

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

In the Matter of the Application of)
Evergy Metro, Inc. d/b/a Evergy Missouri)
Metro for Approval of the Accrual and Funding) **Case No. EO-2021-0056**
of Wolf Creek Generating Station)
Decommissioning Costs at Current Levels)

NON-UNANIMOUS STIPULATION AND AGREEMENT

COMES NOW, Evergy Missouri Metro, Inc., d/b/a Evergy Missouri Metro (“Evergy Missouri Metro”) and the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”) (collectively, the “Signatories” and individually “Signatory”) submit this *Non-Unanimous Stipulation and Agreement* (“Agreement”) to the Commission. The Office of the Public Counsel has advised the Signatories that it will not oppose this Agreement.

I. INTRODUCTION AND BACKGROUND

The Commission is authorized “to review and authorize changes to the rates and charges contained in the schedules of an electric corporation as a result of a change in the level or annual accrual of funding necessary for its nuclear power plant decommissioning trust fund only after a full hearing¹ and after considering all facts relevant to such funding level or accrual rate.”² The Commission is authorized to adopt regulations governing the procedures for tariff changes under Section 393.292 and “to ensure that the amounts collected from ratepayers and paid into such trust

¹ The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Pub. Serv. Comm’n*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).

² § 393.292, RSMo (2016). This authority is an exception to the prohibition against single-issue ratemaking. *See, e.g.*, § 393.270.4, RSMo (2016); *State ex rel. Utility Consumers’ Council of Mo., Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 56 (Mo. banc 1979).

funds will be neither greater nor lesser than the amounts necessary to carry out the purposes of the trusts.”³

Under the Commission’s regulations, an electric utility shall establish a tax-qualified externally managed trust fund for the purpose of collecting funds to pay for decommissioning costs if it owns, in whole or in part, or operates nuclear generating units, the costs of which are reflected in the rates charged to Missouri ratepayers.⁴ Every three years, electric utilities with decommissioning trust funds must perform a cost study detailing the utility’s latest cost estimates for decommissioning its nuclear generating unit(s).⁵ The study must also detail the funding levels necessary to defray these decommissioning costs.⁶ The study must be filed with the Commission along with any appropriate tariff(s) to effectuate any rate change necessary to defray the decommissioning costs.⁷

Evergy Missouri Metro’s predecessor in interest, Kansas City Power & Light Company (“KCP&L”)⁸ established an external nuclear decommissioning trust fund as a result of its ownership interest in the Wolf Creek Generating Station (“Wolf Creek”).⁹ In Case EO-91-84, the Commission established Evergy Missouri Metro’s Missouri retail jurisdictional operations annual decommissioning accrual and trust fund payment at \$2,303,856.¹⁰ This amount was maintained

³ § 393.292, RSMo (2016).

⁴ 20 CSR 4240-20.070(5) (2019). Under Federal law, The Nuclear Regulatory Commission (NRC) establishes minimum amounts necessary for licensees to provide reasonable assurance that funds will be available for the decommissioning process. 10 CFR 50.75 (2019). However, federal regulations also provide that “Funding for the decommissioning of power reactors may also be subject to the regulation of Federal or State Government agencies (e.g., Federal Energy Regulatory Commission (FERC) and State Public Utility Commissions) that have jurisdiction over rate regulations.” 10 CFR 50.75(a) The NRC’s federal regulations are “in addition to, and not substitution for, other requirements, and are not intended to be used by themselves or by other agencies to establish rates.” *Id.*

⁵ 20 CSR 4240-20.070(4) (2019).

⁶ *Id.*

⁷ *Id.*

⁸ To maintain simplicity, this agreement refers to KCP&L as Evergy unless otherwise indicated.

⁹ *Kansas City Power & Light Co.*, Case Nos. EO-85-185 and EO-85-224, 28 Mo.P.S.C. (N.S.) 228 (1986).

