

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

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

INITIAL BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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Glossary of Terms

As used in this brief,

"Ameren" means Union Electric Company d/b/a Ameren Missouri

"ANEC" means Actual Net Energy Cost

"the Company" means Evergy Missouri West, Inc. d/b/a Evergy Missouri West

"EMW" means Evergy Missouri West, Inc. d/b/a Evergy Missouri West

"Evergy" means Evergy, Inc., the parent company of Evergy Metro and Evergy West

"Evergy Metro" means Evergy Metro, Inc. d/b/a as Evergy Missouri Metro

"Evergy West" means Evergy Missouri West, Inc. d/b/a Evergy Missouri West

"FAC" means Fuel Adjustment Clause

"Liberty" means The Empire District Electric Company d/b/a Liberty

"MWh" means megawatt-hour

"NBEC" means Net Base Energy Cost

"OPC" means the Missouri Office of the Public Counsel

"RTO" means Regional Transmission Organization

"SPP" means Southwest Power Pool

"the Commission" means the Missouri Public Service Commission

A Call to Action

Before diving into the issues, the OPC wants to highlight the reason it feels compelled to bring this case in the first place: Evergy West is bleeding money. Actually, it is more accurate to say that Evergy West's customers are the ones being bled through the Company's FAC, which is why the OPC is so concerned. Moreover, this cash hemorrhage is neither a sudden development, isolated occurrence, nor unforeseeable outcome. Evergy West has lost hundreds of millions of dollars in each of its last four FAC prudence periods, as shown in the testimony of OPC witness Dr. Goeff Marke:

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Ex. 303C, *Marke Surrebuttal*, pg.5 ln. 4. These losses are the direct result of the difference between what Evergy West spends to acquire energy from the SPP energy market (Non-Firm short Term Energy) and the revenue generated from what Evergy West sells into the SPP energy market (Off System Sales Revenue). It is also important to note that the table does not include the \$314.6 million loss from purchased power costs that arose due to Storm Uri. *Id.* at lns. 6 – 7. Adding this cost to the mix would bring the Company’s cumulative losses over the past four prudence periods to more than a billion dollars. *Id.* at lns. 8 – 10. That is why the OPC is bringing this case and why the OPC is asking the Commission to act now, before even more costs are incurred.

Evergy West’s failure to maintain sufficient generation to regularly meet the needs of its customers is not an accident. It is a deliberate decision that has been made repeatedly by the Company and that has resulted in immense losses. Losses that, up to this point, have been unfairly borne almost exclusively by Evergy West’s customers. This prudence review presents the only opportunity for the Commission to fix that injustice and return to those customers the money they would not have been billed if Evergy West had operated prudently. However, it is also an opportunity for this Commission to correct this problem moving forward. The Commission can do this by demonstrating how the imprudent management of a utility’s generating resources will not be tolerated.

While this case ultimately concerns the impact Evergy West’s imprudence has already had on a specific prudence period, the underlying imprudence identified by

the OPC persists to this day. Absent the Commission taking necessary actions to encourage the Company to change the adequacy of its current resources in order to meet its customers' energy needs, the losses incurred in this case will be repeated in future prudence periods. When that inevitably occurs, the OPC will be compelled to bring this same issue back to the Commission to once again try to stem this constant bleeding. The OPC therefore respectfully asks the Commission to avoid this outcome by taking action here and now.

Argument

Evergy West has been, and still is, imprudent in its resource management because the Company has decided not to maintain sufficient generation to regularly meet the energy needs of its customers and instead has chosen to rely primarily on the SPP energy market to cover the difference between the energy it produces and the energy it needs to serve those customers, which has consequently and unnecessarily exposed its customers to the volatility of the SPP energy market. Ex. 300C, *Mantle Direct*, pg. 3 ln. 16 – pg. 4 ln. 3; Ex. 302C, *Mantle Surrebuttal*, pg. 2 lns. 9 – 23. To prove this point, while still following the Commission’s order,¹ the OPC will break its argument down into three parts. First, the OPC will examine the nature of the prudence standard itself and show how it has been met by the OPC. This will address issue one in the *Amended List of Issues*. Second, the OPC will present the facts that actually establish the Company’s imprudence. This will answer issue six of the *Amended List of Issues*. Finally, the OPC will address how to calculate the amount of harm that has occurred because of Evergy West’s imprudence and, consequently, how much of a disallowance the Commission should order to correct for that harm. This will resolve issue eight, including both subparts 8(A) and 8(D), as stated in the *Amended List of Issues*.

¹ “Briefs shall follow the same list of issues as filed in the case and must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.” EO-2023-0277, *Order Setting Procedural Schedule and Delegation of Authority*, EFIS Item 12, pg. 4 ¶ 11.

Part 1: Examining the Prudence Standard

Issue one of the *Amended List of Issues* reads as follows: “[h]as the Office of the Public Counsel applied the Commission recognized prudence standard in evaluating their proposed disallowances?” Before directly addressing this issue, the OPC needs to clarify a point of confusion that has been introduced by Every West. The term “Commission recognized prudence standard” *should* be understood to refer to the legal standard (which is well established in Missouri caselaw) that the Commission applies when evaluating the prudence of a utility. The key to that statement is that it is a standard applied by the Commission, not by a party to the case (like the OPC). However, the question posed in the Amended List of Issues attempts to suggest that the OPC is responsible for applying the standard. This, as will shortly be shown, is simply nonsensical.

The discrepancy identified with the first issue arises primarily out of the testimony of Mr. John Reed for Every West. Specifically, Mr. Reed attempted to set out a new prudence standard for this case that he developed using a 1985 National Regulatory Research Institute report. Ex. 303C, *Marke Surrebuttal*, pg. 6 lns. 20 – 23. Mr. Reed then argued that the OPC’s witnesses failed to apply this standard when developing its case. Ex. 3, *Reed Direct*, pg. 5 lns. 2 – 4. But again, this is not what Missouri’s courts have recognized the prudence standard to be or how it is applied. Therefore, to properly answer the question it is necessary to begin with an analysis of the Commission’s legally recognized prudence standard.

Setting Forth the Prudence Standard

Missouri's appellate courts have long recognized that the Commission employs a prudence standard when determining whether a utility complies with its statutory mandate:

Section 393.130.1 provides that all charges demanded by a utility must be just and reasonable. The Missouri Supreme Court has found that within this power necessarily includes the power and authority to determine what items are properly includable in a utility's operating expenses and to determine and decide what treatment should be accorded such expense items. The PSC employs a prudence' standard to determine whether a utility's costs meet this statutory requirement.

Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n, 509 S.W.3d 757, 777 (Mo. App. W.D. 2016) (citing *State ex rel. City of West Plains v. Pub. Serv. Comm'n*, 310 S.W.2d 925, 928 (Mo. banc 1958); *State ex rel. KCP&L Greater Mo. Operations Co. v. Mo. PSC*, 408 S.W.3d 153, 162-66 (Mo. App. W.D. 2013)) (Internal citations and quotation marks omitted); see also *State ex rel. KCP&L Greater Mo. Operations Co. v. Mo. PSC*, 408 S.W.3d 153, 163 (Mo. App. W.D. 2013) (stating same); *State ex rel. Associated Nat. Gas Co. v. PSC*, 954 S.W.2d 520, 528 (Mo. App. W.D. 1997) (stating same). The standard itself has also been recognized by Missouri's appellate court's multiple times:

All charges for [utility] service must be just and reasonable. To determine whether a utility's costs meet this statutory standard, the PSC employs a prudence standard. 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. The presumption does not, however, survive a showing of inefficiency or improvidence. If some other participant in the proceedings alleges that

the utility has been imprudent in some manner, that participant has the burden of creating a serious doubt as to the prudence of the expenditure. If that is accomplished, the utility then has the burden of dispelling those doubts and proving the questioned expenditure was in fact prudent. The prudence test should not be based upon hindsight but upon reasonableness[.]

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

PSC v. Office of Pub. Counsel (In re Atmos Energy Corporation's 2008-2009 Purchased Gas Adjustment & Actual Cost Adjustment), 389 S.W.3d 224, 228 (Mo. App. W.D. 2012) (hereinafter *In re Atmos*);² see also *State ex rel. KCP&L Greater Mo. Operations Co. v. Mo. PSC*, 408 S.W.3d 153, 163 (Mo. App. W.D. 2013); *Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n'n*, 509 S.W.3d 757, 777 (Mo. App. W.D. 2016). The Commission's prudence standard, as recognized by Missouri's appellate courts, is thus straightforward. The next step is to examine its application in this case.

² The original excerpt references gas utilities, not electric utilities. This does not affect the application of the excerpt, however, because the statutory language being applied by the Court governs both gas and electric utilities. RSMo. § 393.130.1 ("Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable."). Further, the same standard has also been applied in electric cases. See *Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n'n*, 509 S.W.3d 757, 777 (Mo. App. W.D. 2016); *State ex rel. KCP&L Greater Mo. Operations Co. v. Mo. PSC*, 408 S.W.3d 153, 163 (Mo. App. W.D. 2013).

Applying the Prudence Standard

As the Court explained in the *In re Atmos* case: “[a] utility's costs are presumed to be prudently incurred.” *In re Atmos*, 389 S.W.3d at 228. That presumption is not, however, absolute. Instead, the presumption can be overcome “[i]f some other participant in the proceedings alleges that the utility has been imprudent in some manner.” *Id.* Once overcome, “the utility then has the burden of dispelling those doubts and proving the questioned expenditure was in fact prudent.” *Id.* However, it is the party alleging imprudence that “has the burden of creating a serious doubt as to the prudence of the expenditure.” *Id.* Therefore, the question before the Commission is simply this: did the OPC create a serious doubt as to the prudence of Evergy West’s expenditures. The answer to that question is undoubtably yes.

While there are numerous points the OPC could use to establish a serious doubt as to the prudence of Evergy West’s expenditures, this brief will focus on three. First, it is necessary to appreciate both the size of Evergy West’s losses and, much more importantly, their repetitive nature. To recall the table from Dr. Marke’s testimony found on page four of this brief, the losses Evergy West has incurred due to its failure to match generation output to customer need (for just this prudence period) stand at nearly three hundred million dollars. Ex. 303C, *Marke Surrebuttal*, pg.5 ln. 4. But this prudence period is also the fourth in a string of consecutive prudence periods where Evergy West lost vast sums of money due to its resource planning. *Id.* Each of the previous three prudence periods have cost Evergy West customers over a hundred million dollars. *Id.* And that says nothing of the more than

\$300 million in additional losses that Evergy West sustained after Winter Storm Uri when it was unable to match its generation supply to customer demand. *Id.* at lns. 6 – 8. It should go without saying that any prudently managed utility which had suffered the losses Evergy West experienced during Winter Storm Uri would have taken actions to protect itself, and its customers, from being exposed to those same risks again. Yet Evergy West took no such action. Instead, the Company just let the losses continue to pile up, prudence period after prudence period. This behavior alone should cast serious doubt as to the prudence of these costs, but there are yet more reasons to consider.

The second point worth discussing is how accumulating over a billion dollars in losses in just six years due to buying energy off an RTO market is something unique to Evergy West. No other Missouri utility has relied on an RTO energy market to cover customer load requirements to the extent Evergy West did during this prudence period. Ex. 302C, *Mantle Surrebuttal*, pg. 5 lns. 7 – 10. Instead, utilities like Evergy Metro and Ameren Missouri maintained “an excess of generation during the prudence period meaning that they sold more into their respective markets than their customers required.” *Id.* at lns. 10 – 12. Even Liberty, which was forced to rely in part on the SPP energy market – due to a forced outage of its largest wind generating project – still did not rely on the SPP energy market to the same extent Evergy West did. *Id.* at lns. 12 – 18. The fact that no other utility in this State deliberately operated in the same manner as Evergy West (and thereby escaped the massive costs incurred

by Evergy West) should again create a serious doubt as to the prudence of Evergy West's resource planning.

The third and most implicative point, however, is the simple fact that each of the three Evergy West witnesses who sponsored testimony in this case have also testified to this Commission about how an overreliance on the SPP energy market to cover customer need is imprudently risky. See Ex. 300C, *Mantle Direct*, pg. 18 lns. 2 – 31. Because the OPC intends to address these admissions by the Company in more detail in the next section, this brief will refrain from a close examination here. Instead, the OPC will offer up just one quote that perfectly encapsulates the problem:

Market purchases can play an important role in a prudent resource mix, but on their own are not a plan but rather are akin to playing Lotto with customers energy supply.

Ex. 1, *Ives Direct*, pg. 14 lns. 14 – 16 (emphasis added). This quote, taken from the direct testimony of Evergy West's Vice President of Regulatory Affairs, expertly states the OPC's point. Evergy West has been relying on the purchase of energy from the SPP market to cover nearly 40% of its customers' energy needs. Ex. 300C, *Mantle Direct*, pg. 12 lns. 1 – 10. Based on the testimony of Evergy's own witness, that means that Evergy has been "playing lotto" with that 40% of customers' energy supply. This decision by Evergy West to "play lotto" with "almost 40% of its customers' energy requirements was imprudent and continues to be imprudent." Ex. 301C, *Mantle Rebuttal*, pg. 10 lns. 16 – 18.

