

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

In the Matter of the Fifth Prudence )  
Review of Costs Subject to the )  
Commission-Approved Fuel ) Case No. EO-2023-0276  
Adjustment Clause of Evergy Metro, )  
Inc. d/b/a Evergy Missouri Metro )

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

**OFFICE OF THE PUBLIC COUNSEL’S STATEMENT OF POSITIONS**

**COMES NOW** the Office of the Public Counsel (“OPC”) and for its *Statement of Positions*, states as follows:

1. The Commission’s *Order Setting Procedural Schedule and Delegation of Authority* issued on October 18, 2023, required parties to (1) file a joint list of issues and (2) file individually “a simple and concise statement summarizing [the party’s] position on each disputed issue, including citations to pre-filed testimony supporting its position.”

2. The parties filed a *Joint List of Issues, List and Order of Witnesses, Order of Opening Statements, and Order of Cross-Examination* on January 23, 2024.

3. Pursuant to the Commission’s October 18<sup>th</sup> *Order*, the OPC now files this notice summarizing its position on each disputed issue identified in the joint list of issues.

## Brief Introduction

These two cases concern the statutorily required prudence review of the Commission approved fuel adjustment clause (“FAC”) in place for both Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy West” or “the Company”). The OPC and the Staff of the Public Service Commission (“Staff”) have raised separate and distinct issues in these cases. The Staff’s issues relate to the imprudence of Evergy’s treatment of certain wind purchase power agreements and encompass stated issues 2, 3, 4, 5, 7, 7(A), 8, 8(A), 8(B), 8(C), and 9. It should be noted that most of these issues pertain to both Evergy Metro and Evergy West. The OPC’s issue relates to Evergy West’s imprudence in deciding not to acquire sufficient generation to protect its customers from the risks of the energy market and instead to rely on the energy market to meet a substantial portion of its customers’ load requirements. This encompasses Issues 6, 8, 8(A), and 8(D). The OPC’s issues pertain only to Evergy West. As stated before, Staff’s and OPC’s issues are separate and distinct and the Commission could agree with either Staff or OPC, both Staff and OPC, or neither Staff nor OPC.

Given the posture of the case outlined above and the fact that the OPC did not provide testimony related to Staff’s issues, the OPC will address only what is directly germane to the OPC’s issues as part of this position statement. However, the OPC would state as a general matter that it supports Staff’s position as to each issue that Staff has raised and may choose to discuss those issues in more detail in briefing.

**Issue 1: Have the Staff and the Office of the Public Counsel applied the Commission recognized prudence standard in evaluating their proposed disallowances?**

As a general matter, the OPC challenges the premise of this issue, in that, the OPC disagrees with the notion that the Commission has a single, recognized standard of evaluating a proposed disallowance. This issue, which was proposed by the Company, seeks to hyperinflate the significance of the testimony offered by its witness Mr. John Reed. This testimony attempts to outline a “recognized” standard of evaluating prudence disallowances based on a 1985 NRRI report. *Marke Surrebuttal*, pg. 6 lns. 19 – 23. This standard “is far from well-established” or “generally agreed upon, and is clearly not properly designed for today’s regulatory environment.” *Id.* at lns. 18 – 19. However, despite the mischaracterization of the proposed standard, the OPC has easily met Mr. Reed’s standard.

Mr. John Reed outlines four principles for his standard. *Reed Direct*, pg. 8 ln. 23 – pg. 9 ln. 1. The first is that prudence relates to actions and decisions, not costs. *Id.* at pg. 9 lns. 2 – 3. In this case, the OPC’s position is that Evergy West’s decision to not acquire sufficient generation to protect its customers from the risks of the energy market and instead to rely on the energy market to meet a substantial portion of its customers’ load requirements was imprudent. *Mantle Direct*, pg. 11 lns. 17 – 23; *Mantle Rebuttal*, pg. 1 lns. 20 – 23; *Mantle Surrebuttal*, pg. 2 lns. 9 – 12. Because the OPC is challenging the ongoing decision made by the Company to not acquire sufficient generation, the first principle is clearly met.

