BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's Request for Authority to Implement a General Rate Increase for Electric Service	))))))	Case No. ER-2024-0189

STATEMENTS OF POSITION

COMES NOW the Office of the Public Counsel ("OPC") and for its *Statements of Position*, states as follows:

1. The Public Service Commission ("PSC") issued an *Order Granting Applications to Intervene and Order Setting Procedural Schedule* in the above styled case on March 8, 2024, that included in its ordered procedural schedule a deadline for parties to file their statements of position on September 20, 2024.

2. On September 17, 2024, the PSC issued an *Order Granting Joint Motion to Amend Procedural Schedule* that ordered that "parties shall file Position Statements no later than September 23, 2024."

3. Pursuant to these Commission orders, the OPC now files its *Statements of Position* on all issues remaining for determination in the above styled case.

4. Because not all issues in the case have been raised and/or addressed by the OPC, this filing will only provide a detailed position statement for those issues on which the OPC has a definitive position and then provide a general statement of position on all remaining issues.

Issue 1: Cost of Capital

A. What is the appropriate value of the return on common equity ("ROE") for the Commission to use to determine the rate of return?

Position: The return on common equity for Evergy West should be set at 9.5%.[1] While Evergy West's cost of common equity has increased since its 2022 rate case, it is still below Mr. Murray's recommended ROE.[2] An authorized ROE above the COE allows Evergy West to attract capital because the opportunity to earn more than the COE creates additional shareholder value.[3] Investors recognize this dynamic in determining whether to expect commissions to adjust authorized ROEs.[4] The current capital market environment supports maintaining Evergy West's authorized ROE at 9.5%.

B. What is the appropriate capital structure for the Commission to use to determine the rate of return?

Position: The capital structure used for determining the rate of return for Evergy West should be 46.37% common equity and 53.63% long term debt.[5] This capital structure considers Evergy's view of the amount of debt its regulated utility assets can support and still maintain an investment grade credit rating.[6] West's capital structure is managed for purposes of achieving a higher equity ratio for purposes of setting its authorized ROR, whereas Evergy's capital structure is managed to achieve a lower cost of capital.[7] Ratepayers should receive the benefits of the lower cost of capital consistent with the low-risk of being captive customers who are required to shoulder more risks due to utility-favorable legislative changes.[8]

---

[1] Murray Direct, pg. 2 lns. 18 – 19.
[2] *Id*. at pg. 2 lns. 3 - 4
[3] *Id*. at pg. 15 ln. 12 – pg. 16 ln. 2
[4] Murray Surrebuttal, pg. 10 lns 8 – 22.
[5] *Id*. at pg. 2 lns. 17 – 18.
[6] Murray Direct, pg. 43 lns. 15 - 28
[7] *Id*. at pg. 35 ln. 20 – pg. 37 ln. 20.
[8] *Id*. at pg. 45 ln. 23 – pg. 47 ln. 19.

<u>Issue 2: Fuel and Purchased Power</u>

A. What is the appropriate level of variable fuel expense for the Commission to order?

<u>Position:</u> The Commission should approve Evergy West's base factor adjusted for the OPC's position as follows: (1) no hedging costs/gains, SPP admin costs, or Crossroads transmission be included; (2) the miscellaneous charges and revenues in FERC account 447 as proposed by Staff witness Karen Lyons with Transmission Congestion Rights ("TCR") and Auction Revenue Rights ("ARR") as proposed by OPC witness Angela Schaben in her rebuttal testimony be included instead of the amounts proposed by Evergy West; and (3) The agreed to normalized net system input that result from the billing determinants used to set rates be used as the denominator of the base factor.[9]

B. What is the appropriate level of purchased power costs and sales for resale revenue for the Commission to order?

<u>Position:</u> The Commission should approve Evergy West's base factor adjusted for the OPC's position as follows: (1) no hedging costs/gains, SPP admin costs, or Crossroads transmission be included; (2) the miscellaneous charges and revenues in FERC account 447 as proposed by Staff witness Karen Lyons with TCR and ARR as proposed by OPC witness Angela Schaben in her rebuttal testimony be included instead of the amounts proposed by Evergy West; and (3) The agreed to normalized net system input that result from the billing determinants used to set rates be used as the denominator of the base factor.[10]

[9] Mantle Rebuttal pg. 17 lns. 5 – 17.
[10] *Id.*

C. What is the appropriate level of transmission costs rights ("TCR") and/or Auction Revenue Rights ("ARR") revenues for the Commission to order?

Position: The confidential amount identified in the testimony of OPC witness Angela Schaben's direct at page nineteen lines twelve through thirteen.[11]

i. In what FERC account should TCR and ARR revenues be recorded?

