BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

REPLY POST-HEARING BRIEF

COMES NOW the Office of the Public Counsel (the "OPC") and offers this Reply Post-Hearing brief.

Introduction

In its Initial Post-Hearing Brief, the OPC substantively addressed many of the issues in this case. The OPC maintains the arguments raised and discussed in its Initial Post-Hearing Brief. For brevity, the OPC does not repeat the majority of those arguments here.

The OPC offers this Reply Post-Hearing Brief to address arguments raised in the briefs of the other Parties regarding (1) application of the 95%/5% cost sharing mechanism; (2) the adjustment to the proposed securitization amount to account for Evergy West's imprudent resource planning; (3) the adjustment to the proposed securitization amount to account for the tax deduction Evergy West received; (4) the appropriate discount rate to use in determining whether quantifiable net present value benefits to customers exist; and (5) the proper allocation method.

Before addressing each of these issues, the OPC first addresses the Non-Unanimous Stipulation and Agreement that it, Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy West" or "EMW"), and the Staff of the Public Service Commission of the State of Missouri ("Staff") signed. (the "Stipulation," Doc. 74).

During the September 8, 2022 Agenda, the Commission determined it would reject the Stipulation. (Sept. 8, 2022 Agenda, http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6504). However, Chairman Silvey suggested that the Commission "rely on the content of the Stipulation to the extent that it is backed up in evidence . . . ." (*Id.*). The other Commissioners agreed. (*Id.*). The Commission has not entered an Order solidifying this decision.

Because the Commission intends to reject the Stipulation, all issues identified in the List of Issues and Proposed Hearing Schedule are open for Commission consideration. (Stipulation ¶¶ 14, 15, 18 (addressing the effect of a Commission decision to reject the Stipulation)).

The Commission should not only follow the agreements reflected in the Stipulation, but should also recognize each of the OPC's proposed adjustments in setting the amount of qualified extraordinary costs and apply the appropriate discount rate when determining whether quantifiable net present value customer benefits exist. (*See* Stipulation ¶¶ 7-8 (identifying the OPC's four proposed adjustments that remain open for Commission resolution and preserving the OPC's right to advocate for the use of a different discount rate)).

Issue 1e: Should EMW's recovery through securitized bonds include more than 95% of fuel and purchased power costs?

Evergy West's recovery through securitized bonds should not include more than 95% of the fuel and purchased power costs the Commission finds to be qualified extraordinary costs. (Ex. 201 "Mantle Rebuttal Testimony" 27-28, Doc. 112; Ex. 102 "Fortson Rebuttal Testimony" 7, Doc. 106; Ex. 100 "Bolin Rebuttal Testimony" 3-4, Doc. 104). Rather, the Commission should apply the 95%/5% cost sharing mechanism. (*Id.*). Both Staff and the OPC support this adjustment. (*Id.*; *see* Staff Initial Brief 5-9, Doc. 131). Staff, OPC, and Evergy West agreed to apply the 95%/5% cost sharing mechanism in the Stipulation. (Stipulation ¶ 7).

In its Initial Post-Hearing Brief, Evergy West contends that if the Commission rejects the Stipulation, it should allow Evergy West to recover 100% of the fuel costs. (Evergy West Initial Brief 12-15, Doc. 132). Evergy West argues that no provision of § 393.1700 RSMo. (the "Securitization Law") allows the Commission to apply the 95%/5% cost sharing mechanism. (*Id.* 12-13). Evergy West also makes several arguments that suggest that because it believes it prudently incurred the costs related to Storm Uri, the Commission must allow it to recover 100% of the costs. (*See id.* 14). The OPC will respond to each argument in turn.[1]

I. The Securitization Law Does Not Prohibit Applying the 95%/5% Cost Sharing Mechanism

Although the Securitization Law does not explicitly provide for application of a cost-sharing mechanism, nothing in the Securitization Law prohibits such application. *See generally* § 393.1700 RSMo. Similarly, nothing in the Securitization Law requires that an electrical corporation recover 100% of its prudently incurred costs. *See generally id.* Rather, the Securitization Law requires the Commission to include in its financing order a finding that the recovery of the amount of qualified extraordinary costs is "just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo.; *see* § 393.1700.1(17) RSMo.

In its Report and Order in The Empire District Electric Company d/b/a Liberty's ("Liberty") case requesting securitization of Storm Uri fuel and purchased power costs, the

[1] In its Initial Brief, Evergy West references Ms. Lena Mantle's contention that Evergy West should have curtailed its load during Storm Uri. (Evergy West Initial Brief 14-15). In its brief, Evergy West refers to this as an "extreme position." (*Id.* 14). However, when looking to the full context of Ms. Mantle's Rebuttal Testimony it becomes clear that Evergy West has misconstrued Ms. Mantle's position. (*Compare* Evergy West Initial Brief 14-15, *with* Mantle Rebuttal Testimony 29-30). Specifically, Ms. Mantle does not recommend that Evergy West limit its customers' electric consumption for long periods of time. (*See* Mantle Rebuttal Test. 29-30). Rather, she references a "controlled interruption" that would last "for an hour a day every other day for a few days." (*Id.* 30). This position recognizes that Evergy West's customers "had they known the magnitude of the cost Evergy West was incurring, and intending to pass on to them, would have accepted some short-term inconvenience to mitigate paying hundreds of millions of dollars over the next 15 years." (*Id.*). The Commission should disregard Evergy West's exaggeration of Ms. Mantle's suggestion.

Commission concluded that "allowing Liberty to use securitization to recover the five percent of its fuel and purchased power costs related to Winter Storm Uri that it would not be permitted to recover under traditional methods of rate making is not just and reasonable, nor is it in the public interest." (Report & Order 21, Case No. EO-2022-0040, Doc. 182). Because Evergy West also seeks to securitize fuel and purchased power costs related to Storm Uri, the Commission should maintain consistency between the two cases and should make the same finding in this case. (Ex. 16 "Lutz Surrebuttal Testimony" 3 (recognizing that "the Winter Storm Uri costs the Company seeks to recover through securitized bonds consist of fuel and purchased power costs," Doc. 100; Report & Order 21, Case No. EO-2022-0040).

II. Should the Commission Determine that Evergy West Prudently Incurred Costs Related to Storm Uri, it May Apply the 95%/5% Cost Sharing Mechanism

In other arguments regarding application of the cost sharing mechanism, Evergy West appears to argue that the Commission must allow it to recover 100% of its prudently incurred costs. (*See* Evergy West Initial Brief 13-15). However, this is not the case.

In referencing the National Regulatory Research Institute ("NRRI") Report, Evergy West implicitly argues that because it believes it prudently[2] incurred the costs related to Storm Uri, the Commission must allow it to recover 100% of those costs. (*See* Evergy West Initial Brief 14). It appears to argue that the Commission should avoid applying a cost sharing mechanism and only apply the prudency test. (*See* Evergy West Initial Brief 14; Tr. 263-64, V. II pdf 207-08 (Reed Testimony)). However, the NRRI Report, which Evergy West's witness, Mr. John Reed, cited in his Surrebuttal Testimony, recognizes that the prudency test "can allow some sharing of the risks

[2] The OPC also disputes the prudency of the Storm Uri costs because it asserts that Evergy West suffered higher costs due to its imprudent resource planning. (*See* OPC Initial Brief 14-29).

between investors and ratepayers." (Ex. 200 "The Prudent Investment Test in the 1980s" vi, Doc. 111; Ex. 18 "Reed Surrebuttal Testimony" 14-15, Doc. 102).

