

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE 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) Case No. ET-2024-0061
Evergy Missouri West for Approval of Tariff)
Revisions to TOU Program.)

Renew Missouri’s Response to Evergy’s Application

COMES NOW Renew Missouri Advocates d/b/a Renew Missouri, pursuant to the Commission’s September 11, 2023 *Order and Notice*, and submits this Response to Evergy’s *Application for Approval of Tariff Revisions to Time-of-Use Program, Request for Waiver of 60 Day Notice Requirement, and Motion for Expedited Treatment* (herein “the Application”). For its Response, Renew Missouri states the following:

I. INTRODUCTION

In December of 2022, the Missouri Public Service Commission (the “Commission”) issued an Amended Report and Order directing Evergy to implement mandatory time-of-use (“TOU”) rates.¹ While not originally proposed by the Company, the Commission determined that implementation of a higher-differential default TOU rate was in the public interest and would better incentivize the behavior change necessary to achieve meaningful peak demand reduction.² As a result, Evergy began customer outreach and education tailored to informing customers that, beginning October 1, 2023, the new default rate would be Evergy’s two-period “Standard Peak Saver” rate, with the option to opt into the low differential Peak Reward Saver rate.³ Evergy’s additional TOU rate options remain available for customers to opt into.⁴

¹ EFIS File No. ER-2022-0130, Doc. No. 658: Amended Report and Order, p. 74; EFIS File No. ER-2022-0130, Doc. No. 673.

² *Id.* at 63.

³ *Id.* at 74.

⁴ *Id.*

There are sufficient legal and policy reasons to deny the Company's Application, however this case has been filed within a relevant political context as well. Following the Commission's Order and Evergy's subsequent roll-out of marketing and education efforts, misinformation surrounding TOU rates began circulating through the press and social media. Among the major concerns was the idea that TOU rates will, invariably, raise customer bills. Another was that TOU rates were being implemented to ration power due to the deployment of renewable energy. Each concern was untrue. While an understandable fear warrants specific education efforts by the Company, customer misunderstanding or political agitation is not a sufficient justification to allow Evergy to reverse course at the eleventh hour, circumventing proper procedure and creating poor precedent for the weight given to Commission orders. Moreover, Evergy's *Application for Approval of Tariff Revisions to its Time-of-Use Program* (the "Application") seeks to create rushed and poorly thought-out policy with broad implications. For the reasons set forth below, Renew Missouri urges the Commission to reject Evergy's Application.

II. EVERGY'S APPLICATION IS NOT THE PROPER VENUE IN WHICH CHANGES TO RATE STRUCTURE SHOULD BE CONSIDERED.

Shortly after the Commission issued its Report and Order, Evergy filed a Motion for Reconsideration, or in the Alternative, Application for Rehearing (the "Motion for Reconsideration"). Evergy's Motion for Reconsideration argued that the low differential TOU rate originally proposed by Staff of the Missouri Public Service Commission ("Staff") would be the more appropriate default TOU rate for its customers.⁵ In addition, in the Motion to Reconsider, Evergy recommended a longer implementation period and agreed with the Commission's Report

⁵ EFIS File No. ER-2022-0129, Doc. No. 655: Evergy Missouri Metro's and Evergy Missouri West's Motion for Reconsideration, or in the Alternative, Application for Rehearing, p. 7; EFIS File No. ER-2022-0130, Doc. No. 670.

and Order that any traditional ratemaking structure would no longer be offered once TOU implementation was completed.⁶

Subsequently, the Commission issued an Amended Report and Order stating all requests for rehearing filed regarding the original Report and Order were moot.⁷ The Amended Report and Order adopted Evergy's proposal for a longer phase-in period but retained the 2-period higher differential TOU rate as the default.⁸ Although the Amended Report and Order set forth a deadline for additional applications for rehearing,⁹ Evergy did not file a motion for reconsideration or an application for rehearing in response to the Amended Report and Order therefore allowing that Amended Report and Order to become final.

