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Public Counsel
EO-2023-0277

SURREBUTTAL TESTIMONY
OF
GEOFF MARKE

Submitted on Behalf of the Office of the Public Counsel

EVERGY MISSOURI WEST, INC. D/B/A
EVERGY MISSOURI WEST

CASE NOS. EO-2023-0277

**
Denotes Confidential Information that has been redacted
**

January 18, 2024

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1 **I. INTRODUCTION**

2 **Q. Please state your name, title and business address.**

3 A. Geoff Marke, PhD, Chief Economist, Office of the Public Counsel (OPC or Public Counsel),
4 P.O. Box 2230, Jefferson City, Missouri 65102.

5 **Q. What are your qualifications and experience?**

6 A. I have been in my present position with OPC since 2014 where I am responsible for economic
7 analysis and policy research in electric, gas, water, and sewer utility operations.

8 **Q. Have you testified previously before the Missouri Public Service Commission?**

9 A. Yes. A listing of the Commission cases in which I have previously filed testimony and/or
10 comments is attached in Schedule GM-1.

11 **Q. What is the purpose of your surrebuttal testimony?**

12 A. I am responding to the rebuttal testimony of other parties' witnesses over the prudent
13 investment test. My testimony will begin by level-setting and clarifying OPC's position due
14 to possible confusion surrounding both Evergy West and the Missouri Public Service
15 Commission Staff's ("Staff") separate counter arguments and show how continued inaction
16 by this Commission has created a moral hazard that is taking advantage of captive
17 customers.

18 I will then conclude my testimony by addressing Evergy West's outside consultant's (Mr.
19 John J. Reed) specific claims regarding the prudent test in light of the primary source he
20 relies on, the 1985 National Regulatory Research Institute's ("NRRI") whitepaper titled
21 "The Prudent Investment Test in the 1980s."

1 My silence regarding any issue should not be construed as an endorsement of, agreement
2 with, or consent to any party's filed position.

3 **II. MANAGERIAL MISMANAGEMENT & INACTION**

4 **Q. Do you agree with Evergy's witness Mr. John Reed's rebuttal testimony claiming that**
5 **OPC's witness Ms. Lena Mantle's position that Evergy West should maintain sufficient,**
6 **cost-effective generation to meet its customers' load is a "lopsided" and "invalid"**
7 **argument?¹**

8 A. Not at all. The position of the OPC, as expressed in the testimony of Ms. Mantle, is that Evergy
9 West should be maintaining sufficient, cost-effective generation to meet its customers' load as
10 a form of "insurance" or "hedge" against volatility in the SPP energy market. Mr. Reed is
11 attempting to confuse that argument by suggesting that OPC is demanding the Company
12 perfectly predict SPP market prices. He further argues, with no support whatsoever, that if the
13 Company had acquired sufficient generation to meets its customers' load but then that
14 generation had become uneconomical to dispatch, the OPC would have been taking the
15 opposite position in this case. That is not at all accurate.

16 **Q. Can you please elaborate?**

17 A. Yes. The OPC's argument is comparable to the question of whether a home-owner should
18 purchase insurance for their house; a decision that hundreds of Americans face on a daily basis.
19 In attempting to determine whether the decision to acquire home insurance is prudent or not,
20 the home-owner must take several variables into consideration. For example, they would need
21 to compare both the value and expected life of the home to the cost of the insurance premiums
22 of that expected life and then weigh all of that against the risk of some negative event actually
23 occurring. In making that decision, the homeowner does not need to perfectly predict whether
24 a disaster is likely to strike the home nor does a disaster even need to occur for the decision to
25 acquire insurance to be prudent or for the decision to refrain from acquiring insurance to be

¹ Reed Rebuttal pg. 6, 7 – 8.

1 imprudent. In the same way, the OPC is not arguing that Evergy West should have perfectly
2 predicted what future SPP prices were going to do in order to know that it was imprudent to
3 simply rely on the market to meet its generation needs. Nor is there any reason for Mr. Reed
4 to speculate that the OPC would have argued had the Company acquired sufficient generation
5 to be considered “insured” against changes in the SPP energy market.

