BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Second Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 2 Energy Efficiency Programs of Evergy Metro, Inc. d/b/a Evergy Missouri Metro	)))))	**File No. EO-2020-0227**

REPORT AND ORDER

Issue Date: May 4, 2022

Effective Date: June 3, 2022

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APPEARANCES

Appearing for Evergy Missouri Metro and Evergy Missouri West

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Appearing for the Office of the Public Counsel

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Appearing for the Staff of the Missouri Public Service Commission

Jeff Keevil, Governor Office Building, 200 Madison Street, Suite 800, Jefferson City, Missouri 65102

Senior Regulatory Law Judge: Charles Hatcher

REPORT AND ORDER

I. Procedural History

This case involves the Second Prudence Reviews of the Cycle 2 costs related to the Missouri Energy Efficiency Investment Act (MEEIA) tariff provisions for both Evergy Metro, Inc. d/b/a Evergy Missouri Metro (Evergy Metro) and of Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy West) (collectively, "Evergy").

For Evergy Metro, the Staff of the Commission (Staff) filed its *Notice of Start of Second Prudence Review of Cycle 2 Energy Efficiency Programs* in File No. EO-2020-0227 on February 3, 2020, advising that it intended to examine Evergy Metro's Cycle 2 Demand-Side Investment Mechanism (DSIM) for the period April 1, 2018, through December 31, 2019. Staff filed a separate notice in File No. EO-2020--0228 for Evergy West auditing the same time period. On June 30, 2020, Staff filed reports in each file setting out the findings of its examinations. On August 5, 2020, the Commission consolidated the two cases, with EO-2020-0227 as the lead case.

Based on its review, Staff recommended the Commission make several prudence-related adjustments to Evergy's DSIM. Staff raised concerns about how Evergy implemented its demand-response programs, and whether Evergy could have used the programs more effectively. The Office of the Public Counsel (OPC) also cited a concern regarding the ratio of incentive to non-incentive costs included in Evergy's energy efficiency spending. On July 7, 2020, Evergy requested a hearing. The Commission set a procedural schedule including the filing of written testimony, a list of issues to be decided by the Commission, and an evidentiary hearing.

Prior to the evidentiary hearing, the parties reached settlement on some issues. Not settled were several of Staff's concerns regarding the demand-response programs and OPC's concern about the incentive to non-incentive cost ratio. Ultimately, the parties presented seven issues for Commission resolution, as follows:

1. Are Staff's and OPC's proposed prudence adjustments within the scope of a MEEIA prudence review as defined by 20 CSR 4240-20.093?

2. Did Evergy act imprudently in its implementation of the Residential Programmable Thermostat program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

3. Did Evergy act imprudently in its implementation of its Demand Response Incentive Program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

4. Did Evergy act imprudently by not calling more demand-response events for the purpose of reducing Southwest Power Pool (SPP) fees? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

5. Did Evergy act imprudently by not calling more demand-response events for the purpose of reducing the costs associated with day-ahead locational marginal prices? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

6. Did Evergy Missouri Metro act imprudently by not entering into more bi-lateral capacity contracts? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

7. Did Evergy act imprudently by virtue of its MEEIA programs' incentive to non-incentive costs ratios?

An evidentiary hearing was held on April 21-22, 2021. The parties filed initial briefs on June 4, 2021, and reply briefs on June 25, 2021. Due to COVID-19 precautions, the hearing was held via the WebEx telecommunications and video web service.

II. General Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Evergy Metro and Evergy West are Missouri electrical corporations as defined by Section 386.020(15), RSMo (Supp. 2021), and are authorized to provide electric service to portions of Missouri.[1]

2. The OPC is a party to this case pursuant to Section 386.710(2), RSMo (2016),[2] and by Commission rule 20 CSR 4240-2.010(10).

3. Staff is a party to all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.[3] Staff participated in this proceeding.

4. The Missouri Energy Efficiency Investment Act (MEEIA) authorizes the use of demand-side programs.[4]

5. Through Evergy's DSIM, Evergy customers have paid for the companies' demand-response programs.[5]

6. Demand response programs financially incentivize ratepayers to participate in the program with the expectation that those participants will reduce a specified portion

[1] List of Issues, Order of Witnesses, Order of Cross-Examination, and Joint Stipulation of Facts, filed October 26, 2021, Joint Stipulated Facts, para. 1.
[2] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.
[3] 20 CSR 4240-2.010(10) and (21) and 2.040(1).
[4] Section 393.1075 RSMo (Supp. 2021).
[5] Ex. 104, Luebbert Direct, p. 6.

of their load at specific times identified by the utility. Those times specified by the utility can be characterized as “demand-response events” or “events.”[6]

