

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
vs.)	<u>Case No. EC-2024-0092</u>
)	
Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West,)	
)	
Respondents.)	

Staff’s Amended Complaint

COMES NOW the Staff of the Missouri Public Service Commission and for its *Amended Complaint*, states as follows:¹

Introduction:

1. This matter concerns the failure of Respondents Evergy Metro, Inc., doing business as Evergy Missouri Metro, and Evergy Missouri West, Inc., doing business as Evergy Missouri West (collectively, “Evergy” or the “Company”) to comply with the Commission’s *Amended Report and Order* issued December 8, 2022, and prepare their ratepayers for the Time-of-Use (“TOU”) rate structure approved by the Commission in the Respondents’ last general rate case, Case Nos. ER-2022-0129 and ER-2022-0130.

Complainant:

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

¹ New matter is **bolded**.

Respondents:

3. Respondent Evergy Missouri Metro (“EMM”) is a Missouri corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. EMM is primarily engaged in the business of generating, transmitting, distributing, and selling electric energy in portions of eastern Kansas and western Missouri. EMM is an electric corporation and public utility as defined in Section 386.020, RSMo., as amended. A *Certificate of Good Standing* was filed with the Commission in Case No. EN-2020-0063 and is incorporated herein by reference in accordance with 20 CSR 4240-2.060(1)(G). EMM’s registered agent is CSC-Lawyers Incorporating Service Company, 221 Bolivar St., Jefferson City, MO 65101.

4. Respondent Evergy Missouri West (“EMW”) is a Delaware corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. EMW is primarily engaged in the business of generating, transmitting, distributing, and selling electric energy in portions of western Missouri and in Kansas. EMW is an electric corporation and public utility as defined in Section 386.020, RSMo., as amended. A *Certificate of Authority for a Foreign Corporation* to do business in the State of Missouri, evidencing EMW’s authority under the law to conduct business in the State of Missouri, was filed with the Commission in Case No. EN- 2020-0064 and is incorporated herein by reference in accordance with 20 CSR 4240-2.060(1)(G). EMW’s fictitious name registration was also filed in Case No. EN-2020-0064 and is incorporated herein by reference. EMW’s registered agent is CSC-Lawyers Incorporating Service Company, 221 Bolivar St., Jefferson City, MO 65101.

5. Both EMM and EMW are wholly-owned subsidiaries of Evergy, Inc., a publicly-traded,² public utility holding company regulated under the Public Utility Holding Company Act of 2005 (“PUHCA 2005”), which was enacted as part of the Energy Policy Act of 2005 (“EPAAct”).³ Evergy, Inc.’s principal office and place of business is at 1200 Main Street, Kansas City, Missouri 64105, and its registered agent is CSC-Lawyers Incorporating Service Company, 221 Bolivar St., Jefferson City, MO 65101. As well as EMM and EMW, Evergy, Inc., owns Evergy Kansas Central, Inc., a regulated electric utility located in Kansas. Evergy, Inc., is a Missouri general business corporation in good standing with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. Through its operating subsidiaries, Evergy, Inc., serves 1.6 million customers in Missouri and Kansas.

Jurisdiction:

6. In the verified application filed by EMM and EMW in Case No. ET-2024-0061, both EMM and EMW admit that they are primarily engaged in the business of generating, transmitting, distributing, and selling electric energy in portions of the State of Missouri and that each of them is an electrical corporation and public utility within the intendments of the *Public Service Commission Law*, Chapters 386 and 393, RSMo.

7. EMM and EMW are subject to the jurisdiction, regulation and control of this Commission. Section 386.020(43), RSMo., and Chapters 386 and 393, RSMo., the *Public Service Commission Law*.

² NASDAQ, under ticker symbol “EVRG.”

³ ***In the Matter of Great Plains Energy Inc.’s Acquisition of Westar Energy, Inc. and Related Matters***, Case No. EM-2016-0324 (***Great Plains Energy Incorporated’s Verified Opposition to Staff’s Motion to Open Investigation and Request for Order Declining Jurisdiction***, filed June 2, 2016), p. 2.

