

**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)
Evergy Missouri West for Approval of Tariff)
Revisions to TOU Program)

Case No. ET-2024-0061

**RESPONSE TO EVERGY’S NOTICE OF WITHDRAWAL OF PROPOSALS AND
AMENDMENT TO APPLICATION, AND MOTION TO DISMISS**

COMES NOW the Office of the Public Counsel (the “OPC”) and in response to Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West’s (“Evergy West,” and collectively with Evergy Metro, “Evergy”) Notice of Withdrawal of Proposals and Amendment to Application (the “Amended Application,” Doc. 18) and Substitute Tariff Sheets (the “September 21 Proposed Tariff Sheets,” Docs. 20-21), and in accordance with the deadline established by the Public Service Commission of the State of Missouri (the “Commission”) in its Order Directing Filing (the “September 22 Order,” Doc. 23) respectfully states:

The OPC maintains its concerns as expressed in its Response to Evergy’s Application, Request for Waiver of 60 Day Notice Requirement, Motion for Expedited Treatment, and Motion to Approve Tariffs on Less Than 30 Days’ Notice; and Motion to Dismiss. (the “OPC Response”) and its Motion to Suspend Hearing (the “Motion to Suspend Hearing”). (Docs. 8, 15). The OPC remains cognizant of the concerns surrounding the implementation of Evergy’s time-of-use (“TOU”) rates. It has heard the concerns expressed by Commissioners during Agenda and is aware that some of the public sentiment regarding implementation of these rates is negative. The OPC is also aware of Evergy’s statements to Commissioners that based on Evergy’s study, conducted by Oracle/Opower, after implementation of the Commission’s ordered default TOU rate and with no assumed behavioral changes, 89% to 91% of customers will see no change or will see savings

based on their historical usage. (*See* Statements of Evergy, Aug. 10, 2023 Agenda at approximately 45:20, <http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6626>). This is consistent with Evergy’s prior study, conducted by the Brattle Group, which concluded that approximately 68% to 74% of customers would have essentially the same bill or some level of savings. (*Id.* at approximately 40:00; *see also* Notice of Workshop Presentation, Ex. A. “March 28, 2023 Evergy Presentation” 14,¹ Doc. 5, Case No. EW-2023-0199). The Commission after reviewing extensive testimony and conducting a lengthy evidentiary hearing made its decision regarding these rates, including which rate should be the default rate. Respectfully, sufficient time should be allowed for that decision to be implemented so that the true impacts of these new rates can be appropriately evaluated and analyzed.

The OPC continues to strongly oppose Evergy’s request to change its tariff sheets regarding its TOU rates on both legal and policy grounds. This pleading will focus most substantively on the legal grounds. The attached memorandum provides a highlight of the factual and policy reasons that the OPC opposes the proposed change. In addition to opposing the proposed changes, the OPC asks the Commission to dismiss Evergy’s Application as an improper collateral attack on the Commission’s December 8, 2022 Amended Report and Order, issued in Evergy Metro and Evergy’s West’s most recent general rate cases.

I. Background

Prior to addressing the OPC’s opposition to Evergy’s Application, it is important to understand the background which preceded Evergy’s Application and the filings made in this case.

¹ This number corresponds to the page number of the March 28, 2022 Evergy Presentation.

A. Evergy Metro and Evergy West’s Most Recent General Rate Cases

On November 21, 2022, the Commission issued a Report and Order (the “Original Order”) in both Evergy Metro and Evergy West’s most recent general rate cases. (*See* Original Order, Doc. 648, Case No. ER-2022-0129; Report & Order, Doc. 663, Case No. ER-2022-0130). The Original Order took effect on December 6, 2022. (*See id.*). In pertinent part, in the Original Order, the Commission ordered Evergy to implement TOU rates and did not approve “any traditional ratemaking structure for residential customers.” (*Id.* 68-69). Specifically, the Commission stated “residential rates for Evergy are authorized to be Evergy’s 2-period TOU proposed rate as the default rate beginning six months after the tariffs become effective.” (*Id.* 68). The Commission approved “Staff’s low-differential rate . . . as an opt-in rate, without a lead-in time” and “Evergy’s additional residential TOU proposals . . . on an opt-in basis, without a lead-in time.” (*Id.*). The Commission “authorized” customers “to opt-out of the default high-differential rate into one of the four additional TOU rates approved here.” (*Id.*).

On December 5, 2022, Evergy filed a Motion for Reconsideration, or in the Alternative Application for Rehearing² (the “Rate Case Application for Rehearing,” Doc. 655, Case No. ER-2022-0129; Doc. 670, Case No. ER-2022-0130). In pertinent part, Evergy requested seven modifications to the Commission’s decision to implement TOU rates. (*See id.* 7-11). The first of these requests was to change the default rate to “Staff’s proposed low-differential TOU rates.”³ (*Id.* 7).

² The Staff of the Commission (“Staff”) also filed a Request for Clarification and Motion for Expedited Treatment. (Doc. 649, Case No. ER-2022-0129; Doc. 664, Case No. ER-2022-0130).

³ In the Rate Case Application for Rehearing, Evergy explicitly stated that it “agrees that any traditional ratemaking structure will no longer be offered following a mandatory, default TOU rate implementation.” (Rate Case Appl. for Rehearing 7).

Three days after Evergy filed its Rate Case Application for Rehearing, on December 8, 2022, the Commission issued an Amended Report and Order (the “Amended Order”) in both cases. (See Am. Order, Doc. 673, Case No. ER-2022-0129; Am. Order, Doc. 658, Case No. ER-2022-0130). In the Amended Order, the Commission appears to have granted many of Evergy’s requested changes to the TOU rates. However, it denied Evergy’s request to change the default TOU rate by continuing to order that “Evergy’s 2-period TOU proposed rate” be “the default rate.” (*Id.* 74). The Commission also delayed implementation of the TOU rates, but stated that Evergy’s “2-period high differential rate should take effect beginning October 1, 2023.” (*Id.* 71). The Commission allowed “the transition to TOU default rates [to] . . . be phased-in between October 1, 2023 and December 31, 2023.” (*Id.* 72). The Commission explained “[t]he phase-in shall occur by appropriate groupings of customers on the appropriate customer’s billing cycle such that the TOU implementation for all Evergy customers shall be completed by December 31.” (*Id.*). Again, in the Amended Order, the Commission did not “approv[e] any traditional ratemaking structure for residential customers to be used after December 31, 2023 . . . with the exception of those residential customers without AMI meters.” (*See id.* 71-74).

