
**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) **File No. EO-2020-0227**
Efficiency Programs of Evergy Metro, Inc.)
d/b/a Evergy Missouri Metro)

In the Matter of the Second Prudence)
Review of the Missouri Energy Efficiency)
Investment Act (MEEIA) Cycle 2 Energy) **File No. EO-2020-0228**
Efficiency Programs of Evergy Missouri) (consolidated)
West, Inc. d/b/a Evergy Missouri West)

REPLY BRIEF OF STAFF

Respectfully Submitted,

Jeffrey A. Keevil
Deputy Counsel
Missouri Bar No. 33825

Attorney for Staff of the
Missouri Public Service Commission

June 25, 2021

**TABLE OF CONTENTS OF
REPLY BRIEF OF STAFF**

CASE NO. EO-2020-0227

INTRODUCTION..... 1
Issue 1 from List of Issues 4
Issue 2 from List of Issues 5
Issue 3 from List of Issues 5
Issue 4 from List of Issues 7
Issue 6 from List of Issues 9
CONCLUSION 10

**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) **File No. EO-2020-0227**
Efficiency Programs of Evergy Metro, Inc.)
d/b/a Evergy Missouri Metro)

In the Matter of the Second Prudence)
Review of the Missouri Energy Efficiency)
Investment Act (MEEIA) Cycle 2 Energy) **File No. EO-2020-0228**
Efficiency Programs of Evergy Missouri) (consolidated)
West, Inc. d/b/a Evergy Missouri West)

REPLY BRIEF OF STAFF

COMES NOW Staff of the Missouri Public Service Commission and submits the following Reply Brief in reply to the initial brief of Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy West”) (collectively “Evergy”) pursuant to the schedule previously ordered by the Commission. Rather than replying to every individual statement made by Evergy, having presented and argued its positions in its initial brief, Staff is limiting its replies to those matters which Staff believes will most aid the Commission. Therefore, the failure of this Reply Brief to address any matter raised in Evergy’s initial brief should not be construed as agreement in any way therewith.

INTRODUCTION

As predicted,¹ Evergy’s initial brief attempts to portray this case as extremely complex, even in its Introduction section, including lengthy bullet-point lists and recitation

¹ “I would suggest that this case is simply a prudence review case, just like any other prudence review. Some parties may try to make it seem more complex than it really is. And you may hear several MEEIA-

of percentages which are irrelevant for purposes of this case, but which certainly give the reader the impression that this case is more than simply a prudence case. At certain points in its brief, it even appears that Evergy is not arguing a prudence case at all, but instead has chosen to re-argue its previous MEEIA application cases. Throughout its brief, Evergy conflates proceedings to “establish, continue, or modify” a Demand-Side Programs Investment Mechanism (“DSIM”) under 20 CSR 4240-20.093(2) and “evaluation, measurement, and verification” (“EM&V”) proceedings under 20 CSR 4240-20.093(8) with prudence reviews under 20 CSR 4240-20.093(11). Many of Evergy’s arguments, such as its repeated references to the TRC test or its programs being deemed cost-effective by the EM&V consultant,² might serve a legitimate purpose in an application or EM&V proceeding, but in this case they serve only to create confusion. Evergy’s attempts to conflate applications and EM&V proceedings with prudence reviews must be rejected, as they are each governed by different subsections of the Commission’s rule, and doing as Evergy argues would effectively eliminate prudence reviews under 20 CSR 4240-20.093(11). This is because Evergy argues, in effect, that if a program has been approved and passed EM&V, it must therefore be prudent. If Evergy were correct, there would have been no need to adopt subsection (11). Do not allow yourself to be misled.

related terms used to make it seem like more than a simple question of prudence. However, at its core, the case is simply a prudence case.” **Tr. Vol. 1, p. 39, lines 14-20.**

² “What I’ve laid out in this case and other cases is that the estimated avoided costs [p]ut forth by Evergy are inflated and don’t reflect what the customers may actually see. And all of that is to really say that the avoided costs may be used through the EM&V process to come up with a cost effectiveness score or TRC number. But **even if that number is above one, that doesn’t mean that the program was implemented prudently.** If there is an opportunity to save ratepayers money at a minimal cost, Evergy is obligated to do so and they haven’t.” (Emphasis added) **Tr. Vol. 2, p. 199, line 19 through p. 200, line 3.**

Consider for a moment the ramifications of considering the total resource cost test (“TRC”) as an equivalent to a review of the prudence of the implementation of a given program. If the TRC of a given program need only to exceed 1.0 in order for the program to be considered prudently implemented, what motivation does a company have for implementing the program as cost effectively as possible? The programs, and the substantial earnings opportunity for shareholders, are fully funded by ratepayers through the DSIM. If the Commission determines that programs that are deemed cost effective through the EM&V process are prudent regardless of the ability to either lower program cost or achieve greater benefits, what deters the company from driving program implementation costs up to the point that the TRC is just above 1.0? Such an approach would minimize the effectiveness of the programs, allow Evergy to maintain as much of its current revenue expectations through rates as possible, allow Evergy shareholders to earn a substantial Earnings Opportunity through implementation of the programs, and harm customers who are left to fund the programs through the DSIM without the ability to realize tangible financial benefits.