Position: TCR/ARR transactions should be recorded in account 447 or 555 depending on whether they constitute a revenue or an expense item.[12]

Issue 3: Fuel Adjustment Clause

A. What sharing ratio between EMW and its customers should the Commission order as an incentive mechanism in EMW's FAC?

Position: The Commission should "modify the incentive mechanism in Evergy West's FAC to pass through 75% of the FAC costs incurred above what is included in base rates for recovery from customers."[13] "The current sharing mechanism of 95% customers/5% Evergy West has not provided Evergy West enough of an incentive to prudently meet the energy needs of its customers."[14] "Evergy West has continuously made the resource planning decision to rely on the SPP energy market to meet the energy needs of its customers instead of building or acquiring cost-effective generation that meets the energy needs of its customers."[15] As a result of this decision, "Evergy West has spent $748 million more on non-firm short-term energy for its customers than it received in revenues from the SPP market" over its last four prudence periods.[16] "This does not include the $314.6 million costs of Storm Uri in

[11] Schaben Direct, pg. 19 ln. 11 - 13
[12] *Id.* at pg.19 ln. 25 – pg. 20 ln. 3.
[13] Mantle Direct, pg. 39 lns. 3 – 5.
[14] *Id.* at pg. 8 lns. 5 – 10.
[15] *Id.*
[16] *Id.* at pg. 9 lns. 5 – 7.

February 2021" which would bring the total costs to $1.2 billion.[17] Evergy has felt comfortable making these decisions because "[h]aving 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 resource planning decision on its customers."[18] Had Evergy West not had an FAC, it almost certainly would have built additional generation instead of relying on the market to meet its energy needs and thereby incurring these massive costs.[19]

"[A] 75/25 sharing mechanism would not and should not be viewed as an effort to punish Evergy West. Instead, it should be seen as an opportunity for the company."[20] This is because "[t]he 75/25 mechanism as proposed would be symmetrical" meaning that "[i]f Evergy West improved the efficiency and cost effectiveness of its fuel and purchased power procurement activities resulting in lower fuel and purchased power costs, then Evergy West would only be required to return 75% of the savings to customers and would get to retain 25% of the savings."[21] That is precisely why the Missouri legislature gave the Commission the incentive mechanism as a tool "to improve the efficiency and cost-effectiveness of [Evergy West's] fuel and purchased-power procurement activities."[22] And this tool could not be needed at a more important time. Evergy West is facing a crisis in terms of its generation vs. capacity.[23] The best way to reduce that risk is "to build or acquire generation."[24] Evergy and its predecessors have proven time and again that this is not something they are willing to do absent Commission intervention. "Changing the sharing to 75/25, transfers some of that risk to Evergy West along with an opportunity for reward and puts less risk on customers who are at the whim of the energy market and the decisions of Evergy West's management to hedge, or in this case not hedge, that market."[25]

B. At what level should Regional Transmission Organization or Independent System Operator transmission costs be included in EMW's FAC?

Position: The Commission should approve Evergy West's base factor adjusted for the OPC's position as follows: (1) no hedging costs/gains, SPP admin costs, or Crossroads

[17] *Id*. at lns. 7 – 11.
[18] *Id*. at pg. 13 lns. 13 – 15.
[19] *Id*.at pg. 17 lns. 3 – 22.
[20] Mantle Surrebuttal, pg. 5 lns. 10 – 11.
[21] *Id*. at lns. 17 – 21.
[22] *Id*. at pg. 14 lns. 12 – 20.
[23] *Id*. at pg.18 ln. 20- pg. 23 ln. 9.
[24] *Id*. at ln. 12.
[25] *Id*. at pg. 31 lns. 17 – 20.

transmission be included; (2) the miscellaneous charges and revenues in FERC account 447 as proposed by Staff witness Karen Lyons with TCR ARR as proposed by OPC witness Angela Schaben in her rebuttal testimony be included instead of the amounts proposed by Evergy West; and (3) The agreed to normalized net system input that result from the billing determinants used to set rates be used as the denominator of the base factor.[26]

C. What is the appropriate base factor for EMW given the Commission's determination of Issue 2?

Position: The Commission should approve Evergy West's base factor adjusted for the OPC's position as follows: (1) no hedging costs/gains, SPP admin costs, or Crossroads transmission be included; (2) the miscellaneous charges and revenues in FERC account 447 as proposed by Staff witness Karen Lyons with TCR and ARR as proposed by OPC witness Angela Schaben in her rebuttal testimony be included instead of the amounts proposed by Evergy West; and (3) The agreed to normalized net system input that result from the billing determinants used to set rates be used as the denominator of the base factor.[27]

ii. What, if any, Regional Transmission Organization or Independent System Operator charge types should the Commission allow EMW to include in EMW's FAC tariff sheets?

