

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

In the Matter of the Second Prudence Review)
of the Missouri Energy Efficiency)
Investment Act (MEEIA) Cycle 3 Energy) Case No. EO-2023-0407
Efficiency Programs of Evergy Metro, Inc.)
d/b/a Evergy Missouri Metro)

In the Matter of the Second Prudence Review)
of the Missouri Energy Efficiency)
Investment Act (MEEIA) Cycle 3 Energy) Case No. EO-2023-0408
Efficiency Programs of Evergy Missouri)
West, Inc. d/b/a Evergy Missouri West)

STATEMENT OF POSITIONS

Comes now the Office of the Public Counsel (the “OPC”) and submits this Statement of Positions:

- 1. Did Evergy Missouri West violate the express language of its Special Rate for Incremental Load Service (“SIL”) tariff sheet (Original Sheet No. 157) by allowing Nucor Sedalia to participate in both the Business Demand Response (“BDR”) Program and the SIL tariff?**

Yes. Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy West”) violated the express language of its SIL tariff sheet (Original Sheet No. 157) by allowing Nucor Sedalia to both participate in the BDR Program and take service under the SIL tariff at the same time. (Payne Direct Test. 8-9; Payne Rebuttal Test. 5-7; Hull Direct Test. 2-4).

Specifically, Evergy West’s SIL tariff sheet prohibits an entity that takes service under that tariff sheet from participating in programs offered pursuant to the Missouri Energy Efficiency Investment Act (“MEEIA”) or in programs related to demand response. (*See* Payne Rebuttal Test., Schedule MMP-R-3 “Mo. P.S.C. No. 1, Original Sheet No. 157”). The SIL tariff provides in pertinent part:

Service under this tariff **may not** be combined with service under an Economic Development Rider, an Economic Redevelopment Rider, the Renewable Energy Rider, Community Solar program, service as a Special Contract, *or be eligible for participation in programs offered pursuant to the Missouri Energy Efficiency Investment Act, or for participation in programs related to demand response* or off-peak discounts, unless otherwise ordered by the Commission when approving a contract for service under this tariff.

(*Id.* (emphasis added)).

Evergy West admits that the Nucor Sedalia “site is on the SIL tariff that restricts MEEIA participation.” (File Direct Test. 8).

It is also undisputed that the Nucor Sedalia site participated in the MEEIA BDR Program during the Review Period at issue in this case. (*See* File Direct Test. 9 (referring to “Nucor’s Sedalia site’s participation in the Business Demand Response program.”); Payne Direct Test. 8-9; Hull Direct Test. 2). Nucor Sedalia’s Business Demand Response Customer Participation Agreement shows that it agreed to participate in the MEEIA BDR Program during the Review Period of this case. (Payne Rebuttal Test., Schedule MMP-R-1 “Evergy West Response to Staff Data Request 0034”).

In sum, Evergy West’s SIL tariff sheet prohibits those who take service under the SIL tariff from participating in MEEIA or demand response programs. (Mo. P.S.C. No. 1, Original Sheet No. 157; Payne Direct Test. 8; Hull Direct Test. 3). Evergy West allowed Nucor Sedalia to both take service under the SIL tariff and participate in the MEEIA BDR Program at the same time. (*See* Payne Direct Test., Schedule MMP-D-3 “Evergy West Response to Staff Data Request 0031”; Payne Direct Test. 8-9; Hull Direct Test. 2-3). Therefore, it cannot be disputed that Evergy West violated the express terms of its SIL tariff sheet during the Review Period of this case.

2. Should the Commission find that Evergy Missouri West acted imprudently by allowing Nucor Sedalia’s participation in both the BDR Program and the SIL tariff?

Yes. Because Evergy West violated its SIL tariff by allowing Nucor Sedalia to participate in the MEEIA BDR Program, the Commission should find that Evergy West acted imprudently in doing so. (*See* Payne Direct Test. 8-9; Payne Rebuttal Test. 3-8; *see generally* Payne Surrebuttal Test.).

