

**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

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Case No. ER-2024-0189

**INITIAL BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL**

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## **Glossary of Terms**

As used in this brief,

- “DSM” means Demand Side Management
- "Evergy Metro" means Evergy Metro, Inc. d/b/a as Evergy Missouri Metro
- “EMW,” “Evergy West,” and “the Company” all mean Evergy Missouri West, Inc. d/b/a Evergy Missouri West
- “FAC” means Fuel Adjustment Clause
- “IRP” means Integrated Resource Plan
- “OPC” means the Missouri Office of the Public Counsel
- “PPA” means Purchase Power Agreement
- “SPP” means Southwest Power Pool
- “TOU” means Time of Use rates

## Introduction

The Joint list of issues filed in this case on September 19, 2024, identified forty-three issues that needed to be addressed. [*List of Issues*, pgs. 1 – 11, ER-2024-0189 EFIS Item No. 241]. The Unanimous Stipulation and Agreement filed thirteen days later resolved all but two of these issues. [*Unanimous Stipulation and Agreement*, pg. 2, ER-2024-0189 EFIS Item No. 264]. Of these two, only one was set for hearing in October, with the parties presenting their opening arguments on October third. [Tr. Vol. 8 pg. 3 lns. 2 – 12, ER-2024-0189 EFIS Item No. 269]. This brief addresses only that issue.

The issue, as stated in the filed *List of Issues*, reads as follows: “What sharing ratio between EMW and its customers should the Commission order as an incentive mechanism in EMW’s FAC?” [*List of Issues*, pg. 2, ER-2024-0189 EFIS Item No. 241]. The OPC’s position is that the existing sharing mechanism ratio (which currently splits costs/savings 95% to customers and 5% to the Company’s shareholders) has proven an insufficient incentive to encourage Evergy West to properly manage its fuel and purchase power costs. [*Public Counsel’s Statement of Positions*, pgs. 4 – 5, ER-2024-0189 EFIS Item No. 244]. Therefore, the OPC argues the Commission should change the 95/5 sharing ratio to shift a larger percentage of the burden onto the Company and its shareholders. [*Id.*]. Specifically, the OPC is arguing that the Commission should order an incentive mechanism that recovers or returns from customers 75% of the difference between the FAC base costs and actually incurred

costs and leaves the remaining 25% to either be recovered from or retained by the Company.<sup>1</sup> [*Id.*].

At the highest level, the simple explanation for the OPC's position is that the currently existing 95/5 incentive mechanism ratio has not achieved the desired goal of ensuring Evergy West efficiently and cost-effectively manages its fuel and purchased-power procurement activities. [*Id.*]. This is principally demonstrated by the Company's longstanding failure to build or otherwise acquire sufficient generation to regularly meet its customer's energy needs in favor of simply relying on the SPP energy market since it was granted an FAC. [*Id.*]. The result of this decision has been for Evergy West to incur costs in excess of \$1 billion over its last four FAC prudence review periods, the majority of which has been passed on to Evergy West's customers through the FAC. [*Id.*]. The OPC argues that, by changing the FAC incentive mechanism to shift a greater share of the potential risk exposure associated with management of the Company's fuel and purchase power costs onto Evergy West itself, the Commission will encourage Evergy West to change course and work to mitigate – and hopefully even eliminate – the existing energy deficit it currently faces. [*Id.*].

To present the OPC's argument for changing Evergy West's FAC incentive mechanism, this brief will first address the statute that allows for such a mechanism.

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<sup>1</sup> As will be discussed much later in this brief, the 75/25 sharing ratio that the OPC is proposing would still allow Evergy West to recover more than 90% of its FAC related costs even if the Company's actual FAC costs were 150% of those included in base rates. [Ex. 302, Surrebuttal Testimony of Lena M. Mantle, pg. 8 lns. 4 – 9, ER-2024-0189 EFIS Item No. 178].

This will be followed by a deeper dive into why the OPC's requested change is necessary. The brief will then provide some necessary historical context to demonstrate that Evergy West's energy deficit problem is neither a new nor isolated occurrence. Finally, the OPC's brief will conclude with an analysis of what is at stake if the Commission fails to act on this matter, as well as what may occur if the Commission does rule as the OPC requests.

## Legal Background

The FAC is a creature of statute. Specifically, it is provided for by Revised Statute of Missouri section 386.266.<sup>2</sup> Subsection one of this statute allows, “any electrical corporation [to] make an application to the commission to approve rate schedules authorizing . . . periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs[.]” [RSMo. § 386.266.1]. Allowing these periodic rate adjustments is a legislative grace extended to electric utilities, in that, it results in single-issue ratemaking, which is otherwise prohibited under Missouri law. [*State of Mo. ex rel. Pub. Counsel v. PSC of Mo.*, 397 S.W.3d 441, 448 (Mo. App. W.D. 2012) (“[W]hen a utility’s rate is adjusted on the basis of a single factor, without consideration of all relevant factors, it is known as single-issue ratemaking. Single-issue ratemaking is generally prohibited in Missouri ‘because it might cause the [Commission] to allow [a] company to raise rates to cover increased costs in one area without realizing that there were counterbalancing savings in another area.’” (citing *State ex rel. Midwest Gas Users’ Ass’n v. PSC*, 976 S.W.2d 470, 479 (Mo. App. W.D. 1998)); see also *State ex rel. Util. Consumers Council, Inc. v. Pub. Serv. Com.*, 585 S.W.2d 41, 57 – 58 (Mo. banc 1979) (finding an FAC ordered by the Commission in

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<sup>2</sup> An FAC had been ordered by this Commission prior to the enactment of section 386.266. [*State ex rel. Util. Consumers Council, Inc. v. Pub. Serv. Com.*, 585 S.W.2d 41, 44 (Mo. banc 1979)]. However, the Missouri Supreme Court determined the implementation of such an FAC violated Missouri statutes governing the Commission’s exercise of power. [*Id.* at pgs. 57 – 58]. This decision was then effectively overturned by the State’s legislature through the passage of section 386.266. [see RSMo. § 386.266]. Thus, in the absence of section 386.266, the FAC has already been found to be illegal, which establishes irrefutably its nature as a creation of statute.

the absence of specific statutory enabling language to be an illegal form of single-issue ratemaking)].

