BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Ninth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Evergy Missouri West Inc., d/b/a Evergy Missouri West	))))	File No. EO-2020-0262
In the Matter of the Third Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Evergy Metro, Inc., d/b/a Evergy Missouri Metro	))))	File No. EO-2020-0263

EVERGY MISSOURI METRO'S AND EVERGY MISSOURI WEST'S
INITIAL POST-HEARING BRIEF

COME NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("Evergy Missouri Metro") and Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy Missouri West") (collectively, "Evergy" or the "Company"), and for its Initial Post-Hearing Brief ("Brief") in this matter, states as follows:

I. INTRODUCTION

A. Executive Summary

This case involves prudence review of costs subject to the Fuel Adjustment Clause ("FAC") of Evergy Missouri Metro and Evergy Missouri West. In this prudence review period,[1] Staff analyzed items affecting the Company's fuel costs; purchased power costs; net emission allowance costs; transmission costs; off-system sales revenues; and renewable energy credit (REC) revenues for the review periods of each company. Based on its FAC prudence review, Staff found no evidence

[1] The Review Period for Evergy Missouri West from July 1, 2018 through December 31, 2019. The Review Period for Evergy Missouri Metro was slightly different from June 1, 2018 through November 30, 2019.

of imprudence for either Evergy Missouri West or Evergy Missouri Metro.[2] However, certain accounting entries were corrected in the process of settling issues in this case.[3]

On January 15, 2021, Evergy, Commission Staff ("Staff"), Public Counsel ("OPC" or "Public Counsel") and Sierra Club also filed a Unanimous Stipulation and Agreement in which the Company agreed to retain and provide certain data, including net margin costs, to the signatory parties related to its decision to self-commit generating units on a day-ahead basis and on a real-time basis. On January 27, 2021, the Commission approved this stipulation.[4] With the approval of this stipulation, the issues raised by the Sierra Club have been resolved.

Public Counsel also raised issues related to the Company's assumptions related to capacity sales in the Integrated Resource Planning ("IRP") process, and its management of its demand response programs. Similar issues were raised by Staff in a pending MEEIA 2 prudence review case, Case Nos. EO-2020-0227 and EO-2020-0228.[5] In this case, Staff witnesses Brad Fortson and J Luebbert recommended that these issues be resolved in the pending MEEIA 2 prudence cases.[6]

As Regulatory Law Judge Dippell recognized in this proceeding,[7] the MEEIA 2 prudence case is intertwined with this case since OPC's issues in this case are similar to issues raised by Staff

[2] Ex No. 101, Fortson Direct, p. 4; and Schedules BJF-d3, p. 5 of 45; and Schedule BJF-d5, p. 5 of 53.

[3] Evergy Missouri West included costs associated with the retirement of the Sibley generating station during the Review Period. The Company has agreed to remove these costs and seek recovery through another mechanism. Staff recommended the Commission order an adjustment in the amount of $1,039,646 as Evergy Missouri West can seek recovery of these costs through another mechanism, such as its next general rate case.

On December 18, 2020, Evergy, Staff and the Office of the Public Counsel filed a Partial Stipulation and Agreement which settled the issues raised by the Staff in the Staff FAC Prudence audit of the Companies. Under this stipulation, Evergy Missouri West agreed to remove certain Sibley retirement costs from the FAC [$1,039,646 or 984,898 Mo. jurisdictional]. The Company will record those retirement costs in the Sibley AAO regulatory liability account established in Case No. EC-2019-0200. Evergy Missouri Metro will also remove about $15,492 Montrose fuel residual costs, and will remove $183,612 from the FAC, and will record this amount to the Cost of Removal account for consideration in the next general rate case. The Commission approved this stipulation on Wednesday, January 20, 2021. See *Order Approving Partial Stipulation and Agreement*, File No. EO-2020-0262 (January 20, 2021).

[4] *Order Approving Unanimous Partial Stipulation and Agreement*, File No. EO-2020-0262 (January 27, 2021).

[5] Ex No. 103, Fortson Rebuttal, p. 3.

[6] Ex No. 101, Fortson Direct, p. 4; Ex No. 103, Fortson Rebuttal, p. 7; Ex No. 105, Luebbert Surrebuttal, pp. 2-3.

