

**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

**RESPONSE IN OPPOSITION TO AMENDED MOTION FOR PROTECTIVE ORDER**

**COMES NOW** the Office of the Public Counsel (the “OPC”) and in response to the Public Service Commission of the State of Missouri’s (the “Commission”) Order Establishing Time to Respond to Amended Motion for Protective Order (the “June 17, 2022 Order”) (Doc. 32) respectfully states:

The OPC opposes Evergy Missouri West, Inc. d/b/a Evergy Missouri West’s (“EMW”) Amended Motion for Protective Order (the “Amended Motion”) (Doc. 31) because EMW requests that the Commission restrict the OPC’s ability to view and to reference certain information in written form in filings before the Commission. Such restrictions may severely hinder the OPC’s ability to present its arguments in this matter. However, the OPC recognizes that the information referenced in the Amended Motion may require additional protection beyond a confidential designation. Therefore, the OPC would not oppose the Commission’s issuance of a protective order as contemplated by 20 CSR 4240-2.135(3) and (4), as long as the protective order does not restrict the OPC’s ability to view and to reference any specified highly confidential information in accordance with the procedures specified in 20 CSR 4240-2.135.

**I. Relevant Procedural Background**

On March 11, 2022, EMW filed a Petition for a Financing Order Authorizing the Issuance of Securitized Utility Tariff Bonds to Finance Qualified Extraordinary Costs Caused by Winter Storm Uri in February 2021 and supporting Direct Testimony. (Docs. 2–9).

On June 6, 2022, EMW filed a Motion for Protective Order and a proposed Protective Order. (Doc. 30). Subsequently, on June 14, 2022, EMW filed the Amended Motion and a Proposed Protective Order. (Doc. 31). On June 17, 2022, the Commission issued the June 17, 2022 Order, ordering any responses to the Amended Motion be filed no later than June 22, 2022.

## **II. Summary of the Amended Motion**

In the Amended Motion, EMW states that “[t]here is . . . a need for portions of the discovery in the case to be designated as Highly Confidential in accordance with Commission Rule 20 CSR 4240-2.135(4).” (Am. Mot. ¶ 2, Doc. 31). EMW explains that, in particular, “Staff and OPC have requested access to a post-event report which will include the production of [Critical Energy Infrastructure Information (“CEII”)] and/or [Bulk Electric System Cyber Security Information (“BCSI”)] . . . .” (*Id.* ¶ 8).

EMW continues saying that “[b]ased on EMW’s interactions with its federal regulators, EMW has determined that any information designated as CEII or BCSI must be provided added protection above the level of protection afforded to information designated as confidential or highly confidential under the typical Protective Order issued in other cases.” (*Id.* ¶ 9). Therefore, EMW seeks a protective order that includes several limitations beyond those imposed by a highly confidential designation. (*See id.* 4-5). Perhaps most importantly to the OPC, these include:

(1) “[w]hen Staff, Public Counsel and/or counsel of record for intervenors and their outside consultants view CEII and BCSI information in this docket, it will do so as view-only through Evergy’s encrypted document review system;”

(2) “[i]f Staff, Public Counsel, or intervenors need to reference its review of CEII or BCSI in its report, testimony, and recommendations filed in the case, it will reference the material by name only in the written filing and provide any necessary description of the details of the CEII or BCSI verbally to the Commission in a closed session;” and

(3) “Staff, Public Counsel, or intervenors will not include any details regarding CEII or BCSI in writing in any filing made in the case[.]”

(*Id.*).