Recognizing that it was providing the utility with a statutory exception from existing Missouri law, the legislature included provisions in the FAC statute designed to help prevent the FAC from being abused. One of the more important of these provisions is the legislative directive that “[t]he commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.” [RSMo. § 386.266.1 (emphasis added)]. This statutory language is the legal basis for including a sharing ratio between Evergy West and its customers as part of the FAC mechanism. But how does this ratio achieve the desired effect of improving the efficiency and cost-effectiveness of the Company’s fuel and purchased-power procurement activities? To answer that, one needs to consider what happens when an electric utility does and does not have an FAC.

In the absence of an FAC, a utility would be wholly responsible for covering the difference between the net energy and purchased power costs included in its base rates and those it actually incurs. [Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 13 lns. 4 – 5, ER-2024-0189 EFIS Item No. 98]. “This means that the utility itself is exposed to the risk of any major price fluctuations in the cost of fuel or the energy market.” [*Id.* at lns. 5 – 7]. Given this risk exposure, the utility would therefore have a very strong incentive to take whatever actions it could to minimize this risk. [*Id.* at



lns. 9 – 12]. This would most likely include (as will be explained in greater detail later) building additional generation that could produce energy which could then be sold into the energy market to offset the cost of buying energy off that same market. [*Id.*].

Having an FAC results in the direct opposite situation occurring. [*Id.* at lns. 13 – 15]. The utility has effectively no incentive to ensure it is effectively managing its fuel and purchase power procurement because “[i]ncreasing fuel or market prices are just passed on to customers with negligible impact on shareholders.” [*Id.* at lns. 15 – 16]. In fact, the utility can bring its risk exposure down to zero if it chooses to rely on contracts (such as PPAs) for the procurement of energy or capacity instead of building additional generation. [*Id.* at pg. 13 ln. 16 – pg. 14 ln. 3]. This also frees the utility’s ability to invest capital in other, non-generation areas without its shareholders having to worry about wild swings in the energy market. [*Id.* at pg. 14 lns. 5 – 7]. However, the downside is that the utility’s customers end up “exposed to the volatility of the energy market and hence may pay even higher bills due to increased FAC costs.” [*Id.* at lns. 7 – 9].

An FAC sharing ratio between customers and the Company seeks to bridge the divide between these two extremes. It does this by requiring the utility to cover some percentage of the FAC costs itself, which allows the utility to mitigate some but not all the risks associated with meeting those FAC costs. It is thus designed to put the Company back into the mindset of operating as though it did not have an FAC – which includes the attendant incentives to mitigate exposure to the energy market – while

still giving the utility some measure of the risk reduction and security that an FAC provides. It also means that, when determining the appropriate sharing ratio, one only needs to ask the simple question: will this sharing ratio cause the utility to act as if it did not have an FAC? If the answer is yes, then the sharing ratio is appropriate. If no, then the sharing ratio mechanism has failed in its primary goal.

To bring the discussion full-circle, subsection one of Revised Missouri Statutes section 386.266 permits the Commission to include in the ordered FAC “features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.” [RSMo. § 386.266.1]. The FAC sharing ratio mechanism is one example of such a feature and works by returning to the utility a percentage share of the risk exposure that the FAC otherwise eliminates. When it reviews a previously ordered FAC sharing ratio, the Commission therefore needs to ask itself this one simple question: has the degree of risk this ratio exposed the utility to properly incentivized that utility to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities? With regards to Evergy West, the answer to that question is an emphatic no. The current ordered FAC sharing ratio has not succeeded in incentivizing Evergy West to efficiently and cost-effectively manage its fuel and purchased-power procurement activities, as this brief will now go on to demonstrate.

## **The Problems with the Current 95/5 FAC Sharing Mechanism**

The current ordered sharing ratio for Evergy West's FAC requires Evergy West's customers to cover 95% of the difference between the FAC costs included in base rates and the FAC costs the Company actually incurs. [Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 8 ln. 5, Schedule LMM-D-1, ER-2024-0189 EFIS Item No. 98]. The Company and its shareholders only cover the remaining 5% of this difference. [*Id.*]. A cursory introduction to the problems with this 95/5 sharing mechanism was already offered in the previous section. At its heart, the issue is that the 95/5 sharing mechanism has not incentivized Evergy West to efficiently and cost-effectively manage the energy needs of its customers. [*Id.* at lns. 5 – 7]. Instead, Evergy West has continuously made the deliberate decision “to rely on the SPP energy market . . . instead of building or acquiring cost-effective generation that meets the energy needs of its customers.” [*Id.* at lns. 7 – 10]. This has resulted in Evergy West's customers paying exorbitant FAC costs. [*Id.* at pg. 8 ln.15 – pg. 9 ln. 14]. Before reviewing the facts establishing this point, however, it is best to consider how the SPP energy market actually works.

