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Angela Schaben
Surrebuttal
File No. ER-2024-0189

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Tracker/Injuries and Damages Tracker
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SURREBUTTAL TESTIMONY

OF

ANGELA SCHABEN

Submitted on Behalf of the Office of the Public Counsel

**EVERGY MISSOURI WEST, INC. D/B/A
EVERGY MISSOURI WEST**

CASE NO. ER-2024-0189

** _____ **
Denotes Confidential Information that has been redacted.

September 10, 2024

PUBLIC

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OF

ANGELA SCHABEN

EVERGY MISSOURI WEST, INC. D/B/A EVERGY MISSOURI WEST

CASE NO. ER-2024-0189

1 **INTRODUCTION**

2 **Q. Please state your name, title, and business address.**

3 A. Angela Schaben, Utility Regulatory Auditor, Office of the Public Counsel (“OPC” or “Public
4 Counsel”), P.O. Box 2230, Jefferson City, Missouri 65102.

5 **Q. Are you the same Angela Schaben who filed rebuttal testimony for the OPC in this
6 case?**

7 A. Yes.

8 **Q. What is the purpose of your testimony?**

9 A. I am responding to Evergy West, Inc. (“Evergy West or “Company” or “EMW”) Witness
10 Linda Nunn regarding administrative fees flown through the Fuel Adjustment Clause (“FAC”)
11 and updated tariff sheets and Witness Hsin Foo regarding additional FAC reporting requests.
12 Additionally, I am responding to Evergy West Witness Ron Klote’s rebuttal testimony
13 positions on the CIP/Cyber Security tracker and the Injury and Damages reserve.

14 **Q. Please summarize your recommendations to the Commission.**

15 A. Regional Transmission Organization (“RTO”) administrative fees are included in revenue
16 requirement and are not currently included in the FAC. I propose keeping this practice moving
17 forward. I also recommend requiring the Company provide additional reporting in its monthly
18 Electric Generation Report, similar to the reporting Ameren Missouri provides. Additionally,
19 I recommend against establishing a CIP/Cyber Security tracker and an Injuries and Damages
20 reserve.

1 **FAC Tariff and Administrative Charges**

2 **Q. Please summarize Ms. Nunn’s claim regarding Southwest Power Pool (“SPP”)**
3 **administrative fees.**

4 A. Ms. Nunn indicates that SPP administration fees are charged by SPP on a per MWh basis
5 and therefore should be recovered in the FAC due to fluctuations based on customer usage¹.

6 **Q. Do you agree with Ms. Nunn?**

7 A. No, for a variety of reasons. First of all, the Commission has previously found that SPP
8 administrative fees are not directly linked to fuel and purchased power costs and on the fact
9 that “Schedule 1-A and 12 fees are variable, but not volatile in nature”.² Furthermore,
10 volatile costs are quite different than variable costs. Based on the definitions of volatility³
11 and variability⁴, Evergy West’s yearly billed MWh sales based on EMW load do not appear
12 volatile⁵, as shown in Table 1 below, and Ms. Nunn has not provided an analysis showing
13 SPP administrative charges are volatile.

¹ Rebuttal Testimony of Linda Nunn, File No. ER-2024-0189, page 5.

