

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 21<sup>st</sup> day of October, 2020.

In the Matter of the Ninth Prudence Review of )  
Costs Subject to the Commission-Approved ) **File No. EO-2020-0262**  
Fuel Adjustment Clause of Evergy Missouri )  
West, Inc. d/b/a Evergy Missouri West )

**ORDER SETTING PROCEDURAL SCHEDULE**

Issue Date: October 21, 2020

Effective Date: October 21, 2020

Staff began its ninth fuel adjustment clause (FAC) prudence review for Evergy Missouri West, Inc. d/b/a Evergy Missouri West and Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro (collectively “Evergy”) on March 3, 2020, in File Nos. EO-2020-0262 and EO-2020-0263. On August 28, 2020, Staff filed its *Staff’s Ninth Prudence Review Report* in those files. After requests for hearing by Sierra Club and the Office of the Public Counsel (Public Counsel), the cases were consolidated and the parties were directed to file proposed procedural schedules. On October 5, 2020, Commission Staff, Public Counsel, and Sierra Club filed a joint proposed procedural schedule. Evergy filed a separate proposed procedural schedule on that date.

The proposed procedural schedules differ in which parties file written direct and responsive testimony prior to the hearing. Staff, Public Counsel, and Sierra Club propose that, similar to the typical way these cases have been conducted at the Commission, all parties file simultaneous written direct, rebuttal, and surrebuttal testimony. Evergy proposes a more novel approach where Staff, Public Counsel, and Sierra Club would file

direct testimony; Evergy would file rebuttal testimony; Staff, Public Counsel, and Sierra Club would file surrebuttal testimony; and Evergy would file sur-surrebuttal testimony.

Evergy states that its proposal is similar to the process the Commission set out in Evergy's most recent FAC prudence review case<sup>1</sup> and, more recently, in its Missouri Energy Efficiency Investment Act (MEEIA) prudence review case.<sup>2</sup> Evergy explains that by structuring the written testimony in such a way, Evergy alone would have the opportunity to respond to all previous arguments in a final round of testimony. Evergy argues that the shifting burden of proof applicable to prudence reviews, as outlined in *State ex rel. Associated Natural Gas Company v. Public Service Commission of the State of Missouri*,<sup>3</sup> requires that Evergy get the final response to any serious doubts raised by the other parties as to the prudence of an expenditure. In the relevant part of *Associated Natural Gas*, the Court stated that a prudence review has a shifting burden of proof. That is, the utility's costs are presumed to be prudently incurred and so the burden is on another party to create a serious doubt as to the prudence of an expenditure. Once a serious doubt is created, the burden then shifts back to the utility to dispel these doubts.<sup>4</sup>

This prudence review case began when Staff conducted an audit and filed a report of its findings. That report traditionally becomes Staff's direct testimony. In this case, Staff's report identified no imprudence. But, other parties, such as Public Counsel and Sierra Club, may have differing opinions about the prudence of Evergy's costs and will have an opportunity to make their cases. Thus, Evergy, alone, is not the only party that

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<sup>1</sup> *In the Matter of the Eighth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company*, File No. EO-2019-0067.

<sup>2</sup> *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.

<sup>3</sup> 954 S.W.2d 520 (Mo. Ct. App. 1997).

<sup>4</sup> *Associated Natural Gas*, 954 S.W.2d 520, 528-529 (Mo. Ct. App. 1997).

may want to respond to or rebut the direct testimony, and/or the rebuttal testimony. Those responses may come from any of the parties with regard to any of the other parties.

When making a final decision in this case, the Commission will consider the evidence in light of the appropriate burden of proof and throughout the process will provide all parties with due process so that they will have an opportunity to meet their burden. There is no reason that cannot be accomplished with the traditional direct/rebuttal/surrebuttal structure of written testimony. Additionally, a major distinguishing factor of this case from the previous FAC case is that all the parties to the earlier case agreed to the procedural schedule. As for the MEEIA case, that procedure has yet to be proven to be helpful in the expedient processing of prudence issues before the Commission.<sup>5</sup> Therefore, the Commission will adopt the procedural schedule proposed by Staff, Public Counsel, and Sierra Club. The Commission will make a modification allowing more time to file the direct testimony, will require the position statements to be filed one day earlier, and will set the transcript due date to ten business days. Additionally, the Commission will adopt other procedural requirements.