The Amended Report and Order set forth many reasons for adopting not only mandatory TOU rates, but the specific Standard Peak Saver rate as the default rate. The Commission's rationale included that opt-out rates result in higher enrollment, increased customer choice, and greater incentive to shift usage to achieve savings as a result of a higher differential rate.¹⁰ Moreover, the Commission concluded that customers unable to shift their usage would be adequately protected by opting-in to Staff's low differential, Peak Reward Saver rate – which reflects such a low differential that it is an outlier in the industry.¹¹

Had Evergy believed that the Amended Report and Order was outside the Commission's statutory authority, not rooted in evidence, or even detrimental to its customers, the Company could have filed an application for rehearing within ten days of the issuance of the Amended Report and Order.¹² If rehearing or reconsideration was denied, or if the Company remained unsatisfied after

⁶ *Id.* at 7-8.

⁷ Amended Report and Order at 5.

⁸ *Id.* at 71-72.

⁹ *Id.* at 5.

¹⁰ *Id.* at 71.

¹¹ *Id.* at 63, 71.

¹² *Id.* at 5.

rehearing, Evergy could have appealed the Commission’s decision for an opportunity to fully litigate its concerns.¹³

Perhaps as a result of political discomfort (see Section V below), Evergy chose to file this Application reversing course at the eleventh hour – a strategy that rarely leads to sound, evidence-based policy decisions. In fact, Evergy’s Application was filed a mere twenty-two days before its new TOU rates were set to take effect.¹⁴ As noted by Staff, the extremely expedited process requested by Evergy does not allow for full Commission consideration of all relevant factors.¹⁵ This is concerning from both a legal and policy perspective, as full consideration of ratemaking issues is generally conducted within an eleven-month-long rate case.¹⁶

III. APPROVAL OF THIS APPLICATION SIGNIFIES THAT COMMISSION ORDERS ARE NOT BINDING.

In addition to the troubling procedural issues raised by this Application, Evergy’s Application raises concerns about the weight afforded to Commission orders. In effect, approval of Evergy’s Application signifies a reversal of the Commission’s Amended Report and Order – as Evergy’s requested relief directly contravenes the Commission’s order. Specifically, the Amended Report and Order stated:

To summarize, residential rates for Evergy are authorized to be Evergy’s 2-period TOU proposed rate as the default rate beginning October 1, 2023. Staff’s low differential rate is approved as an opt-in rate, without a lead-in time. Evergy’s additional residential TOU proposals are also authorized on an opt-in basis, without a lead-in time. Customers are authorized to opt-out of the default high differential rate into one of the four additional TOU rates approved here.¹⁷

The Report and Order further states:

¹³ Chapter 386,510, RSMo.

¹⁴ The Amended Report and Order required Evergy’s new TOU rates to take effect October 1, 2023. Evergy’s Application was filed September 8, 2023.

¹⁵ See EFIS File No. ET-2024-0061, Doc. No. 7: Staff’s Motion to Suspend, p. 3-4 (citing *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. Banc 1979)).

¹⁶ See also Staff’s Motion to Suspend at 4-5 (discussing the prohibition on single issue ratemaking as contemplated in this Application).

¹⁷ Amended Report and Order at 74.

The Commission is not approving any traditional ratemaking structure for residential customers to be used after December 31, 2023, when the transition to TOU default rates is completed, with the exception of those residential customers without AMI meters.¹⁸

Now, Evergy seeks to change the default TOU rate to the Peak Rewards Saver rate, as well as approval to continue offering a standard, non-time-varying rate to all residential customers.¹⁹ As discussed by Staff, Evergy's TOU tariffs approved after the conclusion of its rate case were deemed just and reasonable and in compliance with the Commission order.²⁰ While the Company's September 8, 2023 tariffs are clearly not in compliance with the Amended Report and Order and should not be approved absent a full proceeding, the approval of Evergy's Application would raise another substantial, precedential issue. That is, if utilities are free to file applications reversing Commission orders, what weight do Commission orders carry at all?

Whether the Commission would like to conduct further deliberation surrounding the impact of mandatory TOU rates or not, it is important that the Commission deny Evergy's pending Application. Approval of the Company's requests in this proceeding would signify to other utilities that Commission orders are not really orders, but merely suggestions that can be revisited by the utility – even after rehearing and reconsideration has been denied – if the utility does not like them.

IV. IF THE COMMISSION CONSIDERS THE MERITS OF THIS APPLICATION, IT SHOULD AFFIRM ITS POSITION SET FORTH IN THE AMENDED REPORT AND ORDER.

