

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

In the Matter of the Application of Evergy)
Metro, Inc. d/b/a Evergy Missouri Metro and)
Evergy Missouri West, Inc. d/b/a Evergy)
Missouri West for an Accounting Authority)
Order Allowing the Companies to Record)
and Preserve Costs Related)
to COVID-19 Expenses)

File No. EU-2020-0350

INITIAL BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Initial Brief*, respectfully states:

BACKGROUND

On May 6, 2020, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro”) and Evergy Missouri West, Inc. (“Evergy Missouri West”) (collectively, “Evergy”), filed pursuant to Sections 386.250 and 393.140, RSMo. and Commission Rule 20 CSR 4240-2.060, an Application for an accounting authority order (“AAO”) permitting Evergy to accumulate and defer to a regulatory asset for consideration of recovery in future rate case proceedings before the Missouri Public Service Commission (“Commission”) all extraordinary costs and financial impacts incurred as a result of the COVID-19 pandemic.

After negotiation amongst the parties, Staff became a signatory along with Evergy, Missouri Industrial Energy Consumers (“MIEC”), Midwest Energy Consumers Group (“MECG”), and Sierra Club (collectively, “Signatories”), to a Non-Unanimous Stipulation and Agreement (“Stipulation and Agreement”) filed on October 8, 2020. The Office of the Public Counsel (“OPC”) and National Housing Trust (“NHT”) both filed objections to the Stipulation and Agreement on October 15, 2020. Pursuant to Commission

Rule 20 CSR 4240-2.115(2)(D), a non-unanimous stipulation and agreement which is timely objected to is merely a position of the signatory parties to the stipulated position and no party shall be bound to it. Further, all issues remain for determination after hearing. The Commission held an evidentiary hearing in this matter on November 12 and 13, 2020, where all contested issues were heard, and evidence was offered and admitted into the record.¹

Counsel for all Signatories stated at the evidentiary hearing that Signatories recommended the Commission resolve this matter by issuing an order that approves each term and provision of the Stipulation and Agreement.² Similarly, when asked at the evidentiary hearing, Signatories' witnesses each stated that the terms of the Stipulation and Agreement are reasonable and each witness recommended approval.³

Staff and the other Signatories request that the Commission rely on the Signatories' evidence offered and admitted at the evidentiary hearing to issue an order that approves the terms and provisions of the Stipulation and Agreement. In the Discussion section of this brief, Staff sets forth the evidentiary facts and relevant law the Commission may rely on when rendering such a decision in this matter.⁴

DISCUSSION

I. Is the COVID-19 Pandemic an extraordinary event within the scope of the Uniform System of Accounts as it has been historically interpreted and applied by the Commission or as subsequently modified by Missouri courts?

¹ Upon timely objection to a non-unanimous stipulation and agreement, the Commission must hear all contested issues and resolve them on the basis of the competent and substantial evidence of record. The Commission may not simply adopt the non-unanimous stipulation and agreement. *State ex. rel. Fischer v. Pub. Serv. Comm'n of Missouri*, 645 S.W.2d 39, 44 (Mo. App., W.D. 1982).

² See Tr. Vols. 2 and 3.

³ See Tr. Vol. 2.

⁴ Staff addresses in Discussion Section VIII. of this brief the specific issues the Judge requested all parties address in briefs.

Yes. The Commission can “prescribe uniform methods of keeping accounts, records and books to be observed by electrical corporations[.]”⁵ The Commission can also, “after hearing ... prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.”⁶ Commission Rule 20 CSR 4240-20.030(1) requires electrical corporations to keep all accounts in conformity with the Uniform System of Accounts (“USOA”) as prescribed by the Federal Energy Regulatory Commission (“FERC”) and published at 18 CFR Part 101 (1992).

USOA, General Instruction No. 7, specifically states:

It is the intent that the net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments....Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.

The Uniform System of Accounts defines “extraordinary items” as:

[t]hose items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company...Accordingly, they will be events and transactions of significant effect which would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business...⁷

Consistent with the guidance found in General Instruction No. 7 of the USOA, the Commission has typically maintained a policy of limiting AAOs to costs associated with

⁵ Section 393.140(4) RSMo.

⁶ Section 393.140(8) RSMo.

⁷ *State ex. rel. Office of the Pub. Counsel v. Pub. Serv. Comm'n of Mo.*, 858 S.W.2d 806, 810 (Mo. App. 1993).

extraordinary events.⁸ AAOs have normally been used to allow utilities to capture certain unanticipated costs that have not been included in ongoing rate levels.⁹

Staff considers the COVID-19 pandemic to be an extraordinary event. As Staff witness Kimberly K. Bolin stated in her rebuttal testimony, the COVID-19 pandemic has affected daily life in the U.S. to a degree not previously seen from a disease outbreak within living memory and has changed the way many people live and work.¹⁰

OPC/MECG/SC Issue:

a. Is the resulting economic impact material within the scope of the Uniform System of Accounts?