It is important to recognize that Evergy did not file either a Motion for Reconsideration or an Application for Rehearing in response to the Commission’s Amended Order.

B. Filings Made in the Current Case

The current case began when, on September 8, 2023, a Friday, at approximately 7:00 p.m., Evergy filed its Application for Approval of Tariff Revisions to Time-of-Use Program, Request for Waiver of 60 Day Notice Requirement, and Motion for Expedited Treatment (the “Original Application,” Doc. 1). Evergy also filed proposed tariff sheets to implement the changes it requested in the Original Application (the “September 8 Proposed Tariff Sheets, Docs. 2-3).

The following Monday, September 11, 2023, at 12:34 p.m. the Commission issued the Order and Notice (the “September 11, 2023 Order,” Doc. 4). In the September 11, 2023 Order, the Commission ordered, in pertinent part, that Staff file “a Recommendation on Evergy’s four requests, or a status report stating when it expects to file its Recommendation, no later than September 13, 2023.” (*Id.* 3). The Commission also required that “any [other] responses to the application or to Staff’s pleading shall be filed no later than September 15, 2023,” one week after Evergy filed the Application. (*Id.*). Finally, the Commission scheduled “a hearing on the tariff” for September 19, 2023.⁴ (*Id.*).

On September 13, 2023, Staff filed a Status Report and a Motion to Suspend. (Docs. 7-8). In its Status Report, Staff stated that it would file an “interim recommendation no later than close of business on Friday, September 15, 2023.” (Status Report 3). Staff pointed out that “a full recommendation can be provided only after contested case proceedings following an ample opportunity for discovery.” (*Id.*). In its Motion to Suspend, Staff noted several problems with Evergy’s expedited request, including that “in the absence of a general rate case proceeding,” Evergy’s requests constitute “illegal single-issue ratemaking.” (*See generally* Mot. to Suspend). Staff requested that the Commission “suspend . . . [the] tariffs [Evergy filed with its Application] for 120 days plus six months as allowed by law, give appropriate notice, set a procedural schedule, and enter into general rate case procedures; and grant such other and further relief as is just in the circumstances.” (*Id.* 8).

⁴ This meant the hearing would begin a mere seven-and-one-half calendar days or five-and-one-half business days after the Commission issued its September 11, 2023 Order and approximately ten calendar days or six business days after Evergy filed the Application. (*See* Docket Sheet).

The next day, September 14, 2023, the OPC filed its Motion to Suspend Hearing. There, the OPC requested that the Commission suspend the previously scheduled hearing, because of due process concerns. (*See generally* Mot. to Suspend Hearing).

The following day, September 15, 2023, parties to this matter made numerous filings. For instance, Evergy responded to Staff's Status Report and Motion to Suspend (the "Response to Staff"), as well as the OPC's Motion to Suspend the Hearing ("Evergy's Response to OPC"). (Docs. 9, 13). In its Response to Staff, Evergy opposed Staff's Motion to Suspend stating that "Staff's legal analysis in its Motion is premised on a misunderstanding of the Company's Application and tariff revisions." (Resp. to Staff 1). Evergy averred that § 393.140(11) RSMo. "clearly gives the Commission authority to approve tariff sheets and changes in a public utility's tariffs outside the context of a rate case." (*Id.* 3). Evergy also proclaimed that based on § 393.150 RSMo., 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." (*Id.* 5). Evergy maintained that "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." (*Id.* 3). Therefore, Evergy requested that the Commission deny Staff's Motion to Suspend. (*Id.* 6).

In its Response to OPC, Evergy stated that it "appreciates Public Counsel's concern regarding the shortness of the time for preparation for the hearing." (Resp. to OPC 1). However, Evergy maintains that "this concern must be balanced by the need of the Commission to have sufficient time to consider the record and the arguments and issue its Order in the case prior to the effective date of October 1, 2023 TOU Implementation Plan." (*Id.* 1-2). Evergy asserted that it is

“willing to participate in hearings on” September 26, 27, or 28, 2023. (*Id.* 2). Evergy also included its proposed list of issues. (*Id.* 2-3).

In addition to Evergy’s Responses, Renew Missouri Advocates d/b/a Renew Missouri (“Renew”) also filed a Response to Evergy’s Application (the “Renew Response,” Doc. 10). Throughout its Response, Renew noted its opposition to Evergy’s requested changes. (*See generally* Renew Resp.). Renew requested that the Commission reject Evergy’s Application. (*Id.* 12).

Also on September 15, Staff filed its Interim Recommendation. (Doc. 11). Staff gave three recommendations. (*Id.* 3-4). First, Staff maintained its request for the Commission to suspend the tariffs, as described more fully in Staff’s Motion to Suspend. (*Id.* 3). Second, if the Commission denied Staff’s Motion to Suspend, Staff recommended that the Commission reject the September 8, 2023 Proposed Tariffs because “in concert with the form of the information and marketing Evergy has disseminated to its customers, [the tariffs] are designed to increase the annual revenues generated by Evergy’s Missouri utility operations.” (*Id.*). Finally, if the Commission denied Staff’s Motion to Suspend and did not reject the tariff sheets, Staff recommended that the Commission consider changes to the proposed tariff sheets as described in Staff’s memorandum. (*Id.* 3-4).

On that same date,⁵ the OPC filed the OPC Response. (Doc. 15). In its Response, the OPC raised concerns regarding the amount of time that parties would have to file an application for rehearing following any Commission decision, due process concerns, concerns regarding the sufficiency of Evergy’s timing requests, and requested that the Commission dismiss Evergy’s

⁵ Consumers Council of Missouri also filed its Application to Intervene on September 15, 2023. (Doc. 14).

Original Application as an improper collateral attack on the Commission’s Amended Order. (*See generally* OPC Resp.).

Finally, on September 15, the Commission issued its Order Cancelling Hearing, in which it cancelled the previously scheduled hearing. (Doc. 12).