7. In a combined order, the Commission authorized Cycle 2 of Evergy Metro’s DSIM rider in File No. EO-2015-0240,[7] and Cycle 2 of Evergy West’s DSIM rider in File No. EO-2015-0241.[8] The combined order established Evergy’s Cycle 2 as taking place from April 1, 2018, through March 31, 2019.[9]

8. The Commission extended its authorization for Evergy’s Cycle 2 in File No. EO-2019-0132.[10] The extended time period of Cycle 2 was April 1, 2019, through December 31, 2019.[11]

9. This is Staff’s second prudence review of Evergy’s DSIM Cycle 2. The prudence review covers the Cycle 2 time period, including the extension, of April 1, 2018, though December 31, 2019.[12]

III. General Conclusions of Law

A. Subsection 386.020(15), RSMo (Supp. 2021) defines “electrical corporation” as including:

> every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, . . . owning, operating, controlling or managing any electric plant . . . .

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[6] Ex. 104, Luebbert Direct, p. 4.
[7] EO-2015-0240, *Order Approving Stipulation and Agreement*, effective October 29, 2017. Evergy Metro is f/k/a Kansas City Power & Light Company.
[8] EO-2015-0241, *Order Approving Stipulation and Agreement*, effective October 29, 2017. Evergy West is f/k/a KCP&L Greater Missouri Operations Company.
[9] Ex. 101, Schedule BJF-d3, p. 1, and BJF-d5, p. 1.
[10] Ex. 2, Order Approving Stipulation and Agreement.
[11] Ex. 101, Schedule BJF-d3, p. 2, and BJF-d5, p. 2.
[12] Ex. 101, Schedule BJF-d3, p. 4, and BJF-d5, p. 4.

B. Section 386.266, RSMo (Supp. 2021) authorizes the Commission to allow electrical corporations, such as Evergy Metro and Evergy West, to utilize periodic rate adjustment mechanisms, such as a Fuel Adjustment Clause (FAC), to reflect increases and decreases in prudently incurred fuel and purchased-power costs, including transportation.

C. Section 393.1075, RSMo (Supp. 2021) authorizes the Commission to allow an electrical corporation, such as Evergy Metro and Evergy West, to implement demand-side programs.

D. Subsection 393.1075.3 (Supp. 2021) sets forth the policy of Missouri to value demand-side investments equal to traditional investments in supply and delivery infrastructure, and to allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs.

E. Subsection 393.1075.3 (Supp. 2021) directs the Commission to ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances customers' incentives to use energy more efficiently.

F. Subsection 393.1075.4 (Supp. 2021) restricts recovery for demand-side programs to those resulting in energy or demand savings, and which are also beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.

G. Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including, but not limited to, energy efficiency measures, load management, demand-response, and interruptible or curtailable load, but not including deprivation of service or low-income weatherization.[13]

H. A DSIM is the Commission-approved rate mechanism designed to encourage a utility's investment in demand-side programs under MEEIA. Under the Commission's regulations, a DSIM may include components to recover the costs of demand-side programs, along with amounts reflecting lost sales margins as a result of demand-side programs and any performance incentives or earnings opportunities. The DSIM is collected through a periodically adjusted line item on customer bills.[14]

I. Commission Rule 20 CSR 4240-20.093(11) requires that the Staff conduct prudence reviews of an electric utility's costs recovered through its DSIM no less frequently than every twenty-four months.

J. In determining whether a utility's conduct was prudent, the Commission will judge that conduct by:

> asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, [the Commission's] responsibility is to determine how reasonable people would have performed the tasks that confronted the company.[15]

K. The Missouri Supreme Court further affirmed the Commission's rationale in stating,

> The PSC ordinarily applies a presumption of prudence in determining whether a utility reasonably incurred its expenses. This presumption of prudence will not survive a showing of inefficiency or improvidence that creates serious doubt as to the prudence of an expenditure. If such a showing is made, the presumption drops out and the applicant

[13] 20 CSR 4240-20.092(1)(M).
[14] 20 CSR 4240-20.092(1)(N) and (Q).
[15] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Com'n,* 954 S.W.2d 520, 529 (Mo. App. W.D. 1997).

has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.[16]

L. It would be inconsistent with the statutory authority provided by Section 393.130.1 for the Commission to make a decision on the recoverability of costs based upon a prudency analysis without reference to the detrimental impact of those practices to the ratepayers.[17]

M. Subsection 393.150.2, RSMo (2016) states that the utility bears the burden of proving that a requested rate is just and reasonable.

N. Although the utility always bears the burden of proving that a proposed rate increase is just and reasonable, the Commission will, in the absence of adequate contrary evidence, presume that a utility's costs incurred through arm's-length transactions were prudently incurred. This presumption of prudence affects who has the burden of proceeding, but does not change the burden of proof.[18]

IV. Findings of Fact – Issue 1

Issue 1: Are Staff's and OPC's proposed prudence adjustments within the scope of a MEEIA prudence review as defined by 20 CSR 4240-20.093?

