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

In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri) **File No. EF-2022-0155**
West for a Financing Order Authorizing the)
Financing of Extraordinary Storm Costs)
Through an Issuance of Securitized Utility)
Tariff Bonds)

INITIAL BRIEF OF STAFF

Respectfully Submitted,

Jeff Keevil
Deputy Counsel
Missouri Bar No. 33825

Attorney for Staff of the
Missouri Public Service Commission

August 31, 2022

TABLE OF CONTENTS

INITIAL BRIEF OF STAFF

CASE NO. EF-2022-0155

INTRODUCTION 1

ARGUMENT2

1) What amount of qualified extraordinary costs caused by Winter Storm Uri should the Commission authorize EMW to finance using securitized utility tariff bonds?..... 2

a. What amount of the costs, if any, that EMW is seeking to securitize would EMW recover through customary ratemaking? 3

b. What is the appropriate method of customary ratemaking absent securitization?..... 3

C. Under Section 393.1700.2(2)(e)5, what is the “customary method of financing”? What are the costs that would result “from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates”? 4

d What is the appropriate adjustment related to non-fuel operations and ... maintenance (“NFOM”) costs? 4

e. Should EMW’s recovery through securitized bonds include more than 95% of fuel and purchased power costs? 5

f. Should EMW’s recovery through securitized bonds reflect an offset based on certain higher than normal customer revenues received by EMW during Winter Storm Uri? 10

g. Should EMW’s recovery through securitized bonds reflect a disallowance based on EMW’s resource planning? 11

h. Were the costs incurred by EMW related to Winter Storm Uri as a result of its resource planning process just and reasonable? 11

i. Should EMW’s recovery through securitized bonds reflect a disallowance for income tax deductions for Winter Storm Uri costs? 11

j. Should Evergy’s recovery through securitized bonds reflect a disallowance for the income tax deduction on the carrying costs for Winter Storm Uri costs? 12

k. What are the appropriate carrying costs for Winter Storm Uri? 12

l. What is the appropriate adjustment to the amount of Winter Storm Uri costs to be recovered through securitized bonds, if any, regarding EMW’s administration of the Special Incremental Load (SIL) tariff?.....	12
m. What is the appropriate discount rate or rates to use to calculate the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking?.....	15
2) What are the estimated up-front and ongoing financing costs associated with securitizing qualified extraordinary costs associated with Winter Storm Uri?..	16
a. What is the appropriate return on investment and treatment of earnings in the capital subaccount?	16
b. Is the issuance of multiple series appropriate?	17
3) Would the issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges provide quantifiable net present value benefits to customers as compared to recovery of the securitized utility tariff costs that would be incurred absent the issuance of bonds?	18
a. What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri through securitization?	19
b. What is the appropriate term and coupon rate for securitization of qualified extraordinary costs related to Winter Storm Uri?	19
4) How should the SUTC be allocated?	20
5) What, if any, additions or changes should be made to the Storm Securitized Utility Tariff Rider proposed by EMW?	21
6) Regarding any designated Staff representatives who may be advised by a financial advisor or advisors, what provisions or procedures should the Commission order to implement the requirements of Section 393.1700.2(3)? ..	21
7) What other conditions, if any, are appropriate and not inconsistent with Section 393.1700 that should be included in the financing order?	27
8) Should the Commission grant a waiver under Section 10(A)(1) of the Affiliate Transactions Rule between EMW and the special purpose entity?	28

**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)	<u>File No. EF-2022-0155</u>
Financing of Extraordinary Storm Costs)	
Through an Issuance of Securitized Utility)	
Tariff Bonds)	

INITIAL BRIEF OF STAFF

COMES NOW Staff of the Missouri Public Service Commission and submits the following Initial Brief pursuant to the schedule previously ordered by the Commission.

INTRODUCTION

On August 1, 2022, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW,” “Evergy” or “Company”), the Office of the Public Counsel (“OPV”), and Staff filed a Non-Unanimous Stipulation and Agreement in this case. None of the other parties to this case objected to or opposed the Stipulation and Agreement; therefore, under the Commission’s rule governing stipulations and agreements (20 CSR 4240-2.115) the Commission may treat the stipulation and agreement as a unanimous stipulation agreement.

Pursuant to the Stipulation and Agreement, to resolve Staff’s proposed adjustments to EMW’s requested amount of qualified extraordinary costs that it is seeking approval for securitization, EMW (and the other signatories) agreed to an estimated total of qualified extraordinary costs of \$306.1 million, as detailed in the Stipulation and Agreement. This amount is significantly less than the amount of qualified extraordinary costs for which EMW seeks approval for securitization in the absence of the stipulation, and slightly more than Staff recommends in the absence of the stipulation. However, at

the hearing in this matter on August 4, 2022, in response to a question from counsel, Judge Clark indicated that parties should brief their full case as though no stipulation had been filed. Therefore, this Initial Brief will address the issues as set out in the *List of Issues / Position Statements*; however, this should not be construed as abandonment of the Stipulation and Agreement.

