Commission states “[t]he deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit to Evergy West’s rate base over the life of the securitization bonds corresponding to the income tax periods in which the revenues are recognized.” (*Id.* 39).

Based on these sentences from the Amended Report and Order, it appears that Evergy West must return the amount of the tax deduction it received to its ratepayers over the life of the securitization bonds. (*See id.*). However, the Amended Report and Order does not address the additional interest that Evergy West’s customers must pay due to the higher amount of qualified extraordinary costs—approximately \$30 million. (*See generally id.*; *see, e.g.*, Tr. 502-03, V. IV pdf 90-91 (Mr. Riley explaining the additional interest)). The Commission must clarify whether Evergy West must make its ratepayers completely whole by returning this increased interest amount, in addition to the amount of the tax deduction, to its customers over time.

C. Conclusion: Second Motion for Clarification

As explained above, it is not clear how Evergy West may generate the funds necessary to pay the Revenue Taxes and the legal basis for the Commission’s decision. Second, the

Commission has not addressed whether Evergy West must also return the increased amount of interest its customers will pay due to the higher amount of qualified extraordinary costs as well as the amount of the tax deduction that it received. The Commission must amend its Amended Report and Order to clarify these issues.

III. Second Application for Rehearing

In addition to requiring clarification, the Amended Report and Order is also unlawful, unjust, and unreasonable for several reasons. This includes at least three reasons related to the Commission's decision regarding the OPC's Proposed Adjustment for Taxes. It also includes issues related to carrying costs and the discount rate used when analyzing recovery through securitization. The OPC will first address the issues related to its Proposed Adjustment for Taxes. It will then turn to the issues related to carrying costs and, finally, the discount rate.

A. Standard of Review: Application for Rehearing

“After an order or decision has been made by the commission, the public counsel . . . shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear.” RSMo. § 386.500(1). An application for rehearing “shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust, or unreasonable.” *Id.* § 386.500(2).

“Lawfulness is determined by whether or not the Commission had the statutory authority to act as it did.” *Pub. Serv. Comm'n v. Mo. Gas Energy*, 388 S.W.3d 221, 227 (Mo. Ct. App. 2012) (citations omitted). “Reasonableness depends on whether or not (i) the order is supported by substantial and competent evidence on the whole record, (ii) the decision is arbitrary, capricious

or unreasonable, or (iii) the Commission abused its discretion.” *Id.* (internal quotation marks and citations omitted).

B. Issues Related to the OPC’s Proposed Adjustment for Taxes

The Commission’s decision related to the OPC’s Proposed Adjustment for Taxes is unlawful, unjust, and unreasonable for at least three reasons. First, the Commission failed to acknowledge, address, or provide a justification for its decision to require Evergy West’s ratepayers to pay approximately \$30 million more in interest by rejecting the OPC’s Proposed Adjustment for Taxes. Further, the Commission has failed to provide any details as to how Evergy West will return this amount to ratepayers over time, including whether Evergy West must also return the amount of additional interest that its ratepayers will pay. Finally, the Commission has failed to adequately describe any reconciliation process that may later be used to recognize the tax deduction that Evergy West received. After addressing the factual background relevant to all three of these issues, the OPC will address each ground in turn.

1. Relevant Factual Background

The Commission found and Evergy West itself admitted that Evergy West was entitled to a tax deduction when the Storm Uri costs were incurred. (Amended Report & Order 34; Hardesty Surrebuttal Test. 3 (stating that “[i]t is also true that [Evergy West] was entitled to a tax deduction when the costs were incurred.”)).