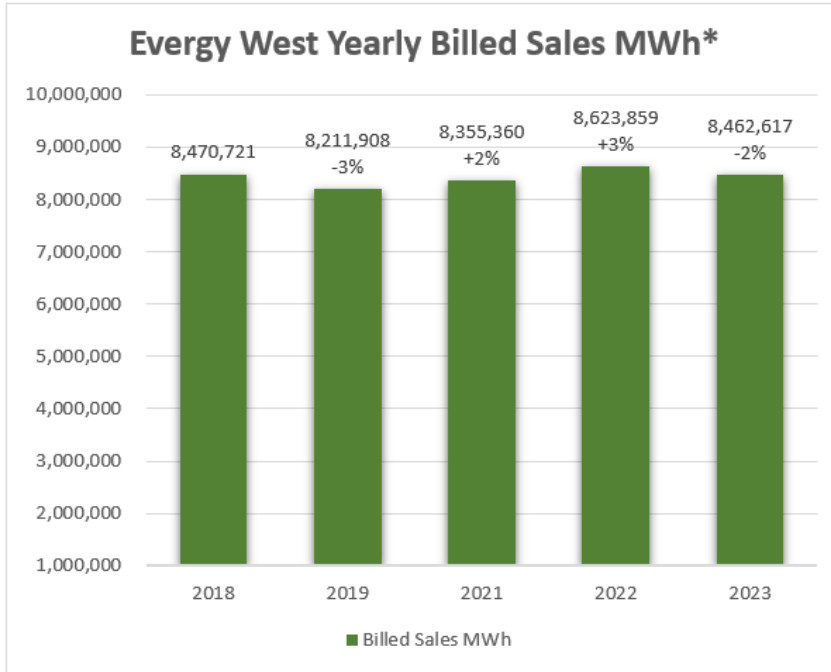
² File No. ER-2014-0370 *Report and Order*, page 36.

³ The Oxford Languages definition of volatility: liable to change rapidly and unpredictably, especially for the worse.

⁴ The Oxford Languages definition of variability: lack of consistency or fixed pattern; liability to vary or change.

⁵ Based on the “MO West peak billed sales” tab of the “SPP Administrative Fees ER-2024-0189 – Direct – Nieto” workpaper and the “MO West-Load” tab of the “Lyons-SPP Admin Fees Direct” workpaper found in Case No. ER-2022-0130, which is derived from the Company’s response to Staff Data Request 102.1.

Table 1:



*Year 2020 billed sales are an outlier due to COVID and were therefore omitted.

1

2 **Q. Please summarize Staff’s position regarding SPP administrative fees.**

3 A. Staff Witness Teresa Denney states that SPP purchased power administration costs “are not
4 eligible expenses under the FAC under the Commission’s historical guidance”.⁶

5 **Q. When Ms. Denney refers to the Commission’s historical guidance, to which guidance
6 do you believe she is referring?**

7 A. The Commission specifically addressed KCPL’s⁷ request to include SPP administrative
8 costs in its *Report and Order* in Case No. ER-2014-0370 where it made the following
9 conclusion:

10 KCPL has requested that SPP Schedule 1-A and 12 fees be included in its FAC.
11 The Commission finds that these fees are administrative in nature and not

⁶ Rebuttal Testimony of Teresa Denney, File No. ER-2024-0189, page 8, lines 10-14.

⁷ KCPL is the predecessor to Evergy Metro, Inc., an affiliate of Evergy West with the same parent company Evergy, Inc.

1 directly linked to fuel and purchased power costs. These fees support the
2 operation of SPP and are not needed for KCPL to buy and sell energy to meet
3 the needs of its customers. These fees are neither fuel and purchased power
4 expenses nor transportation expenses incurred to deliver fuel or purchased
5 power. The Commission concludes that including such fees would be unlawful
6 under Section 386.266.1, RSMo, and, therefore, Schedule 1-A and fees should
7 not be included in the FAC. These fees are appropriate for recovery in base
8 rates. (Emphasis added)⁸

9 The Commission’s conclusion was based on the following findings of fact:

- 10 • SPP Schedule 1-A fees are for SPP expenses associated with administering its
11 Open Access Transmission Tariff. These expenses cover regional scheduling,
12 planning, and market-monitoring services provided to facilitate the
13 transportation of energy on the transmission system.
- 14 • SPP Schedule 12 fees are an assessment charged by FERC related to KCPL’s
15 membership in SPP.
- 16 • Schedule 1-A and 12 fees are administrative in nature and not directly linked to
17 fuel and purchased power costs. These fees support the operation of SPP and
18 are not needed for KCPL to buy and sell energy to meet the needs of its
19 customers.
- 20 • RTO administrative fees, such as Schedule 1-A and 12 fees, are not included in
21 the FACs of other regulated utilities in Missouri.
- 22 • Schedule 1-A and 12 fees are variable, but not volatile in nature.⁹

