

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

In the Matter of the Second Prudence)
Review of the Missouri Energy Efficiency)
Investment Act (MEEIA) Cycle 2 Energy)
Efficiency Programs of Evergy Metro, Inc.)
d/b/a Evergy Missouri Metro)

File No. EO-2020-0227

In the Matter of the Second Prudence)
Review of the Missouri Energy Efficiency)
Investment Act (MEEIA) Cycle 2 Energy)
Efficiency Programs of Evergy Missouri)
West, Inc. d/b/a Evergy Missouri West)

File No. EO-2020-0228

**RESPONSE OF EVERGY MISSOURI METRO AND EVERGY MISSOURI WEST
TO STAFF RESPONSE TO EVERGY’S PROPOSED PROCEDURAL SCHEDULE**

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 submits to the Missouri Public Service Commission (“Commission”) their response to Staff for the Commission (“Staff”) Response To Evergy Procedural Schedule filed on July 23, 2020 and, in support thereof, states as follows:

1. On July 22, 2020, Evergy and Staff/the Office of the Public Counsel (“OPC”) submitted separate proposed procedural schedules for this proceeding. Evergy submitted a proposed procedural schedule which is consistent with long standing practices related to cases involving prudence investigations into the practices of electric and gas utilities in Missouri, including Fuel Adjustment Clause (“FAC”) audits, and Purchased Gas Adjustment Clause (“PGA”) audit cases. Evergy’s proposed procedural schedule is also consistent with cases that recognize that the party with the burden of proof should be required to file direct testimony and should have the last word in testimony responding to other parties (e.g, complaint cases).

2. Staff/OPC's proposed procedural schedule is not consistent with past practices related prudence cases but is more consistent with the complicated procedural schedules used in major rate cases in Missouri. In major rate cases, all parties may file testimony at least three times (i.e. all parties file direct, rebuttal, and surrebuttal and/or cross-surrebuttal testimony. While this complicated approach in major rate cases has been used for years in Missouri, it should not be extended to prudence reviews where the issues are not nearly as numerous, complicated, or complex.

3. The Commission should adopt Evergy's more straightforward proposal which is consistent with long-standing practices for other types of prudence reviews across the electric and gas industries.

4. Evergy proposed the following procedural schedule:

- a. August 21, 2020: Evergy files Direct testimony.
- b. September 21, 2020: Staff and OPC file Rebuttal Testimony.
- c. September 23, 2020: Settlement Conference.
- d. October 5, 2020: Staff and OPC file Cross-Rebuttal Testimony.
- e. October 21, 2020: Evergy files Surrebuttal Testimony.
- f. October 26, 2020: List of Issues, Order of Witnesses, Order of Cross-Examination, Joint Stipulation of Facts, Last Day to Issue Discovery Requests, Subpoenas, or Take Depositions
- g. October 28, 2020: Statement of Position
- h. November 5-6, 2020: Evidentiary Hearing
- i. November 16, 2020: Transcripts due
- j. December 4, 2020: Initial Post-Hearing Briefs
- k. December 18, 2020: Reply Briefs

5. Staff and Evergy disagree on a, b, and e above, namely the filing of written, pre-filed testimony. Staff's proposal includes all parties filing direct, rebuttal and surrebuttal testimony. Whereas Evergy's proposal conforms to the traditional procedural schedule of prudency reviews, and has Evergy filing direct testimony, Staff/OPC filing rebuttal testimony and Evergy filing surrebuttal testimony.

6. Evergy opposes Staff's proposal for two reasons. First, Staff's proposal is needlessly complicated, redundant and duplicative. Staff's Report of Second MEEIA Prudence Review of Cycle 2 Costs Related to the Missouri Energy Efficiency Investment Act ("Staff's Reports")¹ contains Staff's recommended ordered adjustments ("OA") and detailed analysis of Staff's prudency review conducted pursuant to 20 CSR 4240-20.093(11). Staff has offered no reason as to why it would be necessary for it to file direct testimony in addition to Staff's Reports before the Company initially meets its burden of proof to show the reasonableness of its proposal. Staff's proposal will require numerous filings by all parties, rather than the simpler and straight forward approach proposed by Evergy.