To summarize, in order to create a serious doubt as to the prudence of Evergy West's expenditures, the OPC presented evidence that shows how the Company's decision not to acquire sufficient generation to regularly cover its customers' load: (1) resulted in Evergy West incurring hundreds of millions of dollars in losses over four consecutive prudence periods; (2) was inconsistent with the method of operation for every other electric utility in the state; and (3) was directly identified as an unduly risky method of meeting its customers' needs by Evergy West's own witnesses. Moreover, the OPC intends to explore each of these points in even more detail in the next section. For now, though, these should be sufficient to establish how the OPC has met the Missouri court's recognized version of the Commission's prudence standard. *See In re Atmos*, 389 S.W.3d at 228. If these facts are not enough to "create a serious doubt as to the prudence of Evergy West's" resource planning, then the OPC struggles to see what possibly could.

Part Two: Presenting the Facts Establishing Imprudence

Issue Six of the Amended List of Issues reads: “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?” The answer to this question is yes. The OPC has already touched on why the answer is yes in the first part of the argument section and will now provide a little more color to that answer. Before doing that, though, the OPC will present a simple analogy to explain its position.

Owning Generation is like Buying Insurance

Consider the average homeowner who owns a simple, single-family house somewhere in central Missouri. This homeowner, like most living in the same area, purchases a home insurance policy “that, in the event of a tornado, covers the full cost of the replacement of the dwelling and its contents.” Ex. 300C, *Mantle Direct*, pg. 9 lns. 9 – 12.

The purchase of such an insurance policy will cost the homeowner money in the form of regular premium payments. In the event that the homeowner does ultimately lose his home to a tornado, however, then the purchaser will only be out the cost of the insurance policy. He will not have to pay the cost of repairing his home out of his own pocket— a much more expensive endeavor than paying for insurance.

Id. at lns. 12 – 17. Such an action, which is again quite common across Missouri, would therefore not only be considered prudent, but would ultimately lower the

overall costs of being a homeowner in the event of disaster. *Id.* at lns. 17 – 19. But what if a tornado does not occur?

It is generally well understood that an insurance policy carries value for its holder even if the policy holder never makes a claim. This is because it reduces the risk to which the policy holder is exposed. For example, even if the homeowner in the analogy never suffers a tornado, the decision to purchase home insurance would still be considered prudent:

This insurance still costs the homeowner money through its premium payments, but the homeowner did not have to go through the trauma of his house being hit by a tornado. Despite that fact, purchasing insurance was still prudent because, even though it ultimately cost the homeowner more money than the policy paid out (given that no claim was ever made), it eliminated the risk that came with living in an area where a tornado is, while not probable, possible and the cost would be tremendous.

Ex. 300C, *Mantle Direct*, pg. 9 ln. 21 – pg. 10 ln. 5. Conversely, failing to purchase a home insurance policy would be a risky and imprudent decision. *Id.* at pg. 10 lns. 6 – 17. Every time the homeowner hears the tornado sirens go off or gets an alert regarding nearby tornadic activity, they will have to live with the stress that they might lose everything they own. *Id.* Such a risk is generally considered to be so great that most reasonable people will seek to avoid it by buying the insurance policy. *Id.* And this, the OPC is arguing, is how a prudent utility operates.

For a utility, the risk at issue does not come from a possible tornado flattening a house, but rather, from some unforeseen event (local, national, or international in scale) causing a sudden price surge for the cost of buying energy off an RTO energy

market. To better explain and develop this analogy, it is therefore necessary to very briefly address how a utility that is a member of an RTO operates.

In an RTO that operates an energy market (like SPP, to which Evergy West belongs), every load-serving participant is required to pay the RTO for every megawatt-hour (“MWh”) of energy its customers require. Ex. 300C, *Mantle Direct*, pg. 3 lns. 6 – 8. At the same time, though, the RTO pays any energy producing entity for every MWh of energy it generated. *Id.* at lns. 8 – 9. This means that, “[a]t the most simplistic level, if Evergy West has sufficient cost-effective resources to meet all of its customers’ energy needs during the time periods required, the revenues from the generation of energy should effectively match, and thereby negate, the cost Evergy West paid to SPP for the energy its customers use.” *Id.*, at lns. 16 – 19. “In this sense, the generation of energy can be said to have ‘covered’ the cost of the energy that Evergy West purchased.” *Id.* at lns. 19- 21. Moreover, “[b]oth the cost Evergy West incurs for the energy purchased from the SPP energy market and the revenues generated by the energy Evergy West sells into the SPP energy market are ultimately recovered/returned to customers through its FAC.” *Id.* at lns. 9 – 12. Therefore, if Evergy West can match its generation (both in terms of when energy is generated and how much is generated) to the amount of energy its customers consume, the Company will be paid the same amount by SPP as it pays to SPP and thereby “cover” its cost for purchasing power off the RTO’s energy market. *Id.* at lns. 6 – 21., In doing so, Evergy West will be eliminating a cost that would otherwise flow through the FAC. *Id.*

Given that being able to produce energy and sell it into the RTO energy market allows a utility to “cover” the cost of the energy it buys off the same RTO market, having generating resources acts as a utility’s hedge or “insurance” against price volatility in the RTO energy market. Ex. 300C, *Mantle Direct*, pg. 4 lns. 2 – 3. It will not matter if the market price of energy suddenly skyrockets for some reason because, while the utility will pay immensely for every MWh of energy it buys, the utility will also be paid handsomely for all the energy its sells. This brings the issue back to the homeowner’s insurance analogy. Owning generation to protect against price volatility in the RTO energy market is equivalent to purchasing a homeowner’s policy to protect against the risk of losing one’s house to a tornado. However, there is one major difference in the two scenarios, and that one difference explains *why* Evergy West hasn’t bothered to buy the proper amount of insurance. That difference is the existence of the FAC itself.

As already stated, the costs Evergy West incurs for the energy purchased from the SPP energy market are ultimately recovered from customers through its FAC. Ex. 300C, *Mantle Direct*, pg. 3 lns. 9 – 12. This means that Evergy West and its shareholders are not actually exposed to the risk of price volatility in the SPP energy market because “[t]he impacts of Evergy West’s choices have all flown through the FAC and have been borne by its captive customers.” Ex. 303C, *Marke Surrebuttal*, pg. 5 lns. 12 – 14. This is a problem because “Evergy West has no motivation to change when it suffers little to no harm itself.” *Id.* There is even a special name for this

phenomenon in the field of economics; it is called “moral hazard.” *Id.* at pg. 6 lns. 1 - 3.

