

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

The Staff of the Missouri Public Service Commission,
Complainant,
v.
Evergy Metro, Inc. d/b/a Evergy Missouri Metro; and Evergy Missouri West, d/b/a Evergy Missouri West, Inc.,
Respondents.

Case No. EC-2024-0092

**Staff’s Response in Opposition to Evergy’s
Proposed Procedural Schedule and
Proposed Discovery Conditions**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Staff’s Response in Opposition to Evergy’s Proposed Procedural Schedule and Proposed Discovery Conditions*, states as follows:

1. As stated in its *Proposed Procedural Schedule*, Staff has been unable to reach agreement with Evergy on either a *Proposed Procedural Schedule* or *Proposed Discovery Conditions*. The points of contention are:

- a. Evergy’s proposal that it have three months, from February 9 to May 9, in which to prepare its Rebuttal Testimony;
- b. Staff’s proposal to reduce the DR response and objection intervals after direct testimony is filed.

I. Evergy's Proposed Three Months to Prepare Rebuttal Testimony is Unnecessary and is Actually Intended to Delay the Resolution of this Case:

2. Three months for the preparation of rebuttal testimony is an unusually long interval in PSC cases. Evergy cites Case No. EC-2015-0309, in which direct testimony was due on August 21 and rebuttal testimony on November 19. But that case is an outlier.

3. In Case No. EC-2015-0315, a Staff complaint against Ameren Missouri in which the procedural vehicle was a motion for summary determination, the Commission allowed Ameren Missouri only two weeks to respond to Staff's motion and allowed Staff only one week to reply to Ameren Missouri's response. The Commission adopted the same schedule (two weeks to respond) in Case No. EC-2009-0430, a Staff complaint against Evergy's predecessors, KCP&L Greater Missouri Operations Company and Kansas City Power & Light Company that also employed summary determination as a procedural vehicle. In Case No. EC-2009-0078, a Staff complaint against The Empire District Electric Company, the Commission ordered that the company file rebuttal testimony on January 30, about two months after Staff's direct on November 26. In that case, the frankly unusually long interval of two months was due to the intervening Christmas holiday. In Case No. GC-2014-0216, a Staff complaint against Laclede Gas Company and Southern Union Company, both doing business as Missouri Gas Energy, the Commission allowed the respondents about six weeks to prepare their rebuttal testimony after Staff filed its direct testimony.

4. There is no practical reason that Evergy requires three months to prepare its rebuttal testimony. The purpose of rebuttal testimony is to respond to the direct

testimony of the opposing party or parties. Once that testimony and its supporting workpapers are received and read, it is only necessary for the company witnesses to submit such DRs or other discovery requests as are necessary for gathering information to analyze and rebut the direct testimony and then to draft appropriate rebuttal testimony. This process does not require three months to complete.

5. Evergy pleads the press of other business as a reason that it requires three months to prepare its rebuttal testimony. But that is a burden that weighs equally on both Evergy and Staff, for the Staff is a party to all of the cases that Evergy cites and more besides.

6. Evergy's real purpose is delay. This is revealed by paragraphs 8-12 of Evergy's proposed schedule and response to Staff's schedule. This purpose is unmistakably revealed in Evergy's pleading. In Paragraph 9, Evergy states:

As discussed in Evergy's Response to Amended Complaint filed on January 3, 2024, there are several cases and informal matters that are directly related to this Complaint which have already been scheduled for hearing or informal meetings in the next several months. Evergy believes that progress in any of these proceedings may make the issues in the Complaint related to them either moot, or narrower than expected at the present time. Certainly, resolution of some, or all, of these matters may significantly affect the need of the parties to pursue this Complaint.

7. Delay is the typical safe harbor of a respondent. By pushing the resolution of the case into the future, Evergy hopes it will just go away.

**II. Staff's Proposed DR Response and Objection Interval Reduction
is Standard Practice:**

8. It is normal practice in a major case to reduce the DR response and objection intervals. This is a common feature of procedural schedules in general rate cases. For example, in Case No. ER-2022-0337, the DR response and objection intervals

were reduced to 15 days to respond and 7 days to object on January 10, when Staff's revenue requirement direct testimony was filed, and further reduced to 5 days to respond and 3 days to object on February 15, when rebuttal testimony was filed. Likewise, in Case Nos. ER-2022-0129/ER-2022-0130, Evergy's own most recent rate cases, the DR response and objection intervals were reduced to 10 days to respond and 5 days to object on July 14, a day after rebuttal testimony was filed, and further reduced to 5 days to respond and 2 days to object on August 17, a day after surrebuttal and true-up direct testimony was filed. If these intervals will work in a general rate case, a far more complex proceeding than this, they will certainly work in this complaint case.

9. This practice has also been followed in staff complaint cases such as this one. For example, in Case No. EC-2015-0315, a Staff complaint against Ameren Missouri, the Commission ordered that the DR response and objection intervals would be 5 days to respond and 3 days to object. Likewise in the complaint case cited by Evergy, Case No. EC-2015-0309, the DR response and objection intervals were reduced to 10 days to respond and 5 days to object upon the filing of rebuttal testimony, and further reduced to 5 days to respond and 3 days to object upon the filing of surrebuttal and cross-surrebuttal testimony.

10. In those instances in which a company is unable to respond so quickly, it is common practice to informally request an extension from the requesting party. Such requests are generally granted without controversy. In view of the ease with which an extension is available, Evergy's opposition to Staff's proposed schedule, including a DR response and objection interval reduction, is without merit. Evergy's real purpose is delay.

11. What rationale does Evergy offer for its position? Simply this: “There is nothing so urgent about this case that requires the expediting of data request responses.” Evergy’s purported explanation is a non-explanation.

WHEREFORE, Staff prays that the Commission will adopt the *Proposed Procedural Schedule* that it filed herein and reject the schedule filed by Evergy; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson
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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 12th day of January, 2024.**

/s/ Kevin A. Thompson