BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATEOF MISSOURI

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro's Request for Authority to Implement A General Rate Increase for Electric Service	))))	**Case No. ER-2022-0129**
In the Matter of Evergy Missouri West Inc. d/b/a Evergy Missouri West's Request for Authorization to Implement A General Rate Increase for Electric Service	))))	**Case No. ER-2022-0130**

EVERGY MISSOURI METRO'S AND EVERGY MISSOURI WEST'S MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE APPLICATION FOR REHEARING

COME NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("EMM") and Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("EMW") (collectively, "Evergy" or the "Company"), by and through their counsel and, pursuant to Section 386.500[1] and 20 CSR 4240-2.160, and submits their *Motion for Reconsideration, or in the Alternative, Application For Rehearing* ("Application") in response to the *Report and Order* ("Order") issued on November 21, 2022, by the Missouri Public Service Commission ("Commission") in these dockets.

In support thereof, the Company states as follows:

MOTION FOR RECONSIDERATION

1. Evergy appreciates the Commission's thoughtful consideration of its positions in this proceeding. The Company has carefully reviewed the Order and wants to reach the goals and objectives that have been articulated by the Commission.

2. To achieve the Commission's objectives, Evergy believes there are two critical areas that warrant modification on reconsideration in order to enhance customer benefits

[1] All citations are to the Revised Statutes of Missouri (2016), as amended.

consistent with the Commission's Order and ensure a smoother implementation that mitigates potential disruptions for customers: (1) Extending the amortization period for unrecovered Sibley plant investment from 4 years to 8 years, and (2) Modifying the implementation of mandatory time-of-use ("TOU") rates.

3. As explained below, if these two specific items are satisfactorily resolved on reconsideration, the points of error discussed below in the Application For Rehearing section of this pleading, while supported by Evergy, would not require EMW or EMM to seek judicial review of the Order, nor require EMW to file a new rate case on February 2, 2023, as otherwise signaled by EMW's filing of a 60-day notice on December 2, 2022.

(i) Modification of the 4-Year Amortization of the Unrecovered Investment in the Sibley Plant to an 8-Year Amortization.

4. Evergy Missouri West recognizes that the Commission faced a variety of complex and inter-related issues in these proceedings. EMW fully supports many of the Order's decisions, including the Commission's finding that the retirement of Sibley Unit 3 in 2018 was prudent and that no serious doubt was raised regarding Evergy's resource planning. However, the Company must bring to the Commission's attention the issues that will arise if its decision regarding the Sibley amortization of unrecovered net book value is not modified.

5. In deciding how to address the amortization of the Sibley Regulatory Liability ($105,659,315) and the Sibley Regulatory Asset ($182,253,675), the Commission first determined that the Regulatory Liability should be credited to customers over four years. See Order at 40. Evergy agrees with this decision and the rationale articulated by the Commission in support of it, as this amount has been recovered in rates by the Company over the past four years.

6. Regarding the Regulatory Asset (i.e., the net book value of Sibley) amortization, the Order stated that "Evergy should be allowed a return" of the asset "as quickly as practicable."

Id. at 41. Accordingly, the Commission "set the amortization period for the unrecovered investment in the Sibley Units at four years to mirror the amortization period of the regulatory liability account." Id. at 42. Unfortunately, this decision to return these amounts to EMW on an accelerated basis, which was not advocated by any party in this proceeding, results in a higher revenue requirement, and therefore a higher impact to customer rates, as well as a "performance penalty" of approximately $22.0 million annually under Section 393.1655.3 of the plant-in-service accounting ("PISA") statute. Absent a change to the Sibley Regulatory Asset amortization period as requested herein, the only way for the Company to mitigate the detrimental financial impact of this "performance penalty" is to file a general rate case with new rates that become effective no earlier than January 1, 2024.

7. Because the Commission found the Company's decision to retire Sibley to be prudent, it would appear that the Commission did not intend to assess such a penalty to EMW with its Regulatory Asset amortization decision. The Company therefore respectfully requests that it reconsider its decision and order that the unrecovered Sibley investment be returned to it over eight years. The impact of shifting from a four-year amortization period to an eight-year amortization period equates to an annual reduction to revenue requirement of approximately $22.5 million per year, which is a significant benefit to customers, particularly during this period of high inflation.

8. In contrast, the higher revenue requirement resulting from a four-year amortization period for the unrecovered investment in the Sibley plant not only creates higher revenue requirement for customers, it also imposes the performance penalty referenced above. The Section 393.1655.3 performance penalty would arise because the use of a four-year amortization period for the Sibley Regulatory Asset substantially increases the revenue requirement resulting

from this rate case. By increasing the revenue requirement, the statutory cap contained in Section 393.1655.3 will be exceeded, and the amount in excess of the statutory cap (i.e., the compound annual growth rate cap) cannot be recovered as a "performance penalty."

9. The *overarching issue* that the Company now faces is a performance penalty, which does not appear to align with the Commission's statement that EMW should not have to wait "17 to 20 years for a full return of its unrecovered investment." See Order at 41. While the Company appreciates that the Commission, when considering this recovery period, did "not find this result reasonable," and selected a shorter recovery period for the Sibley investment, EMW believes that Commissioners did not intend to increase the revenue requirement by selecting a four-year amortization period *in order to* exceed the statutory cap and create a PISA performance penalty for EMW. Evergy sought a 20-year amortization period which is consistent with the original planned life of Sibley Unit 3 to 2040. See Order at 41; Ex. 44 at 44 (Klote Direct); Ex. 71 at 19 Spanos Direct). The Office of the Public Counsel ("OPC") and Midwest Energy Consumers Group ("MECG") favored an amortization over 17 or 20 years.[2] Although Staff favored a 5-year amortization, it stated that if the Commission set a net book value higher than $145.6 million – which it did, setting the value at $190.8 million – the Commission "should consider lengthening the amortization period to mitigate the rate impact" upon customers. See Staff Post-Hearing Brief at 13, 19; Ex. 269 at 6 (K. Majors Surrebuttal & True-Up Direct). An amortization period longer than the four-year period adopted in the Order, which is quite brief in the realm of generally long-lived utility generating assets, is also warranted by the Commission's finding on p. 9 of the Report and Order in the Sibley AAO case (EC-2019-0200) that the Sibley retirement was unusual. This was because the net book value of Sibley remained significant at

[2] Order at 41.

the time it was retired, given the unit's number of years of remaining depreciable life until 2040, per the last depreciation study issued prior to its retirement.

10. If the Commission changes the Sibley Regulatory Asset amortization period from four years to eight years (particularly as the ordered remaining net book value was set at a value higher than supported by EMW and Staff), it would decrease the revenue requirement and have the collateral impact of lowering annual recovery of the balance from customers and alleviating the performance penalty. This change falls squarely within the discretion of the Commission and is well supported by the record. Moreover, this modification would benefit customers by allowing EMW to forego filing a general rate case in early February 2023, which will otherwise be necessary to mitigate the detrimental financial impacts of the $22.0 million annual performance penalty. A February 2023 rate case filing would alleviate the annual performance penalty for the Company but would leave West's customers with three full years of higher rates based on a higher revenue requirement as a result of the four-year amortization of the Regulatory Asset. Reconsideration by the Commission to change the Sibley Regulatory Asset amortization period to eight years would reduce the annual revenue requirement to be collected from customers by for the return of the remaining Sibley net book value by $22.5 million and alleviate the performance penalty, rendering a February 2023 rate case filing by West unnecessary. The Company sincerely believes that extending the Sibley Regulatory Asset amortization period from four years to eight years more closely aligns recovery of the remaining Sibley net book value with the record evidence and will be in the best interest of all parties, the Company's customers, as well as the Commission.

(ii) Modification of the Implementation Plan for Mandatory and Optional Time-of-Use Rates to Make TOU Rate Implementation More Successful and Acceptable to Customers.