Three days later, on Monday, September 18, at 7:22 p.m., Evergy filed the Amended Application. The next day, the Commission ordered its Staff to file a recommendation “no later than September 25, 2023,” one week after Evergy filed its Amended Application (the “September 19th Order” 1, Doc. 19). The Commission directed that “[a]ny other party who wishes to respond to the amended application” respond by the same date. (*Id.* 2).

On September 21, 2023, following a discussion of this matter during the Commission’s Agenda meeting that day, Evergy filed the September 21 Proposed Tariff Sheets presumably implementing the changes made in its Amended Application. The September 21 Proposed Tariff Sheets bear an effective date of October 8, 2023. (*See* Sept. 21 Proposed Tariff Sheets).

The following day, the Commission expanded its September 19th Order by requiring its Staff and “[a]ny other party who wishes to respond” to include in its September 25, 2023 filing a response to the September 21 Proposed Tariff Sheets. (Sept. 22 Order 1).

II. Summary of Evergy’s Amended Application

In the Amended Application, Evergy withdrew “all of its proposed tariff changes, with the exception that Evergy continues to request approval to change its tariffs to: (i) Modify the default TOU rate from the high differential 2-period TOU rate [i.e. Standard Peak Saver] to the low differential Peak Adjustment TOU rate [i.e. Peak Reward Saver].” (Am. Appl. 2). Evergy also withdrew “its request to have the tariffs effective by October 1, 2023.” (*Id.*).

Evergy asserts that “[u]nder the current tariffs and requirements of the Amended Report and Order from the Company’s last rate case, the Company has flexibility within the October 1 to December 31, 2023 timeframe to implement the TOU rates for individual customers.” (*Id.*). Evergy states “[b]ased upon [its] . . . billing cycles, Evergy is planning to initiate the plan to default customers to the high-differential TOU rate in mid-October.” (*Id.* 3). It “is planning to have the transition completed by the end of the year, as required by the Amended Report and Order.” (*Id.*).

Evergy maintains that it “will be able to implement any of the requested improvement in the TOU rate Implementation Plan if the revised tariffs are effective no later than October 14, 2023.” (*Id.* 2). Therefore, it states “[u]pon approval by the Commission, Evergy will file compliance tariff sheets that will implement the Commission order and any required changes to the tariffs.” (*Id.* 4). It “requests that the compliance tariffs be made effective no later than October 14, 2023.”⁶ (*Id.*).

III. Motion to Dismiss: Evergy’s Request Constitutes a Collateral Attack on the Commission’s December 8, 2022 Amended Report and Order

Evergy’s Application is an improper collateral attack on the Commission’s December 8, 2022 Amended Order and should be dismissed.

Section 386.550 of the Revised Statutes of Missouri mandates that “[i]n all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.” § 386.550 RSMo. The Western District has recognized that “[t]his statute is indicative of the law’s desire that judgments be final.” *State ex rel. Ozark Border Elec. Coop. v.*

⁶ It is no longer clear when Evergy requests the Commission to act. In the Amended Application, Evergy requests that the compliance tariff sheets, which it intends to file “[u]pon approval by the Commission,” take effect “no later than October 14, 2023.” (Am. Appl. 4). However, the September 21 Proposed Tariff Sheets bear an effective date of October 8, 2023. (*See generally* Sept. 21 Proposed Tariff Sheets). This suggests that Evergy requests Commission action—or potentially inaction—prior to October 14, 2023. Unless the Commission intends to rule on the Amended Application prior to October 8, 2023, the Commission should reject or suspend the September 21 Proposed Tariff Sheets, so that those tariff sheets do not take effect by operation of law on October 8, 2023. *See* § 393.140(11) RSMo.

Pub. Serv. Comm'n, 924 S.W.2d 597, 601 (Mo. Ct. App. 1996) (citing *State ex rel. Harline v. Pub. Serv. Comm'n*, 343 S.W.2d 177, 184 (Mo. Ct. App. 1960)). In *Ozark Border Electric Cooperative*, the Western District made clear that “[t]his statutory provision makes a decision of the Commission immune to collateral attack. If a complaint⁷ does not allege a change in circumstance it would be in conflict with this section providing for finality.” *Id.*

Evergy has identified no change in circumstance that gave rise to its belated request in the Amended Application. Rather, Evergy asks for the *same* relief that it requested in its Rate Case Application for Rehearing. (*Compare* Am. Appl. 2 (requesting that the Commission change the default TOU rate to Staff’s proposed low differential plan), *with* Rate Case Appl. for Rehearing 7 (requesting that the Commission on reconsideration adopt “Staff’s proposed low-differential TOU rates . . . as the mandatory, default rate that would be implemented after an education period.”)).

In issuing its December 8, 2022 Amended Order the Commission decided the issues regarding Evergy’s implementation of TOU rates, including which rate would serve as the default rate. (*See generally* Am. Report & Order). Evergy had the opportunity to file an Application for Rehearing in response to that order. *See* § 386.500 RSMo. (granting the right for “the public counsel or any corporation or person or public utility interested therein . . . to apply for a rehearing in respect to any matter determined therein”). In fact, Evergy took advantage of that opportunity following the issuance of the Commission’s Original Order. (*See generally* Rate Case Appl. for Rehearing). Following the Commission’s issuance of the Amended Order, Evergy choose not to seek rehearing. Because it has identified no material change in circumstance that would allow it

⁷ Though the Western District’s statement refers to a complaint, nothing in § 386.550 RSMo. limits collateral attacks to those raised by complaint. Rather, the statute states “[i]n *all* collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.” § 386.550 RSMo. (emphasis added).

to request a change to the Commission’s prior order,⁸ Evergy cannot now—a mere approximately twelve days⁹ prior to when it was to begin implementing the TOU rates—seek a fundamental change to the Commission’s Amended Order. *See Ozark Border Elec. Coop.*, 924 S.W.2d at 601 (citation omitted). For this reason, the Commission must dismiss Evergy’s Application.

IV. Evergy’s Timing Requests are Deficient

If the Commission denies the OPC’s motion to dismiss, Evergy’s timing requests, as included in its Original Application are deficient and should be denied. Evergy included in its Original Application a Motion for Expedited Treatment, a Motion to Approve Tariffs on Less than 30 Days’ Notice, and a request for a Waiver of the 60-Day Notice Requirement. (*See Original*

⁸ Evergy asserts in its Amended Application that it “believes that its Application was responsive to customer and other feedback and that the resulting impact from approval of its Application would be in the public interest and consistent with the Commission’s stated intention to further TOU rate adoption and use.” (Am. Appl. 2). Evergy fails to explain how this feedback constitutes a change in circumstance sufficient to request a fundamental change to the Commission’s Amended Order after the Amended Order has taken effect. *See Ozark Border Electric Cooperative*, 924 S.W.2d at 601.

