

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Second Prudence Review)
of the Missouri Energy Efficiency Investment) File No. EO-2020-0227
Act (MEEIA) Cycle 2 Energy Efficiency)
Programs of Evergy Metro, Inc. d/b/a Evergy)
Missouri Metro)
)
In the Matter of the Second Prudence Review)
of the Missouri Energy Efficiency Investment) File No. EO-2020-0228
Act (MEEIA) Cycle 2 Energy Efficiency)
Programs of Evergy Missouri West, Inc. d/b/a)
Evergy Missouri West)

**EVERGY MISSOURI METRO’S AND EVERGY MISSOURI WEST’S
INITIAL POST-HEARING BRIEF**

COME NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West”) (collectively, “Evergy” or the “Company”), and for its Initial Post-Hearing Brief (“Brief”) in this matter, states as follows:

I. INTRODUCTION

A. Executive Summary

This case involves the second¹ prudence review of costs subject to the Demand Side Investment Mechanism (“DSIM”) of Evergy Missouri Metro and Evergy Missouri West. In the

¹ In the first prudence review of Evergy’s Cycle 2 MEEIA was completed in File Nos. EO-2018-0363 and EO-2018-0364 in March 2019, none of the contested issues in this second prudence review case were raised by Staff or OPC related to Evergy’s Cycle 2 MEEIA programs. To the contrary, the first prudence review resulted in a complete settlement. In the *Order Approving Stipulation and Agreement* in File Nos. EO-2018-0363 and EO-2018-0364, p. 2, the Commission summarized the settlement agreement between Evergy, Staff and OPC as follows:

On February 20, 2019, KCPL, GMO, Staff, and the Office of the Public Counsel (“OPC”) (collectively, “Signatories”) filed a unanimous stipulation and agreement. The Signatories to the stipulation and agreement agree that Staff’s prudence review should be closed and that there should be an \$8,500 ordered adjustment to reduce costs recovered in KCPL’s Demand Side Investment Mechanism (“DSIM”) rider rate adjustment and an \$8,500 adjustment to reduce costs recovered in GMO’s DSIM rider rate adjustment with interest.

second prudence review period,² Staff (“Staff”) for the Missouri Public Service Commission (“Commission”) analyzed all MEEIA costs that are “subject to the DSIM” including the following areas:

- Determination of the “DSIM Charge” for customers’ bills;
- Implementation of the Nexant Tracking system (which allows the company to store, manage, and process data for its Demand Side Management portfolio over the life-cycle of each measure of its MEEIA 2 Plan);
- Review of payouts of rebates or incentives;
- Selection and supervision of its program implementers;
- Selection and supervision of its EM&V Contractors;
- Calculations of MEEIA Labor Costs;
- Calculation of its Through-Put Disincentives;
- Calculation of the Gross Energy and Demand Savings;
- Verified that Company is not seeking recovery of any Cycle 2 Earnings Opportunity;
- Verified the Company did not recover more than its approved Cycle 1 Performance Incentive, including Carrying Costs;
- Interest Calculations and interest amounts; and
- Administrative Costs.

Based on its second MEEIA Cycle 2 prudence review, Staff found no evidence of imprudence for either Evergy Missouri West or Evergy Missouri Metro in the above-referenced areas.³ However, certain accounting entries related to administrative costs were agreed to by the Company and corrected in the process of settling the Staff’s administrative cost issue in this case.⁴

² The Review Period for both companies is from the review period of April 1, 2018 through December 31, 2019 (“Review Period”). (Ex. 100, Fortson Direct, Schedule BJJF-d3, p. 3 of 49).

³ Ex. 100, Fortson Direct, Schedules BJJF-d3, pp. 10-24 and 34-39 of 49.

⁴ On January 8, 2021, Evergy, Staff and the Office of the OPC filed a Unanimous Partial Stipulation and Agreement

In addition, Staff and the Office of the Public Counsel (“OPC”) proposed several disallowances related to the Company’s MEEIA programs, some of which are not “subject to the DSIM”.⁵ More specifically, the issues listed in sections III through IX below are now left for resolution by the Commission.

For the reasons stated herein, the Commission should find and conclude:

1. Evergy’s management of its demand response programs was prudent, consistent with its Commission-approved tariffs, and the MEEIA statutes and rules.⁶
2. Evergy’s management of the Residential Programmable Thermostat Program and the Demand Response Incentive program was prudent, consistent with its Commission-approved tariffs, and the MEEIA statutes and rules.⁷
3. It was prudent for Evergy to call demand response events, consistent with the Unanimous Stipulation and Agreement signed by Evergy, Commission Staff, OPC, Department of Economic Development—Division of Energy, and Renew Missouri in File Nos. EO-2020-0132 and EO-2020-0133.⁸
4. Evergy managed its demand response programs as those programs were designed and approved by the Commission to be managed.⁹ The demand response programs in question were designed, implemented and managed to reduce annual system-wide

which settled the issues raised by the Staff related to administrative costs. Under this stipulation, “the Signatories to this Stipulation agree that, in its next Demand Side Investment Mechanism Rider Schedule DSIM filing to adjust its DSIM Rates, Evergy Missouri Metro shall include a \$10,000 credit to customers as an "Ordered Adjustment" in the "Net Ordered Adjustment" component of its DSIM Rate calculation and Evergy Missouri West shall include a \$5,000 credit to customers as an "Ordered Adjustment" in the "Net Ordered Adjustment" component of its DSIM Rate calculation.” The Commission approved this stipulation on February 17, 2021. See *Order Approving Unanimous Partial Stipulation and Agreement*, File No. EO-2020-0227 (February 17, 2021).

⁵ See Section III A below.

⁶ Ex. 5, File Rebuttal, pp. 5-27; Ex. 6, File Sur-rebuttal, pp. 2-29; Ex. 3, Carlson Rebuttal, pp. 2-12; Ex. 4, Carlson Sur-surrebuttal, pp. 1-3.

⁷ Ex. 5, File Rebuttal, pp. 12-27.

⁸ *Id.* at 11.

⁹ *Id.* at 4-6, 10, 13-14.

peak load.¹⁰ In so doing, those demand response programs achieved the level of cost-effectiveness sought by the Commission via the methodology approved by the Commission.¹¹ The demand response programs in question were not designed to arbitrage day-ahead locational marginal prices (“DA LMP”) or to reduce Southwest Power Pool (“SPP”) Schedule 1A and 11 fees through the calling of numerous demand response events. Reduced LMP and SPP Schedule 1A and 11 fees are possible ancillary benefits, not the primary objective of the programs. The calling of more demand response events is not cost free to Evergy or its customers.¹²

5. The Staff and OPC recommendations to call more curtailment events do not adequately consider the impact to customer behavior or the impact on the Company’s ability to achieve the primary objective of its demand response programs.¹³
6. The Staff and OPC’s recommended monthly arbitrage strategy is itself imprudent and unreasonable given the design and the design objectives of the Company’s demand response programs.¹⁴
7. The Staff and OPC’s position on the demand response programs disallowance is based on hindsight analysis of historical data.¹⁵ The additional demand response events supported by Staff and OPC, assuming hindsight maximum values, would comprise less than 6% of the total value of those programs as they were designed, approved by the Commission and managed by Evergy. Under OPC’s maximum

¹⁰ Id. at 6, 13. *See also* Ex. 106A, Purpose paragraph in Sheet Nos. 1.96, 2.07, 2.09, 2.20, and 2.32; Ex. 106B, Purpose paragraph in Original Sheet Nos. R-73, R-84, R-86, R-96, and R-107.

¹¹ Id. at 11-13.

¹² Id. at 8-10; Ex. 3, Carlson Rebuttal, pp. 18-20.

¹³ Ex. 6, File Sur-surrebuttal, pp. 21-22.

¹⁴ Id. at 24-29.

¹⁵ Ex. 5, File Rebuttal, pp. 8-10; Ex. 6, File Sur-surrebuttal, pp. 24-28.

values, the number of demand response events would need to increase by many times. This increase would only achieve 6% of the total value of those programs, assuming no impact to customer behavior or participation.¹⁶

8. The Staff's proposed adjustment related to the Company's capacity sales practices is imprudent and unreasonable, given the design objectives of the Company's demand response programs.¹⁷
9. OPC's analysis of Evergy's management costs associated with the MEEIA programs is flawed, and in fact, Evergy's administrative costs compare favorably to other similarly situated electric companies.¹⁸
10. When a disallowance is recommended for a capital expenditure for MEEIA programs that would be subject to the DSIM, then a MEEIA prudence proceeding is the appropriate proceeding to evaluate such a proposed disallowance. However, for any adjustment that involves energy costs that flow through the FAC, then it is the FAC prudence review that is the appropriate proceeding to analyze those costs.¹⁹

B. The EM&V Evaluator and Staff's Independent Evaluator Have Determined That Evergy's Programs Are Cost-Effective and Staff's Attempt to Denigrate those Findings Should Not Be Accepted.