ARGUMENT

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

The Commission should authorize EMW to finance an estimated \$303,040,898 using securitized utility tariff bonds.¹ As discussed throughout this brief, this is the amount of securitized utility tariff costs that are just and reasonable and in the public interest to finance through securitization, and there are quantifiable net present value benefits to securitizing these costs compared to traditional or customary ratemaking. This amount, and its component parts, are shown in the following table:

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

Staff's Current Estimate of Storm Uri Bond Issuance Costs²

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

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

+Staff applied the retail energy allocator

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

In the absence of securitization, Staff would recommend that EMW would recover 95% of its extraordinary fuel and purchased power costs associated with Storm Uri, consistent with its Fuel Adjustment Clause, and as adjusted to offset extraordinary costs by higher than normal customer revenues received by EMW during Winter Storm Uri and to reflect a disallowance related to the implementation of Schedule SIL. As of June 30, 2022, Staff estimates these costs to be approximately \$297,014,325 excluding the up-front financing cost.³

b. What is the appropriate method of customary ratemaking absent securitization?

Absent securitization, EMW could pursue recovery by filing a Fuel Adjustment Clause ("FAC") adjustment in an FAC proceeding (as discussed immediately above) or

² Id.

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

by using an Accounting Authority Order (“AAO”) to defer and amortize the extraordinary costs over time. Under the AAO approach, Staff would recommend recovery of those extraordinary fuel and purchase power costs, subject to the adjustments identified above, amortized over at least a fifteen-year period due to the magnitude of the costs, with carrying costs at the long-term debt rate.⁴

C. Under Section 393.1700.2(2)(e)5, what is the “customary method of financing”? What are the costs that would result “from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates”?

This issue is the same as Issue 1b above, and its inclusion here reflects the failure of the parties to agree to the phrasing of the issue. Staff’s position for Issue 1c is therefore the same as its position for Issue 1b.

d What is the appropriate adjustment related to non-fuel operations and maintenance (“NFOM”) costs?

Staff recommended exclusion of NFOM costs as they have been included in Staff’s normalized costs included in Staff’s cost of service in Evergy Missouri West’s current rate case, Case No. ER-2022-0130. Therefore, additional treatment through the securitization request is not required.⁵ After Staff filed its rebuttal testimony in this case, EMW concurred with Staff’s proposal to remove these costs from the amount to be recovered through securitized bonds and concurred with Staff’s adjustment regarding NFOM costs, even in the absence of the stipulation and agreement mentioned at the beginning of this brief.⁶ Therefore, this should no longer be an issue.

⁴ Bolin Rebuttal at page 7, lines 1-11.

⁵ Bolin Rebuttal at page 7, lines 18-20.

⁶ Klote Surrebuttal, pp. 5-6.

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

No, EMW should not be allowed to collect more than 95% of its extraordinary fuel and purchased power costs associated with Winter Storm Uri. The 95/5 sharing mechanism is required under EMW's Fuel Adjustment Clause (FAC). In addition, the 95/5 sharing mechanism allows the utility to retain 5% of any over-collected amounts or requires the utility to absorb 5% of any under-collected amounts for each accumulation period.⁷ This is an essential element to the Commission finding EMW's FAC as just and reasonable, as it protects ratepayers by providing EMW with sufficient incentive to be prudent in its decisions by not allowing all costs to simply be passed through to ratepayers. Staff's proposed disallowance of \$14,771,977 allows for fuel and purchased power costs in this securitization case to be shared at the same 95/5 level as they would be had these same costs been passed through to customers in the FAC, as fuel and purchased power costs typically are.⁸

The Commission itself has previously recognized that a 95/5 sharing mechanism allows the Company to "retain a significant incentive to take all reasonable actions to keep its fuel and purchased power costs as low as possible, and still have an opportunity to earn a fair return on its investment."⁹ If now, through securitization, the Company is allowed to recover 100% of its fuel and purchased power costs, a perverse incentive is created. The perverse incentive is two-fold. First, the Company is incentivized to move as much fuel and purchased power out of the FAC, where those costs are typically passed through and there is a 95/5 sharing mechanism, to securitization where it can recover

⁷ Fortson Rebuttal at page 7, lines 18-23 and page 8, line 1.

⁸ Fortson Rebuttal at page 7, lines 12-15; Fortson Surrebuttal page 1 line 16.

⁹ Case No. ER-2007-0004, Report and Order, page 54.

100%. Second, in the event there is another extreme event similar to Winter Storm Uri, the Company no longer has significant incentive to take all reasonable actions to keep its fuel and purchased power costs as low as possible. Instead, regardless of how high fuel and purchased power costs go, if the Company is allowed to recover 100% of its fuel and purchased power costs, the Company is less incentivized to keep its fuel and purchased power costs as low as possible. The Company would now bear no risk for those costs and instead, all risk would be shifted to ratepayers.¹⁰

Earlier this month, in Case Nos. EO-2022-0040 and EO-2022-0193 (the Empire d/b/a Liberty securitization case(s)), on this exact issue the Commission concluded as follows:¹¹

Conclusions of Law

M. Section 386.266.1, RSMo allows an electrical corporation to apply to the Commission to approve rate schedules that allow for “periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased power costs.” That section also allows the Commission to “include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities.” The 95/5 sharing provision in Liberty’s FAC tariff is designed to provide such an incentive.

N. In its report and order that initially established Liberty’s FAC, the Commission found that “a prudence review can be expected to evaluate the major decisions a utility makes. However, a utility makes thousands of small decisions every hour regarding fuel, purchased power, and off-system

¹⁰ Fortson Rebuttal, page 13, lines 6-19.