6 **Q. Given your answer to the previous question, is it also correct that you would disagree**
7 **with Mr. Reed’s statement that “Ms. Mantle’s standard for resource planning therefore**
8 **appears to be naïve and impossible to achieve absent a crystal ball[?]”²**

9 A. Yes. Not only is this a gross mischaracterization of the OPC’s position, it is also extremely
10 ironic given that Evergy West in particular would have no need for a crystal ball to identify the
11 problems with its resource planning.

12 **Q. What do you mean?**

13 A. This is not the first time that Evergy West has incurred significant FAC related costs due to its
14 poor management decisions. In fact, I believe the Commission can view Evergy West’s
15 situation akin to a home that keeps predictably burning down like a clockwork phoenix every
16 eighteen months. These fires are being driven in part by several large cannisters of gasoline
17 that are labeled “take-or-pay purchased power agreements (“PPAs”).” The Company
18 originally acquired these cannisters because it predicted they would produce benefits, but in
19 practice they have proven to be an enormous liability akin to a dead albatross for Evergy West’s
20 captive ratepayers.³ However, despite the occurrence of these frequent infernos, the Company

² Reed Rebuttal pg. 7. 7 – 8.

³ In Samuel Taylor Coleridge’s 1798 poem *The Rime of the Ancient Mariner*, the albatross was considered an omen of good luck to sailors, and yet the mariner shoots one. The senseless killing brings a deadly curse upon his ship. Unable to speak due to lack of water, the ship’s crew let the mariner know through their glances that they blame him for their plight and they tie the dead bird around his neck as a sign of his guilt. From this arose the image of an albatross around the neck as metaphor for a burden that is difficult to escape. Readers may also be familiar with the following famous passage from this poem:

Water, water, everywhere,
And all the boards did shrink;
Water, water, everywhere,

1 has steadfastly refused to acquire fire insurance. Thus, each successive FAC prudence period
2 includes hundreds of millions of dollars in losses that are borne by captive customers for the
3 exact same reasons—poor management decisions and inaction.

4 **Q. Mr. Reed references the same PPAs that you discussed just now at page six of his rebuttal**
5 **testimony and claims those PPAs show that Staff and the OPC have presented contrary**
6 **positions in an attempt to “have it both ways.”⁴ Is this accurate?**

7 A. No. Mr. Reed has a bad tendency to misrepresent other party’s arguments. As explained by
8 Staff’s witness Ms. Brooke Mastrogiannis, “Staff found that Evergy Missouri West had acted
9 imprudently by not finding a solution for its long-term PPA costs going forward or share
10 more in the losses its ratepayers have incurred over the last approximately ten years.”⁵ The
11 OPC’s argument is that the Company failed to secure sufficient, cost-effective generation
12 to meet its customers’ load requirements. These are by no means mutually exclusive
13 arguments. Moreover, it is important to point out that the OPC’s position that Evergy does
14 not have sufficient generation to meet customers’ load is based on the Company’s energy
15 portfolio including its wind PPAs.

16 **Q. At page 8 of his rebuttal testimony, Mr. Reed discusses Evergy’s “strategy of purchasing**
17 **energy from the SPP market” and even goes as far as to claim that “No pool**
18 **participant will be worse off for having been active in pool transactions.”⁶ Is this**
19 **accurate?**

20 A. No. There are a number of reasons that would explain why this is not accurate, but the most
21 obvious is simply to consider a side-by-side comparison of the results of Evergy Metro with
22 Evergy West’s last five prudence reviews as shown in table 1.
23
24

Nor any drop to drink.

⁴ Reed Rebuttal pg. 6, 14 – 17.

⁵ Mastrogiannis Direct pg. 3, 22 & pg. 4, 1.

⁶ Reed Rebuttal pg. 8, 9 – 10.