Most likely, but the full impact of the pandemic is unknown at this time. Staff witness Bolin stated in her rebuttal testimony and at the evidentiary hearing that the final incremental costs, revenues and/or savings incurred are unknown at present as the COVID-19 pandemic is continuing for an indefinite amount of time.¹¹ Witness Bolin also stated that it appears the pandemic has had a significant financial and operating impact on utilities and notes that Staff will make a final assessment of the materiality of the financial impacts of the COVID-19 pandemic on Evergy in the next general rate case proceedings when any request is made to recover the deferral in rates.¹²

Staff's witness's assessment is consistent with how the Commission has viewed material impact in prior decisions where the Commission has stated that materiality is a factor for consideration, but it is not determinative.¹³ Typically, Staff would recommend that an item

⁸ Ex. 100, p. 4.

⁹ Id.

¹⁰ Id. at p. 6.

¹¹ Id.; Tr. Vol. 2, p. 205.

¹² Id.

¹³ *In the Matter of the Joint Application of Missouri-American Water Company, St. Louis County Water Company, d/b/a Missouri-American Water Company, and Jefferson City Water Works Company, d/b/a*

should be more than approximately 5 percent of income for it to be considered material, and would further recommend that Commission approval needs to be sought to treat an item with less than 5 percent impact as extraordinary.¹⁴ However, in this instance, as witness Bolin stated, the COVID-19 pandemic is currently ongoing and the ultimate financial impact is unknown.¹⁵ Staff suggests the Commission grant Evergy an AAO and Staff and other parties will have an opportunity look at the final financial impact the COVID-19 pandemic had on Evergy in a future general rate case proceeding.

II. Should the Commission approve the Application for an accounting authority order (“AAO”) permitting Evergy to accumulate and defer to a regulatory asset for consideration of recovery in future rate case proceedings before the Missouri Public Service Commission (“Commission”) extraordinary costs and financial impacts incurred as a result of the coronavirus disease (“COVID-19”) pandemic?

The Commission should authorize Evergy to defer to a regulatory asset and/or liability only those costs and savings that are stated in the Stipulation and Agreement.¹⁶ The Application Evergy filed on May 6, 2020, includes a request to defer certain costs and financial impacts that Staff and other parties do not recommend for inclusion in this deferral.¹⁷ However, after negotiation, the Signatories agreed to a discrete list of costs and savings to be deferred, information Evergy would provide regarding the deferral, and additional

Missouri-American Water Company for an Accounting Authority Order Relating to Security Costs, Case No. WO-2002-273, Report and Order, filed November 10, 2004.

¹⁴ *State ex. rel. Office of Pub. Counsel v. Pub. Serv. Comm’n of Missouri* 858 S.W.2d 806, 810 (Mo. Ct. App. 1993).

¹⁵ Ex. 100, p. 6.

¹⁶ See Ex. 1.

¹⁷ See Exs. 100, 102, 300 and 500.

provisions that Staff believes are reasonable and the Commission should include in any order granting Evergy an AAO.¹⁸

As Witness Bolin stated in testimony, if a utility receives authorization from the Commission to defer the costs associated with an extraordinary event, the utility treats those costs as a regulatory asset and records them on its balance sheet to be amortized over some period of time.¹⁹ An AAO simply gives the utility an opportunity to obtain rate recovery of the deferred item in the future.²⁰ Furthermore, the Missouri Court of Appeals has stated that there is a distinction between granting of deferral authority for certain costs and subsequent rate treatment of the costs.

The whole idea of AAOs is to defer a final decision on current extraordinary costs until a rate case is in order. At the rate case, the utility is allowed to make a case that the deferred costs should be included, but again there is no authority for the proposition put forth here that the PSC is bound by the AAO terms.²¹

This is consistent with paragraph 14 of Stipulation and Agreement.

14. Future Recovery: The Signatories agree that the ability to track and defer costs into a regulatory asset is for accounting purposes only. All questions regarding potential ratemaking treatment of the deferred costs are reserved for the Company's next general rate proceedings. The Signatories reserve the right to review and challenge the Company's recovery of COVID-19 costs and recommend adjustments in the Company's next general rate cases.²²

Staff recommends the Commission grant Evergy an AAO that is consistent with all of the terms set forth in the Stipulation and Agreement. In addition to paragraph 14 referenced above, Staff provides detail and support in subsequent sections of this brief for the other provisions of the Stipulation and Agreement.

¹⁸ See Ex. 1.

¹⁹ Ex. 100, p. 4.

²⁰ Id.

²¹ *Mo. Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d. 434, 438 (Mo. App. W.D. 1998).