Similarly, as the Commission pointed out in its Report and Order in Liberty's securitization case, the Supreme Court of Missouri rejected the contention that a utility is entitled to recover 100% of its prudently incurred costs. *See Spire Mo. Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 233 (Mo. 2021) (stating "[i]mplicit in Spire's argument is an assertion that it is entitled to recover all prudent expenditures in its rates. This is not so."); (*see* Report & Order 20, Case No. EO-2022-0040). Rather, the Missouri Supreme Court concluded that "[i]n setting rates, the PSC has broad discretion to include or exclude expenditures to arrive at rates it deems to be 'just and reasonable' . . . ." *Id.* The Court recognized that the Commission's determination of what constitutes just and reasonable rates must be "supported by competent and substantial evidence and not arbitrary, capricious, or an abuse of discretion." *Id.* Based on these statements, the Commission has the discretion to apply the 95%/5% cost sharing mechanism in setting the amount of qualified extraordinary costs that Evergy West may recover through securitized utility tariff bonds. *See id.*

Therefore, the Commission should follow the agreement reached in the Stipulation and apply the 95%/5% cost sharing mechanism. (*See* Stipulation ¶ 7). In doing so, Evergy West's recovery through securitized bonds should not include more than 95% of its prudent fuel and purchased power costs.[3]

[3] Evergy West contends in its Initial Brief that because it "has already absorbed 5% of its 'baseline' level of the fuel and purchased power costs it incurred during Winter Storm Uri" that requiring it "to bear further extraordinary costs, which Staff has not claimed were imprudent, would be punitive." (Evergy West Initial Brief 14). However, this is not punitive. Rather, as the Commission concluded in the Liberty Storm Uri securitization case, allowing Evergy West "to recover the five percent of its fuel and purchased power costs related to Winter Storm Uri that it would not be permitted to recover under traditional methods of rate making is not just and reasonable, nor is it in the public interest." (Report & Order 21, Case No. EO-2022-0040).

Issue 1g: Should EMW's recovery through securitized bonds reflect a disallowance based on EMW's resource planning?

Yes, in setting the amount of qualified extraordinary costs that Evergy West may recover, the Commission should include an adjustment to account for Evergy West's imprudent resource planning, which led to it incurring higher costs related to Storm Uri. (*See* Mantle Rebuttal Test. 2-27). As the OPC explained in its Initial Brief, the OPC has raised a serious doubt as to the prudence of Evergy West's costs related to Storm Uri. (*See* OPC Initial Brief 17-27). Therefore, the burden switches to Evergy West to prove that it prudently incurred those costs. *In re Determination of In-Serv. Criteria for the Union Elec. Co. Callaway Nuclear Plant & Callaway Rate Base & Related Issues*, 27 Mo. P.S.C. (N.S.) 183, 193 66 Pub. Util. Rep. 4th 202, 212 (1985) (hereinafter "*Union Elec. Callaway*"). Evergy West has not and cannot meet that standard. For this reason, the Commission should include an adjustment in the amount of qualified extraordinary costs that Evergy West may recover to account for Evergy West's imprudent resource planning. Ms. Mantle provides a range of appropriate adjustments in her Rebuttal Testimony. (Mantle Rebuttal Test. 6, Ex. 201C Schedule 1 "LMM-R-1C," Doc. 112).

I. The OPC's Witness, Ms. Mantle, Properly Considered the Prudency Standard

In its Initial Brief, Evergy West contends that Ms. Mantle did not accurately conduct a prudency analysis. (Evergy West Initial Brief 20). However, as the OPC explained in its Initial Brief, Ms. Mantle's testimony and the OPC's proposed adjustment comport with the Commission's prudence standard originally adopted in *Union Electric Callaway,* 27 Mo. P.S.C. (N.S.) 183.

Specifically, in suggesting the proposed adjustment, Ms. Mantle considered other utilities and discussed how that comparison led to her conclusion that Evergy West did not prudently plan its resources. (*See* Mantle Rebuttal Test. 3-4, 12). Similarly, based on her years of experience

specifically evaluating the resource plans of Missouri utilities, Ms. Mantle authored a whitepaper entitled, "Resource Planning of a Vertically Integrated Utility in the RTO World." (Ex. 201P Schedule 2 "Mantle Whitepaper," Doc. 112). In that whitepaper, Ms. Mantle discusses what constitutes a prudent utility. (*Id.* 7[4]). Throughout her testimony, Ms. Mantle explains how Evergy West has failed to meet that standard. (*See generally* Mantle Rebuttal Test.).

Similarly, it cannot be said that the OPC relies on hindsight in suggesting this adjustment. (*See* Evergy West Initial Brief 20). Rather, the OPC has raised concerns with Evergy West's resource planning process, including its concerns with Evergy West's reliance on the energy market to meet its customers' needs, since at least 2017, more than three years prior to Storm Uri.[5] (*See* Ex. 207 "Robinett Rebuttal Testimony" 3, Doc. 118; Mantle Rebuttal Test. 9). Despite knowing of these concerns, it appears that Evergy West did nothing to address them. (*See* Mantle Rebuttal Test. 15). This is the very opposite of hindsight. *See Union Elec. Callaway*, 27 Mo. P.S.C. (N.S.) at 194 (stating that the relevant question becomes "[g]iven all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors

[4] As filed in EFIS, Ms. Mantle's whitepaper includes two different sets of page numbers. One set is associated with the whitepaper itself and appears in the bottom center of the page. The second is associated with the schedule as filed in EFIS and appears in the bottom left corner after the identifier "LMM-R-2 Page." For clarity, the OPC refers to the set of page numbers associated with the schedule as filed, the number appearing in the bottom left corner.

[5] For instance, on July 30, 2017, in a memorandum in response to KCP&L-Greater Missouri Operations' integrated resource plan preferred plan update, the OPC stated "the premature forced closure of large amounts of dispatchable base load-serving generation[] in favor of unknown capacity contracts through the SPP energy market raises prudency concerns moving forward by potentially producing significant stranded costs, increased risk exposure from market volatility and future reliability concerns." (Ex. 207P Schedule 3 "JAR-R-3" 5, Doc. 118 (footnote omitted)). The OPC noted that "[w]ith this preferred plan, it seems [KCP&L-Greater Missouri Operations] is moving from a vertically integrated electric utility to a utility that relies on the capacity and energy of other utilities." (*Id.*). In requesting that the Commission order Evergy West's predecessor to complete additional modeling, the OPC noted that "the SPP reserve margin requirements are going to be based on projected normal weather peak load rather than actual peak load moving forward." (*Id.* 5, 7). The OPC therefore "strongly recommend[ed] that the Company's future resource planning efforts consider more volatile peaking scenarios where there is an increase in the frequency and intensity of peak electricity demand." (*Id.* 8).

and *information known* or available to it when it assessed the situation?" (emphasis added)). The costs Evergy West incurred related to Storm Uri are the OPC's concerns coming to light.

