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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: EA-2022-0328

SURREBUTTAL TESTIMONY

OF

MATTHEW W. DORITY

ON BEHALF OF

EVERGY MISSOURI WEST

**Kansas City, Missouri
January 2023**

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SURREBUTTAL TESTIMONY

OF

MATTHEW W. DORITY

CASE NO. EA-2022-0328

I. INTRODUCTION

1

2 **Q: Please state your name and business address.**

3 A: My name is Matthew W. DORITY. My business address is 1200 Main, Kansas City, Missouri
4 64105.

5 **Q: Are you the same Matthew W. DORITY who previously submitted Direct and**
6 **Supplemental Direct testimony in this docket?**

7 A: Yes, I am.

8 **Q: What is the purpose of your Surrebuttal testimony?**

9 A: The purpose of my Surrebuttal testimony is to provide the Company's overall response to
10 Staff's recommendation to deny Evergy Missouri West a certificate of convenience and
11 necessity ("CCN") to operate the Persimmon Creek Wind Farm ("Persimmon Creek" or
12 the "Project"). Other Company witnesses, as outlined below, will also respond to certain
13 aspects of Staff's recommendations. I will also update the Commission on the current

1 timetable for closing the transaction, and respond to certain miscellaneous conditions and
2 concerns about the Project raised by Staff.

3 **Q: Are other Company witnesses filing Surrebuttal testimony?**

4 A: Yes, two other Company witnesses are filing Surrebuttal testimony to address various
5 aspects of Staff's Rebuttal testimony as follows:

6 1. Jason Humphrey addresses Staff's environmental concerns raised in the Rebuttal
7 testimony of Staff witness Shawn Lange. He also addresses Staff's "in-service"
8 criteria. He further addresses Staff witness Matthew Young's cost-related
9 testimony and recommendation for a Production Tax Credit ("PTC") tracker, and
10 other aspects of Staff's recommendations related to costs analyses and delaying this
11 proceeding.

12 2. Kayla Messamore responds to issues raised in the testimonies of Staff witnesses J
13 Luebbert, Claire Eubanks, and Brad Fortson related generally to EMW's need for
14 Persimmon Creek, economic analysis utilized in supporting this application, and
15 the use of the Company's Integrated Resource Plan ("IRP") in supporting resource
16 acquisition decisions including how Staff's concerns with the IRP process are
17 misplaced and incorrect.

18 **Q: What is the Staff recommendation as it pertains to the Company's application for an
19 Operating CCN for Persimmon Creek?**

20 A: Staff witness Luebbert summarizes the Staff recommendation that the Commission reject
21 Evergy Missouri West's application for a CCN. According to Staff, EMW's application
22 and the supporting testimony do not justify the Persimmon Creek wind farm project despite
23 EMW's analyses and clearly identified needs, which EMW has demonstrated supports

1 meeting the Tartan factors. Staff suggests that if Evergy Missouri West were to file a new
2 CCN application, it should include updated analysis and subsequent rounds of testimony.
3 Alternatively, Staff recommends that the Commission extend the procedural schedule in
4 this case, including the opportunity for responsive testimony. In the event that the
5 Commission determines that approval of the CCN is appropriate, Staff recommends that
6 the Commission not make a decision in this case regarding Evergy Missouri West's
7 decisional prudence of the Persimmon Creek Wind Project, and include several conditions
8 in the order approving the CCN.

9 **Q: Do you agree with these recommendations?**

10 A: No, there are numerous flaws and shortcomings that I and witnesses Messamore and
11 Humphrey address in our surrebuttal testimonies. If adopted, Staff's narrow and short-
12 sighted recommendation most likely places increased risk on EMW in affordably and
13 reliably serving its customers and most certainly increases EMW customers' exposure to
14 market price volatility. Based on the Company's most recent IRP Preferred Plan,
15 Persimmon Creek was shown to provide a \$130 million Net Present Value Revenue
16 Requirement ("NPVRR") benefit to Evergy Missouri West customers.

17 **Q: What is your overall reaction to Staff's recommendation?**

18 A: First, contrary to Staff's overly narrow viewpoint of what "need" means, EMW has a clear,
19 present, and ongoing need to add energy resources to its generation portfolio, and to add
20 more renewable generation to the Company's energy position. This is described in great
21 detail by Company witness Messamore.

22 The legal standard for granting a certificate of convenience and necessity under
23 existing statutes and case law will also be addressed in EMW's briefs. However, based

1 upon my discussion with EMW’s legal counsel, it is my understanding that the appellate
2 courts have found that no specific criteria have been set out by statute as to when a
3 certificate is “necessary or convenient for the public service” and thus should be issued.
4 Instead, whether “the evidence indicates the public interest would be served in the award
5 of the certificate” is within the discretion of the Commission.¹ The courts have also held
6 that “necessity” does not mean essential or absolutely indispensable, but that an additional
7 service would be an improvement justifying its cost. In other words, any improvement
8 which is important to the public convenience and desirable for the public welfare may be
9 regarded as necessary. The Commission itself has adopted this view of “need” or
10 “necessity”.²

11 I am also deeply concerned that Staff’s adherence to an inappropriately narrow
12 viewpoint of when new generation resources are needed creates impossible “standards” by
13 which to determine the need for adding new resources. As Company witness Messamore
14 describes in more detail, the approach Staff is taking seems to be founded on the premise
15 that the only prudent path a utility may take is to only add resources when it is required by
16 regulation or external requirements. Such an approach would seriously undermine
17 Evergy’s ability to effectively navigate the ongoing generation transition occurring across
18 the country and outlined in the Company’s IRP filings. Inaction until such criteria were
19 met is not only irresponsible, it could likely result in price volatility for Missouri customers

¹ *In re Application of KCP&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, 515 S.W.3d 754, 759 (Mo. App. W.D. 2016)

² *Report and Order*, pp. 12-13, *Re Application of KCP&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri* (March 2, 2016).