1 Table 1: Equivalent FAC Prudence Review Periods for Evergy West and Evergy Metro with market
2 costs (non-firm short term energy), off system sales revenue and margins owed or collected.
3 **

4
5 **
6 Importantly, this table omits the \$314.6 million in purchased power costs and \$11.8 million in
7 fuel costs as a result of insufficient generation during Storm Uri that will only increase over
8 time due to long-payback associated with securitization. The net margin losses for Evergy
9 West since the first time OPC raised an objection regarding Evergy West’s wind PPA’s in Case
10 No. EO-2019-0067 is now ** _____ **

- 11 **Q. Given such enormous losses, why has Evergy West not changed its strategy?**
12 A. The impacts of Evergy West’s choices have all flown through the FAC and have been borne
13 by its captive customers. Evergy West has no motivation to change when it suffers little to no
14 harm itself.

1 **Q. Is there a term of art for condoning reckless behavior because they know someone else**
2 **will bear the brunt of the negative outcomes?**

3 A. Yes, in economics it is called a moral hazard. In this case, the risk-taker (Evergy West) has
4 more information about the potential risks than the other party (Evergy West ratepayers) who
5 bear the costs. Because the risk-taker (Evergy West) doesn't face the full consequences of
6 their actions, they have little incentive to change behavior. In fact, they actually have an
7 incentive to engage in riskier behavior (see also the Persimmon Creek Wind Farm).
8 As economic regulators, the Commission has a responsibility to encourage responsible
9 behavior.

10 **Q. At page five of his rebuttal testimony, Mr. Reed claims Ms. Mantle failed to “apply the**
11 **longstanding prudence standard in her review of the Company’s resource planning**
12 **processes.”⁷ Is this accurate?**

13 A. No. Ms. Mantle clearly meets all the requirements of Mr. Reed’s articulated prudence
14 framework.

15 **Q. Can you also demonstrate why Evergy management’s consistent inaction should result**
16 **in a disallowance as a result of an articulated prudence test framework?**

17 A. I can, but first I would like to preemptively state that the prudence test Mr. Reed is so fond of
18 citing is far from well-established, generally agreed upon, and is clearly not properly designed
19 for today’s regulatory environment. I will expound on that topic in greater detail in section
20 three of my testimony. In the meantime, I will rely on the 1985 NRRI guidelines that were put
21 forward based on their review of state commissions engaged in prudence reviews for
22 abandoned nuclear plants in the 1980s. This is the exact same resource that Mr. Reed relied on
23 in developing his testimony.⁸

24 The NRRI compiled four common guidelines to follow when conducting prudence reviews.
25 They are paraphrased as follows:

⁷ Reed Rebuttal pg. 5, 2 – 3.

⁸ Reed Direct pg. 24, 4 – 5; Response to OPC DR 8021, attached as schedule GM-2.

- 1) The presumption of prudence for the utility
 - a) The presumption of prudence can be overcome, however, by an allegation of imprudence that is backed up by substantive evidence.
- 2) Use a standard of reasonableness--that is, to be prudent, a utility's decisions must have been reasonable under the circumstances that were known or could have been known at the time the decision was made.
- 3) No hindsight—don't supplement the standard of reasonableness with other standards that look at the final outcome of a utility's decision, though consideration of outcome may legitimately have been used to overcome the first guideline.
- 4) Determine the prudence in a retrospective, factual inquiry. The evidence needs to be retrospective in that it must be concerned with the time at which the decision was made.⁹

Q. Can OPC overcome the presumption of prudence for the utility?

A. Yes. Again, if a house burns down (due to your actions or inactions) and you don't have insurance then the homeowner will be liable for the losses. If the house continues to burn down every 18 months on a reoccurring basis and no meaningful action is taken by the homeowner to prevent it then any rational human being would say the homeowner is at fault. This scenario has played out repeatedly by Evergy West and has resulted in hundreds of million of substantive financial losses in just the last five years. Importantly, these losses will continue to accumulate in the hundreds of millions of dollars every eighteen months in the foreseeable future absent a Commission order (see also Moral Hazard above).

It is this inaction in the face of overwhelming and reoccurring losses that negates Evergy West's presumption of prudence for a utility.