The standard Staff employs in evaluating prudence asks “whether a reasonable person making the same decision would find both the information the decision-maker relied on and the process the decision-maker employed to be reasonable based on the circumstances and information known at the time the decision was made, i.e., without the benefit of hindsight.” (Payne Direct Test. 1 (quoting Staff Report 5)).

A reasonable person in Evergy West’s position would have known that Nucor Sedalia could not lawfully participate in the BDR Program, at the time it began doing so. (Payne Rebuttal Test. 4-7). Specifically, on November 27, 2019, Evergy West issued the tariff sheet prohibiting Nucor Sedalia’s participation in the MEEIA BDR Program. (Mo. P.S.C. No. 1, Original Sheet No. 157). On December 27, 2019, thirty days later, that tariff sheet became effective. (*Id.*). At that time, Evergy West would have been aware that all customers taking service under the SIL tariff were prohibited from participating in MEEIA and demand response programs. (*Id.*; Payne Rebuttal Test. 4-7).

In the same month that the tariff became effective, December 2019, the Commission approved Evergy West's MEEIA Cycle 3 application, including the BDR Program. (Payne Rebuttal Test. 4).

Only approximately months later Evergy West entered into the BDR Customer Participation Agreement with Nucor Sedalia. (Evergy West Response to Staff Data Request 0034 9). At that time, a reasonable person would have known that allowing such participation violated the SIL tariff. (Payne Rebuttal Test. 7). Therefore, Evergy West did not act prudently in allowing Nucor Sedalia to participate in the MEEIA BDR Program while also taking service under the SIL tariff.

3. Did Evergy Missouri West customers benefit by Nucor Sedalia participating in the Business Demand Response program?

The significant harm that Evergy West's customers suffered when Evergy West violated its Commission-approved tariff and that may arise if the Commission condones this tariff violation outweigh any potential monetary benefits that customers may have received. (Payne Rebuttal Test. 7-8; Payne Surrebuttal Test. 3-4).

Evergy West fails to recognize the full scope of the harm its customers suffered and may suffer in the future. (Payne Rebuttal Test. 7-8). First, its customers subsidized unlawful incentive payments to Nucor Sedalia for its participation in the BDR Program. (Payne Direct Test. 9; Payne Rebuttal Test. 5; Payne Surrebuttal Test. 4; Hull Direct Test. 3-5; Hull Rebuttal Test. 4). Second, Evergy West's customers paid Evergy West a substantial profit for violating its Commission-approved tariff by funding Evergy West's earnings opportunity related to Nucor Sedalia's participation. (Payne Rebuttal Test. 4-8; Payne Surrebuttal Test. 4; Hull Rebuttal Test. 3-5). Further, all customers of regulated utilities will suffer an unquantifiable harm should the Commission find that it was prudent for Evergy West to violate its Commission-approved tariff. (Payne Rebuttal Test. 7-8; Payne Surrebuttal Test. 4; Hull Rebuttal Test. 5). The Commission should focus on these tangible harms, find that Evergy West acted imprudently by allowing Nucor Sedalia to both take service under the SIL tariff and participate in the MEEIA BDR Program, and impose an ordered adjustment ("OA") in Evergy West's next DSIM filing to account for this imprudence.

4. Should the Commission order an OA to be applied to Evergy Missouri West's next DSIM filing related to Nucor Sedalia's participation in the BDR Program?

Yes. Because Evergy West violated its tariff by allowing Nucor Sedalia to participate in the MEEIA BDR Program, the Commission should order an OA in Evergy West's next DSIM filing. (*See, e.g.*, Payne Surrebuttal Test. 4). As explained more fully below, this OA should include both the full amount of the incentives that Evergy West unlawfully paid to Nucor Sedalia plus interest and an amount to account for the earnings opportunity Evergy West received due to Nucor Sedalia's participation. (*Id.*).

a. Should any ordered OA include an amount to account for the incentives Evergy Missouri West paid to Nucor Sedalia for Nucor Sedalia's participation in the BDR Program?