8. Section 386.390.1, RSMo., authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission

9. The Commission has by rule authorized the Staff Counsel's Office to bring complaints on behalf of the Staff: "A complaint may also be filed by . . . the commission staff through the staff counsel"4

10. Section 386.570.1, RSMo., provides for a penalty between \$100.00 to \$2,000.00, per offense, for "[a]ny corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission" Each day that a continuing violation persists is counted as a separate offense.⁵ In the case of a corporate respondent, the acts and omissions of its officers, agents and employees are deemed to be the acts and omissions of the corporation.⁶ All penalties are cumulative.⁷

⁴ Rule 4 CSR 240-2.070(1).

⁵ Section 386.570.2, RSMo.

⁶ Section 386.570.3, RSMo.

⁷ Section 386.590, RSMo.

Facts Common to All Counts:

11. The Commission issued its *Amended Report and Order* in cases ER-2022-0129 and ER-2022-0130 on December 8, 2022, effective December 18, 2022.⁸ Therein, the Commission made extensive findings of fact with respect to rate design, a conclusion of law, and set out a lengthy discussion of the various considerations it weighed regarding the prospective rate structure to be authorized for Evergy. The Commission gave certain and unmistakable direction to the Company:

Count I

12. Staff hereby realleges by reference, as though fully set out herein, the allegations set out in Paragraphs 1 through 11, above.

13. Evergy did not file testimony as it agreed to do in the Stipulation approved by the Commission in its *Order Approving Four Partial Stipulations and Agreements* in Case Nos. ER-2022-0129 and ER-2022-0130 (“*Stipulation Order*”), effective October 2, 2022, nor has Evergy estimated the cost to provide the data it committed to provide, nor identified the processes that it would require to provide the data to estimate the cost of carrying out that process.

14. The Commission in its *Order Approving Four Partial Stipulations and Agreements* in Case Nos. ER-2022-0129 and ER-2022-0130 (“*Stipulation Order*”), effective October 2, 2022, approved the *Stipulation and Agreement* dated August 30, 2022; which included a provision at page 12 in which Evergy committed as follows:

⁸ *In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro*, Case No. ER-2022-0129, and *In the Matter of In the Matter of Evergy West, Inc. d/b/a Evergy Missouri West*, Case No. ER-2022-0130 (*Amended Report & Order*, issued December 8, 2022) (hereafter, “*Amended Report & Order*”).

4) Data Retention: a) Prior to July 1, 2023, the Company will identify and provide the data requested in the direct testimony of Sarah Lange. If the requested data is not available or cost-prohibitive to produce, the Company will file a motion to establish an EO docket. In that docket the Company will provide the reason why it cannot provide the requested data and its individual estimate of the cost to provide each set of requested data, for the further consideration of the parties and the Commission.

15. The referenced direct testimony of Sarah Lange described the following discrete pieces of data:

1. Identify and provide the data required to determine: line transformer costs and expenses by rate code; primary distribution costs and expenses by voltage; secondary distribution costs and expenses by voltage; primary voltage service drop costs and expenses; line extension costs, expenses, and contributions by rate code and voltage; and meter costs by voltage and rate code;.

2. For each rate code, provide the total number of customers served on that rate schedule on the first day of the month and the last day of the month;

a. For each rate schedule on which customers may take service at various voltages, the number of customers served at each voltage on the first day of the month and the last day of the month;

3. For each rate code, the number of customers served on that rate schedule on the first day of the month and the last day of the month for which interval meter readings are obtained;

a. For each rate code on which customers may take service at various voltages, the number of customers served at each voltage on the first day of the month and the last day of the month which interval meter readings are obtained;

4. For each rate code for which service is available at a single voltage, the sum of customers' interval meter readings, by interval;

a. For each rate code on which customers may take service at various voltages, the sum of customers' interval meter readings, by interval and by voltage;

5. If any internal adjustments to customer interval data are necessary for the company's billing system to bill the interval data referenced in parts 4. and 4.a., such adjustments should be applied to each interval recording prior to the customers' data being summed for each interval;

6. From time to time the Commission may designate certain customer subsets for more granular study. If such designations have been made, the information required under parts 1 – 5 should be provided or retained for those instances.

7. Individual customer interval data shall be retained for a minimum of fourteen months. If individual data is acquired by the Company in

intervals of less than one hour in duration, such data shall be retained in intervals of no less than one hour.