⁹ Burns, R.E, et al (1985) The Prudent Test in the 1980s. The National Regulatory Research Institute. NRRI-84-16. <https://ipu.msu.edu/wp-content/uploads/2016/12/Burns-Prudent-Investment-Test-84-16-85-1.pdf> p. 4.

1 **Q. Can OPC overcome the second guideline put forward by NRRI around the standard of**
2 **reasonableness of prudence for a utility?**

3 A. Yes. I have used the phrase “inaction” to describe Evergy’s management position as it pertains
4 to FAC risk exposure.¹⁰ However, the term “inaction” is not entirely accurate. Because Evergy
5 West is a member of the Southwest Power Pool (“SPP”), “inaction” does not mean that power
6 was not provided to its customers, rather the power that was provided was disproportionately
7 subject to price volatility from the SPP market. In fact, Evergy West witness Darrin R. Ives
8 claimed that such activity is akin to buying a lotto ticket.¹¹

9 I agree.

10 The issue then centers on whether or not it was reasonable to continue to buy lottery tickets
11 (playing the SPP market) instead of purchasing insurance (*e.g.*, firm generation) after four
12 successive hundred million dollar(s) losses in each of the past eighteen months since 2019. I
13 should also add that Evergy West ratepayers experienced such enormous losses over a couple
14 of days during Storm Uri that a special law had to be enacted to effectively create a credit card
15 backed by the State of Missouri to help pay down the losses because the lotto tickets didn’t pay
16 off. Captive ratepayers will shoulder the Storm Uri costs for another generation separate and
17 in addition to the now reoccurring hundreds of millions of dollars every 18 months in losses as
18 a result of being overwhelming exposed to the market.

19 I believe reasonable minds could stop right there and claim that the second guideline has been
20 met, but let’s explore these facts before us a little more.

21 It would be one thing if management had just made the wrong decision about how to provide
22 safe and adequate service at just and reasonable rates to its captive customers. Making resource
23 decisions requires action, judgement, skill, and managerial discretion. That’s why Evergy’s

¹⁰ This is because Evergy West effectively has no risk exposure with the FAC. In its present design, 95% of the FAC risk exposure is weighted overwhelming onto captive ratepayers who have no choice in managerial decisions and no reasonable choice to elect a substitute for an essential service.

¹¹ He also threatens the Commission that if Evergy doesn’t get their way they will double-down on buying lottery tickets, but that is an issue to be addressed in part five of this testimony.

1 management is compensated so well—to manage. In contrast, playing the lotto does not require
2 any skill, it is dependent on luck and randomness.

3 To clarify this point, there’s a quick and easy way to tell whether an activity involves skill: ask
4 whether you can lose on purpose. In games of skill, it’s clear that you can lose intentionally,
5 but when playing roulette, the lottery, or the SPP market you can’t lose on purpose. This calls
6 into question the value of Evergy West’s management.

7 Every decision commits us to some course of action that, by definition, eliminates acting on
8 other alternatives. Placing a bet on the market means we are doubling-down on luck and we
9 are not committing to some other tangible resource that can generate off-system sales. Luck is
10 not a prudent resource. We can’t control luck.¹² Therefore relying on the lottery cannot be
11 considered a reasonable course of action.

12 **Q. Can OPC overcome the third guideline put forward by NRRI that recommends no
13 hindsight in determining prudence for a utility?**

14 A. Yes. First, it is important to point out that OPC has been raising the alarm about Evergy West’s
15 market exposure for years in multiple filings as well as during the review period in question.
16 Both the Company and the Commission should be well aware of that documented fact. But
17 let’s put aside OPC’s warnings for a moment and erase the vast financial losses and wasted
18 opportunities that accompany these reoccurring “lottery” losses for this exercise and ask
19 whether there was enough objective information out there to suggest relying on the wholesale
20 market is dangerous.

21 It turns out it is relatively easy to control for at least what public information was available to
22 inform Evergy management as it relates to why playing the SPP lotto was an imprudent course
23 of action. One only needs to consider the real-world example of the Texas utility Griddy.