The impact that moral hazard has had on Evergy West’s resource planning is immense. “Because the risk-taker (Evergy West) doesn’t face the full consequences of their actions, they have little incentive to change behavior.” Ex. 303C, *Marke Surrebuttal*, pg. 6 lns. 5 – 6; *see also* Ex. 300C, *Mantle Direct*, pg. 5 lns. 24 – 25 (“With an FAC, the decision to rely on an energy market places very little risk on the utility and a great deal of risk on the customers who are billed the market prices.”). This is the reason why Evergy West has not considered it important to build generation to meet customer demand – it has little to no skin in the game.

Building generation is an inherently risky endeavor for a utility who must contend with environmental concerns, supply chain constraints, potential cost overruns, and regulatory compliance issues among many other possible factors. But all those concerns disappear when a utility has an FAC:

Having a FAC removes the risk of the utility not recovering its fuel and purchased power costs and places the risks of the utility making an incorrect decision on its customers. Increasing fuel or market prices are just passed on to customers with negligible impacts on shareholders. Resource planning decisions, such as entering into PPAs with no capacity charges (only charges for energy which are recoverable through the FAC), remove all risks of building plant from the shareholder and puts all the risk of increased energy costs on the customers. The same is also true of short-term capacity contracts that do not include energy. With these tools, having a well thought-out comprehensive safety net of “insurance” is not always necessary to keep shareholders from absorbing costs, but it places incredible risk on the customers.³

³ This specific concern has been acknowledged by the Commission itself in the past. For example, in a case concerning a request for an FAC brought by one of Evergy West’s predecessor companies, Aquila,

Ex. 300C, *Mantle Direct*, pg. 6 lns. 5 – 17. By contrast, “[i]f there is no FAC, the utility would want to take out platinum ‘insurance’ *i.e.* building whatever resources it believes is necessary to minimize its risk of having to absorb any energy related costs.” *Id.* at pg. 6 lns. 1 – 4.

There is one and only one time “that shareholders even come close to bearing any risk when a utility uses an FAC” and that “is during the periodic, after-the-fact prudence reviews such as this one.” Ex. 300C, *Mantle Direct*, pg. 6 lns. 15 – 17. This is the one opportunity for the Commission to scrutinize the Company’s behavior and to ask whether it is consistent with what a reasonable, responsible person would do. And, “[a]s economic regulators, the Commission has a responsibility to encourage responsible behavior.” Ex. 303C, *Marke Surrebuttal*, pg. 6 lns. 8 – 9. In this case, a reasonable, responsible utility would develop “a prudent resource plan [that] has adequate insurance, *i.e.*, sufficient generation to cover its customers’ load requirements.” 300C, *Mantle Direct*, pg. 10 lns. 21 – 22. This is no different than a homeowner buying a home insurance policy, “a decision that hundreds of Americans face on a daily basis.” Ex. 303C, *Marke Surrebuttal*, pg. 2 lns. 17 – 18.

Having set forth this analogy, the OPC’s position as to issue number six in the Amended List of Issues should be quite clear:

Inc., the Commission found that “after-the-fact prudence reviews alone are insufficient to assure [the utility] will continue to take reasonable steps to keep its fuel and purchased power costs down, and the easiest way to ensure a utility retains the incentive to keep fuel and purchased power costs down is to not allow a 100% pass through of those costs.” Case No. ER-2007-0004, *Report and Order*, pg. 54.

Simply put, Evergy West is imprudent because it decided that it did not need insurance to fend off potential high costs of energy. Its resource planning, or rather the lack of resource planning specific to Evergy West, has resulted in Evergy West not having enough generation resources to meet the load requirements of its customers during this prudence period. Further, this is a problem that has persisted for more than a decade and is also an issue that the OPC has continuously warned about for at least the last six years.

300C, *Mantle Direct*, pg. 11 lns. 17 – 23. The remainder of this section will therefore touch on the specific evidentiary factors that demonstrate the absolute truth of this statement.

How Much of Evergy West’s Energy Need is Currently “Uninsured”?

According to its last resource plan update, Evergy West estimates that it can only generate 62% of its customer’s load requirement. 300C, *Mantle Direct*, pg. 12 lns. 1 – 5. This means that the Company is dependent on the SPP energy market for the remaining 38%. *Id.* at lns 5 – 7. This 38% (or 40% rounding up) of its customer’s energy requirement is what would be considered “uninsured” under the OPC’s analogy. Once again, Evergy West’s decision to “[k]nowingly not provid[e] insurance for almost 40% of its customers’ energy requirements was imprudent and continues to be imprudent.” Ex. 302C, *Mantle Surrebuttal*, pg. 10 lns. 16 – 18.

How Long has Evergy West Lacked “Insurance”?

“Evergy West has not had the resources to meet the load requirements of its customers since before it was acquired by Great Plains Energy (“GPE”) in 2008.” Ex. 300C, *Mantle Direct*, pg. 11 lns. 26 – 27. At the time it was acquired, the Company estimated that it could only cover “74% of the energy its customers’ need, *i.e.* it was depending on the market to cover at least 26% of its customers’ load requirements.” *Id.* at pg. 12 lns. 2 – 4. As previously indicated, this amount has only grown since then. *Id.* at lns. 4 – 7. This is not, however, because the energy needs of its customers have increased. *Id.* at lns. 7 – 8. Rather, the increase in the “uninsured” portion of Evergy West’s energy needs is the result of the Company eliminating elements of its generation fleet. *Id.*

The full history of how Evergy West got into the mess it has today regarding a lack of generation can be found in the testimony of OPC witness Ms. Lena Mantle. Ex. 300C, *Mantle Direct*, pg. 12 ln. 11 – pg. 14 ln. 9. For the sake for brevity, the OPC will not address that history as part of this brief. However, the OPC does believe it necessary to stress the history of how the OPC itself has been attempting to resolve this issue. The OPC has “raised its concerns regarding Evergy West’s resource plan’s increased reliance on energy purchased from the SPP market in at least” ten separate cases since 2016.⁴ Ex. 300C, *Mantle Direct*, pg. 16 lns. 14 – 15. “We presented our concerns with Evergy West in every avenue possible so that a reasonable person

⁴ Please see 300C, *Mantle Direct*, pg. 16 lns. 15 – 16 for the complete list.

would respond to the information provided in a prudent manner.” *Id.* at pg. 16 ln. 19 – pg. 17 ln. 1. As the OPC’s witness explained:

OPC did not prescribe to Evergy West how to cure this imprudence because the OPC does not have the tools necessary to conduct the resource planning needed. However, the OPC did use every opportunity available to identify the problems with Evergy West’s processes. Most of the time OPC’s concern was dismissed. However, had Evergy West responded to these concerns in 2017, when OPC first brought up its concerns and added generation to meet its customers’ load requirements, customers would have faced less risk and likely much lower costs over the prudence period.

