

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

In the Matter of Requests for Customer) File No. EO-2024-0002
Account Data Production)

**REPLY BRIEF OF
EVERGY MISSOURI METRO AND EVERGY MISSOURI WEST**

COMES NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro”), and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West”) (collectively “Evergy” or “Company”), pursuant to the Missouri Public Service Commission’s (“Commission”) *Order Granting Extension of Time* (“Order”) issued March 13, 2024 files its Reply Brief and states as follows:

I. INTRODUCTION

As the Commission reviews the record in this case, it should consider the costs and benefits of requiring Evergy to create and produce the information that Staff is seeking in this case. According to Staff witness Lange, the reason for the Staff’s requests, in part, is to do a deep dive into the distribution costs for serving commercial and industrial customers.¹ Staff would focus on the differences between the cost of secondary versus the cost of primary service.² In its initial brief, Staff suggests that “the information in the first stipulation commitment would have provided all parties ‘information to calculate the discount provided through [Evergy’s] current rate structures to customer served at voltages other than secondary.’” (Staff Brief at 12). Apparently, Staff’s reason for doing this analysis is to benefit commercial and industrial customers to ensure their

¹ Tr. 329-;30.

² Tr. 328.

rates for the distribution system are reasonable and non-discriminatory as well as to review the cost allocations among all classes.³

The Midwest Energy Consumers Group (“MECG”), the legal representative of commercial and industrial customers in this case, has clearly and unequivocally expressed its view that:

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.⁴

* * *

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)⁵

* * *

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 requirements, perform class cost of service studies, develop rates for different classes, develop and remit bills to customers, develop energy efficiency charges, develop fuel adjustment clause charges, and develop RESRAM charges. 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.⁶

Evergy supports the recommendation of MECG in this matter. Adopting the recommendation of MECG, the Commission should find that Evergy has fulfilled its regulatory obligations and has complied with the terms of the Stipulation and Agreement approved in by the

³ Tr. 249-50; 328-30.

⁴ MECG Post-Hearing Brief, p. 1.

⁵ Id. at 1.

⁶ Id. at 3. (footnotes omitted).

Commission in the Company's last rate case (File Nos. ER-2022-0129/0130). Evergy personnel have carefully reviewed the individual sets of data requested by Staff, and when the data requested by Staff was unavailable or cost-prohibitive to create and produce, Evergy has made a good faith effort to explain the reasons the data is unavailable and has estimated the cost of the individual sets of data requested by Staff. Based upon this finding, the Commission should close the case, and move on to Evergy Missouri West's pending general rate case to review its rate design for all customer classes.

As the evidence has demonstrated in this case, just because data exists in some format in Evergy's systems, does not mean it is available and deliverable in the format requested by Staff at a reasonable cost. Data or elements of data exist throughout Evergy's systems. The problem in this case is that Staff wants the data in specific forms, combinations or time intervals that are not inherently available in Evergy's systems. These aspects must be developed at a cost to the Company. Obviously, the cost of creation and production must be taken into account when the Commission decides if Evergy is required to create and produce the data demanded by Sarah Lange in this case. As MCEG explained:

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.⁷

⁷ MCEG Post-Hearing Brief at 4-5

The Office of the Public Counsel, the statutory representative of the public, also does not wish the Commission to order Evergy to create and produce the data demanded by Staff if the cost is approximately \$100 Million. (“If the amount were truly as Evergy has estimated, this office would not support this use of funds.”)⁸

Staff also recognized that it would be imprudent to spend \$80-100 million to create and produce the data requested by Staff in Data Set No. 1.⁹ In its Post-Hearing Brief, Staff unequivocally stated: “Staff does not intend for Evergy to pay upwards of \$100 million to provide this information.”¹⁰ Ms. Lange was also unequivocal in the hearing that she would not support Evergy spending \$80-100 Million to create and produce the data she requested in Data Set No. 1.¹¹

At the conclusion of the hearing, no party, including Evergy, Staff, OPC, or MECG supports an order directing Evergy to produce the information in Data Set No. 1 if it would cost approximately \$100 Million to create and produce. While some parties have expressed skepticism¹² regarding this cost estimate, there is no competent and substantial evidence in the record providing the Commission a better estimate of the cost of creating and producing the data requested in Data Set No. 1.