### **Overview of the SPP Energy Market**

Southwest Power Pool (or “SPP”) is an example of a regional transmission organization (or “RTO”) [About Us, Southwest Power Pool, <https://www.spp.org/about-us/>]. The RTO itself does not own or operate any generation resources. [Ex. 300P, Direct Testimony of Lena M. Mantle, Schedule

LMM-D-4 pg. 4, ER-2024-0189 EFIS Item No. 98]. Instead, the RTO facilitates “the sale and purchase of electricity between its members” usually through the use of a centralized energy market. [*Id.*]. Some members of the RTO may be purely energy producers who are only selling into this market. Others may be entities that solely serve customer load and hence only buy off the market. And then there are some entities, like Evergy West, that serve both functions and therefore act as both a buyer and seller in the energy market.

Evergy West, being a member of SPP, pays the RTO for the hourly load of the energy it buys off the SPP energy market to serve its customers at the price for that hour, as set by SPP. [*Id.* at pg. 8 lns. 15 – 20, LMM-D-4 pg. 4]. It also receives from SPP the revenue generated by the energy it is able to produce and sell into the SPP energy market on an hourly basis, again at the hourly price set by SPP. [*Id.*]. The load being served (*i.e.* the amount of energy being bought off the market) is independent of the energy Evergy West sells into the market at any one given time. [*Id.*]. This means that the Company could be selling either more or less energy than it is buying off the SPP energy market in any given hour. [*Id.*].

Both the cost of the energy bought off the SPP energy market and the revenues generated by selling energy into the SPP energy market are considered “off-system sales” and are included in the calculation of Evergy West’s FAC. [*Id.*]. These off-system sales are added to the cost of fuel to yield all the costs flowing through the FAC. [*Id.*]. As a result, the cost to customers can be expressed with this simple equation:

$$\text{Cost to Customers} = \text{Fuel Cost} + \text{Load Cost} - \text{Generation Revenues}$$

[*Id.*]. Because the cost of fuel and the cost of energy purchased off the market (load cost) are usually going to be positive numbers (given that such things are rarely free), the best way for a utility to reliably control for the costs being flown through the FAC is to manage the generation revenues. This then brings us to the main issue in this case.

### Evergy West's Overreliance on the SPP Energy Market

In its last triennial IRP update, Evergy West estimated that it could only generate 56% of the energy its customers would need in 2023 on a regular basis.<sup>3</sup> [Ex.

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<sup>3</sup> It is important to understand that this statement is referring to the Company's ability to provide energy and not its ability to meet SPP imposed capacity requirements. These are two very different concepts, both separately defined in the Commission's chapter 22 rules. Energy is defined as "the total amount of electric power that is generated or used over a specified interval of time measured in kilowatt-hours (kWh)." [20 CSR 4240-22.020(19)]. Capacity, meanwhile, is defined as "the maximum capability to continuously produce and deliver electric power via supply-side resources or the avoidance of the need for this capability by demand-side resources." [20 CSR 4240-22.020(19)]. The OPC's expert witness provided a helpful analogy to explain the difference:

[T]here is a sign in the elevator that states its capacity, i.e. how many people the elevator can hold at a given time. This limits the amount of people that can be in the elevator at any given time. However, it gives no information on the number of people that ride in the elevator each day. In a given day the elevator may make 10 trips with 20 people each time meaning 200 rides (10 x 20) were given. The next day the elevator may not move because the building is closed resulting in zero rides being given that day. The capacity is the same, 20 people, no matter how many rides are given. However, the number of rides given cannot be determined from the capacity of the elevator.

Similarly, the capacity of a generator is the limiting criteria for the maximum amount of energy a generator can produce. A plant with a capacity of 100 MW cannot generate 200 MWh of energy in any given hour just as an elevator with a capacity of 20 people cannot hold 40 people. However, it is not correct to say that same plant is producing 100 MWh of energy at every hour of every day just as that same elevator is not necessarily carrying 20 people with every trip. The capacity and energy produced by the generator are thus related, in as far as they are dependent on its design, but are measuring very different things.

300P, Direct Testimony of Lena M. Mantle, pg. 16 lns. 2 – 6, ER-2024-0189 EFIS Item No. 98]. That means the Company will not be selling energy into the SPP energy market to offset the remaining 44% most of the time. [*Id.*]. The Company, or rather, its customers, will instead simply be exposed to the full cost incurred by Evergy West to purchase that 44% of the energy it needs to supply. The OPC’s expert witness likened this scenario to Evergy West failing to buy “insurance” to hedge against the SPP energy market, and for good reason.

SPP energy market prices change every five minutes. [*Id.* at pg. 10 lns. 3 – 4]. It would thus be very difficult for a utility to accurately predict SPP market prices in advance. However, a utility can hedge against those market prices by having efficient generation that can be economically dispatched into the market at the same time the utility is buying energy off the market. If there is a sudden spike in the price of energy, the utility with generation would see a spike in both its load costs and generation revenues as the price would be up for both the buyers and the sellers of energy. As previously shown, these two components ultimately cancel each other out when calculating the total energy cost to customers. As such, “Generation resources are hedges or ‘insurance’ against price volatility in the SPP market[,]” and “[t]he

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[Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 5 lns. 7 – 23, ER-2024-0189 EFIS Item No. 98]. The OPC acknowledges that Evergy West can meet the SPP capacity requirements, but the Company’s own data shows that it cannot meet its customers energy requirements on a regular basis through the cost-effective discharge of its own generating units. [*Id.* at pg. 16 lns. 2 – 6].



periods, due primarily to its failure to maintain sufficient generation. Stop for a moment and consider the impact that has had on the Company and, more importantly, its customers.

