

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

In the Matter of the Application of Evergy )  
Missouri West, Inc. d/b/a Evergy Missouri )  
West for Authority to Implement Rate )  
Adjustments Required by )  
20 CRS 4240-20.090(8) and the Company's )  
Approved Fuel and Purchased Power Cost )  
Recovery Mechanism )

**File No. ER-2023-0011**  
Tracking No. JE-2023-0005

**EVERGY MISSOURI WEST'S RESPONSE IN OPPOSITION TO PUBLIC COUNSEL'S  
MOTION FOR SUMMARY DETERMINATION AND RULE VARIANCE; AND  
SUGGESTIONS IN SUPPORT OF EXPEDITED PROCEDURAL SCHEDULE**

**COMES NOW**, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West” or the “Company”) and, for its *Response* (“Response”) to the Office of the Public Counsel’s (“OPC”) *Motion for Summary Determination and Rule Variance or, in the Alternative, Request for Expedited Procedural Schedule* (“Motion”) filed in this docket on August 15, 2022, the Company respectfully states as follows:

**I. Introduction**

1. Balancing the need for expediency with the importance of responding to OPC’s extraordinary motion seeking summary determination, the Company will address OPC’s position at a high level in an effort to assist the Commission in its assessment of OPC’s request. In making this Response, therefore, the Company waives no factual, policy or legal argument that it may deem appropriate to make in the future.

2. As a matter of first impression concerning the operation of a statute that was newly enacted less than five years ago, this dispute is not suitable for resolution by summary determination, particularly given the presence of disputed issues of material fact, policy and law that must be resolved by the Commission in a manner that fairly and reasonably balances the interests of the constituencies involved in this dispute. To that end, the Company opposes OPC’s request for summary determination and supports OPC’s request for an expedited procedural schedule.

## II. Summary Determination is Inappropriate

3. OPC concedes (on page 5 of its Motion) that the Commission's rule authorizing resolution of cases by summary determination does not apply in ". . . a case seeking a rate increase or which is subject to an operation of law date . . . ." This case – in which the Company seeks to increase its fuel adjustment rate ("FAR") through the filing of a tariff sheet that is subject to an operation of law date – is thus inappropriate for resolution by summary determination according to the terms of the Commission's own rule on summary determination. OPC's attempt to justify a variance from this provision of the Commission's summary determination rule – that it was promulgated only to protect non-utility parties from being overwhelmed by utility parties in rate increase cases or tariff cases subject to statutory operation of law dates – is patently one-sided and, therefore unreasonable and unfair. This OPC rationale shamelessly asks the Commission to essentially re-write its rule on summary determination to make it applicable to this case (a request for a rate increase that is subject to a statutory operation of law date) to which, by the rules very terms, the rule does not apply and would amount to preferential treatment for OPC, and disadvantageous treatment of the Company in violation of fundamental notions of fairness that apply to Commission action.<sup>1</sup> In addition, the Commission has a recent track record of handling disputed FAR filings by establishing a procedural schedule and resolving the disputed issues through customary administrative litigation processes that allow for a full and orderly presentation of the issues to the Commission and a reasonable opportunity for the Commission to deliberate and decide the disputed issues.<sup>2</sup> There is simply no reasonable basis to grant the variance requested by OPC.

4. Commission resolution of cases by summary determination is exceedingly rare, so rare, in fact, that the Company's research did not uncover a single order in which this Commission

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<sup>1</sup> *R. Mark, Complainant vs. Southwestern Bell Telephone d/b/a AT&T Missouri, Respondent*, No. TC-2006-0354, 2006 WL 3377560, at \*2 (Nov. 16, 2006).

<sup>2</sup> *See, Order Rejecting Fuel Adjustment Clause Tariff, Scheduling Procedural Conference and Directing the Filing of a Revised Tariff*, File Nos. ER-2019-0413 and ER-2019-0414, dated August 15 2019.

has resolved a disputed case by means of summary determination. It would be reasonable to expect requests for summary determination to involve subject matter that is straightforward and well developed in terms of related fact, policy and law. This matter, however, involves the plant-in-service accounting (“PISA”) legislation enacted in 2018 – less than five years ago – and concerns a matter of first impression that has never been adjudicated before. Under such circumstances, resolution by summary determination is inappropriate as it deprives the Commission of an opportunity to decide the disputed issues with the benefit of a full record. Cutting the process short in this matter of first impression – as OPC seeks with its motion for summary determination – is more likely to lead to a resolution based on insufficiently developed facts, law and policy than would be attainable using customary administrative litigation processes to resolve the disputed issues.