If the Commission determines that it would like to consider the merits of Evergy's Application in this proceeding, there are several important factors that support affirming the position taken in the Amended Report and Order.

¹⁸ *Id.* at 73.

¹⁹ EFIS File No. ET-2024-0061, Doc. No. 1: Application for Approval of Tariff Revisions to Time-of-Use Program, Request for Waiver of 60-Day Notice Requirement, and Motion for Expedited Treatment, p. 3.

²⁰ Staff's Motion to Suspend at 6-7.

As discussed in the Amended Report and Order, Evergy has already spent hundreds of millions of dollars to deploy advanced metering infrastructure (“AMI”) across its Missouri territories.²¹ At the time of the Amended Report and Order, Evergy already had eight years of experience with AMI – time the Company could have used to educate and prepare customers for TOU implementation.²² Moreover, the Company has conducted more than *thirteen* studies on TOU rates.²³ As noted by the Commission, the ability to offer TOU rates is one of the benefits of AMI.²⁴ Moreover, one of the primary objectives of Evergy’s Rate Modernization Plan was, “[l]everaging Customer Information System (‘CIS’) and Advanced Meter Infrastructure (‘AMI’) investments.”²⁵

The circumstances giving rise to the Commission’s concern with low TOU adoption under the status quo approach given the significant resources the Company has poured into AMI rollout and TOU studies²⁶ has not changed. As described in the rate case direct testimony of Evergy’s witness, Bradley Lutz, AMI deployment in Evergy Metro territory began in 2014 and was completed in 2015.²⁷ AMI deployment in Evergy Missouri West territory began in 2016 and was completed in early 2020.²⁸ Yet, by the Commission’s Amended Report and Order in December of 2022, residential TOU adoption remained at a mere 1.1%.²⁹ Given that the ability to offer TOU rates is one of the primary benefits of AMI, it is concerning the Company would continue to pursue an approach in which the full value of its sizeable investment is unrealized. This remains the case

²¹ Amended Report and Order at 70; see also EFIS File No. ER-2022-0129 Doc. No. 557: Exh. 307P Rebuttal Testimony of Geoff Marke, p. 38 (describing the benefit of AMI deployment to the Company in the form of increased rate base and increased earnings over the eight years of AMI rollout).

²² *Id.* at 64, 70.

²³ *Id.* at 64.

²⁴ *Id.*

²⁵ EFIS File No. ER-2022-0129, Doc. No. 420: Exh. 82 Direct Testimony of Kimberly Winslow, p. 14; EFIS File No. ER-2022-0130, Doc. No. 434: Direct Testimony of Kimberly Winslow.

²⁶ Amended Report and Order at 70.

²⁷ EFIS File No. ER-2022-0129, Doc. No. 444: Exh. 117 Direct Testimony of Bradley Lutz, p. 35; EFIS File No. ER-2022-0130, Doc. No. 401: Direct Testimony of Bradley Lutz.

²⁸ *Id.*

²⁹ Amended Report and Order at 70.

even if Evergy is permitted to set the default rate as the low differential Peak Rewards Saver rate, as the one-cent price differential is so low Evergy customers will not receive the savings or demand reduction benefits of full TOU implementation. Stated differently by Evergy Witness Kimberly Winslow, “[u]ltimately, an ‘ultra-low’ differential (essentially non-existent differential) TOU rate, as proposed by Staff, defeats the fundamental purpose of a TOU rate.”³⁰ Moreover, adopting Evergy’s approach will allow customers to opt-in to a traditional, non-time-varying rate that will once again open the door for the benefits of already-deployed AMI investments to remain unutilized.

In addition, now is not the time to lose momentum on TOU implementation. As discussed in rate case direct testimony by Company witness Kimberly Winslow, a primary purpose of TOU implementation is to create elasticity in demand to improve the efficiency of resources.³¹ The underlying goal of Evergy’s proposed TOU program was to leverage these rates to reduce system coincident peak demand.³² These opportunity to carry out these objectives comes at a critical time, as Evergy’s 2023 IRP Annual Update Preferred Plan outlined the need for 2,197 MW of thermal additions, Evergy-wide, from 2023 to 2039.³³ Indeed, Evergy included possible reductions in peak demand from Commission-ordered mandatory TOU rates in its 2023 IRP Annual Update.³⁴ According to Evergy’s 2023 DSM Market Potential Study, at a RAP scenario, Evergy Metro’s DR/DSR potential with the incorporation of mandatory TOU rates as ordered by the Commission could reach 89 MW of demand reduction in 2024 alone.³⁵ The RAP scenario for demand savings

³⁰ EFIS File No. ER-2022-0129, Doc. No. 421: Exh. 83 Rebuttal Testimony of Kimberly Winslow, p. 3; EFIS File No. ER-2022-0130, Doc. No. 435: Rebuttal Testimony of Kimberly Winslow.