²² Ex. 1, p. 7, ¶ 14.

III. If the Commission determines that an AAO or other deferral accounting mechanism should be ordered in connection with the COVID-19 pandemic, what items should be deferred?

Staff addresses its position on items a. through e. together below.

a. Uncollectible expense in excess of amounts included in rates in the most recent general rate cases of Evergy Missouri Metro and Evergy Missouri West, respectively?

b. Costs incurred in connection with the one- and four-month Pandemic payment plan incentives that the Commission permitted the Company to implement in Case No. EO-2020-0383 (including credits awarded as incentives and costs related to customer communications)?

c. Waived late payment fees / reconnection fees to the extent that they fall short of the amount included in rates?

d. Information technology-related costs incurred to enable employees from home, including hardware, licensing fees and connectivity costs?

e. Costs incurred to protect employees unable to work from home, including cleaning supplies, personal protective equipment, temperature testing, employee sequestration preparation (and employee sequestration if that becomes necessary)?

Evergy's Application, and the direct testimonies of Evergy witnesses Ives and Klote, contained requests to defer certain costs associated with the COVID-19 pandemic.²³ In rebuttal, Staff witness Bolin stated that Staff recommended the Commission include in a

²³ Exs. 4, 6 and 7.

deferral many of the costs Evergy had proposed, but recommended the Commission not include Evergy's specific requests to defer lost sales revenues and carrying costs.²⁴ After negotiation and input from parties, the Signatories agreed to a more refined list of specific categories of costs and savings that Evergy should be permitted to defer.²⁵ The Signatories also agreed to values for bad debt expense for both Evergy Missouri Metro and Evergy Missouri West that Staff witness Bolin reviewed and for which she agrees.²⁶ The specific costs and savings that should be deferred and the associated bad debt expense are contained in paragraphs 2, 3, 4, and 7 of the Stipulation and Agreement.

2. The Signatories request that the Commission issue an order that authorizes the Company to track and defer into a regulatory asset the following incremental costs caused by the COVID-19 pandemic, beginning March 1, 2020:

- (a) new or incremental operating and maintenance expense related to protecting employees and customers – eligible costs are the following:
 - (i) additional cleaning of facilities and vehicles;
 - (ii) personal protective equipment (i.e. masks, gloves, sanitizing sprays, temperature testing, plexiglass shields, etc.);
 - (iii) technology upgrades which include equipment directly related to enabling employees to work from home and associated contract labor. Such costs shall not extend to costs normally incurred by the employee including internet connectivity at the home; and
 - (iv) employee sequestration preparation costs (and employee sequestration costs if that becomes necessary).
- (b) increased bad debt expense due to COVID-19 to the extent total bad debt expense exceeds levels included in the cost of service;
- (c) costs related to any assistance programs implemented to aid customers with payment of electric bills during the pandemic except for the contributions by the Company addressed in paragraph 17 and the program designated as confidential in the

²⁴ Ex. 100, p. 3.

²⁵ See Ex. 1.

²⁶ Tr. Vol. 2, p. 207.

- Company's filing in Case No. EO-2020-0383; and
- (d) waived fee revenues up to the amount included in rates related to waived late payment fees and waived reconnection fees.

3. The Company agrees to track all costs separately for Evergy Missouri Metro and Evergy Missouri West.

4. The Signatories agree that the bad debt expense and late payment fees, and service reconnection charges included in the Company's last rate cases are \$5,552,581 (Evergy Missouri Metro) and \$2,894,841 (Evergy Missouri West) for bad debt, and \$1,909,451 (for Evergy Missouri Metro) and \$725,422 (for Evergy Missouri West) for late payment fees, and \$362,605 (for Evergy Missouri Metro) and \$271,385 (for Evergy Missouri West) for service reconnection charges.²⁷

7. Savings to be deferred: The Signatories agree that operating cost reductions caused by the COVID-19 pandemic shall be tracked and netted against the deferred costs recorded as a regulatory asset. These cost reductions will be identified and tracked separately and included in the reporting process prescribed in paragraph 9 below. These deferred COVID-19 operating cost reductions will be tracked so long as the total expense in each cost category is below the level included in rates in the Company's last rate cases. Operating reductions related to the COVID-19 pandemic will be reported separately for Evergy Missouri Metro and Evergy Missouri West. COVID-19 operating cost reductions to be tracked and netted against deferred costs include:

- (a) Travel expense (hotels, airfare, meals, entertainment);
- (b) Training expense;
- (c) Office supplies;
- (d) Utility service provided to facilities leased or owned by the Company;
- (e) Staffing reductions due to the COVID-19 pandemic and excluding staffing reductions instituted in furtherance of merger savings and integration plans or in furtherance of the Sustainability Transformation Plan;
- (f) Reduced employee compensation and benefits due to the COVID-19 pandemic and excluding reductions in furtherance of merger savings and integration plans or in furtherance of the Sustainability Plan;
- (g) Any income tax benefits from taxable net operating losses that are carried back to previous tax years per the 2020 Coronavirus Aid, Relief and Economic Security ("CARES") Act; and
- (h) Any direct federal or state assistance the Company receives, or any federal or state assistance received by Evergy, Inc., properly allocable to Evergy Missouri Metro and/or Evergy Missouri West, related to COVID-19 relief.²⁸

²⁷ Ex. 1, pp. 1-3, ¶¶ 2.-4.

