

**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

INITIAL BRIEF OF MIDWEST ENERGY CONSUMERS GROUP

Tim Opitz, Mo. Bar No. 65082
Opitz Law Firm, LLC
308 E. High Street, Suite B101
Jefferson City, MO 65101
T: (573) 825-1796
tim.opitz@opitzlawfirm.com

ATTORNEY FOR MIDWEST
ENERGY CONSUMERS GROUP

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INITIAL BRIEF

COMES NOW, the Midwest Energy Consumers Group, (“MECG”), and for its Initial Brief, respectfully states:

Introduction

The evidence in this case supports a finding by the Commission that Evergy Missouri (“Evergy” or “Company”) has complied with the data retention provisions in the Stipulation and Agreement from Evergy’s last rate case. At this time, the Commission should make that finding and close this docket.

The past several months have demonstrated this docket is not a good vehicle for constructive technical discussions that may be needed to hash out disputed data production abilities and costs, or even, for narrowing the scope of what data may be provided with existing capabilities. Instead, the case has devolved into a tense standoff with Staff and Evergy retreating to their respective litigation corners. This includes Evergy escalating the dispute by asking the Commission to dictate broad policy changes in how the Staff conducts its core rate case functions. As the Commission saw during the hearing, the temperature between Staff and the Company remains too high.¹ This case is no longer productive for any purpose and should be closed.

The Commission should not 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? (Issue 1)

In the 2022 rate cases, the Commission’s Staff sought certain information as detailed in the testimony of Sarah Lange. Evergy responded that it could not provide that information at that time

¹ Tr. Vol. 4, p. 297, see discussion generally admonishing the parties.

but agreed it would evaluate doing so in the future. The relevant provision in that Stipulation and Agreement provided:

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.²

For its part, Evergy determined it would be cost prohibitive to compile and produce this data and filed a motion to establish this EO docket. It subsequently provided testimony and estimates of the costs to create, retain, and produce the detailed information to Staff and other parties. The docket referenced in the stipulation, this docket, has been opened. The Company witnesses have testified that providing the information they believe Staff is requesting would cost nearly 100 million dollars.³ The testimony provided by Evergy is enough to support a Commission finding that it has substantially complied with the terms of the Stipulation and Agreement and that this case should be closed.

The Company should not expend the funds to create and produce the data requested by Staff.

All parties agree it's unreasonable to spend 100 million dollars to create and produce this information. Staff seems to believe this information can be provided at a lower cost and insists that Evergy provide a more detailed cost estimate. Perhaps there is some other structure or kind of data that can be provided to achieve Staff's underlying goals without incurring excessive incremental costs. For now, it is evident – at least as each party understands the requests – that the list as formulated in Mrs. Lange's testimony cannot reasonably be produced without great cost.

² Case No. EO-2024-0002, EFIS item 52, Joint Statement of Facts, p. 2, paragraph 7.

³ Ex. 3, Direct Testimony of Brad Lutz, Schedule BDL-1

MECG remains skeptical that the putative value of developing and producing this information justifies undertaking this endeavor at *any* incremental cost. As a point of reference, in the absence of the data sought by Staff, parties have been able to: develop revenue requirements⁴, perform class cost of service studies⁵, develop rates for different classes⁶, develop and remit bills to customers⁷, develop energy efficiency charges⁸, develop fuel adjustment clause charges⁹, and develop RESRAM charges¹⁰. Given that parties have been able to perform all functions of evaluating and developing rates for many years without Staff's new preferred level of detail it is unclear why *any* additional cost would be appropriate. Without a clear demonstration that the creation and provision of this data will benefit customers or is necessary for the provision of safe and adequate service, the Commission should not order the Company to incur those costs.

If the Company does choose to incur these costs, it must be able to justify the additional cost by showing some need, benefit, or desire of its customers. Here, Evergy has decided it can't justify incurring the costs, and so, will not spend the money unless the Commission orders. The Commission should not force customers to pay for projects without a clear benefit to them or without a party demonstrating those costs are necessary for the provision of safe, adequate, and reasonable service. Evergy has estimated that creating and providing this data will cost many millions of dollars over multiple years while the benefits to customers, if any, from this endeavor are nebulous. The need to create and provide this data has not been demonstrated in a way that justifies the estimated cost.

Conclusion

Finding that Evergy has complied with its agreements and closing this case may be

⁴ Tr. Vol. 3, p. 90, line 11.

⁵ Tr. Vol. 3, p. 90, line 15.

⁶ Tr. Vol. 3, p. 90, line 20.

⁷ Tr. Vol. 3, p. 90, line 24.

⁸ Tr. Vol. 3, p. 91, line 8.

⁹ Tr. Vol. 3, p. 91, line 12.

¹⁰ Tr. Vol. 3, p. 91, line 15.

unsatisfying to everyone involved. It appears Staff doubts the accuracy of the Company’s cost estimates to produce data in the format it desires and that it believes that the Company misunderstands what information Staff is seeking. For its part, Evergy does not believe Staff’s approach is appropriate or that the information requested is attainable or relevant for any proper ratemaking purpose. Evergy has grown so frustrated that it is asking the Commission to use this docket to tell Staff to change the way it approaches rate case reviews and testimony.¹¹ Paradoxically, these disputes are both extremely technical and as broad as imaginable. This docket has become an impediment to discussions on data retention, data production, and rate design. Rather than delving into managing the utility’s computer programming, judging granularity of cost estimates, or severely restricting the kind of review Staff can conduct in a rate case – the Commission can resolve this case by finding that Evergy has complied with the stipulation terms leading to this case and close the docket.

WHEREFORE, MECG submits its Initial Brief.

Respectfully,

/s/ Tim Opitz

Tim Opitz, Mo. Bar No. 65082
Opitz Law Firm, LLC
308 E. High Street, Suite B101
Jefferson City, MO 65101
T: (573) 825-1796
tim.opitz@opitzlawfirm.com

ATTORNEY FOR MIDWEST
ENERGY CONSUMERS GROUP

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 22nd day of March 2024:

/s/ Tim Opitz

¹¹ Tr. Vol. 3, pp. 22-23.