Position: No administrative fees should be included.[28] As the Commission itself has previously found: "[t]hese fees are neither fuel and purchased power expenses nor transportation expenses incurred to deliver fuel or purchased power. The Commission concludes that including such fees would be unlawful under Section 386.266.1, RSMo[.]"[29] Evergy West "did not provide any information that would justify the Commission changing its position to include SPP administrative costs."[30] Therefore, "[t]he Commission should continue to deny including these costs in Evergy West's FAC."[31]

---

[26] Mantle Rebuttal pg. 17 lns. 5 – 17.
[27] *Id.*
[28] Schaben Rebuttal, pg. 2 lns 2 – 7.
[29] *Id.* at lns. 15 – 17.
[30] *Id.* at lns. 20 – 21.
[31] *Id* at lns. 21 – 22.

a. Should Southwest Power Pool purchase power administration fees account 555070 be included in the FAC?

Position: No administrative fees should be included as laid out in the answer to the above question.

D. Should the Commission order the supplemental monthly submission requirement proposed by Staff and the OPC?

Position: Yes.[32] "Currently, subaccount 447025, named 'Sales for Resale ARR-TCR' does exist though monthly FAC reports do not show dollar amounts recorded in this account."[33] This lack of transparency has already caused problems. For example, "Staff's disallowance related to long term wind PPA losses in EO-2023-0276/0277 was based on contract losses calculated over historic performance periods."[34] "Even after the proposed 25 disallowance and its justification in direct testimony – unaware of the role TCR/ARR congestion revenues played in long term PPA value – Evergy did not disclose the cause/effect relationship between wind transmission congestion and TCR/ARR congestion revenues until surrebuttal."[35] As such, [t]he FAC monthly reports submitted by the Company did not provide an overall "big picture" view or reconciliation between actual long-term wind PPA contracts and TCR/ARR congestion revenue or an analysis of Wind PPA loss in relation to TCR revenues gained from congestion at wind source-to-sink points."[36] The supplemental monthly submission requirement proposed by Staff and the OPC would correct this problem. Additionally, Evergy West should provide the following information, by node for the month, in monthly FAC reports submitted to the Commission: (1) A reconciliation of wind PPA contract costs, corresponding TCR/ARR gains and/or losses, and SPP revenues; and (2) Locational Market Pricing ("LMP") pricing for each generating resource and EMW's load node by hour.[37]

---

[32] Schaben Direct, pg. 21 lns. 7 – 15.
[33] *Id*. at pg. 20 lns. 16 – 17.
[34] *Id*. at lns. 23 – 24.
[35] *Id*. at pg. 20 ln. 24 – pg. 21 ln. 3.
[36] *Id*. at pg. 21 lns. 3 – 6.
[37] *Id*. at lns. 9 – 15.

E. Should the FAC tariff sheets be modified to remove the language associated with Crossroads?

Position: No.[38]

Issue 4: Hedging

A. Should EMW be allowed to include an amortization of the previously deferred hedging costs in its revenue requirement?

Position: No.[39] Hedging is effectively a type of insurance against rising fuel or energy prices.[40] However, Evergy West has proven itself to be extremely inefficient when it comes to hedging. In particular Evergy West's past policy of cross hedging (hedging natural gas to offset energy purchases) inexplicably resulted in continual losses of money even during periods where energy prices were elevated (*i.e.* when the hedging "insurance" should have "kicked in").[41] In other words, Evergy West managed to lose money during periods where a prudently operated hedging program would have made money.[42] The critical problem is not that Evergy West is hedging, but that Evergy West is hedging so poorly that the Company is losing money when it should be making money.[43]

[38] *See* Schedule ADS-R-1 (exemplar tariff sheets that include language referring to Crossroads); Schaben Rebuttal, pg. 3 ln. 14 ("I also recommend the Commission adopt the FAC tariff sheet attached to my testimony.").
[39] Riley Direct, pg. 12 lns. 7 – 15.
[40] *Id.* at pg 11 lns. 4 – 5.
[41] *Id.* at pg.9 ln. 7 – pg.
[42] *Id.* at pg. 17 – 21.
[43] *Id.*

B. Should EMW be allowed to include the costs, gains, and losses arising from its hedging program moving forward in its revenue requirement?