¹⁰ *Kansas City Power & Light Co.*, 1 Mo.P.S.C.3d 353 (1992).

until Case No. ER-2006-0314, when the Commission lowered the amount to \$1,281,264, primarily to reflect the 20-year life extension of Wolf Creek.¹¹ The Commission has maintained the annual funding amount of \$1,281,264 to present.¹²

II. THE 2020 COST STUDY

Pursuant to 20 CSR 4240-20.070(4), on September 1, 2020, Evergy Missouri Metro filed its Application for Approval of the Accrual and Funding of Wolf Creek Generating Station Decommissioning Costs at Current Levels (“Application”). Evergy Missouri Metro filed as Schedule A the Wolf Creek Generating Station Decommissioning Cost Estimate Update for September 1, 2020 (“2020 Study”). The 2020 Study, with the date August 2020 on its cover, was prepared for the Wolf Creek Nuclear Operating Corporation (“WCNOC”) by TLG Services, Inc. (“TLG”), a consulting engineering firm based in Bridgewater, Connecticut.¹³ The TLG analysis relies upon site-specific, technical information from a TLG evaluation prepared in 2014, updated to reflect current assumptions pertaining to the disposition of the nuclear station and relevant industry experience in undertaking such projects. Costs are represented in 2020 Dollars.

For the purposes of the 2020 Study, the final shutdown date of Wolf Creek is projected to occur in 2045. The 2020 Study shows the decommissioning cost estimate to be \$1,073,642,000

¹¹ *Kansas City Power & Light Co.*, Case No. EO-94-80, 3 Mo.P.S.C.3d 60 (1994); *Kansas City Power & Light Co.*, Case No. EO-97-84, 7 Mo. P.S.C.3d 124 (1998); *Kansas City Power & Light Co.*, Case No. EO-2000-210, 8 Mo. P.S.C. 3d 516 (2000).

¹² Case Nos. EO-2009-0072, EO-2012-0068, EO-2015-0056, EO-2018-0062; *see also* Case Nos. ER-2007-0291, ER-2009-0089, ER-2010- 0355, ER-2012-0174, ER-2016-0285 (rate cases maintaining trust fund payment amounts at same level).

¹³ Since 1982, TLG has provided engineering and field services for contaminated facilities including estimates of decommissioning costs for nuclear generating units. TLG also prepared the decommissioning cost estimate for Wolf Creek that was filed with and approved by the Commission in previous Evergy and Union Electric Company decommissioning cost studies.

in 2020 Dollars for the DECON decommissioning option. TLG examined two decommissioning scenarios: (a) DECON,¹⁴ and (b) SAFSTOR.¹⁵ Both alternatives are acceptable to the NRC.¹⁶ The DECON scenario has been assumed in establishing Evergy Missouri Metro's annual contribution amounts in prior cases. Evergy Missouri Metro's Schedule B ("2020 Funding Analysis") to the Application indicates that under current assumptions the present annual trust fund contribution of \$1,281,264 is sufficient to meet the estimated DECON decommissioning option within \$263,000 which is less than 0.40% of the Missouri jurisdictional share of future estimated total decommissioning costs. Based on its analysis Evergy Missouri Metro has concluded that its funding level under the DECON scenario should result in a final decommissioning trust amount which is sufficient to cover the costs estimated in the 2020 Study under what Evergy Missouri Metro believes are a reasonable set of economic, financial, and investment assumptions. Evergy Missouri Metro believes it is reasonable and prudent to continue the annual accruals at the current level of \$1,281,264.

The 2020 Study funding amount presented by TLG of \$1,281,264 includes Evergy Missouri Metro's share of the cost for decommissioning the Independent Spent Fuel Storage Installation ("ISFSI") at Wolf Creek. Evergy Missouri Metro's 47% share of the \$7.66 million total ISFSI cost is \$3.6 million (MO and KS), with approximately 54% (\$1.94 million) of

¹⁴ DECON assumes decontaminating and decommissioning immediately following conclusion of power operations in 2045. Work is anticipated to be completed by 2078. DECON consists of removal of fuel assemblies, source material, radioactive fission and corrosion products, and other radioactive materials immediately after cessation of power operations. *General Requirements for Decommissioning Nuclear Facilities*, 53 Fed. Reg. 24018, 24022 (Jun. 27, 1988). Total estimated cost to decommission in 2020 Dollars is \$1,073,642,000. 2020 Study at 21 of 170.

¹⁵ SAFSTOR places the facility in protective storage for deferred decontamination to levels that permit release for unrestricted use. 53 Fed. Reg. 24018, 24022 (Jun. 27, 1988). Delayed decontamination and dismantling activities are initiated once spent fuel and source material are removed, such that license termination is accomplished within the 60-year time period set by the NRC. This process is anticipated to be completed by 2105. Total estimated cost to decommission in 2020 Dollars is \$1,410,987,000. 2020 Study at 22 of 170.