¹¹ In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty, Case Nos. EO-2022-0040 and EO-2022-0193, Report and Order issued August 18, 2022, page 18 through page 21.

sales. It is not practical to expect a prudence review to uncover and evaluate every one of those decisions.”

O. Commission Rule 20 CSR 4240-20.090(8)(A)2.A(XI) provides that extraordinary costs are not to be passed through the company’s FAC.

P. The securitization statute, Section 393.1700.2(3)(c) requires a financing order issued by the Commission to include all of the following elements:

a. The amount of securitized utility tariff costs to be financed using securitized utility tariff bonds *and a finding that recovery of such costs is just and reasonable and in the public interest.*

The commission shall describe and estimate the amount of financing costs that may be recovered through securitized utility tariff charges and specify the period over which securitized utility tariff costs and financing costs may be recovered;

b. *A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds.* Notwithstanding any provisions of this section to the contrary, in considering whether to find the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest, the commission may consider previous instances where it has issued financing orders to the petitioning electrical corporation and such electrical corporation has previously issued securitized utility tariff bonds; ... (emphasis in Report and Order)

There are two important provisions of this section of the statute that should be noted. First, the section explicitly requires the Commission to determine that the imposition and collection of the utility tariff charge that will result from the securitization of these costs will be just and reasonable and in the public interest. Second, in making its determination as to whether the securitization of these costs is just and reasonable and in the public interest, the Commission is directed to compare the results of the securitization to the results of a recovery of those costs using traditional (non-securitization) methods.

Q. Liberty asserts that it has a general right to recover all prudently incurred costs. The Missouri Supreme Court has found otherwise. In a 2021 case, *Spire Missouri, Inc. v. Public Service Commission*¹², Spire Missouri challenged the Commission's decision to disallow a portion of the company's prudently incurred cost of pursuing its general rate case. In upholding the Commission's decision, the Supreme Court said:

In terms of their reasonableness, these expenditures were entitled to a presumption of prudence, and the **prudence** of the expenditures was never called into question. Nonetheless, the PSC concluded that including all of these expenditures in setting Spire's future rates was not **just** because some of the expenses were not fair to ratepayers in that they were incurred to benefit (if anyone) Spire's shareholders. Implicit in Spire's argument is an assertion that it is entitled to recover all prudent expenditures in its rates. This is not so. In setting rates the PSC has broad discretion to include or exclude expenditures to arrive at rates it deems to be 'just and reasonable,' subject, of course, to judicial review that the PSC's conclusions are supported by competent and substantial evidence and not arbitrary,

¹² 618 S.W.3d 225 (Mo. banc 2021).

capricious, or an abuse of discretion. (Internal citations omitted. Emphasis in original.)

Decision

Under customary methods of ratemaking, Liberty would recover its Winter Storm Uri related fuel and purchased power costs by starting with its FAC. Liberty's FAC includes a 95/5 sharing provision by which the company recovers 95 percent of those costs. In the rate cases in which Liberty's FAC was established, the Commission found that the sharing mechanism was necessary to ensure the company had sufficient financial incentive and motivation to operate at maximum efficiency. The same financial incentives and motivations apply in the situation facing Liberty during Winter Storm Uri.

The prudence of Liberty's decisions relating to Winter Storm Uri will be addressed in subsequent issues, but for this issue, prudence is not relevant. The securitization statute specifically requires the Commission to compare the results of securitization to the results under traditional methods of cost recovery. It also requires the Commission to find that the imposition and collection of the utility tariff charge resulting from the securitization of these costs will be just and reasonable and in the public interest.

The Commission finds that allowing Liberty to use securitization to recover the five percent of its fuel and purchased power costs related to Winter Storm Uri that it would not be permitted to recover under traditional methods of rate making is not just and reasonable, nor is it in the public interest.

The foregoing conclusions and decision from Case Nos. EO-2022-0040 and EO-2022-0193, issued merely days ago, apply equally to this case and to EMW.

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

Under the securitization statute, the Commission must identify amounts that are just and reasonable and in the public interest for Evergy to recover.¹³ In setting just and reasonable rates, the Commission must consider “all relevant factors.”¹⁴ The securitization statute requires the Commission to consider the “retail customer rate impact that would result from customary ratemaking treatment” of qualified extraordinary costs.¹⁵ The securitization statute then requires the Commission to compare the cost of recovery through securitization and the cost of recovery that would have been incurred absent the issuance of securitized utility tariff bonds.¹⁶ Only upon a finding that the issuance of securitized utility tariff bonds and collection of securitized utility tariff charges “are expected to provide quantifiable net present value benefits to customers” compared to customary ratemaking treatment may the Commission authorize a utility to issue securitized utility tariff bonds.¹⁷

Winter Storm Uri was a unique, unusual and non-recurring event, and under Staff’s recommendation the extraordinary Winter Storm Uri costs would be recovered through the securitization process. However, there was also a material amount of additional (excess) revenues received by EMW during this extraordinary event; revenues for which EMW has already received the benefit. That gain to EMW, resulting directly from

¹³ § 393.1700.2(3)(c)a, RSMo (Cum. Supp. 2021).