23 **Q. What do you recommend to the Commission?**

24 A. I recommend that Regional Transmission Organization¹⁰ (“RTO”) administrative fees
25 should be recovered in based rates, not through the FAC. Evergy Witness Nunn claims SPP
26 administrative fees should be recovered in the FAC due to the variable nature of these costs.
27 While these costs may vary, they are not volatile. Furthermore, the Commission has found

⁸ Page 36.

⁹ *Id.*

¹⁰ All Regional Transmission Organizations Evergy engages in business with, to include, but not limited to, both SPP and MISO.

1 that RTO administrative fees are not purchased power or transportation expenses and should
2 not be recovered through the FAC per Section 386.266.1, RSMo.

3 **Transmission Congestion Revenues (“TCR”)**

4 **Q. Witness Foo claims that reporting the hourly Day-Ahead Locational Marginal Pricing**
5 **(“LMP”) by node would require a voluminous amount of data each month. What is**
6 **your response?**

7 A. As part of the Stipulation and Agreement in ER-2022-0337, Ameren Missouri agreed to
8 provide the same data as part of its monthly FAC reporting with no objections.

9 [Ameren Missouri] shall also provide hourly day ahead and real-time locational
10 marginal prices for Ameren Missouri’s load, and each generating resource, in
11 its 20 CSR 4240- 3.190(1)(B) monthly as-burned fuel report and shall include
12 the information currently included for the High Prairie and Atchison Energy
13 Centers in Tabs 5D p3 and 5d p4 for its other Energy Centers.¹¹

14 **Q. Have you reviewed the hourly day-ahead LMP by node submitted on a monthly basis**
15 **by Ameren Missouri in its Electric Generation Reporting Requirements?**

16 A. Yes.

17 **Q. From what you have reviewed of Ameren Missouri’s hourly day-ahead LMP by node**
18 **submitted in its monthly Electric Generation Reporting Requirements, is the data**
19 **voluminous in nature, as claimed by Witness Foo?**

20 A. No. The data easily fits within an Excel spreadsheet.

¹¹ [STIPULATION AND AGREEMENT, File No. ER-2022-0337, Item No. 264, page 5.](#)

1 **Q. Did you request additional TCR/ARR¹² reporting from Evergy West in this case?**

2 A. Yes. In addition to requesting hourly locational market pricing by node, I also requested
3 the Company provide:

- 4 • TCR/ARR revenues and losses by node.
- 5 • A reconciliation cost/benefit analysis between TCR/ARR node revenue and/or
6 losses by each wind farm.
- 7 • Report TCR/ARR revenues and/or losses in specifically designated TCR/ARR
8 subaccounts within the 555000 expense account and 447000 revenue account,
9 respectively.

10 **Q. How did the Company respond to your request for TCR/ARR revenues and losses by
11 node reporting?**

12 A. Witness Foo states that TCR/ARR “revenues and losses are calculated by path and not by
13 node”.¹³ Witness Foo also applies this statement toward my request for a reconciliation
14 cost/benefit analysis between TCR/ARR node revenue and/or wind losses by each wind farm.

15 **Q. What is your response?**

16 A. A path is the distance between two nodes. If TCR/ARR revenues and losses are calculated by
17 path rather than by node, then I request this information by each node path in lieu of individual
18 nodes. Additionally, information by node path is provided by Ameren Missouri within its
19 monthly Fuel Report provided within its monthly Electric Generation Reporting.

¹² Auction Revenue Rights (“ARR”)

¹³ Rebuttal Testimony of Hsin Foo, File No. ER-2024-0189, page 13.