¹² To quote U.S. writer Ambrose Bierce, “Lottery: A tax on people who are bad at math.”

1 **Q. What is Griddy?**

2 A. Griddy was an American power retailer with approximately 29,000 customers in Texas. Griddy
3 was a unique entity created as a result of Texas' deregulated system for electric power. What
4 made it unique was its business model, which simply connected retail customers to the
5 wholesale market for electricity for a monthly fee of \$9.99. Griddy had no generation of its
6 own, it was just an avenue for residential retail customers to buy directly off the energy market.
7 Griddy became a major focal point of public outcry during the 2021 Texas power crisis as a
8 result of Winter Storm Uri and its exposure to the wholesale market. Specifically, Griddy got
9 national attention for urging its customers to leave the Company as wholesale prices were set
10 at \$9 per kilowatt-hour over multiple days by the Electric Reliability Council of Texas
11 ("ERCOT").

12 The price volatility built into Griddy's business model due to its reliance on the market left its
13 residential customers financially vulnerable during the severe winter storm in mid-February
14 2021 with some customers bills running as high as \$17,000 for that month.¹³ Just weeks after
15 the crisis, Griddy found itself sued by the state and forced into bankruptcy. In late May, the
16 Legislature outlawed wholesale plans like Griddy's altogether.¹⁴

17 With Griddy, you have a tangible example of the risk exposure inherent in relying on the
18 wholesale market lotto. The result for Griddy was bankruptcy and a liquidation plan that
19 waived claims against customers for charges incurred from February 15 through 19, while the
20 \$9,000 per MWh price for wholesale power was in effect.

21 Griddy's demise and the proceeding winter Storm Uri costs played out across the national
22 media and in regulatory filings throughout the country. All of this information was available
23 and public to Eversource West management. Yet, Eversource West continued to operate "as is" and

¹³ Najambadi, S. (2021) Texans blindsided by massive electric bills await details of Gov. Greg Abbott's promised relief. *The Texas Tribune*. <https://www.texastribune.org/2021/02/22/texas-pauses-electric-bills/>

¹⁴ Ferman, M. (2021) Texas Legislature approves bill to ban residential wholesale electricity plans — the first major winter storm bill sent to the governor. *The Texas Tribune*. <https://www.texastribune.org/2021/05/13/texas-power-grid-failure-legislature/>

1 will continue to operate “as is” for the foreseeable future as it continues to rely on the wholesale
2 market to meet its energy needs.

3 If I omit the historical losses that proceeded the eleventh review period as well as the numerous
4 filings OPC put forward in front of this Commission (see OPC witness Lena Mantle’s three
5 rounds of testimony in this case) and control just for information that a reasonable person
6 would have available to them in making decisions I can confidently say the third guideline can
7 be met. Evergy West, for its part, should be fully aware of the impact of Storm Uri because its
8 customers suffered financially (and will continue to pay financially for decades) from the
9 market exposure. Contrast that with Evergy Metro who had firm power available, and there
10 should be no question regarding hindsight analysis.

11 **Q. Can OPC overcome the fourth guideline put forward by NRRI around ensuring a**
12 **retrospective, factual inquiry as it pertains to the reasonableness of prudence for a**
13 **utility?**

14 A. I believe I already have with my examples above, but I would direct readers to OPC witness
15 Ms. Mantle’s testimony for further examples where OPC filed comments and raised concerns
16 regarding Evergy West’s continued exposure to the SPP market before, during, and after the
17 review period in question.

18 **Q. Are there any additional guidelines that need to be highlighted within the NRRI**
19 **whitepaper as it pertains to prudence?**

20 A. Two come to mind. The first is that a utility’s decision need not be perfect. The second is that
21 the decision doesn’t need to be least cost.