11. Evergy acknowledges, appreciates and respects the Commission's desire and policy directives to move toward mandatory TOU rates. While Evergy argued against *mandatory* TOU rates in its case, the Company is aligned with the Commission's goal to use TOU rates as an economic signal to reflect wholesale market price differences and provide incentives for behavioral change(s) by customers. However, given the degree of change involved in this rate design, the Company is concerned that a six-month implementation period is not sufficient time to make necessary customer facing system changes and effectively educate customers. As a result, the Company believes many customers will not fully understand the new rate design and will be adversely impacted by a change to TOU rates during the 2023 summer season. During the Agenda Meetings on November 9 and 21, Commissioner Holsman also cautioned against the implementation of mandatory TOU rates in such a quick one-time transition because of the impact on customers, especially for those residential customers who cannot effectuate immediate behavioral change(s) or who do not have the technological or financial resources to mitigate the impact of a higher priced peak period at the start of a summer.[3] The Company would like to collaborate with the Commission, Staff, OPC, and other interested stakeholders to have a smooth and successful transition to default TOU rates for our residential customers. The best way to ensure mandatory TOU rates are successful is for customers to clearly understand them, have tools to understand their rate options and to experience a transition that is easy and results in savings rather than bill increases. Evergy wants TOU rates to be successful and for customers to benefit from them. In the spirit of cooperation and collaboration, Evergy requests the Commission adopt the following transition plan on reconsideration.

12. First, Evergy believes that the Staff's proposed low-differential TOU rates should be adopted by the Commission on reconsideration as the mandatory, default rate that would be implemented after an education period. Evergy agrees that any traditional ratemaking structure will no longer be offered following a mandatory, default TOU rate implementation.

13. Second, Evergy requests the Commission adopt on reconsideration Evergy's two-period TOU rate along with its other proposed higher differential TOU rates to be available to all residential customers[4] on an optional basis. Evergy's objective will be to educate customers on the other optional TOU rates and the benefit of behavioral change(s) to realize bill savings, depending on the customer's lifestyle. This request for reconsideration aligns with the record in this proceeding, particularly with Staff witness Sarah Lange's testimony in which she was adamant that the Company's opt-in TOU rates should not be adopted on a mandatory, default basis:

> So proposals like the company's proposal whether on an opt-in or a mandatory basis are not cost based and are not good for -- In the case of opt-in, the company's proposal is not good for non-participants and in the case of default, the company's proposal would be bad. <u>It would cause significant overrecovery or underrecovery just depending on weather effects and other factors that are influencers on customers consumption of energy.</u> <u>I truly, truly, truly cannot caution enough against either of the company's opt-in designs.</u> <u>There's basically three, I guess.</u> <u>None of those designs should be imposed on a default or mandatory basis.</u> <u>[emphasis added]</u>[5]

[3] http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6533 at 1:06 (Nov. 9, 2022 Agenda); http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6536 at 41:00 (Nov. 21, 2022 Agenda).

[4] The Company believes the only rate available to net metering customers is the Staff low-differential rate as there are technical, billing, and legal barriers to offering Time-of-Use rate options to residential customer-generators. This concern was addressed in the August 30, 2022 Stipulation approved by the Commission. The Company will develop a report examining these barriers and explore potential solutions. Until that can occur, the Company believes net metering customers are ineligible for the optional TOU rates. The Company would note this question is part of the Staff's Motion for Clarification filed on December 2, 2022.

[5] Tr. Vol. 11, pp. 755-56.

14. Third, in order to accomplish a successful transition and adoption of mandatory TOU rates, Evergy requests the Commission adopt on reconsideration a more extended transition period to allow Evergy to sufficiently educate customers about mandatory TOU rates and their benefits while avoiding implementation just before the start of the summer peak season. Evergy proposes to begin implementation of the mandatory TOU rate and the optional TOU rates by October, 2023. This extension, while allowing more time for customer outreach and education, will also critically move the adoption of new TOU structured rates out of the summer, likely the highest impact season for TOU rates, providing customers more time after the rate change to learn and manage behavioral change(s). In addition, implementing mandatory TOU rates in October will give Evergy the necessary time to modify its online portal to allow customers to have interactive rate tools that will include TOU rate options. These tools support the mandatory TOU rate and promote choice. It will be critical for customers to compare and select the best, and most beneficial, TOU rate for them, as well as better understand how to modify their behavior to alter their usage, maximize their bill savings, and successfully adapt to their new TOU rate. In addition, it will be important to complete this exercise to maximize customer tools and digital interaction options in order to mitigate the risk of a very large number of customers contacting the Company's Customer Service Centers seeking to resolve questions regarding the options as to the customer's most beneficial rate or to change the customer's rate manually.

15. Fourth, for ease of customer understanding and implementation, Evergy requests the Commission clarify in its reconsideration that implementation occur at the beginning of a customer's bill cycle. This will help to mitigate customer confusion due to changing to the new TOU default rate in the middle of a bill cycle and will greatly simplify bill presentation to customers by not requiring bill proration between standard tariffed rates and the new mandatory

TOU rate. This clarification to avoid the need for proration of bills, which would be exceedingly complicated to administer and even more difficult for customers to understand, would provide critical simplification for successful implementation.

16. Fifth, Evergy believes it would be prudent for the Commission in its reconsideration to allow Evergy to phase-in TOU availability to customer groups not only over bill cycles but over at least two months after the initiation of the mandatory and optional TOU rates, with a full transition completed by the end of 2023. As discussed below, this slightly longer transition period would avoid the problems of implementing TOU rates at one time and on one effective date for approximately 552,000 customers. Evergy also believes that a slightly longer transition period would reasonably disperse the anticipated large numbers of customers who may have questions or complaints about the new rate contacting (and potentially severely taxing) the personnel of the Company's Customer Service Centers and the Commission Staff's Customer Service Division. If mandatory TOU rates are implemented for all residential customers simultaneously in early June, the Company will likely experience extremely high call volumes and customers will see extended wait times for a customer service representative and longer call times. This may in turn lead to frustrated customers who associate that frustration with the new TOU rates. Evergy believes a slightly longer and phased transition period would mitigate those concerns. Evergy would also note that Ameren Missouri and The Empire District Electric Company are being allowed to transition to low differential mandatory TOU rates and higher differential optional TOU rates over several years as these public utilities install AMI meters across their respective customer bases.[6] Moreover, Ameren Missouri requested to

[6] *Corrected Stipulation and Agreement,* pp. 9-12, Re Ameren Missouri, File No. ER-2019-0335 (filed Feb. 28, 2020; See also Ex. 17, Willis Direct, pp. 4-5, Re Ameren Missouri, File No. ER-2022-0337; *Non-Unanimous Partial Stipulation and Agreement*, p. 8 Re Empire District Electric Company (filed Jan. 28, 2022).

modify the timelines in its Commission approved stipulation concerning the TOU rates as it found that making adjustments to its systems and processes to allow the migration of all of its customers to TOU billing was more difficult and time-consuming than anticipated.[7] The Commission granted the five-month variance from the provisions of the stipulation and from Ameren Missouri's tariffs.[8] As explained in this Motion, Evergy anticipates migration issues as well and seeks, as Ameren did, additional time from the Commission so that full implementation occurs by December 2023.

17. Evergy will work with Staff and OPC so that they have a chance to review the materials related to the TOU education program as directed by the Commission's Order.[9] Moreover, to obtain as much feedback from the Commission and other stakeholders as possible related to the details of the TOU implementation plan, Evergy requests that the Commission convene a workshop proceeding as soon as practical to collaborate with the Commissioners, Staff, OPC, and other stakeholders on the details of the implementation plan. Evergy is convinced that such a collaborative approach will benefit the Company and its customers.

18. Finally, Evergy would respectfully request that in its reconsideration the Commission authorize it to defer the education, marketing, and any system modification costs associated with the implementation of mandatory and optional TOU rates for consideration, after any prudence review, of possible recovery in a future rate case. At present, and subject to continued implementation planning and design, the Company estimates that $9-12 million (see attached **Exhibit A**, which while not insignificant, represents approximately $16 to $22 per residential customer to complete system implementation activities and effectively conduct

[7] Order Granting Variances and Waivers, EE-2021-0103, November 18,2020, p. 2.
[8] Id., p. 6.
[9] See pp. 68-69 of Order.

customer outreach, marketing and communication necessary to successfully implement a mandatory TOU rate and other optional rates. Evergy's cost estimate is comparable to the costs estimated by Ameren for its TOU transition. Under this requested approach, any cost employed to educate customers and implement mandatory TOU rates would be subject to feedback by Staff and OPC and subject to a prudency review by the Commission in the Company's next rate case.