¹⁴ *State ex rel. Utility Consumers’ Council of Mo., Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 49 (Mo. Banc 1979) (superseded by statute on other grounds by Section 386.266, RSMo, as recognized in *State ex rel. Union Elec. Co. v. Pub. Serv. Comm’n*, 399 S.W.3d 467, 481 (Mo. App. W.D. 2013)).

¹⁵ § 393.1700.2(2)(a), RSMo (Cum. Supp. 2021).

¹⁶ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

¹⁷ § 393.1700.2(3)(c)b, RSMo (Cum. Supp. 2021).

Winter Storm Uri, should be offset against the securitization costs. Staff calculated the excess revenues the same way that Evergy calculated extraordinary fuel costs – by calculating a three-year average baseline of revenues received from retail customers and comparing the February 2021 retail revenues to the baseline. Staff considers the amount of February 2021 retail revenues that exceeded the three-year average as excess revenues and has offset the securitized balance of fuel and purchased power costs by \$8,609,978.¹⁸

g. Should EMW’s recovery through securitized bonds reflect a disallowance based on EMW’s resource planning?

Staff does not recommend a disallowance based on Evergy’s resource planning in this case.

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

(i) If no, should EMW’s recovery through securitized bonds reflect a disallowance?

(1) If yes, what amount should the Commission disallow?

See Staff position on immediately preceding issue (issue g) above.

i. Should EMW’s recovery through securitized bonds reflect a disallowance for income tax deductions for Winter Storm Uri costs?

Staff does not recommend a disallowance for income tax deductions. Evergy customers will receive the benefit of the deferred tax liability created by Winter Storm Uri in future general rates over the life of the securitized bond. To disallow the tax timing difference in the securitization amount would double-count the benefits passed on to the customers.¹⁹

¹⁸ Bolin Rebuttal, p. 12 line 20 through p. 13 line 8; Bolin Surrebuttal, p. 6, Table 1.

¹⁹ See, Bolin Surrebuttal, p. 3 line 11 through p. 5 line 9.

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

Staff is not recommending such a disallowance. Staff recommends the Commission use the long term debt rate for carrying costs; therefore no income tax deduction is needed.

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

Evergy should be allowed to securitize approximately \$26,189,699²⁰ in accrued carrying costs associated with Winter Storm Uri qualified extraordinary costs. The Commission should use the long-term debt rate because these costs are not capital normally included in the rate base. Also, by using the long-term debt rate instead of the WACC, this would effectively provide a means of sharing between the ratepayers and the shareholder of the extraordinary costs incurred. Using the WACC would insulate Evergy Missouri West from the risk of an unanticipated event.²¹

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

Staff recommends the Commission disallow \$1,231,553²² (before jurisdictional allocation is applied) from the securitization amount related to the implementation of Schedule SIL. Evergy improperly implemented the Schedule SIL tariff in conjunction with the non-unanimous Stipulation (Non-Unanimous Stipulation and Agreement filed on September 19, 2019 in Case No. EO-2019-0244 and approved by the Missouri Public Service Commission on November 13, 2019) by failing to determine or estimate the next-

²⁰ Bolin Surrebuttal at page 6, Table 1; and Tr. Vol. 3 page 331 line 18 through page 332 line 7.

²¹ Bolin Rebuttal at page 7, lines 6-11.

²² Tr. Vol. 3, p. 303 line 3.

day Nucor hourly load which could be compared to actual Nucor load to determine the cost impacts on non-Nucor ratepayers. Evergy has ** [REDACTED]

**23 ** [REDACTED]

[REDACTED], **24 which plainly violates the intent of Paragraph 7.d. of the Stipulation and Agreement filed in Case No. EO-2019-0244 which states in part that:

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.

The fact that Evergy has not ** [REDACTED] ** results in added difficulty in identifying the costs attributable to Nucor,²⁵ but does not alleviate EMW from the obligations of the Stipulation and Agreement in Case No. EO-2019-0244.

The result of ignoring these events in this case is non-Nucor ratepayer harm through additional costs being included in the securitized utility tariff charge, and EMW shareholders being insulated from those costs *which the company agreed to remove* prior

²³ Luebbert Rebuttal, p. 17 lines 1-3.

²⁴ Luebbert Rebuttal, p. 17 lines 10-11.

²⁵ Luebbert Rebuttal, p. 18 lines 19-21.

to non-Nucor ratepayer recovery. It is unreasonable for Evergy to acknowledge the potential for additional costs, agree to isolate and remove those costs from non-Nucor ratepayer recovery, and then implement the Schedule SIL tariff in combination with the Stipulation in a manner that does not allow for a transparent method to identify, quantify, and isolate those costs from non-Nucor ratepayers.²⁶

The Report and Order in File No. EO-2019-0244 at page 7-8 includes the factual findings that:

The stipulation and agreement also **includes provisions to protect EMW's other customers from any adverse effects from the special rate being provided to Nucor.** EMW expects that the overall aggregate revenues it receives from Nucor over the ten-year period of the special contract and rate will exceed the company's incremental cost to provide that service. However, **EMW acknowledges that on a month-to-month view, conditions could fluctuate enough to produce an under-recovery of incremental costs in a specific month or months of the test year used to establish rates in a future rate case.** The stipulation and agreement addresses that possibility by providing that no such revenue deficiency would be reflected in EMW's cost of service during the ten-year term of the special contract and rate. In other words, **EMW's shareholders would be responsible for any such revenue shortfall, not ratepayers.** [Emphasis added.]

