

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

In the Matter of the Application of The Empire     )  
District Electric Company d/b/a Liberty to         )  
Implement Robust and Mutually- Beneficial     )   File No. EO-2022-0078  
Energy Efficiency Offerings Under the            )  
Framework Prescribed by MEEIA                    )

**EVERGY MISSOURI METRO AND EVERGY MISSOURI WEST  
REPLY TO OPC’S MOTION TO DENY EVERGY’S INTERVENTION**

COMES 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”) and, for its *Reply* (“Reply”) to the Office of the Public Counsel’s (“OPC”) Motion To Deny Evergy’s Intervention (“Motion”) states:

1. On October 8, 2021, Evergy timely filed to intervene in this docket.
2. On October 15, 2021, OPC filed its Opposition in this docket for failure to satisfy Commission Rule 20 CSR 4240-2.075(3)(A) and (B). For the reasons stated herein, OPC’s request should be denied, and Evergy should be permitted to intervene in this matter.
3. As explained in Evergy’s Application, the Commission should allow Evergy to intervene and participate in this case because issues in The Empire District Electric Company d/b/a Liberty (“Liberty”) MEEIA Cycle 1 case have the potential to establish regulatory policies that may adversely affect and undermine Evergy’s MEEIA programs in the future.
4. OPC argues that since this case is not a rulemaking proceeding, an order applicable to Liberty is neither applicable nor binding on Evergy. (OPC Motion, p. 2) OPC ignores the fact that often the Commission will decide an issue in one case and subsequently issue a consistent order in a subsequent case on the same issue.

5. Evergy has a relatively long history of implementing and administering various MEEIA programs, including energy efficiency and demand-side management programs.<sup>1</sup> Over the years, Evergy has experienced increasing opposition from the Commission Staff and OPC to the approval of its MEEIA programs.<sup>2</sup> Evergy is concerned that the Commission may be encouraged by its Staff and/or OPC issue an order in the Empire MEEIA Cycle 1 program that may establish regulatory policies that will undermine the progress that Evergy has made in its MEEIA Cycles 1, 2 and 3 cases that have established favorable regulatory policies toward the adoption and implementation of energy efficiency and demand-side management programs. As

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<sup>1</sup> Evergy's history of implementing DSM programs began with various demand reduction and pricing programs throughout the 1990s — and most notably increased with the adoption of the Comprehensive Energy Plan (CEP) in 2005. Stemming from the Stipulation and Agreement in Case No. EO-2005-0329 (0329 S&A), this plan gave Evergy (f/k/a Kansas City Power & Light Company) the opportunity to offer DSM programs. Evergy began partnering with customers, investing approximately \$67.3 million into DSM programs in our KCP&L-MO service territory as a result of the CEP. That portfolio of programs represented Evergy's initial significant commitment to promote energy efficiency and demand response, ensuring all classes of customers had programs in which they could participate. This commitment to DSM by a Missouri utility was unprecedented at the time. Evergy remained committed to these programs even after the five-year conclusion of the 0329 S&A.

The 2009 passage of MEEIA put regulations into place in 2011. KCP&L completed its MEEIA Cycle 1 on December 31, 2015 and completed its MEEIA Cycle 2 on December 31, 2019. KCP&L's MEEIA Cycle 3 program was approved on March 11, 2020, and is currently ongoing.

<sup>2</sup> While Case No. EO-2005-0329 and subsequent MEEIA Cycle 1 (File No. EO-2014-0095 check) and MEEIA Cycle 2 (File No. EO-2015-0240) cases were resolved by various stipulations with Staff, OPC and various intervenors, Evergy's MEEIA Cycle 3 case was a fully litigated case (involving similar MEEIA programs to Cycles 1 and 2) in which Staff and OPC opposed virtually all aspects of the Company's MEEIA 3 programs. The Commission resoundingly rejected the arguments of Staff and OPC in the MEEIA 3 Cycle case. See *Amended Report and Order*, pp. 25-28, In the Matter of Evergy Missouri Metro and Evergy Missouri West's Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism, File No. EO-2019-0132 (March 11, 2020). The Missouri Court of Appeals affirmed the Commission's MEEIA Cycle 3 decision in all respects. *Per Curiam Opinion, State ex rel. Office of Public Counsel v. Public Service Commission et al.*, Case No. WD-2020-83828 (March 2, 2021).

a result, Evergy has an interest in this case which may be adversely affected by a final order arising from the case. If the Commission adopted arguments of Staff and OPC in the Empire Cycle 1 case similar to the arguments raised in Evergy's last MEEIA 3 case, it will establish regulatory precedent and policies that will directly and adversely affect Evergy's future plans for the extension and expansion of its energy efficiency and demand-side management programs, and its ability to obtain regulatory approval from the Commission in the future for such programs.