1 **Q. What is Staff’s position?**

2 A. Staff is not opposed to the additional reporting that I requested in Direct Testimony of this case.

3 **Q. What do you recommend?**

4 A. I recommend EMW provide monthly TCR/ARR revenues and losses by node path, similar to
5 the reporting Ameren Missouri provides in its monthly Fuel Report. I also continue to request
6 a reconciled cost/benefit analysis between TCR/ARR node path revenue and/or losses by each
7 wind farm.

8 **CIP/CYBER SECURITY TRACKER**

9 **Q. Evergy West Witness Klote states that the “Company should not be expected to budget
10 for events that are unpredictable or where future government regulations are
11 uncertain, but can still reasonably be expected in today’s quickly evolving cyber
12 security space”¹⁴. What is your response?**

13 A. The cyber security space has been quickly evolving since at least 2012 when critical
14 infrastructure threats increased 68% from the previous year.¹⁵ Evergy, Inc. (“Evergy”) has
15 been complying with applicable North American Energy Reliability Corporation (“NERC”)
16 Critical Infrastructure Protection (“CIP”) Security Standards since around 2005. While NERC
17 CIP Security Standards have been evolving since 2005 in response to a quickly evolving cyber
18 security space, Evergy’s cyber security budget and its cyber security identified spending has
19 remained relatively stable, mildly variable, not volatile. These known and measurable
20 expenditures show no volatility even though the cyber security space continues to evolve and
21 are not expenditures based on “what ifs” and “maybes”.

¹⁴ Rebuttal Testimony of Ronald Klote, File No. ER-2024-0189, page 15.

¹⁵ Schedule ADS-S-1.

1 **Q. Mr. Klote also writes “EMW does not include costs in its forecast to account for likely**
2 **future government mandates around cyber security protection until the mandates are**
3 **passed into legislation and required of the Company.”¹⁶ How do you respond?**

4 A. In response to Staff Data Request 0272.1, the Company supplied a “non-exhaustive list of
5 cyber security related activity in various stages of implementation at the Federal level that may
6 drive requirements for Evergy. I will address several items on this list¹⁷:

- 7 1. Department of Defense (DOD) Cyber security Maturity Model Certification
8 (CMMC) 2.0 is expected to be implemented Q1 2025. Evergy would have to
9 implement cyber security measures to meet the NIST SP 800-171 (110 specific
10 requirements) and potentially NIST SP 800-172 standards.

11 NIST SP 800-171 may include 110 specific requirements, in the areas of access control, audit
12 and accountability, awareness and training, configuration management, incident response, etc.
13 However, the list is contrived of 31 basic security requirements with the remaining 79
14 requirements derived from the implementation of these 31 basic security requirements. Evergy
15 has recently participated in the Cyber Security Capability Maturity Model (C2M2) Assessment
16 and GridEx, receiving high ratings. As I stated in my direct testimony, Evergy’s Cyber
17 Security/IT Committee repeatedly reports that Evergy cyber security measures score higher
18 than ****_____**** with a score in the ****__****. A cyber security score that high should be quite
19 difficult to achieve if basic security requirements that did not already meet CIP requirements
20 were not in place. Since Evergy is already achieving a cyber security score in the ****__****,
21 CMMC measures should already be achieved by Evergy’s currently robust cyber security
22 program.

¹⁶ Rebuttal Testimony of Ronald Klote, File No. ER-2024-0189, page 16.

¹⁷ Company’s response to Staff Data Request 0272.1.

1 2. Department of Energy/National Association of Regulatory Utility
2 Commissioners (NARUC) Cyber security Baselines for Electric Distribution
3 Systems and Distributed Energy Resources (DER) are expected to be completed
4 by the end of 2024. This includes 32 cyber security controls¹⁸ which are
5 voluntary until state adoption which is unknown at this time.