19. The Company respectfully requests the Commission reconsider and modify its Order to (1) adopt an eight-year amortization period for the Sibley Regulatory Asset, thereby reducing the total revenue requirement, reducing the impact of the higher revenue requirement on customers, and avoiding the performance penalty, and (2) allow the requested modifications to the TOU implementation plan, helping to ensure a successful transition to mandatory TOU rates and adoption of TOU rates by the Company's Missouri customers. The Company is focused on satisfactorily resolving these two items on reconsideration; in that circumstance, there would be no need for EMW to seek judicial review of the Order or to file a new rate case in early February, 2023.

APPLICATION FOR REHEARING

I. LEGAL PRINCIPLES THAT GOVERN APPLICATIONS FOR REHEARING

20. All decisions of the Commission must be lawful, with statutory authority to support its actions, as well as reasonable. State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 734-35 (Mo. en banc 2003). An order's reasonableness depends on whether it is supported by substantial and competent evidence on the record as a whole. State ex rel. Alma Tel. Co. v. PSC, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). An order must not be arbitrary, capricious, or unreasonable, and the Commission must not abuse its discretion. Id.

21. The lawfulness of an order is determined by whether there is statutory authority to support the Commission's order, with the appellate courts reviewing the legality of the Commission's decisions de novo. For example, it was error for the Commission to exclude "electric vehicle charging equipment" from the statutory definition of "electric plant" in Section 386.020(14). Kansas City Power & Light Co. v. PSC, 557 S.W.3d 460, 472-73 (Mo. App. W.D. 2018). See State ex rel. Util. Consumers Council of Mo., Inc. v. PSC, 585 S.W.2d 41, 49 (Mo. en banc 1979) (as "purely a create of statute," PSC's "powers are limited to those conferred by … statutes").

22. Decisions by the Commission that cause losses to a utility which are patently disproportionate to the public convenience and necessity "render the order...unreasonable and arbitrary," and constitute an abuse of discretion. State ex rel. Chicago, Rock Island & Pacific R.R. v. PSC, 312 S.W.2d 791, 805 (Mo. En banc 1958).

23. A review of the record in this case demonstrates that the Order failed to comply with these principles in certain respects and that rehearing should be granted as to the issues discussed below.

II. AMI DISALLOWANCE (EMM AND EMW)

24. In its Order, the Commission disagreed with OPC's proposed disallowance of costs of all AMI-SD meters since "OPC's recommendation is premised on the assumption that the installation of AMI-SD meters was unjustified and provided no benefits. The Commission does not question the overall benefits provided by AMI-SD meters over AMI meters. There is value in the upgraded technology and benefits provided with the AMI-SD. In this case, the benefits of the AMI-SD meters provide value when installed for justifiable reasons, such as replacing manual meters, or an AMI meter that is not functioning." (Order pp. 50-51)

25. Staff recommended and the Commission adopted disallowances of $6,321,846 for EMM and $2,957,123 for EMW representing the cost of new AMI-SD meters that were used to replace existing AMI meters with remaining life. (Order, pp. 49-51)

26. In light of the Commission conclusions regarding the benefits of AMI-SD meters discussed above, Evergy requests reconsideration and rehearing of the Order and its disallowances, and clarification of the Commission's preferred practice for Evergy in the future with regard to replacement of AMI meters that are not fully depreciated. Recognizing the Commission's findings that AMI-SD meters have benefits over AMI meters, the Company requests the disallowance in this case be modified. The disallowance should be for the average cost of the replaced meters --not of the cost of the new meters as authorized by the Order. This aligns cost on books with expected economic life and allows the Company to continue to change out so that the Company does not have delay in unlocking benefits of AMI-SD. The disallowance should be calculated by taking the number of meters removed multiplied by their average cost ($55 per meter).

27. Even if the Commission rejects the Company's request for reconsideration and/or rehearing of the AMI disallowance in this case, the Commission should clarify if it would find it acceptable for the Company to continue to replace older AMI meters that were not fully depreciated if the Company simultaneously removed from rate base an amount equivalent to the undepreciated portion of the old AMI meters that were being taken out of service and replaced with AMI-SD technology. If accepted by the Commission, the customers would not be charged for more than one meter, but customers would have the benefit of the newer AMI-SD technology. For these reasons, Evergy respectfully requests the Commission reconsider or rehear its Order on the AMI meter issue, as described herein. Even if the Commission does not grant reconsideration

or rehearing of this issue in this case, the Commission should clarify the Commission's preferred practice for replacing AMI meters that are not fully depreciated with new AMI-SD meters in the future. The Commission should adopt Evergy's proposed treatment for the future, as described herein.

III. IMPACT OF SIBLEY AMORTIZATION ISSUE ON PISA DEFERRAL ISSUE (EMW ONLY)

28. The Commission's Order has potentially exacerbated the effect of the Commission's failure to address the PISA-deferral issue when it determined that the amortization period for the unrecovered investment in the Sibley Unit should be four years. This is because the Commission's decision on the Sibley amortization period, unless it is increased from four years to eight years as the Company has requested above in the Motion for Reconsideration section of this pleading, has resulted in a significant increase in the revenue requirement, and consequently, increased the amount of rate increase that exceeds the statutory cap in Section 393.1655.3. This decision therefore has the effect of dramatically increasing the "performance penalty."

29. While both Staff and the Company agreed that Sibley's net book value is approximately $145,000,000 as of 2018, the Company advocated for a 20-year amortization and Staff for a five-year amortization.[10] A 20-year amortization period for the Sibley net unrecovered investment is consistent with the original planned life of Sibley Unit 3.[11] MECG and OPC recommended a Sibley net book value ("NBV") of approximately $300 million as of 2018, amortized over 17 or 20 years.[12]

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[10] Id.
[11] Id.
[12] See Evergy Post-Hearing Reply Brief at 15.

30. No party recommended that the Commission should adopt a 4-year amortization period if the Commission decided the Sibley NBV was higher than that proposed by Company and Staff. Indeed, Staff's witness Majors specifically testified that "If the Commission includes a higher NBV or includes a lessor (sic) amount of regulatory liability from Case No. EC-2019-0200 as an offset to the NBV, thereby increasing the net regulatory asset, the Commission should consider lengthening the amortization period to mitigate the rate impact."[13] Relatedly, MECG's witness Meyer advocated for a "20-year amortization of the unrecovered investment" and amortization of "the regulatory liability including rate of return of $142 million over ten years," noting that "Evergy proposed to amortize the regulatory liability over four years, but the total liability was significantly smaller."[14]

31. Accordingly, no party requested nor offered any evidence in support of a four-year amortization period to recover the Commission-determined net unrecovered investment in the retired Sibley plant if the Commission adopted MECG's and OPC's Sibley NBV. Nevertheless, the Order adopted a 4-year amortization period for the unrecovered investment in the Sibley Unit. This decision has increased the revenue requirement, and results in a performance penalty unless the amortization period is extended from four years to eight years on reconsideration or on rehearing.

32. The attached table (**Exhibit C**) summarizes the impact of the Commission's proposed four-year amortization period compared to the other proposals of Evergy, Staff, OPC, and MECG/OPC discussed in the record of this case. As shown in Exhibit C, the Commission's approach will increase the revenue requirement by $46.7 million, compared to Evergy's proposal which will increase the revenue requirement by $7.1 million. Staff's approach would increase

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[13] See Ex. 269 at 6 (Majors Surrebuttal/True-Up Direct).
[14] See Ex. 400 at 15 (Meyer Direct).

the revenue requirement by $28.3 million, while OPC has alternative proposals which would increase revenue requirement by $14.6 million and $9.3 million, respectively. An 8-year amortization would increase revenue requirement by $22.8 million. Obviously, the Commission's 4-year amortization period for the recovery of the Commission-determined net unrecovered investment in the Sibley plant will have a much more dramatic impact upon the revenue requirement and ultimately create a near-term PISA performance penalty and longer term rate impact on EMW customers, than any of the proposals presented by the parties.

33. If the Commission does not grant rehearing on the Sibley Amortization issue, the Company's revenue requirement will be higher than under the Company/Staff approach, but it will also increase the amount of the exceedance of the statutory cap, and the performance penalty. While the Company does not believe that a performance penalty is warranted since the Commission found the Company's decision to retire Sibley was prudent, if the Commission maintains its 4-year amortization of unrecovered investment in the Sibley Unit, then the performance penalty, if applied, could be approximately $22.0 million.