1 as an increasing reliance on market purchases or having to add resources on a reactive basis
2 would be a likely outcome.

3 Staff also appears to suggest through the testimony of Staff witness Fortson that the
4 IRP is nothing more than a modeling exercise and that it has almost no value in informing
5 actual resource decisions because the Preferred Plan it identifies may change over time.
6 (Fortson Rebuttal, pp. 19-20) Contrary to this assertion, the Commission rules and prior
7 Commission decisions point to a longstanding precedent that the IRP provides the
8 fundamental basis for utility resource planning, and as such provides the basis for utility
9 resource decisions. In fact, in assessing supply resources and obligations, it is paramount
10 that long-term resource planning be utilized due to the significant lead time often required
11 to place generation resources in service and the long-lived characteristics of investments
12 in generation resources.

13 Staff's position also fails to acknowledge that circumstances in the industry
14 generally, and for EMW specifically, have changed in such a way that there is in fact a
15 need for new renewable generation resources now. As the Company's IRP analysis shows,
16 this need will grow in the years to come, and as supported by witness Messamore such
17 investments are demonstrated to result in the least cost option to meet customers' energy
18 needs. In fact, on January 18, 2023, Evergy announced its intent to issue RFPs to acquire
19 more generation resources to serve its customers. (See attached Schedule MWD-1). Over
20 the next 10 years, based on its resource planning, Evergy (on a total company basis) plans
21 to add more than 3,500 MW of renewable energy and retire more than 1,900 MW of coal-
22 based fossil generation. Persimmon Creek is simply the near-term step in executing on

1 that plan. As Company witness Messamore has described in detail, Persimmon Creek
2 fulfills a need today and will immediately start providing benefits to EMW customers.

3 Staff also raises concerns regarding the economic analysis done by EMW, and
4 suggests this puts into doubt the need and economic feasibility for Persimmon Creek and
5 the benefits to customers. Ms. Messamore provides support to show how these allegations
6 are incorrect and Staff's concerns are misplaced as it related to IRP modeling. Company
7 witness Humphrey details how the specific RFP process and LCOE analysis appropriately
8 compares alternative options on an "apples to apples" basis, and definitively shows
9 Persimmon Creek to be the best option evaluated for EMW customers.

10 Staff's assertion that EMW may not make the step to acquire Persimmon Creek
11 because it does not fully satisfy its full need essentially guarantees that EMW's only option
12 is to do nothing and not make any further progress toward transitioning its fleet to a cleaner
13 and more environmentally sustainable future and completely ignores the \$130 million
14 NPVRR benefit to EMW customers that the IRP demonstrates the acquisition of
15 Persimmon Creek will provide. Staff's recommendations should be rejected and the
16 Commission should grant EMW's CCN request for Persimmon Creek.

1 factors related to identifying whether the service is needed, whether the proposal is
2 economically feasible, and whether the service promotes the public interest.

3 **Q: Does the Company agree with Staff's position that EMW has not demonstrated a need**
4 **for the Persimmon Creek wind farm project?**

5 A: No. Staff witnesses Luebbert, Eubanks, and Fortson raise various concerns with respect to
6 the Company's IRP process, assumptions around energy pricing, and capacity positions to
7 suggest that the Company has not clearly established EMW has a need for Persimmon
8 Creek. Company witness Messamore addresses each of these concerns and shows how
9 these allegations are without merit.

10 **Q: Does the Company agree with Staff's position that Persimmon Creek is not**
11 **economically efficient?**

12 A: No. Staff cannot reasonably reach this conclusion without completely ignoring or
13 significantly distorting the substantial analyses, support and testimony advanced by the
14 Company's technical experts in this proceeding. EMW has unequivocally demonstrated
15 economic feasibility for Persimmon Creek. Company witnesses Messamore and
16 Humphrey both address claims raised by Staff witnesses who disagree with some of the
17 modeling assumptions and subsequent results from the IRP and LCOE analysis used to
18 support this application. In addition, Company witness Messamore addresses Staff's
19 concerns with using the IRP as support for near-term resource decisions due to the
20 frequency at which the preferred plan changes. Messamore explains as current and

1 projected assumptions change, the appropriateness of resource plans can change as well,
2 which is why the Commission has an annual update process to account for this reality.

3 Company witness Humphrey describes the appropriateness of the LCOE used in
4 the RFP process to do an “apples to apples” comparison of alternative resource options. He
5 also shows how the separate analysis performed on curtailment, transmission risk, and
6 market revenues of Persimmon Creek compared to the alternative resources evaluated
7 confirm that Persimmon Creek offered the least curtailment, the least transmission risk to
8 Evergy Missouri West and the most market revenue in all scenarios studied for all three
9 years studied, demonstrating economic efficiency.

10 **III. THE GRANT OF AN OPERATING CCN FOR PERSIMMON CREEK IS IN THE**
11 **PUBLIC INTEREST.**

12 **Q: Staff witnesses assert that it is not in the public interest for the Commission to grant**
13 **an operating CCN to Evergy Missouri West at this time. Do you agree?**

14 A: Absolutely not. Staff witness Luebbert’s discussion of the public interest focuses largely
15 upon the concept of the utility requesting permission to construct and/or operate a resource
16 that is not needed, based upon Staff’s overly narrow view of what “need” or “necessity”
17 means. As Company witness Messamore’s testimony has shown, there is a clear need for
18 Evergy Missouri West to add capacity and energy to our generation portfolio, and
19 specifically Persimmon Creek represents the least cost wind resource available at this time

1 that will provide customers with the greatest benefits. Therefore, much of Mr. Luebbert's
2 discussion of public interest is misplaced or otherwise rendered moot.

