

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

In the Matter of Evergy Missouri West, Inc.)	
d/b/a Evergy Missouri West’s Request for)	<u>File No. ER-2024-0189</u>
Authority to Implement A General Rate)	Tariff No. JE-2024-0110
Increase for Electric Service)	

EVERGY’S RESPONSE TO MOTION TO COMPEL

COME NOW Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW” or “Company”, by and through their counsel and, for its *Response to the Motion To Compel* filed by Staff (“Staff”) for the Missouri Public Service Commission (“Commission”) on May 9, 2024, (“Motion”) states as follows:

I. BACKGROUND

1. On February 2, 2024, the Company filed a general rate case designated as File No. ER-2024-0189.

2. As a part of the rate case audit and discovery process, Staff issued DR Nos. 159 and 160 on February 16, 2024, which request information that does not exist and seeks information that is not readily available.

3. On March 12, 2024, Evergy file its responses to the data requests as follows:

Question: 0159

Please provide hourly load data for the period 1/1/2020 - 1/1/2024 for a random sample of customers taking service throughout the identified time period, for each of the following groups of customers. (For SGS customers, include with each set of customer data identification of whether each customer receives service with or without a demand charge; for Residential customers include with each set of customer data identification which rate code the customer receives service under as of December 31, 2023.) a. 100 SGS customers who are not on the space heating rate b. 100 SGS customers who are on the space heating rate c. 100 LGS customers d. All LP customers e. 100 residential customers.

Evergy's Response:

Please see Company response provided in DR 0160. While that request also included an NCP component, all other components to that response also apply here.

Question: 0160

For each of the following customer sets, for the period 1/1/2022 - 1/1/2024, for a random sample of customers taking service throughout the identified time period, for each of the following groups of customers (1) please provide hourly load data, and (2) please provide each customer's NCP by billing month for the same period, including identification of the hour in which such NCP occurred, and (3) please provide each customer's NCP by calendar month for the same period, including identification of the hour in which such NCP occurred. (For SGS customers, include with each set of customer data identification of whether each customer receives service with or without a space heating discount; for Residential customers include with each set of customer data identification which rate code the customer receives service under as of December 31, 2023.) a. 100 SGS customers who are not subject to a demand charge b. 100 SGS customers who are subject to a demand charge c. 100 LGS customers d. All LP customers e. 100 residential customers.

Evergy's Response:

The Company did not extract and prepare individual customer data in this rate case that would enable the sampling being requested. As such, the requested data is not readily available.

More specifically, in order for the Company to provide the data being requested, it would have necessitated the Company manually pull individual customer information by bill component i.e., replicate all billing components, by individual customer, for each class from the billing system to enable sampling as requested. Secondly, because the request is asking for the hour in which the NCP occurred for each customer and that is not typically captured in the billing system, it would also require that customer interval data be pulled by individual customer from the MDM system and then manual analysis would need to be performed to determine the hour in which the NCP occurred for each customer. Lastly, because there is no searchable database that would allow sampling being requested, a specific extract would need to be created by technical personnel to pull the data from multiple systems with manual evaluation and analysis to confirm data being pulled is what was requested.

Instead, the Company pulled aggregated data by rate code and class and by bill component-consistent with historical methods and rate case processes. As discussed in data docket case EO-2024-0002, automated processes and broad configuration of Evergy systems has not occurred yet and available data sets/data to be provided to the MPSC Staff are still being negotiated as part of that docket. As such, no Commission order has been issued outlining a specific approach for data production or guidance on a reasonable cost for the production of data for rate cases.

Until such time that broad configuration of systems occurs, and the automation of data extracts are implemented where possible, all data provided in a rate case requires dedicated technical personnel to manually extract from Evergy systems, to process and quality check accuracy and completeness, to format for end user, and otherwise prepare for rate making and specified analysis. This means that any incremental requests of information and data not originally planned, scheduled, and prepared by the Company and analyzed for its rate case requires new creation by technical SME's. Given limited technical resources, prioritized work already scheduled, and day to day operational support, new requests like this are generally not possible without negative operational impact.

4. On May 6, Deputy Chief Regulatory Law Judge Ronald D. Pridgin convened a discovery conference at which time Staff counsel and Evergy's counsel explained their respective positions on these data requests. Judge Pridgin indicated that Staff may file a written motion to compel to resolve this discovery matter.

5. On May 13, 2024, Staff filed its Motion To Compel which requested that the Commission compel Evergy to provide full and complete responses to DR Nos. 159 and 160. The Commission Staff is effectively requesting that the Commission order Evergy to create and produce the requested information since this data does not exist.

6. For the reasons stated herein, including the explanations in the response to DR Nos. 159 and 160, Staff's motion should be denied.

**II. DR NOS. 159 AND 160 RAISE THE SAME ISSUES PENDING
IN FILE NO. EO-2024-0002**

7. As explained in the responses to DR Nos. 159 and 160, the information requested in DR Nos. 159 and 160 is very similar to data that was requested by Staff in File No. EO-2024-0002. This case has been fully briefed and is awaiting decision by the Commission. The Company should not be compelled to create and produce the massive amount of data requested by Staff while the Commission is considering the broad policy issues and practical problems associated with Staff's request for such data.

