

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

In the Matter of the Application of Evergy Metro,)
Inc. d/b/a Evergy Missouri Metro and Evergy)
Missouri West, Inc. d/b/a Evergy Missouri West) File No. EU-2020-0350
for an Accounting Authority Order Allowing the)
Companies to Record and Preserve Costs Related)
to COVID-19 Expenses)

Public Counsel’s Position Statement

The Office of the Public Counsel (OPC) offers its position statements in response to each issue listed on filed List of Issues as follows:

1a. Is the coronavirus disease (“COVID-19”) pandemic an extraordinary event within the scope of the Uniform System of Accounts as it has been historically interpreted and applied by the Commission or as subsequently modified by Missouri courts?

No. In the Missouri Court’s most recent evaluation of a Commission approved accounting authority order (AAO), the Court made it clear that extraordinariness is “evaluated by looking at the event in relation to ‘the ordinary and typical activities *of the company,*’ not in comparison to the activities of the industry as a whole.”¹ The Court upheld the Commission’s approval of an AAO precisely because the Commission analyzed the impacts of retiring a coal plant relative to Evergy Missouri Metro and Evergy Missouri West (collectively Evergy) rather than relative to the utility industry at large. This means that, although the economic fallout from COVID-19 may be considered extraordinary taken together or colloquial sense, “extraordinary” for the purposes of the Uniform System of Accounts (USOA) requires a narrow view of COVID-19’s impacts on Evergy.

¹ *Off. of Pub. Counsel v. Evergy Mo. West, Inc.*, 2020 MO. App. LEXIS 946, 24 (quoting 18 C.F.R. Part 101, General Instruction 7).

In that regard, Evergy's AAO application does not include extraordinary costs as the Commission has historically interpreted the USOA. OPC witness Robert Schallenberg performed a review of Evergy's filing and available information. Schallenberg did not find evidence that the ordinary and normal activities of Evergy have been significantly impacted by COVID-19 when compared to other economic downturns.² Bad debts are an ordinary business occurrence for a utility, and deferring late payment fees from customers does not require Evergy to incur an additional cost.³ Schallenberg also notes that many of the cost categories Evergy wishes to defer have not been specified into concrete numbers, making any impact speculative with certainty only possible maybe months after an AAO is ordered.⁴

The economic impacts of COVID-19 not being extraordinary is not surprising given that "Evergy's rates were set in the last rate case to compensate the Companies for the potential risk of an economic downturn."⁵ If the Commission had instead used ratemaking to insulate Evergy for economic downturns, there would have been a reduction to its return on equity and risk premium.⁶ Furthermore, due to the Federal Reserve's efforts in response to COVID-19, Evergy has been able to issue bonds at "extraordinarily" cheaper prices than before.⁷ This treatment significantly undermines the need for an AAO to consider losses and hypothetical lose electric sales in Evergy's next rate case.

² Rebuttal Testimony of Robert Schallenberg, EU-2020-0350 p. 7.

³ *Id.* at 9.

⁴ *Id.* at 20.

⁵ Rebuttal Testimony of David Murray, EU-2020-0350 p. 2.

⁶ *Id.* at 3.

⁷ *Id.* at 4.

1b. Is the resulting economic impact from the COVID-19 pandemic material within the scope of the Uniform System of Accounts?

No. For an item to be material, it “should be more than approximately 5 percent of income, computed before extraordinary items.”⁸ Calculations performed by OPC witness Robert Schallenberg find that Evergy have received a considerable return on year-end equity such that the five percent of income threshold would be “\$15.4 million on an after tax basis and \$20.19 million on the pretax basis.”⁹ Based on his review, Schallenberg concludes that the five percent materiality threshold has not been met in Evergy’s requested AAO. Evergy does not dispute that its requested deferral items are not material, but instead argues that it need not prove materiality.¹⁰

2. Should the Commission approve the Application for an accounting authority order (“AAO”) permitting Evergy to accumulate and defer to a regulatory asset for consideration of recovery in future rate case proceedings before the Missouri Public Service Commission (“Commission”) extraordinary costs and financial impacts incurred as a result of the COVID-19 pandemic?

