

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

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

Case No. EO-2024-0002

OFFICE OF THE PUBLIC COUNSEL'S INITIAL POST-HEARING BRIEF

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INTRODUCTION

In order for the Office of the Public Counsel (“OPC”) to properly articulate its stance on how the Commission ought to treat this data production case, it is imperative to explain the format of this brief. On October 18, 2023, the Public Service Commission (“Commission”) ordered, in relevant part “Briefs shall follow the same list of issues as filed in the case and must set forth and cite the proper portions of the record concerning the unresolved issues that the parties believe require a decision by the Commission.” The parties determined that there was not consensus as to what the appropriate list of issues was for this case, thus the parties filed separate issues lists. On January 17, 2024, the Public Service Commission Staff (“Staff”) filed one List of Issues,¹ Evergy² and Midwest Energy Consumer’s Group (“MECCG”) filed a second List of Issues,³ and the OPC filed a third document stating this office had no further issues to add.⁴

On January 18, 2024, all of the parties filed their Statements of Position.⁵ For that filing, the OPC’s positions were listed in three sections. Section 1 regarded the OPC’s general understanding of the case, Section 2 focused on the OPC’s response to

¹ *List of Issues, Order of Opening Statements, List and Order of Cross-Examination*, EO-2024-0002, EFIS Item No. 41.

² “Evergy” and “Company” refer to both Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West together throughout this brief.

³ *List of Issues, Order of Opening Statements, List and Order of Cross-Examination*, EO-2024-0002, EFIS Item No. 42.

⁴ *List of Issues, Order of Opening Statements, List and Order of Cross-Examination*, EO-2024-0002, EFIS Item No. 43.

⁵ Also known as Position Statements.

Staff's issue list, and Section 3 focused on the OPC's response to Evergy and MECG's issues list.

Therefore, for the ease of the parties and the finders of fact, the OPC has chosen to follow the same format used for its Statement of Position.

SECTION 1. THE CASE, GENERALLY

1. **Should the Commission order Evergy to produce the information the Company previously agreed to provide in its last rate case, case nos. ER-2022-0129 and ER-2022-0130, as the stipulation and agreement ("Agreement")⁶ specifies?**

The OPC stands by the Commission's Staff and stands by its original position. The fact that Staff, which is made up of public servants, is seeking to improve the accuracy of Evergy's ratemaking process, at the cost of their own time and energy, deserves commendation. Staff has analyzed the ratemaking process after the transition to Time of Use rates, and has been clear that the information it is requesting is required to determine revenues,⁷ weather normalization adjustments,⁸ Missouri Energy Efficiency Investment Act ("MEEIA") data,⁹ and more. In essence "Staff believes this information is necessary to ensure that the Commission is approving rates that are just and reasonable and that aren't unjustly discriminatory or unduly preferential."¹⁰

⁶ *Stipulation and Agreement* pg. 12, ER-2022-0129, EFIS Item No. 326 (referring to *Direct Testimony of Sarah L. K. Lange*, pg. 3 line 9 to pg. 5 line 3); ER-2022-0130, EFIS Item No. 340 (referring to *Direct Testimony of Sarah L. K. Lange*, pg. 3 line 9 to pg. 5 line 3).

⁷ Transcript ("Tr."), pg. 351 line 22.

⁸ Which is related to revenues; *Id.* at pg. 402 lines 15-25.

⁹ Ex. No. 202, Rebuttal Testimony of J Luebbert, § NECESSITY OF IMPROVED DATA RELATED TO MEEIA AND TIME BASE RATE STRUCTURES, EFIS Item No. 74.

¹⁰ Tr., pg. 249 line 24 to pg. 250 line 2.

However, there is importance beyond even Staff's multiple reasons for requesting this information. When Evergy commits to a settlement condition in order to settle an issue in a rate case, the Company must try to carry out that commitment. If Evergy truly could not provide the information that Staff was requesting, it was obligated to work with Staff, in good faith, to figure out an alternate solution. Instead, Evergy made no move to meet with Staff about producing this data between the end of the 2022 rate case and the Company's first filing in this docket.¹¹ Moreover, Evergy waited until the last day that it could file the motion opening this docket to do so.¹²

Evergy states that it "has tried to stay engaged" by joining workshops that Ameren led and having "a couple of meetings" with Staff. However, the Company also points out, in the same breath, that it has met with Staff only "four times in other venues not specific to these data needs."¹³ It is not Staff's duty to chase down every public utility to ensure it is willing and able to follow through with settlement conditions.

When the parties to a rate case enter into a stipulation and agreement, that document effectively acts as a contract. If one party to a contract promises to provide certain information to the other party, in order to avoid litigating an issue, the promisor must follow through. When it comes to trade and commerce, Missouri state law states, "Every contract or duty within this chapter imposes an obligation of good

¹¹ Id. at pg. 186 line 14 to pg. 187, line 5.

¹² Id. at pg. 187 lines 1-4.

¹³ Id. at lines 18 & 19.

faith in its performance and enforcement.”¹⁴ Missouri courts also have a long-stated belief that “Every contract implies good faith and fair dealing between the parties to it.”¹⁵

In Missouri, courts put so much weight on the implied obligation of good faith in contracts because without it the contract itself is pointless. Staff agreed to settle the data production portion of the Company’s 2022 rate case because Evergy agreed to provide certain information to the PSC. If public utilities can now avoid settlement obligations by asserting, without evidence, following those obligations is too expensive, the other parties have no reason to negotiate.