Finally, Evergy West suggests that Ms. Mantle's approach establishes an "impossible standard" that requires "exceptional performance in every hour of every year." (Evergy West Initial Brief 20 (quoting Reed Surrebuttal Test. 16-18)). This is an inaccurate portrayal of Ms. Mantle's reasonable and measured testimony. Ms. Mantle herself acknowledges that "[t]here is no way to accurately plan for all extreme circumstances." (Mantle Rebuttal Test. 10). A prudent utility, however, sees the objective of resource planning as "meet[ing] its customers' loads 8,760 hours of the year at a reasonable cost that minimizes risk and values flexibility across a variety of various futures—some of which include extreme market prices." (Mantle Whitepaper 6). A prudent utility meets this standard through a "good resource portfolio," which "contains diverse types of generation resources, each with its own strengths and weaknesses that is chosen to meet the unique load demands of the utility's customers at all times while also minimizing the risk of high utility bills and loss of service." (Mantle Rebuttal Test. 18). Ms. Mantle continues, acknowledging that "[n]o one type of resource on its own can meet all of the requirements of a prudent resource plan. However a diverse portfolio of resources will." (*Id.*). In her whitepaper, Ms. Mantle also acknowledges that a prudent utility "sees value in being a part of a market . . . ." (Mantle Whitepaper 6).[6] It is this standard, not a standard of perfection, which Evergy West has failed to meet. (*See, e.g.*, Mantle Rebuttal Test. 11, 13, 19).

As the OPC explained in its Initial Brief, the OPC must only establish a "serious doubt" as to the prudence of Evergy West's costs related to Storm Uri. *See Union Elec. Callaway*, 27 Mo.

[6] In its Initial Brief, Evergy West points to Mr. Reed's arguments regarding a utility's participation in a RTO. (Evergy West Initial Brief 22). Ms. Mantle does not dispute that a prudent utility "sees value in being a part of a market . . . ." (Mantle Whitepaper 6). However, as Ms. Mantle points out, a prudent utility "does not build to meet the RTO planning reserve margin but meets the RTO planning reserve margin because it builds to meet its customers' needs." (*Id.*).

P.S.C. (N.S.) at 193. Once that doubt has been established, "the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent." *Id.* (citation omitted).

II. Evergy West Has Failed to Prove that it Prudently Incurred All of its Costs Related to Storm Uri

Here, the OPC contends that it has met its burden to establish a serious doubt. *See id.*; (OPC Initial Brief 14-29). Therefore, the burden switches to Evergy West to prove that it prudently incurred its Storm Uri costs. *Union Elec. Callaway,* 27 Mo. P.S.C. (N.S.) at 193. Here, Evergy West has failed to do so.

Evergy West attempts to tie the OPC's proposed adjustment to the retirement of Evergy West's Sibley generating unit. (Evergy West Initial Brief 17-18, 21-23). Although Ms. Mantle includes a single reference to the retirement of the Sibley plant in her Rebuttal Testimony, her testimony focuses on other aspects of Evergy West's resource planning as well. (*See* Mantle Rebuttal Test. 3). For instance, Ms. Mantle points to the combined resource planning completed by Evergy, Inc., Evergy West and Evergy Metro's parent company, which models the company as a single utility. (*See id.* 3-4 (stating that "[w]hen Evergy West needed to add generation capacity for Evergy West to meet the [Southwest Power Pool ('SPP')] resource adequacy requirements, Evergy began submitting to SPP the combined resources and loads of Evergy Metro and Evergy West.")). However, this is not how Evergy, Inc. operates. (*Id.*). Rather, "Evergy has chosen to not combine Evergy West and Evergy Metro into one utility." (*Id.* 4). Evergy Metro and Evergy West "each . . . seek[] different rates from their customers." (*Id.*). This combined resource planning process results in the "least cost resource plan option for **Evergy**." (*Id.* (emphasis in original)). This result may not be what is best for *Evergy West's* customers. (*See id.* 4-5 (explaining that

Evergy, Inc.'s decision to have Evergy West rely heavily on the SPP market without sufficient generating resources places great price risk on Evergy West's customers)).

Evergy West also asserts that it "did have sufficient capacity in 2019 to meet SPP's reserve margin requirements on a stand-alone basis, and it continues to do so today." (Evergy West Initial Brief 21). Importantly, Evergy West points only to *capacity* in this statement. (*See id.*). This ignores the distinction between capacity and *energy*. (Mantle Rebuttal Test. 11-12; Tr. 391-92, V. III pdf 122-23 (Mantle Testimony)). As Ms. Mantle stated "capacity is the maximum output an electricity generator can physically produce, measured in megawatts . . . ." (Mantle Rebuttal Test. 11). Energy, on the other hand, "is the amount of electricity a generator produces over a defined period of time." (*Id.*). As Ms. Mantle explained, Evergy West meets the *capacity* requirements because it has entered into *capacity-only* purchased power agreements with Evergy Metro. (*Id.*17). These agreements "transfer[] the *capacity* of generation resources for a payment. [They] do[] *not* include any energy from that generation." (*Id.* (emphasis added)). Therefore, although Evergy West may have the capacity to meet SPP's reserve margin requirements on a stand-alone basis,[7] it does not have the *energy* to meet that requirement. (*See id.* 24).

Storm Uri showed the perils of Evergy, Inc.'s resource plan for Evergy West. (*Id.* 9, 11). Specifically, although Evergy West had sufficient *capacity* to meet the SPP reserve margin requirements, because it could not claim any *energy* from the Evergy Metro capacity for which it contracted, it could not benefit from the sale of the energy generated from this capacity. (*Id.* 18 (explaining that Evergy Metro benefitted from the sale of its energy during Storm Uri, including the energy generated from the capacity attributed to Evergy West)). Therefore, Evergy West's

[7] As Ms. Mantle explained in her Rebuttal Testimony, Evergy West does not submit plans to SPP based only on Evergy West's resources. (Mantle Rebuttal Test. 23-24). Rather, Evergy, Inc. submits plans based on a "combined view" of Evergy West and Evergy Metro's resources together. (*Id.*).

customers are forced to pay the high energy costs Evergy West incurred related to Storm Uri.[8] (*See id.* 11, 18). At this time of high prices, Evergy West's customers received no benefit from the energy generated by Evergy Metro's capacity for which Evergy West contracted. (*See id.* 17-18). Further, as Ms. Mantle explains, "[a]n assumption that energy will be available for all members of a RTO at any time is unrealistic. . . . SPP came very close to not having enough generation to supply the need" during Storm Uri. (*Id.* 25).