22 **Q. Is your argument negated by these conditions?**

23 A. Not at all. The decision Evergy West’s management has made (and continues to make) is to
24 “play the market.” As articulated earlier, there is no skill or managerial competence in leaving
25 your captive customers at the whim of the wholesale market. Just like there is no skill in me
26 purchasing a lottery ticket. To maintain the gambling analogy for a moment, playing the market
27 is not unlike hitting on a seventeen while playing blackjack. You might get lucky and draw a

1 four, but if you play that scenario out indefinitely the house will be more than happy to take
2 your money.

3 As to the guideline that the outcome does not need to be the least-cost. I would respond by
4 pointing out that playing the market is clearly not least cost, because there are only two ways
5 to go moving forward. Continue playing the market or build and/or acquire your own
6 generation. Why a natural monopoly in a vertically integrated state who effectively has enough
7 customers to be considered a monopoly within the SPP is not building generation to at least
8 cover its customer load is a continual mystery to me and I believe for Evergy's shareholders
9 as well.

10 This is especially true today given the overwhelming amount of tax credits and other federal
11 subsidies designed to encourage clean, reliable generation deployment. To date, Evergy West
12 has not filed for a certificate of convenience and necessity for new generation since Iatan 2 in
13 2010 and has prematurely retired baseload generation before the end of its useful life all the
14 while being the only regulated electric utility in the state that has seen an increase in the number
15 of customers it serves. Before the Company starts flinging disparaging comments about OPC
16 and the MO PSC Staff and lamenting that it is not fully realizing its authorized ROE in a state
17 that is not considered an unfavorable environment for utilities (unlike Kansas) it should
18 probably check to see if just maybe they are responsible for the predicament they find
19 themselves in.¹⁵

¹⁵ The authorized return sets a goal for the utility—one that often is not reached (acting more as a ceiling than a threshold). Arguably, achieving returns should be viewed as an ongoing challenge (not an entitlement), just as in competitive environment.

1 **III. UNDERSTANDING THE PRUDENCE STANDARD**

2 **Q. Mr. Reed populates his testimony with adjectives like “longstanding” and “well-**
3 **established” in describing the prudence standard.¹⁶ Is this accurate?**

4 A. I believe Mr. Reed has mischaracterized how stable his framework is. I agree that public utility
5 regulators across the United States have used some variation of a prudence test for more than
6 a hundred years based on the direct antecedent to other areas of law where the concept
7 continues to be used as method for ensuring proper managerial oversight; however, I disagree
8 that the prudence standard is well-established, clearly articulated, universally accepted, or often
9 even possible (or at least remotely effective) under the current regulatory scheme.

10 **Q. What is the basis for that claim?**

11 A. Let me start off first by addressing the 1985 National Regulatory Research Institute’s
12 (“NRRI”) “The Prudent Investment Test in the 1980s” whitepaper that Mr. Reed bases much
13 of his argument on and which he cites to in both rounds of testimony as purported evidence
14 that the prudence standard is long-standing and well-established.

15 Far from confirming Mr. Reed’s premise, the NRRI report states:

16 Thus, **while it is generally thought that the prudent investment test is a well-**
17 **established standard in public utility regulation, it is not.**¹⁷

18 Further, successful application of the concept in a specific case is uncertain
19 because **there is no specific, universally accepted checklist of what**
20 **constitutes a prudent investment decision.**¹⁸

21 While useful parallels can be drawn between the concept of prudence in public
22 utility law and the prudence concept in analogous areas of law, many issues

¹⁶ See Reed Rebuttal pg. 5 lns. 2 – 3.

¹⁷ Burns, R.E, et al (1985) The Prudent Test in the 1980s. The National Regulatory Research Institute. NRRI-84-16.
<https://ipu.msu.edu/wp-content/uploads/2016/12/Burns-Prudent-Investment-Test-84-16-85-1.pdf> p. 4.

¹⁸ Ibid.