<u>Position:</u> No.[44] For the same reasons sated under sub-issue A above, the Company should not be allowed to recover hedging costs moving forward. "EMW's hedging policies have resulted in hedging costs that were 35% of its natural gas costs in 2023."[45] "The amount that EMW is requesting is almost 15% of its normalized natural gas costs in this case"[46] Evergy has proven that it completely incapable of prudently managing its hedging program and has incurred enormous hedging costs on top of the already staggering high fuel costs ratepayers are shouldered with. These hedging costs should not be passed on to ratepayers. "The way to hedge power production is to <u>produce your own power</u>"[47]

i. If EMW is allowed to include the costs, gains, and losses arising from its hedging program moving forward, should those hedging costs, gains, and losses be recovered through the Company's FAC?

<u>Position:</u> No.[48] "reimbursement of poor performance in interim rates only enables the Company to continue an unnecessary exercise."[49]

[44] Riley True-up Rebuttal, pg. 3 lns. 10 – 12.
[45] *Id*. at pg 2 lns. 17 – 18.
[46] *Id*. at lns 18 – 19.
[47] Riley Direct, pg. 10 ln. 22 (emphasis in original).
[48] Riley Direct, pg. 12 lns. 7 – 15.
[49] *Id*. at lns. 14 – 15.

Issue 5: Crossroads Energy Center

A. Should the transmission costs EMW incurs to transmit energy from its Crossroads Energy Center at Clarksdale, Mississippi to its service area in Missouri due to this generating facility being located outside of EMW's regional transmission organization be included in EMW's revenue requirement?

Position: No.[50] Crossroads was originally built by a non-regulated entity (Aquila Merchant Services) in 2002 in order to sell energy into a restructured energy market.[51] It was transferred to Aquila, Inc. (the parent company) in 2007 when Aquila Merchant Services was shut down due to Crossroads inability to effectively dispatch power.[52] "Prior to its acquisition by Great Plains Energy ("GPE"), Aquila made at least two attempts to find a buyer for Crossroads but did not get a single bid partially due to transmission constraints."[53] "GPE transferred this plant that no other entity would buy to Evergy West after acquiring Aquila."[54] Evergy West has since continued to operate the plant and transfer energy from Mississippi to Missouri under a special protection scheme developed by MISTO to reflect the plant's transmission constraints.[55]

Evergy West has twice attempted to have the transmission costs of Crossroads included in rates and has twice been denied by this Commission.[56] In its last decision, the Commission explicitly found "the Crossroads transmission costs does not support safe and adequate service at just and reasonable rates, and the Commission will deny those costs."[57] Evergy has offered no counter to these findings and no argument that the transmission costs incurred to transmit energy from Mississippi to Missouri are prudent.[58] Instead, all Evergy West has done it issued a threat to the Commission and its customers that, if the Commission continues to hold the Company accountable

[50] Mantle Direct, pg. 42 ln. 5; pg. 44 lns. 3 – 6.
[51] *Id*. at pg. 40 lns. 8 – 10.
[52] *Id*. at lns. 10 – 12.
[53] *Id*. at lns 12 – 15.
[54] *Id*. at lns. 15 – 16.
[55] *Id*. at pg. 42 lns. 10 – 15.
[56] *Id*. at pg. 40 ln. 17 – pg.41 ln. 18.
[57] *Id*. at pg. 41 lns. 16 – 18.
[58] Mantle Rebuttal, pg. 8 lns. 21 – 26.

for its bad decisions, the Company will purposefully increase its capacity deficit and thereby harm customers.[59] "The Commission should not bow to this threat."[60]

i. If so, how much?

Position: As stated in subpart A above, no amount should be included.

C. In this case, should the Commission determine it is prudent for Evergy to renew its firm point-to-point transmission service agreement with Entergy Corp. before it expires in February 2029?

Position: No.[61] 'It should remain silent regarding the renewal of the transmission contract for that is an Evergy West management decision."[62] "However, the Commission should warn Evergy West that any actions taken that result in a premature loss of electricity from Crossroads would be imprudent and will likely result in cost disallowances in the future. Any increase in cost due to acquiring generation to replace the capacity of Crossroads would be borne by shareholders as would any penalties assessed by SPP for insufficient capacity"[63]

Issue 19: Rate Case Expense

A. What level of rate case expense should be included in rates?

Position: The Commission should "accept Staff's position for a three-case average for rate case expense" with "a 50/50 sharing mechanism" but only include "the unpaid portion of depreciation study expense."[64] The three-case average was adopted by Staff and accepted by the Company.[65] The 50/50 sharing mechanism has been ordered

---

[59] *Id*. at pg.3 ln. 9 – pg. 4 ln. 26.
[60] *Id*. at pg. 10 ln. 4.
[61] *Id*. at lns. 11 – 13.
[62] *Id*.
[63] *Id*. at lns. 13 – 17.
[64] Payne Surrebutal, pg. 5 lns. 25 – 29.
[65] *Id*. at pg. 4 lns. 12 – 13.

numerous times in the past by the Commission, including in "the Commission's most recent relevant decision on rate case expenses[,]" which "was in the Spire Missouri Rate Case Nos. GR-2017-0215 and GR-2017-0216."[66] And the depreciation study has been previously included in Evergy's rates and is therefore already partially recovered.[67]

<u>Issue 21: Time of Use Education and Marketing</u>

A. Did the Company properly comply with the Commission's order from the prior rate case to engage and educate its customers with regard to TOU rate implementation?