The Commission should hold Evergy West accountable for the decisions that led to the high costs it incurred to maintain its load during Storm Uri[9] by finding that Evergy West imprudently planned its resources. (*See id.* 8-9 (explaining that prior to Storm Uri Evergy West's decisions were imprudent, but did not result in a great cost to Evergy West's customers, however, Storm Uri changed that and Evergy West's imprudent decisions exposed Evergy West's customers to great cost)). The Commission should conclude that Evergy West failed to prove that it prudently incurred all of its Storm Uri costs.

[8] Should the Commission desire to compare Evergy West's resource plan to the resource plan of a more prudent utility, it need look no further than Evergy West's sister company, Evergy Metro. (*See* Mantle Rebuttal Test. 3, 12). Evergy Metro, which operates under the same parent company as Evergy West, generated enough revenue to not only cover its load costs and the fuel costs of its generation, but also produced an extra $58.2 million in revenue. (*Id.*). The $350 million delta between the costs Evergy West incurred related to Storm Uri and the revenues Evergy Metro enjoyed related to the storm, further support the imprudence of Evergy West's resource planning strategy. (*Compare* Ex. 8 "Ives Direct Testimony" 20, Doc. 92, *with* Mantle Rebuttal Test. 12).

[9] In opposing the OPC's proposed adjustment, Evergy West argues that Ms. Mantle's proposed range for the adjustment is "arbitrary" and that including the proposed adjustment is "arbitrary and capricious." (Evergy West Initial Brief 22, 24). However, as explained in her Rebuttal Testimony, Ms. Mantle arrived at the proposed range through careful analysis. (*See* Mantle Rebuttal Test. 6). Also, as explained in Ms. Mantle's testimony and the OPC's Initial Brief, the OPC's proposed adjustment follows the Commission's prudence standard. (*See generally* Mantle Rebuttal Test.; OPC Initial Brief 14-29). Therefore, neither Ms. Mantle's range nor the OPC's proposed adjustment in general is arbitrary.

Similarly, Evergy West contends that Ms. Mantle "neglects to analyze what" the costs to Evergy West's customers would have been had Evergy West had additional generating resources. (Evergy West Initial Brief 23). Ms. Mantle, however, expressly recognized these costs in proposing her range of adjustment. (Mantle Rebuttal Test. 6 (stating "to account for the revenue requirement that Evergy West's customers have not paid . . ." and proposing a lower adjustment amount).

III. The Securitization Statute Allows the Commission to Recognize the OPC's Proposed Adjustment

Similar to its argument regarding application of the 95%/5% cost sharing mechanism, Evergy West contends that the Securitization Law does not allow the Commission to recognize the OPC's proposed adjustment. (Evergy West Initial Brief 19). However, this is not true. Here, Evergy West incurred high fuel and purchased power costs related to Storm Uri due to its past imprudent resource planning decision. (*See* Mantle Rebuttal Test. 11 (stating that Evergy West likely would not have incurred such high costs related to Storm Uri if it had prudently planned its resources)). The Commission can hold Evergy West accountable for those decisions by concluding that Evergy West's costs related to Storm Uri are not prudent costs. *See* § 393.1700.1(13) RSMo. (defining qualified extraordinary costs in pertinent part as "costs incurred prudently"). Further, even if the Commission concludes that Evergy West prudently incurred the costs related to Storm Uri, the Commission can reduce Evergy West's recovery of those costs to account for Evergy West's imprudent resource planning by finding that full recovery is not "just and reasonable and in the public interest." *See* § 393.1700.2(3)(c)a RSMo. (requiring the Commission's financing order to include a finding that recovery of the amount of qualified extraordinary costs "is just and reasonable and in the public interest . . . ."); § 393.1700.1(17) RSMo. Therefore, the Commission should reject Evergy West's contention that the Securitization Law bars the Commission from recognizing the OPC's proposed adjustment.

IV. Conclusion: The Commission Should Recognize the OPC's Proposed Adjustment

For the reasons discussed above and for all of the reasons expressed in the OPC's Initial Brief, the Commission should reduce the amount of qualified extraordinary costs that Evergy West may recover to account for Evergy West's imprudent resource planning.

Issue 1i: Should EMW's recovery through securitized bonds reflect a disallowance for income tax deductions for Winter Storm Uri costs?

Yes, as explained more fully in the OPC's Initial Brief, Evergy West's recovery through securitized bonds should reflect an adjustment to account for the income tax deduction that Evergy West received related to its Storm Uri costs. (OPC Initial Brief 29-39).

The OPC begins by addressing Evergy West's reliance on Mr. John Riley's statement at the hearing that Evergy West and Staff's approach "could be done." (Evergy West Initial Brief 29 (citing Tr. 504-05, V. IV pdf 92-93)). It then turns to Evergy West's contention that the OPC's proposed adjustment has "no basis in the Securitization Law" and is "inaccurate" in light of Internal Revenue Service ("IRS") Revenue Procedure 2005-62. (*Id.* 27-28). It concludes by addressing Evergy West's other arguments.

I. Returning the Amount of the Tax Deduction to Customers Over Time is Neither Just Nor Reasonable and is Not in the Public Interest

In its Initial Brief, Evergy West points to the OPC's witness, Mr. John Riley's statement at the hearing that Evergy West and Staff's approach "could be done." (Evergy West Initial Brief 29 (Tr. 504-05, V. IV pdf 92-93)). However, simply looking at this short statement misses key elements of the OPC's position. Namely, that following Evergy West and Staff's approach would cost ratepayers an additional $30 million. (Tr. 502-03, 505-07, V. IV pdf 90-91, 93-95 (Riley Testimony)). Such a result cannot be just and reasonable, nor can it be in the public interest.

During his testimony, Mr. Riley explained his understanding of Staff's approach. (Tr. 504, V. IV pdf 92). In response to Judge Clark's question, Mr. Riley agreed that "[b]oth methods could be done." (*Id.* 505, V. IV pdf 93). He explained that "I think we need to take care of this up front and Staff wants to float it over 15 years." (*Id.*).

However, importantly, as Mr. Riley, a Certified Public Account, explained, to comply with Evergy West and Staff's recommendation and return the amount of the tax deduction to customers over the life of the securitized utility tariff bonds will result in ratepayers paying an additional $30 million. (Tr. 502-03, 505-07, V. IV pdf 90-91, 93-95).

It simply cannot be that causing customers to pay an additional $30 million is just and reasonable and in the public interest. *See* § 393.1700.2(3)(c)a RSMo. (stating that the Commission's financing order must include a finding that recovery of qualified extraordinary costs "is just and reasonable and in the public interest."). Therefore, the Commission should reject Evergy West and Staff's suggestion to refund the amount of the tax deduction to customers over the life of the bonds.

II. The OPC's Proposed Adjustment is Not Prohibited by the Securitization Law or IRS Revenue Procedure 2005-62

In its Initial Brief, Evergy West asserts that the OPC's proposed adjustment has "no basis in the Securitization Law" and is "inaccurate" in light of IRS Revenue Procedure 2005-62. (Evergy West Initial Brief 27-28). However, neither of these assertions is correct. The OPC's proposed adjustment recognizes the separation between financing costs and qualified extraordinary costs in the Securitization Law. It also recognizes that taxes must be paid on the revenues generated from the collection of the securitized utility tariff charge, which IRS Revenue Procedure 2005-62 requires. Therefore, the Commission should reject these arguments.