Evergy's MEEIA 2 Programs have been through an Evaluation, Measurement, and Verification ("EM&V") process, as required by 20 CSR 4240-20.093(8).²⁰ In addition, Staff's Independent Auditor has reviewed and verified the EM&V results.²¹ The thermostat programs and

¹⁶ Ex. 6, File Sur-surrebuttal, p. 25.

¹⁷ Ex. 3, Carlson Rebuttal, pp. 2-6.

¹⁸ Ex. 6, File Sur-rebuttal, pp. 2-13.

¹⁹ See, Section III herein.

²⁰ Ex. 5, File Rebuttal, pp. 12-13, 18.

²¹ Id. at 5, 7-8.

the DRI were deemed cost-effective by both the EM&V consultant and the Staff's independent auditor.²²

The thermostat programs were a tremendous success during the audit period. Participation in the program was well above targets and met maximums in the Missouri Metro service territory during the Cycle 2 period. Per their EM&V PY 2019 Report, Guidehouse (the third-party evaluator) stated that “together, the thermostat programs and the DRI program deliver strong demand reductions and demonstrate the value they provide as a flexible capacity resource”.²³ In the Evergy Metro service territory, the Business Programmable Thermostat, and Residential Programmable Thermostat programs achieved 86% and 104% of the MEEIA Cycle 2 energy savings targets, respectively.²⁴ Similarly, the Business Programmable Thermostat and Residential Programmable Thermostat programs achieved 155% and 164% of the MEEIA Cycle 2 demand savings targets, respectively.²⁵ In the Evergy Missouri West service territory, the Business Programmable Thermostat and Residential Programmable Thermostat programs achieved 151% and 83% of the MEEIA Cycle 2 energy savings targets, respectively.²⁶ Likewise, the Business Programmable Thermostat, and Residential Programmable Thermostat programs achieved 322% and 143% of the MEEIA Cycle 2 demand savings targets, respectively.²⁷ Additionally, these results compare favorably to Ameren Missouri PY2019 in which residential demand response results were 1.11 for both the total resource cost (“TRC”) and utility cost test (“UCT”) tests.²⁸

²² With the exception of one program year of the Evergy Metro (formerly KCP&L) thermostat program where the Company did not allow any more participation due to maximum participation targets already being achieved. *Id.* at 7-8.

²³ Ex. 5, File Rebuttal, pp. 12-13.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Similarly, the DRI has been cost-effective and successful. In the Evergy Metro service territory, the Demand Response Incentive program achieved 140% of the MEEIA Cycle 2 energy demand savings target. In the Evergy Missouri West service territory, the Demand Response Incentive program achieved 58% of the MEEIA Cycle 2 energy demand savings targets.²⁹ The benefit cost tests for this program also yielded favorable results and improvement over time.³⁰

The DRI program continued to drive value for customers as evidenced by the cost effectiveness and willing participants in the program. As found in the EM&V PY 2019 Report, Guidehouse (the EM&V Evaluator) stated that “together, the thermostat programs and the DRI program deliver strong demand reductions and demonstrate the value they provide as a flexible capacity resource”.³¹

Notwithstanding the outstanding results of the thermostat and DRI programs shown by the EM&V process, and by Staff’s Independent Auditor’s analysis, Staff witness J Luebbert attempted to denigrate these results by suggesting that they do not “derive tangible financial benefits” to consumers during the Cycle 2 prudence period since there was no deferral of a combustion turbine during this period.³² Nowhere in the Commission rules, MEEIA statutes or elsewhere is there a standard or requirement that the MEEIA programs must “derive tangible financial benefits” during any specific prudence review period.

The MEEIA establishes that it is Missouri’s policy “to value demand-side investments equal to traditional investment in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs.” § 393.1075.3 RSMo. The

²⁹ Id. at 18.

³⁰ Id.

³¹ Id.

³² Tr. 158-59, 167-68; Ex. 105, Luebbert Surrebuttal, pp. 6-7.

MEEIA further provides that the Commission, in support of the State's demand-side investment policy, shall:

- (1) [p]rovide timely cost recovery for utilities;
 - (2) [e]nsure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and
 - (3) [p]rovide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.
- § 393.1075.3(1)–(3).

The MEEIA also instructs the Commission that it “may develop cost recovery mechanisms to further encourage investments in demand-side programs” and that, when setting rates, the Commission must “fairly apportion the costs and benefits of demand-side programs to each customer class.”³³

In its original MEEIA Cycle 2 decision approving the MEEIA Cycle 2, the Commission adopted the Company’s use of a combustion turbine for its calculation of its avoided capacity costs.³⁴ Under the Commission rules and customary practices, the demand savings is multiplied by the proxy avoided costs to determine the cost-effectiveness of the programs.³⁵ In this proceeding, Staff and OPC have not argued that the EM&V Evaluator and Staff’s own Independent Auditor failed to follow the Commission’s rules or its normal custom and practice in evaluating the cost-effectiveness. However, in this proceeding, Staff and OPC continue to engage in their short-term thinking that has caused Staff and OPC to oppose Evergy’s MEEIA Cycle 3 programs since Evergy has sufficient capacity to serve its customers for several years.

With this short-term thinking, these parties fall into the trap dubbed the “Cycle of Denial”. The Cycle of Denial illustrates how Staff’s and OPC’s way of thinking will prevent energy efficiency

³³ See, § 393.1075.5. State ex rel. Public Counsel v. Public Service Commission, 397 S.W.3d 441, 444 (Mo.App. W.D. 2013).

³⁴ Ex. 5, File Rebuttal, p. 11.

³⁵ Ex. 105, Luebbert Surrebuttal, p. 7.

programs from ever happening. The Cycle of Denial works like this: 1) the Company is not currently short capacity and will not need new capacity for several years, therefore DSM programs are not needed; 2) sometime in the future a capacity need will arise; 3) at this point it is too late to implement new demand-side programs in time to meet the capacity need; 4) thus a new supply-side resource is constructed to meet the capacity need; 5) after the supply-side resource is constructed, there is no longer a capacity need and demand-side programs are again not needed.³⁶

As background, the avoided cost of capacity is normally represented by a price in dollars per kW-year (\$/kW-yr) which is a levelized fixed charge cost of capacity for one unit of capacity (one kW) for a single year over the life of the resource.³⁷ Using one single year's price is not equivalent to a supply-side resource because the supply-side resource does not have a one-year life.

The Company cannot build a supply-side resource such as a combustion turbine, operate it for one year, and then unbuild the combustion turbine and get a refund. A single year's value of avoided capacity cost is not equivalent to investing in supply-side infrastructure because physical infrastructure cannot be used or developed in that way. The unevenness (or "lumpiness") of supply-side resource development was recognized by Staff's witness Luebbert in the evidentiary hearing of this case.³⁸

Despite this recognition, in the recent Evergy MEEIA 3 proceeding, Staff and OPC argued that MEEIA requires that a new supply-side option be eliminated or deferred as a result of the implementation of the MEEIA DSM programs (i.e., zero avoided capacity cost) before there is a positive avoided capacity cost to be utilized in screening individual programs under the Total

³⁶ Ex. 6, File Sur-surrebuttal, pp. 19-22.

³⁷ Tr. 150.

³⁸ Tr. Vol. 2, p. 165, lns. 12-17.

Resource Cost (“TRC”).³⁹ However, the Commission has flatly rejected the Staff and OPC position, stating “Staff’s use of zero for avoided costs is inappropriate because the MEEIA statute does not limit avoided costs to those associated with the deferral of capacity or require deferral of capacity.”⁴⁰

The Staff and OPC’s position in this case is virtually the same as their position in the MEEIA Cycle 3 case. In both cases the underlying presumption that the thermostat program and DRI must produce an immediate deferral of capacity during the prudence review period if the Commission is to recognize a capacity benefit from the thermostat and DRI programs. Brian File explained the fallacy of the Staff and OPC positions:

Evergy’s Cycle 2 Demand Response programs were designed to create long term value for customers in terms of capacity planning which is evaluated in the integrated resource planning process. Staff and OPC have fallen into a short-term thinking trap that happens regularly with demand response or capacity in general. The short-term thinking trap (sometimes called the “cycle of denial”) tries to optimize for short-term incentives (e.g. current year’s capacity price or small energy price incentives) that will result in significant risk to long term supply and capacity availability. As a public utility, Evergy is charged with looking at the long-term viability of supply and reliability for our customers.