The OPC also questions Evergy’s assertion that the Application was “responsive to customer . . . feedback.” (*See* Am. Appl. 2). As explained in the attached memorandum, Evergy’s Weekly Update filed in Case Number EW-2023-0199 showed that slightly *more* customers are choosing to enroll in the current high-differential TOU rate. (*See* Mem. 2 (citing to Sept. 22, 2023 Weekly Update, Case No. EW-2023-0199, Doc. 37)). This suggests that customers perhaps prefer the current high-differential TOU rate, or at least do not oppose it in the way that Evergy appears to suggest.

Also, as explained in the attached memorandum, switching to the low-differential rate as the default rate fails to accomplish the same policy objectives as the high differential. (*Id.* 16-17). In its Amended Order, the Commission concluded that “Staff’s low differential rate, even though it would provide protections to some customers, does not provide sufficient incentive or opportunities for customers to see savings from TOU rates.” (Am. Order 71). Evergy itself did not support using the low-differential rate as the default rate during its most recent general rate case. (Mem. 16-17 (quoting Winslow Rebuttal Test. 6-7, Case No. ER-2022-0129, Doc. 421; Case No. ER-2022-0130, Doc. 435)).

Further, it appears that at least some of the negative feedback from both customers and others centers on eliminating TOU rates and returning to a traditional rate structure. Evergy has withdrawn its request to allow customers to opt-in to a traditional rate structure. (Am. Appl. 2). Further, returning to a traditional rate structure ignores *Evergy’s* comments to the Commission that 89% to 91% of customers will save money or will be unaffected by the change to the Commission’s default TOU rate. (*See* Statements of Evergy, Aug. 10, 2023 Agenda at approximately 45:20, <http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6626>). It would also continue to result in ratepayers paying both a return on and of millions of dollars of investment that Evergy made in preparation for TOU rates, with little to no benefit. (*See, e.g.*, Mem. 1-2, 5-7).

For at least these reasons, the feedback Evergy alluded to cannot serve as a “change in circumstance” such that Evergy can now—over nine months after the Commission’s Amended Order became effective—seek a fundamental change in that order. *See Ozark Border Electric Cooperative*, 924 S.W.2d at 601.

⁹ This represents the time between when Evergy filed its Amended Application and October 1, 2023—when the Commission ordered the “2-period high differential [TOU] rate” to “take effect.” (Am. Order 71).

Appl. 13-15). In its Amended Application, Evergy withdrew “its request to have the tariffs effective by October 1, 2023,” but did not address its other timing requests. (*See generally* Am. Appl.). To grant the relief Evergy requests in both the Amended Application and the September 21 Proposed Tariff Sheets, Evergy must maintain both its Motion for Expedited Treatment and its request for the tariff sheets to take effect on less than 30 days’ notice. Further, Evergy did not file a 60-day notice, as required by 20 CSR 4240-4.017(1). Therefore, the OPC infers that Evergy maintains its request for a waiver of the requirement. For these reasons, even though they are not explicitly addressed in Evergy’s Amended Application, the OPC will address each of Evergy’s timing requests in turn.

A. The Request for Expedited Treatment

Citing to 20 CSR 4240-2.080(14), Evergy requested in the Original Application that the Commission “issue an order in this docket as soon as possible with an effective date no later than Friday, September 29, 2023.” (Appl. 13). Evergy withdrew “its request to have the tariffs effective by October 1, 2023.” (Am. Appl. 2). However, it will be necessary for the Commission to act in an expedited manner, if it intends to grant Evergy’s request that its September 21 Proposed Tariff Sheets become effective by October 8, 2023, or that its compliance tariffs—to be filed after the Commission has ruled on the Amended Application—be effective by October 14, 2023. (*See* Am. Appl. 2, 4). The OPC objects to Evergy’s requested expedited treatment not only for the reasons addressed throughout this pleading and in the attached memorandum, but also because it objects to many of the statements Evergy made to meet the criteria necessary to request expedited treatment.

Commission Rule 20 CSR 4240-2.080(14) requires:

(14) Any request for expedited treatment shall include the words “Motion for Expedited Treatment” in the title of the pleading. The pleading shall also set out with particularity the following:

- (A) The date by which the party desires the commission to act;
- (B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party’s customers or the general public, if the commission acts by the date desired by the party; and
- (C) That the pleading was filed as soon as it could have been or an explanation why it was not.

20 CSR 4240-2.080(14).

Though, on its face, it appears that Evergy’s Motion for Expedited Treatment in the Original Application meets each of these criteria, the OPC objects to many of Evergy’s statements made in support of its request. Specifically, Commission Rule requires the motion to set out with particularity the “harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party’s customers or the general public, if the commission acts by the date desired by the party.” 20 CSR 4240-2.080(14)(B). Evergy maintained in the Original Application “[t]here will be no negative effect on the Company’s customers or the general public if the Commission acts by this date.” (Appl. 13). However, this statement overlooks all of the potential harm that could accrue to Evergy’s customers and the general public overall if the Commission makes a change to the tariff sheets implementing Evergy’s TOU rates at this late date. For instance, it is clear that Evergy has been communicating with its customers regarding the implementation of TOU rates.¹⁰ (See Appl. 5 (asserting that “[v]ery high customer awareness of the mandated move to TOU” exists)). Changing the default TOU rate a few days before Evergy begins to implement the transition¹¹ will generate

¹⁰ It appears that upon filing the Application, Evergy ceased at least certain communications with its customers. (See Appl. 3). This break in communication is also likely to generate customer confusion.

¹¹ Evergy states in its Amended Application that it “is planning to initiate the plan to default customers to the high-differential TOU rate in mid-October.” (Am. Appl. 3). It “plan[s] to have the transition completed by the end of the year, as required by the Amended Report and Order.” (*Id.*).

additional customer confusion and hardships as customers work to understand why Evergy has made a change to its TOU rates and to identify how that change will affect them. (*See* Mem. 4). Because Evergy requests this change to take effect on an extremely short timeframe there will be little to no opportunity to educate customers on it prior to the TOU rate plans taking effect.

