

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

In the Matter of Requests for Customer)
Account Data Production) **File No. EO-2024-0002**

**EVERGY’S REPLY TO STAFF’S RESPONSE
TO EVERGY’S RESPONSE TO STAFF’S MOTION TO COMPEL**

COME NOW Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“EMM”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW”) (collectively, the “Company”), by and through their counsel and, for their *Reply to Staff’s Response to Evergy’s Response to Staff’s Motion To Compel* filed by Staff (“Staff”) before the Missouri Public Service Commission (“Commission”) on January 19, 2024, (“Motion”) states as follows:

1. On January 19, 2024, Staff filed its *Response To Evergy’s Response To Staff’s Motion To Compel*. As Evergy explained in its January 10th Response to Staff’s Motion to Compel, Staff is seeking discovery of much of the same data that was identified in the testimony of Sarah Lange in the Company’s last rate case which Staff concedes is at the heart of this case. (Staff Response, p. 2, paragraph 3) Evergy has explained in its testimony that much of the requested data does not exist in the format requested by Staff, and in many instances would be cost-prohibitive to create and prepare.

2. Staff does not dispute in its pleading that another very important principle of discovery is that a public utility is not required to create documents that do not exist or perform analysis of data that has not been performed. (See Staff Response, p. 2, paragraph 4) In fact, Staff concedes the point that the requested data does not exist, and lists numerous data requests as “[e]xamples of specific data requests that Staff understands would require Evergy to perform an analysis it has not performed. . .” (Staff Response, p. 4, paragraph 9). For this reason, under the rules of discovery, such non-existent data cannot be compelled to be produced as requested in Staff’s Motion To Compel.

3. Second, Staff never attempts to meet its burden to demonstrate the relevance of the Data Requests that are the subject of its Motion To Compel as required by the rules of discovery. State ex rel. Collins v. Roldan, 289 S.W.3d 780, 786 (Mo.App. W.D, 2009). Instead, Staff pivots to a discussion of its recommendation that “this docket be used as a means to resolve areas where Evergy asserts that it cannot provide requested data because production of this data would require Evergy to perform additional analysis.” (Staff Response, pp. 2-3, paragraph 6) This discussion goes to the merits of Staff’s position in this case, and does not support its Motion To Compel the production of discovery. Evergy has opposed the Staff Recommendation in the pre-filed Surrebuttal Testimony of Bradley D. Lutz. (Lutz Surrebuttal, pp. 19-20). As explained in the Company’s testimony, this recommendation should be rejected by the Commission after it has considered the competent and substantial evidence in the record and the legal arguments in this case.

4. In Paragraph 11, Staff lists data requests requesting information about the Company’s estimate of the cost of: (1) line transformers and expenses by rate code, and (2) primary distribution system cost and expenses associated with its underground system by rate code. (Staff Response, p. 5) Evergy has already explained in discovery and in the pre-filed testimony that Evergy (and other public utilities) do not maintain such information by rate code. (See Direct Testimony of Bradley D. Lutz, pp. 16-20; Direct Testimony of Sean Riley, p. 7). The information by rate code does not exist.

5. In summary, the Commission should reject Staff’s motion to compel in its entirety. Staff has conceded that Evergy does not have the requested analysis or data and that it would have to be created. Staff has failed to show the relevance of its discovery to the limited issues that are presented in this case. Staff has not shown that this discovery is likely to lead to the discovery of admissible evidence.

6. As Evergy explained in its January 10th Response, Staff is attempting to do an end run around the evidentiary hearing process by requesting the information through a discovery motion that is virtually the same information that the Commission is being asked to evaluate and determine if it is cost-prohibitive to create and produce. The Commission will be in a better position to evaluate these issues after the full evidentiary hearing scheduled to commence on January 30, 2024.

7. At the conclusion of this docket, the Company will seek to obtain specific guidance from the Commission on what data, if any, the level of effort, and what cost is reasonable to address Staff's stated need for such information.

WHEREFORE, for all of these reasons discussed herein, the Commission should deny Staff's motion to compel the massive amounts of data that Staff is requesting at this time.

Respectfully submitted,

/s/ Roger W. Steiner

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served upon counsel for all parties on this 23rd day of January 2024 by either e-mail or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner _____

Roger W. Steiner