Staff is not requesting the data central to this case to inconvenience Evergy. Staff is requesting this information because it touches Company revenues,¹⁶ billing determinants,¹⁷ weather normalization,¹⁸ and MEEIA.¹⁹ Further, Staff determined “in the last rate case, the customer counts that [the Company] provided were questionable.”²⁰ In rate cases before this Commission, the areas effected by the information at hand is foundational to proper rate setting.²¹

During the hearing, Mr. Lutz stated “If nothing else, I want everyone to take away from this the Company is not trying to be obstructionist.”²² However, Staff is

¹⁴ 400.1-304 RSMo (2017)

¹⁵ Shoemaker v. Great Lakes Pipe Line Co., 227 Mo. App. 941 (Mo W.D. 1933).

¹⁶ Tr., pg. 351 line 22.

¹⁷ Ibid.

¹⁸ Id. at line 21.

¹⁹ Ex. No. 202, *supra* FN 9.

²⁰ Tr., pg. 416 lines 12-13.

²¹ Id. at pg. 240 line 24 to pg. 250 line 2.

²² Id. at pg. 202 lines 2-5.

telling the Commission that the information it requested is integral to its ability to do its job. Therefore, no matter Evergy's intent, its stance is an obstruction to Staff's ability to regulate it, effectively.

Evergy believes it can avoid its obligations by simply stating, without proof, that the request it agreed to with Staff is too expensive. This view is problematic. If the Commission permits Evergy to circumvent the obligation in the Agreement as easily as Evergy is attempting to in this case, other parties will not be willing to put those clauses in future stipulations. Further, that finding will dissuade parties from settling any issue with Evergy. If the Company is not equally bound by a stipulation, how can another party believe that it is acting in good faith? Considering the issue of information asymmetry, how can another party trust that Evergy's dealing is fair?

The Commission finding that Evergy must provide²³ the same, or analogous, data it agreed to in the Agreement is vital. Staff needs the information itself to effectively engage in ratemaking. Other parties need assurance that the Commission will hold Evergy to its obligations to engage in future settlement negotiations. That is the solution that will provide the greatest benefit to all parties in this case.

2. What is the estimated cost for Evergy to provide the information Staff is requesting?

The Company has not provided any clarity regarding the general cost for the data Staff requested since the Commission approved the Agreement. Through discovery, the OPC has determined that Evergy's cost estimates appear to lack any

²³ Or work to provide, which is discussed in more detail *infra* section 1, question 3.

material support. The Company's reasoning behind its inability to provide more details regarding its cost estimates seems to be the "top down nature" of the approach Evergy used to determine the cost to provide this information.²⁴ However, in assessing the cost through this "top down"²⁵ method, other parties to this case are unable to properly assess Evergy's pricing methodology or the alleged costs, themselves.

However, there is another aspect of Evergy's "top down" pricing method that causes even more problems regarding the provision of data in this specific instance. Specifically, the inability for the Company to itemize the different aspects of data provision severely limits Staff's ability to seek a proper solution in this case. Ms. Sarah Lange, addressing the vague nature of Evergy's pricing said, "I'll say [Evergy's direct filing in this case] does not clearly state what Evergy has to do to get information and what [that process] will cost."²⁶ The OPC requested an itemized breakdown of the cost estimates of the attachment to Company witness Bradley D. Lutz's testimony, BDL-1²⁷. The OPC also requested a breakdown of the time estimates that Evergy assessed for the project in that same attachment.²⁸ The Company merely referred the OPC to BDL-1 for both answers.²⁹ Further, Evergy was

²⁴ Id. at pg. 115 lines 7-16.

²⁵ To be clear, the Company described its method of cost estimation as "top down" to explain why it was unable to provide itemized cost estimates for this project. From what Ms. Drago testified during the hearing, a "top down" approach refers to Evergy looking at the price of other, similar, projects as the one Staff requested here and creating a cost estimate based off of those projects. See Tr. at pg. 69, lines 8-10.

²⁶ Tr. at 359 lines 19-21.

²⁷ Ex. No. 301, DR 1, Attachment BDL-1, EFIS Item No. 92.

²⁸ Ex. No. 302, DR 2, EFIS Item No. 93.

²⁹ Ex. No. 301, DR 1; Ex. No. 302, DR 2.

not able to provide any supporting documentation or calculation beyond the testimony it had previously provided to support its numbers.³⁰

It is Evergy's inability to provide this information that leads the OPC to believe that the cost estimates the Company provided were not made in good faith. The Company is providing Staff an answer to its questions in a manner that enhances both the existence and detriment of the information asymmetry present in this case. Because the Company used a method of assessing cost that is not supported by an itemized breakdown or work-paper support, there is no way for the other parties to see if the Company is adding costs that need not apply. Further, this pricing approach limits other parties' ability to find alternate methods of getting the information that Staff has asserted it needs.³¹ In effect, in a case where knowledge is the most powerful aspect of the issue in question, the Company is retaining as much power as it can.