8. Like in File No. EO-2024-0002, in DR No. 159, Staff is requesting a massive amount of hourly data over a four-year period for residential and small general service customers which does not presently exist in the format requested and is not readily available. Evergy has not utilized such hourly data for the development of its proposed residential and small general service rates in this case.

9. Like in File No. EO-2024-0002, in DR No. 160, Staff is requesting (for the period 1/1/2022 - 1/1/2024), for a random sample of customers taking service throughout the identified time period, for each of the following groups of customers, the following information (1) hourly load data, and (2) each customer's Non-Coincident Peak ("NCP") by billing month for the same period, including identification of the hour in which such NCP occurred, and (3) each customer's NCP by calendar month for the same period, including identification of the hour in which such NCP occurred.

10. This request is very similar to the requests in the pending File No. EO-2024-0002. Specifically, Data Requests 8c.3 and 8c.4 listed in Schedule BDL-1 in File No. EO-2024-0002 requests:

c. 3)for rate codes with more than 100 customers, a sample of individual customer hourly data, and identified peak demands for those 100 customers in the form requested at that time (i.e. monthly 15 minute non-coincident, annual 1 hour coincident);

c. 4) for rate codes with 100 or fewer customers, individual customer hourly data, and identified peak demands for those customers in the form requested at that time (i.e. monthly 15 minute non coincident, annual 1 hour coincident).

For both of these data requests, Evergy responded that it could not provide the requested data in the format requested. Evergy has proposed an alternative solution to the Commission to provide a component of the requested information based on delivery of hourly data for sample of 100 customers (not monthly 15 minute non-coincident data requested by Staff). It is important to note that even if the Commission orders Evergy to move forward with its proposed alternative solution, significant configuration would be needed to facilitate/extract data, and this effort will take time to implement. It is certainly not something that can be done in the timeframe that Staff expects with this Motion to Compel to use such data in this rate case proceeding.

11. However, unlike Data Request 8c listed in Schedule BDL-1, DR No. 160 is also requesting information based upon NCP demand data which will further complicate and extend the time for the creation and retrieval process This data set appears to be designed to develop the determinants for assessment of an on-peak demand charge to replace the current monthly billing demand charge, and for potential implementation for customers not currently subject to a demand charge. Presumably, Staff wants to develop demand charges or other rate elements for the residential, and small general service, and possibly other classes where such charges do not presently exist. Evergy's proposed rates and rate design in File No.ER-2024-0189 does not rely upon such data.

12. Evergy evaluated the data requested by Staff and assessed the feasibility of producing the data. Since the data are not readily available, Evergy examined the level of effort and timeline associated with securing and generating the data. Generally, the data requested resides in disparate systems and is not easily available for direct query. To locate, access, download, and assimilate (i.e. create) the required data to provide the data requested by Staff, it is expected that external expertise may be needed to supplement Evergy’s internal capabilities. In addition, it will be imperative to meet with Staff and understand the desired data outcome before any progress toward data creation can be made. In some cases, the data is not believed to be available to satisfy the Staff’s request and organizational process changes would be required to begin generating the requested data. Negotiations with Staff are ongoing to try to develop a path forward to give Staff reasonable proxies for the information requested in the context of File No. EO-2024-0002.

III. RULES OF DISCOVERY

13. As the Regulatory Law Judge and the Commission considers Staff’s Motion to Compel, it should consider the purposes and restrictions on discovery. Commission Rule 20 CSR 4240.090 provides that: “Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.”

14. Rule 56.01 governs the scope of discovery in civil actions in the circuit court, and generally, “[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action....”¹ Relevance, for purposes of discovery, is “broadly defined to include material “reasonably calculated to lead to the discovery of admissible evidence.”² The party seeking discovery shall bear the burden of establishing relevance.³

¹ Rule 56.01(b)(1); Ratcliff v. Sprint Missouri, Inc., 261 S.W.3d 534, 546-47 (Mo.App.W.D. 2008).

² State ex rel. Wright v. Campbell, 938 S.W.2d 640, 643 (Mo. App. E.D. 1997); State ex rel. Pooker v. Kramer, 216 S.W.3d 670, 672 (Mo. banc 2007).

³ State ex rel. Collins v. Roldan, 289 S.W.3d 780, 786 (Mo.App. W.D, 2009).

15. Rule 58.01 limits production of documents or electronically stored information to that which is “in the responding party's possession, custody, or control” and/or “kept in the usual course of business.” Mo. Sup. Ct. R. 58.01(a) and (c).

