

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 24th day of January, 2024.

In the Matter of Requests from Evergy)
Metro, Inc. d/b/a Evergy Missouri Metro and)
Evergy Missouri West, Inc. d/b/a Evergy)
Missouri West for Customer Account Data)
Production)

File No. EO-2024-0002

ORDER REGARDING MOTION TO COMPEL

Issue Date: January 24, 2024

Effective Date: January 24, 2024

On August 30, 2022, Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (together, “Evergy”) filed a Stipulation and Agreement (“August 2022 Stipulation”) in its last rate case, File Nos. ER-2022-0129 and ER-2022-0130. That Stipulation states:

Data Retention: a) Prior to July 1, 2023, the Company will identify and provide the data requested in the direct testimony of Sarah Lange. If the requested data is not available or cost-prohibitive to produce, the Company will file a motion to establish an EO docket. In that docket the Company will provide the reason why it cannot provide the requested data and its individual estimate of the cost to provide each set of requested data, for the further consideration of the parties and the Commission.¹

¹ See File Nos. ER-2022-0129, ER-2022-0130, Stipulation, p. 12 (filed August 30, 2022).

This case was initiated when Evergy filed its motion to establish this case so that it could provide in detail the reasons why it contends the requested data is not available and is cost prohibitive to produce.

On January 3, 2024, the Staff of the Commission (Staff) filed a Motion to Compel regarding certain data responses (DRs). In particular, Staff argues that Evergy's responses to the following DRs, to date, have been insufficient, incomplete, and inadequate: For Evergy Missouri Metro (EMM), DRs 7, 9, 10 - 14, 16 - 31, 33 - 35, 37 - 40, 42 - 45, 47 - 49, 51 - 53, 55 - 67, 69, and 70 - 75; for Evergy Missouri West (EMW), DRs 78, 80 - 85, 87 - 102, 104 - 106, 108 - 111, 113 - 116, 118 - 120, 122 - 124, 126 - 138, 140 - 146, and 148. Staff did not provide the responses of Evergy with its motion.

On January 10, 2024, Evergy filed its response. On January 19, 2024, Staff filed a response to Evergy's response. And on January 23, 2024, Evergy filed a response to Staff's response.

Per Commission Rule 20 CSR 4240-2.090(1), discovery in Commission cases may be obtained by the same means and under the same conditions as in civil actions in circuit court. Thus, the Missouri Rules of Civil Procedure regarding discovery matters apply.

Under those rules, generally, parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action. The information need not be admissible in evidence to be discoverable if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. The party seeking discovery bears the burden of establishing relevance.²

² Missouri Rules of Civil Procedure Rule 56.01(b)(1).

But this rule is not without limitation. One of the issues the Commission can consider is whether the burden or expenses of the proposed discovery outweighs its likely benefit.³

Staff argues that the subject matter of the present case is whether Evergy has, or is capable of, complying with the terms of the August 2022 Stipulation with respect to its data retention practices. Thus, Staff argues that its inquiries about how Evergy is compiling the information for the costs is relevant and likely to lead to the discovery of admissible evidence. Staff attached a 16-page list of the DRs it is seeking ordered responses to. Staff argued that Evergy has to have compiled the information in its preparations for this case – via witness preparation or via preparing to comply with providing the customer data, thus any objection to it not being compiled would not be accurate.

Evergy responded that the subject DRs include much of the same data which the Commission will have to consider in the evidentiary hearing. Evergy also argues that Missouri Rules of Civil Procedure Rule 58.01 limits production of documents or electronically stored information to that which is “in the responding party's possession, custody, or control” and/or “kept in the usual course of business.” Evergy argues that in some of the DRs, Staff is requesting as much as 10 years of data on specific plant, depreciation, land rights, structures and improvements, poles, underground conduit, line transformers, etc. Evergy states that it provided five years of data on many of these DRs, but did not undertake the work of complying with the whole of the requests because it

³ *Id.*

does not believe the request to be relevant or necessary to resolve the issues of the current case.

The Commission has reviewed the pleadings, including Staff's 16-page attachment of the subject DRs. The Commission finds that most of the requested information in the subject DRs seem to overlap the underlying issues of the case. The Commission also finds that many of the subject DRs seek information that does not appear to be kept in Evergy's usual course of business. What is more, Evergy claims that compiling the requested information could cost upwards of \$100 million⁴ and the determination of whether it is reasonable to require Evergy to provide this information is at the heart of the issues in and the purpose of this case.

The Commission finds that the arguments for and against Staff's motion to compel are basically the same as the underlying issues in the case for determination before the Commission. Additionally, Evergy has alleged that the cost to produce the information is exorbitant and that is also an issue to be determined in this case. The burden or expense of the proposed discovery appears to require litigating the issues of the case at the discovery stage, and therefore outweighs its likely benefit at this point. The Commission will deny Staff's motion to compel.

THE COMMISSION ORDERS THAT:

1. Staff's Motion to Compel is denied.

⁴ More specific numbers and estimates are confidential.

2. This order shall be effective when issued.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

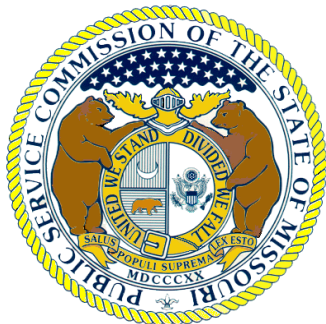
Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 24th day of January 2024.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

January 24, 2024

File/Case No. EO-2024-0002

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Nancy Dippell
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.