However, despite the limited information Evergy has provided Staff thus far to support its cost estimates, Staff is still attempting to be flexible in the methods it uses to get the necessary data. Staff testified to its willingness to review alternate data Mr. Lutz has generally offered.³² Staff also has suggested keeping the current docket open to assess and gather alternate data, as appropriate.³³

The OPC fully supports Staff's cost analysis, as the OPC has interpreted Ms. Lange's assertion during her time on the stand. Specifically, the OPC supports Staff's

³⁰ Ex. No. 303, DR 3, EFIS Item No. 94.

³¹ Tr., pg. 247 line 14 to pg. 272 line 5 provides an in-depth analysis of Staff's need for this information. A summation of those points is also provided in Section 2 of this brief.

³² Id. at pg. 386 lines 9-11.

³³ Id. at lines 12 & 13.

pursuit of the information Evergy can provide, at a reasonable cost. The clearest example of Staff's view, as the OPC is viewing it, occurred during Ms. Lange's testimony when she said the following:

I personally would not recommend proceeding in [seeking the information requested by provision] 1 with anything over a cost after \$100,000 and the likely cost would be much lower than that that I personally would recommend proceeding with.”³⁴

As far as the OPC can tell, Staff is facing a dearth of information that it needs to perform the duties that it is authorized—by statute³⁵ and regulation³⁶—to do. Staff is trying to be as flexible as possible with Evergy, while still retaining the professional skepticism³⁷ that Missourians depend on. The information that Staff is lacking relates not only to the data central to this docket, but also to the method and cost of obtaining that data.

3. Should the Commission order Evergy to actively work with Staff to produce the information the Company previously agreed to provide in the Agreement?

The final question that the OPC gathered from the presented issues was, essentially, how should the Commission order the parties to deal with exchange of the Agreement data. To this question, the OPC makes two (2) recommendations—whether that be by Commission order or otherwise—

³⁴ Id. at pg. 358 lines 6-10.

³⁵ See generally MO. REV. STAT. §§393.110-393.400 & MO. REV. STAT. §§386.210-386.200.

³⁶ See Generally 20 C.S.R. 4240.

³⁷ Tr. pg. 386 lines 16-19.

- 1) Any and all discussions or data provision regarding the Agreement provision central this case should remain in this docket³⁸ and
- 2) Staff and the Company should continue to communicate *effectively* to find the most cost-effective solution for this data problem.

The OPC cannot ignore the central role that asymmetrical information plays in Evergy's ability to severely limit Staff oversight.³⁹ Only Evergy knows the factors it is using to determine the cost associated with providing Staff the requested data. Only Evergy has the ability to determine the price associated with those factors or how integral they are to providing that data. Only Evergy knows the content of the data it has and can access.

Evergy stressed that it does not intend to be obstructionist.⁴⁰ Perhaps that assertion is true. However, the Company has only provided vague non-responses⁴¹ and has aggressively pushed back against most attempts to obtain any of the information that only Evergy can access. The tension between Staff and the Company has even led a company witness to refer to the parties "going to their corners."⁴² The language is concerning. Seeking the best solution for both the utility and its consumers should not be treated as a metaphorical boxing match.

³⁸ Though, the OPC would understand the Commission review aspects of this docket such as the ten (10) day period to respond to data requests.

³⁹ Ex. No. 202, Rebuttal Testimony of J Luebbert, pg. 4 line 13 to pg. 6 line 22, EFIS Item No. 74.

⁴⁰ Tr., pg. 202 lines 4 & 5.

⁴¹ See *generally* Ex. No. 301 through Ex. No 303 as an example.

⁴² Tr. pg. 187 line 1.

As Mr. Lutz says “we can have differences of opinion.”⁴³ In fact, discussing and understanding those differences openly ensures that settlements benefit a wider swath of people and interests. One recurring problem that is exemplified by this case is that Evergy ascribes negative implication to Staff actions. At the same time, Staff, in its attempt to determine a different method of getting the information it needs, has created the space for the Company to assign that intent.⁴⁴ Chairman Rupp,⁴⁵ made the most important observation—regarding future steps—just after the substantive part of the hearing ended.⁴⁶ The Chairman said, in his individual capacity, “[F]rom my standpoint, the entirety of the last two days has been poor communication. . . . You all, I’m talking to the Company and the Staff, you have better information and better data than the Commissioners do.”⁴⁷

The OPC finds itself in a fairly similar position as the Commissioners here and the OPC agrees with the Commissioner’s view. Staff and the Company appear to be coming away from conversations with different views as to each other’s requests and views. Therefore, the OPC believes a beneficial move forward may be to enlist in mediation in a process that mirrors the one spelled out in 20 C.S.R. 4240-36.030. A mediator, that the Commission chooses,⁴⁸ would permit the Staff and Evergy to find

⁴³ Tr., pg. 202 line 7.

⁴⁴ Id. at pg. 298 lines 2-7.

⁴⁵ Now Commissioner Rupp.

⁴⁶ Tr., pg. 467 lines 11 & 12.

⁴⁷ Id. at pg. 467 line 17-25.

⁴⁸ Mirroring the requirement specified by 20 C.S.R. 4240-36.030(3).

a solution, while ensuring that both parties take away the same meaning from the conversation.