Further, simply by granting the relief that Evergy requests, it is likely that there will be customer harm. Evergy has previously told the Commission that two studies show that a majority of its customers will either see benefits from the transition to TOU rates or will see no change to their bills. (Statements of Evergy, Aug. 10, 2023 Agenda at approximately 45:20, 40:00 <http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6626>). Evergy makes no reference to these studies in either its Original Application or its Amended Application. (*See generally* Original Appl.; Am. Appl.). It overall fails to address how those customers who would have seen benefits from the transition to the Commission’s mandated default TOU rate (i.e. Evergy’s 2-period TOU rate) will be affected by the change Evergy now wishes to make (i.e. to default customers to Staff’s low-differential TOU rate). (*See generally* Appl.). Staff asserts in its Motion to Suspend that “evidence will demonstrate that the tariff promulgation requested by Evergy is reasonably expected to result in increased annual revenues.” (Mot. to Suspend 5, Doc. 7). It makes a similar statement in the Memorandum accompanying its Interim Recommendation, stating “[m]aking this

This differs from the deadline referenced in Evergy’s Original Application. In the Original Application, Evergy stated that “good cause exists” to grant a waiver from the 60-day notice requirement “because the Company is currently under the requirement to implement the TOU program no later than October 1, 2023.” (Original Appl. 14). It also requested that the Commission issue an order with an effective date no later than September 29, 2023, in part “to avoid the high differential 2-period TOU rate from going into effect as the default rate in October, 2023.” (*Id.* 13-14).

The OPC questions whether Evergy’s intention to “initiate the plan to default customers to the high-differential TOU rate in mid-October” complies with the plain language of the Commission’s Amended Order. (Am. Appl. 3; Am. Order 74). Specifically, in the Amended Order, the Commission stated that “residential rates for Evergy are authorized to be Evergy’s 2-period TOU proposed rate as the default rate beginning October 1, 2023.” (Am. Order 74). It further referenced that “Evergy shall implement a program to engage and educate customers in the approximate ten-month lead-in time until its 2-period TOU rate takes effect as the default rate for residential customers beginning October 1, 2023.” (*Id.*). However, the OPC recognizes that the Commission allowed Evergy to “phase[-]in” the transition to TOU rates between October 1, 2023 and December 31, 2023. (*See id.* 72).

change at this time will effectively increase the revenues the Evergy Missouri-jurisdictional utilities will recover beyond the revenue requirement ordered by the Commission in File Nos. ER-2022-0129 and ER-2022-0130.” (Interim Rec. Mem. 10). These are just a few of the examples of potential customer harm that Evergy fails to identify in its request for expedited treatment. *See* 20 CSR 4240-2.080(14)(B) (requiring a party requesting expedited treatment to identify with particularity “[t]he harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect . . . if the commission acts by the date desired by the party”).

Further, the Commission’s Rule requires that Evergy state with particularity “[t]hat the pleading was filed as soon as it could have been or an explanation why it was not.” 20 CSR 4240-2.080(14). Evergy asserted in its Original Application that “[t]his application was filed as soon as it could have been following the Commissioner discussion at the August 30, 2023, Agenda meeting.” (Appl. 13). Though Evergy identifies a discussion that took place amongst the Commissioners during the August 30, 2023 Agenda meeting, it fails to identify why this discussion necessitated the filing of the Original Application. Evergy has identified no reason why it could not have requested this change sooner, including by filing an application for rehearing in response to the Commission’s Amended Order.

For at least these reasons, Evergy’s Motion for Expedited Treatment is deficient and the Commission should deny it.

B. The Request that the Proposed Tariffs Be Allowed to Go Into Effect on Less than 30-Days’ Notice

In addition to its request for expedited treatment, Evergy requested that its proposed tariff sheets be allowed to take effect on less than 30-days’ notice. (Appl. 13-14). Evergy did not mention this relief in either its September 21 Proposed Tariff Sheet or its Amended Application. (*See generally* Sept. 21 Proposed Tariff Sheets; Am. Appl.). Again, to allow Evergy’s request that

its September 21 Proposed Tariff Sheets take effect on October 8, 2023, or the relief in its Amended Application (i.e. that the compliance tariff sheets to be filed after the Commission rules on the Amended Application take effect on October 14, 2023), it is necessary for Evergy to maintain this request.¹² Section 393.140(11) of the Revised Statutes of Missouri allows the Commission to approve changes to tariff sheets on less than thirty days' notice "for good cause shown." § 393.140(11) RSMo. Evergy fails to show good cause for why these tariffs should be allowed to take effect on less than thirty-days' notice.

Evergy asserted in the Original Application that "good cause" exists for its requests because "the changes to the TOU Implementation Plan are needed and in the public interest to avoid further confusion and misinformation regarding the Commission-mandated TOU rates, and to avoid the high-differential 2-period TOU rate from going into effect as the default rate in October 2023." (Appl. 14). It may be true that the changes are necessary to "avoid the high-differential 2-period TOU rate from going into effect as the default rate in October 2023." (*See id.*). However, the OPC questions how fundamentally changing the Commission-approved tariff sheets a mere few days before Evergy is to begin implementing the new TOU rates will avoid customer confusion and misinformation. (*See id.*).

To make the change to the planned TOU rates at this late date will likely create additional customer confusion as customers work to identify how the new default rate affects them and why Evergy changed the default rate. (Mem. 4 ("Changing the default rate now and providing accompanying utility messaging may serve to further confuse those customers who are presently confused by the TOU rates.")). Further, "such a shift so late in the process may confuse customers that have not previously been confused." (*Id.*). Again, because Evergy asks that the Commission

¹² Though Evergy filed the September 21 Proposed Tariff Sheets as substitute tariff sheets, the OPC presumes that the substitution resets the thirty-day notice requirement of § 393.140(11) RSMo.

make this change arguably after it was to begin implementing the new TOU rates, there will be little to no opportunity to educate¹³ customers on this change prior to it taking effect. Similarly, Evergy asserts in the Application that it “intends to pause its current communication efforts with customers designed to encourage customers to choose a new rate option.” (Appl. 3). Evergy’s failure to further engage with its customers regarding the implementation of TOU rates a mere few days prior to the date it was to begin implementing those rates is likely to create additional customer confusion.