Id. at pg. 17 lns. 5 – 12. As stated in the introduction to this brief, the problem Evergy West is facing is not new. It has existed for over a decade. The Commission needs to recognize the history here and act to staunch the bleeding caused by that history.

What has Evergy West’s lack of “Insurance” Cost Customers?

As explained in the analogy section, when a utility does not have generation that can match its customers’ energy needs, it cannot cover the cost of the energy it must buy off an RTO energy market with the revenues of the energy it sells into the energy market. So, to understand what the failure to have sufficient generation cost Evergy West, one need only compare what Evergy West spent to acquire energy from the SPP energy market (Non-Firm short Term Energy) against the revenue generated from what Evergy West sold into the SPP energy market (Off System Sales Revenue). This comparison, provided in the introduction of this brief and reproduced below, is from in the testimony of OPC witness Dr. Geoff Marke for this prudence period (11), as well as the last three prior prudence periods:

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Ex. 303C, *Marke Surrebuttal*, pg.5 ln. 4. As this table shows, the losses due to a lack of insurance in just this prudence period amount to nearly \$300 million. *Id.* If the other four prudence periods listed are added together with the current prudence period, those losses balloon to over \$700 million. *Id.* However, even this is an incomplete picture because the table does not include the \$314.6 million loss from purchased power costs that Evergy West incurred during Storm Uri due to having a lack of sufficient generation. *Id.* at lns. 6 – 7. If this amount is added to the existing FAC costs, then Evergy West’s total losses exceed one billion dollars. *Id.* at lns. 8 – 10.

Evergy West's Parent Company Clearly Understands the Importance of Owning
Excess Generation to Act as "Insurance" in the SPP Energy Market

Apart from the sheer size of the losses Evergy West has incurred over the last four prudence periods, there is another striking element to the table from Dr. Marke's testimony. That would be the comparison between Evergy West and its sister utility: Evergy Metro. The OPC has already touched briefly on how the other Commission regulated electric utilities in this State operate in a manner consistent with the OPC's position, and the comparison in this table shows the impact of that decision by Evergy West's sister utility, Evergy Metro.

During the prudence period at issue in this case, "Evergy Metro and Ameren Missouri had an excess of generation . . . meaning that they sold more into their respective markets than their customers required." Ex. 302C, *Mantle Surrebuttal*, pg. 5 lns. 10 – 12. The table from Dr. Marke's testimony shows how having this excess generation allowed Evergy Metro to not only completely cover the cost of buying energy off the RTO market but even produced over \$400 million dollars revenues for its customers. With regard to the specific prudence period at issue, Evergy Metro managed to generate nearly \$170 in revenue while Evergy West was losing nearly \$300 million. In addition, it should be noted that, unlike Evergy West, Evergy Metro made money during Winter Storm Uri. Tr. Vol. 1 pg. 191 lns. 17 – 24. Given the night and day differences between these two utilities, it should be obvious that Evergy Metro has been operated prudently while Evergy West has been operated

imprudently when it comes to maintaining resources that can provide energy when their respective customers need energy.

“Evergy Metro and Evergy West has the same management.” Ex. 301C, *Mantle Rebuttal*, pg. 21 ln. 4. Moreover, the resource planning process for the two companies “was, and still is, conducted as if Evergy West and Evergy Metro were a single utility.” *Id.* at pg. 14 lns. 13 – 14. That last point is important because it means Evergy, Inc. (the parent company) can implement a resource plan that took “advantage of low risk to Evergy’s shareholders but did not take into account the risk to Evergy West’s customers of increased bills due to volatile market prices.” Ex. 300C, *Mantle Direct*, pg. 15 lns. 10 – 12. It did this by allowing Metro to maintain an excess of generating resources that would (when treated as a combined entity) balance out the lack of resources owned by Evergy West. *Id.* at pg. 13 ln. 9 – pg. 15 ln. 2; *see also* Ex. 308, *Lena Mantle Graph*; Tr. Vol. 1 pg. 174 ln. 23 – pg. 175 ln. This clearly benefits Evergy Metro:

Evergy Metro’s customers have to pay for its generating resources plus a return on the resources, but the efficient, low cost energy of these resources generate revenue on the SPP energy market protecting customers from the risk of fluctuating market prices. In addition, Evergy Metro’s customers do not have to take the risk that other members of the SPP will have excess capacity for purchase and benefit from the sale of excess capacity at market prices to Evergy West.

Id. at pg. 14 ln. 19 – pg. 15 ln. 2. However, it leaves Evergy West holding the bag by denying them the “premium insurance” policy that Evergy has acquired for Evergy Metro. *Id.* at pg. 13 lns. 15 – 17. Evergy West’s parent company clearly knows and

understands these facts, and its deliberate decision to favor Evergy Metro over Evergy West was and still is imprudent for Evergy West. *Id.* at pg. 15 lns. 3 – 8.

Evergy West’s Own Witnesses Acknowledge the Need for “Insurance” and Admit
Evergy West’s Current Model of Operations is Inherently Risky

As stated in the first part of the argument section, one of the strangest and most condemning parts of this case is the degree to which Evergy West’s own witnesses have testified in favor of the OPC’s position. Each of the three witnesses sponsored by Evergy West have, either in this case or in a contemporaneous case, argued the very points that the OPC now relies on to establish Evergy West’s imprudence. These statements both show the disingenuity of Evergy West’s position in this case and prove how Evergy West’s own officers and employees know that the Company’s current model of operation is imprudent.

Evergy West witness Mr. John J. Reed provided testimony in this case concerning the prudence standard applied by the Commission, as discussed in part one of the argument section. However, Mr. Reed was also hired by Evergy West to offer testimony in case EA-2023-0291 (hereinafter “the *Dogwood* case”), which concerned the Evergy West’s application for Commission approval to acquire partial control of the Dogwood Energy Facility. Ex. 300C, *Mantle Direct*, pg. 18 ln. 3; Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 2 lns. 11 – 16. In that case Mr. Reed directly acknowledge the risks involved in buying energy off the RTO energy market:

Energy prices in the wholesale market can be volatile and increase the risk of high costs for power purchases to meet load.