That \$1 billion is all from costs that Evergy West incurred because it had to buy energy off the SPP energy market that it could not cover by selling into the SPP energy market. In other words, it is all costs borne out of the Company's lack of generation. It also represents \$1 billion that has now passed into the hands of other power generators who serve the SPP energy market; potentially those operating in other states. It really raises the question: how much better a position would the Company now be in if that \$1 billion had been spent building new generation for Evergy West? Unfortunately, that answer will remain ever unknown. Regardless, the conclusion that should be reached by the Commission based on this data is quite clear: Evergy West has not achieved an "efficient and cost-effective" management of its fuel and purchase power costs.

If the staggering amount of Evergy West's losses were not concerning enough, there is another aspect to Figure 1 that should alarm the Commission. That is the comparison between Evergy West and its sister utility Evergy Metro. In the same period that Evergy West was losing over a billion dollars in the SPP energy market, Evergy Metro managed to achieve positive revenues of nearly half a billion. [*Id.* at lns. 8 - 9]. Why is this? It all comes down to the simple fact that, "during the six calendar years of 2017 through 2022, Evergy Metro had generation above what its customers needed [while] Evergy West relied on the SPP market for approximately



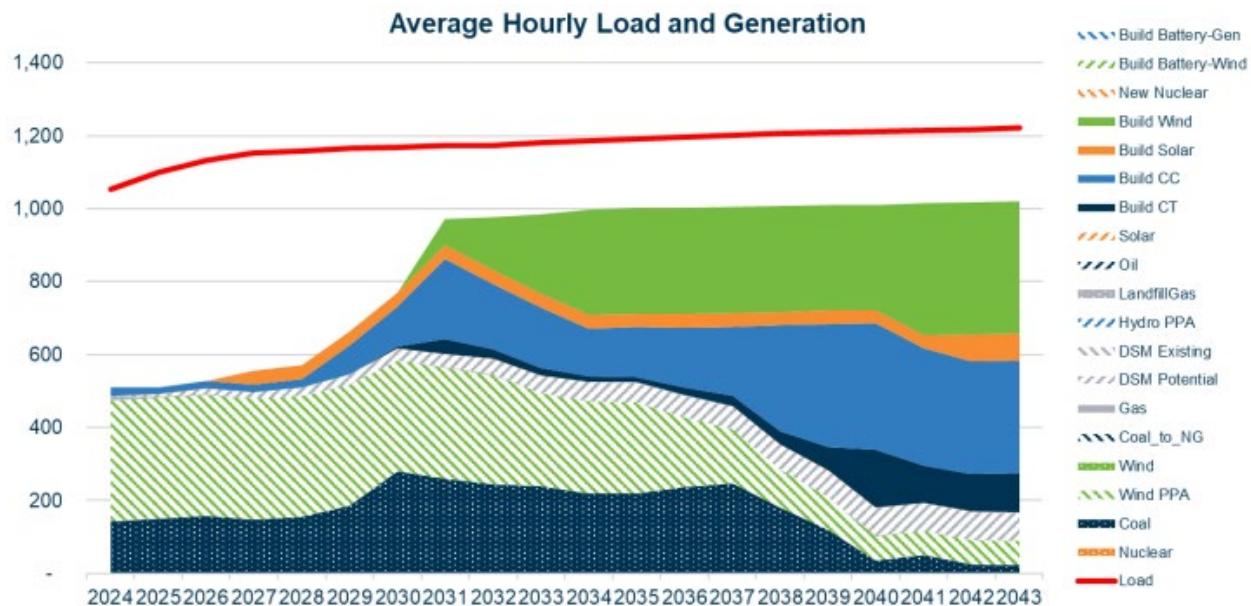
half of the energy its customers needed.” [*Id.* at lns. 11 – 14]. These are two utilities “that faced the same market, the same weather, and have the same management” yet who decided to take extremely different approaches to managing their energy needs with drastically different outcomes as a result. [*Id.* at lns. 10 – 11].

Evergy West clearly could have chosen to secure sufficient generation to meet its customers expected load on a regular basis. We know this simply because its sister utility Evergy Metro was able to accomplish that very goal. [*Id.*]. Instead, Evergy West made the deliberate choice to rely on the SPP energy market instead of acquiring additional generation and its customers paid an egregious price as a result. Worse, Evergy West also clearly does not intend to correct this problem moving forward. This can be seen by examining the Company’s expected generation portfolio on a prospective basis.

#### A Bleak Outlook on the Horizon

According to Evergy West’s own IRP filings, the Company “does not plan to have enough generation to meet its customers’ energy load in any year throughout the 20-year planning horizon.” [Ex. 302, Surrebuttal Testimony of Lena M. Mantle, pg. 19 lns. 6 – 9, ER-2024-0189 EFIS Item No. 178]. This can be seen in the graph from the Company’s IRP, reproduced below as Figure 2:

Figure 2: Evergy West IRP Projection



[*Id.* at lns. 4 – 5]. “The difference between the red line on the top (average hourly load) and average hourly generation shaded areas below is the amount of energy that Evergy West will not be able to provide with its own resources.” [*Id.* at lns. 9 – 11]. It is also important to note that this graph includes “the addition of a portion of the Dogwood combined cycle plant[.]” [*Id.* at lns. 6 – 7]. It also includes some now sadly erroneous assumptions regarding the Company’s potential for demand side management (“DSM”) programs.

