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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: EO-2023-0276/0277

SURREBUTTAL TESTIMONY

OF

JOHN J. REED

ON BEHALF OF

EVERGY MISSOURI METRO and EVERGY MISSOURI WEST

Kansas City, Missouri

January 2024

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1 **I. INTRODUCTION**

2 **Q: Please state your name, business address, by whom you are employed and in what**
3 **capacity.**

4 A: My name is John J. Reed. My business address is 293 Boston Post Road West, Suite 500,
5 Marlborough, Massachusetts 01752. I am Chairman of Concentric Energy Advisors, Inc.
6 (“Concentric”).

7 **Q: Have you previously filed direct and rebuttal testimony in these dockets?**

8 A: Yes.

9 **Q: On whose behalf are you testifying in this proceeding?**

10 A: I am testifying on behalf of Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro
11 (“EMM”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW”)
12 (collectively, “Evergy” or the “Company”).

13 **Q: What is the purpose of your surrebuttal testimony in this proceeding?**

14 A: The purpose of my surrebuttal testimony is to respond to the rebuttal testimony filed by:

15 ▪ Commission Staff (“Staff”) witnesses Brooke Mastrogiannis and Brad
16 Fortson regarding their assertions that the Company was imprudent when it
17 “chose to do nothing” about the Power Purchase Agreements (“PPAs”) in
18 question in *Staff’s Eleventh Prudence Review Report*. I also respond to

1 Staff's new position that Staff's disallowance is based on a going forward
2 set of losses under the PPAs in question.

- 3 ■ The Office of the Public Counsel ("OPC") witness Lena Mantle regarding
4 her assertion that the Company is imprudently relying on the SPP market,
5 and what in her opinion constitutes the principles of prudence and an
6 appropriate disallowance.

7 My surrebuttal testimony addresses these issues from a regulatory policy
8 perspective based on my extensive experience performing prudence reviews for utilities,
9 customers of utilities, and regulators over a more than 35-year period. I am not an attorney,
10 and I am not offering a legal opinion.

11 **II. EXECUTIVE SUMMARY**

12 **Q: Please summarize your response to Staff and OPC.**

13 A: The rebuttal testimony offered by these parties has provided several helpful clarifications
14 and modifications to their previous positions in this case. We know now that there are two
15 entirely separate positions being offered by Staff and OPC.

16 First, Staff has now stated several times that it is not challenging the prudence of Evergy
17 having entered into the wind PPAs that Staff is challenging in this case. It has stated that
18 its only challenge is to the prudence of how Evergy has managed or administered the
19 contracts as they have become more costly relative to resources being offered currently in
20 the SPP energy market. This means that the Commission can likely now move past all of
21 the commentary offered by Staff, and answered by Evergy's witnesses, regarding the
22 reasonableness of these contracts when they were entered into, and what the expectations
23 were at that time. In short, the prudence of the contracts at the time they were entered into

1 is now effectively unchallenged. Staff now states that it wants all of the costs for these
2 contracts, above what can be recovered through energy-only pricing in the SPP market,
3 disallowed in the recent FAC period and in all future FAC periods. This is justified, in
4 Staff’s position, based on its assertion that Evergy should have done something to mitigate
5 “the substantial ratepayer harm going forward, and the decision to do nothing, based on the
6 information we know today, is imprudent.”¹ As I will discuss in this testimony, Staff
7 improperly offers no view regarding what should have been done by Evergy, and creates a
8 proposed disallowance that reflects the wildly unrealistic assumption that the minimally
9 prudent action would have been to achieve a complete reformation of the PPAs to reflect
10 energy-only prices that are a fraction of what the contracts call for, at no cost to customers
11 for such a dramatic reformation of the PPAs. Staff’s position puts the foundation of using
12 prudence to assess cost recovery on shifting sands and would send a strong message to the
13 utilities in this jurisdiction that cost recovery for prudently-incurred costs is no longer a
14 matter of principle. Mr. Ives addresses the implications of this dangerous path in his
15 surrebuttal testimony.

16 OPC has now clarified in its rebuttal testimony that it is not challenging the wind
17 PPAs that are the entire basis for Staff’s proposed disallowance, but is instead proposing a
18 disallowance that solely reflects what it considers to have been Evergy’s imprudent
19 resource planning and reliance on market-based purchases of energy, which OPC claims
20 left EMW unreasonably exposed to price fluctuations and to market conditions. OPC is
21 now fashioning its position around the necessity of having “insurance generation” in a
22 resource portfolio and restating its long-held position that allowing SPP (or MISO) market

¹ Mastrogiannis Rebuttal, p. 16.