16. In the *Order Regarding The Office of the Public Counsel's Motion to Compel, Re Union Electric Company d/b/a Ameren UE*, Case No. ER-2010-0165 (March 16, 2010), 2010 WL 1178770, the Commission also stated:

The discovery process' purpose is to give parties access to relevant, non-privileged information while reducing expense and burden as much as is feasible.” “The circuit court must ascertain that the process does not favor one party over another by giving it a tactical advantage: ‘The discovery process was not designed to be a scorched earth battlefield upon which the rights of the litigants and the efficiency of the justice system should be sacrificed to mindless overzealous representation of plaintiffs and defendants.’”⁴

17. Another very important principle of discovery that is particularly relevant to this proceeding is that 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. Much of the Staff's discovery falls into this category. The Commission's practice in this regard is consistent with the discovery allowed in 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).

⁴ See *State ex rel. American Standard Ins. Co. v. Clark*, 243 S.W.3d 526, 529 (Mo. App. 2008).

IV. RESPONSE TO SPECIFIC STAFF ALLEGATIONS

18. In Paragraph 19 of Staff's Motion, Staff asserts that the information requests in DR Nos. 159 and 160 is necessary for Staff to study the non-residential rate changes that Evergy requests. Again, Evergy re-iterates that this information does not exist in the format requested and it would have to be created and produced at considerable expense. Evergy's proposed rate design may be evaluated by the parties and the Commission with the usage and demand data that is currently readily available. It is only if the Staff wants to propose a substantially different rate structure that the information requested by Staff would be needed or relevant to the investigation.

19. In Paragraph 20 of Staff Motion, Staff assert that "Staff requires that residential sample data to evaluate the reasonableness of Evergy's requested residential revenue tracker, and to evaluate customer impacts of Evergy's requested interclass revenue shifts." Staff's assertion is incorrect. Again, this information is not available in the format requested and it would have to be created and produced at considerable expense if ordered by the Commission. The issue surrounding Evergy's proposed residential revenue tracker is a policy determination that is not dependent upon massive amounts of data. It is essentially a determination of whether the Commission will approve the Company's proposal to track the differences between the revenues collected and associated financial impacts experienced by the Company under its TOU rates, and the revenues collected under the standard general residential block rates that were in effect during the test year prior to the implementation of default TOU rates. (Klote Direct, pp. 37-41)

20. In Paragraph 20 of the Staff Motion, Staff also asserts that "Residential sample customers are also necessary to evaluate the effect of a customer charge on these two requested regulatory treatments, as well as to estimate customer impacts in general." Staff's assertion is overstated. The parties and the Commission have historically evaluated the level of the Company's

proposed customer charges and its impacts upon its customers without the necessity of creating and producing the data requested by Staff.⁵

21. In summary, the Commission should reject Staff's Motion in its entirety. The information sought by Staff is not available in the format requested, and it would have to be created and produced at a cost to the Company if the Commission compelled its creation and production. As explained herein, the Commission and courts have historically held that a document is not in a party's possession, custody, or control if the document does not exist. The Commission should reaffirm this fundamental principle in this case.

V. IN THE ALTERNATIVE, IF THE COMMISSION BELIEVES IT IS NECESSARY FOR EVERGY TO CREATE AND PRODUCE THE INFORMATION REQUESTED IN DR NOS. 159 AND 160, THEN EVERGY IS WILLING TO DISCUSS WITH STAFF THE EXACT NATURE OF THEIR DATA NEEDS AFTER THE COMMISSION ISSUES ITS ORDER IN FILE NO. EO-2024-0002

21. In the alternative, Evergy is aware that the Commission has discussed the parameters of an Order in File No. EO-2024-0002 and may be near to issuing an Order to resolve the issues in that proceeding. Evergy believes it may be prudent and hopefully productive to have additional discussions with Staff related to DR Nos. 159 and 160 after the Order in File No. EO-2024-0002 has been issued. However, it must be emphasized that the data being requested in this rate case proceeding is more complex than the data at issue in File No. EO-2024-0002 since it is requesting hourly data with an NCP demand component. This additional request for information including NCP demand data will complicate the Company's ability to create and produce the requested data in a time period to facilitate its use in the rate case. If the Commission desires that the information in DR No. 159 and 160 be created and produced in some form, it will be essential that Evergy personnel have a complete understanding of Staff's requests. Otherwise, the Company's efforts to

⁵ See e.g., *Amended Report and Order*, pp. 66-69, 76-77, and 101, Re Evergy Missouri Metro and Evergy Missouri West General Rate Cases, File Nos. ER-2022-0129 and ER-2022-0130 (December 8, 2022).

create and produce the data will not be useful, and the effort may not produce the information that will be helpful to the rate case process. Therefore, it will be essential that discussions occur between Evergy's technical personnel and Staff experts to ensure the effort to create and produce the information is worth the time and cost to create and produce the data.

WHEREFORE, for all of these reasons discussed herein, the Commission should deny Staff's motion to compel the massive amounts of data that Staff is requesting in DR Nos. 159 and 160. In the alternative, Evergy is willing to participate in further discussions with Staff to resolve the data issues related to DR Nos. 159 and 160 after the Commission issues its Order in Case No. EO-2024-0002.

Respectfully submitted,

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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 20th day of May 2024 by either e-mail or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner _____

Roger W. Steiner