[7] Tr. 229.

in the MEEIA 2 prudence case. Evergy had filed a Motion to Limit the Scope of the Proceeding in the MEEIA 2 prudence case. However, the Commission denied the motion, indicating that whether certain costs were "subject to the DSIM" was a legal and factual issue which should be heard in the MEEIA 2 prudence hearing.[8] Subsequently, the Commission, at the request of the parties to the case, suspended the procedural schedule in the MEEIA prudence case, pending further settlement discussions.[9]

Following the conclusion of the opening statements in this case, Evergy, Commission Staff, and OPC filed a stipulation which settled OPC's issue related to assumptions related to capacity sales in the IRP process. In the Stipulation, the Company agreed as follows:

> In Evergy's future IRP filings (including, without exception, case numbers EO-2021-0035 and EO-2021-0036), Evergy agrees that, for every modeled plan with assumed sales of excess capacity, the company shall model a plan that is identical in all other respects but which does not include the assumed sales of excess capacity. For each modeled plan that includes sales of excess capacity, Evergy agrees it will provide documentation as to the amount of capacity it modeled to be sold, the price of the capacity and energy used along with how it determined these assumptions, and the result of the models run with and without excess capacity sales.[10]

On February 10, 2021, the Commission approved the terms of the third Stipulation which resolved the Public Counsel's issue related to Evergy's capacity sales assumptions in its IRP planning process.[11]

With the approval of the various stipulations filed in this case, Public Counsel's issue related to the Company's management of its demand response programs is the only issue remaining to be resolved by the Commission.

---

[8] *Order Denying Motion To Limit Scope*, File Nos. EO-2020-0227 (Aug. 19, 2020).
[9] *Order Granting Motion To Suspend Procedural Schedule*, File No. EO-2020-0227 et al. (Oct. 30, 2020).
[10] Unanimous Partial Stipulation And Agreement, p. 2, File Nos. EO-2020-0262 and EO-2020-0263 (filed Jan. 27, 2021).
[11] *Order Approving Stipulation and Agreement Regarding Future IRP Filings*, File Nos. EO-2020-0262 and EO-2020-0263 (Feb. 10, 2021).

More specifically, the following issues are now left for resolution by the Commission:

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

For the reasons stated herein, the Commission should find and conclude:

1. Evergy's management of its demand response programs was prudent, consistent with its Commission-approved tariffs, and the MEEIA statutes and rules.
2. It was prudent for Evergy to call demand response events, consistent with the Unanimous Stipulation and Agreement signed by Evergy, Commission Staff, Public Counsel, Department of Economic Development—Division of Energy, and Renew Missouri in File Nos. EO-2020-0132 and EO-2020-0133.
3. Evergy managed its demand response programs as those programs were designed and approved by the Commission to be managed.[12] The demand response programs in question were designed to reduce annual system-wide peak load.[13] This is how those programs were designed, implemented, and managed. In so doing, those demand response programs achieved the level of cost-effectiveness sought by the Commission

[12] Ex. No. 4, File Rebuttal, pp. 4-6, 10, 13-14.
[13] Id. at 6, 13. *See also* Ex No. 11, Purpose paragraph in Sheet Nos. 1.96, 2.07, 2.09, 2.20, and 2.32; Ex No. 12, Purpose paragraph in Original Sheet Nos. R-73, R-84, R-86, R-96, and R-107.

via the methodology approved by the Commission.[14] The demand response programs in question were not designed to arbitrage day ahead locational marginal (DA LMP) prices or to reduce Southwest Power Pool ("SPP") Schedule 11 fees through the calling of numerous demand response events. The calling of more demand response events is not cost free to Evergy or its customers.[15]

4. OPC's position is based on hindsight analysis of historical data.[16] The additional demand response events supported by OPC (and supported by Staff witnesses), assuming hindsight *maximum* values, would comprise less than 6% of the total value of those programs as they were designed, approved by the Commission and managed by Evergy.[17] Under OPC's maximum values, the number of demand response events would need to increase by ten times. This ten-fold increase only achieve 6% of the total value of those programs, assuming no impact to customer behavior or participation.

5. When a disallowance is recommended for a capital expenditure for MEEIA programs that would be subject to the DSIM, then a MEEIA prudence proceeding is the appropriate proceeding to evaluate such a proposed disallowance. However, for any adjustment that involves energy costs that flow through the FAC, then it is the FAC prudence review that is the appropriate proceeding to analyze those costs.[18]

---

[14] Id. at 11-13.
[15] Id. at 8-10; Ex. No. 3, Carlson Rebuttal, pp. 18-20.
[16] Ex No. 4, File Rebuttal, pp. 7-8.
[17] Id. at 12.
[18] Position Statement of Evergy Missouri Metro and Evergy Missouri West, pp. 3-4.