34. This $22 million annual performance penalty under Section 393.1655.3 of the PISA Law constitutes an abuse of discretion because it exceeds the benefits EMW received under the PISA Law in the form of deferrals of depreciation expense that totaled approximately $44.8 million[15] from the 41-month period of January 2019 through May 2022. The deferrals of depreciation expense and return recorded under Section 393.1400.2 of the PISA Law represent an incentive for the Company to invest in qualified electric plant. When, as in this case, the amount of such an incentive – which can reasonably be characterized as representative of the public convenience and necessity – is exceeded, on a per month basis, by a performance penalty

[15] See Ex. 282-Staff True-up Accounting Schedules, Accounting Schedule 02 (Rate Base), line 16 (PISA Deferral Regulatory Asset).

that is wholly a creation of the Commission itself (in the form of an accelerated amortization not recommended by any party or testifying expert), this disproportionality is an abuse of discretion under State ex rel. Chicago, Rock Island and Pacific R.R. v. PSC, 312 S.W.2d 791, 805 (Mo. En banc 1958). Under these circumstances, the performance penalty also contradicts and violates the intent of the PISA legislation which was to provide incentives for responsible utility investment.

35. If a performance penalty is applied, then EMW will find it necessary to file a new rate case likely in February, 2023, in order to limit the indefinite nature of the performance penalty. The performance penalty would be reflected as a reduction in the rates resulting from this case until the rates are effective in the next EMW rate case. Therefore, by filing a new rate case, the performance penalty would be limited to approximately 13 months. EMW regrets that this new filing would be necessary, and the need for this filing could be avoided if the Commission adjusted the Sibley amortization period to an 8-year period to lower the revenue requirement to ensure that a performance penalty is not triggered.

IV. SIBLEY (EMW ONLY)

36. The Commission unreasonably and erroneously adopted a net book value ("NBV") of $190,833,490 at June 30, 2018 for the Missouri jurisdictional Sibley plant. Such value was not supported by substantial and competent evidence on the record as a whole, but rather was undisputedly based on estimates and an incomplete data set. State ex rel. Alma Tel. Co. v. PSC, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). The Order states that "the Commission finds OPC witness Robinett's calculation to be the most credible of the NBV estimates."[16] However, in his rebuttal testimony, Mr. Robinett made clear that "[t]here are, in [his] opinion, three values the Commission could rely on to calculate or determine the remaining unrecovered

[16] Report & Order at 35.

plant balance of the Sibley plant," including the $145.6 million NBV proposed by Evergy and Staff.[17] Mr. Robinett specifically testified that "my goal here is to provide the Commission with two additional options of how to calculate the unrecovered balances for Sibley," and he did not otherwise recommend or factually support the $190.8 million figure.[18]

37. This is consistent with Mr. Robinett's testimony at hearing, where in answering a bench question regarding Mr. Spanos' "testimony and methodology for how he got to the $145.6 million net book value," Mr. Robinett admitted that he had not "reviewed it all specifically."[19] Mr. Robinett likewise testified that unlike his own calculations, Mr. Spanos' "methodology looks at a very specific set of time, and what it does is it goes back and looks at all of the vintages and tries to calculate out what reserves should have been if a certain rate had been in effect for the life of that asset. And then that's all summed up to get to that value."[20] In response to re-direct by OPC, Mr. Robinett then could not remember why he had offered additional scenarios for Sibley in the first instance:

> MR. CLIZER: Did you take a specific position as to what the remaining net book value of the Sibley asset is in your testimony?
> MR. ROBINETT:· So I went through two different scenarios to arrive at a final total that also included the dismantlement costs. Yes.
> MR. CLIZER: And why did you do two?
> MR. ROBINETT:· I've got to go back through my testimony and review it.
> MR. CLIZER: Mr. Robinett, if you think your testimony will explain it yourself, we can move on.
> MR. ROBINETT: I think it will.
> MR. CLIZER: Never mind then. Let's move on.[21]

[17] Ex. 310 at 14, 16-17.
[18] See id. at 18.
[19] Tr. Vol. 8 at 299:10-17.
[20] Id. at 299:18-25.
[21] Id. at 301:19-302:6.

38. By selecting a self-labeled "optional" NBV that was not supported by any other party and was even abandoned by OPC itself at hearing and in post-hearing briefing, the Commission necessarily rendered an impermissibly unsupported Order. See, e.g., State ex rel. Transp. Delivery Co. v. PSC, 414 S.W.2d 322, 328 (Mo. Ct. App. W.D. 1967) ("we can only conclude that the order of the Commission . . . is unreasonable and void because it is not supported by any evidence, let alone competent and substantial evidence."). In reality, the $190.8 million NBV was the fourth NBV proffered by OPC for Sibley since Unit 3's retirement, and the second "optional" NBV that OPC then deserted without explanation in subsequent proceedings before the Commission. The Commission's Report & Order in the prior AAO Case even recognized that OPC was at that time advocating for an estimated Sibley NBV of "$160 million."[22] The Order's sole reliance on a witness, who in turn admitted that OPC's latest NBV is an optional estimate, was arbitrary and cannot constitute substantial or competent evidence. See State ex rel. Pub. Couns. v. PSC, 289 S.W.3d 240, 250–51 (Mo. Ct. App. W.D. 2009) (reversing and remanding PSC order for relying on a witness's testimony "which we have found does not constitute competent and substantial evidence upon which to base such a finding, but it also demonstrates that the Commission failed to consider a multitude of costs that go beyond the meters and pipes installed on a residential customer's premises").

39. The Commission also arbitrarily and capriciously ignored the positions of the only two parties who provided a depreciation study or depreciation rates in this case (EMW and Staff), even though it is undisputed that EMW witness Mr. Spanos is a nationally recognized depreciation expert.[23]

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[22] See Report & Order at 9, Office of Public Counsel v. KCP&L Greater Mo. Operations Co., No. EC-2019-0200 (Oct. 17, 2019).

[23] See, e.g., Tr. Vol. 8 at 216:14-22 ("I respect Mr. Spanos' expertise as a depreciation expert.") (Majors); id. at 258:1-19 ("MS. MERS: Did any other party besides Staff and Evergy provide depreciation rates in this case? MR.

40. Indeed, EMW, Staff, and Mr. Robinett agreed that a depreciation study involves more relevant factors, data, and related calculations than what was presented in Mr. Robinett's rebuttal testimony.[24] Mr. Robinett's "third option" of the $190.8 million value only "mov[ed] balances forward from the 2014 depreciation theoretical reserve values" and "Mr. Robinett admits that some values are estimated in this third option."[25] Staff witness Cunigan further explained that Mr. Robinett's third option "would require more in depth calculations to accurately capture the value. Also, this method of moving the balances forward from 2014 would need to be done for all steam production accounts and not just Sibley."[26] The Order was based on estimates, missing inputs, and missing values, and was thus not supported by competent evidence on the whole record. The Commission should therefore reconsider its Report & Order to instead adopt the Sibley NBV of $145,657,225[27] advocated by Staff and EMW, for the reasons set forward in EMW's testimony and post-hearing briefing, which are fully incorporated herein.

41. Relatedly, and in addition to the discussion above, the Order's decision to link the amortization period for EMW's recovery of Sibley's remaining unrecovered plant balance to the return of amounts collected after Sibley's retirement was not supported by competent evidence, as well as arbitrary.

42. In the event (as here) that the Commission adopted a Sibley NBV higher than what was recommended by EMW and Staff, not only did no party recommend an associated four-year amortization period, but Staff, EMW, and MECG agreed that the amortization period should be longer. Staff's witness Majors explicitly testified that "If the Commission includes a higher NBV

CUNIGAN: No.").

[24] See id. and 299:10-25.

[25] See Ex. 261 at 7 (Cunigan Surrebuttal/True-Up Direct).

[26] Id.

[27] If this net book value is approved by the Commission, the amount allocated to the Missouri jurisdiction rather than for FERC is $145,161,990. E.g., Ex. 261 at 7 (Cunigan Surrebuttal/True-Up Direct).

or includes a lessor (sic) amount of regulatory liability from Case No. EC-2019-0200 as an offset to the NBV, thereby increasing the net regulatory asset, the Commission should consider lengthening the amortization period to mitigate the rate impact."[28] MECG's witness Meyer similarly advocated for a "20-year amortization of the unrecovered investment" and amortization of "the regulatory liability including rate of return of $142 million over ten years," noting that "Evergy proposed to amortize the regulatory liability over four years, but the total liability was significantly smaller."[29] The Order even recognizes these positions of the parties, but nonetheless finds without citation to record evidence or authority that "the Commission finds it appropriate to set the amortization period for the unrecovered investment in the Sibley Units at four years to mirror the amortization period of the regulatory liability account."[30]

43. Ordering a four-year amortization period for Sibley's unrecovered investment to "mirror the amortization period of the regulatory liability account" is also inconsistent with the Commission's decision in the AAO Case, which found that deferral was appropriate due to the length of Sibley's remaining depreciable life. See Report & Order at 13-14, Office of Public Counsel v. KCP&L Greater Mo. Operations Co., No. EC-2019-0200 (Oct. 17, 2019) ("More importantly, it is unusual and unique for a utility to retire a generating unit with twenty years of remaining anticipated service life, and twenty years of unrecovered depreciation expense.").