Further, Evergy does not identify how making the requested change will avoid “misinformation regarding the Commission-mandated TOU rates.” (*See id.*). For instance, Evergy provides no indication that it will increase communications with customers in an effort to combat the misinformation. Evergy does not, in fact, even address what misinformation it refers to. Rather, Evergy fails to address the studies that show that 89% to 91% will either save money or will be unaffected by the switch to TOU rates. (*See* Statements of Evergy, Aug. 10, 2023 Agenda at approximately 45:20, <http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6626>). It has cited to no harm that will be avoided by changing the default rate.

For at least these reasons, the Commission should find Evergy’s grounds to satisfy the good cause requirement for tariffs to take effect on less than 30-days’ notice are deficient and should deny its request.

¹³ Educating customers on this change will also likely increase Evergy’s education costs, which will, in turn, likely increase costs to customer. (Mem. 4 (recognizing that Evergy has “expended costs for months in a TOU educational campaign” and that “[t]hese costs have been ordered by the Commission to be tracked for consideration for potential inclusion in customer rates in the Company’s next rate cases.” (footnotes omitted)). Evergy has not identified how these increased costs would be “in the public interest.” (Original Appl. 14).

C. **Evergy's Request for a Waiver of the Commission's 60-Day Notice Requirement**

Finally, in its Original Application, Evergy requested that the Commission waive the requirement that it file a notice at least 60 days prior to filing a new case with the Commission. (Appl. 14-15). To date, Evergy has not filed a 60-day notice, as required by Commission Rule 20 CSR 4240-4.017(1). Therefore, even though Evergy did not address this request in its Amended Application, the OPC infers that Evergy maintains its request to waive the 60-day notice requirement. Again, Evergy's identified "good cause" is insufficient to support its request. Further, assuming that Evergy should have filed a 60-day notice, it has also violated the plain language of the Commission's Rule requiring the notice.

Commission Rule 20 CSR 4240-4.017(1) requires in most cases that "[a]ny person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such a case." 20 CSR 4240-4.017(1). This notice must "detail the type of case and issues likely to be before the commission and shall include a summary of all communication regarding substantive issues likely to be in the case between the filing party and the office of the commission that occurred in the ninety (90) days prior to filing the notice." *Id.* The Rule itself explicitly allows for waivers for "good cause." 20 CSR 4240-4.017(1)(D). In discussing good cause, the Rule states that

[g]ood cause for waiver may include, among other things, a verified declaration from the filing party that it has had no communication with the office of the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case¹⁴ or that circumstances prevented filing the required notice and delaying the filing for sixty (60) days would cause harm.

Id.

¹⁴ Evergy explicitly acknowledges in the Original Application that it has had "some communication with the office of the commission within the prior 150 days regarding substantive issues involving the implementation of its TOU rate plans." (Appl. 14-15). Therefore, Evergy cannot rely on its lack of communication with the Commission to form the basis for good cause to grant the waiver. *See* 20 CSR 4240-4.017(1)(D).

Evergy asserted in the Original Application that good cause exists to grant the waiver in this case because it “is currently under the requirement to implement the TOU program no later than October 1, 2023^[15] and the 60-day notice requirement would delay the filing of the Application after this date.” (Appl. 14). Though this statement appears to suggest that “delaying the filing for sixty (60) days would cause harm,” it does not allege that any “circumstances prevented filing [of] the required notice.” *See* 20 CSR 4240-4.017(1)(D). Rather, Evergy has identified no reason why it could not have requested these changes sooner, including at some point in the nine months since the Commission issued its Amended Order and that Amended Order became effective. Also, Evergy previously requested the very relief it seeks in the Amended Application and the Commission rejected it. (*See* Rate Case Appl. for Rehearing 7; Am. Order 58-76). Evergy chose not to raise this point again after the Commission rejected it. Evergy’s attempted second bite at the apple and delayed filing simply cannot support a finding of good cause to grant a waiver from the Commission’s Rule.

Further, assuming that Evergy should have filed the 60-day notice, the Rule explicitly requires that the notice “include a summary of all communication regarding substantive issues likely to be in the case between the filing party and the office of the commission that occurred in the ninety (90) days prior to filing the notice.” 20 CSR 4240-4.017(1). Here, Evergy asserts only that

Since there has been intense interest by the public, legislators, the press and other interested parties, the Company has had some communication with the office of the commission within the prior 150 days regarding substantive issues involving the implementation of its TOU rate plans. These discussions include Commissioner and legal advisor staff participation at an Agenda Meeting on August 10, 2023, the TOU

¹⁵ As discussed above, it appears that Evergy no longer believes it is “under the requirement to implement the TOU program no later than October 1, 2023.” (*See* Original Appl. 14). In its Amended Application, Evergy now asserts that it “is planning to initiate the plan to default customers to the high-differential TOU rate in mid-October” and “is planning to have the transition completed by the end of the year.” (Am. Appl. 3).

implementation workshop in File No. EW-2023-0199 and other more informal discussions concerning TOU implementation.

These statements, especially the statement that “other more informal discussions concerning TOU implementation” have taken place, fail to provide the necessary “summary of all communication” contemplated by 20 CSR 4240-4.017(1).

Because Evergy fails to meet the requirements of 20 CSR 4240-4.017 to request either a waiver of the Commission’s Rule or to meet the filing requirements of the Rule, the Commission should deny its request for a waiver of the sixty-day notice requirement.

For the reasons addressed above, each of Evergy’s timing requests are deficient and the Commission should deny each of them.

V. Evergy has Failed to Identify the Commission’s Legal Authority to Consider the Amended Application and September 21 Proposed Tariff Sheets

Finally, if the Commission determines that it will consider Evergy’s Amended Application, the Commission should reject it because Evergy has failed to identify the legal basis for the Commission’s authority to consider the Amended Application, while at the same time requesting that the Commission act in an expedited manner. Even if the Commission has the legal authority to consider the Amended Application, there will be insufficient time for the Commission to hear and consider the positions of other interested parties during Evergy’s requested timelines.