**THE COMMISSION ORDERS THAT:**

1. The following procedural schedule is adopted:

<b>Item</b>	<b>Date</b>
Direct Testimony (all parties)	October 29, 2020
Rebuttal Testimony (all parties)	December 4, 2020
Settlement Conference	December 14, 2020
Surrebuttal Testimony (all parties)	January 13, 2021

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<sup>5</sup> See File No. EO-2020-0227 for various motions to clarify, limit the scope, and to strike portions of testimony.

List of Issues, Order of Witnesses, Order of Opening Statements, Order of Cross-Examination, and Joint Stipulation of Facts	January 19, 2021
Statement of Positions	January 21, 2021
Evidentiary Hearing	January 27-28, 2021
Transcripts Due to the Commission	February 11, 2021
Initial Briefs	February 22, 2021
Reply Briefs	March 8, 2021

2. The hearing shall be held at the Commission's office at the Governor Office Building, Room 310, 200 Madison Street, Jefferson City, Missouri. This building meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing. Due to the COVID-19 emergency, further accommodations for an electronic hearing may be arranged closer to the hearing upon request of the parties or by the Commission on its own motion.

3. The parties shall comply with the following procedural requirements:
- (A) All parties must comply with the requirements of Commission Rule 20 CSR 4240-2.130 for prepared testimony, including the requirement that testimony be filed on line-numbered pages.
  - (B) All parties shall provide copies of testimony, schedules, exhibits, and pleadings to other counsel of record by electronic means and in electronic form, essentially concurrently with the filing of such testimony, schedules, exhibits, or pleadings where the information is available in electronic format. Parties are not required to put information that does not exist in electronic format into electronic format for purposes of exchanging it.
  - (C) Although not all parties may agree upon how each issue should be described or on whether a listed issue is in fact a proper issue in this case,

the parties shall agree upon and file a list of the issues to be heard, the witnesses to appear on each day of the hearing, the order in which they will be called, and the order of cross-examination for each witness. The list of issues Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission.

(D) Each party shall file a simple and concise statement summarizing its position on each disputed issue. Position Statements shall track the list of issues. Any position statement shall set forth any order requested, cite any law authorizing that relief, and allege facts relevant under the law with citations to any pre-filed testimony in support.

(E) All pleadings, briefs, and amendments shall be filed in accordance with Commission Rule 20 CSR 4240-2.080. Briefs shall follow the same list of issues as filed in the case and must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(F) Discovery will be governed by the normal rules of the Commission found in 20 CSR 4240-2.090.

(G) All workpapers, when feasible, will be provided in electronic format within two business days following the date on which the related testimony is filed.

(H) Where workpapers or data request responses include models or spreadsheets or similar information originally in a commonly available format where inputs or parameters may be changed to observe changes in inputs or outputs, if available in that original format, the party providing the workpaper or response shall provide this type of information in that original format.

(I) Exhibit numbers are assigned in the following manner:

Energy	1-99
Commission Staff	100-199
Office of the Public Counsel	200-299
Sierra Club	300-399

Other parties will be assigned exhibit numbers if needed.

(J) Each party shall prepare a list of its pre-filed, pre-marked exhibits and submit a copy of that list to every other party and to the regulatory law judge as set out above. The lists shall not be filed in the EFIS case file. Exhibits that may be offered during cross-examination, but which have not been pre-filed, need not be included on the list. However, when those documents are offered during the hearing, they will be assigned a number from that party's number group.

4. This order is effective when issued.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, prominent "M" and "W".

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and  
Holsman CC., concur.

Dippell, Senior Regulatory Law Judge