²⁸ Ex. 1, pp. 3-4, ¶ 7, footnotes omitted.

Consistent with Staff's testimony, Staff recommends the Commission include the items in paragraphs 2, 3, 4, and 7 of the Stipulation and Agreement in any order granting Evergy an AAO in this matter.

f. Lost revenues associated with the reduction of electric usage during the Pandemic? As an alternative, should the Commission order the deferral of pandemic-related fixed costs recovery due to the pandemic?

No. The Commission should not permit Evergy to defer lost revenues associated with the reduction of electric usage during the pandemic, nor should the Commission permit an alternative that would allow Evergy the ability to defer pandemic-related fixed costs. Staff witness Bolin states that allowing deferral treatment of the financial impact of reduced return levels associated with losses in customer sales revenues violates the fundamental regulatory principle that the amount of a utility's profits should never be guaranteed, in whole or part.²⁹ Through regulation, a utility should be given the opportunity to earn a reasonable return, but not effectively guaranteed that it will earn a certain level of return.³⁰

Furthermore, In the Report and Order issued in Case No. GU-2011-0392, the Commission denied Missouri Gas Energy's request to defer lost revenues that were caused by a catastrophic tornado, and stated the following,

The Company's claim is different. Ungenerated revenue never has existed, never does exist, and never will exist. Revenue not generated from service not provided represents no exchange of value. There is neither revenue nor cost to record, in the current period nor in any other.

The Company showed no instance when service not provided resulted in recording any revenue or cost, lost or generated, on a deferred or current basis. That is because the Company cannot have an item of profit or loss when it provides no service, whether the cause of no service is ordinary or extraordinary.

An AAO only determines the period for recording an item but the Company seeks an AAO to create the item itself by layering fiction upon fiction. To issue an

²⁹ Id. at p. 9.

³⁰ Id.

AAO for ungenerated revenue would create a phantom loss, and an unearned windfall, for the Company. Therefore, the Commission will deny the AAO as to ungenerated revenue.³¹

Staff witness Robin Kliethermes also addressed Staff's concern with Evergy's calculation for the amount of lost revenues it initially requested.³² Witness Kliethermes stated that if the Commission approves Evergy's lost revenue calculation as proposed, the Companies will ultimately be credited with more retail rate revenue than was authorized by the Commission in Case Nos. ER-2018-0145 and ER-2018-0146.³³

Ultimately, the Signatories adopted the position consistent with Staff's testimony that lost revenues from reduced customer usage should not be included in the deferral, and expressly stated so in paragraph 6 of the Stipulation and Agreement.

6. Lost Revenues: The Company agrees not to defer into a regulatory asset any lost revenues from reduced customer usage (volumetric charges) due to the pandemic or other waived fee revenues except as provided in paragraph 2(d) above.³⁴

Consistent with Staff's testimony and paragraph 6 of the Stipulation and Agreement, Staff recommends the Commission not permit Evergy to defer lost revenues except for waived fee revenues up to the amount included in rates related to waived late payment fees and waived reconnection fees.

g. Other incremental costs or other unfavorable financial impacts resulting from the Pandemic not presently identified?

³¹ *In the Matter of the Application of Southern Union Company for the Issuance of an Accounting Authority Order Relating to its Natural Gas Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)*. Report and Order, Case No. GU-2011-0392, January 25, 2012.

³² See Ex. 102.

³³ *Id.* at p. 7.

³⁴ Ex. 1, p. 3, ¶ 6.

No. Staff recommends the Commission authorize Evergy to defer only those costs that have been specifically listed in the Stipulation and Agreement.³⁵

h. Should carrying costs be excluded during the deferral period and be considered for inclusion in rates in Evergy's next general rate case?

Yes. Carrying costs should be excluded from this deferral period and any consideration of the carrying costs should be considered in Evergy's next general rate case proceedings. As Staff witness Bolin stated in rebuttal, the application of carrying costs to deferrals is essentially a ratemaking determination, and a determination which Staff would recommend the Commission wait until a general rate case proceeding to decide.³⁶ Furthermore, the Signatories essentially adopted this position in paragraph 5 of the Stipulation and Agreement:

5. Carrying Costs: The Signatories agree that any party to the Company's next general rate cases may propose or oppose certain ratemaking treatment of carrying costs related to this COVID-19 AAO in the Company's next general rate cases.³⁷

Consistent with Staff's testimony and paragraph 5 of the Stipulation and Agreement, Staff recommends the Commission exclude carrying costs during this deferral period, and reserve any consideration of the treatment of carrying costs for Evergy's next general rate case proceedings.