8. Evergy shall:

a. Retain individual hourly data for use in providing bill-comparison tools for customers to compare rate alternatives.

b. Retain coincident peak determinants for use in future rate proceedings.

c. Provide to Staff upon request:

1) the information described in part 1;

2) a minimum of 12 months of the data described in parts 2-5;

3) for rate codes with more than 100 customers, a sample of individual customer hourly data, and identified peak demands for those 100 customers in the form requested at that time (i.e. monthly 15 minute non-coincident, annual 1 hour coincident);

4) for rate codes with 100 or fewer customers, individual customer hourly data, and identified peak demands for those customers in the form requested at that time (i.e. monthly 15 minute non-coincident, annual 1 hour coincident).

d. For purposes of general rate proceedings, Evergy shall provide all data described above for a period of not less than 36 months, except that Staff does not request individual customer data for 36 months except as described in part 8.c.3.

9. Develop the determinants for assessment of an on-peak demand charge to replace the current monthly billing demand charge, and for potential implementation for customers not currently subject to a demand charge; and

10. EMM and EMW begin to retain and study data related to the reactive demand requirements of each rate code, and sample customers within each rate code.

16. On July 7, 2023, Evergy filed its *Motion to Establish Docket for Further Consideration of Data Production*, docketed as Case No. EO-2024-0002. This filing did not include any direct testimony nor did the motion state “the reason why it cannot provide the requested data and its individual estimate of the cost to provide each set of requested data, for the further consideration of the parties and the Commission,” as Evergy committed to do in the August 30, 2022, *Stipulation and Agreement* and which the Commission ordered it to do in the October 2, 2022, *Stipulation Order*.

17. The testimony Evergy did file in Case No. EO-2024-0002 on November 1, 2023 is superficial, and provides gross estimates of costs to provide groups of data. Evergy’s responses to Staff’s data requests in that docket reveal that Evergy has not taken reasonable steps to develop reasonable cost estimates. Specifically, Evergy has responded (to date) that it has not prepared cost estimates for the cost to provide any of the discrete items listed in item 1. Further Evergy’s responses to Staff data requests reveal that Evergy has not developed a provisional process to gather the data it has committed to provide. Simply put, if Evergy doesn’t have a plan for what it would do to comply with its commitments to provide data, the cost estimates Evergy provides to

execute that plan are necessarily unreliable and inconsistent with Evergy's commitments under the Stipulation.

18. Among the information Evergy committed to provide in the August 30, 2022, *Stipulation and Agreement* (or to explain why it could not provide that information and its cost estimate to provide that information) is information necessary to determine the amount of energy sold in each hour to its customers by rate plant.

19. It is critical that Evergy make clear why it cannot provide this information and to provide its estimate of cost to obtain this information for further consideration of the parties and the Commission at the earliest possible instance – as Evergy's counterparties to the August 30, 2022, *Stipulation and Agreement* bargained for Evergy to make a good faith effort to retain this data by July 1, 2023.

20. It is necessary that this data be retained at the earliest possible interval because:

A. Currently, Evergy cannot provide customer usage by time period for its General Use rate separate from its Space Heating rate separate from its various time-based rate plans. B. Evergy has communicated to Staff and other stakeholders that it cannot go back to capture data from its billing system. The best practice to establish future determinants is to examine multiple years of data. The hottest summer months and the coldest winter months are critical to examinations of customer impact as well as to the normalization and annualization of billing units used to develop customer rates. **Evergy's failure to begin the retention of this data is effectively depriving future Commissions of the opportunity to rely on robust customer usage data for setting overall**

revenue requirements, much less the setting of individual rates on various rate plans.

C. Confidential schedule BDL-1 attached to Brad Lutz direct testimony in EO-224-0002 notes that ** [REDACTED]

[REDACTED] ** Access to this information is lost each day. This information is essential for development of on-peak demand charges. Unfortunately, unless progress is made to identify an applicable on-peak demand time period, it is necessary to retain ** [REDACTED] ** Once on-peak demand time periods are identified, it be necessary to retain only the applicable NCP within that time period in each billing period for each customer. A minimum of a year of demand data is necessary. Evergy's failure to begin the retention of this data or to work with stakeholders to identify applicable time periods to limit the amount of data to be retained is effectively depriving future Commissions of the opportunity to rely on this data for use in modernizing Evergy's rate structures.