* * *

Despite Staff’s and OPC’s assertions, MEEIA programs do not need to create some short-term huge financial benefit to be valuable to customers and rate payers. To further explain, just because the company doesn’t build (or avoid building) a combustion turbine every year doesn’t mean that there is not value every year in building the demand-side resource. In effect, the building of MEEIA programs over time create a resource that has value over the long term as evidenced in the IRP and is the right thing for customers and the community.⁴¹

³⁹ *Amended Report and Order*, pp. 12-13, In the Matter of Evergy Missouri Metro and Evergy Missouri West’s Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism, File No. EO-2019-0132 (March 11, 2020).

⁴⁰ *Id.* at 12, ¶29.

⁴¹ Ex. 6, File Sur-surrebuttal, pp. 19-20.

As explained above, the Commission⁴² and the Missouri Court of Appeals⁴³ have resoundingly rejected Staff's and OPC's flawed logic, and the Commission should do so again.

The Company has followed the Commission's MEEIA rules and has continued to implement the approved MEEIA Cycle 2 demand response programs as they were designed and approved by the Commission. As explained in Section II below, Evergy's decisionmakers acted prudently under the "reasonableness standard" by following the design of the MEEIA Cycle 2 demand response programs, the approved MEEIA tariffs, and complying with the Commission's order to call five curtailment events during 2019. Based upon the competent and substantial evidence in the record, Evergy's decisionmakers acted reasonably and prudently under all the circumstances that were known to them at the time the decisions were made to curtail the load under the Residential Programmable Thermostat Program and Demand Incentive Program.

II. SCOPE OF A PRUDENCE REVIEW

A. The Prudence Standard.

Over the years, the Commission frequently reaffirmed the prudence standard⁴⁴ articulated in the *Associated Natural Gas* case (which was an PGA/ACA case) as follows:

[A] utility's costs are presumed to be prudently incurred.... However, the presumption does not survive "a showing of inefficiency or improvidence."

...[W]here some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of

⁴² Amended Report and Order, pp. 25-28, In the Matter of Evergy Missouri Metro and Evergy Missouri West's Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism, File No. EO-2019-0132 (March 11, 2020).

⁴³ Per Curiam Opinion, State ex rel. Office of Public Counsel v. Public Service Commission et al., Case No. WD-2020-83828 (March 2, 2021), *transfer denied*, SC99048 (June 1, 2021).

⁴⁴ See e.g., Report and Order, p. 19, Re: Eighth Prudence of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company, File No. EO-2019-0067 (Nov. 6, 2019); Report and Order, pp. 13-14, Re Third Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company, File No. EO-2011-0390 (Sept. 4, 2012); Report and Order, pp. 13-15, Re: PGA Filing for Laclede Gas Company, Case No. GR-2004-0273 (June 28, 2007).

dispelling these doubts and proving the questioned expenditure to have been prudent. (Citations omitted).

In the [Union Electric] case, the PSC noted that this test of prudence should not be based upon hindsight, but upon a reasonableness standard:

[T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.⁴⁵

Furthermore, in order for the Commission to disallow a utility's recovery of costs from its customers, the Commission must apply the following two-pronged test: (1) evaluate whether the utility acted imprudently (that is, did not act reasonably at the time under the applicable circumstances); and 2) evaluate whether such imprudence was the cause of the harm (increased costs) to the utility's customers. *See Associated Natural Gas*, 945 S.W.2d at 529.

B. Burden of Proof

As stated above, under the prudence standard, the Commission presumes that the utility's costs were prudently incurred. *See State ex rel. Associated Natural Gas v. Public Serv. Comm'n*, 954 S.W.2d 520 (Mo. App. W.D. 1997)(citations omitted). This means that utilities seeking a rate increase or a change in their DSIM rates are not required to demonstrate in their cases-in-chief that all expenditures were prudent.⁴⁶

OPC, Staff or any other party can challenge the presumption of prudence by creating "a serious doubt" as to the prudence of an expenditure. Once a serious doubt has been raised, then the burden shifts to the public utility to "dispel those doubts" and prove that the questioned expenditure was prudent.

⁴⁵ *See, State ex rel. Associated Natural Gas v. Public Serv. Comm'n*, 954 S.W.2d 520, 528-529 (Mo. App. W.D. 1997).

⁴⁶ *See, Union Electric*, 66 P.U.R.4th at 212. *See also State ex rel. Office of the Public Counsel v. Missouri Public Service Commission*, 409 S.W.3d 371, 376-77 (Mo. banc 2013).

Missouri case law has described the showing necessary to create a serious doubt sufficient to shift the burden back to the utility. In the *Associated Natural Gas* case, the Missouri Court of Appeals held that the Staff must provide evidence that the utility's actions caused higher costs than if prudent decisions had been made. See *Associated Natural Gas*, 945 S.W.2d at 529. In other words, OPC, Staff or the other parties must satisfy the following two-pronged evidentiary test to support a disallowance: 1) identify the imprudent action based upon industry standards and the circumstances at the time the decision or action was made; and 2) provide proof of the increased costs caused by the public utility's imprudent decisions. To meet this standard, a party must provide substantive, competent evidence establishing a causal connection or "nexus" between the alleged imprudent action and the costs incurred based upon industry standards and the circumstances at the time the decision or action was made; and 2) provide proof of the increased costs caused by the public utility's alleged imprudent decisions. To meet this standard, a party must provide substantive, competent evidence establishing a causal connection or "nexus" between the alleged imprudent action and the costs incurred.

III. ARE STAFF'S AND OPC'S PROPOSED PRUDENCE ADJUSTMENTS WITHIN THE SCOPE OF A MEEIA PRUDENCE REVIEW AS DEFINED BY 20 CSR 4240-20.093?

In its July 30, 2020 Motion to Limit the Scope of the Proceedings, the Company argued that the appropriate scope of the prudence review in this proceeding is defined by subsection (11) of Commission Rule 20 CSR 4240-20.093 when it states:

(11) A prudence review of the costs subject to the DSIM [Demand Side Investment Mechanism] shall be conducted no less frequently than at twenty-four- (24-) month intervals.

Several of the Staff's proposed disallowances are not related to "costs subject to the DSIM" and therefore are not properly the subject of this proceeding. Such costs are not collected through the DSIM, are not addressed in the Company's DSIM tariffs or the MEEIA rules and are not related

to the DSIM in any way. Since these costs are not collected through the DSIM there is no way for the Commission to order the refund of these costs to customers in this docket. Therefore, such costs are not “subject to the DSIM” and are inappropriate subjects for proposed disallowances in the MEEIA prudence audit in this proceeding.

While the Commission did not grant the Company’s July 30, 2020 Motion, it did note at p. 3 of its August 19, 2020 *Order Denying Motion to Limit Scope* that “[w]hether the alleged imprudent acts are costs subject to the DSIM is a question of fact in addition to a question of law.”

The record established in this case demonstrates that several of Staff’s and OPC’s proposed disallowances are not, as a matter of fact or law, subject to the DSIM. Capacity sales (or the lack thereof) are not a cost that is collected through the DSIM and are not addressed in the Commission’s MEEIA rule or in the Company’s DSIM as defined by Evergy Missouri Metro’s tariff.⁴⁷ Capacity sales costs and revenues are not collected through the DSIM, are not subject to the DSIM in any way, and should not be the subject of the MEEIA prudence review in this proceeding.⁴⁸

Similarly, SPP expenses are not costs that are collected through the DSIM.⁴⁹ SPP fees are not recovered under the DSIM. SPP costs are recovered in the Fuel Adjustment Clause (“FAC”) tariff and in base rates, not in the DSIM.⁵⁰

The Staff’s proposed adjustments related to Issue Nos. 4, 5 and 6 are not appropriate adjustments to the Demand Side Investment Mechanism (“DSIM”). Staff’s recommended disallowances to the Company’s purchased power costs and SPP fees in this MEEIA 2 prudence audit case should be made to the Company’s Fuel Adjustment Charge if those disallowances were

⁴⁷ Ex. 106A, Evergy Missouri Metro P.S.C. MO. No. 7 Sheet No. 49I, and Ex. 106B, Evergy Missouri West P.S.C. MO. No. 1, Sheet No. 138.

⁴⁸ Ex. 3, Carlson Rebuttal, p. 3, Ex. 4, Carlson Sur-Surrebuttal p. 2; Ex. 5, File Rebuttal, pp. 4-5.

⁴⁹ Ex. 106B, Evergy Missouri West P.S.C. MO. No. 1, Sheet No. 138.

⁵⁰ Ex. 3, Carlson Rebuttal, p. 7; Ex. 5, File Rebuttal, pp. 4-5.

adopted by the Commission. Capacity sales revenues and SPP fees are recovered through the Fuel Adjustment Clause and not the Demand Side Investment Mechanism, or DSIM.

