

---

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

In the Matter of the Ninth Prudence Review )  
of Costs Subject to the Commission-Approved )  
Fuel Adjustment Clause of Evergy Missouri, )  
West, Inc. d/b/a Evergy Missouri West )

**File No. EO-2020-0262**

In the Matter of the Third Prudence Review )  
of Costs Subject to the Commission-Approved )  
Fuel Adjustment Clause of Evergy Metro, )  
Inc. d/b/a Evergy Missouri Metro )

**File No. EO-2020-0263**

---

**INITIAL BRIEF OF STAFF**

Respectfully Submitted,

**Travis J. Pringle**  
Associate Counsel  
Missouri Bar No. 71128

Attorney for Staff of the  
Missouri Public Service Commission

March 1, 2021

---

**TABLE OF CONTENTS OF  
STAFF’S BRIEF  
CASE NO. EO-2020-0262**

**INTRODUCTION..... 1**

**Argument..... 4**

**Issue (1): Was Evergy imprudent in the management of its demand response programs?..... 5**

**Issue (2): Was it imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs?..... 10**

**Issue (3): If it was imprudent to not call additional demand response events in a manner that would have reduced FAC costs, is it more appropriate to address the imprudent implementation of the programs through an ordered FAC adjustment or an ordered DSIM adjustment? ..... 11**

**CONCLUSION ..... 13**

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

In the Matter of the Ninth Prudence Review )  
of Costs Subject to the Commission-Approved )  
Fuel Adjustment Clause of Evergy Missouri, ) **File No. EO-2020-0262**  
West, Inc. d/b/a Evergy Missouri West )

In the Matter of the Third Prudence Review )  
of Costs Subject to the Commission-Approved )  
Fuel Adjustment Clause of Evergy Metro, ) **File No. EO-2020-0263**  
Inc. d/b/a Evergy Missouri Metro )

**INITIAL BRIEF OF STAFF**

**INTRODUCTION:**

These cases, EO-2020-0262 and EO-2020-0263, involve the Ninth Prudence Review of the Fuel Adjustment Clause (“FAC”) of Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy West”) and the Third Prudence Review of the FAC of Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Metro”)(collectively, “Evergy”).

Commission Rule 20 CSR 4240-20.090(11) and Missouri Revised Statute Section 386.266.5(4) require that Staff conduct prudence reviews of an electric utility’s FAC no less frequently than every 18 months.

In the matter of Evergy West, it’s tariff also provides that as part of its FAC, there “shall be prudence reviews of costs” that “shall occur no less frequently than at 18-month intervals,”<sup>1</sup> which is consistent with Commission Rule 20 CSR 4240-20.090 and § 386.266.5(4) RSMo. Staff filed its *Notice of Start of Ninth Prudence Review* on March 2, 2020, advising the Commission, Evergy West, and all interested parties that it intended to audit the

---

<sup>1</sup> Evergy Missouri West Tariff P.S.C. Mo No. 1, Original Sheet No. 127.22.

period June 1, 2018, through November 30, 2019. Thereafter, Staff filed its *Staff Report* on August 28, 2020, in which Staff analyzed items affecting Evergy’s fuel costs; purchased power costs; net emission costs; transmission costs; off-system sales revenue; and renewable energy credit revenues during the review period of the FAC. As part of its FAC prudence review in this matter, Staff did not review demand response programs as those programs are appropriately addressed in Missouri Energy Efficiency Investment Act (“MEEIA”) prudence reviews. Staff found no evidence of imprudence for the items it examined for the applicable review period. Staff did discover Evergy West included costs associated with the retirement of its Sibley generating station. Evergy West agreed to remove these costs and seek recovery through another mechanism, leading to Staff’s recommended disallowance of \$1,039,646.<sup>2</sup>