Mr. Reed's second principle is a rebuttable presumption of prudence. *Reed Direct*, pg. 9 lns. 5 – 6. This is easily met by the OPC as the Company has filed testimony before this Commission in other cases effectively agreeing that its overreliance on the market for generation is not a prudent decision. *Mantle Direct*, pg. 18 ln. 1 – pg. 19 ln. 13. In fact, Evergy West witness Mr. Darin Ives described the Company's practice as "akin to playing the Lotto with customers energy supply." *Mantle Rebuttal*, pg. 2 lns. 19 – 20. Another important piece of evidence in this regard is the fact that no other utility has made the deliberate decision to rely on the SPP energy market (or any other energy market) in the same manner as Evergy West. *Mantle Rebuttal*, pg. 5 lns. 7 – 18. This includes Evergy West's own sister utility Evergy Metro. *Id.*

Mr. Reed's third principle "is the total exclusion of hindsight from a properly constructed prudence review." *Reed Direct*, pg. 9 lns. 8 – 9. Again, the OPC can easily meet this standard:

This is what Evergy West knew at the time the decision was made to not add generation and rely in the SPP energy market:

1. Evergy West knew it did not have the generation that was needed to meet its customers' load requirements long before this FAC prudence period. OPC, in numerous filings, stated its concerns.
2. Evergy West knew that it was relying on the SPP market for energy because it asked for and received the inclusion of the cost of market energy in its FAC.
3. Evergy West knew that markets could be volatile. In January 2018, Jessica Tucker, Senior Manager at Evergy West, provided testimony regarding Evergy West's strategies for mitigating fuel market price volatility. In that same testimony, Ms. Tucker provides testimony that there was significant volatility in the natural gas market.

4. Evergy West knew that there is a SPP market energy price correlation with natural gas prices. Evergy West knows that electric market prices are tied to natural gas markets.

*Mantle Rebuttal*, pg. 16 lns. 8 – 23 (please see testimony for citations to evidence showing that Evergy West knew each enumerated item at the time the decision was made). The OPC has been consistent in warning Evergy about its lack of generation and the risks to which it was exposing customers in cases stretching back to 2017. *Mantle Direct*, pg. 16 lns. 12 – 16. No reasonable person could even possibly suggest that the OPC has engaged in hindsight review in this case.

Mr. Reed’s fourth and final principle “is that decisions being reviewed need to be compared to a range of reasonable behavior; prudence does not require perfection, nor does prudence require achieving the lowest possible cost.” *Reed Direct*, pg. 9 lns. 14 – 16. As with all the other, the OPC can easily meet this principle. The OPC determined the disallowance it recommends in this case by examining the resource planning documents that Evergy has previously filed with the Commission. *Mantle Direct*, pg. 19 lns. 17 – 18. In “each of these filings Evergy reached the conclusion that the combined resource plans of Evergy West and Evergy Metro were the preferred resource plan for Evergy West.” *Id.* at lns. 19 – 21. Therefore, the OPC “used the FAC and plant in service costs of both Evergy West and Evergy Metro to determine the amount Evergy West’s customers would have paid if the two utilities were combined.” *Id.* at lns. 21 – 23. The OPC’s recommendation thus demonstrates that it compared the Company’s actions against a range of reasonable behavior as it utilized the Company’s own recommendation as the most reasonable proxy. The OPC is neither

requesting perfection nor requiring Evergy West to achieve the lowest possible cost as Mr. Reed warns against; instead, the OPC is simply asking Evergy West to **truly** operate in a manner consistent with how it models Evergy West in its resource planning.<sup>1</sup>

**Issue 2: Were Evergy Missouri Metro and Evergy Missouri West imprudent in entering into four fixed-price, wind energy Purchased Power Agreements (“PPAs”)<sup>2</sup> with twenty-year terms and no clause permitting early cancellation in the event of adverse market conditions?**

The OPC generally supports Staff’s position on this issue but otherwise takes no position at this time. The OPC may choose to provide further analysis of this position during briefing.

**Issue 3: Were Evergy Missouri Metro and Evergy Missouri West imprudent in not protecting their ratepayers from the high costs resulting from the four fixed-price, wind energy PPAs in adverse market conditions?**

The OPC generally supports Staff’s position on this issue but otherwise takes no position at this time. The OPC may choose to provide further analysis of this position during briefing.

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<sup>1</sup> The OPC emphasizes the term “truly” because Evergy’s “resource planning process was, and still is, conducted as if Evergy West and Evergy Metro were a single utility” when, in fact, this is not the case. *Mantle Direct*, pg. 14 lns. 13 – 14.

<sup>2</sup> Denominated Cimarron 2, Spearville 3, Gray County, and Ensign.

**Issue 4: Were Evergy Missouri Metro and Evergy Missouri West imprudent in not mitigating the impact on their ratepayers of the high costs resulting from the four fixed-price, wind energy PPAs in adverse market conditions?**

The OPC generally supports Staff's position on this issue but otherwise takes no position at this time. The OPC may choose to provide further analysis of this position during briefing.

**Issue 5: Were Evergy Missouri Metro and Evergy Missouri West imprudent in that their shareholders did not share any part of the high costs (minus the 95%/5% FAC sharing mechanism) resulting from the four fixed-price, wind energy PPAs in adverse market conditions?**

The OPC generally supports Staff's position on this issue but otherwise takes no position at this time. The OPC may choose to provide further analysis of this position during briefing.