In summary, the competent and substantial evidence in the record supports the finding that the (1) SPP fees, (2) cost changes associated with the arbitraging of Day Ahead Locational Marginal Prices, and (3) revenues associated with capacity sales are not, as a matter of fact or law, collected through the DSIM, they do not flow through the DSIM, and they are therefore not “subject to the DSIM.” The costs and revenues associated with these proposed Staff adjustments proposed in Issue Nos. 4, 5 and 6 would flow through the Fuel Adjustment Clause mechanism or are included in the base rates.

Evergy believes that audits of MEEIA programs should occur in the MEEIA prudence audit dockets. However, if Staff or OPC prevail on any issue (i.e. Issue Nos. 4, 5 and 6) that impacts the Company’s Fuel Adjustment Clause, then that adjustment should be made in the next FAC case. If Staff or OPC prevail on any issue (i.e. Issue Nos. 2, 3 and 7) that impacts costs that are recovered through the DSIM, then that adjustment should be made in the DSIM in the MEEIA audit case.

If the Commission finds that the Company’s management of its MEEIA programs were prudent during the audit period (which the record demonstrates), then it is unnecessary to decide in which case, the FAC prudence review case, or the MEEIA prudence review case, the proposed disallowance should be made.

As shown above, the factual and legal evidence demonstrates that SPP costs and capacity sales are not subject to the DSIM, and the Commission should so conclude. The DSIM is governed by the Company’s Commission approved tariffs and those DSIM tariffs spell out what is included in the DSIM (net program costs, net throughput disincentive and net earnings opportunity). There is no mention in those tariffs of recovering SPP fees or capacity sales. Moreover, the Company’s expert

witnesses have provided testimony which establishes where those costs are recovered by the Company outside of the DSIM.

IV. DID EVERGY ACT IMPRUDENTLY IN ITS IMPLEMENTATION OF THE RESIDENTIAL PROGRAMMABLE THERMOSTAT PROGRAM? IF THE COMMISSION FINDS EVERGY ACTED IMPRUDENTLY, WHAT ADJUSTMENT SHOULD THE COMMISSION ORDER?

Evergy managed its implementation of its residential programmable thermostat program prudently. As described in the rebuttal testimony of Evergy witness Brian File, the Company had three channels of facilitating customers to install programmable thermostats into their homes with the goal of maximizing participation in the program: Direct Installation (“DI”), Do-It-Yourself (“DIY”), and Bring-Your-Own (“BYO”).⁵¹ The direct installation and bring-your-own channels had 100% activation rate, meaning those customers installed the thermostats and participated in demand response events.⁵² The DIY channel had a small number of thermostats (on average less than 10% across MEEIA Cycle 2) that were not activated.⁵³

Staff argues that Evergy could have “avoided additional cost of Direct Installations of thermostats and lowered the incentive amount of the Residential Programmable Thermostat program by simply not giving thermostats away free of charge;”.⁵⁴ Staff simultaneously argues that anything less than 100% participation of enrolled customers is imprudent.⁵⁵

As a matter of law, this position ignores the Company’s tariff, which provides, “Participants will receive a free programmable thermostat that can be controlled via radio or Wi-Fi signals sent to

⁵¹ Ex. 5, File Rebuttal Testimony, p. 13, lns. 11-15.

⁵² Id.

⁵³ Id. at 15.

⁵⁴ Ex. No. 104C, Luebbert Direct, p. 2., lns. 18-20.

⁵⁵ See Ex. 101C, Fortson Direct Testimony, Schedule BJJF-d4, p. 26, lns. 21-24.

the unit by Company or its assignees.”⁵⁶ It is difficult to see how the Company could act imprudently by abiding by the terms of its Commission-approved tariff.

As a matter of policy, Staff’s position ignores the trade-off between installation cost and participation rates. The DIY channel is less expensive than the DI, but the activation rate is not 100% for DIY. Evergy managed the cost of the programmable thermostat program to Commission approved levels and budget.⁵⁷ Additionally, all program costs, including “administration, incentive, delivery, EM&V and marketing are factored into the cost-effectiveness test.”⁵⁸ So the cost of DIY channel and the inevitable, albeit minimal, non-activation rate were included in the cost-effectiveness test.

Evergy’s programmable thermostat program was a success under the statutorily authorized cost-effectiveness test for the relevant time period.⁵⁹ “[A]ny program with a TRC test value above ‘1.0’ is a cost-effective program, meaning the benefits outweigh the costs of benefits from a total system perspective. The Utility Cost Test ‘UCT’ value above ‘1.0’ means that the benefits outweigh the costs from the utility perspective.”⁶⁰ Utility cost means “the cost savings obtained by substituting demand-side programs for existing and new supply-side resources.”⁶¹ As show below in Table 1⁶², Evergy’s programmable thermostat programs were (with one exception) shown to be cost-effective.⁶³ Again, this cost-effectiveness test includes the cost of non-activated thermostats which the Staff claims constitute imprudence.⁶⁴

⁵⁶ Ex. 106A, Evergy Metro Missouri tariff sheet 2.32.

⁵⁷ Ex. 5, File Rebuttal, p. 14.

⁵⁸ Ex. 6, File Sur-surrebuttal, p. 16, lns. 9-11 (citing 20 CSR 4240.092(1)(JJ) & (NN) & (PP) & (WW) & (XX)).

⁵⁹ Ex. 5, File Rebuttal, p. 13, l. 2:

⁶⁰ Id. at 15.

⁶¹ See, 20 CSR 4240-20.092(1)(C).

⁶² Ex. 5, File Rebuttal at 13, lns. 1-2.

⁶³ Id. at 13.

⁶⁴ *Supra*, FN 6.

Table 1
Programmable Thermostat Cost Tests

<u>Program</u>	<u>KCP&L/Metro</u>					
	MEEIA 2 PTD		PY 2019		PY 2018	
	<u>TRC</u>	<u>UCT</u>	<u>TRC</u>	<u>UCT</u>	<u>TRC</u>	<u>UCT</u>
Business Programmable Thermostat	1.57	2.21	1.43	2.02	0.35	0.35
Residential Programmable Thermostat	1.92	2.92	1.89	2.71	0.34	0.30

<u>Program</u>	<u>GMOPS/MO West</u>					
	MEEIA 2 PTD		PY 2019		PY 2018	
	<u>TRC</u>	<u>UCT</u>	<u>TRC</u>	<u>UCT</u>	<u>TRC</u>	<u>UCT</u>
Business Programmable Thermostat	1.60	2.36	1.54	2.15	1.18	1.63
Residential Programmable Thermostat	1.96	3.08	1.88	2.65	1.64	2.13

Evergy’s success under the statutorily authorized cost-effectiveness test in the implementation and management of its programmable thermostat program was undisputed. Rather Staff and OPC allegation of imprudence is based on the belief the Evergy 1) should not have offered any thermostats for free to its customers and 2) called more curtailment events. As previously stated, this position ignores Evergy’s tariff which explicitly provides for free programmable thermostats.⁶⁵ It also ignores the development and infrastructure costs to implement a customer co-payment.⁶⁶

Staff’s position is also contrary to the primary objective and design of the program. “The Company provided customers with options to enter the Programmable Thermostat Program in order to reach the maximum number of customers.”⁶⁷ The maximum number of enrolled customers means fewer curtailment events necessary to achieve cost-effectiveness. Staff’s position requires fundamental changes in the design and purpose of the Company’s MEEIA Cycle 2 programs.

⁶⁵ Ex. 5, File Rebuttal at 14, lns. 15-21.

⁶⁶ Id.

⁶⁷ Ex. 5, File Rebuttal, p. 13, lns. 11-12.

Finally, Staff complains the thermostat incentives offered by Evergy is not logically consistent in that it simultaneously admonishes the Company for the non-100% activation rate of the do-it-yourself channel and complains of the direct installation costs of that channel.⁶⁸ It would seem every option leads to an allegation of imprudence.

V. DID EVERGY ACT IMPRUDENTLY IN ITS IMPLEMENTATION OF ITS DEMAND RESPONSE INCENTIVE PROGRAM? IF THE COMMISSION FINDS EVERGY ACTED IMPRUDENTLY, WHAT ADJUSTMENT SHOULD THE COMMISSION ORDER?