In its brief, Evergy argues that there is no requirement in the MEEIA rules or statutes that MEEIA programs result in tangible financial benefits for ratepayers. The fact that Evergy is arguing that the demand-side programs which are funded by ratepayers, should not provide these types of ratepayer benefits, is alarming. The Commission Report and Order approving Evergy’s MEEIA cycle 3 included several of the cost categories being discussed within these dockets as potential benefits of the programs. The projections put forth by Evergy within the initial MEEIA application relies on the assumption that Evergy ratepayers will avoid costs through the implementation of the

programs. If the “costs” being “avoided” are fictitious and unlikely to produce tangible financial benefits for ratepayers, then the programs are unlikely to be “beneficial to all customers in the customer class in which the programs are proposed.”³ However, once again Evergy is attempting to make this case – a prudence review – into something it is not, such as an EM&V proceeding. As testified by Mr. Luebbert, the use of the phrase “tangible financial benefit” is related to the reasonable person standard used in Commission prudence reviews and discussed in some detail in Staff’s initial brief.⁴

Issue 1 from List of Issues: Are Staff’s and OPC’s proposed prudence adjustments within the scope of a MEEIA prudence review as defined by 20 CSR 4240-20.093?

Under this section of its brief, Evergy states that it “believes that audits of MEEIA programs should occur in the MEEIA prudence audit dockets.” There is no question that all of Staff’s proposed disallowances concern Evergy’s MEEIA programs, and that this case is a MEEIA prudence review. Therefore, this is the proper place for the Commission to order those adjustments.

However, Evergy goes on to state that “if Staff or OPC prevail on any issue (i.e. Issue Nos. 4, 5 and 6) that impacts the Company’s Fuel Adjustment Clause, then that adjustment should be made in the next FAC case. If Staff or OPC prevail on any issue (i.e. Issue Nos. 2, 3 and 7) that impacts costs that are recovered through the DSIM, then that adjustment should be made in the DSIM in the MEEIA audit case.” Evergy’s position simply makes no sense; Evergy would have review of all MEEIA programs take place in a MEEIA prudence review, but certain adjustments be made in a separate FAC case. As stated in Staff’s initial brief, it is not clear why this is even an issue. As

³ RSMo. 393.1075 4.

⁴ Tr. Vol. 2, p. 197, lines 19-25.

explained in Staff's initial brief, Staff's proposed disallowances are within the proper scope of a MEEIA prudence review and should be ordered in this case. However, if the Commission agrees with Evergy on this issue, Evergy has an FAC case currently open, Case No. EO-2020-0262, in which the Commission can order Evergy to make the adjustments required under the other issues of this case.

Issue 2 from List of Issues: Did Evergy act imprudently in its implementation of the Residential Programmable Thermostat program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

As discussed in Staff's initial brief, a reasonable person would not give away smart thermostats, free of charge, to customers who did not even participate in the program; yet that is exactly what Evergy did. In its brief, Evergy attempts to defend itself by pointing to, and even quoting from, its tariff; however, the quotation in its brief clearly states, "**Participants** will receive a free programmable thermostat." (Emphasis added) Evergy's brief shows that not only was it imprudent in giving away thermostats to *customers who did not participate* in the program, but doing so was contrary to its tariff and the terms of the program.

Evergy spends much of the remainder of this section of its brief discussing the cost-effectiveness test. This argument was discussed above in the Introduction section of this brief and will not be repeated here.

Issue 3 from List of Issues: Did Evergy act imprudently in its implementation of its Demand Response Incentive Program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Evergy spends much of its time under this section of its brief conflating MEEIA program approval with prudence reviews, which was discussed under the Introduction section above. Evergy also claims Staff's position conflicts with the definition of avoided costs; however, once again, Evergy is conflating the provisions of different subsections of the rule and ignoring the simple fact that this is a prudence review. Evergy had the opportunity to implement the approved program within the confines of the approved tariff while providing ratepayers the opportunity to realize tangible financial benefits during the prudence review period. However, Evergy failed to even attempt to achieve those benefits that Evergy's witnesses identified as possible benefits of the programs. The lack of effort given the incentive and cost structure of the programs in place was imprudent and the costs should be disallowed. Furthermore, Evergy's position conflicts with the prudence review portion of the rule - if they are right, there would be no need for prudence review. This point is also addressed in the Introduction section of this brief.

Under this section of its brief Evergy also attempts to argue that too many curtailment events will negatively affect customer participation. However, due to Evergy's failure to properly call events in the past, Evergy does not know how many events customers will accept before their participation is negatively affected. Therefore, this argument is highly suspect due to its speculative nature.

