

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

In the Matter of the Second Prudence Review )  
of the Missouri Energy Efficiency Investment ) File No. EO-2020-0227  
Act (MEEIA) Cycle 2 Energy Efficiency )  
Programs of Evergy Metro, Inc. d/b/a Evergy )  
Missouri Metro )

In the Matter of the Second Prudence Review )  
of the Missouri Energy Efficiency Investment ) File No. EO-2020-0228  
Act (MEEIA) Cycle 2 Energy Efficiency )  
Programs of Evergy Missouri West, Inc. d/b/a )  
Evergy Missouri West )

**EVERGY METRO, INC. AND EVERGY MISSOURI WEST, INC.’S REPLY TO  
PUBLIC COUNSEL’S RESPONSE TO MOTION TO STRIKE**

Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West’s (“Evergy Missouri West”) (collectively “Evergy”) files this reply to the Office of the Public Counsel’s (“OPC”) Response to Evergy’s Motions to Strike (“OPC’s Response”).

1. On September 21, 2020 Evergy filed its *Motion to Strike Portions of Rebuttal Testimony of the OPC* (“Motion to Strike”).

2. In the Motion to Strike Evergy points out that Section II of OPC’s witness Dr. Marke’s rebuttal testimony is a new argument that was not broached in any direct testimony.

3. OPC responded to Evergy’s Motion to Strike on September 22, 2020. In OPC’s Response it characterizes Section II of its rebuttal testimony as “Staff’s report failed to emphasize this point.” OPC goes on to argue, “Evergy’s complaint is without merit because it misses points raised in Staff’s direct...” OPC does not *cite* to anywhere in Staff’s direct testimony where Evergy “miss[ed] points raised in Staff’s direct.”

4. Evergy did not miss “points raised” in Staff’s direct testimony, because nowhere in Staff’s direct testimony is it argued that Evergy acted imprudently because of ratios between incentive costs and non-incentive costs in its MEEIA programs. And if such points did exist OPC would have cited to them.

5. The closest OPC comes to making a connection to Staff’s direct testimony is to argue that “Section II provided ‘alternative’ considerations of the administrative cost data Staff’s report contains.” OPC Response, Par. 6.

6. Staff, in response to the Commission’s September 22, 2020 *Order Directing Expedited Response to the Motion to Strike*, takes no position on the issue, but provides in paragraph 4a, “The underlying data addressed by the OPC testimony in question is included in Table 4 of the **Staff Report** attached to the direct testimony of Staff witness Brad J. Fortson as Schedule BJF-d5, Page 15 of 48.” (**Emphasis added.**) The Staff Report was originally filed on June 30, 2020 in this docket, well over one month before OPC’s direct testimony was due (August 14, 2020).

7. OPC’s use of data contained in the June Staff Report only bolsters Evergy’s argument that OPC’s ratio argument was fully available for direct testimony that it chose not to file and is in no way an “alternative” to Staff’s direct testimony, but a *creation* from data contained in Staff’s Report, an antecedent to Staff’s direct testimony.

8. If the Commission were to adopt the position espoused by OPC’s Response it would effectively open rebuttal testimony to any argument whatsoever that could be fashioned out of raw data presented in Staff Report. This policy would erase any meaningful limitation on rebuttal testimony and encourage new arguments so long as it uses raw data presented in Staff’s initial reports.

9. Much of OPC response is a “strawman argument” (a response to an argument not made) that OPC should be allowed to file rebuttal testimony at all. See OPC Response, P. 2, Par.

2. To be clear:

- a. Evergy does not oppose OPC filing rebuttal testimony.
- b. Evergy does not oppose OPC filing rebuttal testimony even if it did not file direct testimony.
- c. Evergy does oppose OPC positing arguments in its rebuttal testimony which should have been made in its direct testimony, which OPC chose not to file.

10. If the Commission does not enforce its own rules with regards to the scope of rebuttal testimony it should not be surprised in this or future proceedings if those rules are ignored by some parties. If the Commission adopts OPC’s position that simply using data presented in direct testimony to fashion new arguments, presented for the first time in rebuttal testimony, it will give license to such testimony going forward, resulting in administrative inefficiency and procedural schedules of questionable utility.

**THEREFORE**, Evergy Metro, Inc. and Evergy Missouri West, Inc. respectfully asks the Commission to strike portions of the rebuttal testimony filed by the Office of Public Counsel or, in the alternative, to allow Evergy to respond to such testimony in its sur-surrebuttal testimony.

Respectfully Submitted,

*/s/ Roger W. Steiner*

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 29<sup>th</sup> day of September 2020.

*/s/ Roger W. Steiner*

Roger W. Steiner