A. Evergy DRI Program Met Cost-Effectiveness Test and Provided Strong Results

Evergy did not act imprudently in its implementation of its DRI program. The DRI program, was deemed cost-effective by both the EM&V and Staff's own independent auditor.⁶⁹ As previously stated, Guidehouse (the EM&V evaluator) commented, "the DRI program deliver strong demand reductions and demonstrate the value they provide as a flexible capacity resource."⁷⁰ This assessment of Evergy's successful management of its DRI program is bore out in the numbers provided by Company witness Brian File, "In the review period [DRI in MO West] this program created ~\$1.75 of benefits for every \$1 spent."⁷¹ The determination of cost-effectiveness for the DRI programs is based on Commission-approved avoided costs.⁷²

The achievement of cost-effectiveness via the Commission's approved avoided costs is undisputed by Staff or OPC. Rather Staff's prudence challenge is based on Staff's disagreement with the Commission and PSC regulations on how avoided costs should be calculated, as articulated by Staff witness Mr. Luebbert, "And as I have brought up in other dockets, the assumed value that Evergy has used and continue to provide its EM&V contractor, is an inflated value that doesn't

⁶⁸ *Id.* at 17, Ins. 7-20.

⁶⁹ Ex. 5, File Rebuttal, p. 7-8.

⁷⁰ *Id.* at 12.

⁷¹ *Id.* at 8.

⁷² *Id.* at 24.

reflect actual utility costs that will be avoided.”⁷³ The other docket that witness Luebbert may have been referring is Evergy’s MEEIA Cycle 3 proceeding in which this argument was explicitly rejected by the Commission.⁷⁴

“Avoided costs” is defined in 20 CSR 240-20.092 as follows:

(C) Avoided costs or avoided utility costs means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand side programs’ energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The **utility shall use the integrated resource plan and risk analysis used in its most recently adopted preferred resource plan to calculate its avoided costs; (Emphasis added.)**

Staff’s witness Luebbert’s recommended disallowance, however, is not supported by the Commission’s MEEIA rules and is instead based on his opinion that avoided costs should be calculated to “reflect actual utility costs” within the two-year timeframe of the prudency review.⁷⁵ (Witness Luebbert, verifies his position as restated by legal counsel for Evergy, “So in this case for Cycle 2, 2018 and 2019 is the only period, and that’s the period that’s subject to the MEEIA prudence review. It’s the only period that those programs are going to achieve demand reductions. And in this case Evergy failed to derive those benefits for customers within that time period that is why I’ve recommended the disallowance.”) Clearly, Staff’s position that avoided cost should be calculated using only avoided costs achieved within the two-year time frame of the prudency review is in direct conflict with 20 CSR 4240-20.092(1)(c) which explicitly defines avoided costs to be calculated using the “most recently adopted preferred resource plan.”

⁷³ Tr. Vol. II, p. 184, lns. 17-21.

⁷⁴ *Supra*, FN 41.

⁷⁵ Tr. Vol. II., p. 158-159, lns. 7-12.

B. Too Many Curtailment Events Will Negatively Affect Customer Participation

It is axiomatic that people respond to their physical environment. As explained in the sur-rebuttal testimony of Every witness Brian File, “[T]here is a known correlation with number of [curtailment] events called and the number of customers that will opt-out...The more events called leads to a diminishing return in event performance as more customers ‘opt-out’ of the event.”⁷⁶ A coal-fired power plant when pushed cannot decide to opt-out of electricity generation. A congested transmission line cannot opt-out of transmitting power. Every customers do, in fact, have an opt-out option of curtailment events under the applicable tariff: “A Participant may opt out of any air condition cycling curtailment event during the Curtailment Season by notifying KCP&L at any time prior to or during a curtailment event and requesting to be opted out. Participants may opt out of an ongoing event via their smart phone or the thermostat itself.”⁷⁷

Because of this opt-out provision, Every must be careful not to call events which would impact the effectiveness of the program in achieving its primary purpose. As described in the sur-rebuttal testimony of Company witness Brian File, “While this [calling additional curtailment events] may seem harmless, the degradation is such that the impact to the most important time (the system annual peak usually in July/August) will be diminished...reducing the impact the system annual peak is the primary and large majority of the value of demand response that will now be impacted.”⁷⁸

Staff and OPC’s position assume that Every can and should treat its customers like any other supply-side resource. But this is simply not the case and would negatively impact the Company’s ability to utilize its demand side programs for its primary purpose.

⁷⁶ Ex. 6, File Sur-surrebuttal Testimony, p. 22, lns. 2-11.

⁷⁷ See, e.g., Ex. No. 106A, p. 66.

⁷⁸ Ex. 6, File Sur-Surrebuttal Testimony, p. 22, lns. 11-14.

C. Evergy Abided—as a Reasonable Person Would—by the Terms of the Stipulation and Agreement

In February of 2019, Evergy, Staff and the OPC, entered into a Stipulation and Agreement which extended the MEEIA Cycle 2 programs for up to nine months while the parties worked on coming to an agreement on MEEIA Cycle 3. Ex. 1., *Stipulation and Agreement Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA 3 Case*, Para. 5.. Section 7(b) of the Stipulation and Agreement provides for the following with regards to the Company’s Programmable Thermostat Program, “The Company *will call five demand response events* per jurisdiction during the summer of 2019 (Jun-Sept). Company will present data to the DSM advisory group following the 2019 season detailing the customer participation rates (e.g. opt-out percentage, participation duration) during each demand response event conducted in 2019.” (Emphasis added.) This Stipulation and Agreement was authorized by the Commission. Ex. 2., *Order Approving Stipulation and Agreement*, File No. EO-2019-0132. The Company complied with the Stipulation and Agreement, and by extension the Commission’s Order, and called five demand response events for the programmable thermostat program in the summer of 2019.⁷⁹ As it applied to 2019, Staff and OPC’s recommended disallowance requires a finding of imprudence by virtue of abiding by the terms of the Stipulation and Agreement for which they are signatories and the Commission approved.⁸⁰

VI. DID EVERGY ACT IMPRUDENTLY BY NOT CALLING MORE DEMAND RESPONSE EVENTS FOR THE PURPOSE OF REDUCING SOUTHWEST POWER POOL (SPP) FEES? IF THE COMMISSION FINDS EVERGY ACTED IMPRUDENTLY, WHAT ADJUSTMENT SHOULD THE COMMISSION ORDER?

Based upon the competent and substantial evidence in the record, the Commission should find and conclude that Evergy acted prudently by implementing its MEEIA Cycle 2 demand response

⁷⁹ Tr. Vol. 1, p. 87, lns. 21-25.

⁸⁰ For a discussion of the calendar year 2018, see Section VI below.

programs as designed and approved by the Commission.⁸¹ Those MEEIA programs were designed and approved by the Commission to reduce annual system-wide peak load.⁸² This means to reduce, on a system-wide basis, the annual peak of energy consumption. This annual peak usually occurs in late July or early August. By reducing such annual peak load Evergy was able to achieve an avoided capacity cost of \$107.27/kW-year which is the avoided capacity cost approved by the Commission in its MEEIA Cycle 2 Order.⁸³

As explained in the rebuttal testimony of Evergy witness Brian File, “Avoided cost is meant to best represent what the Company would have done or had to do in the absence of the program accomplishment...While Staff and OPC seem to have ongoing issues with the specific dollars per kW-year value used for avoided capacity cost, the fact remains that in MEEIA Cycle 2 the value for avoided cost was set with parties in the Stipulation and approved by the Commission as well as utilized in third party Evaluation, Measurement & Verification at \$107.27/kW-year.”⁸⁴ By implementing its MEEIA programs as designed and approved by the Commission, Evergy achieved the cost-effective goals for those programs.⁸⁵

Staff and OPC argue that a reasonable person would have deviated from the design of those MEEIA programs to attempt to arbitrage DA LMP of energy in the SPP and reduce SPP Schedule 1A and 11 fees. DA LMPs and SPP fees constitute about 6% or less of the total maximum cost savings of the MEEIA Cycle 2 programs, assuming perfect predictive powers achievable only through hindsight analysis. As explained herein, the Commission should reject this position.

⁸¹ Ex. No. 5, File Rebuttal, pp. 3-15.

⁸² Ex. 5, File Rebuttal, pp. 6-7, 19.

⁸³ Id. at 11.

⁸⁴ Id.

⁸⁵ Id. at 11, 15.

Contrary to the Staff and OPC arguments, the demand response programs were not primarily designed to reduce SPP Schedule 1A and 11 fees, or shift the peak consumption from high Day Ahead Locational Marginal Prices. Reductions in SPP fees and shifting the peak consumption to times of lower marginal prices are both ancillary benefits of demand response programs, but they are not a primary benefit for which the programs are designed to maximize.⁸⁶

As explained by Evergy witness Carlson, during the MEEIA prudence audit period in this case, Evergy achieved the ancillary benefit of lowered SPP Schedule 11 fees by \$375,000.⁸⁷ The lowered SPP fees were an ancillary benefit achieved as Evergy successfully called curtailment events to lower the annual peak in summer months.

