

Exhibit No.:
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Sponsoring Party:
Case No.:

Streetlighting Tariffs
Carter/Direct
City of St. Joseph
ER-2022-0130

DIRECT TESTIMONY

OF

BRYAN E. CARTER

Submitted on Behalf of
the City of St. Joseph, Missouri

EVERGY MISSOURI WEST, INC. D/B/A EVERGY MISSOURI WEST

Case No. ER-2022-0130

June 8, 2022

DIRECT TESTIMONY

OF

BRYAN E. CARTER

EVERGY MISSOURI WEST, INC. D/B/A EVERGY MISSOURI WEST

CASE NO. ER-2022-0130

1 **I. INTRODUCTION**

2 **Q. Please state your name, title and business address.**

3 A. I am Bryan E. Carter. I am the City Manager of the City of St. Joseph, Missouri. My
4 business address is: City Hall, Room 305, 1100 Frederick Avenue, St. Joseph,
5 Missouri 64501.

6
7 **Q. What are your qualifications and experience?**

8 A. I have served as City Manager of the City of St. Joseph since early in 2021. I was the
9 City Attorney of St. Joseph from late 2015 until my appointment as City Manager. Prior
10 to that, I served as Assistant, and then Deputy, City Attorney from 2011 through 2015.
11 I earned my Bachelor of Science degree in Business Administration from the
12 University of Central Missouri in 2001, and my J.D. from Creighton University School
13 of Law in 2011.

14 **Q. Have you testified previously before the Missouri Public Service
15 Commission?**

16 A. No, I have not.

17 **Q. What is the purpose of your direct testimony?**

18 **A.** The purpose of this testimony is to propose certain changes to Evergy's streetlighting
19 tariff to allow the City to construct new streetlights itself, or through contractors and
20 developers, and for Evergy to accept ownership of those streetlights, as had been the
21 established procedure for many years. The current tariff (Revised Sheet 150) provides
22 for the Company to own streetlights served under Sheet 150. However, the Company
23 now insists that only the Company can *build* new streetlights under that tariff. This

1 burdens the City's budget and taxpayers by shifting what were capital costs, borne by
2 the City or by developers, onto taxpayers by making those costs part of the electric
3 bills paid by the City to Evergy.
4

5 **II. STREETLIGHT ISSUE**

6 **Q. What had the process been historically?**

7 A. For many years, real estate developments and City expansion projects requiring
8 infrastructure, including streetlights, were constructed in accordance with St. Joseph's
9 City Code. Projects were bid out competitively and constructed. The streets, sewer
10 and storm-water facilities became City property at the end of construction. Once the
11 electric utility approved the new streetlight installation, ensuring its compliance with
12 applicable safety standards, that streetlight was deemed part of the streetlighting
13 system and owned by the utility. If the City did not approve the streets, sewers and
14 storm-water facilities, or if the utility did not approve the streetlighting infrastructure,
15 the developer bore the cost of bringing the infrastructure into compliance.

16 **Q. What has changed?**

17 A. In 2018, Evergy took a new approach, requiring that it alone was entitled to
18 construct all new streetlights within the City and then adding those costs to the
19 City's electric bills.

20 **Q. What does the tariff say?**

21 A. Evergy's tariff, beginning with Revised Sheet No. 150, is entitled: "Municipal Street
22 Lighting Service Electric." In the first paragraph, under "Availability," it refers to "a
23 Company-owned Street Lighting system" offered "to municipalities and other
24 governmental entities." This language appears in both the existing tariff and the
25 revised tariff proposed in this case.

26 **Q. Does the City object to Evergy owning the streetlights?**

1 A. No. The City of St. Joseph does not object to Evergy owning all streetlights in the
2 City, as has been the case for many years since the City sold all its streetlights to
3 St. Joseph Light & Power years ago. The issue is that the City believes it has a right
4 to build streetlights on public projects, and to provide for developers to build
5 streetlights as part of City-approved development plans, and then deem those lights
6 to be part of the streetlighting system and owned by Evergy, rather than having
7 Evergy build all new streetlights itself and recouping their cost from the City through
8 its electric rates.

9 **Q. Does Tariff Sheet 150 require that Evergy build all new streetlights?**

10 A. No. It refers to Company ownership of streetlights, but does not provide that the
11 Company must build them.

12 **Q. Has Evergy offered an alternative to the City of St. Joseph?**

13 A. On or about April 16, 2020, Evergy advised the City of St. Joseph in writing that it
14 had two alternatives: (1) let Evergy build all new streetlights and take service under
15 Revised Tariff No. 150, or (2) build new streetlights itself, own and maintain them
16 and take service under Revised Tariff No. 151.

17 **Q. What is Tariff Sheet No. 151?**

18 A. Evergy's Revised Sheet No. 151 is called, "Municipal Off-Peak Lighting Service
19 Electric." It says it is available "[f]or metered, secondary voltage, electric outdoor
20 lighting service solely to a municipality or governmental entities for purposes of
21 enhancing security and/or illuminating streets, parks, athletic fields, parking lots, or
22 other outdoor facilities."