Evergy Metro’s tariff provides, as part of its FAC, there “shall be prudence reviews of costs” that “shall occur no less frequently than at 18-month intervals,”<sup>3</sup> which is consistent with Commission Rule 20 CSR 4240-20.090 and § 386.266.5(4) RSMo. Staff filed its *Notice of Start of Third Prudence Review* on March 2, 2020, advising the Commission, Evergy Metro, and all interested parties that it intended to audit the period July 1, 2018, through December 31, 2019. Thereafter, Staff filed its *Staff Report* on August 28, 2020, in which Staff analyzed items affecting Evergy’s fuel costs; purchased power costs; net emission costs; transmission costs; off-system sales revenue; and renewable energy credit revenues during the review period of the FAC. As part of its FAC prudence review in this matter, Staff did not review demand response programs as those programs are appropriately addressed in MEEIA prudence reviews.

Staff found no evidence of imprudence for the items it examined for the applicable review period. Following the filing of its report, Staff did discover that some fuel residual costs were

---

<sup>2</sup> Ex. 101, Fortson Corrected Direct, pg. 3, ln. 18-22.

<sup>3</sup> Evergy Missouri Metro Tariff P.S.C. Mo No. 1 Original Sheet No. 50.30.

included during Accumulation Period 8. This led to a recommended disallowance of \$15,492, agreed to by Evergy Metro in the *Partial Stipulation and Agreement* filed on December 18, 2020.

On September 8, 2020, the Office of the Public Counsel (“OPC”) and the Sierra Club requested a hearing in both cases. Evergy responded by filing a *Request for Consolidation and Procedural Conference* on September 10, 2020. The Parties held a Procedural Conference on September 21, 2020, and the cases were consolidated under Case No. EO-2020-0262 on September 22, 2020.

Following the procedural conference, competing proposed procedural schedules were submitted on October 5, 2020, one on behalf of Staff, OPC, and Sierra Club, the other on behalf of Evergy. The Commission issued an order approving the joint proposed procedural schedule of Staff, OPC and Sierra Club on October 21, 2020, establishing an evidentiary hearing date of January 27 and 28, 2021, setting dates for the filing of prepared testimony, a list of issues and witnesses, and parties’ position statements.

Over the course of hearing preparation, settlement was reached on a number of issues. The first *Partial Stipulation and Agreement*, filed on December 18, 2020 and approved on January 20, 2021, concerned (1) the removal of Sibley retirement costs from Evergy West’s FAC calculation; (2) Evergy Metro’s removal of Montrose fuel residual costs from its FAC calculations; and (3) Evergy Metro’s removal of the Missouri retail Montrose costs from its FAC calculations. This agreement covered the disallowances recommended by Staff.

An *Unanimous Partial Stipulation and Agreement* was filed on January 15, 2021 and approved on January 27, 2021. This filing settled issues raised by Sierra Club concerning Evergy’s self-scheduling practices, and resulted in Sierra Club being excused from the evidentiary hearing in this matter.

The final *Unanimous Partial Stipulation and Agreement* was filed on the first day of hearing on January 27, 2021. This agreement committed Evergy to model plans that do not include the assumed sale of excess capacity in future IRP filings, and was approved by the Commission on February 10, 2021.

From the *List of Issues, Order of Witnesses, Order of Opening Statements, Order of Cross-Examination and Joint Stipulation of Facts* filed on January 19, 2021, only three remain.

The remaining issues to be argued in this brief are:

1. Was Evergy Imprudent in the management of its demand response programs?
2. Was it imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs?
3. If it was imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs, is it more appropriate to address the imprudent implementation of the programs through and ordered FAC adjustment or an ordered demand side investment mechanism (“DSIM”) adjustment?

### **Argument**

When conducting a prudence review, Staff follows the prudence standard that was outlined in *State ex rel. Associated Natural Gas Company vs. Public Service Commission of the State of Missouri*.<sup>4</sup> In its decision, the Western Court of Appeals stated that, to disallow a utility’s recovery of costs from its ratepayers based on imprudence, the Commission must determine the detrimental impact of that imprudence on the utility’s ratepayers. Further, the Court also noted and supported the Commission’s own definition of prudence, which is based not upon hindsight, but rather a reasonableness standard:

---

<sup>4</sup> *State ex rel. Associated Nat. Gas Co. v. Pub. Serv. Comm'n of State of Mo.*, 954 S.W.2d 520 (Mo.App. W.D. 1997).