IV. Should the Commission adopt a sunset provision in connection with the AAO, and, if so, how should it be structured? Should any sunset provision include the opportunity for the AAO to be extended?

³⁵ See Tr. Vol. 2, p. 213, for Ms. Bolin's responses to Judge Jacobs regarding the specified lists of costs the Signatories agreed to found on page 3, (a) through (h) of the Non-Unanimous Stipulation and Agreement.

³⁶ Ex. 100, p. 13.

³⁷ Ex. 1, p. 3, ¶ 5.

Yes. The Commission should order a sunset provision for this deferral, and the Commission should also permit an opportunity for the deferral to be extended. Staff witness Bolin stated that AAO deferrals should be limited to the duration of extraordinary event impacts, but also noted that Staff would not be opposed to entering into discussions with Evergy and other parties concerning a possible extension of the deferral.³⁸ The Signatories adopted this approach when including paragraph 8 in the Stipulation and Agreement.

8. Duration of AAO: All costs and costs reductions will be tracked, netted and deferred into a regulatory asset until March 31, 2021; provided, however, that this period shall be extended for deferral of uncollectibles expense only in three-month increments as follows:

- (a) From April 1, 2021, through September 30, 2021, uncollectibles expense as determined in the last rate case for Evergy Missouri Metro and Evergy Missouri West, respectively, will be compared on a quarterly basis to actual net write-offs incurred by each respective company during that quarter. Exhibit 1 [attached to Exhibit 1 Non-Unanimous Stipulation and Agreement] sets forth the uncollectible expense as determined in the last rate case for Evergy Missouri Metro and Evergy Missouri West. This time period may be extended by agreement of the Signatories approved by Commission order or upon request of one or more of the Signatories approved by Commission order.
- (b) If actual net write-offs during the quarter exceed the uncollectibles expense as determined in the last general rate case for that quarter by at least 10 percent then the amount by which actual net write-offs exceed the uncollectibles expense as determined in the last general rate case will be deferred.
- (c) If uncollectibles expense as determined in the last general rate case exceeds actual net write-offs for that quarter by at least ten percent then the amount by which uncollectibles expense as determined in the last general rate case exceeds actual net write-offs will be used as an offset to any uncollectibles expense recorded to a regulatory asset pursuant to the Commission's approval of this Agreement.

The duration of this time period for pandemic-related incremental costs and cost reductions, other than uncollectibles expense, may be extended, renewed or

³⁸ Ex. 1, p. 6.

terminated upon agreement of the Signatories and subsequent order of the Commission approving the agreement or, if agreement is not reached among the Signatories, by separate Order of the Commission pursuant to request of one or more of the Signatories. In no event will the deferral authority granted pursuant to the Commission's approval of this Stipulation and Agreement for pandemic-related costs reductions and incremental costs including uncollectibles expense extend beyond the conclusion of the true-up in Evergy's next general rate cases.³⁹

Consistent with Staff's testimony, Staff recommends the Commission include a sunset provision, with an opportunity for extension, as set forth in paragraph 8 of the Stipulation and Agreement, in any AAO it grants Evergy in this matter.

V. If the Commission adopts an AAO for some or all of the costs and revenues associated with the COVID-19 pandemic, should the Commission order periodic reporting of information associated with the deferral? If so, what information should be reported and how often?

Yes. If the Commission authorizes Evergy to defer some or all of the costs and revenues associated with the COVID-19 pandemic, the Commission should order Evergy to provide periodic information associated with the deferral. Similarly, the Commission should also order Evergy to provide documents that state the Company's accounting practices and procedures. Staff witness Natelle Dietrich noted in her surrebuttal testimony that if the Commission were to grant Evergy an AAO, it may be appropriate for the Commission to require certain reporting relevant to the costs and savings that occur as a result of COVID-19 activities.⁴⁰

The Signatories agreed to certain information Evergy would report, how the costs in the reports would be tracked, and the frequency and length of time which Evergy would provide the reports, contained in paragraphs 9, 10, 11, and 12 of the Stipulation and

³⁹ Ex. 1, pp. 4-5, ¶ 8.

⁴⁰ Ex. 103, p. 6.