¹⁶ 53 Fed. Reg. 24018 *et seq.* (Jun. 27, 1988).

the \$3.6 allocated to Evergy Missouri Metro's Missouri operations, identified in the current decommissioning cost analysis [Document W11-1781-001, Rev. 0, Table C, cost element 32.2.1] prepared by TLG Services, Inc., dated August 2020.¹⁷ The ISFSI will be constructed on the Wolf Creek site to hold the spent nuclear fuel assemblies (high-level radioactive waste). The Department of Energy has partially breached a contract with Evergy Missouri Metro, under which Evergy Missouri Metro customers had, until recently, been paying fees in rates, to remove, transport, and dispose of high-level radioactive waste ("HLW") at the Nevada – Yucca Mountain repository site.¹⁸ Until the Department of Energy performs under that contract, the spent nuclear fuel assemblies will need to be stored onsite in the ISFSI with a portion stored in the spent fuel pool until decommissioning.

Among other things, the 2020 Funding Analysis is based on capital market assumptions dated July 1, 2020 provided by Evergy Missouri Metro's pension consultant, Willis Towers Watson. It was agreed in the Nonunanimous Stipulation And Agreement approved in File No. EO-2012-0068 that in future cases such assumptions would be obtained from Evergy Missouri Metro's pension consultant. In addition, a decommissioning cost escalation rate based on inflation assumptions as of July 1, 2020 was also obtained from Willis Towers Watson, in order to provide consistency with the capital market assumptions.

¹⁷ Since the design for decommissioning has not been selected, the \$6.69 million amount should be considered a representative decommissioning cost included within the DECON and SAFSTOR estimates. (See pages 10 and 25 of TLG Services 2020 Cost Study.)

¹⁸ Evergy is not the only utility affected by the Department of Energy's failure to accept and dispose of radioactive waste from United States nuclear utilities. See, e.g., *Yankee Atomic Elec. Co. v. U.S.*, 536 F.3d 1268, 1270 (Fed. Cir. 2008) (*Yankee I*). TLG's assumption that if DOE will not accept already-canistered fuel, that DOE will have liability for costs incurred to transfer the fuel to DOE-supplied containers, is not unreasonable. 2020 Study at 8-9 or 170; see, *Yankee Atomic Elec. Co. v. U.S.*, 679 F.3d 1354, 1362-63 (Fec. Cir. 2012) (entering judgment in favor of utility and against the United States for utility's wet storage pool costs resulting from the Department of Energy's breach of contract).

In its Application, Evergy Missouri Metro requests the Commission: (i) find that the 2020 Study and Funding Analysis satisfy the requirements of 20 CSR 4240-3.185(3)¹⁹; and (ii) approve the continuation of the annual decommissioning expense accrual and trust fund contribution amount at the current funding level of \$1,281,264 (Missouri jurisdictional amount). Because Evergy Missouri Metro is not proposing a change in the funding level, Evergy Missouri Metro has not filed new tariff sheets regarding its funding of decommissioning, is not requesting a hearing, and does not believe that a hearing is required respecting its decommissioning cost study filing.

III. STIPULATIONS AND AGREEMENTS

The Signatories to this case have reached certain understandings so that the Staff and Evergy Missouri Metro stipulate and agree as follows:

1. Evergy Missouri Metro's Missouri retail jurisdictional authorized annual decommissioning expense accrual and trust fund payment is currently set at \$1,281,264. Because the additional expenses identified in the 2020 Study will be incurred over a longer period of time than the 2017 Study (approximately 26 years longer), and because funds currently being collected will continue to earn enough return over that period of time, Evergy Missouri Metro's current Missouri retail jurisdictional authorized annual decommissioning expense accrual need not be adjusted at this time.

2. On September 1, 2020, Evergy Missouri Metro filed its Application along with the 2020 Study.

¹⁹ Effective August 28, 2019, the triennial filing requirement was moved from 20 CSR 4240-3.185(3) to 20 CSR 4240-20.070(4). 44 Mo. Reg. 1594-95 (Jun. 3, 2019).