3 **Q: Has the Commission already addressed in previous orders the public interest and**
4 **benefits of constructing and operating renewable energy facilities, particularly the**
5 **benefits of wind facilities?**

6 A: Yes. There are numerous Commission orders which express the view that the construction
7 and operation of renewable energy facilities are in the public interest.⁴ A recent expression
8 of support for Missouri utilities' development of wind generation involved Empire's
9 application for a CCN to acquire wind generation facilities to serve its Missouri retail
10 customers in File No. EA-2019-0010. In that case, the Commission made the following
11 findings of fact:

12 Wind generation has benefits other than cost savings, including helping to
13 diversify Missouri's energy generation mix, providing renewable energy,
14 and providing local and state economic benefits such as property taxes, land
15 lease payments, and jobs.

16 Wind generation also helps corporations in Missouri to perform more
17 competitively, as there is an emergence of corporate customer interest in
18 renewable energy and corporations are seeking increased options for
19 purchasing renewable power.

20 An increased number of energy customers (individuals, businesses, and
21 governments) are seeking renewable energy to meet their own sustainability
22 goals⁵

23 [and in its conclusions of law, stated:]

24 It is the public policy of this state to diversify the energy supply through the
25 support of renewable and alternative energy sources. The Commission has

⁴ See e.g., *Report and Order*, File No. EA-2015-0256, pp. 15-16 (March 2, 2016)(GMO Community Solar CCN); *Report and Order*, p. 4, para. 9, File No. EO-2013-0307, (April 24, 2013)(Ameren Missouri's Voluntary Green Program); *Report and Order*, p. 14, para. 29, File No. EA-2015-0146 (April 27, 2016)(Ameren Transmission Company CCN); *Report and Order*, pp. 21-22, para. 53-56, File No. EA-2019-0010 (June 19, 2019)(Empire Wind CCN).

⁵ *Report and Order*, pp. 21-22, paras. 53-56, Re Empire District Electric Company, File No. EA-2019-0010 (June 19, 2019)(Empire Wind CCN)

1 also previously expressed its general support for renewable energy
2 generation because it provides benefits to the public.⁶

3 [and]

4 The Commission finds that the Wind Projects will promote the public
5 interest. In addition to the low cost generation that the Wind Projects will
6 provide, these projects meet the policy goals, as identified by the
7 Commission in the *Grain Belt Express Clean Line LLC* case, to diversify
8 energy resources and develop “economical renewable energy sources”.
9 Additionally, the Wind Projects are also important to satisfy the public
10 interest in regard to the use of renewables, especially through the sale of
11 RECs to non-residential customers as set out as a condition in the *Non-*
12 *Unanimous Stipulation and Agreement* and adopted in this order as a
13 condition of the certificates.⁷

14 **Q: Has the Commission found that development of wind facilities will benefit the public**
15 **interest in a transmission line CCN case?**

16 **A:** Yes. In File No. EA-2016-0358, the Commission's order on remand in Grain Belt's CCN
17 application for permission to construct a transmission facility designed to bring renewable
18 energy into the state, the Commission stated:

19 Consistent with these state policies, this Commission has in the past
20 expressed strong support for the “development of economical renewable
21 energy sources to provide safe, reliable, and affordable service while
22 improving the environment and reducing the amount of carbon dioxide
23 released into the atmosphere.”⁸

24
25 The Grain Belt Project will lower energy production costs in Missouri under
26 future energy scenarios developed by MISO and will have a substantial and
27 favorable effect on the reliability of electric service in Missouri, particularly
28 through its effect on wind diversity in the region. Geographic diversity in
29 wind resources inevitably helps to reduce system variability and uncertainty
30 in regional energy systems. **In addition, the Project will provide positive**
31 **environmental impacts, since displacement of fossil fuels for wind**

⁶ Id. at p. 32, para. G.

⁷ Id. at p. 42, para. 5.

⁸ Report and Order on Remand, p. 45-47, Re Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing It to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage Direct Current Transmission Line, File No. EA-2016-0358 (March 20, 2019)(Grain Belt Transmission Line CCN).

1 power will reduce emissions of carbon dioxide, sulfur dioxide, and
2 nitrogen oxide, and reduce water usage in Missouri.⁹

3 There can be no debate that our energy future will require more
4 diversity in energy resources, particularly renewable resources. We are
5 witnessing a worldwide, long-term and comprehensive movement
6 towards renewable energy in general and wind energy specifically.
7 Wind energy provides great promise as a source for affordable,
8 reliable, safe, and environmentally-friendly energy. The Grain Belt
9 Project will facilitate this movement in Missouri, will thereby benefit
10 Missouri citizens, and is, therefore, in the public interest.¹⁰

11 **Q: Please summarize the reasons that it is in the public interest for the Commission to**
12 **grant an operating CCN in this case.**

13 **A:** As the Company has explained in its Application and supporting testimony, it is in the
14 public interest for the Commission to grant an operating CCN for Persimmon Creek for the
15 following reasons.

16 First, the addition of Persimmon Creek to the Company's generation fleet is
17 projected to reduce EMW customer costs through long-term, low-cost energy and capacity
18 to meet EMW and its' customers' needs. Persimmon Creek will provide renewable energy
19 certificates and is eligible for 100% of the available federal production tax credits. In
20 addition, as an owned resource, Persimmon Creek will be under Evergy's operational
21 control, and its costs will be recovered through base rates and operations and maintenance
22 expense, as opposed to purchased power costs. Adding Persimmon Creek to Evergy
23 Missouri West's generation portfolio is consistent with positions taken by the PSC, its
24 Staff, and other parties that have encouraged the Company and its predecessors to invest
25 in its own generation, especially renewable resources, instead of relying on power purchase

⁹ Id. at 46 (emphasis added).