6 The Cyber security Baselines for Electric Distribution Systems and DER consists of 32 cyber
7 security controls. Without specifying which procedures or technologies to use, these baselines
8 define cyber security controls that should be implemented. Examples of these controls include,
9 asset inventory, organizational cyber security leadership, OT cyber security leadership,
10 mitigating known vulnerabilities, etc. These are baselines.¹⁹ Evergy has been subject to
11 stringent NERC CIP Security Standards since at least 2005. NERC CIP Security Standards
12 have been evolving since that time. There is a nuclear plant in its territory. Evergy's baseline
13 cyber security controls should already be established if it's meeting rigorous CIP requirements
14 and therefore should not be affected by the Cyber security Baselines for Electric Distribution
15 Systems and DER requirements.

16 3. Cyber security and Infrastructure Security Agency (CISA) Cyber Incident
17 Reporting for Critical Infrastructure (CIRCIA) Cyber security Reporting Rules
18 - CISA must issue a final rule by October 4, 2026. This would require additional
19 reporting capabilities for cyber incidents and ransomware payments.

20 With the overturning of *Chevron* the future of federal agency regulations related to cyber
21 security policy is uncertain.²⁰ CISA is currently evaluating how the *Chevron* ruling will impact
22 agency rules crafted around CIRCIA, a Federal Act signed into law by President Biden.²¹

¹⁸ <https://www.naruc.org/core-sectors/critical-infrastructure-and-cyber-security/cyber-security-for-utility-regulators/cyber-security-baselines/>

¹⁹ The Oxford Languages definition of baseline: a minimum or starting point used for comparisons.

²⁰ <https://www.wired.com/story/us-supreme-court-chevron-deference-cyber-security-policy/>; Schedule ADS-S-2

²¹ Schedule ADS-S-3.

1 Meanwhile, critical infrastructure organizations have called for clarity and voiced concerns
2 over redundancy.²² In comments to CISA regarding CIRCIA, the Electric Power Supply
3 Association (“EPSA”) stated that EPSA members are currently required to report high and
4 medium asset cyber incidents under rigorous NERC CIP standards and requested a line of
5 communication between CISA and the entities to which EPSA members are already reporting
6 information in order to streamline the reporting process.²³ The Edison Electric Institute
7 (“EEI”) also stated that EEI members are already subject to extensive regulation relating to
8 cyber security and incident reporting requirements through FERC/NERC and DOE:

9 NERC’s Reliability Standards and Critical Infrastructure Protection
10 Reliability Standards (hereinafter Reliability Standards and CIP Reliability
11 Standards, respectively) are promulgated by NERC; approved by FERC; and
12 enforced by FERC, NERC, and NERC’s Regional Entities. They apply to
13 owners, operators, and users of the Bulk Electric System (BES).

14 NERC’s CIP Reliability Standards are designed to address physical and
15 cyber security risks. CIP Reliability Standards “implement a defense-in-depth
16 approach to protecting the security of the BES Cyber System at all impact
17 levels.” Moreover, “the CIP Reliability Standards are objective-based and allow
18 entities to choose compliance approaches best tailored to their systems.” CIP
19 Reliability Standards allow EEI members the flexibility to tailor their risk
20 management approaches. As FERC has recognized, this flexibility is important
21 to accommodate the varying “needs and characteristics of responsible entities
22 and the diversity of BES Cyber System environments, technologies, and risks.”

23 NERC cyber security standard CIP 008-6 stipulates the following
24 requirements: (1) entities must implement one or more processes to identify and
25 respond timely to security incidents; (2) the roles and responsibilities of the
26 security incident response personnel must be clearly defined; (3) procedures for
27 handling security incidents must be documented; (4) incident response plans
28 must be tested once every months; (5) incident reports must be retained to
29 optimize future responses; and (6) following the testing of an incident response
30 event, a covered entity should document learnings, update its existing response

²² Schedule ADS-S-4.

²³ Docket CISA-2022-0010; COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION; Schedule ADS-S-5.