No. Evergy fails to demonstrate that the COVID-19 pandemic and resulting economic fallout qualify for deferral accounting treatment under AAO under Instruction 7 of the USOA. “The [Commission] has followed the guidance in 18 C.F.R. Part 101, General Instruction 7, that costs should not be deferred to another accounting period except for ‘extraordinary items.’”¹¹ When the Missouri’s Court of Appeals most recently analyzed this Commission’s granting of an

⁸ 18 C.F.R. Part 101; *see also* Rebuttal Testimony of Robert Schallenberg, EU-2020-0350 p. 4.

⁹ Rebuttal Testimony of Robert Schallenberg, EU-2020-0350 p. 4.

¹⁰ Surrebuttal Testimony of Darrin Ives, EU-2020-350 p. 9.

¹¹ *Kan. City Power & Light Co.’s Request v. Pub. Serv. Comm’n*, 509 W.W.3d 757, 770 (Mo. App. W.D. 2016).

AAO, it upheld the Commission’s decision because “the Commission lawfully and reasonably applied the standards found in General Instruction 7 of the Uniform System of Accounts.”¹² Of those standards, the Commission accordingly analyzed whether the costs at issue were extraordinary and material.¹³ This analysis is consistent of Commission practice.

The Commission said in WU-2017-0296 that:

The Commission has considered the materiality of costs compared to net income to determine whether the costs are extraordinary. The standard the Commission has used in past AAO cases was the costs must be at least five percent of net income to be considered material.

...

Applying the facts to the pertinent law, the Commission finds that MAWC qualifies for the AAO it seeks. The costs for the LSLR are material, unusual and infrequent and, therefore, extraordinary. Thus, those costs meet the traditional standard the Commission has applied in deciding AAO cases.¹⁴

The Commission’s Report and Order on Remand in WO-2002-0273 likewise states,

Staff’s proposed first factor is materiality. This requirement is drawn from the language of the USOA for electrical utilities, language that does not appear in the USOA for water utilities. The Commission originally stated in the *Sibley* decision, and has restated since, that **materiality is a factor for consideration**, but it is not determinative. **In other words, while the magnitude of the item proposed for deferral must be considered, that factor alone does not drive the decision.**

...

The Commission has said, **in the Sibley decision itself and in later decisions, that materiality must be considered.** Materiality necessarily embraces the financial magnitude of the item proposed for deferral.¹⁵

Therefore, the Commission should review whether the cost items Evergy wishes to defer under AAO are material.

¹² *Off. of Pub. Counsel v. Evergy Mo. West, Inc.*, 2020 MO. App. LEXIS 946, 19.

¹³ *Off. of Pub. Counsel v. Evergy Mo. West, Inc.*, 2020 MO. App. LEXIS 946, 18-19 (quoting 18 C.F.R. Part 101, General Instruction 7).

¹⁴ Report and Order, WU-2017-0296 p. 7-9 (Nov. 30, 2017).

¹⁵ Report and Order on Remand, WO-2002-0273 p. 34-35 (Nov. 10, 2004).

When viewed under this lens, it is clear that the Commission should deny Evergy's requested AAO precisely because it refuses to follow the Commission's standard for AAOs. Evergy does not argue that its requested deferral items exceed five percent of its income, but instead argues that it does not have to show that.¹⁶ Likewise, Evergy makes the newfound argument in surrebuttal that its application should be analyzed under Definition 31 of the USOA rather than Instruction 7, which both the Commission and Missouri Courts have endorsed.¹⁷ Following Definition 31 not only contravenes past Commission practice and judicial guidance, but also effectively nullify any objective framework for evaluating the need for an AAO.

An AAO for hypothetical electric revenues that supposedly would have occurred but-for COVID-19, bad debts, deferred late payments, and carrying costs is detrimental to the public interest now because it presents Evergy with the opportunity to be shielded from any COVID-19 impacts in a future rate case while not demonstrating extraordinariness. Evergy's lack of evidence of materiality or extraordinariness should concern the Commission given Evergy's customers are experiencing the effects of the pandemic as well, and are now facing the risk of paying for hypothetical lost revenues in the future.

3. If the Commission determines that an AAO or other deferral accounting mechanism should be ordered in connection with the COVID-19 pandemic, what items should be deferred?

a. Uncollectible expense in excess of amounts included in rates in the most recent general rate cases of Evergy Missouri Metro and Evergy Missouri West, respectively?

b. Costs incurred in connection with the one- and four-month Pandemic payment plan incentives that the Commission permitted the Company to implement in Case No. EO-2020-0383 (including credits awarded as incentives and costs related to customer communications)?

