

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

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)  
In the Matter of Requests for )  
Customer Account Data Production )  
from Evergy Metro, Inc. d/b/a Evergy ) Case No. EO-2024-0002  
Missouri Metro and Evergy Missouri )  
West, Inc. d/b/a Evergy Missouri West )  
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**THE OFFICE OF THE PUBLIC COUNSEL’S REPLY BRIEF**

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## INTRO

At the beginning of the Company's<sup>1</sup> brief Evergy apologizes for presenting this case to the Public Service Commission ("Commission"), in part, recognizing that "many of the issues are highly technical in nature."<sup>2</sup> However, there is one fact about this docket that all of Evergy's arguments ignores:

In order to reach a settlement with Staff in ER-2022-0129 and ER-2022-0130, the Company agreed to either provide this data, or open this docket to explain why the information was too cumbersome and expensive to produce.<sup>3</sup>

To date, Evergy has failed to meet either condition. Instead, Evergy has spent thousands of dollars and months of energy arguing why it should not be required to produce the information in the first place. A useful, comprehensive review of the cost to produce the information Staff is seeking, with a goal-oriented, solution-seeking approach would lead Staff and the Company to a real solution in this case. Unfortunately, to date, the Company has chosen not to operate in this fashion. Hence, the parties find themselves in this current predicament.

Therefore, in an effort to seek a solution, rather than another argument, the Office of the Public Counsel ("OPC" or "Office") seeks three (3) things:

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<sup>1</sup> "Evergy" references Evergy Missouri Metro, Inc. and Evergy Missouri West, Inc. together.

<sup>2</sup> *Initial Brief of Evergy Missouri Metro and Evergy Missouri West*, pg. 1.

<sup>3</sup> *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).

- 1) The Commission should keep this docket open for the purpose of gathering the data relevant to the central information<sup>4</sup> in this case;
- 2) The Commission should not defer the cost of providing the information Staff is requesting to the next rate case; and
- 3) The Commission hold this Company to the commitments it made in order to settle issues in ER-2022-0129 and ER-2022-0130 with Staff.

#### **A. THE COMPANY'S BRIEF**

Since the Commission approved the Stipulation<sup>5</sup> that ultimately started this case, Staff has sought specific, detailed customer data and explained why it needed that information.<sup>6</sup> Nevertheless, the Company has taken Staff's reasonable request and conflated it to mean that Staff is asking for excessive Company information.<sup>7</sup>

The exaggeration and mischaracterization of Staff actions is unhelpful at best, and obstructionist at worst. Evergy is a regulated monopoly. So, the Company should actively work with Staff to seek an outcome that provides Staff with the information it needs to conduct its duties, in a way that is cost-effective. The case at hand should not be adversarial. It should be a cooperative effort between company and regulator to realize and take advantage of the full potential of the advanced metering infrastructure ("AMI") that Evergy has taken years to install and perfect.

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<sup>4</sup> *Direct Testimony of Sarah L. K. Lange*, pg. 3 line 9 to pg. 5 line 3, Case Nos. ER-2022-0129 & ER-2022-0130.

<sup>5</sup> *Stipulation and Agreement*, supra FN. 3.

<sup>6</sup> [Staff] *Post-Hearing Brief*, pg. 4.

<sup>7</sup> *Initial Brief of Evergy Missouri Metro and Evergy Missouri West*, pg. 28.

Instead of a cooperative effort, however, Evergy has approached this docket with more efforts to *avoid* providing data than it has any efforts to provide data, as its brief demonstrates, in the following ways.

**1. Evergy Asserts Facts without Evidence or Citation.**

One notable instance of the Company referring to facts not in evidence is in the portion of the Company's brief, entitled "Rate Design Proposal Development." Here, Evergy asserts that Staff's "rate design recommendations in general rate proceedings that are based solely on their views and are offered as an alternative to Company rate design recommendations." <sup>8</sup> However, that assertion simply is not true. As early as 2017, Staff and the utilities have met to discuss the future of rate design.<sup>9</sup> In fact, in 2018, the Company's attorney took an active role in the Commission's discussions regarding its future treatment of rate design.<sup>10</sup>

The Company is stating that Staff's handling of rate design is new to imply that the information request, which Evergy committed to give,<sup>11</sup> is unreasonable. However, creating rate design proposals is not new. It is normal for Staff to provide the Commission with such recommendations.

A more confusing example of Evergy using vague language and a lack of citation is its reference to the "experts" that were not present at the hearing for questioning, and were not explained in any of the Company's written testimony or

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<sup>8</sup> Id. at pg 29.

<sup>9</sup> See Ex. No. 305 Order from EW-2017-0245.

<sup>10</sup> In the Matter of a Working Case to Explore Emerging Issues in Utility Regulation, *Utilities' Joint Comments*, Case No. EW-2017-0245, EFIS Item. No. 122., at pg. 4.