The issue before the Commission regarding the implementation of Schedule SIL and the Stipulation is relatively straightforward. EMW agreed to hold non-Nucor ratepayers harmless from the costs of serving Nucor. Staff's proposed disallowance adjustment appropriately accounts for the costs of serving Nucor and seeks to hold non-

²⁶ Luebbert Rebuttal, p. 4 lines 1-17.

Nucor ratepayers harmless in accordance with Schedule SIL and the Stipulation.²⁷

In addition to the proposed disallowance, Staff recommends that the Commission order EMW to:

1. Establish and maintain consistent communication with Nucor to understand what impacts the expected operations at the plant will have on SPP purchased power expenses in order to facilitate accurate records;

2. Keep records of the finite expected hourly load of Nucor's next day operations in the event an adjustment in accordance with Paragraph 7.d. of the Stipulation is necessary in a future case;

3. Identify additional SPP related costs resulting from unexpected operational events;

4. Quantify the balancing relationship between the hourly and day-ahead ("DA") prices to identify the effect of the unplanned load change to apportion any additional SPP balancing charges; and 5. Incorporate the effect of DA and real-time ("RT") imbalances attributed to differences between actual Nucor operations and expected operations into the tracking of Nucor costs.²⁸

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

Net Present Value (NPV) savings should be evaluated, not based on a single data point, but based on a range of discount rates. Staff proposes evaluating NPV savings using a range, including Evergy's long-term debt rate to Evergy's weighted average cost

²⁷ Luebbert Rebuttal, p. 30 lines 10-14.

²⁸ Luebbert Rebuttal, p. 30 line 18 through p. 31 line 11.

of capital.²⁹ The discount rate ranges utilized to inform the NPV savings ranges cited in the testimony of Staff witness Mark Davis are reflected in Confidential Exhibit No. 107 at Tab MD-1.

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

Staff estimates the up-front financing costs to be approximately \$6,026,573, based on Evergy's testimony, updated for staff's adjustments to the size of the securitization. This amount excludes Commission Staff's costs, which will be borne by Evergy regardless of whether the securitization is ultimately approved, for a consistent comparison between traditional rate making and securitization. ** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] . **30

Staff also notes that each upfront and ongoing cost item should be subject to review with the designated representative, including relative to other comparable issuances at the time of structuring, marketing and pricing.³¹

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

Staff would recommend the Commission allow Evergy to earn a return at Evergy's weighted average cost of capital consistent with the securitization statute.³² However,

²⁹ Davis Rebuttal at page 5, lines 3-10.

³⁰ Bolin Rebuttal, p. 6 lines 6-27; Bolin Surrebuttal, p. 6, Table 1 and Tr. Vol. 3 page 332 lines 3 through 5; Davis Rebuttal, p. 7 line 7 – p. 8 line 6; Confidential Ex. No. 107, Tab MD-3.

³¹ Davis Rebuttal, p. 8 lines 7-13 and p. 11 lines 3-8.

³² Section 393.1700.2(3)(c) states "A procedure that shall allow the electrical corporation to earn a return, at the cost of capital authorized from time to time by the commission in the electrical corporation's rate proceedings, on any moneys advanced by the electrical corporation to fund reserves, if any, or capital

the most recently approved weighted average cost of capital of Evergy was in 2014, and therefore, Staff recommends using the weighted average cost of capital of 6.77% approved as part of ER-2019-0374 for Empire District Electric Company, as a proxy. Staff also notes that Evergy should not separately be entitled to return on investment earnings of the capital subaccount, as providing both the weighted average cost of capital and investment earnings would provide greater return to Evergy than is permitted by the Securitization Act.

b. Is the issuance of multiple series appropriate?

As Mr. Davis testified at the hearing:

I would say it's uncommon for securitization bonds to be issued in multiple series. I've seen it done before. I've been involved in instances this year where it's taken place in multiple series, but that's been driven by the overall size of the offering. In this instance, given the size of this offering and the amount of fixed costs associated with securitization, I would anticipate it to be unlikely that the offering should take place in multiple series. It should be reviewed by the designated rep or finance team during the preissuance review process after the financing order is put together and evaluated in conjunction with the review of the up-front and ongoing costs to see if it would be prohibitively expensive to issue the securitization through multiple series.

Ultimately if the underwriters aren't able to place the full amount of the bonds in a single series, having the flexibility to issue incremental bonds through a subsequent series rather than pull a deal may be advantageous to have the flexibility for. However, I would anticipate in this instance it to

accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to the securitized utility tariff bonds”

be highly unlikely that multiple series would be appropriate or should be pursued in this instance.³³

In other words, costs may be materially higher than estimated if EMW issues the securitization through multiple series. To the extent authorization in the financing order of multiple series were required to maximize flexibility, such costs should be evaluated in conjunction with the designated representative's post-financing order, pre-issuance review of upfront and ongoing fees, recognizing the added costs of multiple series of issuances.

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

Under most reasonable assumptions, based on interest rate assumptions used at the time of testimony, issuance of bonds and the imposition of charges would provide quantifiable net present value benefits to Evergy's customers, compared to recovery of those same costs that would be incurred absent the issuance of bonds.