II. RESPONSE TO STAFF AND OPC¹³

On page 3 of the Staff Brief, Staff incorrectly suggests that the relief that Mr. Lutz suggests is essentially the same as Staff’s recommendation to keep this docket open to facilitate the resolution of acquisition of the data requested by Ms. Lange.¹⁴ This is incorrect.

⁸ OPC Initial Brief at 38.

⁹ Staff Position Statement, p. 3.

¹⁰ Staff Post-Hearing Brief, p. 12.

¹¹ Tr. 295-96.

¹² OPC Brief at 19.

¹³ The arguments contained in the Office of the Public Counsel’s Initial Post-Hearing Brief were largely anticipated and addressed in the Company’s Initial Brief, or were similar to arguments raised by Staff. No further responsive comments are necessary to address the Public Counsel’s brief at this time.

¹⁴ Staff Post-Hearing Brief, p. 3

As explained above, Evergy recommends that the Commission issue its order finding that Evergy has complied with the terms of the Stipulation and Agreement in the last rate case, and close the docket. Any ongoing data issues related to class cost of service studies (“CCOS”) should be resolved in the context of a future rate case proceeding. It is not appropriate for Staff to develop in this proceeding its CCOS for use in a future rate case since other intervenors that typically participate in Evergy’s rate cases are not parties to this case.

Staff also recommends that Evergy provide “usable hourly customer usage information by rate code along with the customer count information as necessary to produce fuel and purchased power modeling, and estimate class-level demands for cost allocation methods used by all parties to rate cases.”¹⁵ Again, this information should be developed and provided, if relevant and not cost-prohibitive, in a future rate case proceeding, not this EO- docket.

On page 5 of its brief, Staff implies that Evergy is not meeting its statutory obligation to allow the Commission Staff to examine its books and records.¹⁶ This allegation is blatantly false. Evergy has cooperated in providing Staff with access to its books and records in all regulatory matters. However, Evergy has not been previously required to create and produce whatever information Staff desires in discovery when the information or analysis does not already exist.

Under the Rules of Discovery, a public utility is not required to create documents that do not exist or perform analysis of data that has not been performed. If the Company does not have the document or has not performed the analysis, the Commission has not expected it to somehow create it.¹⁷ Much of the ten Sets of Data demanded by Ms. Lange in this case falls into this category. The Commission’s practice in this regard is consistent with the discovery allowed in

¹⁵ Id. at 4.

¹⁶ Id. at 5.

¹⁷ During the Discovery Conference held on November 21, 2023, Staff witness Lange conceded that “I agree that typically under discovery rules, we – we can’t ask them [Evergy] to do an analysis...” (Tr.28).

Missouri Courts. The Missouri Supreme Court has held that “[o]ur Rule 58.01(a) is identical to Federal Rule of Civil Procedure 34(a).” Hancock v. Shook, 100 S.W.3d 786, 796 (Mo. 2003). “A document is not in a party's possession, custody, or control if the document does not exist.” Weisman v. Barnes Jewish Hosp., No. 4:19-CV-00075 JAR, 2022 WL 850772, at *3 (E.D. Mo. Mar. 22, 2022

Next, Staff argues that Evergy “created a contractual duty when it entered into the 2022 Stipulation and Agreement.”¹⁸ Evergy has already addressed at length in its initial brief that it has fully complied with the 2022 Stipulation and Agreement¹⁹, and there is no need to repeat those arguments and supporting facts herein. Notably, most of Staff’s citations to support its argument in this regard are to citations to its own Position Statement, or Ms. Lange’s interpretation of the 2022 Stipulation and Agreement which have already been addressed and refuted in Evergy’s Initial Brief.²⁰

Concerning customer and usage information, Staff states that “it is unclear to Staff what [Evergy’s] cost estimate is relative to what would actually be produced and when it would be provided to Staff for use in rate cases.”²¹ Evergy’s cost estimates were included in Mr. Lutz’s Direct Testimony, Schedule BDL-1 and were discussed at length during the hearings.²²

Staff also criticizes Evergy for the manner in which it estimated the cost of providing the distribution plant and expense information since it did not itemize those costs on a line-by-line “bottoms up” analysis.²³ Evergy witness Julie Drago has explained in her testimony the process used by Evergy to make these estimates, and has additionally explained why a “bottoms up”

¹⁸ Staff Post-Hearing Brief at 5.