Beyond the point that Staff and OPC are “moving the goal-posts”, their arguments for imprudence fails for three additional substantive reasons discussed in the subsections below: First, Staff and OPC’s argument rests on deeply flawed assumptions regarding the predictive ability necessary to achieve the results on which they base their recommended disallowance. Staff and OPC used historical data and hindsight analysis to calculate their recommended disallowance, with little to no consideration of the predictive ability needed to achieve such results on a prospective basis. Second, Staff and OPC’s argument rests on the flawed assumption that increasing the number of demand response events would have no impact on customer behavior and thus potentially interfere with Evergy’s ability to achieve its demand response primary-objective in reducing annual system wide peak load.⁸⁸ Rather it would have Evergy chase marginal energy saving at the expense of the much more impactful cost-savings achieved via annual system-wide load reduction. Third, Staff and OPC’s recommended strategy is not without substantial financial risk to customers if the

⁸⁶ Ex. 5, File Rebuttal, p. 6; Ex. 6, File Sur-surrebuttal, pp. 22-23.

⁸⁷ Tr. 71-72.

⁸⁸ See Section V(b) above.

recommended monthly bets did not work out. For example, if Evergy decisionmakers fail to accurately predict the weather or experience other unforeseen conditions in the SPP region, then it can be costly (over \$72,000 in losses in one three hour period) to consumers.⁸⁹

In short, the evidence presented in this case shows not only that Evergy acted prudently in its implementation of its MEEIA programs, but that the recommended demand response strategy of Staff and OPC would be highly imprudent. The Commission should reject the recommended disallowance.

A. Evergy Called Five Demand Response Events During the Summer of 2019 As Required By A Commission-Approved Stipulation With Staff and OPC.

On February 15, 2019, the predecessor companies of Evergy Missouri Metro and Evergy Missouri West, Kansas City Power & Light Company (“KCP&L) and KCP&L Greater Missouri Operations Company (“GMO”), entered into a Stipulation and Agreement with Staff, OPC, the Missouri Department of Economic Development—Division of Energy, and Renew Missouri Advocates in File Nos. EO-2019-0132 and EO-2019-0133.⁹⁰ This unanimous stipulation recommended that the Commission approve a MEEIA Cycle 2 Extension Plan to allow MEEIA Cycle 2 to continue beyond the scheduled expiration date of March 31, 2019, under certain specified conditions. (“MEEIA 2 Extension Stipulation”) One of those conditions was as follows:

7. With the following exceptions, the total MEEIA 2 Plan Energy (kWh) and Demand (kW) savings targets will increase 25% (see Exhibit B)

* * *

b. For the Programmable Thermostat Program, The Company will call five demand response events per jurisdiction during the summer of 2019 (Jun- Sept). Company will present data to the DSM advisory group following the 2019 season detailing the customer participation rates (e.g.

⁸⁹ Ex. 3, Carlson Rebuttal, pp. 9-11.

⁹⁰ Ex. 1, *Stipulation and Agreement Regarding Extension Of MEEIA 2 Programs During Pendency Of MEEIA 3 Case*, File Nos. EO-2019-0132 and EO-2019-0133 (filed on February 15, 2019)(“MEEIA 2 Extension Stipulation”).

opt-out percentage, participation duration) during each demand response event conducted in 2019.⁹¹ (*Emphasis added*)

In the Commission's *Order Approving Stipulation and Agreement* in that case, the Commission found that the Stipulation met the provisions of the MEEIA statute and approved the Stipulation. It also ordered that "its signatories shall comply with its terms."⁹² The effect of this Order was that Evergy as well as Staff, and OPC were ordered to comply with the terms of the Stipulation which clearly stated that the Company should call five demand response events per company during the Summer of 2019.

Evergy complied with the terms of the MEEIA 2 Extension Stipulation when it called five demand response events on the following dates during the Summer of 2019⁹³:

Event #1 – July 18, 2019 (4-6 PM)

Event #2 – July 19, 2019 (4-6 PM)

Event #3 – Aug 6, 2019 (4-6 PM)

Event #4 – Aug 7, 2019 (2-4 PM)

Event #5 – Aug 12, 2019 (4-6 PM)

Notwithstanding the provisions of the stipulation which required Evergy to call five demand response events in the summer of 2019, Staff witness J Luebbert and OPC witness Geoff Marke argued in this proceeding that Evergy should have called many more curtailment events for its Residential Programmable Thermostat program, and for the commercial and industrial Demand Response Initiative program.⁹⁴ In fact, OPC witness Geoff Marke argued in this proceeding that there was no reason why Evergy should not have called curtailment events every day for its

⁹¹ *Id.* at 3.

⁹² Ex. 2, *Order Approving Stipulation and Agreement*, p. 3, File Nos. EO-2019-0132 and EO-2019-0133 (Feb. 27, 2019).

⁹³ Ex. 5, File Rebuttal, Schedule BF-s1, p. 12 of 33.

⁹⁴ Ex. 104, Luebbert Direct, pp. 5-6; Ex. 201, Marke Surrebuttal, p. 7.

Residential Programmable Thermostat program, for the commercial and industrial Demand Response Initiative program.⁹⁵

The Commission decided a similar case involving Liberty Utilities, Case No. GR-2014-0152. In the *Liberty* case, the Staff and OPC had argued that the revenues associated with two special contracts with Noranda and General Mills should be imputed at the full-tariffed rates.

However, in an earlier case, Atmos Energy Corporation (the predecessor to Liberty Utilities), Staff, and OPC (“Signatories”) had entered into a stipulation in which the Signatories agreed that revenues associated with the Noranda and General Mills special contracts should not be imputed to the full-tariffed rates. Instead, the public utility, Staff and OPC agreed that the public utility “shall offer to extend the special contracts of Noranda and General Mills to expire on the effective date of the next general rate case. The rates for such extended period shall be those in effect at the end of the respective contract’s original term.”⁹⁶ The Commission issued its *Order Approving Stipulation and Agreement*, and specifically incorporated all the provisions of the agreement related to Noranda and General Mills contracts, including the agreement that specific rates should be charged to Noranda and General Mills.⁹⁷

In the *Liberty* rate case, the Commission rejected the position of Staff and OPC that the revenues associated with the two special contracts should be imputed, and found that the previous Atmos stipulation was not discretionary for the public utility, but mandatory and agreed to by the public utility, Staff, and OPC.⁹⁸ The Commission specifically found:

62. The Agreement to use these specific rates in the Noranda and General Mills contracts was not discretionary with Atmos. The rate provisions

⁹⁵ Ex. 201, Marke Surrebuttal, p. 7.

⁹⁶ *Unanimous Stipulation and Agreement*, p. 3, Case No. GR-2010-0192 (filed August 11, 2010).

⁹⁷ *Order Approving Stipulation and Agreement*, Case No. GR-2010-0192 (issued August 18, 2010).

⁹⁸ *Report and Order*, p. 32-33, Case No. GR-2014-0152.

were mandatory, and agreed to by Atmos, Staff, Public Counsel, and Noranda.

63. Had Liberty charged the rates Staff suggests in this case, Liberty would have violated the stipulation from File No. GR-2010-0192.⁹⁹

Similarly, in this case, the terms of the MEEIA 2 Extension Stipulation to call five demand response events during the Summer of 2019 were not discretionary with Evergy. That stipulation's provisions to call five demand response events were mandatory, and agreed to by Evergy, Staff, OPC, Department of Economic Development—Division of Energy, and Renew Missouri Advocates.¹⁰⁰

Since OPC and Staff were signatories to the MEEIA 2 Extension Stipulation, OPC and Staff should be estopped from making the argument that Evergy should have called more demand response events in the summer of 2019. The Commission should therefore reject OPC's and Staff's arguments that Evergy was imprudent to not call additional demand response events in 2019.

The MEEIA 2 Extension Stipulation was entered into by Evergy, Staff, and OPC after the summer of 2018. Therefore, for the summer of 2018, there were no requirements for calling a specified number of demand response events. However, as explained herein, Evergy was not imprudent in its management of the demand response programs in 2018. Evergy managed its demand response programs in the summers of 2018 and 2019 as those programs were designed and approved by the Commission to be managed. The demand response programs in question were not designed to arbitrage DA LMP or to reduce SPP Schedule 1A and 11 fees through the calling of numerous demand response events, as suggested by OPC and Staff. To the contrary, the demand response programs were specifically designed to reduce annual system-wide peak load, according to

⁹⁹ *Id.* at 33.