10. The Southwest Power Pool (SPP) is a nonprofit regional transmission organization mandated by the Federal Energy Regulatory Commission to ensure reliable supplies of power, adequate transmission infrastructure and competitive wholesale electricity prices. The SPP operates, but does not own, the bulk electric grid in the central

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[16] *Spire Missouri, Inc. v. Pub. Serv. Com'n*, 618 S.W.3d 225, 232 (Mo. banc 2021) (internal citations and quotation marks omitted).
[17] *Associated Natural Gas* at 530.
[18] *Office of Pub. Counsel v. Mo. Pub. Serv. Com'n*, 409 S.W.3d 371, 376-379 (Mo. banc 2013).

United States on behalf of a diverse group of utilities and transmission owners.[19]

11. Evergy operates within the footprint of the SPP.[20]

12. SPP Schedule 11 fees are those expenses that transmission customers within the SPP pay the transmission owners for the build out of the SPP transmission system. The regional portion of the SPP Schedule 11 fees, those costs that are socialized across all transmission customers because the benefits of those upgrades are regional in scale, are allocated based on a company's load ratio share. The load ratio share is the ratio of an entity's average of their 12 monthly peaks to the average of SPP's twelve monthly peaks, expressed as a percentage. As an example, if the regional portion of SPP's Schedule 11 costs was $100 million and a market participant had a load ratio share of 5% then their allocated portion of SPP Schedule 11 fees would be $5 million. It is the regional portion of the SPP Schedule 11 fees that could be impacted from reductions in peak load because it would directly impact the load ratio share.[21]

13. The SPP's electricity market comprises a day-ahead (DA) and a real-time (RT) market. The prices at each generator and load point are known as Locational Marginal Prices (LMP). Thus, the Day-Ahead Locational Marginal Prices (DA LMPs) are the prices, measured at specific points, at which energy is purchased and sold through the SPP market on a day-ahead basis. Similarly, same-day energy purchases and sales done in the market are priced at the real-time locational marginal price (RT LMP). Market participants like Evergy offer generation for sale and bid load for purchase in the SPP

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[19] https://spp.org/about-us, accessed April 20, 2022.
[20] List of Issues, Order of Witnesses, Order of Cross-Examination, and Joint Stipulation of Facts, filed October 26, 2021, Joint Stipulated Facts, para. 4.
[21] Ex. 3, Carlson Rebuttal, pp. 7-8.

market daily, with the information submitted on a day-ahead basis.[22]

14. Staff alleged Evergy was imprudent in not attempting to minimize its monthly peak by calling demand-response events under the MEEIA to minimize its monthly coincident peak through the use of the demand-response program as evidenced by minimal event calling. Staff also argues that Evergy could have called demand-response events to pre-cool residential homes with the goal of minimizing the cost of serving load during periods of high LMP, thus shifting load to periods of lower expected LMPs. Staff argued it was imprudent for Evergy not to call any events to seek DA market pricing opportunities.[23]

15. Capacity sales are sales of excess electricity a utility can produce above the amount needed by the utility's customers. The SPP does not have a capacity market, therefore capacity sales are contracted directly between parties, also referred to as bi-lateral capacity sales. To enter a bi-lateral capacity sale, a utility must employ typical sales methods – such as requests for proposals, cold-calling, or calling existing customers for referrals – and find a willing counterpart to purchase the excess capacity.[24]

16. Sales from a bi-lateral contract would flow through the FAC as off-system sales revenue.[25]

17. Evergy has FAC tariff sheets to address fuel and purchased power costs and revenues.[26]

[22] Ex. 3, Carlson Rebuttal, p. 8-9.
[23] Ex. 101, Schedule BJF-d3, pp. 28-29, and BJF-d5, pp. 28-29.
[24] Ex. 3, Carlson Rebuttal, pp. 2-4.
[25] Ex. 101, Schedule BJF-d3, p. 30.
[26] Evergy Metro P.S.C. MO. No. 7, Sheet No. 50, et. al., and Evergy West tariff sheets P.S.C. MO. No. 1, Sheet No. 127, et. al.