6. Recognizing such concerns, the Commission has often allowed public utilities to intervene in the cases of other public utilities.<sup>3</sup> In fact, three public utilities, Ameren Missouri, The Empire District Electric Company d/b/a Liberty, and Spire Missouri Inc., were authorized to intervene in Evergy's recent and ongoing Transportation Electrification case, File No. ET-2021-0151, which was heard by the Commission last week.<sup>4</sup>

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<sup>3</sup> See e.g., Notice of Rulings Made At Prehearing Conference, Re Kansas City Power & Light Company, File No. ER-2016-0285 (July 28, 2016)[Union Electric Company d/b/a Ameren Missouri granted intervention]; Order Regarding Ameren Missouri's Application To Intervene, Re Kansas City Power & Light Company, File No. ER-2014-0370 (December 3, 2014)[Union Electric Company d/b/a Ameren Missouri granted intervention]; Order Granting Applications For Intervention, Re Kansas City Power & Light Company, File No. ER-2012-0174 (March 20, 2012)[Union Electric Company d/b/a Ameren Missouri granted intervention]; Order Granting Intervention, Re Empire District Electric Company, File No. ER-2011-0004 (October 26, 2010)[Kansas City Power & Light Company granted intervention]; Order Granting Intervention, Re Kansas City Power & Light Company, Case No. ER-2010-0355 (July 13, 2010)[Union Electric d/b/a AmerenUE and Missouri Gas Energy granted intervention]; Order Granting Intervention, Re Empire District Electric Company, Case No. ER-2010-0130 (December 2, 2009)[Kansas City Power & Light Company granted intervention]; Order Granting Intervention, Re: Kansas City Power & Light Company, Case No. ER-2007-0291 (March 8, 2007)[Missouri Gas Energy and Trigen-Kansas City Energy Corp. granted intervention]

<sup>4</sup> Order Granting Interventions, Re Evergy Metro, Inc. d/b/a Evergy Missouri Metro for Approval of a Transportation Electrification Portfolio, File No. ET-2021-0150 (March 15, 2021).

7. The Commission has also allowed public utilities to intervene in Evergy's MEEIA cases. In KCP&L's MEEIA Cycle 1 case, File No. EO-2014-0095, the Commission allowed Ameren Missouri and The Empire District Electric Company to intervene, stating:

The Commission finds that Ameren Missouri's interest in this case is different from that of the general public, and may be adversely affected by a final order arising from this case. Furthermore, the Commission finds that allowing Ameren Missouri to intervene will serve the public interest. Therefore, in accordance with Commission Rule 4 CSR 240-2.075(4), the Commission will grant Ameren Missouri's application to intervene.

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The Commission finds that Empire's interest in this case is different from that of the general public, and may be adversely affected by a final order arising from this case. Furthermore, the Commission finds that allowing Empire to intervene will serve the public interest. Therefore, in accordance with Commission Rule 4 CSR 240-2.075(4), the Commission will grant Empire's application to intervene.<sup>5</sup>

8. In KCP&L's MEEIA Cycle 2 case, File No. EO-2015-0240, Union Electric Company d/b/a Ameren Missouri was authorized by the Commission to intervene in the proceeding.<sup>6</sup> Similarly, in KCP&L's MEEIA Cycle 3 case, File No. EO-2019-0132, Spire Missouri, Inc. was authorized by the Commission to intervene in the proceeding.<sup>7</sup> In fact, no public utility that requested to intervene in Evergy's past MEEIA cases has been denied the right to intervene and participate by the Commission.

9. OPC also argues without any citation to any past case that "Evergy's ability to oppose settlements and challenge issues could slow and hamper this proceeding ..." (OPC Motion, p. 2). OPC did not and can not point to any case where Evergy has opposed an otherwise unanimous settlement in another electric company's rate case or MEEIA proceeding.

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<sup>5</sup> Order Regarding Applications to Intervene, Re: Kansas City Power & Light Company's Filing for Approval of Demand-Side Programs and for Authority to Establish A Demand-Side Programs Investment Mechanism, File No. EO-2014-0095 (January 29, 2014).

<sup>6</sup> Order Granting Applications To Intervene, Re Kansas City Power & Light Company's Filing for Approval of Demand-Side Programs and for Authority to Establish A Demand-Side Programs Investment Mechanism, File No. EO-2015-0240 (September 22, 2015).

<sup>7</sup> Order Granting Applications to Intereven And Order Granting Motion to Consolidate, Re Kansas City Power & Light Company's Application for Authority To Establish a Demand-Side Program Investment Mechanism, File No. EO-2019-0132 (December 27, 2018).

10. OPC also argued that Evergy's intervention would not promote the public interest. This argument is simply incorrect. As explained herein, Evergy has a very extensive history in developing, implementing and promoting energy efficiency and demand-side management programs. Evergy's extensive experience with MEEIA programs will assist the Commission in reviewing Empire's first MEEIA Cycle 1 program application, and Evergy's participation will thereby promote the public interest.

11. OPC made similar arguments in a rate case involving Kansas City Power & Light Company in which OPC objected to the intervention of Ameren Missouri. The Commission rejected OPC's arguments in that case stating:

It has been the Commission's practice to liberally grant intervention to organizations that promote various public policy positions in order to consider a full range of views before reaching a decision. Ameren Missouri's arguments are persuasive that Ameren Missouri has an interest different than that of the general public, that it may be adversely affected by a final order in this case, and that its participation as a party would serve the public interest. The Commission concludes that Ameren Missouri's application satisfies all requirements of Commission Rule 4 CSR 240-2.075, and intervention will be granted.<sup>8</sup> (footnotes omitted)

**WHEREFORE**, Evergy respectfully requests that the Commission issue an order authorizing it to intervene in the above-captioned matter.

Respectfully submitted,

*/s/ Roger W. Steiner*

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<sup>8</sup> Order Regarding Ameren Missouri's Application To Intervene, Re Kansas City Power & Light Company, File No. ER-2014-0370 (December 3, 2014).

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**ATTORNEY FOR EVERGY MISSOURI  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first class United States Mail, postage pre-paid, to counsel for all parties of record this 25th day of October 2021.

*/s/ James M. Fischer*

James M. Fischer