II. THE PRUDENCE STANDARD

A. The Prudence Standard.

Over the years, the Commission frequently reaffirmed the prudence standard[19] articulated in the *Associated Natural Gas* case (which was an PGA/ACA case) as follows:

> [A] utility's costs are presumed to be prudently incurred.... However, the presumption does not survive "a showing of inefficiency or improvidence."
>
> ...[W]here some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent. (Citations omitted).
>
> In the [Union Electric] case, the PSC noted that this test of prudence should not be based upon hindsight, but upon a reasonableness standard:
>
> [T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.

See State ex rel. Associated Natural Gas v. Public Serv. Comm'n, 954 S.W.2d 520, 528-529 (Mo. App. W.D. 1997).

Furthermore, in order for the Commission to disallow a utility's recovery of costs from its customers, the Commission must apply the following two-pronged test: (1) evaluate whether the utility acted imprudently (that is, did not act reasonably at the time under the applicable circumstances); and 2) evaluate whether such imprudence was the cause of the harm (increased costs) to the utility's customers. *See Associated Natural Gas*, 945 S.W.2d at 529.

---

[19] *See e.g.*, *Report and Order*, p. 19, Re: Eighth Prudence of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company, File No. EO-2019-0067 (Nov. 6, 2019); *Report and Order*, pp. 13-14, Re Third Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company, File No. EO-2011-0390 (Sept. 4, 2012); *Report and Order*, pp. 13-15, Re: PGA Filing for Laclede Gas Company, Case No. GR-2004-0273 (June 28, 2007).

B. Burden of Proof

As stated above, under the prudence standard, the Commission presumes that the utility's costs were prudently incurred. *See State ex rel. Associated Natural Gas v. Public Serv. Comm'n,* 954 S.W.2d 520 (Mo. App. W.D. 1997)(citations omitted). This means that utilities seeking a rate increase or a change in their FAC rates are not required to demonstrate in their cases-in-chief that all expenditures were prudent. *See Union Electric,* 66 P.U.R.4th at 212. See also *State ex rel. Office of the Public Counsel v. Missouri Public Service Commission*, 409 S.W.3d 371, 376-77 (Mo. banc 2013).

Public Counsel, Staff or any other party can challenge the presumption of prudence by creating "a serious doubt" as to the prudence of an expenditure. Once a serious doubt has been raised, then the burden shifts to the public utility to "dispel those doubts" and prove that the questioned expenditure was prudent.

Missouri case law has described the showing necessary to create a serious doubt sufficient to shift the burden back to the utility. In the *Associated Natural Gas* case, the Missouri Court of Appeals held that the Staff must provide evidence that the utility's actions caused higher costs than if prudent decisions had been made. *See Associated Natural Gas*, 945 S.W.2d at 529. In other words, Public Counsel, Staff or the other parties must satisfy the following two-pronged evidentiary test to support a disallowance: 1) identify the imprudent action based upon industry standards and the circumstances at the time the decision or action was made; and 2) provide proof of the increased costs caused by the public utility's imprudent decisions. To meet this standard, a party must provide substantive, competent evidence establishing a causal connection or "nexus" between the alleged imprudent action and the costs incurred based upon industry standards and the circumstances at the time the decision or action was made; and 2) provide proof of the increased costs caused by the

public utility's alleged imprudent decisions. To meet this standard, a party must provide substantive, competent evidence establishing a causal connection or "nexus" between the alleged imprudent action and the costs incurred.

III. ISSUES

A. (Issue No. 4 AND 5) Was Evergy imprudent in the management of its demand response programs? Was it imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs?

1. Public Counsel and Staff Have Failed To Raise a Serious Doubt About the Prudence of Evergy's Management of Its Demand Response Program.

For the reasons stated herein, the Commission should find that Public Counsel and Staff have failed to raise a serious doubt that Evergy managed its demand response program imprudently. Based upon the competent and substantial evidence in the record, the Commission should instead find and conclude that Evergy acted prudently by implementing its MEEIA Cycle 2 demand response programs as designed and approved by the Commission.[20] Those MEEIA programs were designed and approved by the Commission to reduce annual system-wide peak load.[21] This means to reduce, on a system-wide basis, the annual peak of energy consumption. This annual peak usually occurs in late July or early August. By reducing such annual peak load Evergy was able to achieve an avoided capacity cost of $107.27/kW-year.

