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	))))	**File No. ER-2024-0189**

RESPONSE TO CPUC APPLICATION TO INTERVENE

COMES NOW Staff of the Missouri Public Service Commission and for its Response to CPUC Application to Intervene respectfully states as follows:

1. On February 5, 2024, the Commission issued an order setting a deadline to intervene in this proceeding. In that February 5th order, the Commission stated that "Applications to intervene shall be filed no later than February 20, 2024."

2. Thereafter, on May 21, 2024, the Federal Executive Agencies ("FEA") filed an application to intervene in this proceeding. In its application, FEA stated that it was unaware of the rate case application until after the intervention deadline had passed. By order issued June 26, 2024, the Commission denied FEA's application to intervene, finding as follows: "The Commission finds that FEA being unaware despite the Commission's notice, and that FEA's intervention application being three months late, does not rise to the level of good cause. Consequently, the Commission will deny FEA's untimely application to intervene."

3. As the Commission recognized in its *Order Directing Filing* issued herein on December 17, 2024, "On December 14, 2024, Clarksdale Public Utilities Commission ["CPUC"] filed an *Application to Intervene* regarding the procedure set out in paragraph 5 of the *Unanimous Stipulation and Agreement* of the parties filed on October 2, 2024." In its application to intervene, CPUC states that it was unaware of this case until

November 4, 2024; this is the same attempted justification for being late to file for intervention as given by FEA. FEA's intervention application was three months late and the Commission denied its application to intervene as untimely. CPUC's intervention application is nearly **ten months late**, was made after the evidentiary hearing, and after the Commission's *Report and Order* (issued December 4, 2024). As the Commission denied FEA's application to intervene, so should it deny CPUC's application to intervene.

4. Although it is denominated as an "application to intervene," as the Commission recognized in its *Order Directing Filing* issued herein on December 17, 2024, CPUC's pleading takes issue with the procedure set out in paragraph 5 of the *Unanimous Stipulation and Agreement* ("Stipulation") of the parties filed on October 2, 2024. This Stipulation was approved by the Commission's *Report and Order* issued December 4, 2024, which ordered the signatories to comply with the terms of the Stipulation. The *Report and Order* had an effective date of December 14, 2024. Since CPUC takes issue with the procedure set out in paragraph 5 of the Commission-approved Stipulation, rather than seeking intervention CPUC is in essence actually seeking rehearing of the *Report and Order* approving the Stipulation.

5. Section 386.500, RSMo, provides in pertinent part that

> 1. After an order or decision has been made by the commission, the public counsel or **any corporation or person or public utility interested therein shall have the right to apply for a rehearing** . . . .
>
> 2. No cause or action arising out of any order or decision of the commission shall accrue in any court to any corporation or the public counsel or person or public utility unless that party shall have made, **before the effective date of such order** or decision, application to the commission for a rehearing. Such application shall set forth specifically the ground or grounds on which the applicant considers said order or decision

> to be unlawful, unjust or unreasonable. The applicant shall not in any court urge or rely on any ground not so set forth in its application for rehearing. (Emphasis added)

6. CPUC filed its pleading **on** the effective date of the Commission's *Report and Order* approving the Stipulation with which it takes issue, not **before** the effective date of such order as required by statute as shown above. Therefore, if the pleading is considered an application for rehearing, it must be denied as untimely.

7. In its *Order Directing Filing* issued herein on December 17, 2024, the Commission ordered that "Staff and Evergy Missouri West shall specifically state in their responses why the Crossroads issue should not be considered in a new case file separate from the general rate case file." Remember that the procedure set forth in paragraph 5 of the Stipulation was approved by the Commission's *Report and Order* issued December 4, 2024, which has already become effective, and which ordered the signatories to comply with the terms of the Stipulation. Allowing CPUC to challenge this procedure in a new case file separate from the current general rate case file would appear to violate § 386.550, RSMo, which provides that "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive." Furthermore, effectively granting a do-over to an entity which failed to timely file for intervention and which failed to timely seek rehearing would create an extremely bad precedent going forward.

8. Finally, the Commission should not be misled by CPUC's pleading. Contrary to any inference which might be drawn from CPUC's pleading, as the Commission stated in its order denying the intervention of FEA, the Commission gave public notice of this case; therefore, CPUC had notice. The Crossroads Energy Center

("Crossroads") is included in Evergy Missouri West's rate base. Even CPUC's pleading admits that an option to purchase Crossroads was granted to Evergy Missouri West's predecessor. CPUC's right and title to said assets is not threatened by the procedure set out in paragraph 5 of the Stipulation. Aquila Merchant, a former subsidiary of Aquila, Inc., the former parent company of what is now known as Evergy Missouri West, procured the turbines and purchased the bonds under the financing arrangement that enabled Crossroads to be constructed. The plant development was conducted by Burns & McDonnell Engineering Co., Inc. as an "engineer, procure, and construct" ("EPC") contract, commonly referred to as "turnkey." Crossroads was built to serve Aquila Merchant as a merchant peaking power plant; was financed by Aquila Merchant; and has never served CPUC or MDEA[1] generation needs. Crossroads would have never been constructed but for Aquila Merchant funding the project.

WHEREFORE Staff submits this Response to CPUC Application to Intervene as directed by the Commission's *Order Directing Filing* issued herein on December 17, 2024, and requests the Commission issue an order denying relief to the Clarksdale Public Utilities Commission.

[1] Mississippi Delta Energy Agency

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 30th day of December 2024.

/s/ Jeffrey A. Keevil