<sup>11</sup> *Stipulation and Agreement*, *supra* FN 3.

briefing. Evergy stated that “Evergy experts were familiar with the cost of large transformational projects,” and that “Ms. Dragoo’s team took that expertise” to determine cost estimates for the project.<sup>12</sup> However, the Company only provided two (2) of its employees to explain the costs,<sup>13</sup> and provided no itemized budget or timeline for the project<sup>14</sup> because of its “top down” nature.

There is no real explanation of these figures. It is impossible to know how much experience Evergy’s “experts” have, as they were not provided for questioning. Further, there is no way to verify the relevance of the Company’s experts as there was not any information provided to identify either the experts or their experience. Therefore, no other party has a way to verify the cost that the Company asserted, which Evergy counted on to further diminish Staff.<sup>15</sup>

## **2. The Legal Portion Lacks Legal Support**

Throughout the Company’s brief, it was impossible to ignore the fact that the section entitled “Legal Arguments” did not, in fact, consist of legal arguments.<sup>16</sup> Rather, the Company arguments consist of factual statements that it feels supports its general argument,<sup>17</sup> a non-legal assertion that Staff must provide proof that a distribution study is necessary in order to conduct one,<sup>18</sup> and an argument that the provision permitting the Company to open an EO docket if the information is too

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<sup>12</sup> *Initial Brief of Evergy Missouri Metro and Evergy Missouri West*, pg 17.

<sup>13</sup> Bradley D. Lutz and Julie Dragoo.

<sup>14</sup> *See* Ex. No. 310—DR 1; Ex. No 2—DR 2; Ex. No 3—DR. 3

<sup>15</sup> *Initial Brief of Evergy Missouri Metro and Evergy Missouri*, pg. 18.

<sup>16</sup> *See generally* *Initial Brief of Evergy Missouri Metro and Evergy Missouri* § III. LEGAL ARGUMENTS.

<sup>17</sup> *Ibid*.

<sup>18</sup> *Id.* at pg. 13.

expensive and cumbersome to produce allows the Company to back out of its obligation.<sup>19</sup>

The Company also takes the time to attack Staff, stating “Based upon *her incorrect interpretation* of the terms of the Stipulation, Staff witness Lange made an *unfounded and particularly disturbing assertion* that Evergy has not acted in ‘good faith’ in estimating the cost of the Data Set No. 1 requested by Staff.”<sup>20</sup> And that “Staff has *twisted* the word ‘individual’ to mean that Evergy was required to provide an itemized estimate of the cost of the data, at the level expressed in their discovery. However, *this is a gross mischaracterization of the meaning of the Stipulation.*”<sup>21</sup> Setting aside the Company’s ad hominin attacks against the Commission’s staff, there should be no question that the Staff is acting in good faith as it seeks the data necessary to improve its recommendations to the Commission, and ultimately, improve the Commission’s decisions on issues impacting Evergy’s customers. Further, there should be no question that the Staff entered into the Stipulation under the belief that the Company would follow through on its commitment.

### **3. Concerning Language**

The final issue with the Company framing of this case is that it shows the sense of entitlement that the Company has towards this Commission. Time and again Evergy insists that the Commission should find that the Company did not violate the Stipulation because that’s what the Company wants. Evergy asserts, with admittedly

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<sup>19</sup> Id. at pg. 15.

<sup>20</sup> Id. at pg. 16 (emphasis added).

<sup>21</sup> Id. at pg. 15 (emphasis added).

odd language, that it “is not able to endorse the Staff’s plans.”<sup>22</sup> At one point, Evergy even emphasizes its stance, stating “The Company will not be supporting the adoption of voltage and infrastructure specific customer and facility charges without regard to class.”<sup>23</sup>

The Company actually has “endorsed” Staff’s current plans for rate design in the past.<sup>24</sup> However, the implication here is that Evergy simply will not assist Staff with providing the data Staff requires for its analysis because Evergy does not agree with Staff’s intended use of that data. In fact, Evergy seems to believe that the Commission should not make it do anything that would go “beyond the Company’s need” to support a Staff rate design proposal that is “not seeking to affirm Company rate design proposals, but instead to pursue rate design plans in spite of Company recommendations.”<sup>25</sup> This argument, unsupported by regulation or law, reframes Staff from an independent entity whose purpose is to assist this Commission with ensuring just and reasonable rates. Rather, Evergy appears to believe that Staff should act as a regulatory employee of its own company, staying out of its way, unless its suggestions will benefit Evergy.

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<sup>22</sup> Id. at pg. 8.

<sup>23</sup> Id. at pg. 11.

<sup>24</sup> See EW-2017-0245.

<sup>25</sup> *Initial Brief of Evergy Missouri Metro and Evergy Missouri*, pg. 28 & 29.