With this additional consideration in mind, this docket should remain open as the conversation progresses. The information provided during this hearing, by both parties, is extensive. Further, this case alone refers to several other cases.⁴⁹ Creating yet another case docket that multiple parties need to remember is not necessary for the resolution of this data production issue. The parties could simply discuss how to handle the structure of the docket, such as the ten (10) day response time to data requests. However, to close this docket entirely and start anew—for the third time—is superfluous. Therefore, the OPC believes that this docket should remain open as a repository regarding Staff and Evergy’s treatment of these Provisions going forward.

SECTION 2. STAFF’S ISSUES⁵⁰

- 1. *What is Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro’s (“Evergy Missouri Metro”) and Evergy Missouri West, Inc., d/b/a Evergy Missouri West’s (“Evergy Missouri West”) estimate of the cost to provide line transformer costs and expenses by rate code?***

Still today, the OPC is not sure. According to the Attachment titled “BDL-I,” Evergy believes that it will cost anywhere from \$80 million to \$110 million. However, there are very real questions around how the Company has calculated that number.

⁴⁹ ER-2022-0129, ER-2022-0130, EW-2017-0245, ER-2022-0337, EO-94-199, and EC-2024-0092.

⁵⁰ Section 1 of this brief discusses each of the main issues, as the OPC sees them, in a generalized fashion. Therefore, the OPC’s responses in Section 2 and Section 3 will link to the relevant portion of Section 1, adding further context to that answer, where appropriate.

For a more complete explanation, please see the OPC's answer to question #2 in Section 1.⁵¹

a. Should the Commission order production of line transformer costs and expenses by rate code as described in Stipulation provision 1 at that estimated cost?⁵²

During the hearing, Mr. Clizer walked through each of the stipulation provisions (“Provision”) Staff was requesting in this case and why each item was necessary. Regarding Provision number 1, Ms. Lange explained that the reason Staff was seeking that data from Evergy is to increase the accuracy of Evergy’s cost allocation and to improve rate design.⁵³ Specifically, Staff testified to its need to perform a class cost of service study (“CCOS”) because Staff has not fully performed a CCOS study since the 1990s.⁵⁴ As Ms. Lange explained, these full reviews are not performed in every rate case,⁵⁵ but it is important for these studies to be updated when the information landscape has changed. With the implementation of Time of Use rates, the way to analyze billing should change too. Further, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 1, for the reasons discussed above.

⁵¹ Please note: Each item that is underlined throughout this brief is a hyperlink that will take the reader to the relevant OPC discussion Section 1.

⁵² During the hearing, Staff discussed provision items as a group, rather than individually. Therefore, the discussion of each item will follow that same format in this brief.

⁵³ Tr., pg. 248 lines 22-25.

⁵⁴ Id. at pg. 263

⁵⁵ Id. at pg. 250 lines 3-5.

2. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide primary distribution costs and expenses by voltage?

As was stated for Section 2, Question 1, the OPC is not entirely sure of the cost for Evergy to provide this information. The OPC is skeptical of the price Evergy has alleged to produce this data and is deeply concerned about the lack of evidence the Company has provided to support its estimate. For a more complete explanation, please see the OPC's answer to question #2 in Section 1.

a. Should the Commission order production of primary distribution costs and expenses by voltage as described in Stipulation provision 1 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 1, for the reasons discussed above.

3. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide secondary distribution costs and expenses by voltage?

As was stated for Section 2, Question 1, the OPC is not entirely sure of the cost for Evergy to provide this information. The OPC is skeptical of the price Evergy has alleged to produce this data and is deeply concerned about the lack of evidence the Company has provided to support its estimate. For a more complete explanation, please see the OPC's answer to question #2 in Section 1.

a. Should the Commission order production of secondary distribution costs and expenses by voltage as described in Stipulation provision 1 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that,

within reason, the Commission should order Evergy to provide the information in Provision 1, for the reasons discussed above.

4. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide primary voltage service drop costs and expenses?

As was stated for Section 2, Question 1, the OPC is not entirely sure of the cost for Evergy to provide this information. The OPC is skeptical of the price Evergy has alleged to produce this data and is deeply concerned about the lack of evidence the Company has provided to support its estimate. For a more complete explanation, please see the OPC's answer to question #2 in Section 1.

a. Should the Commission order production of primary voltage service drop costs and expenses as described in Stipulation provision 1 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 1, for the reasons discussed above.

5. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide line extension costs, expenses, and contributions by rate code and voltage?

As was stated for Section 2, Question 1, the OPC is not entirely sure of the cost for Evergy to provide this information. The OPC is skeptical of the price Evergy has alleged to produce this data and is deeply concerned about the lack of evidence the Company has provided to support its estimate. For a more complete explanation, please see the OPC's answer to question #2 in Section 1.

a. Should the Commission order production of line extension costs, expenses, and contributions by rate code and voltage as described in Stipulation provision 1 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 1, for the reasons discussed above.

6. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide meter costs by voltage and rate code?

As was stated for Section 2, Question 1, the OPC is not entirely sure of the cost for Evergy to provide this information. The OPC is skeptical of the price Evergy has alleged to produce this data and is deeply concerned about the lack of evidence the Company has provided to support its estimate. For a more complete explanation, please see the OPC's answer to question #2 in Section 1.

a. Should the Commission order production of meter costs by voltage and rate code as described in Stipulation provision 1 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 1, for the reasons discussed above.