5. In support of its request for summary determination, OPC asserts (on page 2 of its Motion) that there are no genuine issues of material fact. Evergy Missouri West respectfully disagrees and points out two disputed issues of material fact in sub-paragraphs a and b immediately below. Moreover, the Commission’s rule on summary determination also requires that the movant demonstrate that it is entitled to relief as a matter of law. Evergy Missouri West submits that OPC has utterly failed to make such a showing and explains in sub-paragraph c below why, as a matter of law, OPC is not entitled to the relief it seeks.

a) In seeking to defer \$31 million of fuel and purchased power costs, the Company asserted that the combination of fuel and purchased power costs in the accumulation period that is the subject of this FAR filing plus fuel and purchased power costs in the immediately preceding recovery period plus the amount of fuel and purchased power costs Staff has proposed to include in base rates in Evergy Missouri West’s ongoing general rate proceeding are extraordinary under section XI of the Commission’s FAC rule (20 CSR 4240-20.090(8)(A)2.A.(XI)) and will cause the Company to exceed the

CAGR cap under section 393.1655.5 (See Ives Direct, p. 10). In response, OPC asserts that the \$44.6 million of fuel and purchased power costs incurred by the Company in the accumulation period that is the subject of this FAR filing are lower than the \$47.5 million of fuel and purchased power costs it incurred in the immediately preceding recovery period and, therefore, that the Company's claim that fuel and purchased power costs increases are extraordinary cannot be correct. (See, Motion, p. 4 of 14; and OPC Legal Memorandum in Support of Summary Determination, pp. 24-27) This argument by OPC incorrectly and inappropriately compares only fuel and purchased power costs incurred in the subject accumulation period to fuel and purchased power costs incurred in the preceding recovery period (excluding consideration of the impact of re-basing fuel and purchased power costs in the ongoing general rate proceeding) when the point the Company is making is that the sum of all of these costs is extraordinary and driving the concern that the CAGR cap in the ongoing general rate case would not be exceeded but for the impact of fuel and purchased power costs. Notably, the accumulation period that is the subject of this FAR filing, and the immediately preceding recovery period, and the true-up date in the Company's ongoing rate case all center on the 12-month period ending May 31, 2022. This fact further buttresses the extraordinary nature of the fuel and purchased power cost increases that are driving the Company's concerns in this matter as all three elements – since they cover the same periods of time – are affected by the same market conditions.

- b) Contrary to the Company's assertion that "but for" fuel and purchased power cost increases (in the accumulation period that is the subject of this FAR filing, in the immediately preceding recovery period and in the re-base of fuel costs in the ongoing

general rate proceeding) Evergy Missouri West would be nowhere close to exceeding the 3% CAGR cap in the ongoing general rate case, OPC argues that PISA-related investments by the Company are actually a greater contributor to the Company's general rate increase situation than fuel and purchased power costs. (OPC Legal Memorandum in Support of Summary Determination, p. 8). This OPC assertion is also based on an inaccurate, flawed and incomplete comparison. Here OPC compares \$83 million in PISA investments to \$32 million in fuel and purchased power costs (the amount proposed by the Company in direct testimony, before the recent substantial increases occurred). This OPC comparison fails to account for recent substantial increases in fuel and purchased power costs (i.e., in the accumulation period that is the subject of this FAR filing, in the immediately preceding recovery period and in the re-basing of fuel costs proposed by Staff in the Company's ongoing general rate case) that must be considered when applying the CAGR cap in the general rate case. Moreover, OPC's flawed comparison conveniently ignores the \$57.5 million in operating and maintenance expense savings achieved by the Company, consistent with its projections about the 2018 merger of Great Plains Energy, Inc. and Westar, Inc., that serve to substantially offset the revenue requirement associated with PISA investments. Asking the Commission to agree to summary disposition by sorting through misleading assertions, improperly-labeled as uncontested fact without the benefit of a fully developed record is likely to lead to a Commission decision that is not based on solid understanding of the facts, policy and law applicable to the disputed issues.

