

**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)	Case No.ET-2024-0061
West, Inc. d/b/a Evergy Missouri West)	
for Approval of Tariff Revisions to TOU)	
Program)	

OPC’S RESPONSE TO ORDER DENYING REHEARING

COMES NOW the Office of the Public Counsel (“OPC”) and offers this response to the Public Service Commission’s November 1, 2023, *Order Denying Application for Rehearing and Reconsideration*, and states:

1. The OPC is not appealing the Commission’s September 27, 2023, *Order Approving Amended Application and Tariff* (“Order”). However, given the serious nature of the issues raised by both the OPC and the Commission’s Staff, the OPC is compelled to explain the basis for its decision not to file an appeal.¹

2. The OPC is charged with representing the public interest in matters that come before the Public Service Commission. § 386.710 RSMo. That representation necessarily requires the OPC to endeavor to protect the public in short-term matters, such as requests for rate increases. That representation also requires the OPC to endeavor to protect the long-term interests of the public,

¹ For extensive citations supporting the OPC and Staff Counsel’s claims of legal error, see: Staff’s Motion to Suspend, September 13, 2023, EFIS No. 7; Motion to Suspend Hearing, September 14, 2023, EFIS No. 8; 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, September 15, 2023, EFIS No. 15; and Response to Evergy’s Notice of Withdrawal of Proposals and Amendment to Application, and Motion to Dismiss, September 25, 2023, EFIS No. 25.

such as matters of due process and other ratepayer protections that, if eroded, could threaten the public interest indefinitely.

3. The most significant issue in this case, from a public interest perspective, is the long-term interest in preserving established principles that ensure ratemaking decisions follow a fair and open process.² That interest includes the recognition that decisions impacting rates and revenues follow a Commission review that considers all relevant factors and resolves contested issues based on evidence-based findings. The OPC cannot recall any prior Commission decision that departed from these consumer protections to the degree that occurred in this case.

4. In determining whether to appeal any Commission order, the challenge for the OPC is to weigh the public interest impacts of not appealing, whereby the Order will become final, against the public interest impacts of a reversal of the Commission's Order by an appellate court.

5. If the OPC were to succeed on appeal, and the Order was reversed, it would occur months or even a year after customers defaulted into a new time-of-use (TOU) rate plan. It would likely cause customer confusion and opposition, as it would force another significant rate plan change for the majority of customers. The impact of that change would be a further erosion of regulatory certainty, and potentially lead to a negative view of TOU rates generally. This outcome would be contrary to the public interest.

² If the Commission had granted Evergy's initial and lawful request for rehearing in the rate case and changed the default rate in that case, the OPC would not have opposed the Commission's change as it would have followed the lawful process established for rehearing rate case decisions.

6. Missouri case law establishes that “an administrative agency is not bound by *stare decisis*, nor are PSC decisions binding precedent.” *Spire Mo., Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 235 (Mo. 2021). Any legal errors committed by the Commission in its Order cannot provide a legal basis for similar legal errors in future cases. The OPC is hopeful that this break from established legal principles does not indicate that the Commission no longer values the long-held principles and processes that have successfully benefited the Missouri public and the utilities that serve them for well over a century.

WHEREFORE, the Office of the Public Counsel offers this response to explain its basis for not appealing and draw the Commission’s attention to these issues and concerns.

Respectfully submitted,

/s/ Marc Poston

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 1st day of December 2023.

/s/ Marc Poston