1 forces to set the price for energy to be paid by customers is inherently unreasonable and
2 imprudent. Ms. Mantle’s views regarding the inappropriateness of relying on market-based
3 energy are anything but new. These views have been heard by, and rejected by the
4 Commission in past cases and the same result should be reached here.

5 **III. RESPONSE TO STAFF WITNESSES MASTROGIANNIS AND FORTSON**

6 **Q: Please describe your understanding of Staff’s new arguments.**

7 A: Mr. Fortson and Ms. Mastrogiannis’ testimony make clear that Staff’s position now is that
8 “Staff is only pursuing the imprudence of the Company choosing to do nothing about the
9 substantial ratepayer harm going forward, and that decision to do nothing, based on the
10 information we know today, is imprudent.”² Staff also states clearly now that it is not
11 offering a view about what the Company should now do or should have done in the past
12 that is different than the Company’s actual performance. Staff states that “this is not Staff’s
13 responsibility.”³ Staff acknowledges several times that it “understands that the PPA
14 contracts the Company has signed into have nothing in terms of an early termination clause
15 or renegotiation requirements”⁴ and that “Staff acknowledged and agrees that there are no
16 provisions in the PPA contracts in terms of renegotiation.”⁵ Staff further states that “Mr.
17 Reed does not recommend the Company breach its contracts, and just to be clear, neither
18 does Staff.”⁶ Nonetheless, Staff’s recommended disallowance equates to a “reformed”
19 result where Evergy’s customers would be paying no more than the SPP energy-only price
20 as it is established hour-by-hour, which bears no relationship to the price established in the

² Mastrogiannis Rebuttal.

³ Id.

⁴ Fortson Rebuttal, p. 11.

⁵ Fortson Rebuttal, p. 18.

⁶ Fortson Rebuttal, p. 18.

1 PPA's. Staff simply declares that this should be the amount allowed in rates, without tying
2 it in any way to a result that could have been or should have been achieved through
3 "prudent" actions by Evergy. Staff also notes that the Company's Commission-approved
4 FAC tariff sheets have allowed the flow through of these costs in the past, "However,
5 regardless of that, Staff is recommending the Commission approve a ratepayer cost
6 mitigation for the remainder of these four specific PPA contract terms, and all other PPAs
7 going forward that are halfway through their contract life."⁷

8 **Q: What is your response?**

9 A: Staff's position, i.e., the adoption of a "ratepayer cost mitigation" approach to cost recovery
10 is nothing short of the repudiation of the Commission's prudence standard for the recovery
11 of costs. Staff is quite direct in its statement that it "is simply recommending Company
12 shareholders equitably share in the PPA losses that ratepayers have consistently had to bear
13 the large majority of." Notably, this position is not tied in any way to a position offered by
14 Staff as to how this represents a reasonable opportunity to recover prudently-incurred costs.
15 It is important to remember that Staff is not challenging that the PPAs were prudently
16 entered into, and Staff states that it understands that the Company has no right to
17 renegotiate or breach the PPAs. Staff asserts that the Company should still do something to
18 achieve a better result for customers going forward, and Staff wants to build its view as to
19 what represents a "better result" into rates. As discussed by Ms. Messamore in her
20 surrebuttal testimony, the Company has actively managed these PPAs and has been able to
21 achieve renegotiations that provide benefits to customers. Those benefits are already
22 provided to customers through the FAC. But, that is not enough to satisfy Staff that the

⁷ Fortson Rebuttal, p. 16.

1 result is “equitable” enough. Again, Staff is very direct in its adoption of “equity” and “risk
2 sharing,” along with contrition on the part of the utility, as the standard for cost recovery
3 that the Commission should use to supplant the prudence standard: “Staff’s ‘aspirational
4 position’ is simply that the Company acknowledge the harm it has inflicted upon its
5 ratepayers and cover the costs for the second half of the contract terms since customers
6 have covered the excessive costs of the first half of the contract terms.”⁸ Again, this
7 position has no reference to or grounding in the Commission’s long-established prudence
8 standard. The Commission has rejected “risk sharing” alternatives to the prudence standard
9 in the past and it should do so in this case as well.⁹

10 **Q: Please respond to Staff’s proposed quantification of the “remedy” (i.e., the**
11 **recommended disallowance).**

12 **A:** Staff’s disallowance proposal amounts to nothing more than an aspirational position that is
13 at odds with the facts. Staff’s disallowance represents the entirety of the amount by which
14 the PPAs’ contract prices exceed the energy-only prices developed on an hourly basis in
15 the SPP market. While Staff’s basis for any disallowance being imposed is supposedly
16 anchored in its conclusion that Evergy has been imprudent for “doing nothing” to achieve
17 a result for customers that is better than the terms of the contracts (which are not being
18 challenged for prudence), not even Staff can suggest that the result reflected in its counter-
19 factual cost level would have any chance of ever being accepted by the contractual
20 counterparties, especially without any compensation to the PPA developers. All Staff can

⁸ Fortson Rebuttal, p. 13.