18. Fuel-related revenues means those revenues related to the generation, sale, or purchase of energy or capacity and may include off-system sales.[27]

19. An FAC charge means the positive or negative dollar amount on each utility customer's bill, which in the aggregate is to recover from or return to customers the fuel and purchased power adjustment amount.[28]

20. Evergy's SPP Schedule 11 fees are not recovered under the DSIM.[29]

21. Evergy's SPP costs are recovered through the FAC tariff and in base rates.[30]

22. Proceeds related to DA LMP are not recovered through the DSIM; rather, they are recovered through the FAC tariff and base rates.[31]

23. Proceeds to Evergy from bi-lateral capacity sales are not subject to the DSIM,[32] and cannot be recovered through the DSIM.[33]

V. Conclusions of Law – Issue 1

O. An FAC is a tariff provision that allows the utility to recover (or refund after true-up) "prudently incurred fuel and purchased power costs, including transportation."[34]

P. The DSIM is authorized in Section 393.1075, RSMo (Supp. 2021) through the MEEIA. This section allows the Commission to authorize the recovery of demand-side investments. The DSIM is different from the FAC, which is an interim energy

[27] 20 CSR 4240-20.090(1)(M).
[28] 20 CSR 4240-20.090(1)(H).
[29] Ex. 3, Carlson Rebuttal, p. 7.
[30] Ex. 3, Carlson Rebuttal, p. 7.
[31] Ex. 3, Carlson Rebuttal, p. 8.
[32] Ex. 5, File Rebuttal, p. 4.
[33] Ex. 3, Carlson Rebuttal, p. 3.
[34] Section 386.266, RSMo (2016).

charge or periodic rate adjustment granted by the Commission under the authority in Section 386.266, RSMo.

Q. Capacity sales are not a cost that is recovered through Evergy's DSIM.[35]

R. SPP Schedule 11 transportation expenses are not recovered through Evergy's DSIM.[36]

VI. Decision – Issue 1

The Commission finds that imprudent energy costs that are recovered through the FAC should be adjusted in the FAC, and imprudent MEEIA costs that are recovered through a DSIM should be adjusted through the DSIM.

The Commission finds that the three allegations of imprudence regarding SPP Schedule 11 fee reduction, DA LMP market pricing opportunities, and bi-lateral capacity sales all implicate increases and decreases in Evergy's fuel, purchased-power and transportation costs, which are recovered through the FAC as authorized under Section 386.266, RSMo. Accordingly, after a full review of the facts and the law, the Commission finds these allegations of imprudence are best addressed in an FAC prudence review, as the Commission finds them not within the scope of a MEEIA prudence review as defined by 20 CSR 4240-20.093.

VII. Findings of Fact – Issue 2

Issue 2: Did Evergy act imprudently in its implementation of the Residential Programmable Thermostat program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

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35 Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 7 Sheet Nos. 49I-J, and Ex. 106b, Evergy West 14 P.S.C. MO. No. 1, 2nd Revised Sheet No. 138.2.

36 Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 7 Original Sheet No. 49I-J, and Ex. 106b, Evergy Missouri West 14 P.S.C. MO. No. 1, 2nd Revised Sheet No. 138.2.

Free residential thermostats

24. Evergy has a Residential Programmable Thermostat Program as part of its demand-side programs. The program is available for any customer currently receiving service under any residential rate schedule. Customers must also have adequate paging and/or radio coverage or constantly connected, Wi-Fi enabled internet service and have a working, central air conditioning system of suitable size and technology to be controlled by the programmable thermostat.[37]

25. A Participant in the Thermostat Program (Participant) is an end-use customer.[38]

26. The voluntary Residential Programmable Thermostat Program is intended to help reduce system peak load and defer the need for additional capacity. The program accomplishes this by cycling the Participants' air conditioning unit(s) or heat pump(s) temporarily in a coordinated effort to limit overall system peak load.[39]

27. Under the Residential Programmable Thermostat Program, free programmable thermostats, which can be controlled via radio or Wi-Fi signals sent to the unit by Evergy or its assignees, are given to Participants in the program.[40]

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[37] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 First Revised Sheet No. 2.32 to Original Sheet 2.33, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-107 to Original Sheet R-108.
[38] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 Original Sheet 2.21, and Ex. 106b, Evergy West P.S.C. MO. No. 1 First Revised Sheet R-97.
[39] Ex. 106a. Evergy Missouri Metro P.S.C. MO. No. 2 First Revised Sheet No. 2.32, and Ex. 106b. Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-107.
[40] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 First Revised Sheet No. 2.21, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-107.

28. Under its voluntary Residential Programmable Thermostat Program, Evergy offered a Nest brand programmable thermostat to Participants free of charge, and a flat annual bill credit in exchange for participation in called events.[41]

29. Evergy incurred costs for each installed Nest programmable thermostat that it gave away.[42]

30. During the review period, Evergy Metro gave away 621 programmable thermostats where the recipients of the thermostat did not become Participants in the Residential Programmable Thermostat Program and did not return the thermostat to Evergy Metro.[43]

31. Staff calculated Evergy Metro's costs of providing the 621 unreturned non-participating thermostats at $108,080.[44]

32. During the review period, Evergy West gave away 675 programmable thermostats where the recipients of the thermostat did not participate in the Residential Programmable Thermostat Program and did not return the thermostat to Evergy West.[45]

33. Staff calculated Evergy West's costs of providing the 675 unreturned non-participating thermostats at $116,665.[46] The initial contract for the Residential Programmable Thermostat Program is three years, at the end of which the thermostat is free of charge to the Participant and becomes the property of the Participant.[47]