7. What is Evergy Missouri Metro’s and Evergy Missouri West’s estimate of the cost to provide for each rate code, provide the total number of customers served on that rate schedule on the first day of the month and the last day of the month?

Evergy alleges that providing this information to Staff will cost “~140 hours/\$21K plus ongoing maintenance.”⁵⁶ However, Evergy has not provided a breakdown of either the cost⁵⁷ or the time⁵⁸ that the Company would devote to this project. Therefore, the OPC is unsure of whether this cost is accurate. The OPC’s concerns are discussed in more depth in the OPC’s answer to question #2 in Section 1.

a. Should the Commission order production of the total number of customers served on each rate schedule, for each rate code, on the first day of the month and the last day of the month as described in Stipulation provision 2 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 2, for the reasons discussed above.

8. Customer counts

a. Total customer counts: What is Evergy Missouri Metro’s and Evergy Missouri West’s estimate of the cost to provide for each rate schedule on which customers may take service at various voltages, the number of customers served at each voltage on the first day of the month and the last day of the month?

The same issues regarding the vagueness of Evergy’s calculation and process exists for the Company’s price estimate for this issue. Therefore, the OPC is not

⁵⁶ Ex. No. 3, Direct Testimony of Bradley D. Lutz, BDL-1, see FN 28.

⁵⁷ Ex. No. 301, DR 1.

⁵⁸ Ex. No. 302, DR 2.

entirely sure of the actual cost for Evergy to provide this information and, again, is deeply concerned about the lack of evidence the Company has provided to support its estimate. For a more complete explanation, please see the OPC's answer to question #2 in Section 1.

i. Should the Commission order production, for each rate schedule on which customers may take service at various voltages of the number of customers served at each voltage on the first day of the month and the last day of the month as described in Stipulation provision 2a at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 2a, for the reasons discussed above.

a. Counts of AMI metered customers: What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide for each rate code, the number of customers served on that rate schedule on the first day of the month and the last day of the month for which interval meter readings are obtained?

Evergy alleges that providing this information to Staff will cost “~140 hours/\$21K plus ongoing maintenance.”⁵⁹ However, the lack of clarity around timeline and price exists again here. These concerns are explained in greater depth in the OPC's answer to question #2 in Section 1.

⁵⁹ Ex. No. 3, Direct Testimony of Bradley D. Lutz, BDL-1, see FN 28.

i. Should the Commission order production of the number of customers served on each rate schedule, by rate code, on the first day of the month and the last day of the month for which interval meter readings are obtained as described in Stipulation provision 3 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 3, for the reasons discussed above.

a. Counts of AMI metered customers by voltage: What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide for each rate code on which customers may take service at various voltages, the number of customers served at each voltage on the first day of the month and the last day of the month for which interval meter readings are obtained?

Evergy estimated that providing this information would cost “~360 hours/\$54K.”⁶⁰ However, the Company's inability to provide monetary breakdown or a timeline of this project, again leaves the OPC skeptical. The OPC's concerns are explained in greater depth in the OPC's answer to question #2 in Section 1.

i. Should the Commission order, for each rate code on which customers may take service at various voltages, production of the number of customers served at each voltage on the first day of the month and the last day of the month for which interval meter readings are obtained as described in Stipulation provision 3a at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 3a, for the reasons discussed above.

⁶⁰ Id.

9. Customer hourly usage

a. What is Evergy Missouri Metro’s and Evergy Missouri West’s estimate of the cost to provide for each rate code for which service is available at a single voltage, the sum of customers’ interval meter readings, by interval?

Evergy estimated that providing this information would cost “~360 hours/\$54K.”⁶¹ However, the Company’s inability to provide monetary breakdown or a timeline of this project, again leaves the OPC skeptical. The OPC’s concerns are explained in greater depth in the OPC’s answer to question #2 in Section 1.

i. Should the Commission order production for each rate code for which service is available at a single voltage, the sum of customers’ interval meter readings, by interval as described in Stipulation provision 4 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 4, for the reasons discussed above.

a. What is Evergy Missouri Metro’s and Evergy Missouri West’s estimate of the cost to provide for each rate code on which customers may take service at various voltages, the sum of customers’ interval meter readings, by interval and by voltage?

Evergy estimated that providing this information would cost “~360 hours/\$54K.”⁶² However, the Company’s inability to provide monetary breakdown or a timeline of this project, again leaves the OPC skeptical. The OPC’s concerns are explained in greater depth in the OPC’s answer to question #2 in Section 1.

⁶¹ Id.

⁶² Id.

i. Should the Commission order, for each rate code on which customers may take service at various voltages, production of the sum of customers' interval meter readings, by interval and by voltage; as described in Stipulation provision 4a at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 4a, for the reasons discussed above.

a. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide if any internal adjustments to customer interval data are necessary for the company's billing system to bill the interval data referenced in parts 4. and 4.a., such adjustments should be applied to each interval recording prior to the customers' data being summed for each interval?