⁹ Report & Order, In the Matter of the Determination of In-Service Criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway Rate Base and Related Issues. In the Matter of Union Electric Company of St. Louis, Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company, No. EO-85-17, 1985, p. 99.

1 offer as justification for its recommended counter-factual cost level is that Staff's thinks
2 this is "equitable" and that it reflects an appropriate level "sharing."¹⁰

3 **Q: Why does Staff recommend that the Company "share" in PPA costs that exceed SPP's**
4 **energy-only prices?**

5 A: Staff recommends that the Company and its shareholders essentially absorb, as a
6 disallowance (i.e., "share in the losses"¹¹), the difference between historical energy prices
7 and PPA prices for the PPAs in question. This is flawed in numerous ways. Ms.
8 Messamore's testimony discusses the ways that Staff has not properly accounted for all
9 attributes of the PPA projects in its disallowance. The methodology also has no basis in
10 comparing the actual costs to those that would have been achievable through conduct by
11 the Company that was within the range of prudent decision-making. This is completely
12 disconnected from the Commission's established prudence standard.

13 Staff offers very little justification for the basis for or quantification of its
14 disallowance. While Staff's witnesses often cite to equity, risk sharing, ratepayer harm,
15 mitigating losses, and being "stuck" with the contracts, this approach is an entirely
16 unprincipled application of deciding what costs should be recoverable based on how
17 contracts turn out, years after they were entered into. Staff cites to its view that Evergy
18 entered into these contracts in an attempt to "win" something, at ratepayer expense if the
19 prices ended up being above the SPP energy-only prices.¹² Nothing could be further from
20 the truth. Evergy never had an opportunity to profit in any way from its contracting
21 decisions and contract management regarding these PPAs. It entered into these PPAs as a

¹¹ Fortson Rebuttal, p. 5.

¹¹ Fortson Rebuttal, p. 5.

¹² Fortson Rebuttal, p. 4.

1 means of meeting its obligation to serve its customers, with the full expectation that its
2 prudently-incurred costs would be recoverable, and that only its costs (without any element
3 of profit or gain) would be recovered from customers.

4 **Q: How do you respond to Staff’s position that its disallowance calculation is based on**
5 **“going forward” costs and that it is not inconsistent with the prudence standard?**

6 A: Staff has introduced the argument that its recommended disallowances are based on *future*
7 costs and do not rely on hindsight. This is beyond puzzling. The issue in this proceeding is
8 the recovery of the costs covered by Staff’s last FAC audit, which are all historic costs.
9 Staff is recommending a disallowance of millions of dollars of those past costs, and is doing
10 so based on SPP’s energy-only prices as they were established in the hourly market years
11 after the PPAs were entered into. Most importantly, Staff is blatantly using new information
12 (as of 2023) to judge the prudence of actions (made ten years ago), and doing so claiming
13 that this approach has been endorsed, if not required, by the Commission: “Staff interprets
14 the Report and Order [in EO-2019-0067 regarding the Rock Creek and Osborn wind PPAs]
15 language to say that prudence of long-term investments can only be determined once that
16 investment has long-term data available.” I urge the Commission to correct this
17 misunderstanding by Staff. The Commission has made clear on multiple occasions that
18 prudence is to be judged by what was known or reasonably knowable by the decision-
19 maker at the time the decisions were made. This is also the standard endorsed by the
20 National Regulatory Research Institute and numerous other state and federal regulatory
21 agencies. Staff is seeking to obliterate that long-standing approach to rate regulation. That
22 attempt should be firmly rejected.

