

**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.)

**EVERGY MISSOURI METRO’S AND EVERGY MISSOURI WEST’S
POSITION STATEMENT**

COMES NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro” or “EMM”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West” or “EMW”) (collectively, the “Company”), pursuant to the Missouri Public Service Commission’s (“Commission”) *Order Setting Procedural Schedule* (“Order”) dated January 19, 2024, submits their *Position Statement* (“Position Statement”):

I. INTRODUCTION

On October 27, 2023, following its second prudence review related to the Missouri Energy Efficiency Investment Act (“MEEIA”) Cycle 3 Energy Efficiency Programs of Evergy Missouri Metro, Staff filed its Report of 2nd MEEIA Prudence Review of Cycle 3 Cost Related to the Missouri Energy Efficiency Investment Act related to Evergy Missouri Metro (“Metro Staff Report”) in this proceeding, as required by 20 CSR 4240-20.093(11). The Metro Staff Report identifies, “[D]isallowance of expenses for conferences and meetings; MEEIA Cycle 3 expenses disallowances of expenses for administrative program cost expenses and implementation

contractors' expenses during the Review Period [...] Staff is recommending an ordered adjustment ("OA") in the amount Review Period [...] Staff is recommending an ordered adjustment ("OA") in the amount of \$77,229.63 plus interest, in Evergy Missouri Metro's next DSIM Rider rate adjustment filing to adjust for these disallowed expenses."¹

Also on October 27, 2023, following its second prudence review related to the MEEIA Cycle 3 Energy Efficiency Programs of Evergy Missouri West, Staff filed its *Report of 2nd MEEIA Prudence Review of Cycle 3 Cost Related to the Missouri Energy Efficiency Investment Act related to Evergy Missouri West* ("West Staff Report"). The West Staff Report identifies, "[D]isallowances of expenses for administrative program cost expenses; implementation contractors' expenses; and BDR related to Nucor, during the Review Period [...] Staff is recommending an ordered adjustment ("OA") in the amount of \$1,193,650.67 plus interest, in Evergy Missouri West's next DSIM Rider rate adjustment filing to adjust for these disallowed expenses."² The Office of the Public Counsel ("Public Counsel") also filed rebuttal testimony which recommended disallowances.

For the reasons stated herein, Staff and Public Counsel's proposed disallowances should be rejected.

¹ See, *Metro Staff Report*, p. 1, ln. 24 thru p. 2, ln. 3, Docket No. EO-2023-0407.

² See, *West Staff Report*, p. 1, ln. 24 thru p. 2, ln. 3, Docket No. EO-2023-0408.

II. POSITION STATEMENT

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?

EVERGY POSITION: The Company recognizes there is a conflict between the Nucor SIL contract approved by the Commission and the SIL tariff eligibility for participating in the BDR Program. As a result, the Company has removed Nucor’s Sedalia site from the BDR program until the contract conflict could be resolved with the Commission. It was not until EMW received Staff’s data request 0031 that it realized there was a potential conflict between a customer participating in the SIL tariff with their current contract and the MEEIA BDR program. As a result of this oversight, Evergy has instituted a new BDR program contract flow process that will include a check-point to confirm if the customer is on a special contract or special rate prior to executing the BDR program agreement. The special contract or special rate (SIL tariff in this case) will then be reviewed for any conflict. Additionally, any customer special contracts will be stored in an accessible, centralized location for Energy Solutions personnel, who are responsible for recruiting participation in the BDR program.

2. Should the Commission find that Evergy Missouri West acted imprudently by allowing Nucor to participate in both the BDR Program and the SIL tariff?

EVERGY POSITION: No. While the Company recognizes there is a conflict between the Nucor SIL contract approved by the Commission and the SIL tariff eligibility for participating in the BDR Program, the Commission should not find that Evergy acted imprudently by allowing Nucor to participate in both the BDR Program and the SIL tariff.

Neither Staff nor OPC have applied the Commission-recognized prudence standard in evaluating their respective proposed disallowances. See File Direct, pp. 3-4. 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 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).²

Crucially, in order for the Commission to disallow a utility's recovery of costs from its customers, 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

² 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).

(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, Staff explained the process for reviewing prudence in its Staff Report, p. 8, as follows:

In evaluating prudence, Staff reviews 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. If either the information relied upon or the decision-making process employed was imprudent, then Staff examines whether the imprudent decision caused any harm to ratepayers. Only if an imprudent decision resulted in harm to ratepayers, will Staff recommend a disallowance. However, if an imprudent decision did not result in harm to Evergy Missouri Metro's customers, then Staff may further evaluate the decision-making process, and may recommend changes to the company's business practice going forward. (emphasis added)

As explained below, all non-Nucor customers benefitted by Nucor's participation in the BDR Program and the SIL tariff. There was no harm to non-Nucor customers from the participation of Nucor, and therefore, under the standard enunciated by the Missouri Supreme Court and affirmed by the Staff, it would be unreasonable for the Commission to find Evergy acted imprudently and approve the disallowances recommended by Staff and OPC since there was no harm to customers.

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

EVERGY POSITION: Yes. All EMW customers benefitted from the peak demand reduction supplied by Nucor during the summers of 2021 and 2022 far more than the program

costs paid to Nucor through MEEIA. (File Direct, p. 12) This is a crucial fact that should be recognized by the Commission as it considers the evidence in this proceeding.