Yes. Evergy West unlawfully paid incentives to Nucor Sedalia. (Payne Direct Test. 9; Payne Rebuttal Test. 5; Payne Surrebuttal Test. 4; Hull Direct Test. 3-5; Hull Rebuttal Test. 4). To ensure customers are not required to subsidize Evergy West's violation of its Commission-approved tariff, the Commission should include in the OA the full amount of these unlawful incentives plus interest. (*Id.*). The total for this portion of the OA is \$1,143,651.18. (Payne Surrebuttal Test. 4).

b. Should any ordered OA include an amount to account for the earnings opportunity Evergy Missouri West received due to Nucor Sedalia's participation in the BDR Program?

Yes. The Commission should not allow Evergy West to earn a profit from violating its Commission-approved tariff. (Payne Rebuttal Test. 5-9; Payne Surrebuttal Test. 2-4). Therefore, it should include the earnings opportunity that Evergy West received for Nucor Sedalia's participation in the BDR Program in the OA. (*Id.*).

In approving Evergy West's MEEIA Cycle 3, the Commission approved an earnings opportunity matrix. (Payne Surrebuttal Test. 2). This earnings opportunity matrix allows Evergy West to earn \$10,000 per MWh per program year for the MEEIA BDR Program, up to 150% of the cumulative annual cap. (*Id.*). Evergy West earned \$379,321 in earnings opportunity for Nucor Sedalia's participation in the MEEIA BDR Program. (*Id.* 1-2). The Commission should include this full amount in the OA to ensure Evergy West cannot earn a profit for violating its Commission-approved tariff. (*Id.* 4; Payne Rebuttal Test. 5-9).

c. What should be the total amount of any ordered OA to account for Nucor Sedalia's participation in the BDR Program while taking service under the SIL tariff?

The total amount of the OA the Commission should order to account for Nucor Sedalia's unlawful participation in the MEEIA BDR Program is \$1,522,972.18. (Payne Surrebuttal Test. 4). This includes the full amount of the unlawful incentives paid to Nucor Sedalia, plus interest. (*Id.*). It also includes the full amount of the earnings opportunity that Evergy West received due to Nucor Sedalia's unlawful participation in the program. (*Id.*).

5. Should the Commission adopt Staff's proposed disallowances of expenses for administrative program cost expenses, implementation contractors' expenses, and conference expenses during the review period of \$77,229.63 plus interest for Evergy Missouri Metro and \$17,386.49 plus interest for Evergy Missouri West?

Yes. The Commission should adopt Staff's proposed disallowances of expenses for administrative program cost expenses, implementation contractors' expenses, and conference expenses during the review period for both Evergy West and Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("Evergy Metro") for the reasons discussed below. (Payne Direct Test. 3-7; Payne Rebuttal Test. 1-3; *see generally* Conner Direct Test.; Conner Rebuttal Test.).

Administrative Program Cost Expenses

As to administrative program cost expenses, the Commission should order an OA in the amount of \$70,154.17 plus interest for Evergy Metro and \$3,768.75 plus interest for Evergy West. (Payne Rebuttal Test. 2-3).

Both Evergy West and Evergy Metro seek to recover costs for generic Evergy t-shirts through their MEEIA surcharge. (Conner Direct Test. 4-5, 7). However, these t-shirts are not MEEIA related and provide no MEEIA-specific benefit to customers. (*Id.*; Payne Rebuttal Test. 2). Therefore, the Commission should not allow Evergy West and Evergy Metro to recover these costs through the MEEIA surcharge. (*Id.*).