Nine months after the Commission issued its December 8, 2022 Amended Order and less than one month before it is to begin implementing the TOU rates, Evergy requested in the Original Application that the Commission make substantive changes to the tariff sheets describing those rates. Ten days later, Evergy filed its Amended Application, withdrawing some of its requested relief, but maintaining its request for the Commission to change the default TOU rate. In filing this Amended Application, Evergy requested that the Commission issue an order and allow

compliance tariff sheets—that would be filed after the Commission ruled on the Amended Application—to take effect by October 14, 2023. Approximately three days later, Evergy filed substitute tariff sheets, bearing an effective date of October 8, 2023—only approximately sixteen days after it filed those tariff sheets. The Commission should not allow such a process to fundamentally change a material portion of its Amended Order.¹⁶

Evergy cites no legal basis in either the Original Application or the Amended Application for the Commission to consider its request to change the tariff sheets implementing the TOU rates. (*See generally* Original Appl.; Am. Appl.). Although it refers to § 393.140(11) RSMo. and § 393.150 RSMo in its Response to Staff, it fails to explain how either statute provides the Commission the legal authority to consider its requested relief. (*See generally* Resp. to Staff).

Even if the Commission considers Evergy’s requested relief under the “file and suspend” method, which does not require a hearing, it must “consider all factors relevant to the proper maximum price to be charged.”¹⁷ *See State ex rel. Utility Consumers Council, Inc. v. Pub. Serv.*

¹⁶ Because Evergy maintains its request for the Commission to act expeditiously, it is also likely that the Commission will violate the OPC’s right to challenge the Commission’s decision. *See State ex rel. Office of the Pub. Counsel v. Pub. Serv. Comm’n of the State of Mo.*, 409 S.W.3d 522, 528-29 (Mo. Ct. App. 2013) (hereinafter the “*Western District Writ Case*”); *see State ex rel. Office of the Pub. Counsel v. Pub. Serv. Comm’n*, 236 S.W.3d 632, 636 (Mo. banc 2007) (hereinafter the “*Supreme Court Writ Case*”). The Missouri Court of Appeals, Western District has stated that

it is clear that any shortening of the date on which PSC orders will become effective to less than ten days is presumptively unreasonable and, if challenged, would require the PSC to demonstrate that the circumstances surrounding the case are so extraordinary as to clearly warrant further encroachment on the time provided to the parties in which to exercise their right to apply for rehearing and/or appeal and that the time allowed was reasonably sufficient.

W. Dist. Writ Case, 409 S.W.3d at 529. As addressed in the OPC’s Response, the Commission must give parties at least ten days between the time when it issues its order and when the party must file an application for rehearing. (*See* OPC Resp. 8 (referring to the timelines referenced in the *Western District Writ Case* and the *Supreme Court Writ Case*). Also as addressed in the OPC’s Response, it is unlikely that the Commission can cite to a circumstance surrounding this case that is “so extraordinary as to clearly warrant further encroachment on the time provided to the parties in which to exercise their right to apply for rehearing and/or appeal.” *W. Dist. Writ Case*, 409 S.W.3d at 529; (OPC Resp. 11-12).

¹⁷ Evergy asserts in its Response to Staff that it “is not requesting that the Commission change any rates; rather it is requesting the Commission change the default [TOU] . . . rate to the low-differential TOU rate already approved by the Commission, based on feedback from its customers and state policymakers.” (Resp. to Staff 1 (footnote omitted)). However, in requesting that the Commission change the default rate, Evergy is requesting that the Commission allow

Comm'n, 585 S.W.2d 41, 56 (Mo. banc 1979). In doing so, it should afford all parties ““a full opportunity to be heard, and to defend, enforce and protect his or her rights.”” *In re KCP&L Greater Mo. Operations Co.*, 515 S.W.3d at 757 (quoting *Harter v. Mo. Pub. Serv. Comm'n*, 361 S.W.3d 52, 58 (Mo. Ct. App. 2011)).

In *In re KCP&L Greater Mo. Operations Co.*, the Western District considered whether the Commission violated the public’s due process rights in a case where the Commission did not require the parties to submit pre-filed written testimony and gave the parties only ten business days to prepare for hearing. 515 S.W.3d at 757-58. Citing to § 386.390.5 RSMo., which requires 10 days’ notice prior to a hearing, and 20 CSR 4240-2.130(9),¹⁸ which allows testimony to be taken live, the Western District concluded that the Commission did not violate the public’s due process rights. *Id.* However, in that case, the Commission gave the parties ten business days to prepare for hearing (fifteen calendar days). (*See* Procedural Schedule 1, 3, Doc. 32, Case No. EA-2015-0256 (issuing the Procedural Schedule on January 27, 2016, and scheduling the evidentiary hearing for February 11, 2016)). The Western District also recognized that the parties

- “engaged in discovery, including the depositions of witnesses;”
- “presented a Non-Unanimous Stipulation of Agreed Upon Facts;”
- “filed written position statements regarding the joint list of issues;”
- “made opening statements;”

it to change the rate charged for service, at least for those customers who have not chosen a different TOU rate. This may affect additional customers as well because Evergy has not explained how the change in the default rate will affect those customers who have previously chosen a TOU rate. Further, Staff asserted in the Memorandum accompanying its Interim Recommendation that “[m]aking this change at this time will effectively increase the revenues the Evergy Missouri-jurisdictional utilities will recover beyond the revenue requirement ordered by the Commission in File Nos. ER-2022-0129 and ER-2022-0130.” (Interim Rec. Mem. 10). Therefore, it is difficult to understand how Evergy’s request to change the default rate is not a request to change rates.

¹⁸ At the time of the Western District’s decision, the rule appeared at 4 CSR 240-2.130(9). *See In re KCP&L Greater Mo. Operations Co.*, 515 S.W.3d at 758.

- “presented and cross-examined witnesses;”
- “offered rebuttal testimony; and”
- “filed written briefs at the conclusion of the case.”

In re KCP&L Greater Mo. Operations Co., 515 S.W.3d at 758. Approximately 111 days existed between the time that Kansas City Power and Light (“KCP&L”) filed its Application in that case and the date when the Commission issued its Report and Order. (*See* Docket Sheet, Case No. EA-2015-0256 (identifying that KCP&L filed its Application on November 12, 2015, and the Commission issued its Report and Order on March 2, 2016)). That equated to approximately ninety-one days between the time that KCP&L filed its Application and when the Commission held the evidentiary hearing in the matter. (*See id.* (identifying that KCP&L filed its Application on November 12, 2015, and the Commission held the evidentiary hearing on February 11, 2016)).