Agreement. Staff witness Dietrich stated at the evidentiary hearing that she thought the reporting provisions included in the Stipulation and Agreement were reasonable.⁴¹

9. Reporting: The Company agrees, within two weeks after the Commission issues an order approving this Non-Unanimous Stipulation and Agreement, to file an initial report identifying the cost categories to be tracked and deferred from the period March 1-June 30, 2020. The report will identify all cost increases and decreases related to the pandemic that have been identified to date, and:

- (a) The number of customers, by customer class;
- (b) The number of customers, by customer class, voluntarily disconnected by month;
- (c) The number of customers, by customer class, involuntarily disconnected by month;
- (d) Number of utility reconnections, reported by month;
- (e) Number of customers on a utility payment plan, by payment plan type (including budget billing), by month;
- (f) Total dollar amount of arrearages by customer class;
- (g) The number of accounts in arrearage by customer class in increments (e.g., less than \$100, \$101 to \$250, \$251 to \$500, \$501 to \$750, \$751 to \$1000, \$1001 to \$1500, \$1501 to \$2000, \$2001 to \$2500, \$2501 to \$3000, and \$3000+) by month;
- (h) The range of arrearage amounts by customer class (i.e., current high and low dollar amount) and the mean average;
- (i) A quantification of total past-due customer arrearages and number of customers experiencing arrearages, that are thirty, sixty, and ninety days overdue; and
- (j) Total dollar amount of accounts receivable balances, including accounts receivable balances that are subject to payment plan arrangements, by customer class.

10. The Signatories agree that, for reporting purposes, arrearages will reflect only past due bills.

11. Costs will be tracked by month in the initial and later quarterly reports.

12. The Company will update this report quarterly until the conclusion of the update of its true-up period, if applicable, in the Company's next general rate case. The quarterly report shall be filed within 45 days of the end of each quarter.⁴²

⁴¹ Tr. Vol. 2, p. 230.

⁴² Ex. 1, pp. 5-7, ¶¶ 9. - 12.

Furthermore, the Signatories agreed that in order to have information on the policies and procedures Evergy intends will govern how the monthly deferral amounts are to be calculated for each category Evergy intends to defer, Evergy should provide the applicable policies and procedures to all Signatories, as stated in paragraph 13 of the Stipulation and Agreement.

13. Accounting Practices and Procedures: The Company's authority to defer COVID-19 incremental costs and operating reductions is limited to those categories of costs and savings specifically listed herein. Within 30 days of a Commission order authorizing this deferral, the Company will provide the other Signatories copies of the applicable policies and procedures intended to govern how monthly deferral amounts are to be calculated for each applicable category. Such policies and procedures shall also contain a proposed monthly reporting format. Concerns regarding these policies and procedures on the part of any Signatory will be addressed through further discussion by the Signatories.⁴³

Consistent with Staff's testimony, Staff recommends the Commission order the specific reporting information provisions in paragraphs 9, 10, 11, 12, and 13 of the Stipulation and Agreement.

VI. Should the Commission adopt the recommendations of NHT related to extension of the moratorium on nonpayment service disconnections, arrearage management programs, long-term payment deferral plans, expansion of the Economic Relief Program, income-eligible energy efficiency plans, suspend credit reporting, suspend disconnection and reconnection fees, or other customer programs?

First, as Staff witness Dietrich notes, NHT witness Roger Colton provides a lot of good information related to the effects of COVID-19 on vulnerable populations.⁴⁴ This data and information would be very useful in the Commission's consideration of best practices for

⁴³ Id. at p. 7, ¶ 13.

⁴⁴ Ex. 103, p. 3.

recovery of past-due utility customer payments after the COVID-19 Pandemic Emergency in File No. AW-2020-0356 (“Pandemic Docket”).⁴⁵ Counsel for NHT responded that NHT “has contributed extensive comments during the summer [in the Pandemic Docket] as part of the energy efficiency for all coalition,”⁴⁶ however, a comparison of the comments NHT jointly-filed in the Pandemic Docket to the testimony NHT witness Colton filed in this case, shows that Mr. Colton’s testimony provides much more information on a wider array of topics than NHT’s jointly-filed comments in the Pandemic Docket.⁴⁷ Staff would again suggest NHT file Mr. Colton’s testimony, or something similar, in the Pandemic Docket.⁴⁸

Second, some of Mr. Colton’s recommendation are for customer programs that Evergy is already offering. Mr. Colton recommends Evergy provide longer term deferred payment plans or incentives for repayment of arrearages, however, Evergy already offers customers deferred payment plans.⁴⁹ And in response to COVID-19, Evergy recently expanded those plans.⁵⁰

Additionally, NHT witness Colton recommends such things as expansion of Evergy’s Economic Relief Program (“ERPP”), however, the ERPP’s eligibility criteria and budgets were ordered in Evergy’s last rate cases.⁵¹ Any change to ERPP’s rate caps or budgets would likely only be possible during a separate ratemaking proceeding.⁵² And further, Mr. Colton’s recommendation for Evergy to implement a low income usage reduction program, including an effort to ensure that all low income energy efficiency dollars are spent and that

⁴⁵ Id.