Evergy's estimated cost to fully respond to this provision is between \$3.75 million and \$30 million.⁶³ Evergy even broke that cost down further into a design phase and an implementation phase. Unfortunately, the same concerns regarding Evergy's price determinations persist. Those concerns are explained in greater depth in the OPC's answer to question #2 in Section 1.

i. Should the Commission order production of any applicable internal adjustments to customer interval data as necessary for the company's billing system to bill the interval data referenced in parts 4. and 4.a., if not internally applied; as described in Stipulation provision 5 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 1, for the reasons discussed above.

⁶³ Id.

10. What is Evergy Missouri Metro’s and Evergy Missouri West’s estimate of the cost to provide information the Commission may designate from time to time pertaining to certain customer subsets for more granular study?

Evergy did not provide a cost estimate for this information.

a. Should the Commission order Evergy Missouri Metro’s and Evergy Missouri West’s to take steps to facilitate such production of information as described in Stipulation provision 6 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 6, for the reasons discussed above.

11. What is Evergy Missouri Metro’s and Evergy Missouri West’s estimate of the cost to retain individual customer interval data for a minimum of 14 months where individual data is acquired by the Company in intervals of less than one hour in duration, such data shall be retained in intervals of no less than one hour?

Evergy asserts that it there is no additional cost to this request as the Company “retains interval data for six years.”⁶⁴

a. Should the Commission order such retention as described in Stipulation provision 7 at that estimated cost?

Yes. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 7, for the reasons discussed above.

⁶⁴ Id.

12. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to retain individual hourly data for use in providing bill-comparison tools for customers to compare rate alternatives?

Evergy asserts that there is no additional cost to this request as the Company uses a third party to provide this service.⁶⁵

a. Should the Commission order such retention of individual hourly data for use in providing bill-comparison tools for customers to compare rate alternatives as described in Stipulation provision 8a at that estimated cost?

Yes. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 8a, for the reasons discussed above.

13. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to retain coincident peak determinants for use in future rate proceedings?

Evergy did not provide a cost estimate for this issue.

a. Should the Commission order Evergy Missouri Metro and Evergy Missouri West to retain information to provide coincident peak determinants for use in future rate proceedings as described in Stipulation provision 8b at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 8b, for the reasons discussed above.

⁶⁵ Id.

14. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide to Staff, upon request, the information described in part 1, related to distribution costs and expenses?

Evergy referred to the exceedingly high cost that it estimated for Provision 1.⁶⁶

In doing so, Evergy brings back the same concerns that are the focus of the OPC's answer to question #2 in Section 1.

a. Should the Commission order production to Staff upon request of the distribution data described in Stipulation provision 1, as described in Stipulation provision 8c1 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 1, as described in Provision 8c1, for the reasons discussed above.

15. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide to Staff upon request a minimum of 12 months of the data described in parts 2-5 (customer counts and interval usage by rate code)?

For this item, Evergy listed the cost as “~140 hours/\$20k.” However, the OPC cites the same issues of vagueness around the Company's process and cost breakdown to explain its lack of trust in Evergy's price. For further explanation, see the OPC's answer to question #2 in Section 1.

a. Should the Commission order production to Staff upon request a minimum of 12 months of the data described in parts 2-5 (customer counts and interval usage by rate code) as described in Stipulation provision 8c2 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that,

⁶⁶ Id.

within reason, the Commission should order Evergy to provide the information in Provision 1, as described in Provision 8c2, for the reasons discussed above.

16. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide to Staff upon request for rate codes with more than 100 customers, a sample of individual customer hourly data, and identified peak demands for those 100 customers in the form requested at that time (i.e. monthly 15 minute non-coincident, annual 1 hour coincident)?

Evergy estimated that it would cost “~260 hours/\$42k plus ongoing maintenance”⁶⁷ to provide this information for Staff. However, the OPC has the same concerns regarding this estimate that it has repeatedly noted for the other estimates that Evergy has provided. For further explanation, see the OPC's answer to question #2 in Section 1.

a. Should the Commission order production to Staff upon request such information as described in Stipulation provision 8c3 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 1, as described in Provision 8c3, for the reasons discussed above.

17. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide to Staff upon request for rate codes with 100 or fewer customers, individual customer hourly data, and identified peak demands for those customers in the form requested at that time (i.e. monthly 15 minute non-coincident, annual 1 hour coincident)?

Evergy estimated that it would cost “~250 hours/\$40k plus ongoing maintenance”⁶⁸ to provide this information for Staff. However, the OPC has the same concerns regarding this estimate that it has repeatedly noted for the other estimates

⁶⁷ Id.

⁶⁸ Id.

that Evergy has provided. For further explanation, see the OPC's answer to question #2 in Section 1.

a. Should the Commission order production to Staff upon request such information as described in Stipulation provision 8c4 at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 1, as described in Provision 8c4, for the reasons discussed above.

18. What is Evergy Missouri Metro's and Evergy Missouri West's estimate of the cost to provide for purposes of general rate proceedings, all data described above for a period of not less than 36 months, except that Staff does not request individual customer data for 36 months except as described in part 8.c.3.?