21. By the conduct set out in Paragraphs 12 through 20 above, Evergy violated the *Stipulation Order* of October 2, 2022, and the *Stipulation and Agreement* of August 30, 2022.

WHEREFORE, Staff prays that the Commission will give due notice to the Respondents and, after hearing, (1) order that Respondents forthwith comply with the *Stipulation Order* of October 2, 2022, and the *Stipulation and Agreement* of August 30, 2022, providing the above-enumerated data to Staff or explaining why it cannot; (2) direct

its General Counsel to seek appropriate penalties from Evergy as authorized by law; and grant such other and further relief as is just in the circumstances.

Count 2

22. Staff hereby realleges by reference, as though fully set out herein, the allegations set out in Paragraphs 1 through 21, above.

23. **Evergy did not meet with stakeholders to discuss rate modernization within 180 days of its tariff effective date as ordered by the Commission in the *Amended Report and Order* issued in Case Nos. ER-2022-0129 and ER-2022-0130.**

24. Ordered Paragraph 14 of the *Amended Report and Order* provided, “Evergy shall host a meeting with interested stakeholders related to its rate modernization plan within 180 days of the effective date of Evergy’s tariffs filed in compliance with this order.”

25. Ordered Paragraph 14 of the *Amended Report and Order* is related to a paragraph found in the same order at page 76, titled “Meeting with Stakeholders.” This heading falls under the “Non-residential Rates, Schedules and Structures,” heading.

26. On Friday, July 7, 2023, Roger Steiner, in-house counsel for Evergy, emailed counsel for various stakeholders the following message, “You may recall that Evergy agreed in the last rate cases to host a meeting with interested stakeholders regarding its rate modernization plan. Would you let Evergy know if you are interested in attending such a meeting as well as provide dates in the next 4 weeks that you can participate in a virtual meeting.”

27. On August 8, at 9:01 AM, Mr. Steiner scheduled the “rate modernization discussion,” for 3:00 PM on August 9, 2023.

28. In its presentation sent to stakeholders the morning of August 8, 2023, Evergy referenced the meeting described above and the 180-day requirement stated in Ordered Paragraph 14 of the *Amended Report and Order*.

29. The rate modernization discussion in the presentation **attached to the original Complaint and incorporated herein by reference** was primarily related to residential rate options.

30. Evergy has not met with interested stakeholders concerning its non-residential rate modernization plan as ordered by the Commission in Ordered Paragraph 14 of the *Amended Report and Order*.

31. By the conduct set out in Paragraphs 22 through 30 above, Evergy violated Ordered Paragraph 14 of the *Amended Report and Order*.

WHEREFORE, Staff prays that the Commission will give due notice to the Respondents and, after hearing, (1) order that Respondents forthwith meet with interested stakeholders concerning its non-residential rate modernization plan as ordered by the Commission in Ordered Paragraph 14 of the *Amended Report and Order*; (2) direct its General Counsel to seek appropriate penalties from Evergy as authorized by law; and grant such other and further relief as is just in the circumstances.

Count 3

32. Staff hereby realleges by reference, as though fully set out herein, the allegations set out in Paragraphs 1 through 31, above.

33. Evergy has not filed its solar subscription ET case as it committed to do in Case Nos. ER-2022-0129 and ER-2022-0130 and as reflected in related case filings EO-2023-0423 and EO-2023-0424.

34. On May 19, 2023, EMM and EMW filed tariff sheets, assigned Tracking Nos. YE-2023-0206 and YE-2023-0208, respectively. The submitted tariff sheets (one per tariff number) replaced previously approved tariff sheets as part of the Solar Subscription Rider (Schedule SSP).

35. On June 1, 2023, Staff filed its response to the tariff sheet filings, *Staff Recommendation to Reject Evergy Metro and Evergy Missouri West's Proposed Tariff Sheets Rider and Motion to Open a New Docket*. Therein, Staff cited several concerns as follows:

A. Through discussions beginning with an email from Brad Lutz to Staff on January 31, 2023, Evergy has informed Staff that it is of the opinion that “the Solar Subscription Rider billing is similar to Net Metering billing,” and that it desired or intended to make changes to its tariff to restrict the availability of the Solar Subscription Rider to customers taking service on the Residential Peak Adjustment rate plan.

