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Manzell M. Payne
Direct
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Issue(s): Storm Reserve/Rate Case Expense
Witness/Type of Exhibit: Payne/Direct
Sponsoring Party: Public Counsel
Case No.: ER-2024-0189

DIRECT TESTIMONY

OF

MANZELL PAYNE

Submitted on Behalf of the Office of the Public Counsel

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

CASE NOS. ER-2024-0189

June 27, 2024

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DIRECT TESTIMONY
OF
MANZELL M PAYNE
EVERGY MISSOURI WEST, INC., D/B/A EVERGY MISSOURI WEST
CASE NO. ER-2024-0189

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

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

4 **Q. What are your qualifications and experience?**

5 A. Please refer to Schedule MMP-D-1 attached hereto.

6 **Q. Have you testified previously before the Missouri Public Service Commission?**

7 A. Yes, I have previously testified before the Missouri Public Service Commission
8 (“Commission”). Please refer to schedule MMP-D-2 attached hereto for a list of cases in
9 which I have testified.

10 **Q. What is the purpose of your direct testimony?**

11 A. The purpose of my direct testimony is to address rate case expense and storm reserves as those
12 issues relate to Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri
13 West”).

14 **STORM RESERVE**

15 **Q. What is a storm reserve?**

16 A. A storm reserve is an account that has funds collected through rates that are used to cover
17 costs associated with storm-related expenses effecting company operations. The account is
18 for future storm related damages that may or may not occur.

19 **Q. Has Evergy Missouri West proposed including a storm reserve in past cases?**

20 A. Yes. In case No. ER-2022-0130 the Company proposed establishing a storm reserve of non-
21 labor costs related to storms greater than \$200,000. As Company witness, Ronald Klote
22 stated:

23 The Company is proposing to set a reserve level and annualized level based
24 upon a three year average of storms costs (2018, 2019, and 2020) where the
25 non-labor costs related to individual storms were greater than \$200,000. This

1 average was then multiplied times three to establish the base reserve amount.
2 An annual amount equal to the three year average has been included in the
3 revenue requirement on an on-going basis. This is needed to continue to cover
4 expenses paid out of the reserve over time due to the unpredictable and
5 sporadic nature of storm events. The implementation of this reserve will be
6 used to cover intermediate to large storms by using a \$200,000 minimum
7 storm level, but in the event a storm is very significant and impactful to
8 Company operations this request does not preclude the Company from
9 requesting an Accounting Authority Order if the magnitude of the storm
10 warrants the request as has been done historically.¹

11 **Q. Has the Public Service Commission previously ordered a storm reserve for Evergy**
12 **Missouri West?**

13 A. No. In Evergy Missouri West's most recent rate case, Case No. Er-2022-0130, the Company
14 asked for a storm reserve. However, one was not granted as the parties to the case came to an
15 agreement and Evergy Missouri withdrew their storm reserve request. There has been no
16 change since 2022 in the need for a storm reserve for the Company.

17 **Q. Do you believe it would be appropriate for the Public Service Commission to order a**
18 **storm reserve for Evergy Missouri West in this case?**

19 A. No. Storms are a reoccurring cost of doing business for a utility. This means the costs can be,
20 and ultimately are, accounted for in the course of the Company's rate case and included in
21 their rates at a normalized level. By operating in this manner, the Commission is able to ensure
22 it is considering "all relevant factors" when setting rates because measuring all elements of
23 the test year are being considered at the same time. Any attempt to track storm costs
24 independently would lead to a disjointed form of ratemaking; one that violates the matching
25 principle.² In addition, the use of a tracker unfairly shifts risk from the utility to customers
26 without a corresponding benefit to compensate ratepayers for this increased risk. If the
27 Commission were to order such a tracker, it would only be reasonable to do so if the

¹ ER-2022-0130 Direct Testimony of Ronald A. Klote, Page 36

² The matching principle requires that revenues and any related expenses be recognized together in the same reporting period. - <https://www.accountingtools.com/articles/the-matching-principle>

1 Commission reflected the reduced risk borne by the Company in some manner. Finally, the
2 Company could still request an Accounting Authority Order (AAO) for any storm costs that
3 significantly affect normal company operations.

