

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

In the Matter of Evergy Missouri West, Inc.                     )  
d/b/a Evergy Missouri West’s Request for Waiver            )  
Of the Rules and Regulations, Chapter 8, Electric        )  
Power and Energy Curtailment Plan                             )        **Case No. EE-2023-0081**

**STAFF’S RESPONSE TO EVERGY MISSOURI WEST’S  
REQUEST FOR WAIVER**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and states:

On August 24, 2022,<sup>1</sup> Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy”) filed an Application for Variances and Motion for Expedited Treatment. On August 25, the Commission issued an Order Directing Filing and Evergy filed an Amended Application for Variances and Motion for Expedited Treatment. On August 26, the Commission issued its Order Shortening Time for Responses and setting August 30 at 3:00 p.m. as the response deadline.

Evergy seeks a waiver or variance from its tariff provision 8.01 (E)<sup>2</sup>, which requires:

The voluntary phase of this curtailment program will be initiated when Company’s coal supply in Company’s storage facilities is equivalent to an estimated thirty (30) days’ supply. The mandatory phase of this curtailment program will be initiated when Company’s storage facilities is equivalent to an estimated twenty (20) days’ supply.

Evergy seeks a waiver or variance from the cited provisions for the stated reason they are “dated.” Evergy states they are dated because they are the subject of modifications which the Commission may make to Chapter 8, Electric Power and Energy Curtailment Plan, sheets R-55 through R-48 in ER-2022-0130.<sup>3</sup> Evergy states:

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<sup>1</sup> All date references will be to 2022 unless otherwise stated.  
<sup>2</sup> Evergy’s tariff, Chapter 8, Electric Power and Energy Curtailment Plan, sheet R-55 through sheet R-58, 8.01.  
<sup>3</sup> Per agreements now reached, it seems apparent that in fact the tariffs will be modified. However,

The Company submitted revised tariff sheets as part of its direct testimony in docket No. ER-2022-0130 to address the issues raised with the dated procedures outlined in the current tariff. Staff witness Claire Eubanks filed Rebuttal testimony on behalf of Commission Staff in that docket evaluating the proposed tariff and recommended further modifications that are acceptable to the Company.

Evergy then states:

While the Company is always concerned about below-target coal inventories, this issue does not represent an immediate emergency. Evergy's coal inventory is positioned well to generate as dispatched through the summer. However, the bigger concern for the Company lies in the winter period if coal delivery issues are not alleviated by fall of 2022.

Evergy then asks the Commission to grant the Company a waiver from the requirements of "the referenced tariff sheets as currently written" in order to avoid "potential issues with the dated procedure" outlined in the current tariff "being triggered by a future coal supply issue."

Evergy's cited tariff sheets make no provision for a waiver. Hence, the Commission's granting Evergy's requested relief will violate the "filed rate" doctrine.

Evergy's August 24 application stated:

Rules and Regulations, Tariff sheet No. R-55 through tariff sheet R-58, provides for a waiver of any specified portion of the Company's tariffs by application to the Commission for good cause shown. For the reasons set forth herein, Evergy Missouri West has demonstrated good cause for a waiver of the specified portion of the rule outlined above, and asks the Commission to grant its request.

The Commission's August 25 order stated that the Commission did not find such a waiver provision in the tariffs and ordered that "[n]o later than August 26, 2022, Evergy Missouri West shall supplement its motion to provide a citation to the authority for the Commission to take the action requested." Evergy's August 25 filing then omitted the

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for the reasons here stated, Staff still opposes the request for variance/waiver.

August 24 allegation that the tariff sheets provided for a good cause shown waiver and stated, instead:

20 CSR 4240-2.060 (4) provides for a waiver of any specified portion of the Company's tariffs by application to the Commission for good cause shown. For the reasons set forth herein, and in accordance with 20 CSR 4240-2.060 (4), Evergy Missouri West has demonstrated good cause for a waiver of the specified portions of Rules and Regulations, Chapter 8, Electric Power and Energy Curtailment Plan, tariff sheet No. R-55 through sheet No. R-58, as outlined above, and asks the Commission to grant its request.

As a response to the Commission's August 25 order, Evergy's 20 CSR 4240-2.060 (4) citation is legally insufficient. While the Commission's Rule 20 CSR 4240-2.060(4) prescribes the filing procedures required for applications for tariff variances or waivers, the Commission's filing procedures do not act as a boot strap and confer authority upon the Commission to waive provisions of utility tariffs. A validly adopted tariff "has the same force and effect as a statute, and it becomes state law." *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 337 (Mo. App., W.D. 2006); *Public Service Comm'n of State v. Missouri Gas Energy*, 388 S.W.3d 221, 227 (Mo. App., W.D. 2012). As such, a tariff is binding on the utility, the public, and this Commission. This is referred to as the "Filed Rate Doctrine" or "Filed Tariff Doctrine."<sup>4</sup> Missouri courts have uniformly applied the Filed Rate Doctrine to decisions of the PSC.<sup>5</sup>

Evergy's request violates the "Filed Rate" doctrine and should be denied.

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<sup>4</sup> "As developed for purposes of the Federal Power Act, the 'filed rate' doctrine has its genesis in *Montana Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 251-252, 71 S.Ct. 692, 695, 95 L.Ed. 912 (1951). There, this Court examined the reach of ratemakings by FERC's predecessor, the Federal Power Commission (FPC). \* \* \* [M]any state courts have applied the filed rate doctrine of *Montana-Dakota* to decisions of state utility commissions and state courts that concern matters addressed in FERC ratemakings." *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953, 962, 964, 106 S.Ct. 2349, 2354-55, 2356, 90 L.Ed.2d 943, (1986).

<sup>5</sup> See, e.g., *State ex rel. AG Processing, Inc. v. Public Service Commission*, 311 S.W.3d 361 (Mo. App., W.D. 2010); *Bauer v. Southwestern Bell Tel. Co.*, 958 S.W.2d 568 (Mo. App., E.D. 1997).

**WHEREFORE**, Staff respectfully asks the Commission to deny Evergy Missouri West's request for waiver and/or a variance.

**Respectfully Submitted,**

/s/ Paul T. Graham #30416  
Senior Staff Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Mo 65102-0360  
(573) 522-8459  
Paul.graham@psc.mo.gov

**CERTIFICATE OF SERVICE**

The undersigned by his signature below certifies that the foregoing pleading was served upon all counsel of record on this August 30, 2022 by electronic filing in EFIS, electronic mail, hand-delivery, or U.S. postage prepaid.

**/s/ Paul T. Graham**