1 plan, and disseminate findings to the security team. This Standard also requires
2 applicable facility owners to provide an initial notification to the E-ISAC and
3 CISA's National Cyber security and Communications Center within one hour
4 after the determination of a Reportable Cyber Security Incident and by the end
5 of the next calendar day after determining that a Cyber Security Incident was
6 an attempt to compromise an applicable system.²⁴

7 The comments EPSA and EEI submitted to the CISA CIRCIA docket demonstrate that
8 organizations such as Evergy are already subject to thorough cyber security regulations
9 through FERC/NERC and DOE. Additionally, these comments show that utilities have
10 advocates working to streamline regulation requirements between agencies in order to
11 reduce redundancy and optimize existing processes.

12 Evergy also mentions various active NERC Projects in place that will update CIP standards.
13 Several of the CIP standards engaged in the updating process have been in place over ten
14 years. Evergy has been subject to various CIP standards since at least 2006. Since CIP
15 requirements have been evolving since the early 2000s, the initial investment to launch CIP
16 compliance programs has already been expended. Updating practices in response to
17 changing regulations is a natural occurrence incurred through the course of regular business
18 operations and should not necessitate extraordinary implementation costs. Additionally,
19 Evergy has opportunities to identify efficiencies with each CIP standard update as inactive,
20 outdated standards no longer require compliance.

21 **Q. Do you have additional concerns related to comments within Mr. Klote's Rebuttal**
22 **Testimony?**

23 **A.** Yes. Information technology and cyber security are interdependent upon one another and often
24 the boundaries between the two are blurred. Singling out cyber security costs vs standard

²⁴ Docket CISA-2022-0010; COMMENTS OF THE EDISON ELECTRIC INSTITUTE ON THE DEPARTMENT OF HOMELAND SECURITY, CYBER SECURITY AND INFRASTRUCTURE SECURITY AGENCY'S, PROPOSED RULE REGARDING CYBER INCIDENT REPORTING FOR CRITICAL INFRASTRUCTURE; Schedule ADS-S-6.

1 information technology costs incurred during the regular course of business is conceivably
2 problematic. For example, in his rebuttal testimony, Mr. Klote refers to the recent CloudStrike
3 incident as a cyber security incident. The CloudStrike incident is an example of the importance
4 of robust internal quality assurance programs before pushing updates to production, not a cyber
5 security incident. CrowdStrike was very forthcoming with communications regarding its error
6 and was very clear that the content configuration update it released for Windows machines
7 resulted in an out of bound memory error, causing multiple windows machines to crash.²⁵ This
8 was not a cyber security attack – CrowdStrike itself inadvertently deployed a faulty update that
9 affected Windows machines across the globe and took responsibility for the faulty update
10 within hours of the incident. Mr. Klote’s classification of the CrowdStrike event as a cyber
11 security incident, in order to justify Evergy West’s request for a CIP/Cyber Security tracker, is
12 alarming when it was clearly an incident caused by inadvertent third party vendor update errors.
13 The CrowdStrike incident could be classified as an extraordinary information system event and
14 costs related to this event should be categorized as such. It is not an extraordinary cyber
15 security event. If Mr. Klote and Evergy are labeling the CrowdStrike incident as a cyber
16 security incident then it’s quite possible the Evergy West is prepared to track non-cyber
17 security costs in the CIP/Cyber Security tracker in order to avoid incurring costs above what’s
18 included in revenue requirement, with no incentive to incorporate organizational efficiencies.
19 The question is whether the regulatory bodies reviewing the CIP/Cyber Security tracker
20 expenditures have the expertise to determine differences between regular information
21 technology expenses vs. necessary cyber security expenses required by law.