4 **Q. Who benefits from the Company having a storm reserve?**

5 A. In this situation, Evergy Missouri West and their shareholders are the ones who benefit by
6 there being less risk to the Company by getting money upfront. Ratepayers on the other hand
7 do not benefit, as they would unfairly be funding a storm reserve that reduces the utility's cost
8 of doing business and increases rates.

9 **Q. What do you recommend with regard to any potential storm reserve requested by**
10 **Evergy Missouri West?**

11 A. I recommend that the Company does not need a storm reserve, therefore the Commission
12 should disallow any funds associated with a requested storm reserve.

13 **RATE CASE EXPENSE**

14 **Q. Can you define rate case expense?**

15 A. Rate case expense can be defined as the total cost that a utility will incur to prepare, present
16 and conclude a general rate case. Examples of rate case expenses can be outside legal counsel
17 fees, consultant fees, customer notice fees, and depreciation study fees.

18 **Q. What has been the Commission's position on rate case expense in the past?**

19 A. The Commission has employed a 50/50 sharing mechanism for those rate case expenses that
20 are not mandatory to initiate a rate case. Expenses such as customer notice fees, depreciation
21 studies and filing costs are necessary to introduce a case. The Commission's most recent
22 relevant decision on rate case expenses was in the Spire Missouri Rate Case Nos. GR-2017-
23 0215 and GR-2017-0216, where the Commission held Spire Missouri to a 50/50 sharing
24 mechanism with customers. In its Amended Report and Order, the Commission found:

25 Therefore, it is just and reasonable that the shareholders and the ratepayers
26 who both benefited from the rate case, share in the rate case expense. The
27 Commission finds that in order to set just and reasonable rates under the
28 specific facts in this case, the Commission will require Spire Missouri
29 shareholders to cover half of the rate case expense and the ratepayers to

1 cover half with the exception of the cost of customer notices and the
2 depreciation study.

3
4 On February 9, 2021, the Missouri Supreme Court affirmed the Commission's decision.³

5 **Q. How should the Commission calculate the correct amount of rate case expense to be**
6 **included in Evergy Missouri West's rates?**

7 A. First, the Commission should normalize rate case expense by adding the rate case expense of
8 \$1,659,158 incurred by Evergy West in Case No. ER-2022-0130 to the rate case expense of
9 this case and then dividing that sum by the number of years over which the Company expects
10 to recover the amount. Finally, the Commission should employ the same 50/50 sharing
11 mechanism it has in the past to further reduce the rate case expense.

12 **Q. What is an appropriate period of time for the Company to recover rate case expense**
13 **that the Commission should use in the calculation you just described?**

14 A. 4 years is the appropriate period for the Company to recover rate case expense for this case.
15 This is consistent with the Company, Staff, and OPC positions in the most recent rate case,
16 ER-2022-0130, for Evergy Missouri West.

17 **Q. Are there any specific items that the Commission should disallow recovery of related to**
18 **rate case expense?**

19 A. Yes. The Commission should disallow the full depreciation study from ER-2022-0130, as it
20 has already been partially recovered, and the inclusion of excessive attorney and consultant
21 fees, as these costs are imprudent.

22 **Q. Can you explain your issue with the depreciation study?**

23 A. Yes. The rate case expense for this case includes the cost of the full depreciation study expense
24 for the study that was previously performed in Case No. ER-2022-0130. There has not been
25 a new depreciation study performed for the current case. This is an issue because the Company
26 has already been partially repaid for the depreciation study performed in preparation of its
27 previous case. The repayment has been ongoing since January of 2023. Therefore, the

³ Spire Missouri, Inc. v. Pub. Serv. Comm'n, 618 S.W.3d 225, 233 (Mo. banc 2021).

1 depreciation study included in this case should only be for 4/5 or 80% of the total, due to the
2 Company only needing to perform a depreciation study every 5 years.

3 **Q. Can you explain your issue with outside attorney fees, outside witness fees and**
4 **consultant fees in this case?**

5 A. Yes. The amount of attorneys, witness, and consultant fees incurred by Evergy West is
6 imprudent, in that, it far exceeds the amount that should be considered reasonable. Evergy
7 Missouri West's customers should not be held responsible for funding the Company's
8 excessive and expensive attorneys, witness, and consultant fees every time the Company has
9 a rate case.

