

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

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

**EVERGY MISSOURI WEST’S
AMENDED STATEMENT OF POSITIONS**

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW” or the “Company”), by and through its counsel, hereby sets forth the following *Amended Statement of Positions* (“Position Statement”) in accordance with the Commission’s *Order Approving Stipulation*¹ dated May 2, 2024:

POSITIONS²

1. *Has the Office of the Public Counsel applied the Commission recognized prudence standard in evaluating their proposed disallowances?*

Position: OPC has not applied the Commission-recognized prudence standard in evaluating its respective proposed disallowances. (e.g., Messamore, Ives, and Reed Surrebuttals.) This Commission has consistently reaffirmed the applicable prudence presumption and standard from Associated Natural Gas:

All charges for gas service must be just and reasonable. [Mo. Rev. Stat. § 393.130.1]. . . . If a utility’s costs satisfy the prudence standard, the utility is entitled to recover those costs from its customers. . . .

A utility’s costs are presumed to be prudently incurred. However, the presumption does not survive “a showing of inefficiency or improvidence.” Where some other participant in the proceeding creates a serious doubt as

¹ *Order Approving Stipulation*, EO-2023-0276 & EO-2023-0277 (May 2, 2024).

² The Company does not agree with the wording of some issues or inclusion of all of the issues set out herein. The inclusion of an issue and the Company’s position thereon in the list below does not mean all parties agree with such issue’s characterization, that such issue identified is actually in dispute, and/or that a Commission decision on such issue is proper or necessary in this case.

to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent. . . .

In the [Union Electric] case, the PSC noted that this test of prudence should not be based upon hindsight, but upon a reasonableness standard:

The company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.

See State ex rel. Associated Natural Gas v. PSC, 954 S.W.2d 520, 528-529 (Mo. App. W.D. 1997) (internal citations and original alterations omitted).³

Crucially, in order for the Commission to disallow a utility's recovery of costs from its customers, as OPC requests, the Commission must first follow the established two-pronged test: (1) evaluate whether the utility acted imprudently (that is, did not act reasonably at the time under the circumstances); and (2) evaluate whether such imprudence was the direct cause of the harm (increased costs) to the utility's customers. See Id. at 529. As a result, a party attempting to support a disallowance must supply competent evidence satisfying this two-prong test's associated burden of proof. See Id.

In this proceeding, OPC explicitly relies on unlawful hindsight to then claim imprudence, and has ignored the two-pronged test along with its respective burdens of proof. (E.g., Mantle Surrebuttal at 4.) OPC's witnesses Marke and Mantle contradict each other's testimony as to the time period from which OPC's proposed disallowance arises. (See Marke Surrebuttal at 7; Mantle Surrebuttal at 19.) However, OPC makes clear that it continues to attack the Company's past resource-planning decisions beyond those made when entering into the two wind power purchase

³ See, e.g., Report and Order, p. 19, Re: Eighth Prudence of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company, File No. EO-2019-0067 (Nov. 6, 2019); Report and Order, pp. 13-14, Re: Third Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company, File No. EO-2011-0390 (Sept. 4, 2012); Report and Order, pp. 13-15, Re: PGA Filing for Laclede Gas Company, Case No. GR-2004-0273 (June 28, 2007).

agreements (“PPAs”) at issue for EMW,⁴ which thus necessarily involves inappropriate hindsight-based arguments. (e.g., Messamore Surrebuttal at 13-14; Ives Surrebuttal at 15-16.)

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

Position: No, and the Company does not agree with the inclusion of this “issue” or its wording. As discussed above, OPC fails to properly apply the prudence presumption and standard. The only “imprudence” alleged by OPC in this case constitutes repetition of already-rejected attacks on the Company’s IRP process. The Company’s resource planning represents the “best estimate of potential future scenarios” based on what is what was “known and knowable at the time the decisions were made.” (See Mantle Surrebuttal at 18-19; Reed Surrebuttal at 10.) Additionally, OPC misunderstands that the Company’s IRP process is not static as it is updated annually. (Messamore Rebuttal at 12 (referencing Mantle Direct at 14).) OPC made the same argument about the Company not acquiring what OPC considers to be adequate generation in File No. EF-2022-0155, but the Commission disagreed. (Ives Surrebuttal at 16.)

Contrary to OPC’s simplistic attempt to equate generation acquisition to home-owners’ insurance, owning generating assets has often proven to be a money-losing proposition as compared to buying energy in the market. (Reed Surrebuttal at 10.) Case in point, EMW’s fossil fuel fleet was theoretically capable of producing enough energy during the prudence period, but market energy was more cost-effective. (See Mantle Surrebuttal Schedule LMM-S-13 (Messamore response to DR 8064); Reed Surrebuttal at 10.) Further, the Company procured capacity from Every Missouri Metro’s (“EMM”) excess generation as a preferred plan, which was more economic to meet customers’ needs when compared to other alternatives. (Messamore Surrebuttal at 17).

⁴ Denominated Gray County and Ensign.

8. *If Evergy Missouri West was imprudent with respect to Issue 6, above, should there be a disallowance?*
 - a. *If so, how much should the disallowance be?*
 - d. *Should the commission adopt OPC's proposed ordered adjustment of \$86,376,294, with interest, to be applied in Evergy Missouri West's next FAR filing?*

Position: No, and the Company does not agree with the inclusion of this “issue” or its wording. As discussed above, OPC has not shown with competent evidence any imprudence by the Company. OPC’s attempt to argue “imprudence” violates the Commission’s established prudence presumption and standard. Accordingly, no disallowance should be ordered by the Commission, and the Company should recover its prudently-incurred costs.

The Commission should not adopt OPC’s proposed ordered adjustment of \$86,376,294 (with interest) to be applied in EMW’s next FAR filing. This proposal stems from OPC’s past-rejected allegations that EMW was imprudent for not providing a hedge against energy markets with its own cost-effective generation, and that EMW and EMM should be combined utilities as a result. (See, e.g., Mantle Surrebuttal at 6-7.) Discussed above, contrary to OPC’s simplistic attempt to equate generation acquisition to home-owners’ insurance, owning generating assets has often proven to be a money-losing proposition as compared to buying energy in the market. (Reed Surrebuttal at 10.) Further, OPC’s hypothetical assumptions underpinning its claim that EMW and EMM should be combined actually creates a zero-sum game in which EMW customers would benefit while EMM customers would receive a detriment in the same amount. (Messamore Rebuttal at 15.)

Even Staff disagrees with OPC’s recommended disallowance, since there are too many variables that determine market price as well as too many variables associated with EMW building new generation. (See Hull Rebuttal at 2; Messamore Surrebuttal at 19.)

Respectfully submitted,

/s/ Roger W. Steiner

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

Jacqueline Whipple, MBN 65270
Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Phone: (816) 460-2400
Fax: (816) 531-7545
Jacqueline.whipple@dentons.com

Attorneys 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 10th day of May 2024, by either e-mail or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner

Roger W. Steiner