22 **Q. Mr. Klote opines that “the Company expects expenses related to CIP and Cyber Security**
23 **to increase substantially in the coming years.”²⁶ Do you agree?**

24 **A.** No. As I stated above Evergy’s cyber security program complies with strict CIP standards and
25 is already robust. Even if regulation introducing new or updated cyber security requirements

²⁵ <https://www.crowdstrike.com/falcon-content-update-remediation-and-guidance-hub/>

²⁶ Rebuttal Testimony of Ronald Klote, File No. ER-2024-0189, page 16.

1 was passed, the Company would not have to implement new concepts from scratch. Cyber
2 security is an evolutionary work in progress that builds upon previous iterations of standards.
3 Furthermore, as demonstrated in the comments submitted to CISA regarding CIRCIA, utility
4 advocates such as EEI are calling for streamlining regulations and communications across
5 Federal agencies in order to combat existing redundancy. The future of federal agency
6 regulations is also unclear since the overturning of *Chevron*.

7 **Q. What are your qualifications for presenting testimony on the subject of cyber security?**

8 A. I have participated in various cyber related training, including CISA trainings²⁷. I am a
9 member of the Information Systems Audit and Control Association (“ISACA”) and am
10 familiar with the IT Audit framework based on the NIST Cyber security Framework 2.0.
11 Additionally, I have reviewed study materials affiliated with CompTIA’s Cyber security
12 Analyst+ (“CySA+”) certification and engaged in various Policy and ICS Village activities
13 during Defcon 32.

14 **Q. What is Staff’s position regarding the CIP/Cyber Security tracker?**

15 A. Staff also found EMW’s CIP and cyber security costs consistent each year and does not
16 recommend a CIP/Cyber Security tracker.

17 **Q. What do you recommend?**

18 A. A CIP/Cyber Security tracker is unnecessary as Evergy’s CIP and cyber security costs are not
19 volatile or extraordinary. Even though cyber security standards have been evolving for over a
20 decade Evergy’s CIP and cyber security costs are flat, with little fluctuation. Even if current
21 standards are updated or new standards are proposed at the federal level, the industry has active
22 advocates working to maximize communications between agencies and to minimize

²⁷ Schedule ADS-S-7.

1 redundancy. Furthermore, the overturning of *Chevron* could also impact federal agency
2 standards.

3 **INJURIES & DAMAGES RESERVE**

4 **Q. Mr. Lyons refers to injuries & damages (“I&D”) expenses as a “highly variable expense**
5 **item”.²⁸ What is your response?**

6 A. Based on the definitions of variable and volatile offered in my testimony above, I&D expenses
7 could be considered variable but not necessarily highly variable and definitely not volatile.
8 Regardless, I&D expenses are diminutive in relation to overall Evergy revenues of \$5,508.2
9 million²⁹ reported in its most recent annual report. The level of variability within I&D
10 expenses is neither extraordinary nor volatile and therefore does not warrant the necessity of
11 tracking through an established reserve.

12 **Q. What is Staff’s position?**

13 A. Staff does not support EMW’s request for an I&D reserve. EMW proposed a reserve balance
14 of \$56,589, which exceeds the Company proposed normalized level of I&D. Additionally,
15 these proposed reserve costs are not known and measurable and a reserve simply transfers
16 business risk from EMW and its shareholders to ratepayers, which is detrimental to
17 customers.³⁰

18 **Q. Do you agree with Staff?**

19 A. Yes.

²⁸ Rebuttal Testimony of Ronald Klote, File No. ER-2024-0189, page 21.

²⁹ Evergy Form 10-K for fiscal year ended December 31, 2023, page 47 of 251.

³⁰ Rebuttal Testimony of Karen Lyons, File No. ER-2024-0189, page 17.

1 **Q. What do you recommend?**

2 A. Establishing I&D Reserves violates traditional ratemaking through charging customers for
3 events that have not occurred. Additionally, an I&D Reserves would give EMW little incentive
4 to make decisions that keep injuries and damages to a minimum. While these costs can be
5 variable, they are not volatile and therefore do not necessitate tracking through reserves.

6 **Q. Does this conclude your testimony?**

7 A. Yes.