44. Because no party requested nor offered any evidence in support of a four-year amortization period to recover the Commission-determined net unrecovered investment in the retired Sibley plant, and because the Order contradicts the AAO Case Order, the Order's adoption

[28] See Ex. 269 at 6 (Majors Surrebuttal/True-Up Direct); see also Tr. Vol. 8 at 199:5-18 ("I think if you changed either the -- whether you include or exclude the rate of return deferral, whether you increase the net book value, I think some change [in amortization] is warranted to reduce the sheer impact of those amounts.") (Majors).
[29] See Ex. 400 at 15 (Meyer Direct).
[30] Report & Order at 27, 42.

of such is unavoidably unsupported and capricious.[31] See State ex rel. Cap. City Water Co. v. PSC, 850 S.W.2d 903, 914 (Mo. Ct. App. W.D. 1993) ("if judicial review is to have any meaning, it is a minimum requirement that the evidence, along with the explanation thereof by the witnesses and by the Commission itself, make sense to the reviewing court. We may not approve an order on faith in the Commission's expertise." (quotation omitted)); State ex rel. Transp. Delivery Co. v. PSC, 414 S.W.2d 322, 328 (Mo. Ct. App. W.D. 1967). Whether the Commission reconsiders its Order regarding Sibley's NBV (and it should), in any event the Commission should reconsider its Order to adopt a longer amortization period as recommended by all parties.

V. MANDATORY TOU RATES (EMM AND EMW)

45. The decision to adopt the Company's optional, two-period Time-Of-Use ("TOU") rates as mandatory, default TOU rates for residential customers against the recommendations of Company, Staff and OPC, is arbitrary, capricious and an abuse of discretion. It is also contrary to the overwhelming weight of the evidence. The Commission's rate design decision is also arbitrary and capricious since the rate design was adopted without a determination of its impact upon customers. State ex rel. Public Counsel v. Missouri Public Service Commission, 289 S.W.3d 240, 247-48 (June 23, 2009).

46. The decision is unlawful and unreasonable since there is no competent and substantial evidence in the whole record to support the Commission's decision. Unlike legislative matters, orders in contested cases must be based upon the competent and substantial evidence in the whole record.[32] But in this case, there is not a scintilla of evidence in the record

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[31] As discussed in EMW's Initial and Reply Post-Hearing Briefs, the only regulatory liability that it is appropriate to amortize back to customers is the $39,020,260 recorded to defer amounts in 2018 rates for the non-fuel O&M. The proper amortization period for such regulatory liability is four years, which is the same period in which the revenues were collected from customers. See Ex. 44 at 43 (Klote Direct); Ex. 129 at 13 (Kennedy Rebuttal). This is the only four-year amortization period ever mentioned by any party in this proceeding, which the Order approved. See Report & Order at 40.

[32] State ex rel. Public Counsel v. Missouri Public Service Commission, 289 S.W.3d 240, 247-48 (June 23, 2009).

to support the Commission's decision to adopt the Company's optional, two-period TOU rate as mandatory, default TOU rate for the residential class. As discussed below, all expert witnesses that testified on this issue strongly recommended against the approach being taken by the Commission. The Order fails to cite competent and substantial evidence in the record to support this drastic change in rate design, and violates the requirements of Section 536.090, RSMo. when it fails to explain its decision so a reviewing court can understand it without searching the record for evidence to support it. As a result, the Commission's decision is unlawful and unreasonable.

47. In this case, all parties who addressed residential rate design issues, including the Company[33], Staff[34], and OPC witnesses[35] opposed the adoption of the Company's opt-in two-period TOU rate proposal as a mandatory, default rate for all residential customers. Yet, the Commission adopted a contrary decision that adopted the Company's optional two-period TOU rate on a mandatory basis against the overwhelming weight of the evidence. State ex rel. Public Counsel v. Missouri Public Service Commission, 289 S.W.3d 240, 247-48 (June 23, 2009).

48. In fact, the adoption of any of the Company's optional TOU rates on a mandatory basis was not listed in the Issues Presented by the Parties[36] identified in the Order on page 65, and there was no discussion on the record by the Regulatory Law Judge or any of the Commissioners that even hinted that the Commission was considering the adoption of the Company's opt-in two-period TOU rate proposal on a mandatory, default basis for all residential customers. According to the Commission's procedural order adopted in this case, any issue not listed in the List of Issues will be considered "uncontested" and "not requiring resolution by the

[33] Tr. 725 (Caisley); Evergy Reply Brief at 37.
[34] Tr. 755-56. (Sarah Lange)
[35] OPC opposed the adoption of a higher differential TOU rate on a mandatory basis because "Evergy customers are not prepared to experience large differentials." (OPC Brief at 76).
[36] See List of Issues, Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements (filed Aug. 18, 2022)

Commission".[37] As a result, the Commission's decision to adopt the Company's optional two-period TOU rate on a mandatory, default basis for residential customers flies in the face of its own procedural order. For this reason, the Commission's decision is arbitrary and capricious.

49. The Commission's Order also violates fundamental principles of due process. See State ex rel. Fischer v. Public Service Commission, 645 S.W.2d 39, (Nov. 9, 1982). Due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. Tonkin v. Jackson County Merit System Commission, 599 S.W.2d 25, 32–33[7] (Mo.App.1980) and Jones v. State Department of Public Health and Welfare, 354 S.W.2d 37, 39–40[2] (Mo.App.1962). One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner. Merry Heart Nursing and Convalescent Home, Inc. v. Dougherty, 131 N.J.Super. 412, 330 A.2d 370, 373–374[7] (1974). The Commission's decision to adopt the Company's proposed optional TOU rates as mandatory, default TOU rates for the residential class when this issue was never presented by the parties or considered in the hearing violates the principle that parties must be afforded a full and fair hearing at a meaningful time and in a meaningful manner. Given that the Commission did not indicate at any point in the proceedings or otherwise give notice to the parties that the Company's optional TOU rates were being considered by the Commission to be adopted as a mandatory, default residential rate design, the Company, Staff, OPC, and other parties were deprived of the fundamental right to present evidence, cross-examine witnesses, present oral argument and file briefs on this issue.[38] As a result, the hearing procedures in this case were a violation of the fundamental principles of due process of law.

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[37] *Order Setting Procedural Schedule, Denying Consolidation, And Granting A Variance*, p. 7, File Nos. ER-2021-0129 and ER-2021-0130 (Mar. 16, 2022).

[38] See Section 536.070 and 536.080(1); 20 CSR 4240-2.110, 20 CSR 4240-2.130, and 20 CSR 4240-2.140.

50. The Order evidences a complete disregard for all of the competent and substantial evidence in the record which recommended against the use of the Company's two-period optional TOU rate as a mandatory TOU rate. As such, this decision by the Commission is not based upon competent and substantial evidence, and ranks as one of the most arbitrary and capricious decisions in the recent history of this Commission.

51. All Company witnesses that testified on rate design issues testified in favor of opt-in TOU rates—not mandatory TOU rates.[39] The Company witnesses also opposed the mandatory, low differential TOU rates proposed by Staff and OPC.[40]

52. Staff witness Sarah Lange was particularly adamant that the Company's opt-in TOU rate should not be adopted on a mandatory, default basis:

> So proposals like the company's proposal whether on an opt-in or a mandatory basis are not cost based and are not good for -- In the case of opt-in, the company's proposal is not good for non-participants and in the case of default, the company's proposal would be bad. It would cause significant overrecovery or underrecovery just depending on weather effects and other factors that are influencers on customers consumption of energy. I truly, truly, truly cannot caution enough against either of the company's opt-in designs. There's basically three, I guess. None of those designs should be imposed on a default or mandatory basis. [emphasis added][41]

53. OPC witness Geoff Marke only supported a low-differential TOU rate proposed by Staff as a "training wheels" approach, but he was opposed to the adoption of the Company's higher differential TOU on a mandatory, default basis because ". . . Evergy customers are not prepared to experience large differentials." (Ex. 307, pp. 15, Marke Rebuttal; See also OPC Initial Brief, p. 76).