The company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our [the Commission's] responsibility is to determine how reasonable people would have performed the tasks that confronted the company.<sup>5</sup>

In a prudence case, the party or parties challenging the utility's action or inaction bear the burden of making an initial showing of imprudence. However, once the challenging party "creates a serious doubt as to the prudence of an expenditure,"<sup>6</sup> the burden shifts, and the utility has the burden of showing that the challenged action or inaction was indeed prudent.

**Issue (1): Was Evergy imprudent in the management of its demand response programs?**

Yes, but the imprudence of Evergy's management of its demand response programs is a DSIM issue to be addressed in Docket Nos. EO-2020-0227 and EO-2020-0228 ("MEEIA Prudence Review"). Addressing that imprudence in this consolidated FAC docket is not the correct forum due to the high risk of confusion.

During its review of the prudence of costs subject to Evergy's FAC, Staff did not review Evergy's separate demand response programs, and with the exception of disallowances not at issue today, Staff concluded that both Evergy West and Evergy Metro were prudent in their decision making regarding costs arising from the FAC.

However, since OPC raised the demand response issues in these FAC cases, and because the demand response programs were not a part of Staff's FAC prudence review for Evergy, Staff entered the testimony of Staff witness J Luebbert as Staff's sole surrebuttal filing on January 13, 2021.<sup>7</sup> Mr. Luebbert explained that while Evergy was not prudent in the

---

<sup>5</sup> *Id.* p. 529 (citing *In the Matter of Union Electric Company*, 27 Mo.P.S.C. (N.S.) 183 at 194 [quoting *Consolidated Edison Company of New York, Inc.* 45 P.U.R. 4th 331 (1982)]).

<sup>6</sup> *Id.* p. 528-529.

<sup>7</sup> Ex. 104, Luebbert Surrebuttal.

management of its demand response programs, the proper venue for hearing this issue is, and continues to be, the MEEIA Prudency Review.

When implementing its demand response programs, Evergy failed to comply with the reasonableness standard outlined in *State ex rel. Associated Natural Gas Company vs. Public Service Commission of the State of Missouri*. While Evergy witness Brian File alleges that Staff is reviewing the implementation with the gift of hindsight,<sup>8</sup> Staff's allegations instead flow from a reasonable person's understanding of the fundamentals of MEEIA.<sup>9</sup>

The point of the FAC is to allow a utility to recover or refund ratepayers a portion of its Missouri jurisdictional actual net energy costs.<sup>10</sup> The MEEIA statute concerns valuing demand side investments equal to traditional investments in supply and delivery infrastructure.<sup>11</sup> Demand response programs are defined as “measures that decrease peak demand or shift demand to off-peak periods.”<sup>12</sup> The implementation of Commission-approved programs comes with “the goal of achieving all cost-effective demand-side savings.”<sup>13</sup> Further, recovery for such Commission-approved programs is permitted if the programs “result in energy or demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.”<sup>14</sup>

In his testimony in the MEEIA Prudency Review, Mr. Luebbert explained why Evergy failed to prudently implement its demand response programs, as opposed to claiming the imprudence occurred in relation to its FAC. He concluded that “Evergy failed to even attempt to derive benefits that they could have by implementing their demand response programs and the

---

<sup>8</sup> Ex. 4, File Rebuttal, pg. 7, ln. 20-23 and pg. 8, ln. 1-3.

<sup>9</sup> 393.1075 RSMo.

<sup>10</sup> Ex. 101, Fortson Corrected Direct, pg. 3, ln. 7-10.

<sup>11</sup> 393.1075.3 RSMo.

<sup>12</sup> 393.1075.2(2) RSMo.

<sup>13</sup> 393.1075.4 RSMo.