Both Evergy Metro and Evergy West also seek to recover costs associated with their sponsorship of the Midwest Energy Solutions Conference, which appears to have been presented by the Midwest Energy Efficiency Alliance. (*See* Conner Direct Test. 6-7; Conner Rebuttal Test. 2-3). However, both Evergy entities also maintain a membership to the Midwest Energy Efficiency Alliance. (*Id.*). As demonstrated by Staff witness Ms. Conner, Evergy Metro and Evergy West's customers received no benefit from these entities paying both a membership and a sponsorship fee. (Conner Rebuttal Test. 2-4). Therefore, the OAs should include Staff's recommended amounts for the sponsorship of the Midwest Energy Solutions Conference. (*Id.*).

Further, Evergy Metro seeks to recover costs for gift boxes sent to businesses to encourage them to participate in the MEEIA BDR Program. (Conner Direct Test. 3-4). These gift boxes included both gifts and a "letter with the exact amount of expected incentive." (*Id.*). The letter explaining the amount of the expected incentive should have been sufficient to incentivize businesses to participate in the BDR Program. (Payne Rebuttal Test. 2). Any gifts beyond the letter were excessive. (*Id.*). Therefore, the Commission should include the costs of the gifts in the gift boxes in the OA. (Conner Direct Test. 3-4; Payne Rebuttal Test. 2).

Finally, Staff recommends that the amounts of two Bridging the Gap invoices be included in the OA for Evergy Metro because it could not verify the costs in the invoices as the invoices themselves were not itemized. (Conner Direct Test. 5). Any costs that Staff cannot verify should be included in the OA. (Conner Rebuttal Test. 4-6; Payne Rebuttal Test. 2).

Implementation Contractor Expenses

As to implementation contractor cost expenses, the Commission should order an OA in the amount of \$6,549.15 plus interest for Evergy Metro and \$13,121.19 plus interest for Evergy West. (Payne Rebuttal Test. 3).

Similar to the administrative program cost expenses, both Evergy Metro and Evergy West seek to recover costs for generic Evergy t-shirts through their MEEIA surcharge. (Conner Direct Test. 8-9, 11-12). Again, because they provide no MEEIA-specific benefit, they should not be recovered through the MEEIA surcharge. (*Id.*; Payne Rebuttal Test. 3). The Commission should, therefore, include these amounts in the OAs. (*Id.*).

Both Evergy Metro and Evergy West also seek to recover costs associated with promotional items and gifts. (Conner Direct Test. 8-13). The Commission should include the costs of these items in the OAs because Staff did not have sufficient information to verify that these items provided a MEEIA-specific benefit to customers and customers should not be asked to pay for gifts. (*Id.*; Payne Rebuttal Test. 3).

Further, both Evergy entities seek to recover the cost of a gift card that was “given to a customer for [a] trade ally’s mistake.” (Conner Direct Test. 9, 12-13). The Commission should include the costs associated with this gift card in the OAs because Evergy Metro and Evergy West’s other customers should not bear the burden of correcting implementation contractor’s mistakes. (*Id.*; Payne Rebuttal Test. 3).

Finally, both entities seek recovery of costs associated with events that provided alcohol. (Conner Direct Test. 9, 12). The OPC agrees with Staff that Evergy Metro and Evergy West’s customers should not be required to pay for alcohol. (*Id.*; Payne Rebuttal Test. 3).

Issue 5 Conclusion

For these reasons, the Commission should include an OA in the amount of \$76,703.32 plus interest for Evergy Metro and \$16,889.94¹ plus interest for Evergy West to account for Staff’s proposals regarding administrative program cost expenses and implementation contractor expenses. (Payne Rebuttal Test. 2-3).

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept these Statements of Positions.

Respectfully submitted,

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¹ The OPC acknowledges that these amounts differ slightly from the recommended OAs in Staff’s Direct Testimony. (*See generally* Conner Direct Test.). In Mr. File’s Direct Testimony, both Evergy Metro and Evergy West stated that they had reclassified some administrative program costs as non-MEEIA. (File Direct Test. 3-6). The amounts referenced here remove the reclassified amounts from Staff’s initial proposed amounts. (*See* Payne Rebuttal Test. 2-3).

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 17th day of May 2024.

/s/ Lindsay VanGerpen