Evergy did not provide a separate cost estimate for this item, instead stating "SEE INDIVIDUAL ITEMS ABOVE."⁶⁹

a. Should the Commission order production, for purposes of general rate proceedings, of all data described above for a period of not less than 36 months, except that Staff does not request individual customer data for 36 months except as described in part 8.c.3. as described in Stipulation provision 8d at that estimated cost?

As the OPC has already expressed, the cost Evergy has provided for this Provision leads this office to ask a lot of questions. Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 1, as described in Provision 8d, for the reasons discussed above.

⁶⁹ Id.

19. What is Evergy Missouri Metro’s and Evergy Missouri West’s estimate of the cost to provide and develop the determinants for assessment of an on-peak demand charge to replace the current monthly billing demand charge, and for potential implementation for customers not currently subject to a demand charge?

The Company did not provide this cost estimate.

a. Should the Commission order production and development of the determinants for assessment of an on-peak demand charge to replace the current monthly billing demand charge, and for potential implementation for customers not currently subject to a demand charge; and as described in Stipulation provision 9 at that estimated cost?

Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 9 for the reasons discussed above.

20. What is Evergy Missouri Metro’s and Evergy Missouri West’s estimate of the cost for Evergy Missouri Metro and Evergy Missouri West to begin to retain and study data related to the reactive demand requirements of each rate code, and sample customers within each rate code?

The Company did not provide this cost estimate.

a. Should the Commission order Evergy Missouri Metro and Evergy Missouri West to begin to retain and study data related to the reactive demand requirements of each rate code, and sample customers within each rate code as described in Stipulation provision 10 at that estimated cost?

Generally, the OPC believes that, within reason, the Commission should order Evergy to provide the information in Provision 10 for the reasons discussed above.

SECTION 3. EVERGY'S ISSUES

- 1. Should the Commission order Evergy to create and produce the data requested in the direct testimony of Staff witness Sarah Lange in File Nos. ER-2022-0129 and ER-2022-0130 as detailed in witness Lange's direct testimony on p. 62, ln. 1 through p. 64, ln. 28?⁷⁰**

The OPC's full response to this question is provided in Section 1 of this brief. Essentially, the OPC believes that the Company should provide the amount of information that it is economically feasible to provide. The cost estimates that the Company has provided appear deeply unreliable and unsupported. However, the best method of determining the information that is important is for the parties to meet with a third party and find a real solution to this issue.

- 2. Should the Company expend the funds to create and produce the data requested by Staff? What is the expected cost of creation and production of the data requested by Staff?**

The OPC is deeply concerned about Evergy's estimated cost to produce and deliver the data that Staff has requested. If the amount were truly as Evergy has estimated,⁷¹ this office would not support this use of funds. However, after the hearing, it is clear that Staff also believes the funds that Evergy asserts it would cost would be too much.⁷² What the OPC believes the parties could do, as discussed above, is meet, perhaps with a mediator, and discuss the appropriate cost for the Company to produce this information.

⁷⁰ Please note: The original issue listed the Provision listed in Sarah Lange's testimony in ER-2022-0129 and ER-2022-0130. For brevity, the OPC has removed that portion of this question as each information request is listed in Section 2 of this brief.

⁷¹ Which, again, this office [questions](#).

⁷² Tr., pg. 296 lines 9-11.

3. If the Commission orders the creation and production of the data requested by Staff, should the Commission also order the deferral of all costs for possible recovery in a future rate case?

This issue was not discussed during the hearing. Therefore, the OPC's view of the issue has not changed. In fact, the only party that referred to Evergy's request to defer these costs during the hearing, itself, was MEEG in its opening statement. The only foundation upon which support for such a notion rests is an opinion expressed by company witness Bradley D. Lutz in his surrebuttal testimony.⁷³

Furthermore, during the hearing, the Company introduced a consultant to support its stance that the Commission should not require it to follow the Stipulation and Agreement it signed in ER-2022-0129 and ER-2022-0130.

The witness is a partner at Price Waterhouse Cooper ("Price Waterhouse")⁷⁴ who testified that he had spent an estimated "100, 80 to 100 my guess"⁷⁵ hours working on this project. According to the Statement of Work⁷⁶ that Evergy sent the OPC regarding this witness's pay, partners at Price Waterhouse are paid ****_____**** per hour, so Evergy would pay Mr. Ripley a total of approximately ****_____** **_____****. The OPC does not believe Evergy's ratepayers should bear the burden of paying to support the Company's attempt to remove itself from the settlement agreement it voluntarily entered into with Staff. Importantly, this price exceeds many of the costs the Company asserted were too high to require their production.

⁷³ Ex. No. 4, Surrebuttal Testimony of Bradley D. Lutz, pg. 24 lines 15-20, EFIS Item No. 67.

⁷⁴ Tr. pg 51 lines 10-13.

⁷⁵ Id. at 54 lines 18-22.

⁷⁶ Ex. No. 304, DR 2000, EFIS Item No. 95.

4. *Should the Commission provide guidance concerning rate design proposal development, and the Company's obligation to support the data needs of Staff when the data needs are beyond the needs of the Company and not associated with Company proposals, as recommended by Evergy witness Bradley D. Lutz?*

The purpose of *effective* regulation is the same as that of market competition, to align private behavior with the public interest.⁷⁷ In order to ensure investor-owned utilities (“IOUs”) such as Evergy are acting in the public interest, PSC Staff should be independent, thoughtful, and diligent. This Commission’s Staff is assigning itself more work to ensure that both customers and IOUs continue to progress as unencumbered as possible.