¹⁶ Surrebuttal Testimony of Darrin Ives, EU-2020-350 p. 9

¹⁷ *Id.* at 10.

- c. Waived late payment fees / reconnection fees to the extent that they fall short of the amount included in rates?**
- d. Information technology-related costs incurred to enable employees to work from home, including hardware, licensing fees and connectivity costs?**
- e. Costs incurred to protect employees unable to work from home, including cleaning supplies, personal protective equipment, temperature testing, employee sequestration preparation (and employee sequestration if that becomes necessary)?**
- f. Lost revenues associated with the reduction of electric usage during the Pandemic? As an alternative, should the Commission order the deferral of pandemic-related lost fixed cost recovery due to the pandemic?**
- g. Other incremental costs or other unfavorable financial impacts resulting from the Pandemic not presently identified?**
- h. What pandemic-related savings should be booked as a regulatory liability or included as an offset to the regulatory asset related to the pandemic- financial impacts?**
- i. Should carrying costs be excluded during the deferral period and be considered for inclusion in rates in Evergy's next general rate case?**

If the Commission applies Instruction 7 of the USOA, and finds that an AAO is justified, the Commission should only authorize the deferrals of items a through e listed above. Lost revenues due to reduced electric sales in item f are not appropriate for an AAO. Recording electric sales that did not occur for future ratemaking consideration is speculative, and concerning given the Staff of the Public Service Commission (Staff) identification of Evergy's methodological errors.¹⁸ Staff analysis also shows that Evergy's electric sales are similar or higher than the usage contemplated in its last rate case, except for the Large Power customer class, casting doubt upon the notion that COVID-19 has reduced overall electric consumption.¹⁹ Excluding lost revenues is also consistent with AAOs in Indiana.²⁰

Deferring lost revenues also artificially inflates Evergy's earnings representations, and literally seeks to charge customers in the future for services that Evergy did not render. The object of public utility regulation is to simulate a market environment for natural monopolies. Being able

¹⁸ Rebuttal Testimony of Robin Kliethermes, EU-2020-0350 p. 3-4.

¹⁹ Rebuttal Testimony of Byron Murray, EU-2020-0350 p. 5.

²⁰ Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 10.

to defer all COVID-19 impacts as well as hypothetical lost electric sales removes any market incentive, and places Evergy in a uniquely insulated position. Evergy has told its customers that “we are in this together” with respect to COVID-19, and so they should be held to their word and not be completely insulated through deferrals of lost electric sales.²¹

Similarly, the deferral of unfavorable financial impacts “not presently identified” in item g is not a proper item for an AAO, because it creates the potential for AAO deferrals to expand beyond the scope of costs not truly connected to COVID-19. If the Commission approves this term for deferrals, other parties can effectively only challenge a recording during Evergy’s next rate case. That delay places a persuasive burden onto OPC and others when it should be on Evergy, as the AAO applicant, to support what cost items are truly extraordinary and material at the outset. Such a term is particularly inappropriate and unfair given the lack of a similar term for currently not identified savings that may transpire in the future. The USOA’s guidance that an AAO be only for extraordinary and material items is precisely because an accounting order should be supported by evidence.²² Allowing the deferral of non-identified items contravenes this goal.

If the Commission approves an AAO, the savings to be recorded, and referred to in item h above, should include the benefits of using short-term debt at lower interest rates, reduced allocation of costs from shared services or parent organization costs, reduced operations and maintenance expense, reduced travel and office expense, reduced expenses from supplying utility services to Evergy-owned facilities, reduced tax liability, savings from deferring capital projects that do not affect reliability or safety, any federal or state assistance Evergy receives due to COVID-19, reduced labor expense, and reduced incentive pay or employee bonuses.²³

²¹ Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 12.

²² See Rebuttal Testimony of Robert Schallenberg, EU-2020-0350 p. 3-4.

²³ Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 11.