According to its IRP, Evergy West is predicting a 358% increase in energy savings from its DSM programs over its 20-year planning horizon. [Ex. 314, Surrebuttal Testimony of Geoff Marke Public, pg. 15 lns. 2 – 4, ER-2024-0189 Item No. 181]. While those DSM savings are primarily driven today by business demand response programs (and to a lesser extent, residential demand response thermostats), “the 358% increase in demand savings that support Evergy West’s preferred plan

envisions is in large part predicated on opt-out TOU adoption with larger differentials than what were ultimately ordered.” [*Id.* at lns 8 – 10]. As a result, these DSM projects are almost guaranteed to be massively overstated. [*Id.* at pg. 16 ln. 9]. So not only is the Company not going to have enough generation to meet its customers’ energy load over the next twenty years, the gulf is also actually going to be worse than what the Company is currently projecting. This should be causing numerous alarm bells to go off even before one begins to consider how the rest of the SPP market will be changing over that same 20-year period.

This Commission recently hosted its first Power MO Resource Adequacy Summit wherein multiple stakeholders provided information regarding the future of energy resource adequacy in this State. Among those who presented was SPP itself, who provided important information about the future of the SPP energy marketplace. Excerpts of this presentation were recorded and reflected in the testimony of one of the OPC’s expert witnesses. [Ex. 302, Surrebuttal Testimony of Lena M. Mantle, pg. 20 ln. 3 – pg. 21 ln. 4, ER-2024-0189 EFIS Item No. 178]. These data points show how the SPP energy mix has seen a massive decline in base-load coal generation coupled with a huge uptick in intermittent wind generation, how the 2023 summer peak load was 5.5% higher than the previous peak and the 2022/23 winter peak was 8% higher than its previous period, and how excess capacity in SPP has been declining rapidly and is now expected to fall below the SPP’s peak margin requirements (which have coincidentally been raised for 2023). [*Id.*]. The story this tells is simple but alarming:

the energy supply in the SPP energy market is going down while demand is going up. That is a big problem for Evergy West.

Basic laws of supply and demand show that the lower the supply, the higher the price for a good. [Jason Fernando, Law of Supply and Demand in Economics: How It Works, Investopedia (June 27, 2024), <https://www.investopedia.com/terms/l/law-of-supply-demand.asp>]. A rising demand will equally result in an increase in the price of a good. [*Id.*]. Therefore, if there is a decrease in base-load generation resulting in a decrease in energy supplied in the SPP energy market and an increase in load peaks results in an increase in demand for energy, it is very easy to see that the result will be increases in the overall cost (*i.e.* price) of energy in the SPP energy market. This makes the uncovered portion of the energy needed by Evergy West – which, again, its own IRP predicts will continue to exist at some level for the next 20-year period – even more risky. The critical question now is whether the current FAC sharing mechanism will incentivize Evergy West to respond to this risk in the correct way.

#### Concluding thoughts on the Problems with the Current 95/5 FAC Sharing Mechanism

There are at least three facts that the OPC has so-far established with regard to Evergy West's resource planning:

1. Evergy West is heavily reliant on the SPP energy market to meet its customers energy needs on a regular basis;
2. This heavy reliance has unnecessarily exposed Evergy West's customers to extremely high prices that resulted in costs of over \$1 billion being passed through the FAC; and

3. The Company plans to continue relying heavily on the SPP energy market into the foreseeable future, even as the market itself becomes tighter and therefore riskier.

Without an FAC, Evergy West would undoubtedly respond to these factors by trying “to take out platinum ‘insurance’ *i.e.* building whatever resources it believes is necessary to minimize its risk of having to absorb any energy related costs that might arise due to this risk.” [Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 13 lns. 10 – 12, ER-2024-0189 EFIS Item No. 98]. However, “[b]ecause Evergy West has an FAC with a 95/5 sharing mechanism reducing its risk of cost recovery, the Company has decided . . . not to acquir[e] this necessary insurance[.]” [*Id.* at pg. 31 lns. 21 – 24]. This pattern of behavior demonstrates the undeniable truth: the 95/5 sharing ratio has fundamentally failed to incentivize Evergy West to efficiently and cost-effectively manage its purchase power costs. That is why the FAC sharing ratio needs to change. This brief will continue with that point in a moment, but first it will take a short interlude to describe how exactly Evergy West came to be in the position it finds itself today.

### **The History Surrounding Evergy West’s FAC**

Before it was acquired by Great Plains Energy, Inc. and eventually renamed Evergy West, the utility now before the Commission was known as Aquila. [Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 14 lns. 13 – 14, ER-2024-0189 EFIS Item No. 98]. In the last IRP that Aquila filed before its acquisition, it “estimated that under normal conditions its generation resources could only generate 74% of the

energy its customers' need, *i.e.* it was depending on the market to cover at least 26% of its customers' load requirements." [*Id.* at lns. 15 – 17]. Realizing that this was a problem Aquila sought to correct for this deficit by planning to add \*\*\_\_\_\_\_

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\_\_\_\_\_ \*\* [*Id.* at lns. 18 – 19]. This plan, however, was not destined to last.

“SPP did not have a day-ahead energy market and no investor-owned electric utility in the state of Missouri had an FAC when Aquila filed” its resource plan. [*Id.* at pg. 14 lns. 22 – pg. 15 ln. 2]. This is the most likely reason why “Aquila’s preferred resource plan was to ‘buy’ the proper insurance policy (*i.e.* building generation resources) it believed was necessary to minimize its risk of having to absorb any energy related costs.” [*Id.* at pg. 15 lns. 2 – 4]. “This behavior changed drastically once the Commission approved an FAC for Aquila.” [*Id.* at lns. 4 – 5].