As explained in the rebuttal testimony of Evergy witness Brian File, "Avoided cost is meant to best represent what the Company would have done or had to do in the absence of the program accomplishment…While Staff and OPC seem to have ongoing issues with the specific dollars per kW-year value used for avoided capacity cost, the fact remains that in MEEIA Cycle 2 the value for

[20] Ex. No. 4, File Rebuttal, pp. 3-15.
[21] Tr. 272-273.

avoided cost was set with parties in the Stipulation and approved by the Commission as well as utilized in third party Evaluation, Measurement & Verification at $107.27/kW-year."[22] By implementing its MEEIA programs as designed and approved by the Commission, Evergy resoundingly achieved the cost-effective goals for those programs.[23]

Staff and OPC argue that a reasonable person would have deviated from the design of those MEEIA programs to attempt to arbitrage DA LMP of energy in the SPP and reduce SPP Schedule 11 fees. DA LMPs and SPP fees constitute about 6% or less of the total maximum cost savings of the MEEIA Cycle 2 programs, assuming perfect predictive powers achievable only through hindsight analysis. As explained herein, the Commission should reject this position.

Beyond the point that Staff and OPC are not only "moving the goal-posts," their arguments for imprudence fails for three substantive reasons discussed in the subsections below: First, Staff and OPC's argument rests on deeply flawed assumptions regarding the predictive ability necessary to achieve the results on which they base their recommended disallowance. Staff and OPC used historical data and hindsight analysis to calculate their recommended disallowance, with little to no consideration of the predictive ability needed to achieve such results on a prospective basis. Second, Staff and OPC's argument rests on the flawed assumption that increasing the number of demand response events would have no impact on customer behavior and thus potentially interfere with Evergy's ability to achieve its demand response primary-objective in reducing annual system wide peak load. Rather it would have Evergy chase marginal energy saving at the expense of the much more impactful cost-savings achieved via annual system-wide load reduction. Third, Staff and

[22] Ex. No. 4, File Rebuttal, p. 11.
[23] Id. at 11, 15.

OPC's recommended strategy is not without substantial financial risk to customers if the recommended monthly bets did not work out.

In short, the evidence presented in this case shows not only that Evergy acted prudently in its implementation of its MEEIA programs, but that the recommended demand response strategy of Staff and OPC would be highly imprudent. The Commission should reject the recommended disallowance.

a. Evergy Called Five Demand Response Events During the Summer of 2019 As Required By A Commission-Approved Stipulation With Staff and Public Counsel.

On February 15, 2019, the predecessor companies of Evergy Missouri Metro and Evergy Missouri West, Kansas City Power & Light Company ("KCP&L) and KCP&L Greater Missouri Operations Company ("GMO"), entered into a Stipulation and Agreement with Staff, Public Counsel, the Missouri Department of Economic Development—Division of Energy, and Renew Missouri Advocates in File Nos. EO-2019-0132 and EO-2019-0133.[24] This unanimous stipulation recommended that the Commission approve a MEEIA Cycle 2 Extension Plan to allow MEEIA Cycle 2 to continue beyond the scheduled expiration date of March 31, 2019, under certain specified conditions.[25] ("MEEIA 2 Extension Stipulation") One of those conditions was as follows:

> 7. With the following exceptions, the total MEEIA 2 Plan Energy (kWh) and Demand (kW) savings targets will increase 25% (see Exhibit B)
>
> * * *
>
> b. For the Programmable Thermostat Program, <u>The Company will call five demand response events per jurisdiction during the summer of 2019 (Jun-Sept)</u>. Company will present data to the DSM advisory group following the 2019 season detailing the customer participation rates (e.g. opt-out percentage, participation duration) during each demand response event conducted in 2019.[26] (<u>Emphasis added</u>)

---

[24] Stipulation and Agreement Regarding Extension Of MEEIA 2 Programs During Pendency Of MEEIA 3 Case, File Nos. EO-2019-0132 and EO-2019-0133 (filed on February 15, 2019)("MEEIA 2 Extension Stipulation") (Official Notice taken at Tr. 229-30).
[25] Tr. 232-33.
[26] Id. at 3.