1 **IV. RESPONSE TO OPC WITNESS LENA MANTLE**

2 **Q: Ms. Mantle argues that “both Ms. Messamore and Mr. Reed hold the same illogical**
3 **belief that the only resource planning decisions pertinent to this case were decisions**
4 **made during the prudence period.”¹³ How do you respond?**

5 A: Nowhere do I say this. What I do say, is that the resource planning decisions pertinent to
6 the arguments made by Staff and OPC are the decisions made when resources were
7 acquired, either through long term PPA contracts or asset acquisitions. Once again, costs
8 are not imprudent or prudent, decisions are. The basis for determining prudence is the
9 evaluation of conditions at the time of the decision. It is not costs that are prudent, it is
10 actions. OPC has made no meaningful evaluation of the decisions or decision-making
11 process used by Evergy. OPC ought to have reviewed the decisions made for the resources
12 that underlie the FAC charges applicable to the FAC review period, and determine the
13 prudence of those decisions, on the basis of what was known and knowable at those points
14 in time the decisions to commit to those resources were made (i.e. a decade ago).

15 **Q: What is Ms. Mantle alleging to be “imprudent”?**

16 A: Ms. Mantle asserts that EMW does not have enough “insurance” generation and is therefore
17 relying too much on bi-lateral purchases or SPP market purchases to cover customer needs.
18 Ms. Mantle would have the Commission believe that Evergy’s resource planning decisions
19 no longer represent a “cost effective” strategy and are therefore imprudent. Ms. Mantle
20 further argues that “decision making and the harm that arises from imprudent decision
21 making rarely occurs at the same time...[if Reed and Messamore are to be believed] the
22 Commission would be essentially creating a situation where the adequacy of a utility’s

¹³ Mantle Rebuttal, p. 13.

1 resource planning could never be reviewed for prudence.”¹⁴ I would respond that resource
2 planning *decisions* can, and should, be reviewed on the basis of what was known and
3 knowable at the time the decisions were made. It is concerning that Ms. Mantle is not
4 willing to adopt this established approach.

5 **Q: Ms. Mantle argues that “The question is simply should Evergy West have procured**
6 **insurance by acquiring generation that provides energy when its customers need it**
7 **or play the market exposing customers to unnecessary volatility, risk, and cost?”¹⁵**
8 **How do you respond?**

9 A: Ms. Mantle appears to be suggesting that rate based insurance generation is always the
10 “more prudent” decision. However, this conclusion suggests that PPAs are never
11 appropriate to enter into, and that resource planning decisions and processes are flawed
12 unless they determine that a least cost resource is an “insurance” rate based asset. This
13 completely undermines the goals of least cost resource planning, which evaluates the long
14 run costs and revenues of different resource mixes under a variety of scenarios. Owning
15 has proven too often be a money losing proposition, compared to just buying energy in the
16 market, and the reverse can also be true. However, Evergy has an obligation to serve which
17 requires the acquisition of resources to meet long term planning needs. One cannot reach a
18 conclusion of imprudence based on a retrospective review of prices and whether the market
19 provided sufficient revenues to fully cover costs.

20 Resource planning represents the Company’s best estimate of potential future
21 scenarios. Ms. Mantle has for some years now taken the position that a “prudent utility”
22 will adopt a resource planning objective to be able to provide generation required by its

¹⁴ Mantle Rebuttal, p. 13.

¹⁵ Ibid, p. 17.

1 customers every hour at a cost below market prices. That is an unreasonable and
2 unobtainable objective for any utility operating in an organized market with an obligation
3 to serve. It is not possible to perfectly procure resources for every possibility within the
4 range of potential future scenarios, and essentially always “beat the market.” Making a
5 claim of imprudence because Evergy does not subscribe to this objective is simply unjust,
6 unreasonable, and illogical. Ms. Mantle’s views of what constitutes being a “prudent
7 utility,” as presented in her whitepaper on “Resource Planning of a Vertically Integrated
8 Utility in the RTO World,”¹⁶ has formed the basis for her claims of utility imprudence in
9 past Evergy and Empire District Electric cases, and those positions have not been adopted
10 by the Commission. There is no basis for the Commission now adopting that perspective
11 in this case, and to do so would be incompatible with the reality of operating in an organized
12 power market such as the SPP, and with Evergy’s obligation to serve its customers’ needs,
13 regardless of whether it is likely that the revenue from the market will or will not be
14 sufficient to cover the resource’s costs. Please see Ms. Messamore’s testimony on this
15 point.

¹⁶ Mantle Direct, Exhibit LMM-D-3, p. 8.