“The Commission approved an FAC for Aquila effective July 5, 2007, five months after this resource plan was filed with the Commission.” [*Id.* at lns. 6 – 7]. In the more than fifteen years since then, only two additional generation resources were added to the fleet that was Aquila, now Every West prior to the acquisition of Dogwood this year. [*Id.* at lns. 7 – 16]. The first of these were a series of wind PPAs “that Every West claims [] it entered into not to meet their customers’ energy requirements (or to meet Missouri renewable energy standards), but for what Every West has termed ‘economic reasons,’” [*Id.*]. The second, was “the merchant Crossroads Energy Facility” which was added to Every West’s fleet only after its “parent company could not get any buyers for it.” [*Id.*]. Outside of these two additions,

no part of the former 775 MW of generation that Aquila planned to add before it received its FAC have materialized. [*Id.*].

This series of events paints perhaps the most irrefutable picture of why the FAC has failed in Missouri. Aquila had an energy deficit, it recognized it as a problem, and came up with a solution to fix it. The utility needed to come up with a solution because otherwise Aquila would bear the risk of price fluctuations that came with securing that energy deficit in between rate cases. But then the Company got its FAC and suddenly the plan that had been carefully developed went right out the window. This is obviously because the FAC (coupled with the introduction of the SPP energy market) effectively removed the risk of having to source energy from Aquila and placed it instead on the customers. Had the Commission not given Aquila its FAC in 2007, or else used a more meaningful sharing ratio, there is a high likelihood that Evergy West would have 775 MW of additional generation today. Instead, the Company has utilized the FAC as a safety net and continued to make decisions that only aggravated its current energy deficit problem.

“In addition to not adding any resources to meet its customers’ load requirements since the filing of that preferred plan, Evergy West retired the only coal plant of which it had sole control in 2018 reducing its capacity by 400 MW” [*Id.* at lns. 17 – 19]. Take a moment to consider that. Evergy West knew it was in an energy deficit, abandoned the plan Aquila had developed to add 775 MW of generation, and then retired an additional 400 MW of baseload generation. Not only that, “Evergy West did not add any resource to replace the capacity or energy generation

capabilities of this plant that it showed running through the entire 20-year planning horizon in its 2007 preferred resource plan.” [*Id.* at lns. 20 – 22]. Why? Why would an electric utility exacerbate its already significant energy shortfall by shutting down an existing plant nearly a decade ahead of schedule and then not replace that generation with anything? The answer is clear and obvious: the FAC.

Evergy West’s over-reliance on the FAC is the only thing that could explain the historical behavior Evergy West has taken. As previously stated:

Having 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. Increasing fuel or market prices are just passed on to customers with negligible impact on shareholders.

[*Id.* at pg. 13 lns. 13 – 16]. The FAC allowed Evergy West to ignore the risks associated with its actions because those risks did not impact the Company to enough of a degree to make a difference. If the Commission had not given Evergy West (then Aquila) its FAC or had used a different sharing ratio, things would now be different. “[I]f Evergy West did not have an FAC, it would have acted differently, putting steel in the ground, or entering into long-term firm contracts for the provision of energy instead of relying on the volatile SPP energy market.” [*Id.* at pg. 8 lns. 12 – 14]. This is why the Commission must act now, to right this past wrong and put Evergy West and Missouri in general back on the correct track.



## **A call to Action**

In the words of the immortal bard, “Whereof what's past is prologue; what to come, in yours and my discharge.” [William Shakespeare, The Tempest act 2, sc. 1]. Whatever events previously transpired that led up to this point cannot be undone, but the Commission can act in the present to change the situation moving forward. This is what the OPC is now requesting; not a retroactive fix, but a prospective one. Stated another way, the OPC is asking Evergy West to have more “skin in the game” when it comes to resource management.

As shown, Evergy West’s current IRP is a mirror of its history. The Company has had to rely on the SPP energy market for well over a decade and is now planning to continue to do so for another two decades. Nothing short of changing the FAC sharing ratio, and thereby forcing Evergy Wests to shoulder a greater share of the risk that comes with not having sufficient generation, will get the Company to correct its behavior. And so, again, that is what the OPC now requests. Before concluding, though, the OPC will touch briefly on two final points.

### **A 75/25 Split Represents a Low Impact, High Reward Scenario for Evergy West**

Throughout the course of this brief the change from the 95/5 sharing mechanism has been referred to as an increase in the proportional share of risk borne by Evergy West. But that only tells half the story. The sharing ratio (whether 95/5, 75/25, or something else entirely) is symmetrical by design. [Ex. 302, Surrebuttal Testimony of Lena M. Mantle, pg. 5 lns. 17 – 18, ER-2024-0189 EFIS Item No. 178].

If the Company does find a way to lower its actual fuel and purchase power costs below what is already in base rates (*i.e.* it goes on to acquire new generation), then the Company retains its percentage share of the difference. The OPC's witness explained this phenomenon with regard to the proposed 75/25 split:

If 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. This would result in Evergy West actually recovering more than the cost that it incurred thus giving it the opportunity to increase its earnings.

[*Id.* at pg. 5 lns. 18 – 23 (emphasis added)]. This is why Evergy West should be viewing the proposed 75/25 split as an opportunity for the Company. [*Id.* at pg. 5 lns. 10 – 11].