¹⁰⁰ Ex. 1, *Stipulation and Agreement Regarding Extension Of MEEIA 2 Programs During Pendency Of MEEIA 3 Case*, File Nos. EO-2019-0132 and EO-2019-0133 (filed on February 15, 2019) ("MEEIA 2 Extension Stipulation").

the terms of the Company's tariffs.¹⁰¹ This is how those programs were designed, implemented, and managed. In so doing, those demand response programs achieved the level of cost-effectiveness sought by the Commission via the methodology approved by the Commission.¹⁰²

OPC and Staff have failed to raise a serious doubt that the Company acted imprudently in the management of the demand response programs during the MEEIA prudence review period. In any event, the Company has dispelled any doubts and demonstrated that it was prudent in the management of its demand response programs. It was prudent for the Company to have followed the parameters of the demand response programs established in its tariffs, and complied with the terms of the Commission's *Order Approving Stipulation and Agreement* in File Nos. EO-2019-0132 and EO-2019-0133 (Feb. 27, 2019).

VII. DID EVERGY ACT IMPRUDENTLY BY NOT CALLING MORE DEMAND RESPONSE EVENTS FOR THE PURPOSE OF REDUCING THE COSTS ASSOCIATED WITH DAY-AHEAD LOCATIONAL MARGINAL PRICES? IF THE COMMISSION FINDS EVERGY ACTED IMPRUDENTLY, WHAT ADJUSTMENT SHOULD THE COMMISSION ORDER?

See Section VI above.

VIII. DID EVERGY MISSOURI METRO ACT IMPRUDENTLY BY NOT ENTERING INTO MORE BI-LATERAL CAPACITY CONTRACTS? IF THE COMMISSION FINDS EVERGY ACTED IMPRUDENTLY, WHAT ADJUSTMENT SHOULD THE COMMISSION ORDER?

This issue is related to the issue raised by Staff in the Company's MEEIA 3 case in which the Commission approved the Company's MEEIA 3 programs, even though the Company has sufficient capacity to serve its customers for several years into the future. In its *Amended Report and Order* in the MEEIA 3 case, the Commission found that it was in the public interest to approve the Company's MEEIA 3 energy efficiency and DSM programs, even though the Company had

¹⁰¹ Ex. 106A, Purpose paragraph in Sheet No. 1.96, 2.07, 2.09, 2.20, and 2.32; Ex. 106B Purpose paragraph in Original Sheet No. R-73, R-84, R-86, R-96, and R-107.

¹⁰² Ex. 5, File Rebuttal, pp. 14-15.

sufficient capacity to serve its customers for several years into the future.¹⁰³ The Western District of the Missouri Court of Appeal recently affirmed the Commission's order on all points.¹⁰⁴

Evergy Missouri Metro did not act imprudently by not entering into more bi-lateral capacity contracts.¹⁰⁵ Staff and OPC's positions are based on flawed assumptions regarding the available market for such bi-lateral contracts and the planning time-frame by which such bi-lateral capacity contracts are entered into.

In this case, Staff is proposing to disallow \$1.2 million because Evergy Missouri Metro did not enter into a hypothetical capacity sales contract with a non-affiliate in 2018 and 2019.¹⁰⁶ Staff is under the mistaken impression that a ready market exists for unused capacity in the SPP footprint.¹⁰⁷ The overriding assumption made by Staff is that capacity sales are easily made, and that extra capacity can be sold by a market participant at any time. Staff is incorrect to make that assumption.

As Mr. Carlson explains in his testimony, capacity purchases and sales made in the SPP market are bilateral in nature, meaning they are contracted between two counterparties outside of the SPP marketplace.¹⁰⁸ Unlike other regional transmission organizations such as the Midcontinent Independent System Operator, SPP does not have a capacity market. Without a capacity market, market participants such as Evergy must canvass the market and find a counterparty that is interested in buying or selling capacity as needed.¹⁰⁹

¹⁰³ *Amended Report and Order*, File Nos. EO-2020-0132/0133.

¹⁰⁴ *Per Curiam Opinion, State ex rel. Office of Public Counsel v. Public Service Commission et al.*, Case No. WD-2020-83828 (March 2, 2021, *transfer denied*, SC99048 (June 1, 2021)).

¹⁰⁵ Ex. 3, Carlson Rebuttal, pp. 3-7; Ex. 4, Carlson Sur-surrebuttal, pp. 2-3; Ex. 5, File Rebuttal, p. 10.

¹⁰⁶ Ex. 104, Luebbert Direct, p. 2.

¹⁰⁷ Ex. 3, Carlson Rebuttal, p. 3.

¹⁰⁸ *Id.* at 3-4.

¹⁰⁹ *Id.*

Evergy routinely talks with other utilities, energy marketers, municipalities, independent power producers, and financial institutions to understand the needs of the marketplace to be in a position to respond to Requests For Proposal, or to sell capacity on a bilateral basis to unaffiliated entities.¹¹⁰

In 2018 and 2019, Evergy Missouri Metro sold capacity to other entities who are identified in the confidential version of Mr. Carlson's testimony on page 4. The Company also continued to respond to RFPs in 2018 and 2019 as it has done for years.¹¹¹

There are many factors that affect the ability to sell capacity, including the supply situation and needs of other utilities, transmission constraints, and the time periods needed to upgrade transmission facilities to serve those customers.

Staff simply makes the inaccurate assumption that such capacity sales: (1) would have had a buyer; (2) at a particular price; (3) were not impacted by any transmission constraints, and (4) with particular terms and conditions agreeable to both the buyer and seller.¹¹²

Staff's analysis does not suggest who the buyer would be or even if there was any buyer interested in Evergy's capacity during this audit period. It is based upon a hindsight review and does not meet the reasonable person standard for prudence reviews that is discussed in Staff and Company testimony.

It is not reasonable to make a prudence disallowance in this case when a reasonable person making decisions at Evergy during the audit period did not have any more realistic opportunities to make additional capacity sales. Evergy's personnel used reasonable practices to attempt to find potential buyers of its excess capacity, but no buyers were found. It would be unreasonable and

¹¹⁰ Id.

¹¹¹ Ex. 3 (Confidential), Carlson Rebuttal, p. 4.

¹¹² Ex. 3, Carlson Rebuttal, p. 5.

unlawful for the Commission to adopt Staff's proposed prudence disallowance under these circumstances.

A similar and related issue has already been resolved in the recent FAC prudence review case, File Nos. EO-2020-0262 and EO-2020-0263. In that case, the OPC initially argued that the Company should have entered into capacity sales contracts with third parties as Staff is arguing in this case. In the alternative, OPC argued that Evergy should in the future include an assumption in its IRP scenarios that there would be no capacity sales.

Evergy, OPC and the Commission Staff filed a unanimous partial stipulation which settled the issue in the FAC proceeding. Evergy agreed to include a "no capacity sales" assumption in each of its IRP scenarios.¹¹³ On February 10, 2021, the Commission approved the terms of the Stipulation which resolved the issue related to Evergy's capacity sales and the capacity sales assumptions that would be used in future IRP scenarios.¹¹⁴

IX. DID EVERGY ACT IMPRUDENTLY BY VIRTUE OF ITS MEEIA PROGRAMS' INCENTIVE TO NON-INCENTIVE COSTS RATIOS?

With this issue, OPC asks the Commission to find the Company imprudent by comparing it to other utilities throughout the country with respect to program overhead costs. This comparison is meaningless without a common understanding of what each utility considers to be incentive and non-incentive costs. OPC witness Marke admitted that he does not know how the list of utilities across the country that he used in his comparison characterize program incentive and non-incentive costs.¹¹⁵

Even more arbitrary and unsupportable is OPC's use of a 50/50 split for its proposed adjustment. OPC asks the Commission to make a disallowance of \$1,930,392 against Evergy

¹¹³ *Unanimous Partial Stipulation and Agreement, Re Evergy Metro and Evergy Missouri West*, File Nos. EO-2020-0262 and EO-2020-0263, p. 2 (filed January 27, 2021).

¹¹⁴ *Order Approving Unanimous Partial Stipulation, Re Evergy Metro and Evergy Missouri West*, File Nos. EO-2020-0262 and EO-2020-0263, p. 2 (issued February 10, 2021).

¹¹⁵ Tr. 217, lns. 15-16; Tr. 220, lns. 8-12.

Missouri West on this issue so that the level of each utility's prudence disallowance will result in an approximate 50/50 level of incentive to non-incentive cost.¹¹⁶ During questioning by Regulatory Law Judge Hatcher, it became apparent that there is little, if any, basis for a 50/50 split proposed by OPC, but it is simply an arbitrary line drawn by OPC witness Marke.¹¹⁷ It is quite clear that OPC's administrative cost adjustment is meant to punish the Company based on an undefined OPC 50/50 "standard of "fairness". For Evergy Missouri Metro, OPC proposes no prudence adjustment since the total dollar level of Staff's prudence adjustment for the Metro operations met OPC's arbitrary 50/50 standard , but for Evergy Missouri West, OPC proposes an overhead adjustment since Staff's prudence adjustment for West was much lower. OPC ignores the fact that both companies run the same programs in the same way, yet Metro faces no overhead adjustment from OPC while West is penalized by almost \$2 million. Staff agrees that OPC's 50/50 adjustment is arbitrary and does not support it.¹¹⁸ Neither should the Commission.