B. Staff informed Evergy that it did not see any serious obstacles to offering the SSP to customers on any residential rate plan, but that the “Services and Access” charge of the SSP would need to be set out as applicable to each residential rate plan for these purposes.

C. Staff understood that Evergy would be filing an ET case requesting promulgation of new tariff sheets reflecting Evergy’s preferred outcome and that Staff and other parties would have the opportunity to present alternative solutions to the Commission.

36. On June 7, 2023, Evergy responded with its agreement to the establishment of a new EO case file to consider the 45-day construction audit of the cost and generation projections related to the Hawthorn solar facility and to address any necessary updates to the current Commission-approved Solar Subscription Pilot tariffs.

37. Evergy's response also stated its intent to withdraw the submitted tariff sheets, assigned Tracking Nos. YE-2023-0206 and YE-2023-0208, and to refile them after the conclusion of the new case to update the Commission-approved SSP tariffs currently in effect.

38. Evergy also stated that it would file a new ET docket for the Commission's consideration of the Time-of-Use (TOU) and the Service and Access charge issues contained in Staff's *Recommendation*. In particular, in its response, Evergy stated, "However, the "appropriate rate plan" issue discussed on p. 4 of Staff's *Recommendation*, which the Company understands to be made up of the Time-of-Use ("TOU") and the Service and Access charge issues contained in Staff's *Recommendation*, should not be addressed in the EO docket, which will be focused on Staff's construction audit. The Company will file a new ET docket by June 30, 2023, for those issues to be addressed."

39. To date, this new ET docket filing has not been made and the Time-of-Use ("TOU") and the Service and Access charge issues contained in Staff's *Recommendation* have not been addressed.

40. **By the conduct set out in Paragraphs 32 through 39 above, Evergy violated the agreements and commitments enumerated in those paragraphs.**

WHEREFORE, Staff prays that the Commission will give due notice to the Respondents and, after hearing, (1) order that Respondents forthwith cause the opening

of a new ET docket in which the Time-of-Use (“TOU”) and the Service and Access charge issues contained in Staff’s *Recommendation* will be addressed; (2) direct its General Counsel to seek appropriate penalties from Evergy as authorized by law; and grant such other and further relief as is just in the circumstances.

Count 4

41. Staff hereby realleges by reference, as though fully set out herein, the allegations set out in Paragraphs 1 through 40, above.

42. Evergy did not file its proposed plan for default TOU rates as ordered by the Commission in its prior rate cases, Case Nos. ER-2018-0145 and ER-2018-0146.

43. In the September 25, 2018, *Non-Unanimous Stipulation and Agreement Concerning Rate Design Issues* in Case Nos. ER-2018-0145 and ER-2018-0146,⁹ approved by the Commission in its October 31, 2018, *Order Approving Stipulations and Agreements*,¹⁰ KCP&L and GMO, corporate predecessors of EMM and EMW, agreed as follows: “KCP&L and GMO will submit a Residential TOU rate design in their next rate cases based on lessons learned from the TOU service.”¹¹

⁹ *In the Matter of Kansas City Power & Light Company*, Case No. ER-2018-0145, and *In the Matter of KCP&L Greater Missouri Operations Company*, Case No. ER-2018-0146 (*Non-Unanimous Stipulation and Agreement Concerning Rate Design Issues*, filed September 25, 2018).

¹⁰ *In the Matter of Kansas City Power & Light Company*, Case No. ER-2018-0145, and *In the Matter of KCP&L Greater Missouri Operations Company*, Case No. ER-2018-0146 (*Order Approving Stipulations and Agreements*, issued October 31, 2018) at Ordered Paragraph 1: “The four above-referenced Stipulations and Agreements are approved as a resolution of all issues. The signatory parties are ordered to comply with the terms of the Stipulations and Agreements that they have signed. Copies of the four Stipulations and Agreements are attached to this order and incorporated by reference.”