Also if the Commission employs Instruction 7 to authorize an AAO, such an authorization should not include carrying costs referenced in item i above. Including carrying costs is contrary to a COVID-19 related AAO because COVID-19 itself is not causing carrying costs.²⁴ The carrying costs themselves are effectively interest applied to any recorded costs.²⁵ Applying interest in this manner inflates Evergy's actual COVID-19 impacts, and simulates the return that would normally be expected of a rate base investment. Given that Evergy's requested AAO is for expenses, which are not rate base items with an associated return, it is not proper for a COVID-19 AAO to expressly authorize carrying costs.

4. Should the Commission adopt a sunset provision in connection with the AAO and, if so, how should it be structured? Should any sunset provision include the opportunity for the AAO to be extended?

OPC did not file testimony on a proposed data for a sunset provision given its position against the COVID-19 AAO as requested. OPC supports the February 28, 2021, deferral termination date and associated reporting proposed by Midwest Energy Consumers Group and Missouri Industrial Energy Consumers witness Greg Meyer.²⁶ A termination date is necessary due to current uncertainties with COVID-19, and to prevent the shifting of costs into an AAO that are not germane.²⁷

5. If the Commission adopts an AAO for some or all of the costs and revenues associated with the COVID-19, should the Commission order periodic reporting of information associated with the deferral? If so, what information should be reported and how often?

²⁴ Rebuttal Testimony of Robert Schallenberg, EU-2020-0350 p. 9-10.

²⁵ Rebuttal Testimony of Robert Schallenberg, EU-2020-0350 p. 3, 16-17.

²⁶ Rebuttal Testimony of Greg Meyer, EU-2020-0350 p. 20.

²⁷ Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 10.

If the Commission authorizes an AAO, OPC recommends initial and periodic reporting to ensure transparency and accurate recording. Specifically, within two weeks of Commission approval and on a quarterly basis until the Commission designated termination date, Evergy should be required to file separate quarterly reports in this docket and submitted within 15 days of the end of each quarter. Those reports should include:

- A detailed identification of monthly weather normalized revenue by customer class, during the pandemic;
- A detailed identification of revenue changes by customer class, both increases and decreases, during the COVID-19 pandemic;
- The impact COVID-19 has had on Evergy's capital expenditure program during the previous quarter;
- Any issuances of short-term and long-term debt during the previous quarter and the all-in costs at which that financing was issued;
- The embedded cost of short-term debt for that quarter;
- Updated and most recent credit metrics calculated by Evergy or provided to the Company by nationally recognized credit rating agencies;
- Any correspondence with nationally recognized credit rating agencies and equity analysts during the previous quarter;
- Copies of credit rating agencies and equity analysts' reports published during the previous quarter;
- A list of reductions and their cost savings (to date) made to capital, operational and discretionary expenses as articulated above in this testimony to minimize cost impacts to ratepayers; and
- A list of COVID-19 related expenses and their respective amount that the Company incurred to ensure safe and reliable service.
- The number of customers, by customer class, voluntarily disconnected by month;
- The number of customers, by customer class, involuntarily disconnected by month;
- Number of utility reconnections, reported by month;
- Number of customers on a utility payment plan, by payment plan type (including budget billing), by month;
- Total \$ amount of arrearages by customer class;
- The number of accounts in arrearage by customer class in increments of \$100 (e.g., less than \$100, \$101 to \$200, etc...) by month;
- The range of arrearage amounts by customer class (i.e., current high and low dollar amount) and the mean average;
- The percentage of involuntary disconnections by customer class by four-digit zip code area along with the supporting numbers (i.e., number of accounts relative to number of accounts involuntarily disconnected) by month;

- A quantification of total past-due customer arrearages and number of customers experiencing arrearages, that are thirty, sixty, and ninety days or more late in payment, reported by month;

OPC bases this recommendation and specific reported items on what the Kansas Corporate Commission ordered when it granted Evergy's Kansas affiliate a COVID-19 related AAO.²⁸

6. Should the Commission adopt the recommendations of NHT related to extension of the moratorium on nonpayment service disconnections, arrearage management programs, long-term payment deferment plans, expansion of the Economic Relief Program, income-eligible energy efficiency plans, suspend credit reporting, suspend disconnection and reconnection fees, or other customer programs?