OPC's use of Energy Information Administration ("EIA") 2018 data, cannot be the basis of a Commission prudence adjustment. The EIA data does not provide information which the Commission can use to find that the Company's level of MEEIA 2 administrative costs (non-incentive costs) are imprudent as compared to the other utilities represented in the EIA data.¹¹⁹ The Low-Income Weatherization program is another example of how the distinction between incentive and non-incentive is misunderstood by OPC. Evergy categorizes the costs for all the measures (insulation, lighting, weatherstripping, etc.) and the installation costs of those measures as "delivery" of the program because no cash, rebates or bill credits are provided to the customer.¹²⁰ OPC's analysis makes this look

¹¹⁶ Ex. 201, Marke Surrebuttal, p. 2.

¹¹⁷ Tr. 211-13.

¹¹⁸ Ex. 103, Tandy Surrebuttal, p. 3.

¹¹⁹ Tr. 220, Ins 8-12.

¹²⁰ Ex. 6, File Sur-surrebuttal, p. 9.

like a negative “administrative cost” in how the program is managed and the amount of benefits received by the customer. In other words, OPC’s analysis mischaracterizes the delivery cost of the weatherization measures as an administrative cost “inefficiency” when it is actually the cost of installing the weatherization measure in the customers’ home.¹²¹

OPC’s analysis ignores the fact that utilities characterize “incentive” and “non-incentive” costs differently. Evergy describes the majority of the consumer benefit a “delivery” cost and reports those benefits to the EIA. These “delivery” costs, such as a free smart learning thermostat device provided to customers curtailing summer peak demand through the residential demand response program are categorized as a “non-incentive” in OPC’s analysis.¹²² OPC believes, without providing any support, that these non-incentive costs are the same as program overhead costs. However, other utilities, deem the thermostat costs as an incentive and thus would not be reported to EIA as a delivery cost.¹²³ Neither of these ways of categorizing delivery costs by the utility is wrong but it does show the danger of comparing incentive and non-incentive costs between utilities when there is no attempt, as in the case with OPC’s analysis, to show that every utility looks at the delivery cost in the same way.

OPC’s “analysis” is also flawed because is not conducted on a “per device” basis and thus would lead to perverse incentives if adopted by the Commission. If one utility gives a rebate of \$500 and another gives a rebate of \$1000, OPC’s analysis favors the \$1000 rebate because the ‘incentive’ part of the equation would increase in relative size to the “non-incentive” portion.¹²⁴ As described below, a much better evaluation tool for the Commission is the total dollars spent per kWh saved to measure effectiveness of a program relative to peers with similar programs.

¹²¹ Id.

¹²² Ex. 6, File Sur-Surrebuttal, p. 4.

¹²³ Id.

¹²⁴ Ex. 6, File Sur-surrebuttal, p. 10.

When using a baseline which does compare to other utilities, Evergy’s performance is near the top and therefore not appropriate for a prudence adjustment. If the dollars per kilowatt hour or dollars per kilowatt saved for utilities of similar size (and administering similar programs) is used, Evergy is on par with its peer utilities. If one were to use a comparable set of utility DSM programs (spend between \$1 million and \$40 million per year), Evergy Missouri Metro and Evergy Missouri West rank 32nd and 44th, respectively, out of 159 utilities in \$/kWh in the EIA database.¹²⁵ This ranking means that Evergy is at or near the top quartile in dollars spent per kWh saved and that 75% of the other utilities operate their programs more expensively than Evergy for every dollar spent to achieve energy reduction.¹²⁶ The ratio of \$/kWh or \$/kW (in annual first year savings) in the table below shows that, it is getting near or better than average kW or kWh savings as compared to Ameren as well.

Table 2¹²⁷

PY 2019 DSM Portfolio Cost Comparisons

	Program Costs \$/per kW	Program Costs \$/per kWh
Ameren PY 2019	\$ 537.84	\$ 0.327
Evergy Metro PY 2019	\$ 470.88	\$ 0.293
Missouri West PY 2019	\$ 349.05	\$ 0.273

¹²⁵ Id. at 5.
¹²⁶ Id. at 6-8.
¹²⁷ Id. at 5.

Table 3¹²⁸

PY 2018 DSM Portfolio Cost Comparisons

	TRC Program Costs \$/per kW	TRC Program Costs \$/per kWh
Ameren PY 2018	\$ 1,136.75	\$ 3.940
Evergy Metro PY 2018	\$ 716.97	\$ 0.294
Missouri West PY 2018	\$ 517.90	\$ 0.560

	UCT Incentive Costs / per kW	TRC Non-incentive Costs / per kWh
Ameren PY 2018	\$ 355.62	\$ 224.42
Evergy Metro PY 2018	\$ 167.84	\$ 195.52
Missouri West PY 2018	\$ 112.61	\$ 156.23

	UCT Incentive Costs / per kWh	TRC Non-incentive Costs / per kWh
Ameren PY 2018	\$ 0.11	\$ 0.07
Evergy Metro PY 2018	\$ 0.07	\$ 0.08
Missouri West PY 2018	\$ 0.08	\$ 0.11

Similarly, the above tables show that the Company’s Total Resource Cost Test (“TRC”) total portfolio program costs were lower than that of Ameren Missouri. These costs are the program costs used by Ameren’s and Evergy’s EM&V contractors to calculate the cost effectiveness ratios. The Company’s TRC total portfolio program costs were lower than that of Ameren Missouri and costs on a UCT incentive and TRC non-incentive costs were lower than that of Ameren Missouri on a per kW basis and comparable on a per kWh bases.¹²⁹ The Commission has made no prudence

¹²⁸ Id. at 6.

¹²⁹ Id. pp. 5-6.

adjustment against Ameren on the basis of excessive overhead costs and neither is one warranted in the case of Evergy's MEEIA programs.

OPC witness Marke's assumptions and comparisons regarding overhead costs are not sound.¹³⁰ The Company's MEEIA programs do not have excessive overhead as compared to similarly sized utilities and are more efficient than most utilities in terms of dollars per kWh saved. In addition, the Company's programs were in line with Commission approved levels of spend by category, with better values in most categories.¹³¹ OPC has not raised a serious doubt as to the reasonableness of Evergy's management of its MEEIA program costs.

X. CONCLUSION

Evergy respectfully submits that Staff and OPC's recommend disallowances are based on a curtailment event strategy (attempting to arbitrage DA LMP prices and SPP fees via additional curtailment events) that itself should be deemed imprudent. The evidence clearly shows that Evergy acted in a reasonable manner by implementing its MEEIA Cycle 2 consistent with those programs' design and purpose. The evidence clearly shows that Evergy abided by the terms of the Stipulation and Agreement extending the MEEIA Cycle 2 programs in the summer of 2019. The evidence clearly shows that Evergy was successful in achieving cost-effective MEEIA programs. Staff and OPC's attempt to litigate their MEEIA 3 policy preferences via a prudence review should be recognized and disregarded by the Commission. Neither Staff, nor OPC presented any evidence that would cast a "serious doubt" as the reasonableness of Evergy's decision-making.

¹³⁰ In the past, the Commission has rejected the use of "management efficiency adjustments" when assessing rate of return due to the difficulty of making valid comparisons among public utilities. See Staff v. Southwestern Bell Telephone Company, Case No. TC-89-14, 29 Mo.P.S.C. (N.S.) 607, 653-56 (June 20, 1989) ("...these types of adjustments can rarely be supported by sufficient evidence to warrant such a decision."); See also Re Missouri Gas Energy, Case No. GR-2004-0209, 12 Mo.P.S.C.3d 581, 595-98 (Sept. 21, 2004).

¹³¹ Ex. 6, File Sur-Surrebuttal, p. 13.

WHEREFORE, the Company respectfully submits its Brief for consideration by the Commission.

Respectfully Submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Evergy, Inc.
1200 Main Street
Kansas City, MO 64105
Phone: (816) 556-2791
Fax: (816) 556-2787
roger.steiner@evergy.com

Joshua Harden, MBN 57941
1010 W. Foxwood Drive
Raymore, Missouri 64083
Phone: (816) 318-9966
jharden@collinsjones.com

James M. Fischer, MBN 27543
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101
Phone: (573) 636-6758
Fax: (573) 636-0383
jfischerpc@aol.com

**Attorneys for Evergy Missouri Metro and
Evergy Missouri West**

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon counsel for all parties via electronic service on this June 4, 2021.

/s/ Roger W. Steiner

**Attorney for Evergy Missouri Metro and
Evergy Missouri West**