In the Commission's *Order Approving Stipulation and Agreement* in that case, the Commission found that the Stipulation met the provisions of the MEEIA statute and approved the Stipulation. It also ordered that "its signatories shall comply with its terms."[27] The effect of this Order was that Evergy as well as Staff, and Public Counsel were ordered to comply with the terms of the Stipulation which clearly stated that the Company should call five demand response events per company during the Summer of 2019.

Evergy complied with the terms of the MEEIA 2 Extension Stipulation when it called five demand response events on the following dates during the Summer of 2019[28]:

Event #1 – July 18, 2019 (4-6 PM)

Event #2 – July 19, 2019 (4-6 PM)

Event #3 – Aug 6, 2019 (4-6 PM)

Event #4 – Aug 7, 2019 (2-4 PM)

Event #5 – Aug 12, 2019 (4-6 PM)

Notwithstanding the provisions of the stipulation which required Evergy to call five demand response event in the summer of 2019, OPC witness Lena Mantle argued in this proceeding that Evergy should have called 14 curtailment events for its Residential Programmable Thermostat program, and 9 curtailment events for the commercial and industrial Demand Response Initiative program.[29]

At the time that OPC witness Lena Mantle recommended that the Commission find Evergy imprudent for not calling more curtailment events, Ms. Mantle was unaware of the provision in the MEEIA 2 Extension Stipulation that required Evergy to call five demand response events for its

---

[27] Tr. 233; Ex. F15, Order Approving Stipulation and Agreement, p. 3, File Nos. EO-2019-0132 and EO-2019-0133 (Feb. 27, 2019) (Official Notice taken at Tr. 229-30).
[28] Ex No. 8, File Rebuttal, File Nos. EO-2020-0227/0228, Schedule BF-s1, p. 12 of 33.
[29] Ex. 203, Mantle Surrebuttal, p. 14.

residential program.[30] As a result, Ms. Mantle was unaware that her office and the Commission Staff had recommended that the Commission order Evergy to call five demand response events during the Summer of 2019.[31]

The Commission decided a similar case involving Liberty Utilities, Case No. GR-2014-0152. In the *Liberty* case, the Staff and Public Counsel had argued that the revenues associated with two special contracts with Noranda and General Mills should be imputed at the full-tariffed rates.

However, in an earlier case, Atmos Energy Corporation (the predecessor to Liberty Utilities), Staff, and Public Counsel ("Signatories") had entered into a stipulation in which the <u>Signatories agreed that revenues associated with the Noranda and General Mills special contracts should not be imputed to the full-tariffed rates</u>. Instead, the public utility, Staff and Public Counsel agreed that the public utility "shall offer to extend the special contracts of Noranda and General Mills to expire on the effective date of the next general rate case. The rates for such extended period shall be those in effect at the end of the respective contract's original term."[32] The Commission issued its *Order Approving Stipulation and Agreement*, and specifically incorporated all the provisions of the agreement related to Noranda and General Mills contracts, including the agreement that specific rates should be charged to Noranda and General Mills.[33]

In the *Liberty* rate case, the Commission rejected the position of Staff and Public Counsel that the revenues associated with the two special contracts should be imputed, and found that the previous Atmos stipulation was not discretionary for the public utility, but mandatory and agreed to by the public utility, Staff, and Public Counsel.[34] The Commission specifically found:

---

[30] Tr. 225-26, 237.
[31] Id.
[32] Unanimous Stipulation and Agreement, p. 3, Case No. GR-2010-0192 (filed August 11, 2010).
[33] Order Approving Stipulation and Agreement, Case No. GR-2010-0192 (issued August 18, 2010)
[34] Report and Order, p. 32-33, Case No. GR-2014-0152.

62. The Agreement to use these specific rates in the Noranda and General Mills contracts was not discretionary with Atmos. The rate provisions were mandatory, and agreed to by Atmos, Staff, Public Counsel, and Noranda.
63. Had Liberty charged the rates Staff suggests in this case, Liberty would have violated the stipulation from File No. GR-2010-0192.[35]

Similarly, in this case, the terms of the MEEIA 2 Extension Stipulation to call five demand response events during the Summer of 2019 were not discretionary with Evergy. That stipulation's provisions to call five demand response events were mandatory, and agreed to by Evergy, Staff, Public Counsel, Department of Economic Development—Division of Energy, and Renew Missouri Advocates.[36]

Since Public Counsel and Staff were signatories to the MEEIA 2 Extension Stipulation, Public Counsel and Staff should be estopped from making the argument that Evergy should have called more demand response events in the summer of 2019. The Commission should therefore reject Public Counsel's and Staff's arguments that Evergy was imprudent to not call additional demand response events in 2019.