A. Legal Standards

The OPC begins with the pertinent language of the Securitization Law and IRS Revenue Procedure 2005-62.

1. Securitization Law

Looking to several pieces of Securitization Law, it becomes clear that it does not prohibit the OPC's proposed adjustment. This includes the definitions of financing costs, qualified extraordinary costs, securitized utility tariff costs, and securitized utility tariff charge. It also includes the requirements of the Commission's financing order.

In pertinent part, the Securitization Law defines financing costs as "[a]ny taxes and license fees or other fees *imposed on the revenues generated from the collection of the securitized utility tariff charge* or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued." § 393.1700.1(8)(d) RSMo. (emphasis added).

The Securitization Law also defines qualified extraordinary costs as,

> costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events

§ 393.1700.1(13) RSMo. Securitized utility tariff costs include qualified extraordinary costs. § 393.1700.1(17) RSMo.

Together, financing costs and qualified extraordinary costs form the securitized utility tariff charges that will be included on Evergy West's customers' bills. *See* § 393.1700.1(16). The statute defines these charges as

> the amounts authorized by the commission to repay, finance, or refinance *securitized utility tariff costs and financing costs* and that are, except as otherwise provided for in this section, nonbypassable charges imposed on and part of all retail customer bills, collected by an electrical corporation or its successors or assignees, or a collection agent, in full, separate and apart from the electrical corporation's base rates, and paid by all existing or future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission-approved rate schedules, except for customers receiving electrical service under special contracts as of August 28, 2021, even if a retail customer

elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state;

Id.

The Commission's financing order must separately identify the amount of qualified extraordinary costs and the amount of financing costs. § 393.1700.2(3)(c)a RSMo. Specifically, the Commission must include in the financing order, "[t]he amount of securitized utility tariff costs to be financed using securitized utility tariff bonds *and* a finding that recovery of such costs is just and reasonable and in the public interest." *Id.* (emphasis added). It must also "describe and estimate the amount of financing costs that may be recovered through securitized utility tariff charges and specify the period over which securitized utility tariff costs and financing costs may be recovered." *Id.*

2. <u>IRS Revenue Procedure 2005-62</u>

IRS Revenue Procedure 2005-62 "sets forth the manner in which a public utility company may treat the issuance of a financing order by a State agency authorizing the recovery of certain specified costs incurred by the utility and the securitization of the rights created by that financing order." (Ex. 19 "IRS Revenue Procedure 2005-62" § 1, Doc. 103).

In describing its application, the revenue procedure states in full:

.01 The utility will be treated as not recognizing gross income upon—

(1) The receipt of a financing order that creates an intangible property right in the amount of the specified costs that may be recovered through securitization;

(2) The receipt of cash or other valuable consideration in exchange for the transfer of that property right to a financing entity that is wholly owned, directly or indirectly, by the utility; or

(3) The receipt of cash or other valuable consideration in exchange for securitized instruments issued by the financing entity that is wholly owned, directly or indirectly, by the utility.

.02 The securitized instruments described in Section 5.04 will be treated as obligations of the utility.

> .03 The non-bypassable charges are gross income to the utility recognized under the utility's usual method of accounting.

(*Id.* § 6).

B. The OPC's Proposed Adjustment Recognizes the Requirements of Both the Securitization Law and IRS Revenue Procedure 2005-62

Here, the OPC proposes that the Commission reduce the amount of qualified extraordinary costs that Evergy West may recover through securitized utility tariff bonds to reflect the income tax deduction that Evergy West received as a result of its fuel and purchased power costs related to Storm Uri. (*See generally* Ex. 205 "Riley Rebuttal Testimony," Doc. 116). The OPC recognizes the requirements of both the Securitization Law and IRS Revenue Procedure 2005-62 in proposing this adjustment.

Importantly, the Securitization Law separates the amount of qualified extraordinary costs from the amount of financing costs. *Compare* § 393.1700.1(8) RSMo. (defining financing costs), *with* § 393.1700.1(13) RSMo. (defining qualified extraordinary costs). Financing costs include "[a]ny taxes . . . *imposed on the revenues generated from the collection of the securitized utility tariff charge* or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued." § 393.1700.1(8)(d) RSMo. (emphasis added).[10] Qualified extraordinary costs include costs "such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events." § 393.1700.1(13) RSMo. The Commission must ensure that it separately identifies the amount of qualified extraordinary costs and the amount of financing costs. *See* § 393.1700.2(3)(c)a RSMo.

[10] In its Initial Brief, Evergy West asserts Mr. Riley's reliance on the Securitization Law's definition of financing costs is "misplaced." (Evergy West Initial Brief 29). However, Evergy West cites to a different subsection of financing costs than that on which the OPC relies. Specifically, Evergy West cites to § 393.1700.1(8)(e) RSMo. (*Id.* 29 n.105). The OPC relies principally on § 393.1700.1(8)(d) RSMo., which specially applies to "[a]ny taxes . . . *imposed on the revenues generated from the collection of the securitized utility tariff charge or otherwise resulting from the collection of securitized utility tariff charges* . . . ." § 393.1700.1(8)(d) RSMo. (emphasis added). Because these are the taxes at issue in Evergy West's argument, the OPC's reliance on the Securitization Law is not misplaced.

The Commission's financing order must separately identify the amount of each category of costs and the period over which each category may be recovered. *Id.*

The OPC's proposed adjustment recognizes this distinction. Specifically, the OPC requests that the Commission reduce the amount of qualified extraordinary costs to reflect the tax deduction that Evergy West received as a result of its fuel and purchased power costs related to Storm Uri. (Riley Rebuttal Test. 3). It also recognizes that the Securitization Law allows Evergy West to recover the amount necessary to pay the taxes owed due to the revenue generated from the collection of the securitized utility tariff charge. (Tr. 512, V. IV pdf 100 (Riley Testimony)). The OPC asserts that the amount necessary to pay these taxes must come from Evergy West's customers at the time they pay the securitized utility tariff charge. (*See id.* 507, 512-13, V. IV pdf 95, 100-01).

In recognizing that Evergy West's customers must pay these taxes as financing costs, the OPC does not, as Evergy West asserts, ignore the taxes that will be due on the revenues generated from the collection of the securitized utility tariff charge. (*See id.*). When Evergy West collects this amount as a financing cost, it will comply with IRS Revenue Procedure 2005-62. (*See* IRS Revenue Procedure § 6.03). This Revenue Procedure recognizes that "[t]he non-bypassable charges are gross income to the utility recognized under the utility's usual method of accounting." (*Id.*).