10 **Q. Can you provide detail on why customers should not be held responsible for Evergy**
11 **Missouri West's excessive attorney, consultant, and witness fees?**

12 A. Yes. While it may be reasonable for a utility to retain additional legal services when pursuing
13 a rate increase request before the Commission, there is also a point where the cost of such
14 service exceed what a reasonable person would spend. However, when the utility is able to
15 recover at least half these costs from ratepayers, the downside to shareholders for pursuing
16 these excessive costs becomes minimized. The upside to shareholders of having a high-priced,
17 well-recognized name as a consultant, meanwhile, remains the same. This will lead a utility
18 to want to hire outside consultants and overly-expensive law firms even when they are not
19 truly required to present the Company's case. The Company already has experienced
20 personnel working internally who can provide testimony to support the Company's position.
21 Rate payers are already paying for them and should not have to pay additional for consultants
22 or attorneys.

23 **Q. Can you provide an example of this?**

24 A. Yes. Recently, in Case No. EO-2024-0002, Evergy Missouri West and Evergy Missouri
25 Metro had a docket over Customer Account Data Production. In this case, the Company hired
26 witness, Sean P. Riley of Price Waterhouse Coopers LLP to testify on behalf of the Company
27 over their issues.

1 **Q. Do you have transcripts from the hearing?**

2 A. Yes. Below is the transcript of Mr. Sean Riley's testimony from the hearing in Case No. EO-
3 2024-0002:

4 CROSS-EXAMINATION

5 BY MS. KERR:

6 Q. You've been paid separately for your testimony today?

7 A. I will be.

8 Q. And how much will you be paid for your testimony today?

9 A. It's going to be dependent on how much time is incurred. I don't have that calculation. We
10 haven't done that calculation as yet.

11 Q. Is it hourly?

12 A. It is.

13 Q. How much hourly?

14 A. It depends on the level of staff working on the job but, so it really depends anywhere from
15 \$200 an hour to \$700 an hour. Somewhere in there is my recollection.

16 MS. KERR: Okay. Thank you. No further questions.

17 JUDGE HATCHER: Thank you.

18 MS. KERR: I do have a couple others.

19 JUDGE HATCHER: You're good. Go ahead.

20 BY MS. KERR:

21 Q. How many hours have you put in so far?

22 A. I don't have that. It would be difficult to guess.

23 Q. Do you have an estimate?

24 A. 100, 80 to 100 my guess.

25 MS. KERR: Thank you.

26 JUDGE HATCHER: Thank you. That takes us to Commissioner questions for Mr. Sean Riley.

27 Any Commissioner questions? Hearing none. The Judge does have a couple.

28 QUESTIONS

29 BY JUDGE HATCHER:

30 Q. Does Price Waterhouse Coopers perform the financial statement audit of Energy?

31 A. Of Evergy?

32 Q. I'm sorry. Of Evergy, yes.

33 A. No.

1 Q. Do you know if the FERC, that's Federal Energy Regulatory Commission, USOA, that's
2 Uniform System of Accounts, do you know if the FERC USOA requires electric
3 utility use of a specific rate design methodology?

4 A. Of a specific, no.

5 Q. Can you tell me your experience with writing computer software code or generating report
6 queries from utility customer data and billing software?

7 A. Certainly. I have zero, zero experience.⁴
8

9 **Q. Does the testimony of Company Witness, Sean Riley, represent a witness that is not**
10 **providing any value to rate payers but is paid handsomely at the same time?**

11 A. Yes. Mr. Riley's testimony is primarily over what he is being paid at an hourly rate, how Price
12 Waterhouse Coopers did not perform a financial statement audit of Evergy, and how he
13 personally does not have experience in the circumstances of the Company for which they
14 hired him for. Being paid \$200-\$700 an hour but not providing any value does not help rate
15 payers.