Assuming Staff's proposed numbers, the net present value benefit would be approximately \$55 million – \$67 million, at an illustrative discount rate of the weighted average cost of capital and long-term debt rate, respectively, when compared to the FAC utilizing Evergy's analytical framework adjusted for Staff's balance and carrying cost assumptions.³⁴

³³ Tr. Vol. 4, p. 441 line 21 through p. 442 line 18; see also pp. 442-446.

³⁴ Davis Rebuttal at page 6, lines 25-26 and page 7, line 1. See also Confidential Ex. No. 107.

Utilizing similar assumptions, the implied NPV benefit of securitization would be approximately \$8 million - \$19 million when compared to an AAO utilizing Klote's analytical framework adjusted for Staff's balance and carrying cost assumptions.³⁵

However, given interest rate movements and volatility, among other factors, a review to confirm actual quantifiable savings exists should be completed as part of the pre-issuance review process closer to pricing and memorialized in the issuance advice letter, based on the final terms and pricing of the bonds.³⁶

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

Similar to the approach addressed in issue 1m, a range of discount rates should be used for net present value benefits analysis, ranging from Evergy's long-term debt rate to Evergy's weighted average cost of capital.³⁷ The discount rate ranges utilized to inform the NPV savings ranges cited in the testimony of Staff witness Mark Davis are reflected in Confidential Exhibit No. 107 at Tab MD-1.

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

Evergy proposed overall cash flow length of 15 years at weighted average coupon of 3.427%.³⁸ Staff does not oppose the length of recovery period through securitization. However, Staff notes the proposed weighted average coupon is outdated and the issuer should update such estimates to support its testimony that quantifiable net present value savings will be achieved.

³⁵ Davis Rebuttal at page 7, lines 2-4. See also Confidential Ex. No. 107.

³⁶ Davis Rebuttal at page 6, lines 3-6 and page 12, lines 19-23.

³⁷ Davis Rebuttal at page 6, lines 25-26 and page 7, lines 1-4.

³⁸ Lunde Testimony Schedule SL-1.

Staff has revaluated net present value benefits calculation using an illustrative range of 4.5% to 5.0%, reflecting movements in the benchmark treasury rate informing bond pricing. However, the issuer should be required to update such amounts to demonstrate NPV savings, including at the time of pricing.

4) How should the SUTC be allocated?

The Commission order should state the Winter Storm Uri SUTC should be recovered from all applicable customers on the basis of loss-adjusted energy sales.³⁹

The costs at issue in this case are energy costs. If they were to be flowed-through the Company's FAC they would be allocated on the basis of energy through the FAC. If the costs were in a rate case via an AAO the costs would be allocated on the basis of energy. Energy costs, such as these, are allocated on an energy basis.⁴⁰ In fact, in surrebuttal, Mr. Lutz of Evergy stated "I therefore concur in Staff witness Lange's recommendation to use loss-adjusted energy sales to allocate the SUTC among the Company's customers,"⁴¹ thereby effectively abandoning the Company's original position on this issue. Furthermore, Staff's recommendation is also consistent with the Commission's recent decision on this exact issue in Case Nos. EO-2022-0040 and EO-2022-0193 (the Empire d/b/a Liberty securitization case(s)).⁴²

At the request of the presiding judge made during the hearing of this matter, on August 12, 2022, Staff filed the specimen exemplar tariff developed by Ms. Lange of Staff and Mr. Lutz of Evergy Missouri West which was referenced by Ms. Lange during her

³⁹ Lange Rebuttal page 1, line 22 – page 2, line 2; page 20, lines 9-13.

⁴⁰ Tr. Vol. 3, p.373.

⁴¹ Lutz Surrebuttal, p. 3, lines 18-19.

⁴² In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty, Case Nos. EO-2022-0040 and EO-2022-0193, Report and Order issued August 18, 2022, page 86 through page 89.

testimony at the hearing. This specimen exemplar tariff was designated as Exhibit No. 108. As stated above, the Commission order should state the Winter Storm Uri SUTC should be recovered from all applicable customers on the basis of loss-adjusted energy sales; this is most reasonably accomplished via the mechanism contained in Exhibit No. 108, whether or not the Commission approves the Stipulation and Agreement previously submitted in this case.

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

Significant modification of the proposed Evergy tariff(s) and underlying mechanisms (the tariffs and mechanisms attached to Evergy's testimony in this case) are necessary.⁴³ In Staff's view, the tariff initially proposed by Evergy was/is inoperable for several reasons, including but not limited to, its failure to include a true-up formula and failure to provide a rate for all applicable customers.⁴⁴ The tariff proposed by Evergy in surrebuttal testimony is better, but still lacks much-needed features.⁴⁵ However, the specimen exemplar tariff which was developed by Ms. Lange and Mr. Lutz, and which was late-filed as Exhibit No. 108 per the judge's request, makes all necessary changes to the tariffs previously proposed by Evergy.

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

The securitization statute requires compliance with a number of factors to be achieved, including demonstrating quantifiable net present value savings and

⁴³ See Lange Rebuttal, pages 4-20.

⁴⁴ Tr. Vol. 3, p. 365; see also Lange Rebuttal, pages 4-20.