1 **Q: Ms. Mantle recommends a disallowance of \$86.4 million. She also states, in rebuttal**
2 **to your position, that this recommendation does not, and need not, reflect a range of**
3 **what would have been reasonable for Evergy to have done in its resource plans. She**
4 **further states that her use of an average cost of generation across EMM and EMW to**
5 **set the allowable power cost for EMW is reasonable and can be used to reduce EMW's**
6 **allowable power costs without adjusting or increasing EMM's power costs. What are**
7 **your responses to these positions?**

8 A: Her first point is entirely inconsistent with the Commission's construct for conducting a
9 prudence review. Her only explanation for this is that, in her opinion, the issue of securing
10 or not securing "insurance generation" is a "zero/one range," meaning that you either do it
11 or don't do it. This is, of course, not true in power supply planning any more than it is in
12 buying any form of insurance. The level of hedging that a utility undertakes can cover a
13 wide range of acceptable risk mitigation. Ms. Mantle's position appears to be that there
14 should be no risk exposure for customers. That certainly is not the norm for integrated
15 electric utilities across the nation. And, because there is a wide range of acceptable behavior
16 when it comes to hedging electric power costs, it is very important to define an acceptable
17 range and reflect that in any prudence review.

18 Ms. Mantle's second position regarding the development of a proposed
19 disallowance is clearly internally inconsistent. She states that "For years, Evergy has told
20 the Commission in these filings that combining the resources of Evergy West and Evergy
21 Metro is the least-cost and preferred plan for meeting the customer needs for both Evergy
22 West and Evergy Metro. Therefore, a reasonable estimate of prudent FAC costs for Evergy
23 West would be to combine the actual costs of the two utilities and then allocate those costs

1 based on the amount of energy required by the customers of the two utilities. This is how
2 OPC calculated the imprudence amount of \$86,376,294.”¹⁷ I will let Evergy explain
3 through its Company witnesses how Ms. Mantle has mischaracterized Evergy’s position
4 regarding combined resource planning for its Missouri operations. However, there can be
5 no doubt that if one develops a measure of what would be a “reasonable estimate of prudent
6 FAC costs” for one of these companies based on the use of average costs spanning both
7 companies, then that same estimate must be used to establish the prudent level of costs for
8 the other company as well. Ms. Mantle’s position hinges on the conclusion that the
9 “average” production cost level is prudent and reasonable. That, of course, means that Ms.
10 Mantle’s position, reasonably applied to both sides of the equation, only results in a cost
11 shift between EMM and EMW, not an overall disallowance. I will leave it to the
12 Commission to decide if it wishes to engage in that manner of cost reallocation, but it
13 should answer that question with the understanding that there is no basis for doing so based
14 on any reasonable conclusion that either EMM or EMW has been imprudent in its power
15 supply planning or procurement.

16 **V. CONCLUSION**

17 **Q: Please summarize your conclusions.**

18 **A:** Staff’s rebuttal testimony ignores the well-established principles of prudence and relies
19 exclusively on “how things turned out” to justify Staff’s recommended disallowance for
20 this FAC review period. Further, Staff does not properly calculate its recommended
21 disallowance as it does not compare the outcomes under the contracts to what would have

¹⁷ Mantle Rebuttal, p. 19.

1 been the outcomes under an alternative set of prudent decisions, either now or at the time
2 the contracts were signed.

3 Staff essentially seeks to replace the Commission’s standard of prudence for costs
4 being recoverable with one which adopts “risk sharing” as a new form of regulation. The
5 regulatory principle relating to cost recovery has been clear for many decades—utilities
6 are entitled to a reasonable opportunity to recover their prudently incurred costs, and a
7 reasonable opportunity to earn a fair return on the assets that are the product of prudent
8 investment.

9 Similarly, Ms. Mantle flatly ignores the well-established principles for performing
10 a prudence review. Her position as to what would constitute prudent resource planning is
11 misinformed at best and not at all within the mainstream of utility conduct. Ms. Mantle’s
12 testimony regarding what she alone considers prudent resource planning should be given
13 no weight and OPC’s recommended disallowances should be rejected. Missouri precedent
14 on all of these points is fully aligned with the national mainstream and with the National
15 Regulatory Research Institute standards. In order for a prudence disallowance to be
16 warranted, a party would have to show that EMW’s conduct was outside the range of what
17 a reasonable utility would have done based on what was known or reasonably knowable at
18 the time the decision was made. Neither OPC nor Staff attempt to make this showing.

19 Finally, these witnesses, having seen that some risks did not turn out as expected,
20 seek to have prudently-incurred costs absorbed or “shared” by the utility’s shareholders,
21 which is simply another label for costs being disallowed. There is no basis for such an
22 abrupt and inequitable change in direction for Missouri’s regulatory framework being
23 applied in this case.

1 Q: Does this conclude your surrebuttal testimony at this time?

2 A: Yes, it does.