In rejecting the OPC’s proposed adjustment, the Commission stated that “Evergy West does not have to recognize money received from the [Special Purpose Entity] pursuant to the financing order¹¹ and the transfer of the deferred tax liability for costs expended due to Winter

¹¹ The OPC does not dispute that in accordance with IRS Revenue Procedure 2005-62, Evergy West “will be treated as not recognizing gross income upon” (1) the “receipt of a financing order,” (2) the “receipt of cash or other valuable consideration in exchange for the transfer of that property right to a financing entity that is wholly owned, directly or indirectly, by the utility;” or (3) the “receipt of cash or other valuable consideration in exchange for

Storm Uri for income tax purposes.” (Amended Report & Order 39). It continued saying that “[h]owever, that does not mean that the revenues collected that typically offset the tax deduction related to fuel and purchased power costs (Winter Storm Uri costs) will not be recognized in future Evergy West rate cases.” (*Id.*). “All revenues collected from Evergy West customers as part of the [securitized utility tariff charge] will be taxed in the tax periods received or recognized,” the Commission explained. (*Id.*). The Commission concluded that “[t]he deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit^[12] to Evergy West’s rate base over the life of the securitization bonds corresponding to the income tax periods in which the revenues are recognized.” (*Id.*).

Referencing the reconciliation process provided for in § 393.1700.2(3)(c)k RSMo., the Commission then continued saying that “there is no need to disallow an uncertain tax amount now, when more information regarding what, if any, tax benefits Evergy West receives will be available and will be reconciled in a future rate case.” (*Id.*).

2. The Commission Failed to Address the Approximately \$30 Million in Additional Interest Ratepayers Must Pay

Mr. Riley identified an additional approximately \$30 million in interest that will result from the Commission’s decision to not reduce the amount of qualified extraordinary costs to account for the tax deduction that Evergy West received and to return that amount back to ratepayers over the life of the bonds. (*See, e.g.*, Tr. 504-07, V. IV pdf 92-95). The Commission’s decision to reject the OPC’s Proposed Adjustment for Taxes is unlawful, unjust, and unreasonable for failing to

securitized instruments issued by the financing entity that is wholly owned, directly or indirectly, by the utility.” (*See* IRS Revenue Procedure 2005-62 § 6).

¹² Again, although the Commission uses the word “debit,” the OPC interprets this statement as saying that deferred tax liability will be included as a *reduction* to rate base in future Evergy West rate cases. (*See* Bolin Surrebuttal Test. 4 (answering “[y]es” in response to a question that asked “[w]ill the deferred tax liability be included as an *offset* to rate base in future Evergy Missouri West general rate cases.” (emphasis added))).

recognize this additional burden, for requiring ratepayers to bear this additional burden, and for providing no justification for its imposition.

Mr. Riley, a certified public accountant, stated that returning the tax benefit to ratepayers over time, as opposed to reducing the amount of qualified extraordinary costs to be securitized to reflect this tax deduction, results in ratepayers paying an additional \$30 million in interest. (*See, e.g.*, Tr. 504-07, V. IV pdf 92-95). In its decision rejecting the OPC's Proposed Adjustment for Taxes, the Commission fails to acknowledge or address this \$30 million additional burden. (*See generally* Amended Report & Order 34-39). It also fails to provide a justification for its imposition. (*See generally id.*). Rather, the Commission states only that the "deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit to Evergy West's rate base over the life of the securitization bonds corresponding to the income tax periods in which the revenues are recognized." (*Id.* 39). Failing to acknowledge or address this additional burden, and providing no justification for its imposition is unjust and unreasonable. *See Mo. Gas Energy*, 388 S.W.3d at 227.

Further, this decision is unlawful. The Commission's financing order must include a finding that the recovery of the identified amount of qualified extraordinary costs is "just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo. In its decision to reject the OPC's Proposed Adjustment for Taxes, the Commission has required ratepayers to pay an additional approximately \$30 million in interest to receive a benefit—a reduction in the amount they must pay to account for the tax deduction Evergy West received—to which they are entitled. (*See, e.g.*, Tr. 504-07, V. IV pdf 92-95). The Commission has done so without acknowledging the additional burden—the approximately \$30 million in additional interest—imposed on ratepayers or providing a justification for the imposition of that burden. (*See generally* Amended Report &

Order 34-39). Requiring ratepayers to bear this burden in the amount of qualified extraordinary costs they must pay, while not acknowledging it or providing a justification for its imposition, cannot be “just and reasonable and in the public interest.” § 393.1700.2(3)(c)a RSMo. Therefore, the Commission’s decision is also unlawful. *See; Mo. Gas Energy*, 388 S.W.3d at 227.