¹⁰ Id. at 47 (emphasis added).

1 agreements and the wholesale electricity markets.¹¹ Persimmon Creek is being procured as
2 part of executing Evergy's Preferred Plan as identified through the Integrated Resource
3 Planning process.

4 Second, Evergy Missouri West's decision to add Persimmon Creek to its resources
5 is economically feasible. High-capacity factor wind generation from western Oklahoma is
6 one of the cheapest forms of renewable energy in the United States. After the competitive
7 RFP process, Persimmon Creek was selected because it had the lowest levelized cost of
8 energy of all projects. The concerns that Staff identified with the economic modeling
9 performed by the Company in its IRP and subsequent RFP process are either unfounded or
10 immaterial compared to the overall analysis which demonstrated economic benefits to
11 EMW customers, as described by Company witnesses Messamore and Humphrey.
12 Furthermore, Company witness Humphrey describes how the Project is attractive
13 compared to alternative available projects from a permitting and supply chain perspective
14 because it is already operational with the lowest congestion risk for delivery to Missouri
15 customers. Persimmon Creek is one of the most advanced and efficient wind generating
16 facilities now in operation, with a proven operational aggregate Net Capacity Factor of
17 approximately 50% over the past four years as described in Mr. Humphrey's testimony.

18 Third, Persimmon Creek will broaden the renewable generation portfolio of EMW
19 which currently owns no wind resources. The addition of Persimmon Creek's 198.6 MW

¹¹ See Report & Order at 14-15, In re KCP&L Greater Mo. Operations Co. Application for a CCN regarding Solar Generating Facilities in Western Mo., No. EA-2015-0256 (Mar. 2, 2016), aff'd United for Missouri v. PSC, 515 S.W.3d 754, 764-65 (Mo. App. W.D. 2016) (CCN issued for Greenwood solar facility); Report & Order at 81-85, 98-99, In re KCP&L Greater Mo. Operations Co. Rate Case, No. ER-2010-0356 (May 4, 2011), aff'd State ex rel. KCP&L Greater Mo. Operations Co. v. PSC, 408 S.W.3d 153, 161-62 (Mo. App. W.D. 2013) (Crossroads Energy Center included in rate base).

1 will bring Evergy Missouri West in line with Evergy's other public utilities which
2 collectively own and operate over 575 MW of wind resources.

3 In addition, having EMW operate the Persimmon Creek Wind Farm aligns with
4 Missouri's renewable energy policies, including the Renewable Energy Standard Law,
5 Section 393.1020, et seq., and provisions of the Plant in Service Accounting Law.¹² The
6 addition of Persimmon Creek to EMW's resources will provide environmental benefits and
7 provide a diversified energy resource to serve the community as Evergy transitions its
8 generation fleet to achieve the target of net-zero emissions by 2045, with an interim goal
9 of a 70% carbon reduction in such emissions from 2005 levels by 2030.

10 Taken together, all these factors, including other factors discussed in the
11 Company's supporting testimony, demonstrate that the granting of an operating CCN is in
12 the public interest.

13 **IV. THE COMMISSION SHOULD REJECT THE CONDITIONS PROPOSED BY**
14 **STAFF**

15 **Q: The Commission Staff has proposed several conditions if the Commission grants**
16 **EMW an operating CCN in this case. Do you have a response to their proposed**
17 **conditions?**

18 **A:** Yes. I will address each of the Staff's proposed conditions below.

¹² See, Section 393.1400.4.(3) RSMo.

1 **Q: If the Commission determines that approval of the CCN is appropriate, Staff**
2 **recommends that the Commission not make a decision in this case regarding Evergy**
3 **Missouri West’s decisional prudence of the Persimmon Creek wind farm project. Do**
4 **you agree?**

5 A: It is interesting that Staff would make that argument in this case because Evergy Missouri
6 West did not ask for decisional prudence as part of its application. That said, while such
7 decisions of prudence may have historically been reserved for a rate case, the Commission
8 recently recognized and explicitly stated as part of its revised CCN rule that it is appropriate
9 and the Commission in fact may consider decisional prudence as part of a CCN request.
10 *See* 20 CSR 4240-20.045(2)(C). Staff’s position in this case and other CCN dockets to
11 only consider prudence in a rate case ignores this amendment of the CCN rule and the
12 policy change that the amendment recognizes. In several aspects it also ignores the fact
13 that this case involves an operating CCN for a wind farm that has a historical operating
14 track record. Unlike requests for CCNs to construct a new facility, in this case, Persimmon
15 Creek will immediately begin serving and providing benefits to EMW customers. As a
16 result, this case is ripe for a determination of decisional prudence (as discussed in more
17 detail below) if the Commission desires to make this finding based upon the competent and
18 substantial evidence in this case.

19 **Q: Would you elaborate on the distinction in this case from traditional CCN proceedings**
20 **in which the public utility is requesting authority to construct a particular generating**
21 **facility?**

22 A: Yes. In this case, the Company is requesting the first operating CCN required under the
23 new rule. An acquisition such as Persimmon Creek would not have even been part of a

1 CCN request prior to the recent rule change. The requirements spelled out in the revised
2 rule for an operating CCN are specifically identified and much more streamlined compared
3 to the additional requirements for a CCN request to construct a new resource. Staff brings
4 up many issues and recommendations that are beyond the scope of an operating CCN
5 proceeding and while I would characterize many as not necessary or an overreach, at best
6 they would be more appropriate to be considered in a rate case as opposed to an operating
7 CCN docket.

8 **Q: Staff also recommends certain conditions be included in the Order approving the**
9 **CCN. Will you address these conditions?**

10 A: Yes. First, Staff recommends that the Commission order that the in-service criteria
11 contained in attachment SEL-2 to Shawn Lange’s rebuttal testimony are appropriate for
12 use in a future case to determine whether the Persimmon Creek project is in-service. As
13 Company witness Humphrey addresses, many of the items are reasonable. However, other
14 than testing the Company’s Supervisory Control and Data Acquisition (“SCADA”)
15 capabilities (part 2b) after the six months of transition operation, all of these items have
16 already been satisfied when the wind farm went into Southwest Power Pool (“SPP”) service
17 in 2018. The Company’s concern is with the potential expense of recertifying an asset that
18 has already been performing in SPP service. Despite these concerns, the Company would
19 accept Staff’s proposed in-service criteria to gain approval of the CCN.

1 **Q: Staff also recommends that the CCN should be conditioned on any future moneys lost**
2 **due to loss of production tax credits, investment tax credits and market energy sales,**
3 **or moneys paid for additional projects to meet compliance with the Southwest Power**
4 **Pool resource adequacy requirement, associated with any change in operating the**
5 **facility due to an Incidental Take Permit (“ITP”), Habitat Conservation Plan**
6 **(“HCP”), or the like should not be borne by the ratepayers but by the shareholders.**
7 **Do you agree with this Staff condition?**

8 A: Not at all; this is a significant over-reach and likely confiscatory. Staff’s recommendation
9 is outside of the traditional regulatory construct in Missouri. As the Commission knows,
10 customers under Missouri law and customary practice pay for the cost of providing service
11 to them. Shareholders provide the capital for the service and are entitled to the opportunity
12 to earn a reasonable return on their investments. The Commission does not use hindsight
13 to review the prudence of decisions to acquire generating assets. All such decisions are
14 based upon the information known at the time of the decision. The acceptance of Staff’s
15 proposed condition would clearly break the historical regulatory compact between public
16 utilities and their customers and condition recovery of the asset provided in a CCN upon
17 speculative market events in the future. Such a decision would have far reaching impacts
18 on the regulation of public utilities in Missouri.

19 **Q: Does the Company have a further response to this Staff condition?**

20 A: Yes. Company witness Humphrey also addresses this condition in his Surrebuttal
21 testimony.

22 **Q: Staff witness Luebbert compared the economic risks of Persimmon Creek with the**
23 **risks associated with Independent Power Producers who have to bear that economic**

1 **risk when developing a resource that they will take to market. Is this a valid comparison**
2 **and concern?**

3 A: No. The regulatory construct for regulated public utilities like EMW is completely different
4 from unregulated IPPs. Mr. Luebbert’s testimony itself highlights this distinction when as
5 he observes:

6 Evergy Missouri West’s ratepayers are captive because they do not
7 generally have a choice of their electric provider and are required to pay the
8 Commission approved tariffed rates for use of the service. In return, Evergy
9 Missouri West is tasked with building and maintaining generation that is
10 sufficient to serve the needs of the ratepayers. Evergy Missouri West will
11 ultimately seek recovery of and a return on the initial investment for the
12 Persimmon Creek project. These costs will be borne by its captive
13 ratepayers who do not have a say in the generation procurement plans of the
14 company. Due to its status as a monopoly, once the plant is included in
15 Evergy Missouri West’s rates, shareholders will be insulated from the risk
16 that the revenues from the wind facility do not exceed the costs. That risk is
17 borne by the captive ratepayers. (Luebbert Rebuttal, p. 10)

18 This clearly demonstrates that Staff witness Luebbert understands that if the Commission
19 finds there is a need for Persimmon Creek and is granted an operating CCN, it is reasonable
20 for customers to assume the economic risks associated with it, just as they do and have
21 with respect to all of the other resources used to serve them. Consequently, drawing such
22 analogies with IPPs that do not have the same obligation to provide sufficient needed
23 resources to serve load is inappropriate.

24 Unfortunately, Mr. Luebbert attempts to distort the meaning and purpose of the
25 traditional regulatory compact by suggesting that it is somehow a flaw that customers do
26 not have a voice in generation procurement plans. Of course, this is one of the reasons that
27 the Commission has required the use of the IRP process which includes the participation

1 of the Staff, Public Counsel and other stakeholders in reviewing the Company's plans
2 related to the construction and operation of generation units and demand-side programs.

3 **Q: In this same section of testimony discussing the "Monopoly Status of Evergy**
4 **Missouri West" Staff witness Luebbert proposes a "hold harmless" provision. Is this**
5 **an appropriate solution to propose as a condition?**

6 A: Absolutely not. There are a variety of reasons why such an unprecedented condition is both
7 unreasonable and unjust. Under Staff's recommended condition, EMW's return could be
8 determined by SPP wholesale energy market conditions that are outside of the Company's
9 control. Company witness Messamore addresses this potential solution raised by Staff. I
10 would reiterate that under the existing regulatory compact, shareholders provide the capital
11 for the resources necessary to provide electricity to meet the needs of the customers.
12 Customers pay for their electric service based upon the revenue requirements needed to
13 compensate shareholders for providing the necessary capital to serve customers. The
14 Commission regulates the public utility in a manner that balances the interests of customers
15 and shareholders.

16 **Q: Has the Commission rejected a "hold harmless" condition such as the one proposed**
17 **by Mr. Luebbert?**

18 A: Yes. In File No. EA-2019-0010 involving Empire District Electric Company's request for
19 a CCN to construct and operate a wind facility, the Commission considered and rejected
20 "hold harmless" and customer protection plan conditions proposed by the Public Counsel.
21 On page 30, paragraph 72 of the Commission's *Report and Order* in that file, the
22 Commission stated:

23 72. Public Counsel's proposed "hold harmless" and "customer protection
24 plan" conditions would require Empire to make the ratepayers whole

1 through rates if the Wind Projects did not generate cash through the holding
2 companies equal to or greater than the costs of the Wind Projects. These
3 proposed conditions are not reasonable because they would require Empire
4 through rates to forgo any return on or return of its authorized capital
5 investments.¹³ (footnote omitted)

6 **Q: Staff also recommends that any future expense for any equipment that may be used**
7 **to study or alter migratory or flight patterns of any aviaries that is threatened or**
8 **endangered in the region that this facility is sited, should not be borne by ratepayers**
9 **but by the shareholders. Do you agree with this Staff condition?**

10 A: No. As Company witness Humphrey explains, such a condition would be unprecedented
11 and it is unnecessary. Persimmon Creek is fully in compliance with all environmental laws
12 and regulations today. The potential for a rule or law to change in the future is not a reason
13 for shareholders to solely bear that risk, consistent with the existing regulatory compact
14 that I discuss above. If the law were to change, shareholders would play their role to
15 provide the capital for investments which would then be subject to review for prudence
16 during a future rate case. It has not been the historical practice for Missouri regulation and
17 is not appropriate today that the shareholder be required to bear the burden of a previously
18 compliant regulated asset that has had to be updated to meet the standards of law at a future
19 date.

¹³ Report and Order, p. 30, para 72, Re Application of Empire District Electric Company for a Certificate of Convenience and Necessity related to Wind Generation Facilities, File No. EA-2019-0010 (June 19, 2019).

1 **Q: Staff witness Young recommends that the Commission order Evergy Missouri West**
2 **to track production tax credits accrued on its books so that they can be available for**
3 **the Commission’s consideration in Evergy Missouri West’s next rate case. Do you**
4 **agree with this Staff condition?**

5 A: No. Staff’s position on this condition is quite disingenuous and inconsistent with its past
6 arguments against the use of trackers. It is also inconsistent with the Commission’s
7 previous decisions on tracker requests and accounting authority orders (“AAO”). As I will
8 discuss below, the Commission has held that trackers and other deferrals should be
9 infrequently approved and rarely utilized. The Commission has held that trackers should
10 apply to only extraordinary items and not routine costs. Trackers should apply to costs that
11 are significant and volatile in nature. The Production Tax Credit does not meet any of these
12 requirements. It is not extraordinary, unusual, or infrequent, but it has been in existence
13 for many years and available to promote the construction and operation of wind and other
14 renewable facilities. I am also unaware of any instance in which the Commission has
15 deferred the PTC impact to any future rate case.

16 **Q: Please explain your understanding of the standard that has been utilized by the**
17 **Commission to review requests for trackers and AAOs.**

18 A: The Commission has previously decided – and it has been affirmed by the Missouri Court
19 of Appeals – the “use of trackers should be limited because they violate the matching
20 principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility

1 has to operate efficiently and productively under the rate regulation approach employed in
2 Missouri.”¹⁴

3 As the Commission explained in its 2019 decision involving a request for an AAO
4 by Spire Missouri¹⁵, the Commission has evaluated requests for AAOs to determine if they
5 are “extraordinary events.” The USOA General Instruction No. 7 defines “extraordinary
6 items” as follows:

7 *Extraordinary items.* It is the intent that net income shall reflect all items of
8 profit and loss during the period with the exception of prior period
9 adjustments Those items related to the effects of events and
10 transactions which have occurred during the current period and which are
11 of **unusual nature and infrequent occurrence** shall be extraordinary
12 items. Accordingly, they will be events and transactions of significant effect
13 which are **abnormal and significantly different from the ordinary and**
14 **typical activities of the company**, and which would **not reasonably be**
15 **expected to recur in the foreseeable future.** (In determining significance,
16 items should be considered individually and not in the aggregate. However,
17 the effects of a series of related transactions arising from a single specific
18 and identifiable event or plan of action should be considered in the
19 aggregate.) To be considered as extraordinary under the above guidelines,
20 an item should be more than approximately 5 percent of income, computed
21 before extraordinary items. Commission approval must be obtained to treat
22 an item of less than 5 percent, as extraordinary.¹⁶

23 The Commission has applied the foregoing standard in several recent decisions.
24 For example, in In the Matter of the Application of Spire Missouri Inc. for an Accounting
25 Authority Order Concerning Its Commission Assessment for the 2019 Fiscal Year, File
26 No. GU-2019-0011, the Commission reviewed Spire’s request for an AAO related to its
27 2019 PSC Assessment. The Commission stated that “Extraordinary events are events that
28 are unusual, unique, and not-recurring. The classic example of any extraordinary event

¹⁴ Re Kansas City Power & Light v. Missouri Public Service Commission, 509 S.W.3d 757, 769 (Mo. App. 2016).
Re Kansas City Power & Light Company, Report and Order, pp. 50-51, Case No. ER-2014-0370 (September 2, 2015).

¹⁵ Re Application of Spire Missouri, Inc. for an Accounting Authority Order Concerning Its Commission Assessment for the 2019 Fiscal Year, Report and Order, pp. 14 (March 20, 2019).

¹⁶ 18 C.F.R. § Pt. 201, General Instruction No. 7. (Emphasis added.)