Id. at pg.19 lns. 1 – 4. More to the point, Mr. Reed outlined three ways that electric utilities could meet their customer’s energy needs. *Id.* at pg. 18 lns. 6 – 21. The first way Mr. Reed identified was for electric utilities “to own resources that provide services to their customers, which provides more control over and certainty of deliverability for meeting customers’ needs.” *Id.* Mr. Reed specifically identified that “[t]his approach also limits exposure to adverse pricing in wholesale electricity markets as the services are effectively self-provided through ownership.” *Id.* To be clear, this is the exact point the OPC is trying to make. Evergy West should have made efforts to own enough of its own generating resources to meet its customer’s needs and thereby “limit[] exposure to adverse pricing in wholesale electricity markets.” *Id.* at pg. 11 lns. 16 – 23.

Mr. Reed’s testimony did not end with the prior quotes. He also identified the method Evergy currently uses to meet nearly 40% of its energy need as his third potential option: “[a] third alternative is to rely on broader wholesale market mechanisms to meet the needs of customers.” Ex. 300C, *Mantle Direct*, pg. 18 lns. 18-20. However, Mr. Reed also noted that “[t]his approach imposes the most price and resource sufficiency risk on the utility.” *Id.* at lns. 20- 21. As the OPC has already explained, though, the risk Mr. Reed was referring to is not actually being assumed by Evergy West, but rather, by its customers through the Company’s FAC. *Id.* at lns. 22 – 24. And again, the OPC agrees with what Mr. Reed testified to in the *Dogwood* case. Evergy West’s decision to rely on the RTO energy market for 40% of its load has

“impose[d] the most price and resource sufficiency risk” on Evergy’s customers, which is exactly why it was and still is imprudent. *Id.* at pg. 11 lns. 16 – 23.

Alongside Mr. Reed, Evergy West also offered the testimony of Ms. Kayla Messamore, the Company’s “Vice President of Strategy and Long Term Planning[.]” Ex. 2, *Messamore Direct*, pg. 3 lns. 2 – 7. Ms. Messamore, like Mr. Reed, also provided testimony in the *Dogwood* case. Ex. 300C, *Mantle Direct*, pg. 18 lns. 25 – 27; Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 1 lns. 1 – 6. In that case, Ms. Messamore presented a nearly perfect recitation of the OPC’s central argument against Evergy West in the present case.

To begin with, Ms. Messamore clearly articulated that “EMW has near- and long-term needs for physical capacity, **physical energy, and a hedge against the SPP energy market.**” Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 3 lns. 10 – 11 (emphasis added). With regard to Evergy West’s need for energy, Ms. Messamore explained:

[M]arket capacity like the capacity EMW purchases from Evergy Metro only includes mutually agreed upon market energy (or no energy at all), **which doesn’t provide a long term energy hedge.** As a result, the amount of capacity currently covered by these market capacity purchases (240 MW in 2026) represents an incremental need for energy available on the EMW system to meet customer needs. This need for energy can, and has, been met by the wholesale energy market, **but this dependence on the energy market can create risk if it is covering a large portion of customer needs for the long-term.**

Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 3 lns. 10 – 11 (emphasis added). It is at this point that it becomes necessary to remember that Evergy West has been

“dependent” on the energy market for *at least* 26% of its energy needs since 2008. 300C, *Mantle Direct*, 12 lns. 1 – 4. And that this amount has since grown to 38% as of the Company’s latest resource plan update. *Id.* at lns. 4 – 7. That is the whole basis of the OPC’s case. Evergy West has already “created risk” by “covering a large portion of customer needs” over a very “long term.” But Ms. Messamore’s testimony becomes even more important when she turns to the question of hedging against market energy prices.

To “hedge” is “to use two compensating or offsetting transactions to ensure a position of breaking even; esp., to make advance arrangements to safeguard oneself from loss on an investment, speculation, or bet, as when a buyer of commodities insures against unfavorable price changes by buying in advance at a fixed rate for later delivery.” BLACK’S LAW DICTIONARY 869 (11th ed. 2019). Buying insurance is a classic form of hedging against loss. *See* 300C, *Mantle Direct*, 4 lns 2 – 3. In her testimony in the *Dogwood* case, Ms. Messamore was asked this question: “In prior testimony, Staff implies that there is not a need for energy, but rather a need for a hedge against market energy prices. Do you agree with this perspective?” Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 12 lns. 4 – 6. She responded: “No. These two needs are not mutually exclusive **and EMW has a need for both.**” *Id.* at ln. 7 (emphasis added). She then went on to elaborate:

In addition, **a strategy of relying on wholesale capacity and energy does not provide a hedge for EMW to mitigate its exposure to energy prices.** As I will describe in more detail later in this testimony, a large portion of EMW capacity consists of inefficient, high heat rate natural gas turbines which operate very infrequently, as

Company Witness Carlson explains. EMW leans on the more economic wholesale market to provide energy when these units aren't dispatched due to being "out of the money". Effectively, this results in EMW being a price taker any time the wholesale market is cheaper than the operating costs of its natural gas turbines, **which is a significant portion of the time.**

[. . .]

In the same way, some of EMW's market capacity contracts also make it a price taker **because those contracts do not include corresponding energy.** The capacity contracts that do include an energy option are only set at mutually agreeable market prices at the time of transaction. **That is the need for an energy hedge** which Staff references and **which is very real for EMW customers.**

Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 13 lns. 6 – 23 (emphasis added). What should be clear from this excerpt is that Ms. Messamore admitted in the *Dogwood* Case that Evergy West (1) cannot currently meet its customers' energy needs with its own generation in a profitable manner for a significant portion of the time, and (2) this means that Evergy West is in dire need of a hedge against the SPP energy market. *Id.*

The "hedge" that Ms. Messamore refers to in her testimony from the *Dogwood* case is the "insurance" that the OPC is arguing the Company failed to acquire for this prudence period, thus making Evergy West's actions imprudent. See 300C, *Mantle Direct*, pg. 4 lns 2 – 3; pg. 11 lns. 16 – 23. If there is any doubt as to that idea, please consider Ms. Messamore's own words as explication:

Q: What does it mean to need a hedge?