<u>Position:</u> No.[68] "[S]ignificant documented customer confusion and concern resulted from the Company's educational efforts as expressed by most if not all Missouri Public Service Commissioners."[69] For example, "84% of customers on the eve of the transition to TOU rates were concerned or extremely concerned about TOU when in fact 91% of Evergy West customers would experience bill savings or no bill increase."[70] Thus, while Evergy is correct that customers were "aware" of TOU rates, the Company did not successfully fulfill the intention of the Commission's educational directive.[71] This is also to say nothing of the pervasive negative undercurrent in customer messaging (which was both unproductive and inappropriate) that the Company used in its educational program. Such messaging included "establishing a tone of fear for TOU including implying that customers had to make an imminent choice or else be placed on a rate" and utilizing messaging about "'mandatory' regulatory requirements by the Missouri PSC" despite the recommendation of its own retained advisors.[72]

---

[66] *Id*. at pg. 5 lns 2 – 13.
[67] Payne Direct, pg. 4 ln. 23 – pg. 5 ln. 2.
[68] Kremer Direct, pg. 14 lns.4 – 6.
[69] *Id*.
[70] Kremer Surrebuttal, pg. 22 lns. 6 – 9.
[71] *Id*. at pg. 23 ln. 20 – pg. 24 ln. 2.
[72] *Id*. at pg. 25 ln. 28 – pg. 26 ln. 2; Kremer Rebuttal, pg. 9 lns. 2 – 14.

B. What, if any, amount of EMW expenditures related to the education and outreach costs associated with TOU rate implementation should EMW be permitted to recover?

Position: "Based upon the many years the Company had to contemplate a TOU education program, the documented customer confusion, and concern they experienced in the Company's TOU transition . . . reducing the Company's expenditures to be paid for by rate payers in the range of 50% would be appropriate."[73] Given that Evergy West's total TOU education bill now stands at approximately $3,870,849,.31, this would result in a disallowance of $1,935,424.65.[74]

C. Should the Commission order EMW to continue its education and marketing campaign and undertake the public service announcements as articulated in the testimony of Dr. Geoff Marke?

Position: Yes.[75] "Public Service Announcements (PSAs) are a type of advertising similar to a conventional commercial in some respects but differ in that commercials are largely centered on increasing the public's awareness of the brand while PSAs are designed around a goal of changing attitudes and behaviors."[76] In this instance, PSA are warranted because "[c]ustomers need to know that they have some degree of control over the price they are paying. TOU rates enables behavior that will almost assuredly result in savings to participants, and at a large enough scale to non-participants as well."[77] Evergy West's "[c]ustomers were never told why these plans were being offered to begin with." It is therefore "completely understandable why the public, at large, questioned the Company's motivation and why regulators and the consumer advocate office continue to be frustrated with the accompanying educational messaging surrounding the rate offerings."[78] Further, the Commission needs to consider that Evergy West's current IRP relies heavily on TOU rates to meet future demand needs.[79] Evergy West's TOU education program to date will not achieve these results.[80] If the Company fails to continue its education and marketing

---

[73] Kremer Direct, pg. 15 lns. 12 – 15.
[74] Kremer Surrebuttal, pg. 20 lns. 4 – 7.
[75] Marke Direct, pg. 17 ln. 8 – 20.
[76] *Id*. at pg. 14 lns. 7 – 10.
[77] *Id*. at pg. 15 lns. 4 – 6.
[78] *Id*. at pg. 17 ln. 22 – pg. 18 ln. 2.
[79] Marke Surrebuttal, pg.15 lns. 1 – 10.
[80] *Id*. at pg. 16 lns. 5 – 11.

campaign as recommended by Dr. Marke, it is likely that the resource adequacy problem that is already facing the Company will grow exponentially worse.[81]