<sup>14</sup> *Id.*



failure to attempt to achieve those benefits was imprudent.”<sup>15</sup> Mr. Luebbert would go on to elaborate that:

The issue that I've taken with these programs, specifically the demand response programs, is that they're only approved or they're only -- the measured lives are only for the period of time that the cycle is approved for. So in this case for Cycle 2, 2018 and 2019 is the only period, and that's the period that's subject to the MEEIA prudence review, is the only period that those programs are going to achieve demand reductions. And in this case Evergy failed to derive those benefits for customers within that time period and that's why I've recommended the disallowance [in the MEEIA Prudency Review].”<sup>16</sup>

And regarding those benefits, Mr. Luebbert continues that “if customers don't receive tangible financial benefits from demand response programs within that time period that they never will absent additional payments in subsequent cycles and therefore those benefits can't really be attributed to this period.”<sup>17</sup>

Mr. File attempted to refute Mr. Luebbert's conclusion by claiming that, if Evergy were to call too many demand response events, the events would become “subject to the law of diminishing returns”<sup>18</sup> Evergy reached this conclusion from a study in 2019 that saw a six percent drop in participation as event numbers went up.<sup>19</sup>

However, it was hardly an unknown to customers who signed up for Evergy's demand response programs that multiple events could be called. In fact, Mr. File went into great detail acknowledging that customers did, in fact, know exactly what they were signing up for. Customers were specifically given the number of times they may be called upon to participate in events.<sup>20</sup> Mr. File even adds that he “believe[s] they [customers] understand that those number of events are

---

<sup>15</sup> Transcript Vol. II, pg. 161, ln. 6-9.

<sup>16</sup> *Id.* pg. 162, ln. 10-20.

<sup>17</sup> *Id.* pg. 163, ln. 11-16.

<sup>18</sup> Ex. 4, File Rebuttal, pg. 13, ln. 5-6.

<sup>19</sup> Transcript Vol. II, pg. 138, ln. 11-14.

<sup>20</sup> *Id.* pg. 131, ln. 22-25 and pg. 132, ln. 1-4.

what's in the contract.”<sup>21</sup> This undermines the theory that maximizing the number of events could result in diminishing returns, because Evergy believes these customers understand exactly what they are signing up for. In fact, per the agreement with Evergy, customers understand that there can be upwards of 10 to 15 events called – yet nowhere near that number of events were called.<sup>22</sup>

And that's where the imprudence of Evergy's decisions become clearer. As further explained by Mr. Luebbert, “the Company [Evergy] recognized the event, or the potential for those economic incentives, and then failed to even attempt to achieve those benefits.”<sup>23</sup>

As outlined by Mr. File, Evergy called two industrial class customer demand response events in 2018, two residential demand response events in 2018, two residential demand response events in 2019, and five commercial demand response events in 2019.<sup>24</sup> However, Mr. File also explained that Evergy understands that it would be reasonable to call events in other months to further decrease Southwest Power Pool (“SPP”) Schedule 11 fees.<sup>25</sup>

As Mr. Luebbert explained during questioning from the bench, it is not about hitting a magic number of events called, but rather maximizing benefits:

Evergy had the ability to derive more benefits for its ratepayers by calling more events with an attempt to target certain time periods and failed to do so. And by deriving additional benefits, it would have made the program if nothing else more cost effective.<sup>26</sup>

Because the prudence of these demand response events is related to the implementation of the demand response program through the DSIM, this FAC prudence review is simply the wrong venue:

The way that Evergy designed the programs resulted in a large portion of the [MEEIA] cost of the program to be paid out up front with minimal additional

---

<sup>21</sup> *Id.* pg. 132, ln. 11-12.

<sup>22</sup> *Id.* pg. 138, ln. 3-7.

<sup>23</sup> *Id.* pg. 171, ln. 1-3.

<sup>24</sup> *Id.* pg. 106, ln. 20-25 and pg. 107, ln. 1-14..

<sup>25</sup> *Id.* pg. 135, ln. 18-24.