¹⁹ Evergy Initial Brief at 14-18.

²⁰ Id. at 14-16.

²¹ Staff Post-Hearing Brief at 6.

²² Tr. 104-06; 115, 118, 198

²³ Id. at 7.

approach is not appropriate under the circumstances of this case. She explained that Evergy had to look at Data Set No. 1 on a holistic basis, or as a “top down” estimate because there were not refined business requirements on how the data could be created and produced. As a result, it was difficult to do a “bottoms up” estimate without specific items to describe how Evergy’s systems would need to work to make the requested data available.²⁴ Evergy experts were familiar with the cost of large transformational projects. Ms. Dragoo’s team took that expertise along with knowledge that this project would be a new concept for the industry²⁵ and a huge organizational change management effort for Evergy and used it to develop the cost estimates.²⁶ Trying to estimate efforts to complete reporting asks, or potentially large overhauls of Evergy’s enterprise systems is even more difficult when the scope is vague or worse, undefined. Any technology project requires a review of effort to understand what resources internally and externally and/or software and hardware will be necessary to complete the job. Without fully detailed scope, technology efforts are “shirt sized” and given a range of S – XXL. For these reasons, Staff’s criticisms of Evergy’s approach to developing its cost estimates should be dismissed by the Commission.²⁷

Staff also criticized Evergy’s cost estimates to create and produce information related to coincident peak demand charges. As Evergy explained in its initial brief, this information related to Data Set Nos. 8b, 9 and 10, and should be rejected by the Commission. Deployment of on-peak demand charges or changes to reactive demand charges have not been ordered for the Company by the Commission nor explored in any detail as part of a recent general rate

²⁴ Tr. 72.

²⁵ Ex. 5, Riley Direct, pp. 7-8.

²⁶ Tr. 73.

²⁷ Staff Post-Hearing Brief at 7.

proceeding.²⁸ The Commission should reject Data Set Nos. 8b, 9 and 10 since there has been no policy to collect meter interval data for all hours of the day, 365 days of the year for customers with AMI meters. Configuration would be needed to create reporting for the collection of hourly kw during any peak period identified. Evergy does not have a study design in place to inform the portion of this Data Set related to reactive demand.²⁹

Staff also criticized Evergy when it stated: “Evergy gave no estimated cost to comply with the sixth provision or request for data outlined in the Stipulation and Agreement. . .”³⁰ However, Data Set No. 6 requests: “From time to time the Commission may designate certain customer subsets for more granular study.” As Evergy explained in its initial brief, Data Set No. 6 is a prospective request and cannot be appropriately assessed at this time. According to Staff witness Lange, Staff did not have particular designations of subsets in mind at the time the Data Set No. 6 was issued, but “just to be aware as they’re setting up software that if we’re doing a lot of programming, let’s get the capability we think we’re going to need and not wait until it’s too, you know, imminent.” Given this explanation by Staff, there is nothing for the Commission to consider or order related to Data Set No. 6. Staff’s criticism should be disregarded by the Commission.

Notwithstanding the vague nature of Data Set No. 6, Staff “recommends that changes made to access the billing system as a result of this case be future-proofed to the extent possible to refine the scope of the information obtained.”³¹ This recommendation is also too vague to understand or implement, and should be rejected by the Commission.

²⁸ Ex. 4, Lutz Surrebuttal, p. 25.

²⁹ Ex. 3, Lutz Direct, Schedule BDL-1, page 2 of 2.

³⁰ Staff Post-Hearing Brief at 11.

³¹Id.

WHEREFORE, for all the reasons stated herein, Evergy respectfully requests that the Commission adopt its position on the above-stated issues in this case.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Phone: (816) 556-2314
E-mail: roger.steiner@evergy.com
Evergy, Inc.
1200 Main – 16th Floor
Kansas City, Missouri 64105
Fax: (816) 556-2110

James M. Fischer, MBN 27543
Fischer & Dority, P.C.
2081 Honeysuckle Lane
Jefferson City, Missouri
65109 Phone: (573) 353-8647
jfischerpc@aol.com

**Attorneys for Evergy Missouri Metro and
Evergy Missouri West**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served upon counsel for all parties on this 8th day of April, 2024 by either e-mail or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner

Roger W. Steiner