<u>Issue 24: Net Operating Loss Carryforward</u>

A. Does EMW have a Net Operating Loss Carryforward (NOLC)?

<u>Position:</u> No.[82] "Evergy West should have exhausted its NOLs in the five years since its 2018 rate case."[83] There is confusion in this case, however, because Evergy West is still amortizing an NOL account balance.[84] This is a violation of IRS practice.[85] In addition, "[t]he amortization of a nonexistent NOL by ARAM is a violation of the IRS's normalization rules."[86] "Even Staff witness Young acknowledges that the Company no longer has a regulatory NOL on the books."[87]

ii. Should the balance of Accumulated Deferred Income Tax ("ADIT") or Excess Accumulated Deferred Income Taxes ("EADIT") in rate base be reduced by the book balance of the NOLC, if it exists

<u>Position:</u> No.[88] As already explained, Evergy West does not have an actual NOLC.[89] Amortizing a non-existent NOLC "is not appropriate for the purpose of regulatory accounting and should be halted."[90]

---

[81] *Id.*
[82] Riely Surrebuttal, pg. 3 ln. 13.
[83] Riley Direct, pg. 7 ln. 3.
[84] Riley Surrebuttal, pg. 2 lns. 2 - 19.
[85] Riley Direct, pg. 5 ln. 17 – pg. 6 ln. 2.
[86] Riley Surrebuttal, pg. 7 lns. 9 – 10.
[87] *Id.* at pg. 3 lns.14 – 15.
[88] Riley Direct, pg. 7 lns. 3 – 4.
[89] *Id.*
[90] *Id.*

Issue 26: Income Taxes

A. Should the calculation of EMW's income tax expense include a tax deduction for tax losses associated with asset dispositions?

Position: Yes.[91] All major utilities "dispose of utility property every year and reap a tax deduction for these sale or retirement losses."[92] "The Commission should recognize these tax losses (or gains for that matter) and adjust the Company's income when calculating the overall tax expense that is included in the revenue requirement."[93] It must be remembered that "the disposal is for utility assets that were paid for by the ratepayers."[94] "Given that the ratepayers are the ones who paid for the asset, they should receive the corresponding tax benefit when the asset is disposed of."[95] Further, "the ratepayer provided an interest free loan associated with the [disposed] assets and neither the Company nor the Commission, by way of rate reduction, refunded the loan."[96] "The ratepayer has been footing the bill on the purchase of the assets as well as the ADIT and ROR[;]" therefore, "[t]he ratepayer should receive the benefit, of the tax reduction upon disposal, in rates."[97]

Issue 28: Revenue Tracker

A. Should the Commission approve EMW's request for a tracker associated with TOU rate revenue?

Position: No.[98] What Evergy West is actually requesting here is a decoupling tracker, meaning a tracker that would allow Evergy West to make up the difference between its ordered revenue requirement and its actual revenues. Evergy's request is legally prohibited under Missouri statutes section 386.266.3, which gave the utilities the option "the option to select "PISA" ("Plant In Service Accounting") or decoupling

[91] *Id*. at pg. 13 lns. 12 – 15; pg. 16 lns. 9 – 13.
[92] *Id*.
[93] *Id*. at pg. 13 lns. 12 – 15.
[94] *Id*. at pg. 13 ln 22 – pg. 14 ln. 2.
[95] *Id*.
[96] *Id*.
[97] *Id*. at pg. 16 lns. 11 – 13.
[98] Marke Surrebuttal, pg. 13 lns. 11 - 13

treatment. Not both"[99] "Evergy West has already selected PISA treatment" and therefore cannot also request to receive decoupling treatment.[100] Moreover, instituting such a tracker is a bad idea in that it allows Evergy "to fully recover costs regardless of how efficiently the utility operates."[101] Allowing Evergy's requested TOU revenue tracker is therefore both a violation of state law and an exercise in poor policy.

<u>Issue 21: Other Tariff Cleanup</u>

B. Should the Commission order the following updates:

iv. Update EV-related rates (CCN, BEVCS, and ETS) to coincide with the overall ordered percentage increase or based on increase ordered for the associated class.

<u>Position:</u> Because the relative rate of return of the EV rate class is negative — specifically -59.9% — the Commission should order that the EV-related rates are increased based on the associated class relative rate of return.[102] The OPC's recommendation is that the Commission order a 60% rate increase for the EV rate class, amounting to $84,950.35 increase in the overall rates.[103] The reason for this is that the class should not be subsidized by either the Residential or the various industrial and business classes.[104]

---

[99] *Id.* at pg. 12 lns. 11 – 13.
[100] *Id.*
[101] *Id.* at pg. 13 lns. 1 – 2.
[102] Seaver Rebuttal, pg. 2 lns. 10 - 17
[103] *Id.* at pg. 5 lns. 19 – 20; pg.4 lns. 22 – 23.
[104] *Id.* at pg. 5 lns. 1 – 5.