This case differs greatly from the case the Western District considered in *In re KCP&L Greater Mo. Operations Co.* For instance, the condensed timeframe for the Commission to review Evergy’s request in the Amended Application means that no party will be allowed to participate in the full and robust discovery it would typically pursue.¹⁹ Pursuant to Commission Rule, parties have 20 days to respond to data requests and 10 days to object or request additional time to answer. 20 CSR 4240-2.090(2)(C)-(D). Here, Evergy filed its Original Application after 7:00 p.m. on Friday, September 8, 2023. Ten days later, on Monday, September 18, 2023, Evergy filed the Amended Application, also after 7:00 p.m. Because the September 21 Proposed Tariff Sheets take

¹⁹ The OPC acknowledges and appreciates that Evergy has responded to some of the OPC’s data requests issued in this case. However, given the condensed timeframe in which Evergy asks the Commission to review this case, the OPC has the ability to conduct only limited discovery.

The Commission’s Staff has also repeatedly noted its inability to conduct full discovery in this matter. (*See* Staff Status Report 3 (noting that a “full recommendation can be provided only after contested case proceedings following an ample opportunity for discovery”); Interim Recommendation (stating as its third recommendation that the Commission consider changes to Evergy’s proposed tariff sheets, but noting that “Staff has not had any opportunity for discovery in this matter, nor sufficient time to thoroughly review and analyze proposed tariff changes of this magnitude.”).

effect by operation of law on October 8, 2023, presumably Evergy now requests that the Commission act no later than 11:59 p.m. on October 7, 2023. Therefore, only eighteen days exist between when Evergy filed the Amended Application and when the Commission must decide whether to act.²⁰ It simply cannot be said that any party will have the opportunity to engage in full and robust discovery prior to the date when the Commission must decide whether to act.

Further, the condensed timeline Evergy requests significantly hinders parties' ability to present their arguments to the Commission. Typically, parties present numerous rounds of pre-filed testimony and participate in an evidentiary hearing, which includes live witness cross-examination. Even in the case underlying *In re KCP&L Greater Mo. Operations Co.*, the Commission allowed the parties to participate in an evidentiary hearing. 515 S.W.3d at 758. Here, the Commission has cancelled the previously scheduled hearing and has not entered a procedural schedule allowing for pre-filed testimony. Although the OPC presents a memorandum previewing its factual and policy arguments against Evergy's requested relief, it cannot be said that any party has had a full opportunity to present all of its arguments—including its responses to other parties' arguments—against Evergy's requested relief.²¹

²⁰ If the Commission calculates the amount of time to conduct discovery beginning from the date that Evergy filed the Original Application and ending on the date that the Commission must decide whether to act, only approximately twenty-eight days exist.

²¹ Though the Commission may have previously received evidence that assisted in its decision to choose a default TOU rate, this evidence has not been formally entered into the record in this matter. Therefore, it is questionable whether it is proper for the Commission to rely on this evidence in rendering its decision in this case.

Further, there has been little to no opportunity to address the new evidence that has arisen since the Commission previously considered what the appropriate default rate should be. For instance, Evergy has presented two studies that show, based on historical data and with no assumed behavioral changes, a majority of customers will either save money or be unaffected by the current default TOU rate. (*See* Statements of Evergy, Aug. 10, 2023 Agenda at approximately 40:00, 45:20, <http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6626>).

Similarly, the parties have had little to no opportunity to rebut the factual arguments made by Evergy. For instance, as addressed in the attached OPC memorandum, based on the number of customers that have chosen a TOU rate plan to date, Evergy's apparent assertion that customers prefer Staff's low-differential TOU rate appears questionable. (*See* Mem. 2).

Evergy has failed to identify the legal basis for the Commission to consider the relief it requests in the Amended Application and the September 21 Proposed Tariff Sheets. Even if the Commission were to consider Evergy's request under the "file and suspend" method, the Commission must consider all relevant factors in reaching its decision. *See Utility Consumers Council, Inc.*, 585 S.W.2d at 56. In doing so, the Commission should afford all parties the "opportunity to be heard in a meaningful manner." *See In re KCP&L Greater Mo. Operations Co.*, 515 S.W.3d at 757. Because based on Evergy's requested timeline there will not be sufficient time to do so, the Commission should reject both Evergy's Amended Application and its September 21 Proposed Tariff Sheets.

VI. Conclusion

The OPC is aware of the concerns raised in the Commission's Agenda discussions associated with Evergy's implementation of its TOU rates. The OPC is also aware that some of the public sentiment regarding the rates themselves is negative. However, Evergy itself has presented two studies to the Commission that demonstrate that a significant majority of its customers will either benefit from the transition to the current default TOU rate or will be unaffected by it. Therefore, even aside from the legal and policy concerns that arise with changing the tariff sheets at this last stage, the rates as ordered by the Commission should be allowed to go into effect. If Evergy later wishes to seek changes to its tariff sheets in accordance with the Commission's rate case procedure, a process exists for it to do so. This process allows an opportunity for all parties to engage in robust discovery on Evergy's requested changes, for the Commission to consider the viewpoint of all stakeholders, and for the Commission to consider all relevant factors.

Evergy should continue to educate its customers regarding the TOU rates and assist them in choosing the rate that is best for them. Such education should amplify to customers the findings of the two studies conducted at Evergy's direction. Evergy should review its educational program, which may contain messaging that could be encouraging unfounded negative perceptions regarding TOU by its customers. It should also include "the why" of TOU rates in its educational program. Evergy's TOU education should continue even after it has fully implemented the TOU rates, especially as the year approaches the summer months, which may result in larger price differentials.

WHEREFORE, for the reasons addressed above, the Office of the Public Counsel respectfully requests that the Commission reject Evergy's September 21 Proposed Tariff Sheets and dismiss Evergy's Amended Application. If the Commission denies the OPC's motion to dismiss and considers Evergy's Amended Application, the OPC respectfully requests that the Commission reject Evergy's timing requests as deficient and reject the Amended Application for the reasons addressed in this pleading and in the attached memorandum.

Respectfully submitted,

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