For these reasons, the Commission’s Amended Report and Order is unlawful, unjust, and unreasonable.

3. **The Commission Failed to Specify How In Practice Evergy West Must Return the Amount of the Tax Deduction to Ratepayers in Future Rate Cases, Including Whether Evergy West Must Return the Amount of Additional Interest**

As explained above, one of the issues that exists in the background of the OPC’s Proposed Adjustment for Taxes is how Evergy West’s customers will receive the benefit of Evergy West’s reduced tax liability due to the tax deduction it received. Although it appears that the Commission has decided that Evergy West must return the amount of the tax deduction to ratepayers by including the deferred tax liability as an offset to rate base in Evergy West’s future rate cases, the Commission has failed to specify how that process will work in practice. In not providing that explanation, the Commission has also failed to address whether Evergy West must return the amount of additional interest its customers must pay.

In its Amended Report and Order, the Commission recognizes that “[a]ll revenues collected from Evergy West customers as part of the [securitized utility tariff charges] will be taxed in the tax period received or recognized.” (Amended Report & Order 39). The Commission goes on to say “[t]he deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit to Evergy West’s rate base over the life of the securitization bonds corresponding to the income tax periods in which the revenues are recognized.” (*Id.*).

Based on these statements, and as addressed in the Second Motion for Clarification above, the OPC interprets these statements as suggesting that Evergy West must return the amount of the tax deduction back to its customers by reducing rate base in future rate cases. (*See id.*). However, the Commission has not addressed how this will work in practice. Critically, for instance, the Commission failed to address whether Evergy West must return the amount of the additional interest its ratepayers must pay as well as the amount of the tax deduction itself. (*See Amended Report & Order 34-39*).

With key considerations such as these unclear, the Commission’s Amended Report and Order is unreasonable and unjust for failing to specify how, in practice, Evergy West must return the amount of the tax deduction back to its ratepayers over the life of the securitized utility tariff bonds.

4. The Commission Failed to Specify How the Future Reconciliation Process in Accordance with § 393.1700.2(3)(c)k Will Work in Practice

In the final paragraph of its decision rejecting the OPC’s Proposed Adjustment for Taxes, the Commission suggests that the tax benefit may be included in a future rate case through a reconciliation process, in accordance with § 393.1700.2(3)(c)k RSMo. However, it fails to specify how such a reconciliation process would be accomplished, which the Securitization Law requires. Without this specification, the Amended Report and Order is unlawful, unjust, and unreasonable.

The Securitization Law requires that the financing order specify a “future ratemaking” reconciliation process. *See* § 393.1700.2(3)(c)k RSMo. Specifically, that provision of the statute states in full:

A financing order issued by the commission, after a hearing, to an electrical corporation shall include all of the following elements: . . . A statement specifying a future ratemaking process to reconcile any differences between the actual

securitized utility tariff costs¹³ financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the electrical corporation or assignee provided that any such reconciliation shall not affect the amount of securitized utility tariff bonds or the associated securitized utility tariff charges paid by customers.

*Id.*¹⁴

In rejecting the OPC's Proposed Adjustment for Taxes, the Commission references this reconciliation process and suggests that the tax benefits may be returned to customers in a future rate case by utilizing it. (*See* Amended Report & Order 39). Therefore, the Commission concludes "there is no need to disallow an uncertain tax amount¹⁵ now, when more information regarding

¹³ The OPC notes that securitized utility tariff costs include qualified extraordinary costs, which are at issue in this case. § 393.1700.1(17) RSMo.

¹⁴ In setting forth its Conclusions of Law addressing the OPC's Proposed Adjustment for Taxes, the Commission includes a paragraph that references this reconciliation process. (Amended Report & Order 38). That paragraph states in full "Section 393.1700.2(3)(c)k, RSMo. requires that this order provide for a reconciliation process that would require Evergy West to account for any potential tax benefits that may lower its actual securitized utility tariff costs associated with Winter Storm Uri through a future rate case." (*Id.* (emphasis added)). Similarly, in setting forth its decision, the Commission states that "the Securitization Law, at Section 393.1700.2(3)(c)k, RSMo., requires that this Financing Order provide for a reconciliation process to account for any potential tax benefits in a future rate case." (*Id.* (emphasis added)).