The MEEIA 2 Extension Stipulation was entered into by Evergy, Staff, and Public Counsel after the summer of 2018. Therefore, for the summer of 2018, there were no requirements for calling a specified number of demand response events. However, as explained herein, Evergy was not imprudent in its management of the demand response programs in 2018. Evergy managed its demand response programs in the summers of 2018 and 2019 as those programs were designed and approved by the Commission to be managed. The demand response programs in question were not designed to arbitrage DA LMP or to reduce SPP Schedule 11 fees through the calling of numerous

[35] Id. at 33.
[36] Ex. 15, Stipulation and Agreement Regarding Extension Of MEEIA 2 Programs During Pendency Of MEEIA 3 Case, File Nos. EO-2019-0132 and EO-2019-0133 (filed on February 15, 2019)("MEEIA 2 Extension Stipulation").

demand response events, as suggested by Public Counsel and Staff. To the contrary, the demand response programs were specifically designed to reduce annual system-wide peak load, according to the terms of the Company's tariffs.[37] This is how those programs were designed, implemented, and managed. In so doing, those demand response programs achieved the level of cost-effectiveness sought by the Commission via the methodology approved by the Commission.[38]

Public Counsel and Staff have failed to raise a serious doubt that the Company acted imprudently in the management of the demand response programs during the FAC review period. In any event, the Company has dispelled any doubts and demonstrated that it was prudent in the management of its demand response programs. It was prudent for the Company to have followed the parameters of the demand response programs established in its tariffs, and complied with the terms of the Commission's *Order Approving Stipulation and Agreement* in File Nos. EO-2019-0132 and EO-2019-0133 (Feb. 27, 2019).

b. The Proposed Disallowance is Based Upon Historical Data and Hindsight Information.

OPC used historical DA LMP data and historical Schedule 11 fees that was not available to the Company at the time it was implementing this demand response program to draw the conclusion that Evergy could have achieved more energy-saving for its customers by utilizing demand response events to arbitrage DA LMP prices and Schedule 11 SPP fees. As discussed in Section II herein, these recommended disallowances contradict the well-established legal standard by which a utility company's decisions must be judged "prospectively rather than in reliance on hindsight." *Associated Natural Gas*, 954 S.W.2d at 529.

---

[37] Ex No. 11, Purpose paragraph in Sheet No. 1.96, 2.07, 2.09, 2.20, and 2.32; Ex No. 12, Purpose paragraph in Original Sheet No. R-73, R-84, R-86, R-96, and R-107; Tr. 272-73.
[38] Ex. No. 4, File Rebuttal, pp. 14-15.

OPC's exclusive use of historical monthly peak-load data to fabricate customer-harm out of whole cloth misapprehends the Company's ability to predict peak-load for multiple months and gives a false impression of the energy-savings that are capable.

The recommended disallowance is based on the belief that Evergy should have attempted to predict four monthly peaks, from June through September, and called demand response events accordingly. There are at least two flawed assumptions with this recommended disallowance. The first is that if Evergy can predict its annual peak load, it can just as easily predict monthly peak loads and so it should have tried to do so. This misapprehension likely stems from a lack of experience on the part of OPC and Staff in predicting peak-loads and operating within the SPP energy market.[39]. The second flawed assumption is that even if Evergy was successful in predicting the monthly peaks of June, July, August and September that it would necessarily reduce SPP Schedule 11 fees.[40]

First, as explained in the sur-rebuttal testimony of Evergy witness Brian File, predicting annual system-wide peak load is not the same as predicting monthly peak loads just less often: "Predicting the day of the annual system peak is somewhat challenging, but attainable. Predicting the peak for any other month, however, is considerably harder, even harder is accurately predicting the peak day for multiple months."[41] Importantly, Staff and OPC's recommended monthly arbitraging strategy does not work if the Company is merely "close" in predicting the monthly peak load. For this strategy to be "successful" (setting aside any impact to customer behavior) it would require the Company to predict the monthly peak load perfectly or the demand response event is pointless, if not worse.[42]

---

[39] Tr. 168-69.
[40] Ex. No. 3, Carlson Rebuttal, p. 21.
[41] Ex. No. 4, File Rebuttal, p. 7.
[42] Ex. No. 4, File Rebuttal, pp. 11-12.