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[41] Ex. 104, Luebbert Direct, p. 5.
[42] Ex. 104C, Schedule JL-d2, pp. 1-2 of 79. The actual costs are included in an exhibit that is marked as confidential, and thus the details will not be discussed in this order.
[43] Ex. 101, Schedule BJF-d3, p. 26.
[44] Ex. 104C, Schedule JL-d2, p. 2 of 79. The numbers supporting Staff's calculation are taken from Evergy's response to Data Request 53.1, are confidential, and will not be stated in this Report and Order.
[45] Ex. 101, Schedule BJF-d5, p. 26.
[46] Ex. 104C, Schedule JL-d2, p. 1 of 79. The numbers supporting Staff's calculation are taken from Evergy's response to Data Request 53.1, are confidential, and will not be stated in this Report and Order.
[47] Ex. 106 Evergy Missouri Metro P.S.C. MO. No.2 Original Sheet 2.33, and Evergy Missouri West Sheet P.S.C. MO. No. 1 5th Revised Sheet No. R-63.25.

34. Non-participating thermostats, even though they were provided pursuant to the voluntary Residential Programmable Thermostat Program, by definition, do not cycle the ratepayer's air conditioning unit(s) or heat pump(s) temporarily in an Evergy-coordinated effort to limit overall system peak load. Thus, the non-participating thermostats do not help reduce system peak load or defer the need for additional capacity pursuant to the voluntary Residential Programmable Thermostat Program.[48]

Controlling the Budget

35. In 2017, Evergy exceeded the projected installations of programmable thermostats given away pursuant to the voluntary Residential Programmable Thermostat Program. At any point during 2017, Evergy should have known that installations were being adopted more quickly than projected. Thus, Evergy was faced with the decision of how to control the program budget.[49]

36. Evergy chose to control the budget by limiting available installation methods.[50]

37. Staff alleges that the prudent choice would have been lowering the incentive level paid to ratepayers participating in the voluntary Residential Programmable Thermostat Program. Staff argues that altering the incentive level would have decreased program costs to ratepayers as a whole and maintained the expectation to meet the targeted goal of the voluntary Residential Programmable Thermostat Program.[51]

[48] Ex. 105, Luebbert Surrebuttal, p. 17.
[49] Ex. 101, Schedule BJF-d3, p. 25, and BJF-d5, p. 25.
[50] Ex. 101, Schedule BJF-d3, p. 25, and BJF-d5, p. 25.
[51] Ex. 101, Schedule BJF-d3, p. 25, and BJF-d5, p. 25.

38. Evergy testified that changing program rules mid-cycle causes discontinuity and customer confusion.[52]

39. Initially in Cycle 2, Evergy offered three methods for ratepayers to become Participants in the voluntary Residential Programmable Thermostat Program: direct installation; do-it-yourself; and bring-your-own.[53]

40. The participation rate for programmable thermostats installed by the direct installation method and the bring-your-own method is 100%.[54]

41. The do-it-yourself method of joining the voluntary Residential Programmable Thermostat Program begins with the provision of a free programmable thermostat to the home of the ratepayer. The ratepayer is then responsible for the installation and activation of the free programmable thermostat to participate in the voluntary Residential Programmable Thermostat Program.[55]

42. The participation rate for programmable thermostats installed by the do-it-yourself installation method is, on average, a decrease of approximately 10% from the direct installation method.[56]

43. The direct installation method provided budget and participation management tools, which allowed Evergy to control the number of thermostats distributed and installed, and ultimately the number of Participants.[57]

44. Stated differently, when faced with the problem of a shrinking budget, Evergy chose to restrict Participants in the voluntary Residential Programmable

[52] Ex. 5, File Rebuttal, p. 15.
[53] Ex. 5, File Rebuttal, p. 13.
[54] Ex. 5, File Rebuttal, p. 14.
[55] Ex. 5, File Rebuttal, p. 15.
[56] Ex. 5, File Rebuttal, p. 15.
[57] Ex. 5, File Rebuttal, p. 14.

Thermostat Program to only those installing the free programmable thermostat by the direct installation method (professional installation of the thermostat).[58]

45. The direct installation method is more expensive than the do-it-yourself installation method, but the direct installation method has a higher participation rate of the free programmable thermostats.[59]

VIII. Conclusions of Law – Issue 2

S. The Residential Programmable Thermostat Program found in Sections 23.24 and 15.22, of Evergy Metro and Evergy West's applicable tariffs, respectively, state, in part:

> CONTROLS AND INCENTIVES:
>
> Participants will receive a free programmable thermostat . . .[60]

* * *

IX. Decision – Issue 2

<u>Free residential thermostats</u>

Participants are the only authorized recipients of the free programmable thermostats through the voluntary Residential Programmable Thermostat Program. Nevertheless, Evergy gave away free programmable thermostats to non-Participants.