³¹ *Id.*

³² Amended Report and Order at 59 (citing Direct Testimony of Kimberly Winslow at 7).

³³ EFIS File No. EO-2023-0212, Doc. No. 9: 2023 IRP Annual Update, p. 6; EFIS File No. EO-2023-0213, Doc. No. 9: 2023 IRP Annual Update.

³⁴ *Id.* at 3.

³⁵ *Id.* at Evergy 2023 DSM Market Potential Study, p. 32.

potential increases over the course of several years, with 115 MW achievable in 2025, 135 MW achievable in 2026, 144 MW achievable in 2029, and 147 MW achievable in 2033.³⁶ It should be noted that the assumptions in the RAP scenario account for the learning curve as customers become better at responding to price signals over time.³⁷

These results demonstrate that well-designed TOU rates play a meaningful role in achieving peak demand reduction – demand reduction which could mitigate the need to build gas peaking capacity. As Missouri utilities implement resource plans with reliance on expensive gas peakers, it is important that the Commission has thoroughly considered alternative measures in order to save customers money and ensure safe and adequate service at just and reasonable rates. Moreover, Evergy must fully consider all viable options to avoid and reduce new natural gas generation if it is to have any hope of meeting its goal of net-zero carbon emissions by 2045. As the Commission and outside analysis has recognized, TOU rates with higher rate differentials elicit stronger customer responses and lead to larger decreases in on-peak hour consumption than rates with lower pricing differentials.³⁸ As such, the Commission’s adoption of the Standard Peak Saver rate is the best-suited approach to achieve significant demand reduction goals.

V. SOCIAL MEDIA AND POLITICAL PRESSURES SHOULD NOT USURP THE COMMISSION’S EVIDENCE-BASED DECISION MAKING.

A primary basis for Evergy’s Application appears to be customer concerns’ regarding mandatory TOU rates.³⁹ In its Application, Evergy cites to social media comments accusing the Company of using TOU rates to spike customer bills to increase profits.⁴⁰

³⁶ *Id.*

³⁷ *Id.*

³⁸ Amended Report and Order at 63; 2023 Evergy DSM Market Potential Study at 17.

³⁹ Application for Approval of Tariff Revisions

⁴⁰ *Id.* at 6.

While the Company has conducted a customer survey to gauge reactions to mandatory TOU rates,⁴¹ it has described no plans to conduct education targeted specifically to alleviate concerns arising from the misinformation that caused customer concerns in the first place. Indeed, Evergy's own study indicates that the primary customer concern, by far, for switching to mandatory TOU rates is that customer bills will increase.⁴² However, as Evergy knows, the vast majority of customers who are switched to the Standard Peak Saver rate will see bill savings or a similar bill.⁴³ Of the slight minority of customers that will see bill increases, even fewer will experience substantial impacts. These are primarily customers using space heating taking service under a special declining block rate from several years ago.

Importantly, the ability to mitigate customer concerns rests squarely with Evergy. Rather than succumbing to negative Facebook comments by reversing course and attempting to upend a binding Commission order, the Company could simply adjust its marketing and outreach efforts to better target those most likely to need to switch rates (i.e., low-income or space heating customers) or those least educated on Evergy's TOU rate plans. Evergy has this information at its hands, and can respond appropriately. We believe Evergy can effectively identify and reach out to this small group of impacted customers, and mitigate their bill impacts through a combination of 1) switching them to the low differential Peak Rewards Saver rate; 2) enrolling them in customer assistance programs; 3) deploying energy efficiency program resources; and 4) referring them to community action agencies and connecting them with other resources (e.g. LIWAP, LIHEAP, etc.).

⁴¹ *Id.* at Exhibit A.

⁴² *Id.* at Exhibit A, p. 33.