<sup>26</sup> *Id.* pg. 187, ln. 12-17

[MEEIA] cost to call events for the demand response incentive program to be paid to those customers that achieved savings during an event and little, if any, incremental [MEEIA] cost to call additional events for the thermostat program. So to the extent that you could call more events at little to no cost and achieve additional financial benefits for your ratepayers, it would be more cost effective.<sup>27</sup>

While Evergy attacked Mr. Luebbert's claim that "tangible financial benefits" were not a part of statute, Commission rules, or previous agreements,<sup>28</sup> Evergy's tariffs do mention that demand response events can be called for "economic reasons."<sup>29</sup> Brian File testified that Evergy called no demand response events for those permissible "economic reasons."<sup>30</sup> By failing to call any demand response events for economic reasons, not only did Evergy fail to maximize benefits, Evergy failed to even attempt to maximize benefits.<sup>31</sup> In other words, Evergy did not even attempt to dispel the serious doubt cast on these imprudent actions.

By failing to call additional events, Evergy failed to deliver, per the MEEIA statute, its obligation to maximize benefits to all ratepayers. Ratepayers fund these programs, with an expectation, even a statutory mandate, for maximum financial benefits, with minimal costs. Evergy fails its ratepayers when it refuses to even attempt to maximize these benefits.<sup>32</sup>

And that is where imprudence arose; Evergy knew of opportunities to maximize benefits, and decided not to act. A reasonable person would have at least attempted to maximize benefits by calling additional events; Evergy's failure to do so is a clear violation of the prudence standard outlined in *State ex rel. Associated Natural Gas Company*. However, again, though Staff has

---

<sup>27</sup> *Id.* pg. 187, ln. 23-25 and pg. 188, ln. 1-8.

<sup>28</sup> *Id.* pg. 175, ln. 7-20.

<sup>29</sup> *Id.* pg. 189, ln. 22-25.

<sup>30</sup> *Id.* pg. 143, ln. 13-22. See also KCP&L Greater Missouri Operations Company Tariff P.S.C. Mo. No. 1, 1st Revised Sheet No. R-89; KCP&L Greater Missouri Operations Company Tariff P.S.C. Mo. No. 1 Original Sheet No. R-85; and KCP&L Greater Missouri Operations Company Tariff P.S.C. Mo. No. 1 Original Sheet No. R-108

<sup>31</sup> *Id.* pg. 190, ln. 19-21.

<sup>32</sup> *Id.* pg. 194, ln. 19-24.

concluded that Evergy was imprudent in its management of its demand response programs, this remains an issue best resolved in the MEEIA Prudency Review.

**Issue (2): Was it imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs?**

It was imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs. However, Staff has not recommended any disallowances due to Evergy's failure to call additional demand response events within the context of the FAC prudence review because the indecision regarding calling events was the result of the implementation of the demand response programs, which are funded through the DSIM. Separating the management of the demand response programs from a MEEIA prudency review, as suggest by Mr. File,<sup>33</sup> "could result in the same issues or substantially similar issues being raised and litigated by multiple parties in up to three different dockets."<sup>34</sup>

That being said, and as outlined in response to Issue (1), Staff has concluded that Evergy was imprudent in not calling additional demand response events. It is true that if Evergy had attempted to maximize the number of events called, benefits and costs could have flowed through the FAC.<sup>35</sup>

However, any disallowance recommended by Staff, even with the potential of benefits and costs to flow through the FAC, are best addressed in the MEEIA Prudency Review because "the demand response program costs are recovered through the DSIM and the programs are implemented imprudently, and so therefore I [Mr. Luebbert] would say an adjustment is more appropriate through the DSIM than through the fuel adjustment clause."<sup>36</sup>

---

<sup>33</sup> Ex. 8, pg. 15, ln. 16.

<sup>34</sup> Ex. 104, pg. 3, ln. 21-23.

<sup>35</sup> Transcript Vol. II, pg. 179, ln. 2-9.

<sup>36</sup> *Id.* ln. 14-18.