These statements appear to suggest that the reconciliation process is limited to accounting for potential tax benefits. However, as can be seen from the language of the statute set forth above, it is clear that the reconciliation process is broader. *See* § 393.1700.2(3)(c)k RSMo. The reconciliation process can account for "any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the electrical corporation or assignee . . ." *Id.*

Though the OPC asserts that the Commission should reduce the amount of qualified extraordinary costs—which are included as securitized utility tariff costs—to account for the tax benefits that Evergy West received associated with its costs related to Storm Uri, this reconciliation process may be used to account for other differences in the amount of qualified extraordinary costs as well. *See* § 393.1700.1(17) RSMo. (defining securitized utility tariff costs to include qualified extraordinary costs).

It is also important to note that this reconciliation process cannot "affect the amount of securitized utility tariff bonds or the associated securitized utility tariff charges paid by customers." *See* § 393.1700.2(3)(c)k RSMo. Therefore, even if the Commission recognizes the tax deduction that Evergy West received associated with its increased costs related to Storm Uri in a future rate case, the Commission cannot change the amount of the securitized utility tariff bonds or the securitized utility tariff charges paid by Evergy West's customers. *See id.* In this circumstance, because the amount of the securitized utility tariff bonds and the securitized utility tariff charges would not change, Evergy West's customers would likely still be subject to the additional approximately \$30 million burden due to the increased interest they would pay.

¹⁵ In its Amended Report and Order, the Commission refers to an "uncertain tax amount." (Amended Report & Order 39). However, the amount of the tax deduction can be quantified. (*See* Riley Rebuttal Test. 2-3). In his pre-filed Rebuttal Testimony, Mr. Riley explained the tax deduction's origin and how the tax consequences of the reduction can be quantified. (*Id.*). Specifically, Mr. Riley states, "[t]he tax consequences of this reduction can be quantified by applying the generally accepted composite tax rate—23.84%—to the amount of the reduction. The

what, if any, tax benefits Evergy West receives will be available and will be reconciled in a future rate case.” (*Id.*).

However, the Commission has not met the requirements of § 393.1700.2(3)(c)k RSMo. The Securitization Law requires that the Commission “specify[] a future ratemaking process to reconcile any differences . . .” § 393.1700.2(3)(c)k RSMo. Although the Commission included a statement recognizing the existence of this reconciliation process, it failed to address how such a process would work in practice. (*See* Amended Report & Order 39). It is clear from the Securitization Law that such a reconciliation process may not reduce “the amount of securitized utility tariff bonds or the associated securitized utility tariff charges paid by customers,” but it is not clear from either the Securitization Law or the Commission’s Amended Report and Order how such a reconciliation process would work in a future general rate case. *See* § 393.1700.2(3)(c)k RSMo.; (*see generally* Amended Report & Order). This is true especially in light of the limitations identified in the Securitization Law on the Commission’s ability to consider the securitized utility tariff bonds in a future rate case. *See, e.g.*, §§ 393.1700.3(1); 393.1700.3(6) RSMo.

Because the Commission has failed to specify how the reconciliation process would work in a future rate case, in contravention of the Securitization Law, the Commission’s reliance on this reconciliation process is unlawful, unjust, and unreasonable. *See Mo. Gas Energy*, 388 S.W.3d at 227.

result of this calculation is Evergy West’s tax savings associated with the unreimbursed Storm Uri costs.” (*Id.* 3). Therefore, the amount of the tax deduction is easily quantifiable.

Further, accepting the OPC’s Proposed Adjustment for Taxes and reducing the amount of qualified extraordinary costs by an amount equal to the tax deduction is arguably the simplest way to return the amount of the tax deduction to Evergy West’s ratepayers because it is a simple, up-front, one-time deduction. (*See* Riley Surrebuttal Test. 3 (explaining that “[t]he deduction I propose to the securitization amount should be a one-time deduction that matches the Company tax deduction and should not need updating with any annual true-up mechanisms.”)).