The costs of the voluntary Residential Programmable Thermostat Program are recovered through the DSIM. The money that was paid for the non-participating thermostats did not provide any value to the Program – ratepayers paid for free programmable thermostats that did not participate in the voluntary Residential

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[58] Ex. 101, Schedule BJF-d3, p. 25, and BJF-d5, p. 25; and Ex. 105, Luebbert Surrebuttal, p. 11.
[59] Ex. 5, File Rebuttal, p. 14.
[60] Ex. 106a, Evergy Metro Tariff, P.S.C. MO. No. 2, Sheet No. 2.32, and Ex. 106b, Evergy West Tariff, P.S.C. MO. No. 1, 1st and 3rd Revised Sheet No. R-63.10.

Programmable Thermostat Program. The Commission finds that Evergy was imprudent in giving away free programmable thermostats to non-Participants as they did not cycle the ratepayer’s air conditioning unit(s) or heat pump(s) temporarily in an Evergy-coordinated effort to limit overall system peak load, and thus did not help reduce system peak load and defer the need for additional capacity pursuant to the voluntary Residential Programmable Thermostat Program.

Evergy argued that cost-effectiveness of the program was excusatory. Under the MEEIA statute, Section 393.1075, RSMo (Supp. 2021), a utility may implement a cost-effective program, but the utility can only recover the reasonable and prudent costs of delivering the program.

To disallow an incurred cost on the basis of imprudence, the Commission must find both that (1) the utility acted imprudently and (2) the imprudence resulted in harm to the utility's ratepayers. The Commission finds that Evergy acted imprudently in giving away thermostats to customers who did not ultimately participate in the program. The Commission finds this imprudence had a detrimental financial impact to the ratepayers in having to pay for thermostats to be given free to non-Participants in the voluntary Residential Programmable Thermostat Program. The costs to the ratepayers of the voluntary Residential Programmable Thermostat Program were unjustifiably higher due to Evergy’s giving away thermostats to non-Participants; those costs could have been lower had a different course of action been taken by Evergy. This harm is quantified as $108,080 for Evergy Metro and $116,665 for Evergy West.

Controlling the Budget

The Commission finds that when faced with the problem of a limited budget, Evergy acted reasonably in allowing the number of installations to dictate the number of

Participants by restricting installation methods to only direct installation of the free programmable thermostats. Using the direct installation method as a way to control the program budget insures a higher participation rate over the less expensive option of the do-it-yourself method. The Commission finds Evergy's actions reasonable regarding the use of the direct installation method of the free programmable thermostats to control the program budget.

X. Findings of Fact – Issue 3

Issue 3. Did Evergy act imprudently in its implementation of its Demand Response Incentive Program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

46. Evergy has a Demand Response Incentive (DRI) Program as part of its demand-side programs.[61]

47. The DRI Program is designed to reduce business participant load during peak periods to improve system reliability, offset forecasted system peaks that could result in future generation capacity additions, and/or provide a more economical option to generation or purchasing energy in the wholesale market.[62]

48. Evergy requires a business customer to have a load curtailment capability of at least 25 kW, meaning the business customer has the ability to forego at least 25 kW of its own load when an event is called.[63]

[61] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 Original Sheet No. 2.09 to Original Sheet 2.13, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-86 to First Revised Sheet R-90.
[62] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 Original Sheet No. 2.09, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-86.
[63] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 Original Sheet No. 2.09, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-86.

49. Under the DRI Program, business customers receive compensation based on individual customer curtailment contracts.[64]

50. The DRI program offers compensation to business customers in exchange for Evergy's ability to direct the reduction of the business customer's load temporarily during peak periods.[65]

51. Staff argues that the DRI incentives paid to business customers should have been lowered as the customers did not participate meaningfully. However, Staff does not discuss how the business customers did not meaningfully participate. Rather, Staff discusses, in this entire section of its testimony, the fact that Evergy called fewer demand-response events than desired. Staff testified, "If it was Evergy's intent to call minimal events, Evergy could have designed the incentive structures to focus on performance during called events; thus reducing program costs by not providing substantial incentives to customers that do not participate in called events."[66]

52. Evergy's DRI Program tariff sheets provide the levels of upfront payments, and were previously approved by the Commission.[67]

53. Evergy operated the DRI Program in compliance with its DRI Program tariff sheets.[68]

[64] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 Original Sheet No. 2.11, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-86-87.
[65] Ex. 106a. Evergy Missouri Metro P.S.C. MO. No. 2 First Revised Sheet No. 2.32, and Ex. 106b. Evergy West P.S.C. MO. No. 1, 1st Revised Sheet No. R-87; see also Ex. 5, File rebuttal, p. 19.
[66] Ex. 104 Luebbert Direct, pp. 5-6.
[67] Ex. 5, File rebuttal, p. 19.
[68] Ex. 5, File rebuttal, p. 19.