Second, as described in the rebuttal testimony of Evergy witness John Carlson, even if the Company was successful in predicting the monthly peak loads, it would not necessarily result in the reduction of SPP Schedule 11 fees, because such fees are allocated based on a load-share ratio.[43]This means if other market participants' loads are reduced equal to or great than Evergy's load reduction from demand response events then there would be no benefit.

During cross-examination, Ms. Mantle candidly admitted that her proposed disallowance was based on hindsight analysis of historical information that was not available to the Company's decision makers at the time they made their decisions to call curtailment events. She used the five highest market priced hours for the two summers, even though that information was not available to the Evergy decision makers at the time they needed to make the decision to call curtailable events.[44]

OPC claims that the hindsight analysis of historical data was simply to determine the "impact" of the Company not attempting a monthly arbitrage of peak-load.[45] Analyzing historical monthly peak-load data does not equal an "impact analysis" without a predictive methodology that would have resulted in such an impact. It is absurdly easy to find an "impact" when using historical data to justify a disallowance based on predictions. We can all calculate the impact of not betting on the winner of yesterday's horse-race. But this is totally meaningless without offering a methodology by which we could have selected the winning horse.

However, this is understandable given OPC's farcical explanation that calling demand response events is just like "hitting a button" – why would a reasonable person not "hit the button" all the time to save customers money?[46] Unfortunately, that is not the reality and if Evergy were to attempt such a button-hitting strategy it would be acting imprudently and unreasonably. The

---

[43] Ex. No. 3, Carlson Rebuttal, P. 21.
[44] Tr. 273.
[45] Tr. 275.
[46] Tr. 53.

Commission should reject the recommended disallowance because it is based on an analysis of historical data that a reasonable non-psychic person would not have attempted to predict.

c. Customer Behavior and Impact to Primary Objective of Demand Response Programs.

As explained in the rebuttal testimony of Evergy witness Brian File, "Even to achieve hindsight maximum values used by Staff, the Company would be spending 90% of the events calls to achieve less than 6% of the value."[47] To achieve this 6% theoretical value (using Staff and OPC's hindsight based monthly arbitraging strategy) requires one to believe that calling additional demand response events would not impact customer participation in demand response events. This belief is demonstrably not correct. Staff and OPC's analysis is static and does not account for the dynamic relationship between the utility company and its customers in the calling of demand response events.

Evergy's customers voluntarily sign up to participate in demand response programs and that relationship requires trust between the Company and its customers.[48] By participating in these demand response programs, customers are allowing an external company to affect their living and working environment. For the Company to use its demand response programs in the fashion desired OPC, the design of those programs would need to be changed in terms of customer compensation and expectations. For residential customers, the programmable thermostat program allows customers to opt-out of demand response events.[49] Evergy has provided evidence showing a correlation between the number of events called and customer utilizing their opt-out option on demand response events.[50]

---

[47] Ex. No. 9, File Sur-surrebuttal, pp. 25.
[48] Ex. No. 4, File Rebuttal, pp. 8-9.
[49] Id. at 9-10.
[50] Ex. No. 9, Sur-Surrebuttal File, P. 22.

The problem with Staff and OPC's monthly arbitraging strategy is not just that Evergy's customers would be inconvenienced. The problem is that a substantial increase in the number of demand response events will result in customers opting-out or not participating in those programs as they are currently designed and will impact Evergy's ability to achieve its primary objective of reducing annual system-wide peak load. Evergy would be chasing the maximum potential 6% benefit (achieved by predicting DA LMPs and reducing SPP Schedule 11 fees) to the detriment of achieving the 94% actual benefit of reducing annual system-wide peak load.[51]

The recommended disallowances are based on a static analysis of the Company's demand response resources. But demand response programs are not like a wind farm or a combined cycle natural gas plant in that those resources cannot turn themselves off or otherwise refuse to participate if overused. The Commission should reject Staff and OPC's monthly arbitraging strategy because a reasonable person would not jeopardize the primary objective of those demand response programs to chase 6% or less of the theoretical value of those programs by making much more difficult monthly predictions.[52]

d. "Hitting the Button" Can Cost Customers Money

OPC's monthly arbitraging strategy is predicated on the flawed assumption that there is no financial risk to betting wrong. In fact, there is real financial risk to betting wrong. This failure to recognize the financial risks of betting wrong with demand response events likely stems from a lack of understanding or experience with the mechanics of the SPP day ahead and real-time markets.[53] However, given an understanding of these market mechanics, a reasonable person would not adopt the recommended monthly arbitraging strategy that has been recommended by OPC and Staff.