Therefore, neither the Securitization Law nor IRS Revenue Procedure 2005-62 prohibit the OPC's proposed adjustment. Rather, the adjustment recognizes the requirements of both.[11] The

[11] As the OPC explained in its Initial Brief, Evergy West does not dispute that it has received a tax deduction related to the Storm Uri fuel and purchased power costs. (*See* Ex. 5 "Hardesty Surrebuttal Testimony" 3, Doc. 89; Tr. 230 V. II pdf 174 (Hardesty Testimony)). Evergy West also admitted that it "does not have to repay the tax deduction." (Tr. 231 V. II pdf 175 (Hardesty Testimony)). Therefore, the record is clear that Evergy West received the benefit of a tax deduction. The question currently before the Commission is how to ensure that Evergy West's ratepayers also receive the benefit of that tax deduction.

Commission should reject Evergy West's contention that the OPC's adjustment has no basis in the Securitization Law and is inaccurate in light of IRS Revenue Procedure 2005-62.

III. Evergy West's Arguments Rely on a Flawed Understanding of the Securitization Law

The Commission should reject Evergy West's arguments and reliance on Ms. Bolin's testimony because they rely on a flawed understanding of the Securitization Law.

First, Evergy West argues that if the Commission reduces the amount of qualified extraordinary costs to account for the tax deduction that Evergy West received, then "there will not be sufficient funds to recover all of the Winter Storm Uri costs, including the income tax expense at the [special purpose entity]." (Evergy West Initial Brief 28). However, this argument is flawed. As the OPC explained in its Initial Brief, because of the distinction between qualified extraordinary costs and financing costs, if the Commission reduces includes the OPC's proposed adjustment, it should have no effect on Evergy West's ability to pay the taxes associated with the revenues generated from the collection of the securitized utility tariff charges. (*See* OPC Initial Brief 33-38).

Second, Evergy West's contention, through reliance on Ms. Bolin's testimony, that Evergy West's customers will not pay these taxes is in direct contradiction with the Securitization Law. (*See* Evergy West Initial Brief 29). The Securitization Law specifically references as financing costs the "taxes . . . imposed on the revenues generated from the collection of the securitized utility tariff charge or otherwise resulting from the collection of securitized utility tariff charges . . . ." § 393.1700.1(8)(d) RSMo. Securitized utility tariff charges include financing costs. § 393.1700.1(16) RSMo. Therefore, the Securitization Law requires Evergy West's customers to pay the taxes associated with the revenues generated from the collection of the securitized utility tariff charges. *See id.* The Commission should reject this argument as well.

Third, Evergy West and Staff's calculations do not comply with the Securitization Law. During her testimony at the hearing, Ms. Bolin appears to have recognized the contradiction between Evergy West and Staff's calculation and the requirements of the Securitization Law. (*See* Tr. 338, V. III pdf 69). However, she maintained her assertion that neither Evergy West nor Staff calculated financing costs to recognize these taxes. (*See id.* (Ms. Bolin stating that "[p]er the definition of the statute, [the taxes owed on the revenues to finance the bonds that are collected through the non-bypassable charge] are financing costs. *However, nowhere in any of the calculations for financing costs in this case is there a line item for taxes. The taxes are included in the securitized amount.*" (emphasis added))). Rather, Ms. Bolin clarified that "[t]he amount securitized, the fuel and purchased power, includes the taxes that will need to be paid. There's no line item separately listed in financing cost for taxes." (*Id.*).

The Securitization Law specifically requires the taxes at issue to be included in financing costs. § 393.1700.1(8)(d) RSMo. As Ms. Bolin's statements show, Evergy West and Staff have included taxes in the amount of qualified extraordinary costs that will be securitized. (*See* Tr. 338, V. III pdf 69). The Commission should disregard Staff and Evergy West's calculations because they do not comply with the Securitization Law.

IV. Conclusion: The Commission Should Include the OPC's Proposed Adjustment

Although Mr. Riley stated that Evergy West and Staff's approach "could be done," he recognized that to do so would cost Evergy West's ratepayers approximately $30 million over the life of the bonds. (Tr. 502-03, 505-07, V. IV pdf 90-91, 93-95 (Riley Testimony)). Further, neither the Securitization Law nor IRS Revenue Procedure 2005-62 prohibit the OPC's proposed adjustment. Rather, it is Evergy West and Staff's arguments that do not recognize the difference between financing costs and qualified extraordinary costs in the Securitization Law.

By including the OPC's proposed adjustment, the Commission would prohibit Evergy West from both recovering the full amount of its fuel and purchased power costs and enjoying an additional tax deduction related to those costs. (Riley Rebuttal Test. 7; Ex. 206 "Riley Surrebuttal Testimony" 3, Doc. 117). This result is "just and reasonable and in the public interest." *See* § 393.1700.2(3)(c)a RSMo. Therefore, in setting the amount of qualified extraordinary costs that Evergy West may recover, the Commission should include an adjustment to account for the tax deduction Evergy West received as a result of its Storm Uri fuel and purchased power costs.

Issue 1m: What is the appropriate discount rate or rates to use to calculate the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking?

Issue 3a: What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri through securitization?[12]

The Commission should use at least two different discount rates to determine whether securitization results in quantifiable net present value benefits to customers as compared to recovery through customary ratemaking. (*See* Ex. 203 "Murray Rebuttal Testimony" 13, 15 Doc. 114; Ex. 204 "Murray Surrebuttal Testimony" 5, 8, Doc. 115). The appropriate discount rate to use when analyzing recovery through customary ratemaking—either through Evergy West's fuel adjustment clause ("FAC") or through an accounting authority order ("AAO")—is a rate higher than that used to analyze recovery through securitization. (Murray Rebuttal Test. 12-15; Murray Surrebuttal Test. 5). For recovery through customary ratemaking, the OPC recommends a range of discount rates based on Evergy West's current after-tax cost of capital, such as 6.08% to 7%.[13] (Murray Rebuttal Test. 15; Murray Surrebuttal Test. 6-8). However, for recovery through

[12] Given the similarity in the analysis of issues 1m and 3a, the OPC addresses both issues here.

[13] The OPC supports Staff's suggestion to use "a range of discount rates" in analyzing recovery through customary ratemaking. (Staff Initial Brief 15-16; Murray Surrebuttal Test. 7). However, as Mr. Murray explains, the range should be calculated using an accurate reflection of Evergy West's "current cost of capital." (*Id.* 6).

securitization, the Commission should use a rate equal to the rate/coupon of the securitized debt. (Murray Rebuttal Test. 13-14; Murray Surrebuttal Test. 5).

I. The Commission Should Use Different Discount Rates When Determining Whether Quantifiable Net Present Value Benefits Exist

In its Initial Brief, Evergy West opposes the OPC's recommendation to use a different discount rate when analyzing recovery through customary ratemaking and recovery through securitization. (Evergy West Initial Brief 36). However, by using a single discount rate, the Commission would ignore the fundamental differences between recovery through customary ratemaking and recovery through securitization. (*See* Murray Rebuttal Test. 13-14; Murray Surrebuttal Test. 5). It also does not recognize the purpose of a net present value benefit analysis and the discount rate's role in that analysis. (*See* Murray Rebuttal Test. 11-12). To recognize this difference and the purpose of a net present value benefit analysis, the Commission must use at least two different discount rates. (*See* Murray Rebuttal Test. 13-15; Murray Surrebuttal Test. 5, 8).

