

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

In the Matter of the Application of Evergy)
Metro, Inc. d/b/a Evergy Missouri Metro and)
Evergy Missouri West, Inc. d/b/a Evergy) No. EU-2021-0283
Missouri West for an Accounting Authority)
Order Allowing the Companies to Record and)
Preserve Costs Related to the February 2021 Cold)
Weather Event)

**EVERGY MISSOURI METRO AND EVERGY MISSOURI WEST
RESPONSE IN OPPOSITION TO OPC MOTION TO DISMISS**

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 “Company”) and, for their *Response in Opposition* (“Response”) to the Office of the Public Counsel’s (“OPC”) *Motion to Dismiss Application for an AAO for Storm Uri Costs* (“Motion”) dated July 14, 2021, states as follows:

1. OPC’s motion to dismiss should be denied by the Commission. As OPC acknowledges, Rule 20 CSR 4240-2.116(4) provides that “good cause” is “required” to be shown to support a motion to dismiss. See Motion to Dismiss at 2. To “show cause” why a tribunal should act, or refrain from acting, a litigant must provide sufficient reason. This is synonymous with a showing of “good cause” which is defined as showing a “legally sufficient ground or reason” under the circumstances. Good cause means a good faith request for reasonable relief. To constitute good cause, the reason “must be real, not imaginary, substantial, not trifling, and reasonable, not whimsical, and good faith is an essential element.”¹

¹ Belle State Bank v. Industrial Comm’n, 547 S.W.2d 841, 846 (Mo. App. Spfld. 1977) (original emphasis). See, Darr v. Roberts Mktg. Group, LLC, 428 S.W.3d 717, 724-25. (Mo. App. E.D. 2014).

2. OPC's arguments fail to establish good cause for the Commission to dismiss the Application because OPC incorrectly concludes that Evergy does not need an AAO to defer the impacts of Winter Storm Uri, applies an erroneous interpretation of the Commission's standard and precedent for granting an AAO, and inappropriately suggests that the Company can and should simply file a rate case to recover the costs from Winter Storm Uri.

3. Given the extraordinary results of the extreme weather wrought by Winter Storm Uri, OPC's motion to terminate the Commission's review of Evergy's AAO application, especially consideration of how to manage the significant and unusual \$297.3 million of costs incurred by Evergy Missouri West, should be denied. See Evergy AAO Application, ¶ 27. There is ample Commission precedent supporting the issuance of an AAO for extraordinary storm costs, such as the Winter Storm Uri costs, and it is clearly within the Commission's purview to issue an AAO as requested by Evergy in this docket.² OPC simply ignores this precedent in its Motion to Dismiss, and instead makes inaccurate and misleading arguments in support of its position.

4. First, OPC appears to assert at Paragraphs 2 and 3 that the Company does not require a Commission order to establish regulatory assets and regulatory liabilities in order to defer the extraordinary effects of Winter Storm Uri costs. Tacitly acknowledging that the effects of the storm were "extraordinary" under General Instruction 7 of the FERC Uniform System of Accounts (USOA) adopted by the Commission, OPC ignores USOA Definition 31 which sets forth the requirements to be met for the establishment of regulatory assets and liabilities.

5. Definition 31 states that regulatory assets and liabilities "are assets and liabilities that result from specific revenues, expenses, gains or losses that would have been included in net

² In re Southern Union Co., Report & Order at 26, No. GU-2011-0392 (Jan. 25, 2012) (Joplin tornado). See, also the cases cited in footnote 5, infra.

income determination in one period under the general requirements of the [USOA] but for it being probable:

- A. that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services;
or
- B. in the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.”

6. In order to meet subpart (A) of this requirement and establish that it is “probable that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services,” it is necessary for Evergy to obtain an accounting authority order from the Commission, Evergy cannot simply choose to defer the costs of Winter Storm Uri without such an order from the Commission. When an order permitting deferral is issued by the Commission, the regulatory assets and liabilities appear in either Account 182.3 (“Other regulatory assets”) or Account 254 (“Other regulatory liabilities”) on the balance sheet, and *not* on the income statement as would normally occur. The Commission has referenced these accounts in numerous deferral orders that it has issued.³ As the Court of Appeals recently stated: “Whether a cost should be afforded different treatment and merits a deferral directly ... is necessarily a discretionary judgment that is within the expertise of the PSC” Office of Public Counsel v. Evergy Mo. West, Inc., 609 S.W.3d 857, 866 (Mo. App. W.D. 2020), quoting Kansas City Power & Light Co. v. PSC, 509 S.W.2d 757, 770 (Mo. App. W.D. 2016).