¹¹ *Non-Unanimous Stipulation and Agreement Concerning Rate Design Issues*, *supra*, at p. 7, para. 2.j.

44. Evergy did not submit a Residential TOU rate design in their next rate cases, ER-2022-0129 and ER-2022-0130, based on lessons learned from the TOU service as ordered by the Commission in its October 31, 2018, *Order Approving Stipulations and Agreements*.

45. **By the conduct stated in Paragraphs 41 through 44 above, Evergy violated the October 31, 2018, *Order Approving Stipulations and Agreements*.**

WHEREFORE, Staff prays that the Commission will give due notice to the Respondents and, after hearing, direct its General Counsel to seek appropriate penalties from Evergy as authorized by law; and grant such other and further relief as is just in the circumstances.

Count 5

46. **Staff hereby realleges by reference, as though fully set out herein, the allegations set out in Paragraphs 1 through 45, above.**

47. **Evergy has not complied with the Commission's order in the *Amended Report and Order* in Case Nos. ER-2022-0129 and ER-2022-0130, to implement a program to engage and educate customers in the approximately ten-month lead-in time until its tariff provisions regarding the 2-period TOU rate as the default rate for residential customers becomes effective.**

48. In the *Amended Report and Order*, the Commission included the following within Ordered Paragraph 9, "Evergy shall implement a program to engage and educate customers in the approximately ten-month lead-in time until its tariff provisions regarding the 2-period TOU rate as the default rate for residential customers becomes effective."¹²

¹² *Amended Report & Order*, pp. 98-99.

49. In the *Amended Report and Order*, the Commission included the following language relevant to this complaint:

A. Given the high differential in the 2-period TOU rate and Evergy's customer surveys showing hesitancy regarding TOU rates, this 2-period high differential rate should take effect beginning on October 1, 2023, to correspond to the start of non-summer TOU season. This will allow more time for customer education prior to implementation and have the transition occur when the rate differential is lower. Additionally, the transition to TOU default rates shall be phased-in between October 1, 2023 and December 31, 2023. The 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, 2023.¹³

B. 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, 2023.¹⁴

C. Evergy shall work with Staff and OPC and permit them a chance to review materials related to the education program and to the implementation of TOU rates from October 1 through December 31, 2023, to ensure the program and implementation have a maximum potential for success.¹⁵

50. On September 8, 2023, only twenty-two days prior to the ordered date for beginning the transition of customers to the default 2-period TOU rate, Evergy filed its

¹³ *Amended Report & Order*, pp. 71-72.

¹⁴ *Amended Report & Order*, p. 74.

¹⁵ *Amended Report & Order* Page 74

Application for Approval of Tariff Revisions to Time-of-Use Program, Request for Waiver of 60 Day Notice Requirement, and Motion for Expedited Treatment (“Application”) in Case No. ET-2024-0061. Attached to the *Application* as Exhibit A, and incorporated herein by reference for all purposes, is a presentation entitled “Time-Based Rate Campaign Tracker, Missouri residential customer survey (23-0013), August 2023” (hereinafter the “*Presentation*”).

51. The *Presentation* generally demonstrates that Evergy’s actions in the ten months since the issuance of the *Amended Report and Order* have failed to engage and educate customers.

52. Evergy violated the *Amended Report and Order* by failing to educate customers as the order required.

WHEREFORE, Staff prays that the Commission will give due notice to the Respondents and, after hearing, direct its General Counsel to seek appropriate penalties from Evergy as authorized by law; and grant such other and further relief as is just in the circumstances.

Count 6

53. **Staff hereby realleges by reference, as though fully set out herein, the allegations set out in Paragraphs 1 through 52, above.**

54. Evergy’s attempts at customer education were unreasonable in that they were alarmist and failed to include simple information describing time-based rate plans. Further, Evergy’s attempts at customer education are misleading as to the design and operation of the rate plans across seasons.

55. The first information many Evergy customers received is reproduced below:

Check out your new time-based plans...