The Securitization Law requires the Commission's financing order to include a "finding that the proposed issuance of securitized utility tariff bonds . . . are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds." § 393.1700.2(3)(c)b RSMo. The statute does not specify how the Commission must reach this finding.[14] *See generally* § 393.1700.2(3)(c)b RSMo. In order to accurately answer this

[14] The OPC notes that the Securitization Law mentions a discount rate only once. *See* § 393.1700.2(3)(c)m. In that section, the statute states that

> The customer credit shall include the net present value of the tax benefits, calculated using a discount rate *equal to the expected interest rate of the securitized utility tariff bonds*, for the estimated accumulated and excess deferred income taxes at the time of securitization including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds.

question, the Commission must use an appropriate discount rate for *each* of the recovery scenarios. (*See* Murray Rebuttal Test. 13).

As Mr. Murray explains, recovery through each of the scenarios at issue, FAC/AAO and securitization, "presents its own risk factors as it relates to [Evergy West's] recovery of its extraordinary costs." (Murray Rebuttal Test. 13-14). Specifically, because securitization "disaggregate[d] the regulatory asset (Storm Uri obligations) from the rest of [Evergy West's] balance sheet . . . . the risk profile of expected cash flows from the securitization of the asset [is] . . . different from [Evergy West's] expected cash flows related to recovery of its investment through general rates." (Murray Surrebuttal Test. 5). Perhaps most importantly for this discussion is that "[b]ecause of the certainty or near-certainty of the recovery of principal and return on the principal, investors in the securitized bond will require a much lower return." (*Id.*).

"A fundamental tenant of discounting future cash flows is to use a discount rate consistent with the risk of the cash flows." (Murray Rebuttal Test. 15). The risk of recovery through securitization is inherently different from the risk of recovery through customary ratemaking. (*See* Murray Surrebuttal Test. 5). To ensure that it recognizes this fundamental difference, in determining whether quantifiable net present value benefits exist, the Commission must use a different discount rate to analyze recovery through customary ratemaking as opposed to recovery through securitization. (*See id.*). Otherwise, the Commission would expressly ignore the unique aspects of securitization. (*See id.*). Therefore, the Commission should reject Evergy West's argument opposing the use of multiple discount rates and should use at least two different discount

Id. (emphasis added). This section does not apply to the instant case. *See id.* (specifying that the section applies "[i]n a financing order granting authorization to securitize energy transition costs or in a financing order granting authorization to securitize qualified extraordinary costs that include retired or abandoned facility costs").

rates in determining whether quantifiable net present value benefits exist. (*See* Murray Rebuttal Test. 13, 15; Murray Surrebuttal Test. 5, 8).

II. Evergy West's Opposition is Incorrect and Inherently Contradictory

In its Initial Brief, Evergy West takes issue with Mr. Murray's identified discount rates because they are "based on an investment risk assessment regarding [Evergy West], not the risk to the customer." (Evergy West Initial Brief 36). However, this argument is incorrect and is inherently contradictory in light of Evergy West's recommendation to use its identified weighted average cost of capital as the appropriate discount rate. (*See id.* 34).

As Mr. Murray described in his testimony, the OPC suggests that the appropriate discount rate to use when analyzing recovery through customary ratemaking is a rate higher than that used to analyze recovery through securitization, more specifically a range of discount rates based on Evergy West's current after-tax cost of capital, such as 6.08% to 7%. (Murray Rebuttal Test. 12-15; Murray Surrebuttal Test. 5-8). However, when analyzing recovery through securitization, the Commission should use a rate equal to the rate/coupon of the securitized debt. (Murray Rebuttal Test. 13-14; Murray Surrebuttal Test. 5).

Evergy West takes issue with these recommended discount rates because they look to the "investment risk assessment regarding [Evergy West], not . . . the customer." (Evergy West Initial Brief 36). As to the OPC's recommended discount rate for recovery through securitization, Evergy West's argument is incorrect. Mr. Murray recommends that the Commission use the rate/coupon of the securitized debt, which is based on investors' required return to purchase bonds in the special purpose entity. (Murray Rebuttal Test. 15; Murray Surrebuttal Test. 5). Therefore, the recommended discount rate is not tied to the "investment risk assessment regarding [Evergy West]." (*See id.*; Evergy West Initial Brief 36).

Also, the premise for Mr. Murray's recommended discount rate is no different than the premise for Evergy West's recommended discount rate. Evergy West itself recommends that the Commission use 8.9%, or what it considers to be its weighted average cost of capital from the 2018 rate case. (Evergy West Initial Brief 34). Although this rate is set by the Commission and used to set customer rates, it too looks to the "investment risk assessment regarding [Evergy West]." (Evergy West Initial Brief 36). Specifically, it is calculated by looking to the return on equity, cost of debt, and the amount of debt and equity in a corporation's capital structure, which include an assessment of Evergy West's investment risk.[15] (Murray Rebuttal Test. 3 (explaining how Mr. Klote calculated the after-tax weighted average cost of capital)). As Mr. Klote recognized in his Surrebuttal Testimony, the weighted average cost of capital "represents the cost of capital embedded in rates paid by the Company's customers . . . ." (Ex. 12 "Klote Surrebuttal Testimony" 15, Doc. 96). Therefore, the only difference between the OPC's approach and Evergy West's approach is Mr. Murray's recommended discount rate for recovery through securitization reflects the lower risk profile of the special purpose entity. (*Compare* Murray Rebuttal Test. 15; Murray Surrebuttal Test. 5, *with* Klote Surrebuttal Test. 15). This lower risk profile is part of the purpose of securitization. (Murray Surrebuttal Test. 5).

Because Evergy West's argument regarding Mr. Murray's suggested discount rate for recovery through securitization is incorrect and contradictory to Evergy West's own argument, the Commission should ignore Evergy West's criticism of the OPC's recommended discount rate.

[15] Importantly, the OPC does not oppose the use of a rate equal to the corporate cost of capital as a part of the range of discount rates when analyzing recovery through customary ratemaking. (*See* Murray Surrebuttal Test. 6). However, as explained more fully in the OPC's Initial Brief, the OPC contends that 8.9% does not accurately reflect Evergy West's current cost of capital. (*See* OPC Initial Brief 55). Therefore, the Commission should use a range of rates that more closely estimate Evergy West's current cost of capital. (*See* Murray Surrebuttal Test. 6-8).

III. Conclusion: The Commission Should Use the OPC's Proposed Discount Rates

To ensure that securitization does, in fact, provide quantifiable net present value benefits to Evergy West's customers as opposed to recovery through customary ratemaking, the Commission must ensure that it uses an appropriate discount rate. (Murray Rebuttal Test. 12-14 (explaining a net present value analysis, the role of a discount rate, and the effect of using a different discount rate on a net present value benefit analysis)).

Evergy West contends that the Commission should use only a single discount rate in determining whether quantifiable net present value benefits exist to customers. (Evergy West Initial Brief 34). It also criticizes the OPC's recommended discount rates for looking to the "investment risk assessment regarding [Evergy West]." (Evergy West Initial Brief 36). Because Evergy West's argument ignores the fundamental differences between securitization and customary ratemaking and is inherently contradictory, the Commission should disregard it.