23 **Q. Couldn't St. Joseph build its own streetlights and take service under Tariff
24 Sheet 151?**

25 A. Yes. However, that would require adding to the City budget for liability insurance, and
26 for maintenance costs (personnel and materials), associated with streetlights. Having
27 separate lighting systems with some being owned by Evergy and others being owned

1 by the City would add complexity and require the City to create a new maintenance
2 program for a relatively small number of newly-added streetlights..

3 **Q. How does Evergy’s application of its Tariff Sheet 150 hurt the City of St.
4 Joseph?**

5 A. By shifting the capital costs of streetlights into the operating budget of the City, the
6 cost of new streetlights is borne by the City’s operating budget rather than by
7 developers who are causing the system expansion. Also, we believe the costs
8 included in Evergy’s rates are higher than those paid in St. Joseph for public works
9 projects or by developers. So, not only are St. Joseph taxpayers paying for capital
10 costs (formerly paid for by the contractor or the public funding source) through the
11 City’s electric bills, but they are paying *higher* capital costs than necessary.

12 **Q. Please explain how City of St. Joseph streetlight installation costs used to be
13 handled?**

14 A. As a charter city, and under land use laws in Missouri, local governments are
15 authorized to set the ground rules for the development of property within their
16 jurisdiction. They have the authority to manage the right-of-way for utilities within their
17 jurisdiction, including the authority to set the standards for streets, sewers, storm-
18 water facilities and streetlights.

19
20 Further, local governments have the flexibility to allocate development costs between
21 developers and taxpayers. For example, a city can require a development impact fee,
22 sewer connection charges, etc. The St. Joseph City Code establishes that a developer
23 is responsible to pay for the construction of new infrastructure, including streetlights.¹
24 Under the St. Joseph City Code, a developer presents plans to the City’s Department
25 of Public Works and Transportation for approval. Those plans must meet City Code
26 standards for streets, sewers, storm-water facilities and streetlights. The developer

¹ St. Joseph City Code, Chapter 26 – Subdivisions.

1 must pay for all that infrastructure and post a maintenance bond for any work needed
2 on streetlights for two years. These capital costs become costs of the developer to
3 recoup from the project. If undergrounding of power lines to a streetlight is required,
4 the cost of undergrounding is borne by the developer. This is true of breakaway bases,
5 rock removal or other trenching or boring, as well. The installation includes bases,
6 poles, wiring, fixtures and bulbs.

7
8 The streets, sewers and storm-water facilities become City property at the end of
9 construction. In the past, once Evergy approved the new streetlight installation, that
10 streetlight was deemed part of the streetlighting system and owned by the utility. If the
11 City did not approve the streets, sewers and stormwater facilities, or if Evergy did not
12 approve the streetlighting infrastructure, the developer bore the cost of bringing the
13 infrastructure into compliance.

14
15 City projects for new roads or road expansions are funded through some form of public
16 funding, such as the capital improvements sales tax or grant funding, which covers
17 the cost of constructing the project and meeting all elements of required roadway
18 standards, including streetlighting. The City performs the engineering for the
19 installation, hires the contractor, and everything is installed as outlined above. The
20 capital cost of new streetlights for the project is borne 100% by the project, from the
21 public funding source. This includes the cost of undergrounding, breakaway bases,
22 rock removal, trenching, etc. Again, in the past, once Evergy approved the new
23 streetlight installation, that streetlight became the property of Evergy. If Evergy did not
24 approve the streetlighting infrastructure, the City's project bore the cost of bringing the
25 infrastructure into compliance. When the City installs this infrastructure, it is able to do
26 so using a bidding process that ensures a competitive environment that conserves
27 the City's limited financial resources.

1 For many years, the accepted practice in St. Joseph was as just described. In addition,
2 the rates for electricity to the streetlights installed by the City, or by developers within
3 the City, were discounted to reflect that the utility received economic value from the
4 gift of the streetlight asset. Those rate discounts were lost when Evergy modified its
5 new installation requirement, unnoticed by the City at the time, although the rationale
6 for them remains. According to the Company, that practice ended with the
7 implementation of LED streetlighting and the consolidation of L&P and MPS
8 streetlighting tariffs effective May 19, 2017.

9
10 **Q. Does the City of St. Joseph have a contract with Evergy for streetlighting**
11 **service?**

12 A. Not that either the City or the Company is aware of. Revised Sheet No. 150 includes
13 a “Term of Contract” which provides: “Contracts under this schedule shall be for a
14 period of not less than ten years from the effective date thereof.” However, the City
15 of St. Joseph is not aware of such a current contract with Evergy or its
16 predecessors. Evergy says, in a Data Request Response, that it “cannot be
17 determined if a specific contract exists with the City.” But Evergy adds that the rate
18 schedules and Rules and Regulations “define the terms of the agreement.”² So,
19 this contract requirement in Tariff Sheet 150 appears to be superfluous.

20 **Q. Does the City of St. Joseph have any other problems with Tariff Sheet 150 as**
21 **applied by Evergy?**

22 A. Yes. In its electric rates in Tariff Sheet 150, Evergy charges extra for undergrounding
23 service extensions, breakaway bases, rock removal “or other specialized
24 trenching/boring for installation of underground service,” and for metal poles instead
25 of wood poles.³ Those become ongoing monthly charges to the City, whereas

² Evergy Responses to St. Joseph Data Requests 2.10 and 2.11.