[Standard Peak Saver](#) | [Peak Reward Saver](#) | [Nights & Weekends Saver](#) | [Nights & Weekends Max Saver](#)

Summer Weekdays (Mon-Fri)

Time Period	Rate (\$/kWh)
12 AM - 4 PM	0.05
4:01 PM - 8:17 PM	0.08
8:18 PM - 12 AM	0.05

Standard Peak Saver

- ✓ **Who's it for:** Everyday users. This is Evergy's standard default plan.
- ✓ **Savings level:** Some energy shifting effort and flexibility needed during the summer (June-Sept)
- ✓ **Tip:** Set your thermostat to avoid cooling during summer peak hours of 4-8 pm

This is our new standard rate plan that offers a discounted price for electricity 8 months out of the year but also has a peak price from 4-8 pm during the weekday summer months (June-September). To avoid paying a higher price for energy, it will be important to shift your large energy usage to mornings, overnight, or weekends in the summer. There is only a peak price during the summer months. See peak and off-peak pricing for your area by clicking the [Get More Details](#) button.

56. This description frightened and misled customers with its “tip,” to “set your thermostat to avoid cooling during summer peak hours of 4-8 pm,” and its statement “to avoid paying a higher price for energy, it will be important to shift your large energy usage to mornings, overnight, or weekends in the summer.”

57. This description mislead customers to believe that time-based charges on this plan will exist only during summer months.

58. Evergy has made no apparent effort to educate customers regarding the elimination of the discounted rate plans.

59. Pending additional discovery, Staff expects to adduce evidence that Evergy’s rate plan brand names resulted in needless confusion, Evergy’s attempts at education focused on “Missouri,” and resulted in misinformation, and Evergy’s focus on “savings,” resulted in unnecessary confusion.

60. Various slides in the presentation entitled “Time-Based Rate Campaign Tracker, Missouri residential customer survey (23-0013), August 2023,” demonstrate

Evergy's failure to take advantage of the eleven-month educational window provided by the Commission, and the customer confusion that has resulted.

a. "Knowledge of Evergy's time-based rate plans is fairly low (15% Top 2 Box) and remains flat at this point. The details of the time-based rates are just now starting to be communicated in this phase of the campaign and were expected to be fairly low in August."¹⁶

b. In June of 2023, seven months since the issuance of the *Order*, and only four months before customers are to begin transitioning to the default 2-period TOU rate, only 45% of customers surveyed answered yes to the question "Before today, have you ever heard of Evergy's time-based rate plans? This would be a rate plan where the costs of electricity will vary based on the time of day that you use it."¹⁷

c. In July of 2023, eight months since the issuance of the *Order*, and only three months before customers are to begin transitioning to the default 2-period TOU rate, only 66% of customers surveyed answered yes to the question "Before today, have you ever heard of Evergy's time-based rate plans? This would be a rate plan where the costs of electricity will vary based on the time of day that you use it."¹⁸

d. In August of 2023, nine months since the issuance of the *Order*, and only two months before customers are to begin transitioning to the default 2-period TOU rate, only 76% of customers surveyed answered yes to the question "Before

¹⁶ *Application*, Ex. A, p. 3.

¹⁷ *Application*, Ex. A, p. 12.

¹⁸ *Application*, Ex. A, p. 12.

today, have you ever heard of Evergy's time-based rate plans? This would be a rate plan where the costs of electricity will vary based on the time of day that you use it."¹⁹

e. In August, 2023, only 11.9% of customers surveyed responded in the "top 2 box[es]" to the question "How would you rate your knowledge of the different time-based rate plans that Evergy allows you to choose from?"²⁰

f. "Just over one-third (34%) of customers indicated they know nothing or very little about Evergy's time-based rates at this point."²¹

g. As of August 2023, 59% of customers who stated they knew about changes to rate plans from Evergy stated that they heard about these changes by "Email from Evergy," and 30% indicated they heard about these changes by "Mail from Evergy." (customers could select more than one option.)²²

h. While in August 90% of survey respondents had "seen or heard about Evergy's new rate options,"²³ it appears that 35.2% of those respondents indicated that "I know they exist but don't know anything about them / I know a very little about them," and 33.4% indicated that "I know a little bit about them," in response to the question "How familiar are you with the different type of rate plans available from Evergy. ."²⁴

¹⁹ *Id.*

²⁰ *Application*, Ex. A, p. 14, 14.6% of 76% = 11%.

²¹ *Application*, Ex. A, p. 15.

