

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

In the Matter of the Joint Application)
of Evergy Metro, Inc. d/b/a Evergy Missouri)
Metro and Evergy Missouri West, Inc. d/b/a) File No. ET-2024-0061
Evergy Missouri West for Approval of Tariff)
Revisions to TOU Program)

RESPONSE TO STAFF STATUS REPORT AND MOTION TO SUSPEND

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, the “Company”) and, for its *Response* (“Response”) to Staff (“Staff”) for the Missouri Public Service Commission’s (“Commission”) *Motion to Suspend* (“Motion”) and *Status Report*¹ (“Status Report”), both filed on September 13, 2023, states as follows:

1. Staff’s legal analysis in its Motion is premised on a misunderstanding of the Company’s Application and tariff revisions. The Company is not requesting that the Commission change any rates; rather it is requesting the Commission change the default time of use (“TOU”) rate to the low-differential TOU rate already approved by the Commission, based on feedback from its customers and state policymakers.² The Company is seeking to modify the details of the TOU rate implementation program that the Commission established in its last rate case. Contrary to Staff’s arguments, the Company is not seeking to change its revenue requirement, establish a

¹ This pleading’s focus is on responding to Staff’s Motion. However, since Staff’s Status Report at p. 3 indicates that Staff can only provide an “interim recommendation” and that a “full recommendation” can only be provided after a contested case proceeding, the arguments in this pleading also show why a contested case proceeding is not necessary.

² The Application also requests that the Commission approve the following: a) Modify the tariffs to allow residential customers to opt-in to the traditional residential rate (i.e. “Anytime Plan”) which has historically been in effect and is proposed to be offered as an option beginning May 1, 2024 rather than being terminated as scheduled under the approved TOU Implementation Program; b) Restrict rate switching to mitigate adverse revenue impacts by selective switching between the offered tariffs to artificially lower a customer's annual bill below reasonable cost of service through tariff selection only; and c) Revise the estimates of education, outreach and implementation costs consistent with the revisions requested to be approved in the Application. (Application, p. 3).

higher rate of return, establish new depreciation rates, or change the allocation of costs among customer classes—all issues for a general rate case. Therefore, Staff’s advice that the Commission cannot lawfully provide the relief the Company requests because it must “consider all relevant factors” should be rejected by the Commission as improperly interfering with the Commission’s discretion to determine how the TOU rate implementation program is to be finally implemented. Under the unique circumstances of this case, the Commission has an opportunity to approve modifications to the TOU rate implementation program that it believes will promote the public interest, and protect customers who are not fully engaged in choosing a TOU rate option from the unintended consequences that may result from the current high-differential default TOU rate. If the Commission believes that the TOU Implementation Plan as currently approved with the high differential TOU as the default rate is not in the public interest, then the Commission clearly has the statutory authority to change the default rate, as explained herein. The Commission should not be dissuaded from considering this requested change by Staff’s strained legal analysis which would limit the Commission’s ability and discretion to promote the public interest.

2. In the Company’s last general rate case, Staff’s own expert witness recognized the dangers of adopting a high differential TOU rate as a default TOU rate and recommended against its adoption. Staff witness Sarah Lange’s testimony stated:

So proposals like the company's proposal whether on an opt-in or a mandatory basis are not cost based and are not good for -- In the case of opt-in, the company's proposal is not good for non-participants and in the case of default, the company's proposal would be bad. It would cause significant overrecovery or underrecovery just depending on weather effects and other factors that are influencers on customers consumption of energy. I truly, truly, truly cannot caution enough against either of the company's opt-in designs. There's basically three, I guess. None of those designs should be imposed on a default or mandatory basis. [emphasis added](Tr. Vol. 11, pp. 755-56, File Nos. ER-2022-0129/0130).

3. In fact, no party proposed that the Commission adopt the Company's opt-in two period TOU rate as a mandatory or default rate. Quite to the contrary, all parties who expressed a position in the hearings on residential rate design, including the Company³, Staff⁴, and OPC⁵ opposed the adoption of the Company's opt-in two-period TOU rate proposal as a mandatory, default rate for residential or customers.