XI. Conclusions of Law – Issue 3

T. The Commission-approved tariff states that the DRI "program is designed to reduce customer load during peak periods to help defer future generation capacity additions and provide for improvements in energy supply."[69]

U. The Demand Response Incentive Program found in Sections 23.09 and 15.09 of Evergy Metro and Evergy West's applicable tariffs, respectively, state, in part:

> AVAILABILITY:
>
> The Customer must have a load curtailment capability of at least 25 kW during the Curtailment Season and within designated Curtailment Hours. . .
>
> * * *
>
> CUSTOMER COMPENSATION:
>
> Customer compensation shall be defined within each Customer contract and will be based on contract term, Maximum Number of Curtailment Events and the number of actual Curtailment Events per Curtailment Season. Timing of all payments/credits shall be specified in the curtailment contract with each Customer. Payments shall be paid to the Customer by KCP&L in the form of a check or bill credit as specified in the contract or by a KCP&L-approved Aggregator as defined within the Customer's contract. The credits shall be applied before any applicable taxes. All other billing, operational, and related provisions of other applicable rate schedules shall remain in effect.
>
> Compensation will include:
>
> PROGRAM PARTICIPATION PAYMENT:
>
> For each Curtailment Season, Customer shall receive a payment/credit based upon the incentive structure outlined within the contract term. The Program Participation Payment for a Curtailment Season is equal to the per kilowatt of Curtailable Load rate as defined in the Customer's contract.
>
> The Program Participation Payment will be divided by the number of months in the Curtailment Season and applied as bill credits equally for each month of the Curtailment Season.

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[69] Evergy MO Metro Tariff sheet 2.09.

> Curtailment Occurrence Payment: The Customer may also receive an Event Payment for each Curtailment Hour during which the Customer's metered demand is less than or equal to his Firm Power Level

* * *

XII. Decision – Issue 3

The Commission finds that the costs associated with Evergy's DRI Program were not shown to be unreasonable or imprudent. Evergy operated the program as described in its tariff, which was previously approved by the Commission. If parties had concerns about the incentive levels to be paid to business customers participating in the DRI Program, those concerns needed to be raised during the authorization process.

Issue 4. Did Evergy act imprudently by not calling more demand-response events for the purpose of reducing Southwest Power Pool (SPP) fees? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Per its decision regarding Issue 1, supra, the Commission finds that this is not an appropriate MEEIA prudence review item and should be addressed in an FAC prudence review. No further findings of fact, conclusions of law, or discussion are needed.

Issue 5. Did Evergy act imprudently by not calling more demand-response events for the purpose of reducing the costs associated with day-ahead locational marginal prices? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Per its decision regarding Issue 1, supra, the Commission finds that this is not an appropriate MEEIA prudence review item and should be addressed in an FAC prudence review. No adjustment will be made in this case regarding DA LMP market pricing opportunities. No further findings of fact, conclusions of law, or discussion are needed.

Issue 6. Did Evergy Missouri Metro act imprudently by not entering into more bi-lateral capacity contracts? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Per its decision in Issue 1, supra, the Commission finds that this is not an appropriate MEEIA prudence review issue and should be addressed in an FAC prudence review. Generally, bi-lateral contracts are handled in an FAC prudence case. The contracts, and lack of contracts, for this review period do not provide a basis for adjustment through the DSIM under the MEEIA. No adjustment will be made in this case regarding bi-lateral capacity contracts. No further findings of fact, conclusions of law, or discussion are needed.

XIII. Findings of Fact – Issue 7

Issue 7. Did Evergy act imprudently by virtue of its MEEIA programs' incentive to non-incentive costs ratios?

54. The U.S. Energy Information Administration (EIA), Form EIA-861, Annual Electric Power Industry Report, Energy Efficiency Spending (2013-2018) serves as the basis for OPC's concern, which is that Evergy's incentive to non-incentive cost ratio for energy efficiency incentive spending is high when compared to the national average and when compared to investor-owned utilities operating in Missouri.[70]

55. OPC's testimony does not define what is included as an incentive and what is included as a non-incentive regarding energy efficiency spending.