A: A need for a hedge simply means that you do not have sufficient control or certainty around your future outcomes, based on your specific risk tolerance, and so you want to find some way to improve that control /certainty. As Company Witness Reed describes, insurance is an

example of a hedge in that it does come with a cost (insurance premium), but the purpose of it is to give you greater stability and security in your future costs. In general, if you do not end up using your health insurance (e.g., because you did not have any major medical issues), you are better off overall. Would it have been nice to know that you were not going to use the insurance so you could save yourself paying the premium cost? Yes. Would it have been possible for you to know that in advance? No. If something serious had happened, would you have been very glad you had insurance? Yes.

Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 14 lns. 1 – 12. This is nearly identical to the OPC's analogy outlined previously in this argument and again only reinforces the OPC's case. *See supra* pg. 15: *Owning Generation is like Buying Insurance*. The only pertinent difference between what Ms. Messamore testified to in the *Dogwood* case and the OPC's position in this case is that Ms. Messamore was arguing why the Company should be allowed to acquire generation in order to have a hedge against the SPP energy market prices moving forward while the OPC is arguing why the Company has been imprudent for not acquiring generation necessary to hedge against the SPP energy market prices for the last decade. However, this difference only strengthens the OPC's claim simply because there is no change related to the SPP energy market that would explain why a hedge is only necessary now and hasn't been necessary for the past decade.

The last witness offered by Evergy in this case was that of Mr. Darin Ives, Evergy West's Vice President of Regulatory Affairs. Ex. 1, *Ives Direct*, pg. 1 lns. 2 – 11. With regard to Mr. Ives, one need look no further than the testimony provided in this case to see him agree with the OPC's position:

Market purchases can play an important role in a prudent resource mix, **but on their own are not a plan but rather are akin to playing Lotto with customers energy supply.**

Ex. 1, *Ives Direct*, pg. 14 lns. 14 – 16 (emphasis added). And here, Mr. Ives is right. Evergy West's decision to rely on the SPP energy market to supply nearly 40% of its customer's energy needs was indeed equivalent to the Company playing the lotto with customers' money. This was imprudent, as explained by the OPC's witness Dr. Geoff Marke:

Every decision commits us to some course of action that, by definition, eliminates acting on other alternatives. Placing a bet on the market means we are doubling-down on luck and we are not committing to some other tangible resource that can generate off-system sales. Luck is not a prudent resource. We can't control luck. Therefore relying on the lottery cannot be considered a reasonable course of action.

Ex. 303C, *Marke Surrebuttal*, pg. 9 lns. 7 – 11. Given everything said by its own witnesses, there is no possible way to doubt that Evergy West has been, and currently still is, acting imprudently with regard to its generation resource management.

Summary of Imprudence

There are three key facts to this case that this brief has developed and demonstrated in an irrefutable manner:⁵

- (1) Evergy West did not possess enough generation resources to regularly meet its customers' needs during the prudence period and instead had to rely on purchasing energy off the SPP energy market, which is a position Evergy West has been in for over a decade.

⁵ They are irrefutable in that these facts are derived from either OPC witness testimony that Evergy West never sought to contradict (whether in its own pre-filed testimony or at the hearing), or they are derived directly from the testimony of Evergy West's own witnesses as discussed in this brief.

- (2) The lack of generation resources means that Evergy West lacks “insurance” or a hedge against price volatility in the SPP energy market, which is something the Company should have according to its own witnesses and which all the other Commission regulated electric utilities in this State possess.
- (3) The lack of “insurance” or a hedge against price volatility in the SPP energy market resulted in Evergy West incurring immense losses during the prudence period, which other utilities (that had adequate generation to meet their customers’ energy needs) were able to avoid.

These three facts clearly establish the undeniable imprudence of Evergy West’s resource planning strategy as it existed before the prudence period, during the prudence period, and still now following the prudence period.

Evergy West’s decision not to acquire sufficient generation to regularly meet the needs of its customers is the equivalent to a homeowner not buying a home insurance policy or an individual not procuring a personal health insurance policy, actions that any reasonable person would do. Moreover, its decision is contrary to the current operating practice of every other Commission regulated Missouri electric utility, including Evergy West’s own sister utility Evergy Metro. The Commission should therefore find that Evergy West has indeed acted contrary to the “reasonable person” standard and has thus been, and remains, imprudent in how it approaches generation resource adequacy. *See In re Atmos*, 389 S.W.3d 224, 228 (Mo. App. W.D. 2012) (“In effect, the PSC’s responsibility is to determine how reasonable people would have performed the tasks that confronted the utility.”).

Part Three: Calculating the Harm Resulting from Evergy West's Imprudence

Issue eight of the *Amended List of Issues*, including its sub-parts (A) and (D), can effectively be combined into a single question: what, if any, disallowance should the Commission order if it finds Evergy West was imprudent? Given the preceding arguments, it should be no surprise that the OPC contends the Commission should find Evergy West imprudent. Therefore, this section of the brief will focus solely on calculating the proper disallowance.

"In order to disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that (1) the utility acted imprudently [and] (2) such imprudence resulted in harm to the utility's ratepayers." *In re Atmos*, 389 S.W.3d 224, 228 (Mo. App. W.D. 2012) (quoting *State ex rel. Assoc. Natural Gas Co. v. Public Service Comm'n*, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997)). In this case, the harm alleged by the OPC is the amount Evergy West customer's overpaid through the Company's FAC due to Evergy West relying on the SPP energy market instead of acquiring sufficient generation. Consequently, this harm also serves as the amount the OPC's witness has recommended the Commission disallow. Ex. 300C, *Mantle Direct*, pg. 6 ln. 21 – pg. 7 ln. 10.

In order to determine what Evergy West customers overpaid due to the Company's imprudent decisions, it is necessary to first determine how much FAC costs customers would have paid if Evergy West had acted prudently, which includes taking into account any additional non-FAC costs that customers would have needed

to pay if the utility had acted prudently. On its face, this could be considered a problem, as what it would have cost for Evergy West to have acted prudently (*i.e.* acquire sufficient generation to regularly meet its customers' needs) could vary significantly based on a number of different factors. However, there is actually a very simple solution to the problem.

Evergy West's parent company, Evergy, conducts its resource planning process for both Evergy West and its sister utility Evergy Metro as if the two utilities were combined. Ex. 300C, *Mantle Direct*, pg. 14 lns. 13 – 14. Further, while Evergy Metro and Evergy West are treated as a combined entity, the total generation matches nearly one hundred percent of the net system input (what Evergy bought off the RTO Market). Ex. 308, *Lena Mantle Graph*; Tr. Vol. 1 pg. 174 ln. 23 – pg. 175 ln. 6. Taken together, these facts mean that, if Evergy West and Evergy Metro were combined into one entity (which is how Evergy West's parent company already treats them for resource planning purposes), the combined entity would have enough generation to regularly meet its customers' energy needs and thus be prudent. *Id.* Therefore, the simple way to calculate the harm Evergy West has caused its customers through its imprudence is to treat Evergy Metro and Evergy West as having been combined and then calculating what Evergy West customers would have paid under that scenario. This is precisely what the OPC did. Ex. 300C, *Mantle Direct*, pg. 19 lns. 21 – 23 (“Therefore, I used the FAC and plant in service costs of both Evergy West and Evergy Metro to determine the amount Evergy West's customers would have paid if the two utilities were combined.”).