³ Revised Sheet 150.1, under “RATE (Optional Equipment) MOMLL, Sections 4.1 through 4.5.

1 previously a developer or City contractor paid for those items as a capital cost of the
2 project.

3 I believe it is unfair for the City to have to pay for those capital costs in its monthly
4 electric rates simply because the Company requires that it build all new streetlights.
5 Under the exercise of the City's proper legal authority, it can require those capital
6 costs to be incurred by the developer or the City's contractor. And for the many
7 projects completed before Evergy's most recent policy and practice, where streetlights
8 have been conveyed to the Company after being built by the developer or contractor,
9 it is unfair for the City to then be paying for undergrounding and breakaway bases
10 *again* through the tariff rates. It should also be noted that Evergy already gets the
11 advantage of new streetlights for which a developer or City contractor has posted
12 bond for any needed repairs for two years without paying for that protection, while
13 presumably also including the costs associated with that risk in its rates.

14 **Q. Is the City being charged these extra monthly charges for streetlights that have**
15 **been constructed by developers or contractors?**

16 A. Yes. The City of St. Joseph is currently being billed for undergrounding and
17 breakaway bases on 61 streetlights identified by Evergy as being transferred by the
18 City to Evergy in 2017. Company states that its "[a]vailable records are limited to 2017"
19 with no explanation of why that would be true.⁴ It may be assumed that numerous
20 streetlights prior to 2017 are also being charged monthly for undergrounding and
21 breakaway bases, even though those costs were already borne by developers or City
22 contractors.

23 **Q. What does the City of St. Joseph propose as a remedy to these concerns?**

24 A. We propose that language be added to Revised Sheet 150 to address these issues.
25 This language could be added under "Special Rules and Regulations" on Sheet 150.2,

⁴ Evergy Responses to St. Joseph Data Requests 2.2 through 2.5.

1 or as a new section on Sheet 150.2 which could be called "City or Contractor Built
2 Streetlights." The language would be: "If new streetlights are built by a city as part of
3 a city-funded project, or by a contractor as part of a city-approved development or
4 project, those streetlights may be deemed to be owned by Company, after inspection
5 and approval by Company for compliance with applicable safety standards, and shall
6 not be subject to additional installation or structure charges."

7 The tariff should also state that, "No RATE (Optional Equipment) MOMLL" charges in
8 Section 4 of this tariff will be charged to streetlight facilities which are deemed to be
9 owned by the Company and installed by a city or its contractor, or by a developer of
10 a city-approved development."

11 **Q. Please summarize your testimony.**

12 A. Under Evergy's current application of its tariff (Revised Sheet Nos. 150 to 150.2),
13 capital costs of new streetlights, which used to be paid for by developers, or out of a
14 dedicated capital project public funding source for City projects, are now added to the
15 energy costs of the City in Evergy's monthly electric bills. This changes those costs
16 from capital costs to operating costs which, ultimately, are paid by taxpayers of the
17 City. This puts new and unacceptable strain on the City's budget and places a
18 significant burden on City resources that would otherwise be used for street
19 maintenance, police protection, fire protection, public health efforts, and other critical
20 operations the public relies on the City to perform. Language should be added to
21 Revised Sheet 150 to permit a municipality to build streetlights as part of a public
22 works project, or have them built by a contractor as part of a city-approved
23 development, and deem ownership of the streetlights to be in Evergy, as was done
24 successfully for many years. Such streetlights should also be exempt from extra
25 monthly charges for any "Optional Equipment" charges for such things as
26 undergrounding and breakaway bases.

27 **Q. Does this conclude your testimony?**

28 A. Yes.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Evergy Missouri West, Inc.)
d/b/a Evergy Missouri West's Request for) File No. ER-2022-0130
Authority to Implement a General Rate)
Increase for Electric Service)

AFFIDAVIT OF BRYAN E. CARTER

STATE OF MISSOURI)
) ss
COUNTY OF BUCHANAN)

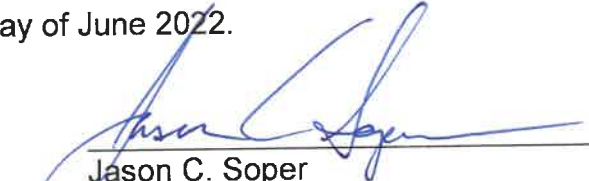
Bryan E. Carter, of lawful age and being first duly sworn, deposes and states:

1. My name is Bryan E. Carter. I am the City Manager of the City of St. Joseph, Missouri.
2. Attached hereto and made a part hereof for all purposes is my direct testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.



Bryan E. Carter
City Manager

Subscribed and sworn to me this 8th day of June 2022.



Jason C. Soper
Notary Public

My commission expires December 13, 2023.

JASON C. SOPER
Notary Public - Notary Seal
State of Missouri
Commissioned for Buchanan County
My Commission Expires: December 13, 2023
Commission Number: 11414857