1 concerning prudence and its application are as yet unresolved in the public
2 utility law? What is it? Toward what is it evolving? How useful is it? How can
3 it be better articulated? To some extent, **those who refer to the prudence test**
4 **in its current role as a long-standing regulatory principle are**
5 **characterizing the concept as something that it is not.** As a result, there is a
6 danger of misapplication of the concept in the hearing room where the legal
7 concept often merges with its policy application.¹⁹

8 Context is important in reading these select quotes. The NRRI whitepaper that Mr. Reed
9 relies on was drafted during a period (i.e., the 1980s) of large cost overruns related to excess
10 generation buildout and in many cases abandoned nuclear plants. It is during this period that
11 the prudent investment and the used and useful tests were routinely exercised in regulatory
12 proceedings to determine cost disallowances associated with poor management decisions.

13 The NRRI report speaks to those challenges, provides some rough guidelines based on a
14 review of successful prudence disallowances in the early 1980s for abandoned and stranded
15 plant consideration, and speaks about the need to evolve and properly articulate the standard
16 as a result of increasing complexity and risk exposure to customers. The courts have
17 acknowledged this challenge:

18 [T]he prudent-investment rule in practice often being no match for the capacity
19 of utilities having all relevant information to manipulate the rate base and
20 renegotiate the rate of return every time a rate was set.²⁰

21 I would note that the complexity and risk exposure to customers has only increased in orders
22 of magnitude since that report was published. The guidelines put forward by NRRI, and
23 subsequently adapted by Mr. Reed, predate wholesale energy markets, fuel adjustment
24 clauses, or any of the other many surcharges and special legislation passed to streamline

¹⁹ Ibid.

²⁰ See *Verizon Commc'ns, Inc. v. F.C.C.*, 535 U.S. 467, 486 (2002) quoted from:
<https://www.law.cornell.edu/supremecourt/text/00-511>

1 cost recovery, reduce regulatory lag, and minimize Commission oversight. In short, the
2 objective authors from the NRRI were signaling that this concept needed to be updated in
3 1985. In the intervening period, regulatory frameworks and mechanisms have evolved to
4 the benefit of shareholders but the prudence test is still roughly in the same nebulous form
5 it was back in the turn of the 20th century.

6 **Q. What is your response to the fact that Mr. Reed’s prudence standard was specifically**
7 **referenced in the Commission’s Report and Order in the Liberty securitization case?**

8 A. This is not Liberty’s securitization case and the facts and context are entirely different.

9 **Q. Do you have any additional observations regarding Mr. Reed’s testimony?**

10 A. Only minimally. Based on his own self-assertions throughout his testimony, Mr. Reed has
11 made a successful career being a consultant-for-hire across the United States. Based on my
12 review of Mr. Reed’s filed work, specifically cases that denote the word “prudence” in some
13 manner under topics in his CV I was unable to find any examples where Mr. Reed found that
14 a utility was imprudent. Not one. Let that sink in for a second. Over a thirty-five plus year
15 career, largely centered on being *the* expert witness on prudence standards and not one example
16 of imprudent behavior.

17 Mr. Reed (and Evergy as a whole) have attempted throughout this case to misrepresent the
18 OPC’s position by continuing to cry wolf and clutch their pearls over compactly fabricated
19 concerns. Chief among them is Evergy’s insistence that Staff and OPC are holding or forcing
20 Evergy into an impossible standard that would require perfect foresight to perform the duties.

21 This is a rich comment to make. Seeing as though Evergy West customers are potentially on
22 the hook for excess costs that exceed ****___**** due to Evergy West’s continued insistence to
23 not build generation (to the benefit of their shareholders and ratepayers) and instead rely on the
24 luck of the market. OPC is not demanding perfection or necessarily the lowest possible costs.
25 We want to stop the bleeding. And if Evergy West is being honest, and we can infer as much
26 (albeit not nearly as much as they should) by their recent Dogwood CCN filing, that they want
27 to as well.