In the Amended Motion, EMW also references the Kansas Corporation Commission’s (“KCC”) Order on Evergy’s Motion to Amend Protective Order, saying that it “adopted similar protections for CEII and BCSI.” (*Id.* ¶ 10 (citing the KCC Order entered in KCC Docket Number 21-EKME-329-GIE)).<sup>1</sup>

### **III. Analysis**

As a part of its request for a protective order in the Amended Motion, Evergy seeks to severely restrict the OPC’s ability to view and to reference CEII and BCSI. This may hinder the OPC’s ability to effectively present its arguments in this matter. In making its request, EMW references no authority that requires the Commission to impose such restrictions, does not point to anything to suggest that a “highly confidential” designation affords inadequate protection, and does not explain the logistics of how testimony and argument pertaining to CEII and BCSI would be taken if the Commission granted the requested protective order. The KCC has also rejected a similar request. As explained in greater detail below, the OPC requests that the Commission deny the protective order EMW requests in the Amended Motion.

First, although EMW cites to its “interactions with its federal regulators,” it does not reference any ruling, rule, or statute that requires the Commission to limit the OPC’s ability to view and to reference CEII and BCSI data in written filings before the Commission. (*See Am. Mot.* ¶ 9). Rather, the Commission’s confidential information rule recognizes that the Commission

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<sup>1</sup> In the Amended Motion, EMW states that the KCC entered its Order on Evergy’s Motion to Amend Protective Order in KCC Docket Number 21-EKME-329-GIE on May 5, 2021. (*Am. Mot.* ¶ 10). However, the KCC docket in Docket Number 21-EKME-329-GIE reflects no filings entered on that date. (*See generally* KCC Docket No. 21-EKME-329-GIE). However, the KCC entered an order with the same title—Order on Evergy’s Motion to Amend Protective Order—in KCC Docket Number 21-EKME-329-GIE on May 20, 2021. The OPC presumes that this May 20, 2021 Order is the Order to which EMW refers. The OPC refers to this May 20, 2021 Order as the “KCC Order.”

“may order greater protection than that provided by a confidential designation . . . .” 20 CSR 4240-2.135(4). Further, that same rule recognizes that “[a]ny party may use confidential information in prefiled testimony, in a pleading, at hearing, or in a brief if the same level of confidentiality assigned by the disclosing party, or the commission, is maintained.” 20 CSR 4240-2.135(9). The rule also sets forth how prefiled testimony that contains confidential information shall be filed, how live testimony pertaining to confidential information shall be taken, and how the transcript pertaining to testimony that discusses confidential information shall be kept. *See* 20 CSR 4240-2.135(10), (12). As to the OPC’s access to confidential information, the Commission’s rule provides:

The officers or employees of the commission and the public counsel and employees of the Office of the Public Counsel are subject to the nondisclosure provisions of section 386.480 RSMo. Neither the officers or employees of the commission, nor the public counsel and the employees of the Office of the Public Counsel shall use or disclose any information obtained in discovery for any purpose other than in the performance of their duties.

20 CSR 4240-2.135(16). Therefore, the Commission’s rules provide an adequate process that EMW may pursue to protect CEII and BCSI from disclosure.

Second, EMW provides no specific indication why a highly confidential designation would not sufficiently protect the CEII and BCSI data potentially at issue. For instance, EMW points to no flaw in the Commission’s cyber security system that may pose a potential threat to the release of this information or to any incident in which highly confidential information was disclosed to individuals who did not have authorization to view that information.

Third, EMW provides no explanation how the OPC would present potential arguments referencing CEII and BCSI information. Rather, EMW states only that if the OPC “need[s] to reference its review of CEII or BCSI in its report, testimony, and recommendations filed in the case, it will reference the material by name only in the written filing and provide any necessary

description of the details of the CEII or BCSI verbally to the Commission in a closed session.” (Am. Mot. 4-5). If the Commission were to grant all of EMW’s requests in the Amended Motion, based on the information contained in the Amended Motion, it is unclear how the OPC could present testimony and later briefing on any potential issues involving CEII and BCSI. Further, this is in direct conflict with the Commission’s confidential information rule, which states that “[a]ny party may use confidential information in prefiled testimony, in a pleading, at hearing, or in a brief if the same level of confidentiality assigned by the disclosing party, or the commission, is maintained.” 20 CSR 4240-2.135(9).