⁴⁵ Tr. Vol. 3, p. 365.

demonstrating the securitization is expected to achieve compliance with the lowest cost, consistent with market conditions at the time.⁴⁶

Under Evergy's proposal, ratepayers are not directly protected, even though ratepayers would be irrevocably responsible for all charges associated with securitization. Evergy and other parties involved may not otherwise have a natural incentive to protect the interests of ratepayers. A Staff representative, under the advisement of dedicated financial advisors and legal counsels, can ensure ratepayer interests are protected and the lowest cost standard is achieved, as has been utilized as a best practice in other ratepayer backed bond issuances.

The Commission should not take the lowest cost standard lightly and should designate one or more Staff representatives to provide input to and collaborate with Evergy in all facets of the process undertaken by Evergy to place bonds to market.⁴⁷ The Commission should further authorize a financial advisor contracted with the Commission to advise the designated Staff representatives. As discussed below, the Commission should make clear that the designated Staff representative and financial advisor shall have the right to legal counsel in all proceedings.

The financing order should provide that the designated Staff representatives and financial advisors, advised by legal counsel, have sufficient time and access to information to be effectively involved and collaborate in the pre-issuance review process

⁴⁶ Section 393.1700.2(3)(c)c requires the Commission's financing order to find that the proposed structure and pricing of the securitized utility tariff bonds "are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order." Section 393.1700.2(3)(c)b requires the financing order to find that the issuance of bonds is "expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds."

⁴⁷ Davis Rebuttal at page 10, lines 17-19.

and not simply wait until weeks prior to issuance to review near final terms.⁴⁸ Such a delayed review, rather than real-time review, could add to process delays if any changes are needed to structuring, marketing or pricing – something Evergy is seeking to avoid. The financing order should direct that designated Staff representative(s) and financial advisor(s), advised by legal counsel, must be provided the ability to be involved in all facets of the bond structuring, marketing, and pricing processes. Designated Staff representatives, with dedicated financial advisors and legal counsel, can advise the Commission whether the issuance is consistent with the financing order as also required by Section 393.1700.2(3)(h), by reviewing all aspects of the structuring, marketing and pricing to comply with the lowest cost standard and reviewing the proposed upfront and ongoing financing costs; the structure, form, and implementation of true-ups and other credit protections; and structural elements.

The financing order should also specify that Staff representatives and financial advisors, advised by legal counsel, must be involved in the selection of underwriters and other deal participants. Involvement in the selection process can maximize perspective and insights, and obtain the best views of all relevant underwriters to inform the strategy and approach to the issuance process. Involvement in the selection process will help Staff representatives and financial advisors, advised by legal counsel, advise the Commission whether the process described and the certificates given in certifications provided by Evergy and by underwriters meet the statutory objectives of the securitization statute. The Staff representatives and financial advisors, advised by legal counsel, can advise the Commission on the reasonableness of any assumptions made in any

⁴⁸ Davis Rebuttal at page 11, lines 3-8.

certification by underwriters and by Evergy. Given the underwriting team that will be involved in the structuring of this transaction may be different from the corporate bond underwriters Evergy typically interacts with, this involvement will be useful.⁴⁹

An effective pre-issuance review process should ensure that all possibilities are explored to achieve the lowest cost issuance, including, but not limited to, adapting the marketing timeline and go-to-market strategy to conditions at the time, while ensuring ratepayer interest are protected. In traditional ratemaking, the Commission reviews costs on an ongoing basis. Unlike traditional costs, the proposed utility securitization is an irrevocable charge that cannot be refinanced without incurring significant additional financing costs. This may be problematic, absent oversight, as competing interests of utilities and underwriters may not be completely aligned with the rate payer. For example, pricing higher may also allow the deal to complete the issuance more quickly, allowing the utility to get the underlying liability off-balance sheet more quickly and underwriters, who do not have a fiduciary duty to the ratepayer or the utility, to move to the next deal.⁵⁰

The provisions or procedures Staff is recommending the Commission order in this case are quite similar, if not identical, to those which the Commission recently ordered in Case Nos. EO-2022-0040 and EO-2022-0193 (the Empire d/b/a Liberty securitization case(s)). There the Commission decided:

To ensure, as required by Sections 393.1700.2(3)(c)c and 393.1700.2(3)(h), that the structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff bond charges consistent with market conditions and the terms of this Financing Order, the Commission designates a Finance Team consisting of

⁴⁹ Davis Rebuttal at page 10, line 20-26 and page 11, lines 1-2.

⁵⁰ Davis Rebuttal at page 11, lines 19-25 and page 12, lines 1-7.

designated Commission Staff representatives, financial advisors, and outside counsel to review, provide input, and collaborate on marketing and pricing of the securitized utility tariff bonds and the associated transaction documents. Any costs incurred by the Finance Team in connection with its review of the securitized utility tariff bonds shall be treated as financing costs. The Finance Team shall provide oversight over and input to the structuring and pricing of the securitized utility tariff bond transaction and review the material terms of the transaction to ensure the transaction provides quantifiable net present value benefits to customers compared to the use of traditional ratemaking and results in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced.