Evergy suggests that Staff should be “seeking to affirm Company rate design proposals,” and should not be “pursuing rate design plans in spite of Company recommendations.”⁷⁸ This view is wrong. To say otherwise unduly limits one of the few safeguards Missouri’s citizens have against privately-owned, natural monopolies. When regulations do not require utilities to align their private conduct with the public interest, those utilities have no other incentive to do so.

This issue, as Evergy has phrased it, asks if the Commission should “provide guidance concerning rate design proposal development, and the Company’s obligation to support the data needs of Staff when the data needs are beyond the needs of the Company and not associated with Company proposals[.]” The OPC rejects the premise of this question. There is plenty of Commission precedent to show that

⁷⁷ Scott Hempling, *Preside or Lead? The Attributes and Actions of Effective Regulators*, 99 (2d ed. 2013).

⁷⁸ Evergy Position Statement, pg. 11, EFIS Item No. 47.

multiple parties provide guidance concerning rate design proposal development.⁷⁹

Therefore, it is not appropriate for members of this Commission to rely solely on the asserted needs of the Company it regulates to determine how its Staff should act. Instead, the Commission should rely on its own precedent,⁸⁰ the practice and expectations of other IOUs,⁸¹ and the needs its own Staff attests to,⁸² as well.

5. **Should the Commission order that this docket remain open for resolution of discovery disputes related to data provision, as recommended by Staff expert J Luebbert? Specifically, Staff recommended 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 to provide required data in a usable format.**

The OPC believes that this docket should remain open for the specific purpose of providing the data central to this particular case, as this office has already explained in this brief.

6. **Should the Commission order that this docket remain open for use as a discovery repository and forum for dispute resolution related to the provision of information to conduct a distribution system cost study, as recommended by Staff expert Sarah Lange?**

If the information that the Company would produce is the same information that would effectively respond to the Agreement, the OPC believes it would be appropriate to keep this docket open, as discussed above.

⁷⁹ *How Utility Rates Are Set*, PSC CONNECTION, pg. 2 (January 2011), <https://psc.mo.gov/CMSInternetData/PSCConnection/How%20Utility%20Rates%20Are%20Set.pdf>.

⁸⁰ See generally Ex. No. 305, Order from EW-201-0245, EFIS Item No. 96.

⁸¹ Tr., pg. 339 line 13 to pg. 341 line 9.

⁸² See FN 53.

7. **Should the Commission order Evergy to have the discussions with Staff that Ms. Dragoo suggests in her direct testimony and to order Evergy to provide the data requested in 2, 3, and 4, which Evergy states is more reasonable and should only be provided with support from the Commission? To the extent that Evergy is unable to retrieve this information after a day, month, or billing cycle has passed, should Evergy retain that information so that it is available for use in future general rate cases?**

The OPC supports Evergy and Staff meeting to determine the appropriate steps forward that the Company should take for this docket. See the OPC's answer to question #3 in Section 1. The OPC is a bit confused as to why the Company believes that it is appropriate for Evergy to refuse to work with Staff to produce this information without the Commission's support. In order for the Public Service Commission to be effective, Staff cannot be required to seek Commission guidance on every issue it has with utilities. Such a requirement would cause the breakdown in regulation and would be deeply inefficient.

8. **Should the Commission direct Evergy to provide any usable hourly customer usage information by rate code along with the customer count information, and 15 minute on-peak period demand determinants by rate code for non-residential rate schedules, as recommended by Staff Witness Sarah L. K. Lange?**

Generally, the OPC believes that, within reason, the Commission should order Evergy to provide this information for the reasons discussed above.

CONCLUSION

The OPC commends the effort of the PSC Staff to ensure that it is led by its mission statement, to ensure Missourians receive safe and reliable utility services at just, reasonable and affordable rates.⁸³ However, following that mission statement

⁸³ Missouri Public Service Commission, ABOUT THE PSC, Mission Statement (Last visited Mar. 21, 2024), https://psc.mo.gov/General/About_The_PSC.

can be difficult if the parties are unable to communicate effectively. An undercurrent of the hearing was the lack of trust between all of the parties. In order to move forward in this case, and—importantly—in cases that are set to take place in the near future, the Company must be held accountable to the agreements it enters into. If the Company cannot abide by a commitment it previously made, then it should take purposeful step and meet with Staff to find a solution. Moreover, Staff should be clearer when presenting its expectations and recommendations to the Company. Minor changes—such as specifically stating that Staff is not recommending that Everygy spend tens of millions of dollars on a project such as the one presented here—would also help avoid this confusion in the future.

Finally, in response to the communication issue that undergirds this docket, the OPC believes that closing this docket and starting again is unproductive. Instead, the Commission should create a structured schedule of meetings, perhaps with a mediator present, to fully resolve the data production issue. The OPC, like the Commission, is limited in its ability to provide an in-depth insight as to the appropriate treatment of the data Staff is seeking. However, in general, the OPC believes that Staff is properly following through on its duties, and that the Company should be made to do the same.

Respectfully submitted,

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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 22nd day of March, 2024.

/s/ Anna Martin