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[39] See Ex. 20 and 107, p. 4, 11-12, 21-23, (Caisley Direct)
[40] Ex. 83, pp. 4-7 (Winslow Rebuttal).
[41] Tr. Vol. 11 at 755-56 (Lange).

54. Nor was there any discussion on the record by the Regulatory Law Judge or any Commissioner that even hinted that the Commission was considering the adoption of the Company's two-period TOU rate proposal on a mandatory, default basis for all residential customers. As a result, the parties were never on notice that this was an issue or a possible outcome of this case.

55. Perhaps most importantly, the Commission failed to consider the impact of the Order upon customers. While the Commission's Order speculates "Evergy's 2-period TOU rate to be the best introductory high differential TOU rate for residential customers as it has the lowest differential of Evergy's high differential TOU rates while still providing a benefit to those customers seeking substantial savings by altering the time of day of their energy consumption," (Order, p. 67), the Order cites no expert testimony to support this finding and totally ignores the expert witness testimony that this rate should be available on an optional basis only, and not on a mandatory basis. The Commission fails to analyze and quantify the impact on customers of requiring the use of the two-period TOU rate as a mandatory rate for the residential customers. This is a fatal flaw in the Commission's analysis, and constitutes reversible error.

56. There is no consideration of, and no evidence in the record to assess, the impact of such a drastic change in rate design on low-income customers and Evergy's most vulnerable customers to peak period usage charges. The Order finds that "Staff's proposal uses a low differential rate to offer more protection for the customer that cannot change usage times" (Order, pp. 66-67), but then rejects this Staff proposal since Staff's low-differential rate "does not provide sufficient incentive or opportunities for customers to see savings from TOU rates." (Order, p. 67). While the Company agrees that higher-differential TOU rates may provide a larger incentive or opportunity for customers to see savings from TOU rates, the Order adopting mandatory higher

differential 2-period TOU rate also poses the threat and strong possibility that such a rate will have very significant adverse impacts upon customers who cannot or will not change their usage patterns. The Order contains no analysis of the impact of the mandatory TOU rates on such customers. The Order demonstrates no effort to consider gradualism or other regulatory "best practices" to transition to mandatory TOU rates for all residential customers.

57. As the Missouri Court of Appeals has held in a gas rate case, an order of the Public Service Commission is arbitrary when the rate design was adopted without a determination of the impact upon customers. In an appeal of an order of the Public Service Commission, if a Commission order is clearly contrary to the overwhelming weight of the evidence, then a court may set it aside. State ex rel. Public Counsel v. Missouri Public Service Commission, 289 S.W.3d 240, 247-48 (June 23, 2009). Clearly, the Commission's decision in this case is contrary to the overwhelming weight of the evidence, and therefore it should be reconsidered or reheard.

58. Under the Commission's Order, the new mandatory TOU rates would be effective at the beginning of the summer season of 2023. Based upon the rates included in the Company's Direct filing, this would mean that current summer rates for EMM of $0.13511 to $0.14916 per kwh[42] will increase to $ 0.35770 per kwh during the summer peak period[43]. For the peak hours, this would be approximately a 140% increase in on-peak rates. For EMW customers, the current summer rates of $0.10938 to $0.11927 per kWh will increase to $0.30818 per kwh during the summer peak period. For the peak hours, this would be approximately a 158% increase in on-peak rates.

59. No matter how much education occurs during the first six months after the Order is effective, many customers will be surprised and adversely impacted by this drastic change

[42] See EMM Tariff, PSC Mo. No. 7, Tenth Revised Sheet No. 5A.
[43] See EMM proposed Tariff, Original Sheet No. 7F.

during the summer season of 2023, with many high bill complaints to the Company, the Commission's Consumer Services Department, and OPC. During the Agenda Meetings on November 9 and 21, Commissioner Holsman also cautioned against the implementation of mandatory TOU rates in such a quick flash cut transition because of the impact on customers, especially for certain residential customers who cannot effectuate immediate behavioral change(s) or who do not have the technological or financial resources to mitigate the impact of a higher priced peak period at the start of a summer.[44] Commissioner Holsman's concerns and objections to a high differential TOU rate stated in the Agenda are correct, and should be adopted by the Commission on reconsideration.

60. Just as importantly, there are no billing determinants in the record to support the use of the Commission's mandatory TOU rates for residential customers. While the Commission has specifically approved the use of the Staff's billing determinants in this case,[45] these billing determinants do not include billing determinants on a mandatory TOU basis. The Company and Staff have been working to develop an estimate of the billing determinants on a mandatory TOU basis to determine the likely impact of the mandatory TOU rates upon the Company's overall collection of residential revenues, and the Company has filed tariffs based upon its best estimate of billing determinants assuming mandatory TOU rates. However, there is no analysis or evidence in the record on the billing determinants to be used for two-period or other high differential, TOU rates because no party advocated that such rates be adopted on a mandatory basis. But the lack of correct billing determinants for mandatory TOU rates will have real

[44] http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6533 at 1:06 (Nov. 9, 2022 Agenda); http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6536 at 41:00 (Nov. 21, 2022 Agenda.

[45] See *Order Approving Four Partial Stipulations* (Sept. 22, 2022); Stipulation and Agreement, p. 2 and Ex. 2 (Aug. 30, 2022).)("Signatories agree that Staff's true-up revenues and billing determinants as reflected in the true-up direct workpapers of Kim Cox will be utilized to set base rates." The actual confidential billing determinants are included in Exhibit 2 of the Stipulation and Agreement.)

consequences for the Company's ability to ensure that it will collect the approved revenue requirement in this case. As the Missouri Court of Appeals has clearly held, when the Public Service Commission's Order completely failed to consider an important aspect or factor of the issue, a court may find the agency acted arbitrarily and capriciously. See State ex rel. Public Counsel v. Missouri Public Service Commission, 289 S.W.3d 240, 250 (June 23, 2009); State ex rel. GS Techs. Operating Co. v. Pub. Serv. Comm'n, 116 S.W.3d 680, 692 (Mo.App. W.D.2003) (quoting Barry Serv. Agency Co. v. Manning, 891 S.W.2d 882, 892 (Mo.App. W.D.1995)). The lack of necessary billing determinants is such an important aspect or factor that needs to be considered by the Commission.

61. In the past, the Commission has recognized the importance of using the correct billing determinants before finalizing the approved rates. In Re Laclede Gas Company, Case No. GR-2002-356, the Commission convened a hearing after the initial decision but before compliance tariffs were approved to establish the correct billing determinants for the calculation of compliance tariffs. See *Report and Order*, pp. 5-6, Re: Laclede Gas Company, Case No. GR-2002-356 (Nov. 8, 2002).

62. The Order is also unlawful because the Commission has no statutory authority to assume the role of management in the operation of the Company. The Commission has recognized this fundamental principle for many years. See Re Union Electric Co., 1959 WL 116929, 29 P.U.R.3d 254, Case No. 14,309 (July 16, 1959) ("Most certainly the commission is not authorized to assume the role of management in the operation of the company.") "[I]t must be kept in mind that the commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business." State v. Public Service Commission, 406 S.W.2d 5, 11[8] (Mo. banc 1966). State ex rel. Public Service Com'n v.

Bonacker, 906 S.W.2d 896, 899 (Mo.App. S.D. 1995) See also State v. Public Service Commission, 406 S.W.2d 5, 11 (Mo. 1966); State v. Bonacker, 906 S.W.2d 896, 899 (Mo. App. S.D. 1995); State ex rel. Laclede Gas Company v. Public Service Commission, 600 S.W.2d 222, 228 (Mo. App. W.D. 1980). By ordering such a fundamental change in the way that Evergy charges its residential customers for the electric service provided by Evergy, over the objections of the Company and its management, the Commission has usurped the role of management in the operation of the Company in violation of law. The Commission is now unlawfully dictating how Evergy conducts business with its customers. The Order is also expected to engender ill feelings by some consumers toward the Company since the Company will be blamed for the change in rate design.

