
**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

REPLY BRIEF OF STAFF

Respectfully Submitted,

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March 15, 2021

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CASE NO. EO-2020-0262**

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COMES NOW the Staff of the Missouri Public Service Commission and submits the following Reply Brief in reply to the initial briefs of Evergy Metro, Inc. d/b/a/ Evergy Missouri Metro (“Evergy Metro”), Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy West”) (collectively, “Evergy”), and the Office of the Public Counsel (“OPC”):

INTRODUCTION:

Evergy was imprudent in its management of its demand response programs. However, any disallowances arising from that imprudence is best addressed in Evergy’s Missouri Energy Efficiency Investment Act (“MEEIA”) prudence review (“MEEIA Prudency Review”), not this fuel adjustment clause (“FAC”) prudence review.

The purpose of a Reply Brief is for a party to respond to the opposing arguments made by the other parties to a proceeding. Rather than replying to every individual statement made by the other parties in their initial briefs, 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 in its

determinations. Therefore, the failure of this Reply Brief to address any matter raised in the initial briefs of the other parties should not be construed as agreement in any way therewith unless otherwise stated herein.

RESPONSE

Response (1): Was Evergy imprudent in the management of its demand response programs?

Yes, but the imprudence of Evergy's mismanagement of its demand response programs is a demand side investment mechanism ("DSIM") issue to be addressed in the MEEIA Prudency Review. However, for the reasons explained in Response (2) below, addressing that imprudence in this consolidated FAC docket is not the correct forum.

Even with Staff's opposition to addressing Evergy's imprudence in this FAC prudence review, Staff has concluded that Evergy was imprudent in the mismanagement of its demand response programs. In its Initial Brief, Evergy outlines its argument that OPC and Staff relied on "hindsight analysis of historical data."¹ However, Staff witness J Luebbert thoroughly explained how Staff's analysis is not dependent upon hindsight, and instead relies upon the "reasonableness standard" outlined in *State ex rel. Associated Natural Gas Company vs. Public Service Commission of the State of Missouri*.² As Mr. Luebbert explains:

Evergy's decision makers acted imprudently by not attempting to minimize costs and maximize benefits to ratepayers through the implementation of the demand response programs despite the ability to do so with minimal incremental program costs. At the time of implementation, Evergy managers and decision makers should have been aware of the real costs that the Company incurs due to its membership in the Southwest Power Pool (SPP) and the ways to minimize those costs... While the impact analysis of the failure to call additional events may have utilized historical data, the decision to limit the number of events and failure to attempt to maximize the benefits of the demand response programs was based on information the decision makers knew at the time. My recommended disallowances for the demand response programs **are based on opportunities that were**

¹ Evergy Missouri Metro and Evergy Missouri West's Initial Post-Hearing Brief, pg. 5.

² *State ex rel. Associated Nat. Gas Co. v. Pub. Serv. Comm'n of State of Mo.*, 954 S.W.2d 520 (Mo.App. W.D. 1997) (citing *In the Matter of Union Electric Company*, 27 Mo.P.S.C. (N.S.) 183 at 194 [quoting *Consolidated Edison Company of New York, Inc.* 45 P.U.R. 4th 331 (1982)]).

missed that a reasonable person would have attempted to achieve given the potential ratepayer benefits and the incentive structure in place at the time of implementation (emphasis added).³

This is the causal connection or “nexus” between the alleged and imprudent action and costs incurred.⁴ Evergy’s decision-makers are knowledgeable and experienced when dealing with SPP. They should have known that limiting Evergy’s number of events, and not even attempting to maximize benefits for ratepayers, would be imprudent at the time they made those decisions, especially with everything Evergy knew at the time of its decision.

Evergy also argues that any disallowance is based on the flawed assumption 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.”⁵ However, Evergy witness John Carlson states that his group does forecast load, and when meeting with the demand response group, “looking[sic] at each month's or each week's load projection and comparing that relative to monthly peaks and/or seasonal peak.”⁶ According to Evergy’s own witness, it is possible to look at monthly and weekly load projection, but Evergy simply chooses not to.