5. **Conclusion: The Commission's Amended Report and Order is Unlawful, Unjust, and Unreasonable as to its Decision to Reject the OPC's Proposed Adjustment for Taxes**

As to the Commission's decision to reject the OPC's Proposed Adjustment for Taxes, the Amended Report and Order is unlawful, unjust, and unreasonable for at least three reasons. First, the Commission failed to acknowledge or justify its imposition of an additional \$30 million burden on Evergy West's ratepayers that results from the additional interest due. Second, the Commission failed to specify how in practice Evergy West must return the amount of the tax deduction it received back to its customers in future rate cases. This includes whether the amount returned must include the additional approximately \$30 million in interest. Finally, the Commission failed to specify how the reconciliation process under § 393.1700.2(3)(c)k RSMo. will work in a future general rate case, in contravention of the Securitization Law.

For these reasons, the Commission must grant this Second Application for Rehearing and amend its Amended Report and Order to recognize the OPC's Proposed Adjustment for Taxes and to remedy the deficiencies addressed herein. Alternatively, the OPC requests that the Commission reopen the record to gather additional evidence, so that it can make additional findings of facts on these issues.

B. Issues Related to Carrying Costs

For at least two reasons, the Commission's Amended Report and Order is also unlawful, unjust, and unreasonable as to the Commission's decision regarding the rate used to calculate carrying costs. Specifically, in finding that Evergy West has carried the costs related to Storm Uri using short term debt, but ordering that a higher long term debt rate be used to calculate carrying costs, the Commission has allowed Evergy West to profit from its recovery of the costs related to Storm Uri. Further, in ordering the use of a historical long term debt rate, the Commission has

allowed Evergy West to further increase those profits. After addressing the legal standard applicable to carrying costs in the Securitization Law, the OPC will address each ground in turn.

1. Legal Standard: Carrying Costs in the Securitization Law

The Securitization Law allows an electrical corporation to include carrying costs as a part of the qualified extraordinary costs it may recover through securitized utility tariff bonds. § 393.1700.1(13) RSMo. (defining 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 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” (emphasis added)). However, the statute does not define how carrying costs must be calculated. *See generally* § 393.1700 RSMo.

The Securitization Law also requires that the Commission include a finding that the specified amount of qualified extraordinary costs, which includes carrying charges, “is just and reasonable and in the public interest.” §§ 393.1700.2(3)(c)a; 393.1700.1(13) RSMo.

2. The Commission Has Unlawfully, Unjustly, and Unreasonably Allowed Evergy West to Profit from its Recovery of the Costs Related to Storm Uri

The Commission’s “Findings of Fact” as to the proper rate to use to calculate carrying costs and its ultimate decision on this issue show that the Commission has allowed Evergy West to profit from its recovery of the costs related to Storm Uri at the expense of its ratepayers. Such a result is unlawful, unjust, and unreasonable.

In discussing the appropriate rate to use to calculate carrying costs, the Commission included as a finding of fact that “Evergy West has been carrying Winter Storm Uri costs using short[]term debt.” (Amended Report & Order 40 (footnote omitted)). However, the Commission

ordered that a higher long term debt rate, 5.06%, be used to calculate the amount of carrying costs to include in the qualified extraordinary costs. (*Id.* 43). In doing so, the Commission has allowed Evergy West to profit from its recovery of the costs related to Storm Uri.

In rejecting the OPC's proposal to use a short term debt rate, compounded monthly, the Commission stated only that it "is inappropriate as the term to which the short[]term debt rate, compounded monthly, . . . is a period greater than 364 days and closer to two years." (*Id.* 43). The Commission did not address that although Evergy West carried the costs related to Storm Uri for longer than 364 days, Evergy West carried those costs using short term debt. (*See id.*).

The OPC does not dispute that "for accounting purposes, an obligation longer than 364 days is considered long[]term." (Ex. 204 "Murray Surrebuttal Testimony" 2, Doc. 115). However, as the OPC's witness, Mr. David Murray, explained, "from a practical perspective," this does not "trigger[Evergy West's] cost of long[]term debt as the appropriate carrying cost rate." (*Id.*). This is so because such a reasoning ignores how Evergy West has *actually* carried the debt. (*See id.*).