1 impacting utility operations and costs are the occurrence of natural disasters, or so-called
2 ‘acts of God,’ such as severe wind and ice storms, and major flooding.”¹⁷ In its Decision
3 portion of the *Report and Order*, the Commission reaffirmed that “the Commission has
4 previously found (and the Court has agreed) that the use of these deferral accounting
5 mechanisms ‘should be limited because they violate the matching principle, tend to
6 unreasonably skew ratemaking results, and dull the incentives a utility has to operate
7 efficiency and productively under the rate regulation employed in Missouri.”¹⁸ Rejecting
8 Spire’s request for an AAO, the Commission stated: “The evidence showed that the
9 Commission assessments are not extraordinary, unusual and unique, or nonrecurring.”¹⁹

10 In Re Kansas City Power & Light Company’s Request for Authority to Implement
11 a General Rate Increase for Electric Service, Case No. ER-2014-0370 et al. 12, Kansas
12 City Power & Light Company (“KCP&L”) and GMO sought trackers for transmission fee
13 expense, property tax expense, and CIP/cyber-security expense. Regarding the Company’s
14 transmission fee tracker request, on page 51 of its *Report and Order* in that case, the
15 Commission found that the “broad use of trackers should be limited because they violate
16 the matching principle, tend to unreasonably skew ratemaking results, and dull the
17 incentives a utility has to operate efficiently and productively under the rate regulation
18 approach employed in Missouri,” and even though KCP&L’s transmission costs had
19 increased over the past several years, found that “KCPL’s transmission costs are normal,
20 ordinary and recurring operating costs, and not extraordinary.” On page 54 of the same
21 *Report and Order*, under its Conclusions of Law and Decision, the Commission found that

¹⁷ *Report and Order*, pp. 10-11, Re Application of Spire Missouri, Inc. for an Accounting Authority Order Concerning Its Commission Assessment for the 2019 Fiscal Year, (March 20, 2019).

¹⁸ *Id.* at 16.

¹⁹ *Id.*

1 “[t]he evidence presented in this case showed that KCPL’s transmission costs, while having
2 increased in recent years, are normal, ordinary and recurring operation costs. These
3 recurring costs are not abnormal or significantly different from the ordinary and typical
4 activities of the company, so they are not extraordinary and, therefore, not subject to
5 deferral under the USoA [Uniform System of Accounts].” Using similar analysis, the
6 Commission also denied the Company’s request for trackers related to property tax expense
7 and CIP/cyber-security expense.²⁰

8 KCP&L and GMO appealed the Commission’s Report and Order to the Western
9 District of the Missouri Court of Appeals, which affirmed the Commission’s decisions on
10 all of the tracker issues.²¹ In its opinion, the court stated as follows:

11 The PSC denied KCPL’s request to use tracking mechanisms as to each of
12 these categories of expenses. This is the subject of KCPL’s Point Three
13 on appeal, considered first, in which KCPL claims the PSC erred in denying
14 its request for a “tracker” accounting deferral mechanism because the legal
15 conclusion by the PSC that only “extraordinary” items could be deferred as
16 regulatory assets is unlawful and unreasonable because it is contrary to the
17 Uniform System of Accounts (“USOA”), adopted by the PSC, because the
18 USOA does not require that revenues, expenses, gains or losses be
19 “extraordinary” in order to be deferred as a regulatory asset or liability.

20 The PSC has the power, pursuant to section 393.140(4), to prescribe
21 uniform methods of keeping accounts. The PSC has adopted a rule that
22 requires utilities to use the USOA to maintain their books and records. See
23 4 CSR 240–20.030. KCPL’s arguments regarding the USOA and its alleged
24 right to use a tracking accounting deferral mechanism completely ignore
25 that the PSC’s decision that only extraordinary expenses should be allowed
26 such treatment is a policy decision that has been made by the PSC and is
27 not dictated by whether, in the abstract, the USOA provides a mechanism
28 to defer costs, whatever the type. **The PSC has decided that the “use of
29 trackers should be limited because they violate the matching principle,
30 tend to unreasonably skew ratemaking results, and dull the incentives
31 a utility has to operate efficiently and productively under the rate
32 regulation approach employed in Missouri.”** The manager of the PSC’s

²⁰ Id.

²¹ Kansas City Power & Light Co. v. PSC, 509 S.W.3d 575, 770 (Mo.App. W.D. 2016).

1 auditing unit testified that the PSC will issue accounting authority orders
2 (“AAOs”), which serve to allow a utility to deviate the normal method of
3 accounting for certain expenses, most often associated with “extraordinary”
4 events. The request by KCPL for the “tracking” accounting mechanism is
5 the same as a request for an AAO, as it seeks to book a particular cost,
6 normally charged as an expense on a utility’s income statement in the
7 current period, to the utility’s balance sheet as a regulatory asset or
8 regulatory liability. The manager testified that the PSC:

9 in prior cases has stated that the standards for granting the authority
10 to a utility to defer costs incurred outside of a test year as a
11 regulatory asset are: 1) that the costs pertain to an event that is
12 extraordinary, unusual and unique, and not recurring; and 2) that the
13 costs associated with the event are material.

14 In affirming the Commission’s decision to deny KCP&L’s requests to use deferral
15 accounting, the Court deferred to the Commission, holding that it “will not second-guess
16 the PSC’s reasoned decision that only extraordinary items may qualify for deferral
17 treatment.”²²

18 **Q: In light of these decisions by the Commission and the courts, have you reached any**
19 **conclusions regarding the consistency of Staff’s recommendation for a PTC tracker**
20 **in this case with other precedents?**

21 A: Yes. In light of the recent nature of these decisions by the Commission and the Court of
22 Appeals, as well as the fact that the Commission has subsequently applied the same
23 analysis to other requests to make use of deferral accounting, I am of the opinion that this
24 analysis represents well-established, currently applicable and authoritative Commission
25 policy on this topic. As a result, it is clear that the Staff’s recommendation to condition
26 any approval of a CCN in this case with a PTC tracker condition would be inconsistent

²² *Id. at 8.*

1 with past practice supported and advocated by the Staff and ordered by the Commission,
2 as affirmed by the courts.