56. The EIA information provided by OPC does not include a definition of incentive and non-incentive.

57. The EIA website only offers that non-incentive spending could include

[70] Ex. 200, Marke Rebuttal, pp. 3-8.

administration; marketing and education; and evaluation, measurement, and verification. The EIA website also refers to energy efficiency incentive spending as direct spending.[71]

58. OPC witness Marke testified that Evergy has the highest non-incentive cost ratio (cost of incentives compared to the cost of non-incentives) in Missouri.[72] He testified that in 2018, non-incentive costs comprised 55% and 60% of the energy efficiency budgets for Evergy Metro and Evergy West, respectively.[73] OPC concluded that having non-incentive costs above 50% is imprudent, testifying that spending more than half of the energy efficiency budget on non-energy efficiency items is problematic.[74]

59. OPC testified that it seeks a disallowance for Evergy West such that the disallowance would reflect at least a 50/50 equivalent in non-incentive to incentive cost breakdown, which OPC considers 50% to be the maximum level of spending on non-incentive costs that could be considered prudent.[75]

60. OPC also proposed to hold Missouri investor utilities to a standard that they should be in line with utilities across the country in the non-incentive to incentive costs. OPC recommended the Commission order "that utilities participating in ratepayer-funded energy efficiency programs have more than a 5% excess non-incentive budget expenditure deviation from the three-year national average, and any amount above that should be considered imprudent as a general framework for utilities and stakeholders to be aware of in the near future."[76]

61. OPC testified that it was unaware of any Commission rule or precedent that

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[71] https://www.eia.gov/todayinenergy/detail.php?id=42975 accessed April 22, 2022.
[72] Ex. 200, Marke Rebuttal, p. 3.
[73] Ex. 200, Marke Rebuttal, p. 7.
[74] Tr. Vol. 2, p. 210.
[75] Ex. 201, Marke Surrebuttal, pp. 0-0.
[76] Ex. 200, Marke Rebuttal, pp. 12-13.

establishes a specific ratio for a prudency standard.[77]

62. OPC testified that its recommended incentive to non-incentive cost ratio is based on the witness's expertise.[78]

63. OPC further testified that there are many nuances within a utility's characterization of a cost as incentive or non-incentive, and that utilities may characterize incentive and non-incentive costs differently depending on location.[79]

64. Staff testified that the non-incentive to incentive cost ratio is a policy issue that deserves more robust discussion, prospectively, and outside of a prudence review.[80]

XIV. Conclusions of Law – Issue 7

V. A statement of general applicability that implements, interprets, or prescribes law or policy is a rule within the definition of Section 536.010, RSMo, (2016) and would require rulemaking procedures in order to be valid.[81]

XV. Decision – Issue 7

OPC alleges that Evergy's percentage of non-incentive costs as compared to incentive costs is imprudent when over the amount of 50%. OPC does not offer any citation of law, rule, precedent or other standard to support a 50% prudency standard as the maximum non-incentive spending allowed and still be considered prudent. Moreover, there is no singular definition of incentive or non-incentive that would allow a comparison between utilities.

[77] Tr. Vol. 2, pp. 216-217.
[78] Tr. Vol. 2, p. 217.
[79] Tr. Vol. 2, pp. 217-219.
[80] Ex. 103, Tandy Surrebuttal, p. 3.
[81] See also *State ex rel. Beaufort Transfer Co. v. PSC*, 610 S.W.2d 96 (WD 1980).

The Commission is foreclosed from issuing orders that would have a general applicability, which is the essence of OPC's concern. If the Commission were to find a maximum of 50% allowable non-incentive spending in this case (or even a standard of 5% non-incentive spending over the national average), it could later be argued to be discriminatory if the Commission finds a different maximum of allowable non-incentive spending for a different utility. Further, outside of a formal rulemaking, it would be inappropriate for the Commission to make a determination as to whether an amount over 50%, or 5% non-incentive spending over the national average, was imprudent as a generally applicable standard. As such, OPC's recommendation for a 50%, or 5% non-incentive spending over the national average, presumed prudence limit requires a rulemaking procedure – which should include a more robust discussion and be focused prospectively. Therefore, the Commission finds that there was not sufficient evidence to support a finding that Evergy's non-incentive to incentive cost ratio was unreasonable or imprudent.

THE COMMISSION ORDERS THAT:

1. Evergy Metro shall refund to ratepayers the prudence adjustment amount of $108,080 and Evergy West shall refund the amount of $116,665, each amount is plus interest. These amounts shall be refunded as ordered adjustments in Evergy's next DSIM Rider rate adjustment filings.

2. Staff's request for an ordered adjustment in both File No. EO-2020-0227 and EO-2020-0228 related to alleged imprudence in changing the manner of thermostat installation due to budget restrictions is denied.

3. Staff's request for an ordered adjustment in both File No. EO-2020-0227 and EO-2020-0228 related to alleged imprudence in the administration of the DRI program is denied.

4. OPC's request for an ordered adjustment in File No. EO-2020-0228 related to alleged imprudence in non-incentive to incentive costs ratio is denied.

5. This order shall be effective on June 3, 2022.

BY THE COMMISSION

Morris L Woodruff

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 4th day of May, 2022.

Morris L Woodruff

Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

May 4, 2022

File/Case No. EO-2020-0227

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

Morris L Woodruff

Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.