3. The 2020 Study extended the estimation period from 2053 to 2079 to incorporate the likelihood of extended ISFSI operations following decommissioning. As discussed in the 2017 estimate, developments in the area of spent nuclear fuel disposal suggest a possibility that the federal government may not have removed all of Wolf Creek’s spent nuclear fuel and high-level radioactive waste from the station by the time the plant is ready for decommissioning. While there is still much uncertainty in this area, the probability that the 2017 Study base case estimate assumptions occur has become unlikely, and the assumptions contained within the alternative scenario in the 2017 estimate, where the spent fuel remains on site for an extended period following decommissioning of the power block, have become more likely to occur.

4. The 2020 Study estimates the decommissioning cost for the DECON alternative to be \$1,073,642,000 in 2020 Dollars for the decommissioning period 2045-2079 (extended period), which is 31.94% higher than the 2017 estimate of \$813,733,000 for the decommissioning period 2045-2053. For comparison, assuming an unchanged base case, the 2020 Study estimates would be roughly \$890,056,000 (2045-2053 period) in 2020 dollars, which is an increase in costs of about 9.38%, representing an annualized escalation rate of about 3.03% for the 3-year period between 2017 and 2020.²⁰ The 2020 Study includes Evergy Missouri Metro’s share of the cost for decommissioning the ISFSI.²¹

5. Any ISFSI funds that may be recovered from the DOE in the future in connection with decommissioning of the ISFSI will be used to offset the costs of decommissioning the Wolf Creek site.

²⁰ 2020 Study at page 7 of 170. This scenario was Evergy’s alternative scenario in the 2017 estimate. Evergy’s 2020 Report states, “Because the assumptions used in Appendix F analysis are speculative at this point, the hypothetical cost effects shown here have not been included in the overall updated cost estimate in [the 2020] report.” 2020 Study, page 7 of 170.

²¹ 2020 Study, page 10 of 170 and Appendix E, page 141 of 170.

6. Any excess trust funds from the costs of decommissioning the Wolf Creek site are to be reimbursed to the ratepayers through the ratemaking process pursuant to the terms of 20 CSR 4240-20.070(16) (2019).

7. The current annual contribution of \$1,281,264 (Missouri jurisdictional amount) to Evergy Missouri Metro's nuclear decommissioning trust fund is reasonable given the uncertainties in the numerous forecasted assumptions used to determine the contribution level. The forecasted assumptions include, but are not limited to, capital market expectations, projected decommissioning inflation rates and the costs to decommission Wolf Creek.

8. The Signatories agree that it is reasonable to use capital market return expectation information provided by Evergy Missouri Metro Missouri Metro's pension plan consultant for purposes of developing expected portfolio returns for Evergy Missouri Metro's nuclear decommissioning trust fund. The Signatories agree that any proposed changes to the annual contribution to Evergy Missouri Metro's nuclear decommissioning trust fund shall be based on capital market return expectation information provided by Evergy Missouri Metro's pension plan consultant, unless the Signatories agree to use a different source and/or methodology for capital market return expectations or the Commission finds in a contested case that different source and/or methodology for capital market return expectation are more appropriate.

9. Evergy Missouri Metro shall continue its Missouri retail jurisdiction expense accruals and trust fund payments at current levels without any change in its Missouri retail jurisdictional rates, unless and until the Commission subsequently approves such a change.

10. Annual Missouri retail jurisdictional decommissioning costs, inclusive of the ISFSI, in the amount of \$1,281,264 are, and should continue to be, included in Evergy Missouri Metro's cost of service and reflected in its current rates for ratemaking purposes.

11. The Signatories agree and acknowledge that this Agreement does not prevent any Signatory from proposing changes to the annual contribution amount to the nuclear decommissioning trust fund in a subsequent rate proceeding.

12. The Signatories agree that Evergy Missouri Metro shall continue to record and preserve Wolf Creek asset retirement obligation costs, as agreed to by the Staff, Public Counsel, and Evergy Missouri Metro, and authorized by the Commission, in Case No. EU-2004-0294.

13. Except as explicitly agreed otherwise herein, none of the Signatories to this Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Agreement or for which provision is made in this Agreement.

14. If the Commission does not unconditionally approve this Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has to a hearing on the issues presented by the Agreement, regarding cross-examination or a decision in accordance with Section 536.080.1, RSMo (2016) or Article V, Section 18 of the Missouri Constitution. The Signatories shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that may have been offered or received in support of or in opposition to this Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions, and

shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

15. To assist the Commission in its review of this Agreement, the Signatories also request that the Commission advise them of any additional information that the Commission may desire from the Signatories related to the matters addressed in this Agreement, including any procedures for furnishing such information to the Commission.