---

[51] Ex. No. 4, File Rebuttal at 13.
[52] Id.
[53] Id. at 15.

As explained in the rebuttal testimony of Evergy witness John Carlson, the complexity of the SPP market requires not simply that Evergy pick the right day of the monthly peak, but the right hour.[54] This gamble must be made by 9:30 a.m. the day before the monthly peak and requires Evergy to reduce its bid into the SPP market by the amount of the energy reduced by the demand response event.[55] If the weather is not as predicted (or there are other reasons Evergy's crystal ball did not work) then it could be necessary for the Company to buy energy out of the real-time market to cover its load. The net effect could be costly to customers.[56]

Staff and OPC are profoundly, categorically, and demonstrably wrong in their insistence that a wrongly placed bet on DA LMPs are costless. The mechanics of the SPP market and unexpected events requiring the Company to buy power out of the real-time markets is a real, tangible financial risk to customers. A reasonable person would not attempt to use the Company's demand response programs as designed to arbitrage monthly peak-load given the possibility of unforeseen events requiring the Company to buy energy out of the real-time market at higher price.

B. (Issue No. 6) If it was imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs, is it more appropriate to address the imprudent implementation of the programs through an ordered FAC adjustment or an ordered DSIM adjustment?

As shown above, there was no imprudence on the part of the Company and therefore there should be no adjustment to the FAC or the DSIM. The Company does recognize that there is considerable confusion over the appropriate docket to review the prudence of its MEEIA programs. On the one hand, Staff's recommended disallowances to the Company's purchased power costs and SPP fees in the MEEIA 2 audit case would be made in the Company's FAC if those disallowances

[54] Ex. No. 3, Carlson Rebuttal, pp. 18
[55] Id. at 18-19.
[56]Id. at17-18.

were adopted by the Commission.[57] On the other hand, it is not possible to manage the MEEIA programs one way for the purpose of the FAC and another way for MEEIA purposes as they are the same programs. It also does not make sense to litigate the same issues twice, once in an FAC audit and once in a MEEIA audit.

Evergy believes that future audits of MEEIA programs should occur in the MEEIA audit docket. If Staff or OPC prevail on any issue that impacts the Company's FAC, then that adjustment should be made in the next FAC case. If Staff or OPC prevail on any issue that impacts the DSIM, then that adjustment should be made in the DSIM in the MEEIA audit case.

CONCLUSION

Staff and OPC's monthly arbitraging strategy and its recommended disallowance should be rejected by the Commission. Staff and OPC have failed to raise a "serious doubt" about the reasonableness of Evergy's management of its Demand Response Program. The OPC and Staff recommendation does not consider the fact that Evergy was ordered by the Commission to call five demand response events during the summer of 2019, and it complied as ordered by the Commission. The recommendations are based on hindsight analysis of historical data without the offering of an actual prediction methodology. The recommendations do not consider impact to customer behavior or the impact on the Company's ability to achieve the primary objective of its demand response programs. The recommendations do not consider real financial risks to the Company's customers from placing monthly weather bets. Staff and OPC's recommended monthly arbitrage strategy is itself imprudent and unreasonable given the design and the design objective of the Company's demand response programs.

[57] Tr. 156.

WHEREFORE, the Company respectfully submits its Brief for consideration by the Commission.

Respectfully submitted,

/s/ Roger W. Steiner

Robert J. Hack, MBN 36496
Roger W. Steiner, MBN 39586
Evergy, Inc.
1200 Main Street
Kansas City, Missouri 64105
Phone: (816) 556-2791
rob.hack@evergy.com
roger.steiner@evergy.com

James M. Fischer MBN 27543
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101
Telephone: 573-636-6758
Facsimile: 573-636-0383
jfischerpc@aol.com

Joshua Harden MBN 57941
Collins & Jones, P.C.
1010 W. Foxwood Dr.
Raymore, MO 64083
Telephone: 816-318-9966
Facsimile: 888-376-8024
Email: jharden@collinsjones.com

Attorneys for Evergy Missouri Metro and Evergy Missouri West

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 1st day of March 2021, to all counsel of record.

/s/ Roger W. Steiner

Roger W. Steiner