The Finance Team shall have the right to review, provide input, and collaborate on all facets of the structuring, marketing and pricing bond processes, including but not limited to, (1) the size, selection process, participants, allocations and economics of the underwriter and any other member of the syndicate group; (2) the structure of the bonds; (3) the bonds credit rating agency application; (4) the underwriters' preparation, marketing and syndication of the bonds; (5) the pricing of the bonds and the certifications provided by Liberty and the underwriters; (6) all associated costs, (including up front and ongoing financing costs), servicing and administrative fees and associated crediting; (7) bond maturities; (8) reporting templates; (9) the amount of any equity contributions; (10) credit enhancements; and (11) the initial calculations of the securitized utility tariff charges. The foregoing and other items may be reviewed during the entire course of the Finance Team's process. The pre-issuance review process will help ensure that the securitized utility tariff bonds will be issued with material terms that meet the requirements of the Securitization Law. The Finance Team's review shall continue until the issuance advice letter is disapproved, approved, or takes effect by operation of law.

For the Commission to remain informed and updated throughout the pre-issuance review process, the Commission may require status meetings or phone conferences for the Finance Team and involved parties to communicate and update the Commission on the information being reviewed and prepared in the structuring and pricing process. The Commission may request access to the actual documents and information being reviewed by the Finance Team as needed. The Finance Team may submit written status reports to the Commission as the Finance Team deems appropriate or as requested by the Commission. If concerns arise during the process, such status meetings, conferences or updates can be requested by the Finance Team or other involved parties as needed.

No member of the Finance Team has authority to direct how Liberty places the securitized utility tariff bonds to market although they shall be permitted to attend all meetings convened by Liberty, and participate in all non-privileged calls, e-mails, and other communications relating to the structuring, pricing and issuance of the securitized utility tariff bonds, or be subsequently informed of the substance of those communications.

In connection with the submission of the issuance advice letter, Liberty and the lead underwriters for the securitized utility tariff bonds shall provide a written certificate to the Commission certifying, and setting forth all calculations and assumptions used to support such calculations and certificate, that the issuance of the securitized utility tariff bonds (i) complies with this Financing Order, (ii) complies with all other applicable legal requirements (including all requirements of Section 393.1700), (iii) that the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, and (iv) that the structuring and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at

the time the securitized utility tariff bonds are priced and the terms of this Financing Order. Such certificates shall be a condition precedent to the submission of the issuance advice letter to the Commission.

In addition, the securitized tariff bonds issued in compliance with this Financing Order shall have a triple-A rating from at least two of the nationally recognized rating agencies.⁵¹

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

Principally, the Commission should ensure the financing order provides some level of specificity in the level of involvement Staff is empowered to have. Proposing Staff involvement absent more specific prescriptions may result in the issuance advice letter being the only tool by which this responsibility may be exercised, and the rejection thereof would be catastrophic for the deal.

The Commission should order delivery of a certification from both the underwriters and from Evergy certifying that the proposed securitization meets the statutory requirement that the securitized utility tariff bonds as structured comply with the requirement that securitization provide quantifiable net present value benefits to ratepayers, and that the bonds are structured, marketed, and priced to provide the lowest securitized utility tariff charges consistent with market conditions at the time the bonds are priced.

Not only is this consistent with the underlying purpose of the statute, this requirement provides any designated Staff representatives and financial advisor the

⁵¹ In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty, Case Nos. EO-2022-0040 and EO-2022-0193, Report and Order issued August 18, 2022, page 83 through page 86.

ability to assist the Commission in ensuring the underwriter's process described and certification given meet those statutory objectives.

The Commission must clarify the right of its designated Staff representatives and financial advisors to be represented by legal counsel. Other participants will be represented by legal counsel; to ensure a level playing field, Staff representatives and financial advisors must be represented by legal counsel, too. Nothing in 393.1700 prohibits designated Staff representatives and financial advisors from representation by legal counsel.

Finally, the Commission must also clarify every element of the issuance process should target achieving the lowest SUTC consistent with market conditions for which the roles and inputs of the designated Staff representatives should be determined and specified in the financing order.

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

Staff does not oppose EMW's request for a waiver of the section of the affiliate transaction rules pertaining to asymmetrical pricing of the financial advantage standard requirement.⁵² However, the remaining applicable sections of the affiliate transactions rule applies to record keeping and should not be waived.⁵³ Staff will need to review the securitization-related affiliate transactions in a future rate case to ensure that the assignment of costs to the SPE is appropriate. If the records are not retained as required by the rule Staff will not be able to determine if the assignment of costs proposed in future

⁵² Bolin Surrebuttal, p. 2 lines 3-5.

⁵³ Bolin Surrebuttal, p. 3 lines 4-5.

rate cases by EMW is accurate.⁵⁴ EMW has indicated its willingness to remain subject to the record keeping requirements⁵⁵, so this should not be an issue.

WHEREFORE, Staff prays that the Commission issue its order finding in favor of Staff on each of the issues set forth herein and making such further orders as the Commission deems just and reasonable.

Respectfully submitted,

/s/ Jeffrey A. Keevil

Jeffrey A. Keevil

Missouri Bar No. 33825

P. O. Box 360

Jefferson City, MO 65102

(573) 526-4887 (Telephone)

(573) 751-9285 (Fax)

Email: jeff.keevil@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 31st day of August, 2022.

/s/ Jeffrey A. Keevil

⁵⁴ Bolin Surrebuttal, p. 3 lines 5-9.

⁵⁵ Tr. Vol. 3 p. 292.