Issue 37: Storm Reserve

A. Should the Commission establish a storm reserve for EMW?

Position: No.[105] "Storms are a reoccurring cost of doing business for a utility."[106] "This means the costs can be, and ultimately are, accounted for in the course of the Company's rate case and included in their rates at a normalized level."[107] "Any attempt to track storm costs independently would lead to a disjointed form of ratemaking; one that violates the matching principle."[108] "In addition, the use of a tracker unfairly shifts risk from the utility to customers without a corresponding benefit to compensate ratepayers for this increased risk."[109]

Issue 38: Injuries and Damages

A. Should the Commission establish an injuries and damages reserve for EMW?

Position: No.[110] Evergy West's injuries and damages "expenses from 2021 through 2023 have not increased, do not appear extraordinary or volatile and therefore do not require the need for a cost tracking mechanism."[111] "Attempting to isolate and track these selected costs, while simultaneously overlooking utility continuous changes in a utility's revenue requirement that may otherwise offset these costs could lead to excessive and unfair rates."[112]

---

[105] Payne Direct, pg. 3 lns. 9 – 12.
[106] *Id.* at pg.2 ln. 17 – pg. 3 ln. 3.
[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] Schaben Direct, pg. 9 ln. 20.
[111] *Id.* at lns. 20 – 22.
[112] *Id.* at pg. 10 lns. 4 – 7.

Issue 39: Critical Infrastructure Program ("CIP) and Cyber Security Tracker

B. Should a tracker be implemented for EMW's CIP/cyber-security expense that varies from the level of CIP/cyber-security expense the Commission recognizes in EMW's revenue requirement?

Position: No.[113] Evergy West's cybersecurity costs are extremely consistent year over year.[114] These costs are already included in the Company's rates both as expense items and, where appropriate, as plant.[115] "Given the moderate amount of historical and forecasted expenses, as a percentage of overall revenues and costs, considering these costs in isolation do not reasonably or adversely impact EMW's future financial stability or reasonable access to capital"[116] In addition, including cybersecurity and related cost in a tracker would make those costs difficult if not impossible to verify and evaluate.[117] "Attempting to isolate and track these selected costs, while simultaneously overlooking utility continuous changes in a utility's revenue requirement that may otherwise offset these costs could lead to excessive and unfair rates."[118]

Issue 41: Customer Complaint Reporting Requirements

A. Is EMW fully in compliance with Commission Rule 20 CSR 4240-13.040?

Position: No.[119] Rule 20 CSR 4240-13.040 requires, among other things, for a utility to maintain records "on its customers for at least two (2) years which contain all information concerning the number and general description of complaints registered with the utility."[120] However, based on data responses received by the OPC from

[113] Schaben Direct, pg. 10 lns. 7 – 8.
[114] *Id*. at pg. 6 lns. 11 – 25.
[115] *Id*. at pg. 7 lns. 5 – 9.
[116] *Id*. at pg. 8 lns. 4 – 6.
[117] *Id*. at pg. 8 ln. 17 – pg. 9 ln. 7.
[118] *Id*. at pg. 10 lns. 4 – 7.
[119] Kremer Direct, pg. 29 lns. 9 – 10.
[120] 20 CSR 4240-13.040(5)

Evergy West, the Company is "not able to distinguish between Missouri West/Metro" and does "not have data from 2022 or 2021."[121] In addition, Evergy "views complaints as only those 'registered' complaints coming to it from the Missouri Public Service Commission, and any other customer concerns, complaints, requests to speak to a supervisor, etc. posed directly to the Company and forwarded to its Escalation and Resolution specialists are not considered complaints by the Company for purposes of PSC rules."[122] Based on these answers, Evergy West is not in compliance with rule 20 CSR 4240-13.040.[123]

B. What, if any, changes should the Commission order EMW to make regarding its retention of customer complaint information?

Position: "In order to comply with the Commission's rule the Company would have to (1) begin tracking all issues forwarded to its Escalation and Resolution specialists in the same regard as it tracks customer complaints coming from the PSC (regardless of whether the Company considers them "complaints"), (2) separate the customer complaints/escalations by Missouri West and Missouri Metro, and (3) keep the records for a minimum of two years."[124] The Commission should therefore order Evergy West to begin taking these actions in order to ensure that the Commission's rules are being properly followed. If there are matters contained within the Escalation records that are not of a complaint nature, then those customer matters could be excluded from the two-year record requirement.[125]

---

[121] Kremer Direct , pg. 28 lns. 18 – 21.
[122] *Id*. at pg. 29 lns. 2 – 7.
[123] *Id*. at pg. 29 lns. 9 – 10.
[124] *Id*. lns 10 – 15.
[125] Kremer Surrebuttal pg. 15, lns. 1 – 3.