Another important point to make is that, even with a 75/25 sharing mechanism, Evergy West would still recover over 90% of its total FAC costs under most scenarios. [*Id.* at pg. 6 lns. 3 – 5]. To understand what this means it is necessary to remember that the FAC only recovers the difference between “the FAC costs included in revenue requirement and what is actually incurred.” [*Id.* at lns. 10 – 11]. Because only the difference between base and actual FAC costs flows through the FAC, the vast majority of the FAC related costs incurred by a utility will still be recovered in base rates in all but the most extreme circumstances.<sup>4</sup> The OPC's expert

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<sup>4</sup> Further, as was already discussed, in the circumstances where the actual FAC costs fall below the base rates the utility still recovers all its actual costs and then retains a portion of the excess. [Ex. 302,

witness prepared the table, shown as Figure 3, that represents how much of the total FAC costs are recovered under both the current 95/5 sharing mechanism and the proposed 75/25 sharing mechanism for a variety of scenarios:

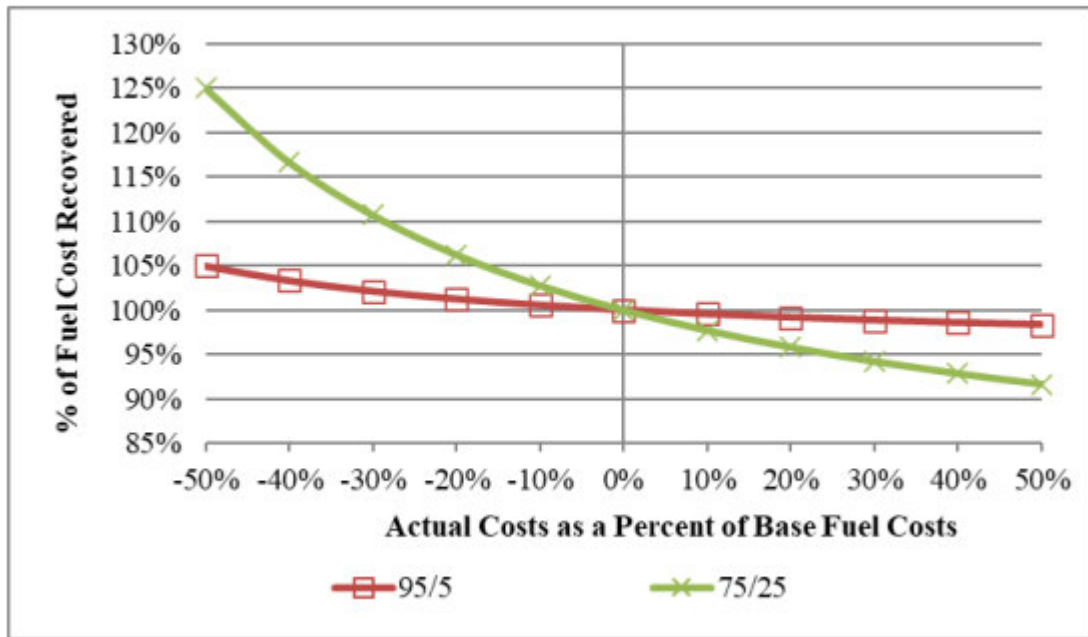
Figure 3: Total FAC Cost Recovery Comparison

Sharing Mechanism	Change in Fuel and Purchased Power Costs from Base										
	-50%	-40%	-30%	-20%	-10%	0%	10%	20%	30%	40%	50%
95/5	105%	103%	102%	101%	101%	100%	100%	99%	99%	99%	98%
75/25	125%	117%	111%	106%	103%	100%	98%	96%	94%	93%	92%

[*Id.* at pg. 7 lns. 5 – 6]. This information was further presented as a graph to better visualize the comparison between the two proposals:

Figure 4: Total FAC Cost Recovery Comparison Graph

Cost Recovery through Symmetrical Sharing Mechanisms



[*Id.* at lns. 2 – 3]. As the OPC’s expert witness explained:

Surrebuttal Testimony of Lena M. Mantle, pg. 6 lns. 12 – 16, ER-2024-0189 EFIS Item No. 178]. This results in the Company recovering above 100% of its actual FAC costs. [*Id.* at pg. 7 lns. 5 – 6].

This graph shows, and the table reports, that if the actual costs were 20% below the costs in permanent rates (shown at -20%), Evergy West would get to recover 106% of the cost that it incurred with the 75/25 sharing mechanism but only 101% with the 95/5 sharing mechanism. The change to the 75/25 sharing mechanism would allow them to keep 5% more than the 95/5 sharing mechanism. If it reduced costs by 50%, then it would get to recover 125% of the cost it incurred with the 75/25 sharing mechanism which is 20% more than the 105% it would get to recover with the 95/5 sharing mechanism.

[*Id.* at lns. 7 – 14]. However, when the inverse occurs (that is the Company's actual FAC costs are higher than the base costs), The Company still manages to recover the majority of their total FAC costs even under a 75/25 sharing ratio:

As shown above, when costs increase 20%, Evergy West would still be able to recover 96% of the fuel and purchased power costs it incurred. If the costs increase 50%, with a 75/25 sharing mechanism Evergy West would still recover 92% of the costs.

[*Id.* at pg. 8 lns. 4 – 9]. Given these factors, it should be clear why the OPC argues that the 75/25 sharing ratio split represents a low impact, high reward situation for Evergy West.

Even under a scenario where actual FAC costs were 150% of what was included in base rates, Evergy West would recover 92% of its total FAC costs under a 75/25 split. [*Id.*]. If the Company can get just 20% below its base costs, on the other hand, it has the opportunity to recover 105% of its total FAC costs. [*Id.* at lns. 7 – 14]. Therefore, the 75/25 split should not be seen as some impossible hurdle placed in Evergy West's path. Instead, it should be seen as what it was always meant to be: an incentive. The FAC sharing ratio is meant to provide a reason for Evergy West to take

greater care in ensuring that it is efficiently and cost effectively managing its fuel and purchase power costs. This is something that the Commissions of the past clearly knew as they articulated the importance or re-assessing the FAC if this goal was not met.