16 **Q. Do you have any examples that pertain to excessive legal counsel specifically?**

17 A. Yes. Despite having in-house counsel, Evergy West retained additional legal counsel from
18 the firm of Fischer & Dority to aid them in this case. As I stated preciously, this is not in itself
19 imprudent. However, the Company then further retained counsel from Dentons US LLP
20 ("Dentons"). According to the service list for this case, there are at least three attorneys from
21 Dentons working on this case. This is excessive. Dentons is the world's largest global law firm
22 operating in over eighty countries around the world with over 160 offices and more than 5,600
23 lawyers. It is the 6th-largest law firm by revenue making nearly \$3 billion. To retain multiple
24 counsel from a firm of this size and stature for a rate-case proceeding before a state regulatory
25 body is unnecessary and unreasonable.

26 **Q. Did the Company seek other bids for the scope of work of their consultants, vendors, or**
27 **attorneys in this case?**

28 A. No. The Company's response to Data Request 0095, question No. 5, "Did EMW seek other bids
29 for this scope of work? If not, why not?" was:

⁴ EO-2024-0002, Transcript - Volume 3 (Evidentiary Hearing - Jefferson City, MO - January 30, 2024), Sean Riley testimony, page 53-56.

1 “No. For highly specialized legal services and expert witnesses, Regulatory Affairs, Subject
2 Matter Experts, and the Law Department have researched the field in search of the optimal
3 match of expertise and experience to most effectively address the company’s circumstances.”

4 **Q. Do you believe this to be a problem?**

5 A. Yes. This leads to a potential exorbitant amount of fees since there is no real cost control for
6 the Company to follow. This in turn burdens Evergy Missouri West’s customers who have no
7 say in who their electric utility is and no say in who the Company chooses to pay for services
8 during a rate case. The Company has experienced internal attorneys and witnesses on payroll
9 currently. The Company researching “the field in search of the optimal match of expertise and
10 experience to most effectively address the Company’s circumstances” is clearly an approach
11 to seek out witnesses that will favor the Company’s shareholders at the expense of the rate-
12 paying public.

13 **Q. If the Commission has ruled on a 50/50 sharing mechanism in the past, should that not**
14 **help the burden of customers having to pay for excessive fees born by the Company for**
15 **rate case expense?**

16 A. Although the Commission has previously ruled that a 50/50 sharing be the standard for rate
17 cases, the Company still has the ultimate say on who they choose for their outside attorneys
18 and consultants. Due to that being the case, Evergy Missouri West has the option to pick the
19 most expensive consultants and attorneys. This is coupled with the Company having an
20 excessive number of attorneys and consultants on a case instead of using in house labor.

21
22 **Q. Do you have a disallowance for attorney and consultant fees?**

23 A. Yes. I recommend the Commission disallow from rate case expense 100% of the fees
24 associated with outside attorneys, consultants, and vendors for the following:

- 25 • Dentons US LLP Kansas City
- 26 • Concentric Energy Advisors

27 **Q. You previously explained why Dentons is excessive, who is Concentric Energy Advisors**
28 **and why should the Commission disallow their costs?**

29 A. Concentric Energy Advisors is a consulting firm that has spent time reviewing the written
30 testimony of Evergy Missouri West’s witnesses and having expensive phone calls with those

1 witnesses. The fees associated with this vendor should be disallowed due to the Company
2 having enough in house personnel and witnesses to do this work. Paying for the third-party
3 vendor is excessive and rate payers should not bear, even half, the burden of these expenses.

4 **Q. Can you summarize your recommendation for rate case expense in this case?**

5 **A.** Yes. First, I recommend that Evergy Missouri West's rate case expense follow Commission
6 precedent and the Company follow the 50/50 rate case sharing. Secondly, I recommend that
7 the Company should have normalized rate case expense by taking the rate case expense of
8 \$1,659,158 from Case No. ER-2022-0130 added to the rate case expenses from this case and
9 then divided that sum by the number of years they expect to recover the amount. Third, I
10 recommend that a portion of the depreciation study be disallowed for this rate case, the
11 Company has not performed a new study for this case and since the Company has been paid
12 back for their depreciation study through rates for at least a year already. Finally, I recommend
13 that a portion of outside attorney and consultant fees be disallowed due to the Company
14 having an excessive number of outside help and the expensiveness of that help, which does
15 not help in limiting rate increases on customers. To be exact, I recommend the disallowance
16 of fees associated with Dentons US LLP Kansas City and Concentric Energy Advisors.

17 **Q. Does this conclude your direct testimony?**

18 **A.** Yes it does.