Issue 42: Income Eligible Program Evaluation

A. Should the Commission order EMW to evaluate their critical medical needs program and file the results of that evaluation in its next rate case?

Position: Yes.[126] There are several bill assistance programs in place in Evergy West.[127] These include "the Low-Income Home Energy Assistance Program ("LIHEAP") and Low-Income Weatherization Assistance Program ("LIWAP")" as well as "the Economic Relief Pilot Program, the Rehousing Program, the Critical Medical Needs Program, and, to a lesser extent budget billing."[128] These programs appear to be doing well and "the Company's outreach has evolved and is beginning to result in favorable outcomes for the Company in both customer and regulator/stakeholder perception."[129] In order to ensure these programs continue to develop positively, the Commission should "order a third-party impact/process evaluation of its flagship income eligible program (the Economic Relief Pilot Program), a third-party study examining the level and concentration of energy burden in its territory and that the Company begin the process of joint evaluation of the Critical Medical Needs Program(s) across the state."

i. Should the Commission order this study to be done in conjunction with other participating utilities?

Position: Yes.[130]

---

[126] Marke Direct, pg. 20 lns. 13 – 17.
[127] *Id.* at pg. 19 lns. 17 – 18.
[128] *Id.* at lns. 20 – 23.
[129] *Id.* at pg. 20 lns. 8 – 10.
[130] Marke Surrebuttal, pg. 23 lns. 10 – 11.

<u>Issue 43: Prospective consolidation of Evergy service territories</u>

A. Should the Commission order EMW to file, in a new docket, its position on consolidation in detail to include, without limitation, estimated time-frame, specific deliverables, and meaningful actions that would need to occur to consolidate its Missouri affiliates?

<u>Position:</u> Yes.[131] "The Commission currently has a study conducted by the utility four years ago where Evergy gave their affirmation that consolidation is ultimately in the best interest of all parties (ratepayers, shareholders, regulators, management) with a general breakdown of issues/concerns that need to be addressed."[132] "The Commission also has empirical evidence that Evergy West is bleeding money and will continue to bleed money because it has not built generation, prematurely retired more than 25% of its generation with no replacement while it was experiencing load growth, is not building generation (see the SPP generation interconnection que above) and is not utilizing the assets it has bought to mitigate that shortfall."[133] "Consolidating Evergy Metro and Evergy West into one entity is one necessary step that has to be undertaken or the problem will be magnified moving forward."[134]

B. Should the Commission order EMW to provide periodic on-the-record presentations with status reports on the progress of consolidation and penalties for non-compliance?

<u>Position:</u> Yes.[135] "Consolidation is not a panacea for what has ailed Every West, nor will it fully solve the problems on the horizon in the immediate future, but it is one part of the directional answer towards ensuring rates are set in the public interest that has been woefully ignored to date and will most certainly continue to be ignored absent clear Commission direction."[136]

---

[131] Marke Surrebuttal, pg. 9 ln. 19 – pg. 10 ln 2.
[132] Marke Direct, pg. 13 lns. 7 – 10.
[133] *Id*. at lns. 10 – 16.
[134] *Id*. at lns. 16 – 17.
[135] Marke Surrebuttal, pg. 9 ln. 19 – pg. 10 ln 2.
[136] *Id*. at pg. 10 lns. 5 – 8.

All Remaining Issues

For issues and sub-issues 2(A)(i), 2(C)(ii), 3(B)(i), 3(C)(i), 5(B), 6, 7, 8, 9, 10, 11, 12 (all subparts included), 13, 14 (all subparts included), 15, 16 (all subparts included), 17, 18, 20 (all subparts included), 21 (all subparts excluding (B)(iv)), 22, 23, 25, 27 (all subparts included), 29 (all subparts included), 30 (all subparts included), 31(all subparts included), 32, 33, 34 (all subparts included), 35, 36, and 40 (all subparts included); the OPC does not take a definitive position at this time but in general supports the position taken by the Commission's Staff to the extent that position is not inconsistent with a position stated herein. The OPC reserves the right to take a definitive position on any of these issues in its filed briefs.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission rule in the OPC's favor on all issues addressed herein and take such other action as is reasonable and prudent under the circumstances.

Respectfully submitted,

By: /s/ John Clizer
John Clizer (#69043)
Senior Counsel
Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5324
Facsimile: (573) 751-5562
E-mail: john.clizer@opc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this twenty-third day of September, 2024.

/s/ John Clizer