³ See, e.g., OPC v. KCP&L Greater Mo. Operations Co., Report & Order at 15-16, No. EC-2019-0020 (Oct. 27, 2019); In re Kansas City Power & Light Co., Report & Order at 2, No. EU-2012-0131 (Apr. 19, 2012); In re Application of Empire Dist. Elec. Co. for an AAO, Order Approving Stip. & Agmt. at 2, No. EU-2011-0387 (Nov. 30, 2011).

7. Second, OPC misapplies a single Commission decision with substantially different facts than those present in the current docket and fails to consider the significant Commission precedent establishing a utility's ability to obtain an AAO for extraordinary storm events. The case⁴ cited by OPC dealt with a request by St. Joseph Light & Power Company ("SJLP") to defer approximately \$3.3 million dollars in incremental energy costs due to an unplanned shut down at the Lake Road power plant. OPC and other parties argued that the AAO should not be granted because the Lake Road incident resulted directly from the acts or omissions of SJLP. While the Commission did not make a determination of SJLP's fault, it did note that it was understandable that SJLP did not file a rate case due to a rate moratorium in conjunction with a proposed merger. The Commission then noted that since the merger moratorium had been rejected by the Commission, SJLP was now free to file a rate case and rejected the AAO application. That decision, specific to the unique circumstances experienced by SJLP, does not overrule the multitude of Commission orders approving AAOs for extraordinary storm costs without requiring a showing that the Company could have filed a rate case. For example, in its order approving a stipulation and agreement that authorized the use of an AAO by The Empire District Electric Company to account for costs related to the 2011 Joplin tornado, the Commission stated that "Missouri courts have recognized the Commission's regulatory authority to grant a form of relief to a utility in the form of an AAO 'which allows the utility to defer and capitalize certain expenses until the time it files its next rate case.'"⁵

⁴ Order, 2000 Mo. PSC LEXIS 1664 *11, In re Application of St. Joseph Light & Power CO. for an AAO, No. EO-2000-845 (Dec. 14, 2000).

⁵ Order Approving and Incorporating Unanimous Stipulation and Agreement at 3, In re Application of Empire Dist. Elec. Co. for the Issuance of an AAO, No. EU-2011-0387 (Nov. 30, 2011), citing State ex rel. Aquila, Inc. v. PSC, 326 S.W.3d 20, 27 (Mo. App. W.D. 2010). See, Report & Order, In re Union Elec. Co., No. EU-2012-0027 (Nov. 26, 2013) (winter ice storm); Order Approving Stipulation & Agmt., In re Union Elec. Co., No. EU-2008-0141 (Apr. 30, 2008) ((winter ice storm); Order Granting Acct. Auth. Order, In re Kansas City Power & Light Co., No. EU-2002-1048 (July 30, 2002) (winter ice storm).

8. OPC's argument would create an inefficient result where a utility has to file a rate case anytime it incurs extraordinary storm costs rather than allowing deferral of the costs in an AAO and relying on the utility to file a rate case for the opportunity to recover the costs when it makes sense based on other factors besides the deferrals. For instance, if a utility experienced multiple storms in one calendar year (one in January and one in December) it may be forced under OPC's logic to file separate rate cases for each event rather than seeking to defer the costs for the opportunity to recover in one rate case.

9. Third, OPC ignores the benefits that deferral of the costs related to Winter Storm Uri as proposed by Evergy would provide for customers – a smoothing of the recovery of costs from Evergy Missouri West through the use of securitization and a return of the regulatory liability to Evergy Missouri Metro customers through the FAC. The AAO proceeding also gives the Commission the opportunity to address a number of issues related to the requested deferral and recovery in this docket, including the jurisdictional allocation issue which unfairly requires the Company to credit customers for off-system sales in excess of actual revenues and the question of whether the Company's FAC should be used as the mechanism for the recovery of extraordinary fuel costs and the return of off-system sales revenues (which would unfairly penalize both the Company and its customers) as compared to giving the Company the opportunity to recover prudently incurred deferred Winter Storm Uri costs and revenues in a future proceeding.

10. Fourth, if Evergy were required to file a rate case to address recovery of the Winter Storm Uri costs, rather than receiving authority to defer them in this docket, a decision in that rate case would not be decided for over a year. Such a delay would result in significant volatility in Evergy's calendar year financial books across years that would not send appropriate signals of the

Company's financial performance to investors. Instead, it is appropriate for the Commission to approve the deferral in this docket so that the Winter Storm Uri costs can be reviewed in a future proceeding –either a securitization proceeding or an FAC filing – and so that the financial books for 2021 accurately reflect the costs and accounting treatment for Winter Storm Uri.

WHEREFORE, the Company respectfully submits its Response in Opposition to the Motion to Dismiss, and requests the Commission issue an order denying OPC's Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 26th day of July 2021, to all parties of record.

/s/ Roger W. Steiner

Roger W. Steiner