63. The Order includes no assessment of the cost, time and effort to conduct the type of research, outreach and education necessary for such a drastic rate design change. There is also no provision in the approved rates in this Order for the recovery of the incremental costs of implementing the Commission's Order. Nor is there any provision for future recovery of the incremental costs to Evergy to implement the Commission's decision to order mandatory TOU rates for residential customers, contrary to all evidence in the record. At a minimum, the Company should be allowed to defer the cost of compliance with the Commission's mandatory TOU rate decision for possible recovery in a future rate case. The Company currently estimates that the cost of compliance will range from $8 million to $12 million. This approach has been taken in the past when the Commission amended its Cold Weather Rule ("CWR") and caused public utilities to incur costs to comply with the amended CWR. The costs of compliance were allowed to be deferred for possible recovery in a future rate case.[46]

[46] See 20 CSR 4240-13.055(14)(F); State ex rel. Office of the Public Counsel v. Missouri Public Service Commission, 301 SW.3d 556 (Mo.App. W.D. 2009); Missouri Gas Energy v. Public Service Commission, 978 S.W2d 434, 438

64. There is no assessment of the corporate projects or other corporate objectives required to be delayed or eliminated in order to implement this massive change in rate design. In sum, the Commission has unlawfully usurped the role of management in running the affairs of the Company, and it will cause the Company to incur substantial costs to comply with the Order without authorizing any deferral of those compliance costs for consideration of possible recovery in a future rate case.

65. For all these reasons, the Commission should reconsider or rehear its decision to order the Company to drastically change the manner it charges its customers and move to a mandatory, default TOU rate for residential customers. Instead, the Commission should begin the transition to a higher differential TOU rate structure by adopting the Staff's proposed lower-differential TOU rate as the mandatory rate after the education and transition period. Evergy's other higher differential TOU rates would be available to all residential customers on an optional basis. Evergy's goal would be to encourage as many customers as possible to accept the benefits of a higher TOU rate structure.

66. Upon reconsideration and/or rehearing, the Commission should adopt the various proposals supported in the record. In particular, recognizing that the Commission desires to have a mandatory TOU rate applicable to all residential customers, the Commission should adopt Staff's low differential TOU rate as the mandatory, default rate for all residential customers. The Company's proposed two-period TOU rate or its higher differential TOU rates should be adopted as optional TOU rates. In order to avoid the likely adverse impacts of the implementation of high differential TOU rates during the summer season, the Commission should extend the initiation date of default TOU rate implementation from six months after the effective date of the new rates

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(Mo.App.W.D. 1998)

until October 2023. These rate options should be available to coincide with the customer's billing cycle for the month of October to avoid a difficult proration of non-TOU rates with TOU rate options. The Company also requests that the Commission phase-in the availability of mandatory and optional TOU rates to groups of customers over two months to avoid a situation where a large number of customers who may have questions or complaints about the new rate structure will be contacting (and potentially severely taxing) the personnel of the Company's Customer Service Centers and the Commission Staff's Customer Service Division. In order to avoid the need for proration of bills, Evergy also proposes to implement the TOU rates at the beginning of the customers' bill cycles. Evergy believes that the transition plan to mandatory TOU rates with higher differential TOU rate options, would be more likely to be successful, and less likely to have adverse impacts on customers and a possible backlash against the new mandatory and optional TOU rates.

VI. RATE CASE PISA DEFERRAL (EMW ONLY)

67. The Commission erroneously failed to address any issues related to the Plant-in-Service Accounting ("PISA") Law's provisions in Section 393.1655. The Order improperly stated: "One issue, referenced as the Plant-In-Service Act (PISA) deferral issue, has been made moot as the Commission addressed it in a separate case, File No. ER-2023-0011." See Order at 6. The Commission referenced its decision in that Fuel Adjustment Rate ("FAR") case in a footnote without any substantive discussion. Id., n. 7. EMW filed its Application for Rehearing in the FAR Case on November 18, 2022.[47]

68. The Commission's Order in this rate case rejected EMW's recommendation that the Company's revenue requirement be determined in this proceeding *before* it issued a decision

[47] See EFIS Item 55, Application for Rehearing of Evergy Mo. West, In re Application of Evergy Mo. West, Inc. for Auth. to Implement Rate Adjustments Required by 20 CSR 4240-20.090(8) and the Company's Approved Fuel and

in in the FAR case. See Evergy Initial Brief at 40-42; Evergy Reply Brief at 31-32. EMW recommended this sequence so that the full effect of the rebasing of Base Energy Costs in this proceeding could be calculated. Instead, the PSC issued its Order on November 9 in the FAR case which misinterpreted Section 393.1655.5 of the PISA Law by holding that its deferral provisions did not apply to the rebasing of Base Energy Costs.[48]

69. The legal and factual errors in the FAR case have now been compounded by the Commission's Order in this rate case which has (a) failed to correct those errors, (b) failed to calculate the amount by which the rebasing of Base Energy Costs will cause the Company to breach the compound annual growth rate of Section 393.1655.3, and (c) failed to order the deferral required by Section 393.1655.5. These omissions are unlawful and unreasonable, as well as arbitrary, capricious, and an abuse of discretion.

70. By erroneously concluding that the PISA deferral issue is "moot," the Order **has continued and carried forward** the Commission's fundamental misinterpretation of Section 393.1655.5. If rehearing is not granted, the Order will cause tariffs to be implemented that are likely to impose an unlawful and unreasonable "performance penalty" on Evergy Missouri West under Section 393.1655.3. Such a result is clearly not permitted by the deferral provisions of Section 393.1655.5 (also referred to as Subsection 5) and would violate its provisions because such a penalty will be the result of the rebasing of Base Energy Costs that the Commission's own regulations require, as explained below.

71. Through its inaction, the Commission has disregarded how the Missouri General Assembly intended Subsection 5 to be construed with other sections of the PISA Law, as well as Section 386.266 which authorized the Commission to approve a periodic rate adjustment

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Purchased Power Cost Recovery Mechanism, No. ER-2023-0011 (Nov. 18, 2022).

[48] Report & Order at 18-19, Id. (Nov. 9, 2022).

mechanism ("RAM"). In failing to discuss the facts presented by the Company and to follow the law, including its own regulations, as well as its own precedents holding why adopting RAMs like the fuel adjustment clause ("FAC") is appropriate, the PSC has ignored the intent of the PISA Law, specifically Subsection 5 whose purpose is to avoid a performance penalty caused by rate increases resulting from a RAM approved by the Commission under Section 386.266. The FAC – a RAM approved by the Commission under Section 386.266 - requires the rebasing of Base Energy Costs (i.e., fuel and purchased power ("FPP") costs) that are beyond a utility's control in this general rate case.

72. The Order erroneously failed to consider that the mandatory rebasing of Base Energy Costs under the Section (2) of the Commission's Fuel and Purchased Power Rate Adjustment Mechanisms Rule, 20 CSR 4240-20.090(2) ("RAM Rule") will cause EMW to exceed the compound annual growth rate ("CAGR") cap of Section 393.1655.3. As a result, the Order violated the mandate of Section 393.1655.5 that such amounts "shall be deferred to and included in the regulatory asset" under Section 393.1400 because it failed to defer the amount of rebased Base Energy Costs that would cause the CAGR cap to be breached. See Ex. 42 at 19-23 (Ives Surrebuttal).

73. The Order, just like the FAR Case Report and Order, did not analyze or discuss Base Energy Costs which the RAM Rule in Section 1(C) defines as "fuel and purchased power costs net of fuel-related revenues determined by the commission to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case; …." See 20 CSR 4240-20.090(1)(C). Consequently, the Order in this case provides no basis for a reviewing court to understand how the Commission resolved the relevant issues and how it interpreted Subsection 5. It is conclusory and unreasonable.

74. Under the Company's RAM approved by the Commission under Section 386.266, EMW "must rebase base energy costs in each general rate proceeding in which the FAC is continued or modified" under the RAM Rule's Section (2). The rebasing of Base Energy Costs required by the Company's FAC tariff rider is a change in rates charged under a RAM because the rebasing of such costs is required under Section (2). The Company has met this requirement of the RAM Rule, as shown in its Tariff Sheet No. 127.21. See EMW Rider FAC at 9 (attached as **Exhibit B**). This Rider sets forth a formula that expressly includes "net base energy costs ordered by the Commission in the last general rate case consistent with the costs and revenues included in the calculation of the FPA." Id. (emphasis added). The Rider defines FPA as the "fuel and purchased power adjustment." Id. at 1.