²² *Application*, Ex. A, p. 32.

²³ *Application*, Ex. A, p. 6.

²⁴ *Application*, Ex. A, p. 9.

i. In response to the question “How easy will it be for you to make changes to your electric usage to fit with your new rate plan,” while 50% of customer responses in June believed it would be “somewhat easy,” “very easy,” or “extremely easy,” in July that percent dipped to 43%, and in August it was 46%.²⁵

j. As of August, only 23% of customers responded that the statement “Evergy provides resources and information,” applied to Evergy.²⁶

k. As of August, only 20% of customers responded that the statement “Evergy is proactive and transparent,” applied to Evergy.²⁷

l. As of August, only 14% of customers responded that the statement “Communications from Evergy fit their image,” applied to Evergy.²⁸

m. The percent of customers who think they will save money on the new rate plan has gone down since July, and the percent of customers who think they won’t save money on the new plan has gone up from 42% in July to 55% in August.²⁹

n. “In August, 76% of Missouri residential customers had heard about Evergy’s time-based rates. That is a 68% increase from the baseline measurement in June.”³⁰

²⁵ *Application*, Ex. A, p. 34.

²⁶ *Application*, Ex. A, p. 40.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Application*, Ex. A, p. 35.

³⁰ *Application*, Ex. A, p. 3.

o. “The number of Missouri residential customers who recall Evergy communications about the new time-based rates has doubled in the past couple of months (increased from 32% to 69%).”³¹

p. As of August 2023, in response to the question “What concerns, if any, do you have about switching to a rate plan where the costs of electricity will vary based on the time of day that you use it?” 73% of respondents were concerned that “My bill will go up,” 45% were concerned that “Need electricity during peak hours,” 42% were concerned that “Can’t use electricity when I need to,” 37% were concerned that “I don’t know enough,” and 30% were concerned “I will pick the wrong plan.”³²

61. This final point is a good illustration of the confusion that Evergy’s campaign has caused. Evergy’s alarmist advertising implied that customers should not use energy during peak hours. In fact, while customers will pay more for energy used during peak hours, the reduction in the cost of energy in other hours will offset the increased charges for energy used during peak hours. Evergy has failed to educate customers on the offsetting design of the time-based rates relative to current rates.

62. Concurrent with the filing of this complaint, Staff is propounding to Evergy a request for production of all ads, educational materials, and social media posts. Staff will file an amended complaint within a reasonable time of the production of these materials that more specifically identifies misleading, alarmist, and inaccurate content.

³¹ *Id.*

³² *Application*, Ex. A, p. 33.

Evergy provided some subset of the indicated materials on November 9, 2023, in File No. EW-2023-0199.

63. On November 15, 2023, technical Staff became aware that Evergy confirmed practices that had been alleged in customer comments and/or informal complaints. These practices include violations of Commission rule 13.015(C), which requires billing periods of 26 – 35 calendar days. When Evergy customers requested to be switched to a ToU plan (or switched ToU plans) in the middle of a billing cycle Evergy chose to issue bills closing out the service on the Customer's then-current rate code, which may be issued for a service period of less than 26 days. Evergy then issues a bill for service on the new rate reflecting the remaining days in the billing cycle plus the next billing cycle, which may exceed 35 calendar days.

64. On November 15, 2023, technical Staff became aware that Evergy was considering (or had already begun) to address its violations of Commission rule 13.015(1)(C) by waiting until the next bill cycle to transition customers to a ToU plan, or to switch ToU plans. Staff does not contend in this complaint that this practice would be in violation of the tariffs of Evergy Missouri Metro or Evergy Missouri West, however this practice would be inconsistent with representations that Evergy has made to the general public and to Commissioners.

65. By the conduct set out in Paragraphs 53 through 64, above, Evergy violated the *Amended Report and Order*.

WHEREFORE, Staff prays that the Commission will give due notice to the Respondent and, after hearing, (1) order that Respondent forthwith undertake an effective customer education plan as directed in the *Amended Report and Order*; (2) direct its

General Counsel to seek appropriate penalties from Evergy as authorized by law; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

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Missouri Public Service Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, **on this 20th day of November, 2023.**

/s/ Kevin A. Thompson