**Issue 6: Was Evergy Missouri West's continuing decision to not acquire sufficient generation to protect its customers from the risks of the energy market and instead to rely on the energy market to meet a substantial portion of its customers' load requirements imprudent?**

Yes. *Mantle Direct*, pg. 11 lns. 17 – 23; *Mantle Rebuttal*, pg. 1 lns. 20 – 23; *Mantle Surrebuttal*, pg. 2 lns. 9 – 12. The Company has filed testimony in this and

other cases that effectively agrees with the OPC on this point. *Mantle Direct*, pg. 18 ln. 1 – pg. 19 ln. 13. In fact, Evergy West witness Mr. Darin Ives described the Companies practice as “akin to playing the Lotto with customers energy supply.” *Mantle Rebuttal*, pg. 2 lns. 19 – 20. Yet, despite these problems, Evergy West nevertheless decided to engage in this practice, which “resulted in harm to customers [that] continues to this day.” *Mantle Rebuttal*, pg. 10 lns. 14 – 16. “Knowingly not providing insurance for almost 40% of its customer’s energy requirements was imprudent and continues to be imprudent.” *Id.* at 16 - 18

**Issue 7: Did Evergy Missouri West improperly and imprudently recover through the FAC \$2,076.20 for SPP administrative fees, under Schedules 1 and 1a?**

The OPC generally supports Staff’s position on this issue but otherwise takes no position at this time. The OPC may choose to provide further analysis of this position during briefing.

**Issue 7(a): If so, Should the Commission adopt Staff’s proposed ordered adjustment of \$2,076.20, plus interest, for transmission and SPP administrative fees to be applied to Evergy Missouri West’s next FAR filing?**

The OPC generally supports Staff’s position on this issue but otherwise takes no position at this time. The OPC may choose to provide further analysis of this position during briefing.



**Issue 8: If Evergy Missouri Metro and Evergy Missouri West were imprudent with respect to any of the decisions listed in Issues 2 through 6, above, should there be a disallowance?**

Yes. If the Commission determines imprudence, then it should disallow costs to correct for the imprudence. See below for a specific explanation of the costs that should be disallowed.

**Issue 8(A): If so, how much should the disallowance be?**

See Issue 8(D) below.

**Issue 8(B): Should the Commission adopt Staff's proposed ordered adjustment of \$12,401,229, plus interest, to be applied to Evergy Missouri Metro's next Fuel Adjustment Rate ("FAR") filing?**

The OPC generally supports Staff's position on this issue but otherwise takes no position at this time. The OPC may choose to provide further analysis of this position during briefing.

**Issue 8(C): Should the Commission adopt Staff's proposed ordered adjustment of \$13,989,508, plus interest, for purchased power costs to be applied to Evergy Missouri West's next FAR filing?**

The OPC generally supports Staff's position on this issue but otherwise takes no position at this time. The OPC may choose to provide further analysis of this position during briefing.

**Issue 8(D): Should the Commission adopt OPC's proposed ordered adjustment of \$86,376,294, with interest, to be applied in Evergy Missouri West's next FAR filing?**

Yes. This \$86 million dollar amount reflects the reduction in costs that would have been passed through to customers through Evergy West's FAC if Evergy West and Evergy Metro had operated as a combined entity during the prudence period in a manner consistent with the Company's own IRP analysis. *Mantle Direct*, pg. 19 ln. 14 – pg. 20 ln. 16. It should be noted that the actual change in the Company's proportional share of its Actual Net Energy Costs ("ANEC"), had it been operated as a combined entity with Evergy Metro was \$174 million. *Id.* However, the OPC recognized that "[p]rudent management of Evergy West's resources would have also resulted in its customers being billed increased capital costs." *Id.* at pg. 21 lns. 6 – 7. The OPC therefore "used the fixed costs of the generation plant that were included in Staff's true-up workpapers of the revenue requirements of Every West and Evergy Metro in Case Nos. ER-2018-0145 and ER-2018-0146" to account for this and lowered the disallowance proposal by nearly half as a result. *Id.* at pg. 21 ln. 4 – pg. 22 ln. 3.

**Issue 9: Should the Commission order that any losses incurred for these PPAs going forward be borne by the Companies' shareholders?**

The OPC generally supports Staff's position on this issue but otherwise takes no position at this time. The OPC may choose to provide further analysis of this position during briefing.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Statement of Positions* and rule in the OPC's favor on all issues addressed herein.

Respectfully submitted,

By:           /s/ John Clizer            
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 31<sup>st</sup> day of January, 2024.

  /s/ John Clizer