The avoided capacity cost benefits to all EMW customers calculated for Nucor's Sedalia site participation is \$2,555,754. This is 2.2 times greater than the costs of incentives paid related to this site's participation. It should be noted that this does not include potential additional benefits related to transmission and distribution avoided capacity costs across Evergy's system. (File Direct, pp. 10-11)

EMW is requesting the Commission to allow Nucor to participate in the BDR program on a going forward basis. This customer's participation creates benefits for all customers, as calculated in the direct testimony of Brian File (File Direct, pp. 10-11). Additionally, Company witness Brad Lutz's testimony demonstrates that this customer is covering its incremental cost under the SIL tariff. Based on these analyses, EMW believes that Nucor's Sedalia site provided value to all customers by participating in the BDR program and believes that future participation would result in the same relative benefits.

As supported by filings made by the Evergy Missouri West in recent rate cases, Evergy Missouri West has evaluated and determined that the SIL customer continued to cover its cost to serve, including during the time period when the customer participated in the BDR program. (Lutz Direct, p. 6) Even though Evergy Missouri West could find no harm to customers through this customer's participation in the demand response program, the customer's contract should be modified and amended if the customer wants to continue to participate in the demand response program.

While the issue in this case is whether or not Nucor should have been allowed to participate in BDR program, it should be clear that Nucor did reduce demand during peak times creating value

for the entire rate base as discussed in the benefits answers above. As explained below, it would be unreasonable and inappropriate for the Commission to disallow the incentives paid to Nucor for Nucor's participation in the BDR Program or the EO related to Nucor's participation in the BDR Program that benefitted all customers.

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?

- 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?**
- 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?**
- 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?**

EVERGY POSITION: For all the reasons stated herein, the Commission should not approve Staff's and OPC's proposed disallowance. All customers benefited from Nucor's participation in the BDR program. (File Direct, pp. 8-11) Since non-Nucor customers were not harmed by Nucor's participation in the BDR, it would be unreasonable and unlawful for the Commission to adopt Staff's and OPC's proposed disallowances.

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?

EVERGY POSITION: No. For the reasons stated herein, the Commission should not adopt Staff's proposed disallowances of expenses for administrative program cost expenses, implementation contractors' expenses, and conference expenses during the review period for Evergy Missouri Metro and Evergy Missouri West.

Staff identified \$4,265.30 and \$70,680.48 of Administrative Program Expenses that it recommended to be disallowed in MO West and MO Metro jurisdictions, respectively. The large majority of Administrative Program Expenses identified by Staff were relevant and appropriate for furthering the Company's deployment of MEEIA programs. However, there are a few minor expenses identified in the direct testimony of Brian T. File that the Company agrees to re-classify as recommended by Staff. (File Direct, pp. 3-7)

Staff has issue with the Evergy branded materials, specifically shirts, that Evergy purchased for professionals to wear while they are interacting with customers to discuss MEEIA programs and the creation of promotional MEEIA material. Both activities are important to achieve MEEIA program participation. These items help customers feel confident in the personnel who are interacting with them that they are a credible representative of Evergy to deliver the MEEIA programs while they are at their residence or business. The shirt is one of the first visible signs that the person is representing Evergy. This customer confidence benefit tied with the fact that these personnel would not otherwise be interacting with the customer without MEEIA programs to promote is why these costs should be considered prudent. (File Direct, p. 5)

Staff also proposed that certain expenses were not detailed enough to be allowed. The Company disputes a portion of this disallowance. In particular, Bridging the Gap has been a contractor for MO Metro for multiple years and charge a fixed rate per hour for generating interest, supporting project development and managing business energy efficiency rebate applications. Staff had access to the agreement with Bridging the Gap and would have seen the scope of their work and invoicing approach.

There are a handful of expenses that the Company agrees with Staff that can be re-classified to non-MEEIA expenses. The totals for the re-classification are \$496.55 and \$526.31 for MO West and MO Metro, respectively. The expenses were for and by MEEIA specific employees, but the expenses could be viewed as supporting more general activity, such as employee support and training. Therefore, Evergy agrees to re-classify these expenses as non-MEEIA expenses. (File Direct, p. 6)

Staff identified \$13,121.19 and \$6,549.15 of implementation contractor expenses that it recommended to be disallowed in MO West and MO Metro jurisdictions, respectively. Staff also identifies an event and contractor gifts that were included in the proposed disallowance that Staff proposes to re-allocate to shareholders. These expenses are reasonable and appropriate.

Over the years, Evergy has built a strong, HVAC and energy-related contractor network to support the deployment of MEEIA programs. These contractors are essential to bringing higher energy efficient equipment to customers at their decision point. Annually, Evergy hosts an event for the contractor network to thank them for their involvement, celebrate top performers and share learnings for upcoming activity, including program changes or enhancements. These events would not be conducted without MEEIA programs; therefore, they are highly relevant and important to the success of the MEEIA programs. (File Direct, p. 7)

WHEREFORE, the Company respectfully submits its Position Statement and requests the Commission adopt its position on the issues in the case.

Respectfully submitted,

/s/ Roger W. Steiner

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**Attorneys for Eversource Missouri Metro and
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, to the Staff of the Commission and to the Office of the Public Counsel this 17th day of May 2024.

/s/ Roger W. Steiner

**Attorney for Eversource Missouri Metro and Eversource
Missouri West**