Finally, EMW cites to the KCC’s Order on Evergy’s Motion to Amend Protective Order, issued in docket number 21-EKME-329-GIE (the “KCC Order”). (Am. Mot. ¶ 10). Although EMW states that this Order “adopted similar protections for CEII and BCSI,” EMW fails to mention that the KCC rejected many of the same limitations that EMW requests in the Amended Motion. (*Id.*) Specifically, Evergy Kansas Central, Inc.; Evergy Kansas South, Inc.; and Evergy Metro, Inc. (collectively, “Evergy Kansas”) included the same three requests mentioned above in their Motion for Amendment of Protective Order (the “Evergy Kansas Motion”). *See* Mot. for Amendment of Protective Order 6, KCC Docket No. 21-EKME-329-GIE (filed Apr. 1, 2021). The KCC, however, only partially granted the Evergy Kansas Motion. (*See generally* KCC Order). In pertinent part, the KCC rejected the three requests that the OPC raises issue with here.<sup>2</sup> (*Id.*).

In the KCC Order, the KCC specifically stated that “[a]ny party obtaining confidential information may use or refer to such information in prefiled or oral testimony provided that the

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<sup>2</sup> The OPC acknowledges that in its Order, the KCC limited the review of CEII and BCSI to the Commission and Commission Staff. (*See* KCC Order ¶ 7).

However, in the Amended Motion, EMW does not seek to limit review to only the Commission and Staff. (*See* Am. Mot. 4 (stating that “[s]pecifically, EMW requests that the Commission issue a Protective Order that provides that certain information (i.e. CEII and BCSI) be available only to Staff, Public Counsel, and counsel of record and outside consultants for intervenors who sign a Non-Disclosure Agreement . . . .”). Therefore, the Commission should not limit review of CEII and BCSI to only the Commission and Staff here.

confidentiality is maintained, unless otherwise ordered by the Commission.” (*Id.* ¶ 18). Similar to the Commission’s confidential information rule, the KCC Order also contained procedures that the parties should follow if “pleadings, prefiled testimony, or exhibits include confidential information[,]” how confidential testimony may be offered, and how the transcript of live testimony or oral argument disclosing confidential information shall be kept. (*See id.* ¶¶ 20, 21). Further, it appears that the KCC rejected Evergy Kansas’s request to allow review of CEII and BCSI only through an encrypted document system. (*See id.* ¶¶ 7–8, 14). The Commission should follow the KCC’s example as set forth in the KCC Order and reject EMW’s request to limit the OPC’s ability to view and to reference the CEII and BCSI data.

Evergy has referenced no authority that requires the Commission to limit the OPC’s ability to view or to reference CEII and BCSI data in written filings before the Commission. Similarly, EMW has pointed to nothing to suggest that a “highly confidential” designation affords inadequate protection for this information. It also has provided no indication how arguments involving CEII and BCSI information would be presented if the Commission were to grant the protective order requested in the Amended Motion. Rather, the Commission’s rules contemplate a “highly confidential” designation, which allows for “greater protection than that provided by a confidential designation” and provides procedures for the use of confidential information before the Commission. *See* 20 CSR 4240-2.135. Similarly, persuasive authority exists from the KCC to reject EMW’s attempts to impose these limitations on the OPC. For these reasons, the Commission should reject the protective order EMW requested in the Amended Motion.<sup>3</sup>

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<sup>3</sup> The OPC acknowledges that CEII and BCSI information may require additional protection above a confidential designation to prevent its disclosure. The OPC would not oppose the Commission issuing a protective order as contemplated by 20 CSR 4240-2.135(3) and (4), as long as such protective order allowed the OPC to view the information and to use the information in accordance with the procedures set forth in 20 CSR 4240-2.135.

**IV. Conclusion**

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission deny the protective order EMW requested in the Amended Motion.

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 22nd day of June 2022.

/s/ Lindsay VanGerpen