⁴³ Evergy Spokesperson Kelli Kolich has conducted numerous interviews with Kansas City media outlets stating that 70% of customers switched to the default rate will see bill savings. *See e.g.*, https://www.kq2.com/community/evergy-change-in-rate-structure/article_0edc4f86-155d-11ee-a923-43671286c112.html

Moreover, customer hesitancy regarding mandatory TOU rates is not a new circumstance that justifies fully reversing course. Evergy and the Commission knew of customer concerns at the time of the Amended Report and Order – in fact, Evergy’s customer surveys surrounding mandatory TOU rates were a primary basis for the Commission’s decision to implement TOU rollout beginning October 1st, to correspond with the start of the non-summer TOU season.⁴⁴ This timeframe was intended to allow for additional customer education prior to and during the transition while the rate differential is lower.⁴⁵ Further, the Commission has convened a workshop on customer education and outreach regarding Evergy’s default TOU rates.⁴⁶ These Commission workshop cases provide venues in which utilities can voice concerns about customer education and develop strategies to negate misinformation and backlash.

Finally, although customer concerns are the basis of this Application on its surface, it is clear that Evergy’s Application is also tied up with state politics. Once the issue of TOU rates in the Amended Order and Report (ER-2022-0129) were made final, a well-placed Missouri politician – Senate Majority Leader Cindy O’Laughlin – took to the social media platform Facebook to condemn the decision to implement mandatory TOU rates, describing the decision as “woke.” The Senator declared – absent any facts on the record to substantiate such claims – that TOU rates would increase bills and were being deployed to cover up failures resulting from the deployment of renewable energy. Media attention and civic agitation commenced. As a result, the TOU rates issue has become relevant as a larger political concern in the state.

The comments made by Senator O’Laughlin on her Facebook and in the media were designed to deliver misinformation to inflame and incense the public in order to draw attention to

⁴⁴ Amended Report and Order at 71-72.

⁴⁵ *Id.* at 72.

⁴⁶ *See* EFIS File No. EW-2023-0199.

what she believed is an inattentive bureaucracy. This can be inferred as Senator O’Laughlin’s post was coupled with another Facebook post she made purporting to show two Commissioners sleeping during a hearing.

If the Commission decides to reverse course based on this campaign of generating anger through social media posting, no Commission decision will be safe from political meddling. The Commission makes decisions and policy based on evidence, precedent, and its statutory authority. The reason Commissioners are not elected in this State is to shield their decisions and actions from the short-term inflammations of the public; to be shielded from the whims of the political wind. The Commission should be above this demagoguery. If this Application is granted, perhaps decisions involving utility ratemaking should merely be left to online polling and counting the “likes” on a Twitter posting.

The Commission should not make rate design decisions based on angry comments on Evergy’s Facebook page or the whims of state politicians. The Commission’s role is to regulate in the public interest, and to determine whether rates proposed by the Company are just and reasonable.⁴⁷ In ordering the implementation of mandatory TOU rates, the Commission did just that. The Commission, based on its expertise and consideration of the full range of evidence and in the context of a general rate case, was in the best position to determine that mandatory TOU rates will serve the public interest. As such, the Commission’s evidence-based determination should not be upended by misinformed and reactionary comments. We respectfully remind the Commission of one of its conclusions of law in its Amended Report and Order: “Generally, one’s

⁴⁷ Section 393.150.2, RSMo.

belief, feeling, understanding, or thought about a matter does not constitute substantial evidence justifying or permitting a finding to that effect.”⁴⁸

VI. CONCLUSION

Renew Missouri urges the Commission to reject Evergy’s Application. A rushed, last-minute proceeding to change rates is legally impermissible and does not provide the Commission with enough opportunity to consider all relevant factors. Approval of this Application sets poor precedent for utilities to attempt to upend binding Commission orders. If the Commission does consider the merits of Evergy’s Application in this proceeding, there is no justifiable reason to permit Evergy to modify its TOU plan.

WHEREFORE, Renew Missouri respectfully requests that the Commission reject Evergy’s Application, along with any other relief the Commission deems proper.

Respectfully Submitted,

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⁴⁸ EFIS File No. ER-2022-0129, Amended Report and Order at 10, citing *Dickey Co. v. Kanan*, 537 S.W.2d 430, 433-34 (Mo.App.1976).