The OPC's method of calculation is straightforward and based exclusively on known values provided by Evergy West and Evergy Metro that were taken from this case, other cases, and monthly FAC data submitted to the Commission. First, the OPC calculated what the ANEC "would have been for both Evergy West and Evergy Metro had the two utilities been combined using the combined ANEC and the load requirements of the two utilities." Ex. 300C, *Mantle Direct*, pg. 20 lns. 1 – 3. "This calculation shows that, had the two utilities been combined, the ANEC of Evergy West would have been \$337 million or \$174 million less than actually was incurred." *Id.* at lns. 9 – 11. "This is Evergy West's 'Prudent ANEC.'" *Id.* at ln. 11. This Prudent ANEC was then plugged into the Company's existing FAC tariff to calculate what "would have been passed through to customers through Evergy West's FAC." *Id.* at lns. 12 – 16. This resulted in an imprudence adjustment of \$164,624,506. *Id.* at pg. 21 lns. 2. But that does not end the calculation.

As previously mentioned, it is necessary when calculating an imprudence disallowance to take into account any increased costs the utility would have incurred to be prudent from the amount of savings that prudent behavior would have produced. In this case, "[p]rudent management of Evergy West's resources would have also resulted in its customers being billed increased capital costs." Ex. 300C, *Mantle Direct*, pg. 21 lns. 6 – 7. To account for this factor, the OPC "used the fixed costs of the generation plant that were included in Staff's true-up workpapers of the revenue requirements of Evergy West and Evergy Metro in Case Nos. ER-2018-0145 and ER-2018-0146." *Id.* at lns. 8 – 10. This showed that "Evergy West's annual

revenue requirement would have been \$52 million higher at \$204 million had the two utilities been combined.” *Id.* at lns. 11- 12. As such, Evergy West’s customers would have paid \$78,248,211 more than what was actually included in their rates for the eighteen-month prudence period. *Id.* at lns. 13 – 14; pg. 22 ln. 2.

The OPC’s final disallowance recommendation for this case is thus calculated by taking the \$164,624,506 in fuel and purchase power costs that Evergy West customers would not have incurred if Evergy West and Evergy Metro had been combined and subtracting the \$78,248,211 that Evergy West customers would have had to pay if Evergy West and Evergy Metro had been combined. Ex. 300C, *Mantle Direct*, pg. 21 ln. 16 – pg. 22 ln. 2. The final result is a disallowance recommendation of \$86,376,294. *Id.* This amount: (1) is calculated by treating Evergy West and Evergy Metro in a manner consistent with the companies’ own resource planning, and (2) uses real values taken directly from the Company’s FAC reports and Commission Staff’s true-up workpapers from the companies’ prior rate cases. The Commission should thus disallow \$86,376,294 (plus interest)⁶ worth of FAC costs charged to customers over the eighteen-month time period of this prudence review to compensate customers for the costs they have already paid for Evergy West’s imprudence.⁷ *Id.* at pg. 7 lns. 5 – 10.

⁶ Imprudently incurred costs must be refunded with interest at the utility’s short-term borrowing rate. RSMo. § 386.266.5(4)

⁷ The Commission should ignore any argument that a disallowance related to imprudence made for Evergy West should result in a corresponding adjustment to the FAC costs recovered through Evergy Metro as has been suggested by Evergy West’s witnesses. Ex. 301C, *Mantle Rebuttal*, pg. 23 lns. 11 – 14. “This should not be a zero-sum game for Evergy decision makers.” *Id.* at ln. 14. As the OPC’s witness explained:

Conclusion

Evergy West has lacked the resources to regularly meet the energy needs of its customers since before its initial acquisition by Evergy, Inc. in 2008. In the more than fifteen years since then, the deficit has only grown worse. This is not a matter of happenstance; it is the result of the direct and deliberate decision of Evergy West who decided to rely on the SPP energy market as opposed to acquiring new generation resources. This decision, which Evergy West's own witness describes as akin to "playing the lotto" was, and still is, imprudent. Moreover, this imprudence has led to losses of nearly \$300 million in just this prudence period and over \$1 billion over the last six years. Thanks to its FAC, however, Evergy West's shareholders have been almost completely shielded from the effect of this imprudent decision. Instead, it has been Evergy West's customers who have had to shoulder the burden of the massive losses induced by Evergy West's imprudence. This is manifestly unjust and needs to be corrected.

Evergy Metro's customers did not make the decision to not purchase insurance for Evergy West customers leaving them to the whims of the market so they should not have to pay for Evergy's imprudence with regard to Evergy West. Evergy management made that decision. Just as Evergy West customers should not have to pay more because of imprudent decisions, neither should Evergy Metro's customers.

If the Commission makes this a zero-sum game, then the management of Evergy West will continue its current path of not acquiring efficient generation resources for Evergy West and relying on the market – a strategy that Mr. Ives uses as a threat to the Commission if the Commission finds that very strategy imprudent in this case.

Id. at pg. 23 ln. 14 – pg. 24 ln. 9

The OPC is asking the Commission to make ratepayers whole again by ordering Evergy West to return the \$86,376,294 (plus interest) that its imprudence caused. This amount represents what Evergy West customers would have paid if the Company had operated as a combined entity with its sister utility, Evergy Metro. This is an extremely reasonable way to view the two companies because it matches how Evergy West actually engages in resource planning. However, the OPC also wishes to stress the point made at the very beginning of this brief. More than just making customers whole, this disallowance will motivate Evergy West to begin acting prudently moving forward. The Company has proven (through more than a decade of inaction) that it has no intention of reducing the market risk its customers face by building or acquiring the generation it so desperately needs unless forced to by this Commission. Therefore, if this Commission wants to do what is best for not only Evergy West customers, but the State of Missouri as a whole, the Commission needs to take some action to bring Evergy West's generation resources into line with the other investor-owned electric utilities in Missouri and ensure that the Company does not continue to waste customer dollars betting on the game of chance that is the SPP energy market.

Respectfully submitted,

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