⁴⁶ Tr. Vol. 2, p. 72.

⁴⁷ See Joint Comments of the Missouri Energy Efficiency for All Coalition, File No. AW-2020-0356, July 15, 2020.

⁴⁸ Ex. 103, p. 3.

⁴⁹ Ex. 103, p. 4.

⁵⁰ Id.

⁵¹ Id. at p. 5.

⁵² Id.

additional dollars are redirected or made available to Community Action Agencies for low income weatherization, is trumped by Evergy's MEEIA Plans that were approved by the Commission in March 2020.⁵³ Those MEEIA Plans include low income energy efficiency programs, a low income housing credit, income eligible multi-family programs and weatherization programs.⁵⁴ MEEIA rules also require periodic stakeholder processes where program designs and budgets are discussed.⁵⁵ In short, there is already a process in existence for consideration of modification to Commission-approved MEEIA programs of the nature being proposed by Mr. Colton.

To reiterate, Staff thinks NHT witness Colton provides a lot of good information and data that would be useful for consideration in the Pandemic Docket.⁵⁶ And while Mr. Colton provides recommendations on programs addressed above that Evergy has already implemented, many of Mr. Colton's recommendations are not specific to Evergy's operations or Evergy's customers, and are more suited for general consideration in the Pandemic Docket or other forum before the Commission.⁵⁷ As such, Staff does not recommend the Commission adopt any of NHT's recommendations that were not included in the Stipulation and Agreement and supported in the evidentiary record of this case.

VII. Should the Commission adopt any of the customer-specific recommendations of OPC including: 1) waiving disconnection and reconnection fees; 2) ceasing full credit reporting; 3) waiving late payment fees and deposits; 4) expanding payment

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id. at p. 3.

⁵⁷ See Tr. Vol. 3, p. 339. Q. "Mr. Colton, did you or anyone else on behalf of NHT send a data request, any data request to Evergy seeking information in this proceeding?" A. "To my knowledge, NHT—I wouldn't send data requests, of course. To my knowledge, NHT did not send a data request given the time constraints involved."

plans to 12 months or greater; and 5) establishing an arrearage matching program, dollar-for-dollar on bad debt for eligible customers.

Most of the recommendations listed above are included paragraphs 16 and 18 of the Stipulation and Agreement. Staff witness Dietrich stated that these paragraphs that contain provisions regarding discussions between Evergy, Staff, OPC, and NHT on potential continuation of programs and additional customer protections were reasonable in light of the level of uncertainty regarding the current COVID-19 pandemic.⁵⁸

Furthermore, Evergy has already funded several programs with the goal of assisting customers who have been impacted by the COVID-10 pandemic.⁵⁹ Evergy has also stated that it made additional commitments to fund other programs that assist customers in paying their energy bills.⁶⁰ Evergy is booking the contributions for the particular assistance programs referenced in paragraph 17 of the Stipulation and Agreement below the line, which essentially means Evergy is not using ratepayers' dollars to fund these programs.⁶¹ These contributions are akin to charitable contributions by Evergy, and paragraph 17 is important because it makes it abundantly clear that these dollars will not be eligible for deferral in this AAO.

16. COVID-19 Customer Arrearage Payment Plans: The Company offered incentives for residential and small business customers to resolve arrearages through one- and four- month payment plans in June, July and August. The Company also offered twelve-month payment plans to residential and small business customers seeking flexibility regarding the payment of their electric bills, and the Company will continue to offer those twelve-month payment plans through at least December 31, 2020. Cold weather rule payment plans will also be available to residential customers from November 1, 2020, through March 31, 2021. The Company agrees to evaluate

⁵⁸ Tr. Vol. 2, pp. 227-229.

⁵⁹ Ex. 1, pp. 8-9, ¶ 17.

⁶⁰ Id.

⁶¹ Id.

the advisability of extending its offering of twelve-month payment plans to residential and small business customers beyond December 31, 2020, and March 31, 2021, in consultation with Staff, the Office of the Public Counsel and National Housing Trust. In addition, the Company agrees to evaluate the advisability of offering additional customer assistance programs after December 31, 2020, in consultation with Staff, the Office of the Public Counsel and National Housing Trust.

17. The Company has also provided additional support to help customers in communities it serves recover from the impact of the COVID-19 pandemic, including a pledge of \$2.2 million in contributions to help agencies, communities and customers. Included in this support is \$400,000 already pledged for Evergy Emergency Grants to help non-profit agencies on the front lines that have remained open and are delivering essential services. Also included is \$800,000 in grants to non-profit agencies for Evergy's Hometown Economic Recovery Program that will help build back its local economies by supporting small business and entrepreneurial efforts, business attraction and retention, and workforce training and development. In addition, Evergy has announced that it is committing up to \$1,000,000 to Dollar-Aide, Project Deserve and other programs that assist customers with energy bill payments. These contributions are being recorded below the line and the Company will not seek to recover them in rates.