16. If requested by the Commission, the Staff shall submit to the Commission a memorandum responsive to the Commission's request. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which shall also be served on all parties. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other Signatories to this Agreement, whether or not the Commission approves and adopts this Agreement.

17. The Staff also shall provide, at any agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests. The Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosures, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order that may be issued in this case.

18. Because this is an Agreement with the sole purpose of addressing the authority requested by the Application of Evergy Missouri Metro, except as specified herein, the Signatories to the Agreement shall not be prejudiced, bound by, or in any way affected by the

terms of this Agreement: (i) in any future proceeding; (ii) in any proceeding currently pending under a separate docket; and/or (iii) in this proceeding, should the Commission decide not to approve the Agreement or in any way condition its approval of the same, except as stated herein. Because this is an Agreement for the purpose of settling matters in this case, it shall not be cited as precedent or referred to in testimony as an assertion of the particular position of any Signatory in any subsequent or pending judicial or administrative proceeding, except that this shall not be construed to prohibit reference to its existence in future proceedings, including proceedings to enforce compliance with its terms.

19. The parties offer the 2020 Study, attached hereto and incorporated by reference, into evidence.

20. Pursuant to Section 393.290 RSMo, the Signatories agree that the Commission may review and authorize changes to Evergy Missouri Metro's Missouri retail jurisdictional rates and charges as a result in a change in the annual accrual of funding for the Missouri jurisdictional sub-account of the Wolf Creek decommissioning trust after a full hearing, including but not limited to any general rate increase case or excess earnings complaint case, and after considering all facts relevant to such accrual rate.

21. The provisions of this Agreement have resulted from discussions/negotiations among the Signatories and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, it shall be void and no Signatory hereto shall be bound by, prejudiced, or in any way affected by any of the agreements or provisions hereof unless otherwise provided herein.

22. In the event the Commission accepts the specific terms of this Agreement, the Signatories waive their respective rights: (i) to cross-examine witnesses pursuant

to Section 536.070(2) RSMo; (ii) to present oral argument and written briefs pursuant to Section 536.080.1 RSMo; (iii) to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo; and (iv) to judicial review pursuant to Section 386.510 RSMo. This waiver applies only to a Commission Report and Order respecting this Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

WHEREFORE, the Signatories hereto request that the Commission issue an order:

1. Approving this Non-Unanimous Stipulation and Agreement;
2. Receiving into evidence this Non-Unanimous Stipulation and Agreement, and the 2020 Study;
3. Finding that Evergy Missouri Metro's Application and the 2020 Cost Study satisfy the requirements of 20 CSR 4240-20.070(4) (2019);
4. Finding, pursuant to this Non-Unanimous Stipulation and Agreement, that Evergy Missouri Metro's Missouri retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$1,281,264;
5. Finding, in order for the decommissioning fund to retain its qualified tax status, that the current decommissioning costs for Wolf Creek, inclusive of the ISFSI, are included in Evergy Missouri Metro's current Missouri cost of service and are reflected in its current Missouri retail rates for ratemaking purposes; and
6. Authorizing Evergy Missouri Metro to continue to record and preserve Wolf Creek asset retirement obligation costs, as agreed to by the Staff, Public Counsel and Evergy Missouri Metro, and authorized by the Commission, in Case No. EU-2004-0294.

Respectfully submitted,

/s/ Roger W. Steiner

Robert J. Hack, MBN 36496
Roger W. Steiner, MBN 39586
Evergy, Inc.
1200 Main Street
Kansas City, MO 64105
Phone: (816) 556-2791
rob.hack@evergy.com
roger.steiner@energy.com

Counsel for Evergy Missouri Metro

/s/ Curt Stokes

Curt Stokes
Deputy Chief Counsel
Missouri Bar No. 59836
Attorney for the Staff of the Missouri Public
Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4227 (Telephone)
(573) 751-9285 (Facsimile)
curtis.stokes@psc.mo.gov

**Counsel for Staff of the
Missouri Public Service Commission**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 8th day of January, 2021, to all parties and/or counsels of record.

/s/ Curt Stokes
Curt Stokes