4. The statute that Staff cites, Section 393.270.4 RSMo. states that "In determining the **price** (emphasis added) to be charged for gas, electricity, or water the Commission may consider all facts which within its judgment have any bearing...." The Company's Application does not seek to change the price the Commission established under the approved TOU rate implementation plan. What the Application does request is to change in the tariff language that determines what TOU rate is first applied to customers who do not choose a specific TOU rate—the default TOU rate. At the same time, Staff fails to cite Section 393.140(11) which clearly gives the Commission authority to approve tariff sheets and changes in a public utility's tariffs outside the context of a rate case.⁶

5. Similarly, Staff's argument that the Commission would engage in "single issue ratemaking" unless it suspends the rates for ten months and treats the Application as if it was a full-blown general rate case must be rejected. There is no request to change rates, based upon a single cost component of the revenue requirement. In fact, there is not a single request to change in any way the revenue requirement and the rates that were approved by the Commission in the last general rate case. The revenue requirement, including the rate of return, cost of service

³ See File Nos. ER-2022-0129 and ER-2022-0130, Tr. 725 (Caisley); Evergy Reply Brief at 37.

⁴ Id. at Tr. 755-56. (Sarah Lange), File Nos. ER-2022-0129/0130.

⁵ OPC opposed the adoption of a higher differential TOU rate on a mandatory basis because "Evergy customers are not prepared to experience large differentials." (OPC Brief at 76).

⁶ See *Order Approving Tariff*, p. 1, Re Joint Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for a Variance from the Commission's Billing and Payment Standards, File No. ET-2020-0133 (July 12, 2020).

expenses, depreciation rates, and rate design were all determined by the Commission in the last general rate case, based upon its consideration of “all relevant factors.” The rate case was appealed by Public Counsel and the Commission’s decision has been affirmed by the Western District of the Missouri Court of Appeals.⁷

6. Staff’s reliance upon State ex rel. Midwest Gas Users Ass’n v. Pub. Serv. Comm’n, 976, S.W. 2d. 470 (Mo. App., W.D. 1988) is similarly misplaced. (Motion, pp. 3-4) Missouri courts have traditionally held that section 393.270.4 means that the Commission’s determination of the proper rate for utilities is to be based on all relevant factors rather just a single factor. Id. at 479. The court noted that single issue ratemaking is generally prohibited in Missouri “because it might cause the [Commission] to allow [a] company to raise rates to cover increased costs in one area without realizing that there were counterbalancing savings in another area.” Id. at 480. Again, no rates will be changed if the Commission grants the Application and changes the default TOU option to the low-differential TOU rate which was recommended by both Staff and Public Counsel in the last rate case.

7. Staff’s quotation from State ex rel. Utility Consumers Council of Missouri, Inc. V. Pub. Serv. Comm’n (UCCM) case also demonstrates on its face the flaw in Staff’s analysis. Staff states: “Of particular relevance here, the Missouri Supreme Court has stated, ‘[e]ven under the file and suspend method, by which a **utility’s rates may be increased** without requirement of a public hearing, the commission must of course consider all relevant factors including all operating expenses and the utility’s rate of return, in determining that no hearing is required and that the filed rate should not be suspended.’” (emphasis added) (Staff Motion, p. 4) There is no increase in rates requested in the Company’s Application or tariffs filed on September 8. Clearly, the

⁷ State ex. rel Office of the Public Counsel v. Public Service Commission, WD86023 (August 22, 2023)(transfer motion pending).

Missouri Supreme Court in UCCM was discussing a general rate case in which “all operating expenses and the utility’s rate of return” would be examined in the ratemaking process, not a tariff case like this one in which details of implementing a TOU rate program are being requested to be modified.