Allowing Evergy West to profit from Storm Uri at the expense of its ratepayers is unlawful, unjust, and unreasonable. The Securitization Law requires that the Commission include a finding that the specified amount of qualified extraordinary costs, which includes carrying charges, "is just and reasonable and in the public interest." §§ 393.1700.2(3)(c)a; 393.1700.1(13) RSMo. Permitting Evergy West to collect a profit simply because it carried the debt for longer than 364 days, without reconciling this general accounting standard with how Evergy West has actually carried the debt, cannot be "just and reasonable and in the public interest." *See* § 393.1700.2(3)(c)a. Therefore, this aspect of the Commission's Amended Report and Order is also unlawful, unjust, and unreasonable.¹⁶

¹⁶ The OPC notes that in reaching this conclusion, the Commission has also incentivized electrical corporations to delay in bringing their requests to securitize costs. Namely, as long as the electrical corporation carries

3. **By Ordering the Use of a Historical Higher Cost of Long Term Debt, the Commission Has Unlawfully, Unjustly, and Unreasonably Allowed Evergy West to Further Increase its Profits from the Recovery of its Costs Related to Storm Uri**

In this case, not only is the Commission allowing Evergy West to profit from its recovery of the costs related to Storm Uri, the Commission has allowed Evergy West to further increase its profits by using a higher historical long term debt rate. Such a result is unlawful, unjust, and unreasonable.

As the Commission found in the Amended Report and Order, 5.06% is the long term debt rate from Evergy West's 2018 rate case, ER-2018-0146. (Amended Report & Order 41). The OPC explained in its Initial Post-Hearing Brief that at least three problems exist with this rate. (See OPC Initial Post-Hearing Brief 44-45, Doc. 134). First, 5.06% is based, in part, on debt issued in the 1990s, which "is not reflective of current required returns on debt." (*Id.* 44 (quoting Murray Surrebuttal Test. 2)). Also, an embedded cost of debt, such as the 5.06% ordered here, includes costs other than the coupon/interest payments on the debts, which leads to a higher cost of debt. (*Id.* 44 (citing Murray Surrebuttal Test. 2-3)). Finally, a majority of the debt upon which the 5.06% is based has since matured. (*Id.* 45 (citing Murray Surrebuttal Test. 2-3)).

Further, as the Commission found in the Amended Report and Order, Evergy West itself estimated its embedded cost of long term debt at 3.787% in its *current* general rate case, ER-2022-0130. (Amended Report & Order 41).

Also by utilizing a higher rate, presumably the resulting amount of carrying costs included in the amount of qualified extraordinary costs will be higher. The Securitization Law requires that the Commission include a finding that the specified amount of qualified extraordinary costs, which

the debt for longer than 364 days, how it has actually carried the debt since incurring it will not affect the Commission's analysis.

includes carrying charges, “is just and reasonable and in the public interest.” §§ 393.1700.2(3)(c)a; 393.1700.1(13) RSMo. Allowing Evergy West to further increase its profits from its recovery of the costs related to Storm Uri, simply cannot be “just and reasonable and in the public interest.” *See* § 393.1700.2(3)(c)a RSMo.

Therefore, the Commission allowed Evergy West to profit from Storm Uri by finding that Evergy West has been carrying the costs related to Storm Uri using short term debt but ordering that a higher long term debt rate be used to calculate carrying costs. The Commission has also allowed Evergy West to further increase that profit by ordering the use of a historical higher long term debt rate. Such a result is unlawful, unjust, and unreasonable.

4. Conclusion: The Commission’s Decision Regarding the Rate to Calculate Carrying Charges is Unlawful, Unjust, and Unreasonable

The Commission’s decision to use 5.06% as the rate to calculate carrying costs in this matter is unlawful, unjust, and unreasonable because it has allowed Evergy West to profit on its recovery of the costs related to Storm Uri. The Commission must grant this Second Application for Rehearing and amend its Amended Report and Order to order that a short term debt rate—which mirrors how Evergy West has been carrying the debt, (Amended Report & Order 40)—be used to calculate the amount of carrying costs that Evergy West may recover as qualified extraordinary costs.