- c) In reading pages 18-22 of the OPC Legal Memorandum in Support of Summary Determination, OPC contends it is beyond dispute that section 393.1655.5 RSMo.

does not require or permit deferral of fuel and purchased costs that cause an electric utility to exceed its CAGR cap in a general rate case. However, the Company firmly disputes this assertion. The Commission's FAC rule requires the re-base of fuel and purchased power costs (called "base energy costs" in the FAC rule) in base rates in any general rate case in which the FAC is continued or modified. (20 CSR 4240-20.090(1)(X)). Sheet No. 127.21 of Evergy Missouri West's FAC tariff contains a provision recognizing that base energy costs used in the administration of the Company's FAC are those ordered by the Commission in the last general rate case. The Commission's FAC rule defines "Base energy costs" as "fuel and purchased power costs net of fuel-related revenues determined by the commission to be included in a RAM [rate adjustment mechanism] that are also included in the revenue requirement used to set base rates in a general rate case." It is clear, therefore, that when fuel and purchased power costs are re-based in a general rate case and the Company's base retail rates change as a result, this is occurring, at least in part, because it is required under any rate adjustment mechanism that is adopted pursuant to the authority of the Commission's FAC rule. Section 386.266 RSMo. is cited, among other statutory sections, as authority for the Commission's FAC rule. Under section 393.1655.5 (emphasis added),

[I]f a change in *any* rates charged under a rate adjustment mechanism approved by the commission under sections 386.266 . . . would cause an electrical corporation's average overall rate to exceed the compound annual growth rate limitations set forth in subsection 3 . . . of this section, the electrical corporation shall reduce the rates charged under that rate adjustment mechanism in an amount sufficient to ensure that the compound annual growth rate limitation set forth in subsection 3 . . . is not exceeded due to the application of the rate charged under such mechanism and the performance penalties under such subsections are not triggered.

Section 393.1655.5 goes on to prescribe for the deferral of sums, to the regulatory asset established under section 393.1400 RSMo., that exceed the CAGR limit. Because the FAC rule requires the re-basing of fuel and purchased power costs in any general rate case where an FAC is continued or modified, the resulting base rate impacts represent rates changed under a rate adjustment mechanism and amounts of such fuel and purchased power costs in excess of the CAGR cap are to be deferred under section 393.1655.5 RSMo. Again, the shortcut process OPC seeks to invoke will not permit a reasonable level of analysis and deliberation by the Commission of the various factual, policy and legal issues that are in dispute in this matter. The Commission has previously described the heavy burden a movant must carry to obtain relief by summary determination:

[T]he Commission will decide this case without an evidentiary hearing if the party filing the motion for summary determination ("movant") meets a certain burden. But that burden is greater than the burden for winning with an evidentiary hearing. . . . Even a movant with no burden of proof on the complaint has a burden when filing a motion for summary determination. That burden is to demonstrate a legal entitlement to relief.<sup>3</sup>

OPC's request for summary determination should therefore be denied.<sup>4</sup> Given OPC's failure to satisfy the public interest element of the rule, the Commission must deny OPC's request for summary determination.

### **III. Suggestions in Support of OPC's Request for Expedited Procedural Schedule.**

7. Evergy Missouri West brought this matter to the Commission's attention at its earliest opportunity. In so doing, the Company has attempted to be as transparent as possible about the rationale for its request to defer \$31 million in fuel and purchased power costs in the subject FAR filing. The high cost of fuel and purchased power represents the current operational reality for Evergy Missouri West, the customers it serves and its regulators. The Company is no more interested in causing irreversible damage to its customers than it is to suffer irreversible damage itself.

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<sup>3</sup> Eddie Shepherd, Complainant, No. EC-2011-0373, 2011 WL 6960557, at \*1-\*2 (Dec. 23, 2011).

<sup>4</sup> Missouri Pub. Serv. Comm'n, No. SC-2007-0396, WL 4386055 n. 7 (Oct. 4, 2007).

8. As an alternative to its request for summary determination, OPC has requested the establishment of an expedited procedural schedule to allow for a Commission order before December 6, 2022. Evergy Missouri West supports that request by OPC and stands ready to assist in the development of such a schedule.

**WHEREFORE,** the Company submits its response to the Commission and respectfully requests that the Commission deny OPC's request for summary determination and grant OPC's motion to establish an expedited procedural schedule.



Respectfully submitted,

/s/ Roger W. Steiner

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**Attorneys for Evergy Missouri West**

**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 in this case on this 23<sup>rd</sup> day of August 2022.

/s/ Roger W. Steiner

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**Counsel for Evergy Missouri Metro and  
Evergy Missouri West**