In the final subsection of this section of its brief, Evergy points to the stipulation and agreement entered into in February of 2019 by Evergy, Staff, and OPC, in Case No. EO-2019-0132. Evergy argues that the stipulation limited it to calling five demand response events for programmable thermostats during the summer of 2019. As

Mr. Luebbert testified at the hearing, he viewed the five events provided in the stipulation as a minimum, which was included in the stipulation because the number of events being called each year by Evergy was trending downward, and that Evergy could have called more than five events.⁵ Evergy's interpretation of the stipulation – that it limited Evergy to five events in 2019 – would conflict with Evergy's program tariffs, which clearly allow for more than five events per year,⁶ whereas Staff's interpretation would not. However, even if the Commission agrees with Evergy's interpretation of the stipulation, that interpretation does not apply to or explain Evergy's actions during the summer of 2018, when Evergy called only two events,⁷ since the stipulation was entered in 2019.

Issue 4 from List of Issues: Did Evergy act imprudently by not calling more demand response events for the purpose of reducing Southwest Power Pool (SPP) fees? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Evergy's brief on this issue conveniently overlooks the fact that Evergy's own witness *admitted* that if Evergy had called more events it would have increased the likelihood of hitting the monthly peak and subsequently saved more on SPP fees. As Mr. Carlson testified:

Q. Sure. And so if Evergy called more demand response events – let's just limit to summer then. Do you think you'd be more likely to hit the monthly peak then?

A. Yes. That's a fair statement.

⁵ Tr. Vol. 2, pp. 201-202.

⁶ "The programs were designed for 10 events maximum (DRI) and 15 events maximum (thermostat)." File Rebuttal, Ex. 5, p.7, lines 8-9.

⁷ Tr. Vol. 2, p. 201.

Q. And if you are more likely to hit the system peak, are you more likely to save on SPP fees as well?

A. Let me make sure I understand that question. Are you saying if we called more events and potentially hit the system peak, we would save more on SPP fees?

Q. Correct.

A. I believe that is – that is correct. We could save more than we already are on SPP fees, yes. By the very nature of programs, if we call an event, we're saving SPP fees.⁸

* * *

Q. Mr. Carlson, my question is, wouldn't it stand to reason that the more events Evergy calls, the more likely to hit the system peak for that month and save on SPP fees?

A. If we called more events on a monthly basis, then that would increase our likelihood of hitting a system peak and should reduce SPP fees more, yes.⁹

Evergy had the opportunity to attempt to achieve these benefits and the incentive structure in place would have required minimal additional costs.¹⁰ The Evergy Missouri Metro Tariff sheet no. 2.09 states that the purpose of the program is to “reduce customer load during peak periods to help *defer future generation capacity additions and provide improvements in energy supply.*” [Emphasis added.]¹¹ Despite Evergy's repeated statements that attempting to achieve the aforementioned benefits were not aligned with the design of the program, the tariff states that Evergy “may call a curtailment event any weekday, Monday through Friday, excluding Independence Day and Labor Day, or any

⁸ Tr. Vol 1, p. 58 line 18 through p. 59 line 9.

⁹ Tr. Vol. 1, p. 74 line 22 through p. 75 line 4.

¹⁰ Tr. Vol. 2, p. 174, line 16 through line 20.

¹¹ Ex. 105, page 9, lines 6 through 8.

day officially designated as such.” The tariff further explains that Evergy “may call a maximum of one curtailment event per day per Participant, lasting no longer than four (4) hours per Participant.”¹²

In this section of its brief Evergy repeats its argument regarding the stipulation and agreement from Case No. EO-2019-0132. That argument is addressed above under the preceding issue and will not be repeated here.

Issue 6 from List of Issues: Did Evergy Missouri Metro act imprudently by not entering into more bi-lateral capacity contracts? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Several times in this section of its brief Evergy refers to Staff’s position as being based on Staff’s “assumptions.” However, as discussed in greater detail in Staff’s initial brief, Staff’s position on this issue is not merely based on Staff’s “assumptions,” but instead is *based on Evergy’s prior representations* to the Commission in Case No. EO-2019-0132.¹³ Either Evergy acted imprudently by not entering into more bilateral capacity contracts, or Evergy grossly misrepresented the potential benefits of demand reductions that will result from its MEEIA programs in Case No. EO-2019-0132. This is especially concerning given Evergy’s apparent assertion in this case that programs that are deemed cost effective through the EM&V process should also be considered to have been implemented prudently.

Evergy concludes this section of its brief by referring to a stipulation entered into in Case No. EO-2020-0262. However, that was a separate case and dealt with a different

¹² Ex. 105, page 11, lines 13-16.

¹³ Ex. 105, pp. 15-17.

issue (i.e., IRP scenarios) and is completely irrelevant in this context. Even Evergy's brief does not claim the issue to be the same, or explain the stipulation's relevance in the present circumstance – probably because there is no such relevance.

CONCLUSION

For the reasons set forth in its initial brief and this reply brief, Staff requests the Commission issue an order adopting Staff's position on each of the issues in this case as set forth in detail in Staff's initial brief.

WHEREFORE, Staff respectfully submits this Reply Brief of Staff for the Commission's consideration.

Respectfully submitted,

/s/ Jeffrey A. Keevil

Jeffrey A. Keevil

Missouri Bar No. 33825

P. O. Box 360

Jefferson City, MO 65102

(573) 526-4887 (Telephone)

(573) 751-9285 (Fax)

Email: jeff.keevil@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service
Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel for parties of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 25th day of June, 2021.

/s/ Jeffrey A. Keevil