18. Customer Protections: The Company agrees that it will continue the practices currently in place of waiving late payment fees and not undertaking full credit external reporting of its customers for the duration of the approved AAO for pandemic-related incremental costs and costs reductions, other than uncollectibles expense as provided in paragraph 8, and will also waive re-connect fees commencing with the effective date of the Commission's order approving this Non-Unanimous Stipulation and Agreement through the end of the same time period.⁶²

Consistent with Staff's testimony, Staff recommends the Commission only adopt those of OPC's customer-specific recommendations that are provided for in paragraphs 16, 17 and 18 of the Stipulation and Agreement.

VIII. What, if any, other conditions should the Commission adopt in connection with the AAO?

At the evidentiary hearing in this matter, the Judge instructed the parties to address in briefs the Commission's authority to condition AAOs. The Judge also requested that parties specifically address the Commission's authority to order paragraphs 16-18 of the

⁶² Ex. 1, pp. 8-9, ¶¶ 16-18.

Stipulation and Agreement, and further directed the Signatories to state if they would still support the Commission ordering the other terms and provisions of the Stipulation and Agreement if the Commission were to decide it did not have the authority to order those paragraphs or if the Commission would decline to order those paragraphs.

First, the Commission is “an administrative body created by statute and has only such powers as are expressly conferred by statute and reasonably incidental hereto”.⁶³ The Commission’s authority to authorize deferrals, such as AAOs, is rooted in Sections 386.250 and 393.140. Those two provisions of Missouri law are silent on the Commission’s authority to impose conditions on deferral mechanisms. By Commission rule, electric utilities under the Commission’s jurisdiction must keep their accounts in conformity with the USOA.⁶⁴ Staff has typically advocated in utility requests for deferrals that the Commission look to General Instruction No. 7 for guidance on evaluating deferral accounting requests. The guidance from General Instruction No. 7 largely relies on an evaluation of the circumstances surrounding the event that precipitated the utility filing for a deferral, and secondarily relies on an analysis of what the financial impacts of the event are. Nothing in that guidance speaks directly to what conditions may or may not be adopted or imposed.

Missouri courts have held that the Commission’s authority does not extend to the general management of any utility and any conditions the Commission would choose to adopt may not impose on the utility’s management discretion.⁶⁵ None of the terms or provisions of the Stipulation and Agreement are impositions on Evergy’s management

⁶³ *State ex. rel. AG Processing Inc. V. Thompson*, 100 S.W.3d 915, 919 (Mo. App., W.D. 2003).

⁶⁴ 20 CSR 4240-20.030(1).

⁶⁵ *State of Missouri ex. rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm’n of Missouri*, 262 U.S. 276, 289, 43 S.Ct. 544, 547, 67 L.Ed 981, ____ (1923). *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm’n*, 600 S.W.2d 222, 228 (Mo. App., W.D. 1980).

discretion because Evergy itself has committed to those provisions. In contrast, the customer-specific program proposals recommended by OPC and NHT, to which Evergy has not committed itself, may be impositions on Evergy's management discretion.

Moreover, Staff does not believe there is a legal impediment to the Commission granting an order that is consistent with the Stipulation and Agreement as paragraph 17 makes clear what programs Evergy has already contributed to, what programs Evergy intends to contribute to, and how Evergy will account for the contributions. The provision in paragraph 17 regarding how Evergy will account for the contributions demonstrates how Evergy's commitment to its customer programs is directly linked to its request for a deferral accounting mechanism.

In the event the Commission finds no legal impediment to ordering the terms and provisions in paragraphs 16-18, but still decides within its discretion that it does not want to order the terms and provisions in paragraphs 16-18, Staff would still support the Commission granting Evergy an AAO to Evergy, so long as the order granting the AAO was consistent with paragraphs 2-15 of the Stipulation and Agreement.

CONCLUSION

Staff recommends the Commission issue an order that is consistent with all of the terms and provisions of the Stipulation and Agreement. Each term and provision is supported by substantial and competent evidence offered and admitted at the evidentiary hearing,⁶⁶ and results in a reasonable resolution of this matter.

⁶⁶ "The opinion of a qualified expert may amount to substantial and competent evidence." *State ex. rel. General Tel. Co. of Midwest v. Public Service Commission*, 537 S.W.2d 655, 663 (Mo. App. W.D. 1976) (citing 2 Am.Jur.2d, Adm. Law § 395, p. 201 (1962)).

WHEREFORE, Staff submits its *Initial Brief* for the Commission's information and consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 4th day of December, 2020, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Jamie S. Myers