To appropriately account for the differences in the risk of recovery through each of the different scenarios, the Commission should use a different discount rate for each of the scenarios that recognizes the risks associated with that scenario. (Murray Rebuttal Test. 3, 15; Murray Surrebuttal Test. 5, 8). The appropriate discount rate for recovery through customary ratemaking is a rate higher than that used to analyze recovery through securitization, such as a range of discount rates based on Evergy West's current after-tax cost of capital, 6.08% to 7%. (Murray Rebuttal Test. 12-15; Murray Surrebuttal Test. 6-8). As to recovery through securitization, the appropriate discount rate is a rate equal to the rate/coupon of the securitized debt, which reflects the return required for investors to purchase the securitized utility tariff bonds. (Murray Rebuttal Test. 13-14; Murray Surrebuttal Test. 5).

Issue 4: How should the SUTC be allocated?

The Commission should allocate the securitized utility tariff charge ("SUTC") on the basis of loss-adjusted energy sales. (Ex. 104 "Lange Rebuttal Testimony" 20, Doc. 108; Ex. 208 "Marke Surrebuttal Testimony" 1-2, Doc. 119). This is the position agreed to by the OPC, Staff, and Evergy West both in the Stipulation and in pre-filed testimony. (Marke Surrebuttal Test. 2; Lange Rebuttal Test. 20; Lutz Surrebuttal Test. 3-5; Stipulation ¶ 11). The Commission should also reject Velvet Tech Services, LLC's ("Velvet Tech") suggestion to "cap[] the impact of the securitization charge on hyperscale projects." (Velvet Tech Initial Brief 6, Doc. 135).

In its Initial Brief, the OPC explained why the loss-adjusted energy-based sales allocation method represents the appropriate method to allocate the SUTC.[16] (*See* OPC Initial Brief 59-62). The OPC maintains the arguments raised in its Initial Brief. In this Reply Brief, the OPC will respond to the arguments Velvet Tech made in its Initial Brief.

I. Velvet's Tech's Position

In its Initial Brief, Velvet Tech concedes that the Securitization Law requires the securitized utility tariff charge to be nonbypassable. (Velvet Tech Initial Brief 6).

However, it argues that the Commission should "adopt[] the allocation in Mr. Lutz's Direct testimony and adopt[] the LPS billing rate (or a lower billing rate) for MKT customers" and/or "cap[] the impact of the securitization charge on hyperscale projects to harmonize the securitization statute with the state's interest in economic development, data centers, and renewables." (Velvet Tech Initial Brief 6). In support of these positions, Velvet Tech claims that the loss-adjusted energy-based allocation method is (1) inconsistent with principles of cost

[16] In its Initial Brief, Midwest Energy Consumers Group ("MECG") argues that the Commission should allocate the securitized utility tariff charge using a class-based allocation method. (*See generally* MECG Initial Brief, Doc. 136). However, for the reasons explained in the OPC's Initial Brief, the Commission should reject this argument and should adopt a loss-adjusted energy-based allocation method. (OPC Initial Brief 59-62).

causation, (2) would lead to a result that is inconsistent with the public policy of Missouri, and (3) would lead to a result that is inconsistent with the Securitization Law and the Commission's previous discussion in approving contract rates. (*See generally id.*).

II. The Commission Should Reject Velvet Tech's Arguments

The Commission should reject each of Velvet Tech's arguments. In making its arguments, Velvet Tech argues that the loss-adjusted energy-based allocation method is inconsistent with principles of cost causation, pointing out that "[i]t is undisputed that Velvet [Tech] was not an Evergy customer at the time of Winter Storm Uri." (Velvet Tech Initial Brief 7). However, this argument ignores the plain language of the Securitization Law. *See* § 393.1700.1(16) RSMo. The statute defines a securitized utility tariff charge as being "nonbypassable" and "imposed on and part of all retail customer bills . . . paid by all existing or future retail customers receiving electrical service from the electrical corporation . . . ." *Id.* The Commission should disregard this argument as barred by the statutory language of the Securitization Law.

Velvet Tech also claims that to adopt the loss-adjusted energy-based allocation method is at odds with the Securitization Law and the Commission's prior decisions in approving contract rates. (*See* Velvet Tech Initial Brief 10-13). In making this argument, Velvet Tech points out that the Securitization Law exempts certain customers who receive service under a special contract from paying the securitized utility tariff charge. (*Id.* 10-11). Velvet Tech then claims it has interests similar to those of customers. (*Id.* 12). Based on those similarities, Velvet Tech argues that the Commission should limit the effect of securitization on Velvet Tech. (*Id.* 10-12).

In making this argument, Velvet Tech attempts to expand the Securitization Law beyond its plain language. Namely, the statute specifically provides that the securitized utility tariff charge is "nonbypassable . . . except for customers receiving electrical service under special contracts as

of August 28, 2021 . . . ." § 393.1700.1(16) RSMo. By including this language, the legislature made a specific choice to exempt certain customers from paying for securitization. The legislature included a date certain in the statute and did not expand this exemption to future customer receiving service under special contracts. *See id.* The Commission should enforce the plain language of the statute and disregard Velvet Tech's contention that a loss-adjusted energy-based approach is at odds with the Securitization Law. *See State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 399 S.W.3d 467, 480 (Mo. Ct. App. 2013) (describing the rules of statutory interpretation and stating that "[t]he rules of statutory interpretation are not intended to be applied haphazardly or indiscriminately to achieve a desired result. . . . This Court's primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue." (quoting *Parktown Imports, Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009))).

For at least these reasons, the Commission should reject Velvet Tech's arguments and adopt a loss-adjusted energy-based allocation method.

Conclusion

For the foregoing reasons, the OPC requests that the Commission follow the agreements reached by Evergy West, Staff, and the OPC as reflected in the Stipulation. Further, in determining the amount that Evergy West may recover through securitized bonds, the Commission should include the five adjustments proposed by the OPC: (1) a reduction to account for application of the 95%/5% cost sharing mechanism; (2) a reduction to account for Evergy West's imprudent resource planning; (3) a reduction to account for the income tax deduction that Evergy West received related to fuel and purchased power costs; (4) a reduction to account for the income tax deduction that Evergy West received related to the carrying charges; (5) a reduction to account for the use of a lower rate to determine the applicable carrying charges. In determining the net present

value benefits to customers, the Commission should also use a discount rate equal to the rate/coupon on the bonds when considering securitization and a higher rate when considering recovery through customary ratemaking. Finally, in allocating the SUTC, the Commission should utilize a loss-adjusted energy sales allocation method.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission follow the agreements reflected in the Stipulation and find in favor of the OPC on each of its preserved issues.

Respectfully submitted,

/s/ Lindsay VanGerpen

Lindsay VanGerpen (#71213)
Associate Counsel

Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5565
Facsimile: (573) 751-5562
E-mail: Lindsay.VanGerpen@opc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 12th day of September 2022.

/s/ Lindsay VanGerpen