8. Staff also argues that the “filed tariff doctrine” would prohibit the Commission from ruling on the Company’s application without a full rate case filing and a ten-month suspension period. (Motion, pp. 6-7) Again, this proposition would be true if the Company was seeking to not charge the TOU rates that the Commission established. Instead, the Company wants to modify how TOU rate program is being implemented and not to change the rates themselves. The “filed rates” will continue to be used and available for customers to choose if they desire to do so.

9. Staff ignores the clear language of section 393.150 RSMo., which states the Commission “**may** suspend the operation of such schedule and defer the use of such rate, charge, form of contract or agreement, rule, regulation or practice” (emphasis added). The statute authorizes the Commission to suspend the Company’s tariffs filed on September 8, 2023 but does not require it to do so. The Commission has the discretion to allow the September 8 TOU tariffs to go into effect in order to allow the Company to better manage the TOU transition and the statute and case law cited by Staff does not provide otherwise.

10. Staff even suggests that since the Company’s Application does not meet the Commission’s rate case minimum filing requirements, the Application should be dismissed. (Motion, p. 8) The Company does not need to meet the minimum filing requirements required by 20 CSR 4240-3.030 because it is not seeking to change rates at all.

11. The Commission in the past has often exercised its discretion to approve or modify the terms of various public utility programs and the related tariffs outside the context of general rate cases.⁸ It has also been a long-standing practice for the Commission to conduct rate design proceedings in which rates and rate designs were modified on a revenue-neutral basis outside the context of a general rate case.⁹ Given these long-standing precedents, there should be no question that the Commission has the authority to grant the Company's requests in this proceeding. The Company would respectfully request that the Commission exercise its discretion again in this case to mitigate customer confusion and misinformation related to Evergy's TOU implementation program.

WHEREFORE, Evergy Missouri Metro and Evergy Missouri West respectfully submit this response and request the Commission deny Staff's motion that the Commission suspend the tariffs for ten (10) months, set a procedural schedule, and enter into general rate case procedures.

⁸ See e.g., Order Approving Compliance Tariffs, Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro for Approval of Tariff Revisions, File No. ET-2021-0109/0110 (Dec. 28, 2020)(Evergy's Customer Forward Program); Order Approving Tariff, Re The Empire District Electric Company's Application for Approval of a Community Solar Program for Electric Customers in the Missouri Service Area, File No. ET-2020-0259 (Sept. 20, 2020)(Empire's Community Solar Program); Order Approving Stipulation and Agreement, In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval to Expand Its Community Solar Pilot Program and Associated Tariff, File No. ET-2020-0022 (May 28, 2020)(Ameren Missouri's Community Solar Pilot Program); Order Approving Stipulation and Agreement, In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of Efficient Electrification Program, File No. 2018-0132 (October 17, 2019)(Ameren Missouri EV Charging Program); Order Approving Tariffs, In the Matter of Kansas City Power & Light Company's Revised Tariff Sheets, File No. ET-2019-0080 (October 24, 2018)(KCP&L's Limited Large Customer Economic Development Rider); Order Approving Stipulation and Agreement and Tariff, In the Matter of The Empire District Electric Company's Revised Economic Development Rider Tariff Sheets, File No. ET-2019-0029 (Modification of Empire's Existing Economic Development Rider).

⁹ See Report and Order, In the matter of the investigation of the rate design of Union Electric Company, Case No. EO-78-163, 23 Mo.P.S.C. (N.S.) 429 (March 26, 1980); Report and Order, In the matter of the rate design of Kansas City Power & Light Company, Case No. EO-78-161, 25 Mo.P.S.C. (N.S.) 605 (February 28, 1983).

Respectfully submitted,

/s/ Roger W. Steiner

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**ATTORNEYS FOR EVERGY
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been emailed to the Office of the General Counsel, the Office of the Public Counsel, and counsel for intervenors in File Nos. ER-2022-0129 and ER-2022-0130, this 15th day of September 2023.

/s/ Roger W. Steiner

Roger W. Steiner