7. Second, Staff's proposal disrupts the "burden shifting" framework of a prudency review. In its Response, Staff recognizes "the simple fact that ultimately any utility company bears the burden of proving its proposed rates and tariffs are just and reasonable." (Staff Response, p. 2) Staff's recognition of this simple fact is correct and supported by the statutory framework in Missouri that the public utility initially has the burden of proof to support its proposed rate and tariff. Section 393.150(2) RSMo. Therefore, the public utility must initially shoulder the burden

¹ See, Second Prudence Review of Cycle 2 Costs Related to the Missouri Energy Efficiency Investment Act for the Electric Operations of Evergy Metro, Inc., April 1, 2018 through December 31, 2019, File No. EO-2020-0227, and Second Prudence Review of Cycle 2 Costs Related to the Missouri Energy Efficiency Investment Act for the Electric Operations of Evergy Missouri West, Inc., April 1, 2018 through December 31, 2019, File No. EO-2020-0228. (Collectively "Staff's Reports")

to prove its rate and tariff is just and reasonable. Then, the Staff, Public Counsel or other intervenor has the burden to raise a “serious doubt” as to the reasonableness of the rate and tariff. If a serious doubt is raised as to the prudence of an expenditure, then the applicant has the burden of dispelling this doubt and proving the questioned expenditure to have been prudent. See State ex rel. Office of the Public Counsel v. Public Service Commission, 409 S.W.3d 371, 376-77 (Mo. banc 2013); State ex rel. Associated Natural Gas Company, v. Public Service Commission, 954 S.W.2d 520, 523-29 (Mo.App. 1997); Re Union Electric, 27 Mo. PSC (N.S.) 183, 193 (1985). This requires that if some party raises a “serious doubt” as to the prudence of an expense, then the public utility has the last opportunity to dispel any doubts as to the reasonableness of the rate and tariff.

8. This burden-shifting framework in prudence reviews is clearly reflected in the most recent fuel adjustment clause prudence review cases.² In these FAC cases, Evergy files direct testimony, describing and supporting its FAC-related expenditures and Staff and OPC file rebuttal testimony, which may or may not shift the burden to the utility to overcome a showing of “inefficiency or improvidence” in its surrebuttal testimony. Staff’s proposal does not recognize its own filed Reports, *infra* FN 1, or require the public utility to initially support its proposed rate and tariff, but rather gives the Staff the opportunity to support its proposed adjustment several times, and fails to give the public utility the last word to demonstrate the reasonableness of the rate and tariff.

² See, Joint Proposed Procedural Schedule, and Motion to Consolidate Cases, In the matter of the Eighth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations and Kansas City Power and Light Company, File No. EO-2019-0067 and EO-2019-0068, , filed March 18, 2019; See also Order Setting Procedural Schedule, In the matter of the Second Prudence Review of Costs Subject to the Commission Approved Fuel Adjustment Clause of Union Electric Company d/b/a Ameren Missouri, File No. EO-2012-0074, (March 30, 2012).

9. The Staff/OPC proposal is not consistent with the longstanding practices used in contested PGA cases.³ In such cases, the public utility files its direct testimony supporting its proposed PGA rate and adjustments, followed by Staff/OPC filing rebuttal, and concluding with the utility having the last word in surrebuttal testimony.

10. Staff incorrectly argues that the current cases were initiated by Staff's filing of a Notice of State of Second MEEIA Prudence Review (Response, pp. 1-2). Like FAC and PGA cases that are required by the utility's tariffs, this prudence review case is also required by Evergy's MEEIA tariffs. (See Evergy Metro PSC Mo. Tariff No. 7, Sheet 49D; Evergy West Tariff PSC Mo. No. 1, Sheet 138.6). The fact that Staff conducted a prudence review does not change the Company's burden of proof or the appropriate procedural schedule that recognizes that the utility must support its MEEIA rates and tariffs and dispel any "serious doubts" raised by other parties.

WHEREFORE, Evergy Missouri Metro and Evergy Missouri West respectfully requests the Commission issue its order adopting its proposed procedural schedule and requirements attached as Schedule A to its pleading filed on July 22, 2020.

³ *Order Adopting Procedural Schedule, Re Empire District Gas Company*, GR-2008-0368 (March 22, 2010); *Order Setting Procedural Schedule, Re Missouri Gas Utility*, Case No. GR-2008-0136 (October 16, 2008).

Respectfully Submitted,

/s/ Roger W. Steiner

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**Attorneys for Respondent Evergy
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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 the Staff of the Commission and to the Office of the Public Counsel this 27th day of July 2020.

/s/ Roger W. Steiner

**Attorney for Evergy Missouri Metro and Evergy
Missouri West**