1 To be clear, the impossible standard is the one imposed by Mr. Reed. OPC has gone to great
2 lengths to document our concerns regarding the risk exposure faced by Evergy West customers
3 for years now. Primarily in dockets where the issue of prudence is not subject to Commission
4 decision. When presented with an opportunity to raise prudence issues we are then dismissed
5 out-of-hand on the false assertion that Evergy West's IRP's somehow functions as a pre-
6 approval for managerial decisions and not as modeling exercise that helps provide a range of
7 scenarios under a variety of variables to help inform planning decisions. This is a dangerous
8 line of thinking for the Commission to acquiesce to. Consider for a moment that we have not
9 had a contested IRP evidentiary hearing since its inception well over a decade ago. That is
10 because it is a modeling exercise that is constantly in-flux and Missouri is not a pre-approval
11 state. The IRP can be used to help inform decisions but placing too much weight on its
12 outcome will open ratepayers up to continued gamesmanship and exploitation more than it
13 already does.

14 **Q. You have spoken at length about how the prudence standard (as defined in this docket)**
15 **has not evolved with changes to the regulatory environment. Do you have any**
16 **recommendations on that topic for the Commission?**

17 A. I do. One reason the prudence test is ill-equipped to deal with the current regulatory climate is
18 that it is too easily manipulated. It is painfully obvious that the prudence test is ill-equipped to
19 deal with standalone, expedited cases that accompany the many surcharges for service. But
20 this is even more pronounced in complex rate cases dealing with hundreds of pages of
21 testimony around how a revenue requirement or authorized return on equity ("ROE") should
22 be calculated, where anything and everything can be manipulated. Many investments can be
23 deemed sufficient, prudent, and acceptable. When everything between 0% and 100% (and
24 sometimes even less than 0% or more than 100%) of what the utilities ask for can be granted,
25 the regulatory system becomes the very definition of arbitrary and capricious.

26 A better, more articulate standard is required to ensure just and reasonable rates while
27 simultaneously allowing utilities a fair opportunity to earn its authorized return. The most

1 straightforward and obvious answer for me is to ensure that no party (ratepayers, shareholders,
2 utility management) be in a position to have upside without sharing the downside, particularly
3 when others may be harmed. Additionally, no person in a transaction should have certainty
4 about the outcome while the other one has uncertainty. In short, there needs to be skin in the
5 game. A 95/5 FAC sharing mechanism is woefully one-sided, unfair, and has ultimately led to
6 the unintended consequence Evergy West's customers currently find themselves trapped in.
7 Regulatory policies that shift risk from utility investors to utility ratepayers increase the overall
8 cost of service. Lower risks to investors come at a higher price to ratepayers, namely, an
9 offsetting loss of economic efficiency due to weak performance incentives.

10 **Q. Do you have any final comments to make?**

11 A. Briefly. It has been said often in regulatory circles that all regulation is incentive regulation and
12 all incentive regulation is based on regulatory risk. The job of a regulator then is not to
13 micromanage utilities but rather to frame the system of performance goals and incentives
14 within which utilities must manage themselves.

15 Relying on the SPP market lotto has proven time and time again to be a losing endeavor for
16 Evergy West's customers. Absent a prudence disallowance I struggle to see how the Company
17 will meaningfully change its behavior. For the review period in question, I believe Ms.
18 Mantle's extensive testimony and work provides a compelling basis for cost disallowances
19 associated with the Company's continued inactions. Absent that, the Commission should fully
20 expect this situation to continue indefinitely.

21 **Q. Does this conclude your testimony?**

22 A. Yes.

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

In the Matter of the Eleventh Prudence)
Review of Costs Subject to the)
Commission-Approved Fuel Adjustment) Case No. EO-2023-0277
Clause of Evergy Missouri West, Inc. d/b/a)
Evergy Missouri West)

AFFIDAVIT OF GEOFF MARKE

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Geoff Marke, of lawful age and being first duly sworn, deposes and states:


1. My name is Geoff Marke. I am a Chief Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.



Geoff Marke
Chief Economist

Subscribed and sworn to me this 18th day of January 2024.

<small>TIFFANY HILDEBRAND NOTARY PUBLIC - NOTARY SEAL STATE OF MISSOURI MY COMMISSION EXPIRES AUGUST 8, 2027 COLE COUNTY COMMISSION #15637121</small>



Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2027.