3 **Q: Does any other EMW witness address this Staff condition?**

4 A: Yes. Company witness Humphrey also addresses this condition in his Surrebuttal
5 testimony. The fact is that EMW customers will immediately begin receiving benefits of
6 this zero energy-cost resource flowing through the FAC prior to the asset being recovered
7 in base rates. This, combined with the fact that, while none of the operating and
8 maintenance expenses, and a partial 85% of the plant's depreciation expense with carrying
9 costs can be deferred until the asset is reflected in rates, already reflects an appropriate
10 balance between the Company, shareholders, and customers of EMW. For the period
11 between the acquisition and the next rate case, the PTC will be an offset to this regulatory
12 lag that EMW will incur on the investment until such a time Persimmon Creek is fully
13 recovered in rates. This is an appropriate and balanced treatment and is fully supported by
14 the existing FAC tariff and clear treatment under the PISA statute and historical
15 ratemaking. Therefore, the Commission should reject the Staff PTC tracker proposal.

16 **Q: Please respond to Staff's recommendation to extend the procedural schedule.**

17 A: The Commission must reject Staff's recommendation to delay this proceeding to allow for
18 more analysis by Staff, or allow for more rounds to testimony to address the facts in this
19 case. This proceeding has already been extended well beyond EMW's original filing
20 request and Evergy's acquisition contracts will not support any further delay. Were a delay
21 in decision granted by Commission, Evergy would not proceed with pursuing acquisition
22 of Persimmon Creek for EMW. We would be required to either not close the transaction
23 for the beneficial acquisition of Persimmon Creek or we would be required to close and

1 acquire Persimmon Creek in another part of Evergy's operations outside of Missouri. It is
2 imperative that EMW be authorized an operating CCN in a timely manner so that it may
3 acquire the Persimmon Creek Wind Farm, an asset which is currently available to it.
4 Company witness Humphrey describes in more detail why it is not practical to extend the
5 procedural schedule beyond April 2023.

6 **Q: Please summarize your testimony.**

7 A: The issuance of a Commission order by April 6, 2023 granting EMW an operating CCN,
8 and granting EMW permission to complete the acquisition and merger described in the
9 Application is in the public interest. This is supported by EMW's analyses and testimony
10 from its technical experts clearly demonstrating existing need for capacity and energy,
11 Persimmon Creek's successful operational history, and the absence of issues related
12 construction, siting, and related land acquisition issues. The need and economics driving
13 the selection of Persimmon Creek relative to other alternative options are unchanged with
14 the passage of the IRA: This Application is a straightforward acquisition of an out-of-state
15 renewable energy resource with four years of operating experience which will provide
16 immediate benefits to customers and enhance the Company's generation portfolio,
17 consistent with its Integrated Resource Plan.

18 For the reasons I have described above, the Commission should also reject the
19 various conditions proposed by Staff related to an approval of the CCN, as they are
20 generally not appropriate under the regulatory construct and certainly beyond the scope of
21 what needs to be considered in an operating CCN proceeding. While the Company did not
22 specifically ask for decisional prudence in its application, it is certainly within the
23 Commission's authority to address, and with the asset acquisition upon receipt of an

1 operating CCN that once granted and closed will immediately begin serving and benefitting
2 customers it is appropriate for the Commission to address decisional prudence. Finally,
3 there can be no further delay in the procedural schedule if Persimmon Creek is to be
4 acquired by EMW and provide benefits to its customers.

5 **Q: Does that conclude your testimony?**

6 **A:** Yes, it does.

Evergy Seeks to Add Generation Resources
Midwest projects of 50 MW or larger requested

KANSAS CITY, Mo. -- Jan. 18, 2023 -- Today, Evergy issued a Request for Proposals (RFP) for generation resources to serve its customers.

The all-source RFP solicits bids for Evergy's purchase or contracting of up to 1,240 megawatts (MW) of energy resources that will be in service by 2026. The RFP is Evergy's first since the passage of the Inflation Reduction Act. Any savings achieved as part of the federal incentives would benefit customers.

Resources must be at least 50 MW and interconnect to the Southwest Power Pool (SPP). Siting preference will be given to projects located in Kansas and Missouri, particularly located within Evergy's service area. Proposals are due by Feb. 28, 2023. Response and contact information are [available online](#). Proposals selected from the RFPs are subject to appropriate regulatory approvals.

Over the next 10 years, Evergy plans to add more than 3,500 MW of renewable energy and retire more than 1,900 MW of coal-based fossil generation. Projects selected through this RFP would fulfill plans to add up to 1,240 MW of renewable generation by 2026. Evergy has set a goal of 70 percent carbon reduction by 2030 (relative to 2005 levels) and a target to reach net-zero carbon emissions by 2045. The company expects a combination of supportive energy policies and evolving technology to enable the net-zero goal.

About Evergy, Inc.

Evergy, Inc. (NASDAQ: EVRG), serves 1.6 million customers in Kansas and Missouri. Evergy's mission is to empower a better future. Our focus remains on producing, transmitting and delivering reliable, affordable, and sustainable energy for the benefit of our stakeholders. Today, about half of Evergy's power comes from carbon-free sources, creating more reliable energy with less impact to the environment. We value innovation and adaptability to give our customers better ways to manage their energy use, to create a safe, diverse and inclusive workplace for our employees, and to add value for our investors. Headquartered in Kansas City, our employees are active members of the communities we serve.

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