When Evergy argues that there would be no benefit to Evergy’s load reduction from demand response events if other market participants’ loads were reduced equal to or greater than that of Evergy,⁷ it does not acknowledge what can also happen in the alternative. For if market participants loads are reduced and Evergy does not utilize demand response events to reduce load, it would be fair to say that Evergy’s load ratio share would increase and cost ratepayers more. This harm to ratepayers would be an imprudent action, especially when Evergy has an opportunity to avoid that harm based on the information before it at the time.

³ Exhibit 104, Surrebuttal Testimony J Luebbert (Confidential), pg. 5, ln. 2-7 & 11-15.

⁴ Evergy Missouri Metro and Evergy Missouri West’s Initial Post-Hearing Brief, pg. 8.

⁵ *Id.*, pg. 15.

⁶ Transcript Vol. II, pg. 89, ln. 1-18.

⁷ Evergy Missouri Metro and Evergy Missouri West’s Initial Post-Hearing Brief, pg. 16.

Evergy also emphasizes that OPC and Staff’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.”⁸ Evergy’s own witness Brian File continuously undermined this claim during the evidentiary hearing.

Evergy seems to imply that, when its customers enroll in a demand response programs, calling any more than five events in a season is unreasonable. However, Evergy’s customers could not possibly think that, because the number of possible events is clearly stated in the contract, and that number can get as high as 15.⁹ This should not be an irritant or surprise to Evergy’s customers, because they are aware that Evergy can call up to fifteen events.

Finally, Evergy constantly puts forth that the MEEIA 2 Extension Stipulation, mandating five demand response events be called, was the maximum number of events to be called, and OPC and Staff should be estopped from making the arguments that Evergy should have called more demand response events in the summer of 2019.¹⁰ However, nothing in the MEEIA 2 Extension Stipulation or the record in this case states that five demand response events was a maximum. Even if the Commission were to accept Evergy’s argument that it was only mandated to call five events in the 2019 season, that would not excuse the even fewer events called by Evergy during the 2018 season (two industrial events and two residential events).¹¹

It is clear that Evergy acted imprudently in the mismanagement of its demand response programs; however, any disallowances arising from such imprudent actions should be addressed in the MEEIA Prudency Review.

⁸ *Id.*, pg. 9.

⁹ Transcript Vol. II, pg. 138, ln. 3-7.

¹⁰ Evergy Missouri Metro and Evergy Missouri West’s Initial Post-Hearing Brief, pg. 13.

¹¹ Transcript Vol. II, pg. 106, ln. 20-25 and pg. 107, ln. 1-14.

Response (2): If it was imprudent 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?

The appropriate place to address the imprudence of Evergy's implementation of its demand response programs is through an ordered DSIM adjustment in the MEEIA Prudency Review. As described by Evergy, "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."¹² Staff agrees, and the Commission should order that that disallowances due to Evergy's mismanagement of its demand response programs are best addressed in the MEEIA Prudence Review.

OPC posits that, since the failure of Evergy to properly use its demand response programs resulted in increased costs that flow back to customers through the FAC, this is the proper venue to address those disallowances.¹³ However, even with the potential for benefits and costs to flow through the FAC, demand response programs are recovered through the DSIM, thus any disallowances or adjustments are best addressed through the DSIM, not the FAC.¹⁴ Any failure arising from the implementation of Evergy's demand response programs has to arise from the mismanagement of said programs, of which the costs flow through the DSIM, and which belong in the MEEIA Prudency Review, not a FAC prudence review.

WHEREFORE, for the reasons set forth herein and in Staff's initial brief, Staff prays that the Commission will issue an order finding in Staff's favor on each issue in this case and granting such other and further relief as the Commission deems just in the circumstances.

¹² *Id.*, pg. 20.

¹³ Initial Brief of the Office of the Public Counsel, pg. 34.

¹⁴ Transcript Vol. II, pg. 179, ln. 11-18.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all parties and/or counsel of record this 15th day of March, 2021.

/s/ Travis J. Pringle