C. The Commission’s Decision Regarding the Discount Rate Used to Analyze Recovery Through Securitization is Unreasonable

The Commission must also grant rehearing as to the issue of the proper discount rate to determine whether quantifiable net present value benefits exist when analyzing recovery through securitization. Here, an inconsistency in the Amended Report and Order as to this issue makes the Commission’s decision unreasonable.

Issue 3A asked “[w]hat 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?” (Amended Report & Order 57). In answering that question, the Commission made a finding of fact that “[t]he certainty of payments under securitization necessitates a lower discount rate than under other ratemaking scenarios.” (*Id.* (footnote omitted)). The Commission also found that “[a] principle of discounting future cash flows is to use a discount rate consistent with the risk of those cash flows.” (*Id.*). However, the Commission concluded that 5.06% is the appropriate discount rate to use when analyzing recovery through securitization. (*Id.* 58). This matches the discount rate the Commission decided should be used when analyzing recovery through customary ratemaking. (*See id.* 48-50). Therefore, a clear conflict exists between the Commission’s finding of fact on Issue 3A and the Commission’s decision on that issue. (*Compare id.* 57 (finding that recovery through securitization “necessitates a lower discount rate than under other ratemaking scenarios”), *with id.* 48-50, 58 (ordering 5.06% be used as the discount rate to analyze recovery through securitization, which is the same as the discount rate ordered to be used to analyze recovery through customary ratemaking)). The Commission did not remedy this conflict in reaching its decision.

This conflict and the Commission’s failure to remedy it makes the Commission’s decision unreasonable. The Commission must grant this Second Application for Rehearing on this issue and amend the Amended Report and Order to order that the forecasted rate of the securitized utility tariff bonds be used as the discount rate to analyze recovery through securitization. (*See Ex. 203 “Murray Rebuttal Testimony” 13, 15, Doc. 114; Murray Surrebuttal Test. 8).*

IV. Conclusion

For the reasons stated above, the OPC requests that the Commission clarify two issues. First, how Evergy West may generate the funds necessary to pay the Revenue Taxes and the legal basis for that decision. Second, whether in returning the amount of the tax deduction back to its customers over the life of the securitized utility tariff bonds, Evergy West must also return the additional interest its ratepayers will pay.

Further, the Commission's Amended Report and Order is unlawful, unjust, and unreasonable for the reasons addressed above. Specifically, as to the Commission's decision to reject the OPC's Proposed Adjustment for Taxes, the Commission's decision is unlawful, unjust, and unreasonable because (1) the Commission failed to acknowledge or to provide a justification for its decision to impose an additional burden on Evergy West's ratepayers, in the form of additional interest; (2) the Commission failed to specify how in practice Evergy West must return the amount of the tax deduction back to its ratepayers, including whether it must also return the amount of additional interest; and (3) the Commission failed to specify how the future reconciliation process in accordance with § 393.1700.2(3)(c)k RSMo. will work in practice.

Further, the Commission's Amended Report and Order is unlawful, unjust, and unreasonable as to its decision regarding the appropriate rate to use to determine carrying costs. Specifically, the Commission has allowed Evergy West to profit from its recovery of the Storm Uri costs and to further increase that profit by ordering the use of a historical long-term debt rate.

Finally, the Commission's decision regarding the appropriate discount rate to use when analyzing recovery through securitization is unreasonable because it does not comport with the Commission's finding of fact on that issue and the Commission failed to remedy that conflict.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission provide the clarification requested in the Second Motion for Clarification, grant the Second Application for Rehearing, and amend the Amended Report and Order as specified above. As to the issues related to the OPC's Proposed Adjustment for Taxes, alternatively, the OPC requests that the Commission reopen the record on these issues to gather additional evidence, so that the Commission may make additional findings of fact.

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 26th day of November 2022.

/s/ Lindsay VanGerpen