**Issue (3): If it was imprudent to not call additional demand response events in a manner that would have reduced FAC costs, is it more appropriate to address the imprudent implementation of the programs through an ordered FAC adjustment or an ordered DSIM adjustment?**

The appropriate place to address the imprudence of Evergy's implementation of its demand response programs is through an ordered DSIM adjustment in the MEEIA Prudency Review. In his surrebuttal testimony, Mr. Luebbert outlined why a DSIM adjustment in those separate cases is the proper resolution:

1. The MEEIA demand response program costs, including incentives, program administration, and employee salaries, are recovered through the respective company's Demand-Side Programs Investment Mechanism ("DSIM").
2. Evergy was incentivized to implement the programs through the approved Earnings Opportunity ("EO") which is also funded through the DSIM.
3. Evergy's decision makers failed to maximize the benefits of the approved demand response program even after acknowledging several of those potential benefits.
4. Ratepayers paid for the demand response programs and the associated EO through the DSIM with the expectation that the Evergy decision makers would implement the programs in a manner that would maximize the benefits realized through those programs.
5. The programs were funded through the DSIM despite the decisions not to target potential ratepayer benefits during the implementation of the programs.

6. Ratepayers should not be required to fully fund programs, much less pay Evergy shareholders a substantial earnings opportunity, for programs that underperform and fail to maximize ratepayer benefits due to Evergy's managerial decision making.<sup>37</sup>

As further described by Mr. Luebbert:

While some of the potential benefits that Evergy failed to attempt to achieve would have flowed back to customers through the respective company's Fuel Adjustment Clause ("FAC"), the decisions, or lack thereof in some instances, were the result of Evergy's implementation of the MEEIA programs and the disallowances I recommended are appropriate to address through the MEEIA prudence review proceedings.<sup>38</sup>

The Commission should not address the imprudence of Evergy's demand response programs in the context of this FAC prudence review. Ordering an adjustment to the FAC, based on the imprudence of Evergy's management of its demand response programs, would lock us in the worst of times. The Commission runs the risk of not just hearing this issue again in the MEEIA Prudency Review, but in Evergy's next general rate case as well. Under § 386.266.6 RSMo, "Once such an adjustment mechanism is approved by the commission under this section, it shall remain in effect until such time as the commission authorizes the modification, extension, or discontinuance of the mechanism in a general rate case or complaint proceeding."

We are already in the worst of times because this very same issue is already being addressed in two different prudency review dockets. The risk of confusion is further compounded if the courts were to hear multiple appeals, regarding the same issue, in separate dockets.<sup>39</sup>

As outlined by Mr. Luebbert:

"The creation of such an administrative inefficiency regarding the decisions made during the implementation of a utility energy efficiency program is ironic and easily

---

<sup>37</sup> Ex. 104, p. 2, ln. 20-24 and pg. 3, ln. 1-14.

<sup>38</sup> *Id.* pg. 3, ln. 15-19.

<sup>39</sup> *Id.* pg. 4, ln. 3-6.

avoided by addressing the imprudent actions of Evergy's decision makers through the DSIM and within the context of the MEEIA prudence review."<sup>40</sup>

## **CONCLUSION**

Evergy was imprudent in the management of its demand response programs, by failing to even attempt to maximize benefits by calling more events. Any disallowances are best handled as adjustments to the DSIM because the imprudence arises from the implementation of the programs which are funded through the DSIM, even if the imprudence did fail to reduce FAC costs. To escape this tale of two dockets, the only way to get to the best of times is to resolve this issue in the MEEIA Prudency Review.

Respectfully Submitted,

**/s/ Travis J. Pringle**

Travis J. Pringle  
Missouri Bar No. 71128  
Legal Counsel for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Mo 65102-0360  
(573) 751-4140 (Telephone)  
(573) 751-9285 (Facsimile)  
(Email) travis.pringle@psc.mo.gov

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all parties and/or counsel of record this 1st day of March, 2021.

**/s/ Travis J. Pringle**

---

<sup>40</sup> *Id.* pg. 4, ln. 6-9.