### The FAC was Never Intended to be Set in Stone

As explained earlier, Evergy West, then Aquila, was the very first electric utility in this State to receive an FAC. [Ex. 300P, Direct Testimony of Lena M. Mantle, Schedule LMM-D-2 pg. 8, ER-2024-0189 EFIS Item No. 98]. In that case, Aquila, to the surprise of none, “asked for a 100 percent pass through of costs to customers.” [*Id.* at testimony pg. 33, lns. 17 – 18]. This was rejected by the Commission, who found it was “insufficient to assure Aquila would take reasonable steps to keep its fuel and purchased power costs down.” [*Id.* at lns. 18 – 22]. A group of four intervenors to the case (AARP, SIEUA, AG Processing, and Federal Executive Agencies) counter argued for a “a 50/50 sharing of costs above those in base rates.” [*Id.* at pg. 34 lns. 1 – 2]. This too was rejected. Instead, the Commission chose to adopt a 95/5 sharing mechanism; something that no party to the case had proposed.<sup>5</sup> [*Id.* at lns. 5 – 9]. The Commission therefore recognized the importance of having some incentive mechanism, but ultimately just had to “pick” a number from somewhere between what had been proposed by the parties to achieve what the Commission

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<sup>5</sup> “Staff recommended an interim energy charge and OPC recommended the Commission approve neither an FAC nor interim energy charge for Aquila.” [Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 33 n. 48, ER-2024-0189 EFIS Item No. 98].

considered to be just and reasonable. [*Id.*]. Yet that did not mean the Commission considered their invented solution to be fixed or permanent.

In his concurring opinion filed with the Commission's order, then Chairman Jeff Davis explained that the 95/5 sharing mechanism was not to be viewed by the Company as a guarantee:

Aquila should be very mindful that the majority of this commission took a bold step in awarding Aquila a fuel adjustment mechanism. This commission and the General Assembly will be watching. If Aquila fails to adopt a proper hedging strategy, fails to follow its hedging strategy or abuses the discretion given to it by this commission in any other way, this commissioner will not hesitate to modify or reject Aquila's FAC application in a future proceeding.

[*Id.* at pg. 35 lns. 2 – 8 (emphasis added)]. It is also interesting to note that Chair Davis explicitly stated his reason for rejecting the higher, 50/50 sharing ratio was because it “would make it extremely difficult for the company to reinvest in infrastructure and to attract the investment capital necessary to maintain infrastructure and expand generation capacity.” [*Id.* at pg. 34 lns. 14 – 16]. As this brief has already explained:

The only additional infrastructure added by Evergy West since this report and order was a 153 MW portion of Iatan 2, which was under construction prior to Evergy West receiving an FAC, the Crossroads Energy Facility that Evergy West's parent company tried to sell but could not find a buyer, and the June 2024 purchase of less than a quarter ownership of the Dogwood plant.

[*Id.* at pg. 35 lns. 12 – 16]. In the past, the members of this Commission did not order a higher 50/50 sharing ratio because they feared it would impact the Company's ability to generate capital and thus build more generation. [*Id.* at pg. 34 lns. 14 – 16]. Yet, without the proper incentive, Evergy West still chose not to build more generation, even under the lower 95/5 sharing ratio. [*Id.* at pg. 35 lns. 12 – 16]. Having now seen how the 95/5 sharing ratio resulted in the very thing the Commission feared would happen without this low sharing ratio, the Commission is now in a better position than the 2007 Commission to ensure it does not make that same mistake twice.

The need to make additional investments – and the proposed impact that changing the FAC might have on that need – is once again being used by parties to argue against the OPC's position more than a decade since the prior decision was handed down. Yet the OPC still hopes that, this time around, the Commission will recognize the folly of these past arguments and choose to act. Former Chairman Davis, speaking for the Commission, made one thing very clear when Evergy West was first awarded an FAC: the FAC sharing ratio is not set in stone. At the time, he was waiting to see what the future would hold before he decided on whether to change it. Now the future is here, and the need to change the FAC sharing ratio has become inescapable. Now is the time to act.

## Conclusion

As soon as Evergy West was awarded an FAC, it scrapped the existing plans it had to build new generation and instead made the deliberate decision to rely on the SPP energy market to cover an ever-increasing portion of its customer's energy needs. This has exposed Evergy West's customers to an unnecessary level of risk and has resulted in losses in excess of a billion dollars. Given these facts, can the Commission truly conclude that the existing FAC sharing ratio has properly incentivized Evergy West to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities? Once again, the OPC contends that this question should be answered with an emphatic no.

The Company's existing IRP shows that the current paradigm of relying on the SPP energy market to make up for missing generation is not expected to end in the next twenty years. That is because Evergy West clearly prefers to rely on the safety-net that is the FAC instead of taking on the riskier and more demanding task of developing its current generation fleet. The only solution to this problem is for this Commission to choose to act. This Commission needs to send a clear message to Evergy West, a message that tells the Company that just leaning on the SPP energy market is not sufficient, a message that it is time to put steel in the ground. Modifying the existing FAC sharing ratio, whether to the proposed 75/25 or something else entirely, will send just such a message. The OPC thus asks this Commission to take the necessary actions to safeguard Evergy West's customers and Missouri's energy future in general.



WHEREFORE, the Office of the Public Counsel respectfully requests the Commission rule in the OPC's favor on the issues presented herein and grant any such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

By:           /s/ John Clizer            
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CERTIFICATE OF SERVICE

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

\_\_\_\_\_ /s/ John Clizer