#### 4. Evergy Treat's the Commission's Power as though it is Based on the Company's Needs

A more subtle version of how the Company reframes the Commission's duties is its treatment of Staff oversight<sup>26</sup> versus its treatment of Commission deference.<sup>27</sup> When Staff tries to use the Company's improved technology to ensure that class, voltage, and line rates are fair,<sup>28</sup> the Company insists that Staff is playing a managerial roll.<sup>29</sup> However, if Staff were playing a managerial role, there would be no information asymmetry that would prevent Staff from creating a more reasonable cost estimate. It is that lack of a cost estimate that the Company then utilizes to argue that the Commission should find that the cost estimates Evergy provided were correct *and* that Evergy "made a good faith effort to comply with the terms of the Stipulation."<sup>30</sup>

When it comes to an issue that would benefit the Company, however, the Commission has "BROAD DISCRETION."<sup>31</sup> Specifically, in this docket, Evergy has alleged the Commission may defer any and all related Company expenditures to its next rate case since they are "Commission-mandated."<sup>32</sup> However, Evergy's systems should have been designed to produce the requested information from the start.<sup>33</sup> Further, Evergy's cost estimate is speculative at best,<sup>34</sup> and no party to this case

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<sup>26</sup> Id. at pgs. 29 & 30.

<sup>27</sup> Id. at § A. THE COMMISSION HAS BROAD DISCRETION TO GRANT DEFERRAL OF COMMISSION-MANDATED EXPENDITURES.

<sup>28</sup> Tr., pg. 249 line 24 to pg. 250 line 2.

<sup>29</sup> *Supra* FN 26.

<sup>30</sup> *Initial Brief of Evergy Missouri Metro and Evergy Missouri*, pg. 18.

<sup>31</sup> *Supra* FN 27.

<sup>32</sup> *Initial Brief of Evergy Missouri Metro and Evergy Missouri*, pg. 26.

<sup>33</sup> Tr., at pg. 419 lines 16-21; pg. 426 lines 10-12.

<sup>34</sup> [Staff] *Post-Hearing Brief*, pg. 6.

supports the Company spending the millions of dollars to provide the information Staff is seeking.<sup>35</sup> Finally, there appears to be a real question of the Company's prudence around its system design in relation to the optimization of its AMI technology. Therefore, the Commission should not defer the costs the Company would spend to provide this information. In the alternative, the Commission should not consider the treatment of any resulting expenditure, as well as its prudence, until the parties can fully analyze the issue.

## II. WHY HANDLE THIS CASE NOW

Evergy claims that the Commission should find that it has complied with the Stipulation because there is no need for a CCOS outside of a rate case or a rate design proceeding<sup>36</sup> The Company further claims that the Commission should not require it to provide further information due to the preferability “for all parties to future rate cases to be able to participate in the discovery process, and the Commission [to] deal with discovery disputes, if any, in the context of those future rate cases.”<sup>37</sup> However, before the Commission decides to push these issues off to a separate case, it is important to remember why this docket exists.

This docket is the result of a Stipulation and Agreement that Evergy and Staff signed during the Company's *last* rate case, in 2022.<sup>38</sup> The parties entered into that

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<sup>35</sup> *Initial Brief of Evergy Missouri Metro and Evergy Missouri*, pg. 19.

<sup>36</sup> *Id.*, 13

<sup>37</sup> *Id.* at Pg. 11

<sup>38</sup> *Stipulation and Agreement* pg. 12, Case No. 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).

Stipulation to ensure that Evergy's AMI optimized benefits, improved rate design, and ensured rates are fair and equitable across the board.

Now, Evergy has retreated from that goal. The purpose of AMI has always been to give customers control of their energy usage and rates. Now, Evergy insists that it does not need to present Staff with the information that those meters provide, claiming that it is too costly. The OPC rejects that assertion. Further, the OPC agrees with a statement that MEEG made "Finding that Evergy has complied with its agreements and closing this case may be unsatisfying to everyone involved."<sup>39</sup> Therefore, the Commission should not find that Evergy has complied with the Stipulation. The information Staff needs, it needs *now*. Evergy Missouri West has already filed another rate case.<sup>40</sup> The parties must resolve this issue, rather than having to add another issue to its plate in the middle of a large and complicated rate case.

### CONCLUSION

The Commission has a staff full of smart, capable individuals who are doing their best to do what is fair for both the people of Missouri and the Company. Staff is requesting information to devote the little time it has to ensure the Company is charging just and reasonable rates for its service. Moreover, the Company *agreed* to provide that information unless it was too cumbersome and expensive.

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<sup>39</sup> *Initial Brief of Midwest Energy Consumers Group*, pgs. 3 & 4.

<sup>40</sup> *In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's Request for Authority to Implement a General Rate Increase for Electric Service*, Case. No. ER-2024-0189.

While this brief discusses concerns around Evergy’s handling of this case, and the unintended consequences that may result, the solution, in the OPC’s view, remains the same. These parties need to communicate. The parties’ inability to communicate effectively was clear throughout testimony, throughout the hearing, and throughout briefing. Staff needs certain data to do its job. Evergy has that information but claims it is too expensive to provide. To the OPC, it is clear that meeting with a mediator, or with an objective third party—in a non-adversarial forum—would provide both parties the most benefit. Then, Staff and Evergy could work to find a solution, together.

Respectfully,

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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 8th day of April, 2024.

/s/ Anna Martin