75. Because the FAC Rider is a tariff that has been approved by the Commission, it has the force and effect of law. Brooks v. Empire Dist. Elec. Co., 420 S.W.3d 586, 591-92 (Mo. App. S.D. 2013); A.C. Jacobs & Co. v. Union Elec. Co., 17 S.W.3d 579, 582 (Mo. App. W.D. 2000). It must be followed under the filed rate doctrine that governs a utility's relationship with its customers. Bauer v. Southwestern Bell Tel. Co., 958 S.W.2d 568, 570 (Mo. App. E.D. 1997). The Order in this rate case punishes EMW with a performance penalty for following its RAM tariff.

76. The first sentence of Section 393.1655.5 states that when "a change in any rates charged under a rate adjustment mechanism … would cause" a breach of the CAGR cap, "the electrical corporation shall reduce the rates charged under that rate adjustment mechanism in an amount to ensure that" (a) the CAGR cap "is not exceeded" and (b) "the performance penalties" under Section 393.1655.3 (also referred to as "Subsection 3") "are not triggered [emphasis added]." The second sentence of Subsection 5 provides that "[s]ums not recovered under any

such mechanism" because of "any reduction in rates <u>shall be deferred</u> to and included in the regulatory asset arising under section 393.1400 [emphasis added]."

77. However, without legal foundation, the Order improperly treats rate increases resulting from Base Energy Costs that are rebased in rates, as required by the RAM Rule, like rate increases caused by qualifying electric plant[49] costs. Subsection 5 does not allow rate increases caused by qualifying electric plant costs (or other general cost increases not covered by a RAM approved by the Commission under Section 386.266 or Section 393.1030) to be deferred if they exceed the CAGR limits so the Commission's mistreatment of rates increased by FPP costs will improperly result in a penalty to Evergy under the PISA statute.

78. The Order is also inconsistent with and violates the Commission's RAM Rule which it promulgated under Section 386.266.10 "to govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments." The Order fails to analyze, let alone cite, Section (1)(C) which clearly states that Base Energy Costs that are used in the rebase process include fuel and purchased power costs that are determined by the Commission to be included in a RAM and are also included in the revenue requirement used to set base rates in a general rate case.

79. The Order should have recognized that the RAM Rule carries out the purpose of Section 386.266 to allow rate adjustment mechanisms. This is because the FAC Rule is a RAM "approved by the commission under section[ ] 386.266," as referenced in Subsection 5, which requires changes in rates due to FPP costs in both a periodic adjustment and in the rebasing of rates. The Commission has ample authority under Subsection 5 to carry out its mandate and its conclusion to the contrary is error.

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[49] Qualifying electric plant is defined in PISA Section 393.1400.1(3).

80. This authority is reflected in the Commission's prior orders approving fuel adjustment clauses for its electric utilities. The PSC has found that the "price of coal, natural gas, nuclear fuel, and oil … are established by national or international markets" and that the utility "does not have control over commodity prices." See Report & Order at 28-30, In re Kansas City Power & Light Co., No. ER-2014-0370 (Sept. 2, 2015). It also found that utilities "cannot control the fundamentals that drive the short and long-term fuel markets, so fuel costs are beyond the control of [a utility's] management" and are "volatile." Id. Accord Report & Order at 38-40, In re Empire Dist. Elec. Co., No. ER-2008-0093 (July 30, 2008); Report & Order at 36, In re Aquila, Inc., No. ER-2007-0004 (May 17, 2007).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, to all counsel of record as reflected on the service list maintained by the Commission in its electric filing information system this 5th day of December 2022.

|s| Roger W. Steiner

Attorney for Evergy Missouri Metro and Evergy Missouri West

Residential Time of Use (TOU) Mandatory Transition Budget Preliminary Summary

Category (Examples offered will vary with budgeted spend)	Preliminary Budget
Awareness - Direct Mail Send - Mass awareness advertising - Rate Education Videos - Contact Center Preparedness/Customer support	$2,000,000 to $3,000,000
Education (plus Digital Tool Modification) - Personalized Rate Education Reports - Direct Mail - New Rate Options Modeling - Self-service system updates - Advertising and outbound communication - Hard to Reach customer outreach - Online rate enrollment modification	$4,500,000 to $5,500,000
Enrollment - Outbound communication - Bill Inserts	$500,000
Post-Enrollment Success - Welcome Kit experience Direct Mail - Weekly Rate Coaching Report modifications - Seasonal Communication - Updated new movers' communication	$2,000,000 to $3,000,000
Total	**$9,000,000 to $12,000,000**
Cost per Residential Customer (552,361 customers)	$16.26 to $21.72

Note: The budget amounts above do not include the ongoing education or operational costs necessary to support the successful adoption of behavioral change and acceptance of the TOU rate structure. In addition, we are in the early stages of planning and any new requirements may drive change to these estimates.

KCP&L GREATER MISSOURI OPERATIONS COMPANY

P.S.C. MO. No. 1 Original Sheet No. 127.21

Canceling P.S.C. MO. No. Sheet No.

For Missouri Retail Service Area

FUEL ADJUSTMENT CLAUSE – Rider FAC
FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE
(Applicable to Service Provided the Effective Date of This Tariff Sheet and Thereafter)

FORMULAS AND DEFINITIONS OF COMPONENTS (continued)

B = Net base energy costs ordered by the Commission in the last general rate case consistent with the costs and revenues included in the calculation of the FPA. Net Base Energy costs will be calculated as shown below:

S_{AP} x Base Factor ("BF")

S_{AP} = Net system input ("NSI") in kWh for the accumulation period, at the generation level.

BF = Company base factor costs per kWh: $0.02240

J = Missouri Retail Energy Ratio = Retail kWh sales/total system kWh

Where: total system kWh equals retail and full and partial requirement sales associated with GMO.

T = True-up amount as defined below.

I = Interest applicable to (i) the difference between Missouri Retail ANEC and B for all kWh of energy supplied during an accumulation period until those costs have been recovered; (ii) refunds due to prudence reviews ("P"), if any; and (iii) all under- or over-recovery balances created through operation of this FAC, as determined in the true-up filings ("T") provided for herein. Interest shall be calculated monthly at a rate equal to the weighted average interest paid on the Company's short-term debt, applied to the month-end balance of items (i) through (iii) in the preceding sentence.

P = Prudence adjustment amount, if any.

FAR = FPA/S_{RP}

Single Accumulation Period Secondary Voltage FAR_{Sec} = FAR * VAF_{Sec}
Single Accumulation Period Primary Voltage FAR_{Prim} = FAR * VAF_{Prim}
Single Accumulation Period Substation Voltage FAR_{Sub} = FAR * VAF_{Sub}
Single Accumulation Period Transmission Voltage FAR_{Trans} = FAR * VAF_{Trans}

Annual Secondary Voltage FAR_{Sec} = Aggregation of the two Single Accumulation Period Secondary Voltage FARs still to be recovered
Annual Primary Voltage FAR_{Prim} = Aggregation of the two Single Accumulation Period Primary Voltage FARs still to be recovered
Annual Substation Voltage FAR_{Sub} = Aggregation of the two Single Accumulation Period Substation Voltage FARs still to be recovered
Annual Transmission Voltage FAR_{Trans} = Aggregation of the two Single Accumulation Period Transmission Voltage FARs still to be recovered

Issued: November 6, 2018
Issued by: Darrin R. Ives, Vice President

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Service Commission
ER-2018-0146; YE-2019-0085

Effective: December 6, 2018
1200 Main, Kansas City, MO 64105

SIBLEY NET BOOK VALUE
Position of Parties

Sibley Issue	Commission	OPC Option 2	Staff	Evergy	MECG & OPC Option 1
Net Unrecovered as June 2018	$ 190,833,489	190,833,489	145,380,476	145,380,476	300,003,016
Depreciation	(45,766,195)	(45,766,195)	(45,766,195)	(45,766,195)	(45,766,195)
Net Unrecovered	145,067,294	145,067,294	99,614,281	99,614,281	254,236,821
Dismantlement Costs	37,186,380	37,186,380	37,186,380	37,186,380	37,186,380
Net Book Value to be Amortized	182,253,674	182,253,674	136,800,661	136,800,661	291,423,201
Amortization Period	4	20	5	20	20
Revenue Requirement Impact of Amortization	$ 45,563,419	$ 9,112,684	$ 27,360,132	$ 6,840,033	$ 14,571,160

**All amounts are MO Jurisdictional