The Commission should not adopt National Housing Trust's (NHT) recommendations regarding an extension of the moratorium on nonpayment service disconnections.²⁹ If the Commission desires to be proactive on preventing service disconnections, OPC recommends that the Commission institute emergency rulemaking to set threshold disconnection percentage limits for all Missouri utilities.³⁰

The Commission should adopt an arrearage management payment plan program as recommended by NHT and OPC.³¹ A dollar-for-dollar matching with contributions from both customers and Evergy would do real good for Missourians struggling during the COVID-19 pandemic, while decreasing overall arrearages for Evergy's benefit. Such an arrangement is also similar to the matching program the Commission approved in EM-2016-0213.

The Commission should not adopt NHT's recommendation to expand Evergy's Economic Relief Pilot Program.³² NHT's recommendations do not have sufficient detail, and the Program

²⁸ Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 11-12, 19-20.

²⁹ Surrebuttal Testimony of Geoff Marke, EU-2020-0350 p. 2.

³⁰ *Id.* at 4.

³¹ *Id.* at 5.

³² *Id.* at 6-7.

lacks the administrative support necessary to meet NHT's suggestions. However, OPC would support an expansion that is borne solely by Evergy shareholders.

The Commission should not adopt NHT's recommendation to expand low-income weatherization dollars to address COVID-19 impacts.³³ Weatherization and energy efficiency savings do not address the larger financial issues for customers who cannot make their overall utility bill, but increasing financing of those programs does increase customer support of those programs. NHT's recommendation may be understandably altruistic, but it ignores that saving a few dollars on a utility bill will not stave off a disconnection. Furthermore, given current economic conditions, it is unlikely that the current weatherization agencies will spend down currently allotted federal and utility funds. However, OPC would support an increase to weatherization and low-income energy efficiency programs supported solely by Evergy shareholders.

The Commission should adopt NHT and OPC's recommended suspension of full-credit reporting.³⁴ Ceasing credit reporting of unpaid utility bills will protect consumers' economic mobility following the COVID-19 pandemic. This recommendation, coupled with an arrearage payment plan, would have a minimal impact on Evergy's financial integrity.

7. Should the Commission adopt any of the customer-specific recommendations of OPC including: 1) waiving disconnection and reconnection fees; 2) ceasing full credit reporting; 3) waiving late payment fees and deposits; 4) expanding payment plans to 12 months or greater; and 5) establishing an arrearage matching program, dollar-for-dollar on bad debt for eligible customers.

Yes, the Commission should adopt the customer protections recommended by OPC if the Commission authorizes an AAO.³⁵ These recommendations will substantiate real relief for

³³ *Id.* at 8.

³⁴ *Id.*

³⁵ Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 19-20.

customers struggling with the current economic climate, and represent a true balance of utility and consumer interests. If Evergy receives an AAO as requested for COVID-19, its earnings will appear largely insulated from market realities and will gain the opportunity to seek actual ratemaking relief in its next case. Meanwhile, Evergy’s residential and corporate customers do not have the luxury of deferrals. However, coupling an AAO with consumer protections institutes actual sharing of the impacts of COVID-19.

Suspending disconnection and reconnection fees is reasonable given that Evergy has deployed advanced metering infrastructure (AMI) with the purported benefits that company expenses to connect and reconnect traditional meters have been negated.³⁶ Retaining those fees also does not encourage customers to pay down bad debt, and only further punishes customers who cannot pay during a pandemic. Similarly, the Commission should order Evergy to cease full-credit reporting, and to waive late payment fees and deposits. Reporting customers’ bad debts to credit agencies and imposing late payment fees will likely not encourage bill payment, but will make dire situations worse for customers. On the other hand, Expanding payment plans and a new arrearage matching program means that both Evergy and its customers are working together towards managing bad debt, keeping customers connected, and mitigating future rate impacts. The Commission employed similar measures when Liberty Utilities acquired The Empire District Electric Company in EM-2016-0213.³⁷

8. What, if any, other conditions should the Commission adopt in connection with the AAO?

OPC maintains the right to respond to other parties proposed “other conditions” in briefing.

³⁶ *Id.*

³⁷ *Id.* at 21.

WHEREFORE, the OPC supplies its Position Statement, and requests that the Commission deny Evergy's application for AAO related to COVID-19 related impacts as presented. Should the Commission apply Instruction 7 of the USOA and find that an AAO is warranted, the OPC requests that the AAO be structured as described in paragraphs 3, 4, and 5 above with the customer protections outlined in paragraph 7.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 16th Day of September, 2020, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall

