

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

In the Matter of Evergy Metro, Inc. d/b/a)
Evergy Missouri Metro’s Request for Authority)
to Implement a General Rate Increase for Electric) **Case No. ER-2022-0129**
Service)

In the Matter of Evergy Missouri West Inc. d/b/a)
Evergy Missouri West’s Request for Authorization)
To Implement a General Rate Increase for Electric) **Case No. ER-2022-0130**
Service)

**EVERGY MISSOURI METRO’S AND EVERGY MISSOURI WEST’S
RESPONSE TO OPC’S MOTION FOR RECONSIDERATION OR, IN THE
ALTERNATIVE, APPLICATION FOR REHEARING**

COME NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“EMM”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW”) (collectively, “Evergy” or “the Company”) and, for their *Response* (“Response”) to the Office of the Public Counsel’s (“OPC”) *Motion for Reconsideration or, in the Alternative, Application for Rehearing* (“Motion”) filed on December 16, 2022, states to the Missouri Public Service Commission (“Commission”) as follows:

1. The Commission properly and lawfully exercised its discretion to reconsider the recovery period over which the \$182 million regulatory asset related to the retirement of the Sibley plant would be returned to EMW. Given the parties’ recommendations that the investment be returned over periods ranging from five years to twenty years, the Amended Report and Order’s judgment that the regulatory asset be returned over eight years is both lawful and reasonable. See Amended Report and Order at 39-43 (Dec. 8, 2022) .

2. OPC seeks to handcuff the Commission, arguing that it must choose either the Staff’s recommendation of a five-year recovery period, the 17-year period supported by OPC, or the 20-year periods proposed by MECG and Evergy. See Motion at 6-9. There is no lawful basis to constrain the decision-making authority of the Commission which “is granted wide discretion in determining”

issues related to financial and accounting issues. Kansas City Power & Light Co. v. PSC, 509 S.W.3d 757, 770 (Mo. App. W.D. 2016). Just as “[t]he PSC ... remains the authority that determines when an item may be included in a different accounting period for the purpose of developing authorized rates,” the Commission’s decision on the period of years over which a regulatory asset will be recovered by the Company in authorized rates “is necessarily a discretionary judgment that is within the expertise of the PSC” Id. Because of this, the appellate courts “will not second-guess the PSC’s reasoned decisions” regarding such decisions. Id. at 770-71; State ex rel. Public Counsel v. PSC, 289 S.W.3d 240, 246-47 (Mo. App. W.D. 2009).

3. The appellate courts that review the Commission’s decisions have stressed that they “consider the evidence, along with all reasonable supporting inferences, in the light most favorable to the Commission.” Id. “A large area of discretion is delegated to our Public Service Commission by law; many of its decisions necessarily rest largely in the exercise of a sound judgment. We do not substitute our judgment for that of the Commission.” State ex rel. Dyer v. PSC, 341 S.W.2d 795, 802 (Mo. 1960).

4. For example, when setting the return on equity of a public utility, state and federal regulatory utility commissions are free to determine a return that falls within a “zone of reasonableness” and not limit itself solely to the numerical returns proposed by the witnesses. For example, when the Commission set the return on equity of Union Electric Co. at 10.2%, which fell within a zone of reasonableness of 9.36% to 11.36%, it was free to disregard the opinion of the witness it found to be most credible. State ex rel. Public Counsel v. PSC, 274 S.W.3d 569, 575 (Mo. App. W.D. 2009). The Court of Appeals stated that the commission was “not obligated to believe all of” that expert’s testimony. It “was free to reject” parts of his analysis, and “accordingly, to modify his recommended 9.8 percent rate of return.” Id.

5. As the U.S. Supreme Court has stated, as long as a regulatory utility commission acts reasonably, "... it must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests." In re Permian Basin Area Rate Cases, 390 U.S. 747, 767 (1968).

6. Given that the parties' recommendations for the amortization period related to the Sibley unrecovered investment ranged from five years to 20 years, the Commission was free to determine a period within that range. It reasoned that while "Evergy should be allowed a return" of the unrecovered investment "as quickly as practicable," "it is more appropriate and transparent to treat the regulatory liability and asset accounts independently." See Amended Report & Order at 42-43. The Commission reaffirmed its decision that the regulatory liability of \$105,659,315 be returned over four years, but then determined that the regulatory asset of \$182,253,675 be recovered over eight years. Id. at 38-39, 43. Finding that the regulatory asset was "not so large as to necessitate" an amortization period of 17 to 20 years, the PSC noted that "it is almost double the amount of the regulatory liability which is to be recovered over a four-year period." Id. at 43. Exercising its judgment and discretion, the Commission found "it appropriate to set the amortization period for the unrecovered investment in the Sibley Units at eight years." Id.

7. The PSC's final decision to set the recovery period at eight years – not "eight days" as noted in several places by OPC¹ – was particularly appropriate given Staff's testimony that if its recommendation to value the Sibley regulatory asset at \$145.6 million and to set the amortization recovery period at five years was not accepted, the Commission "should consider lengthening the amortization period to mitigate the rate impact" upon customers. See Ex. 269 at 6 (K. Majors Surrebuttal & True-Up Direct). See also Ex. Staff Post-Hearing Brief at 13, 19; Ex. 218 (K. Majors Direct). Because the Commission determined to use a higher net book value for Sibley, thus

¹ See OPC Motion at ¶¶ 52-54.

increasing the regulatory asset, the Amended Report and Order properly increased the amortization period to address the customer impact noted by Staff. Additionally, the Commission exercised its sound discretion to avoid the possibility of triggering a PISA growth cap violation under Section 393.1655.3 that could be caused by an amortization decision, and took action that “will decrease the risk of Evergy surpassing the PISA cap.” See Report & Order at 43. See also Spire Missouri, Inc. v. PSC, 618 S.W.3d 225, 233 (Mo. en banc 2021) (“the PSC has broad discretion” in making rate case decisions).

8. The Commission’s decision to adjust the length of the amortization period so as not to create a performance penalty is well supported in the Amended Report and Order. The Commission determined that the decision to retire Sibley was not imprudent (p. 35), concluding in Ordered Paragraph 5 (p. 98): “The retirement of Sibley was prudent.” Therefore, it follows that this decision should not be the basis for a performance penalty under PISA.

9. Finally, OPC complains that it didn’t have sufficient time to respond to EMW’s Motion for Reconsideration or, in the Alternative, Application for Rehearing, filed December 5, 2022. Given the statutory timeline that rate cases be decided in eleven months unless extended, and that Commission decisions in such proceedings occur “as speedily as possible,”² OPC has had sufficient opportunity to raise its arguments which are now before the Commission. Moreover, if OPC truly believed that a 17 to 20 year amortization period was appropriate, it had ample time to inform the Commission of this belief following the initial Report and Order which established a four-year amortization period.

WHEREFORE, the Company submits its Response and respectfully requests that the Commission deny OPC’s Motion for Reconsideration or, in the Alternative, Application for Rehearing.

² § 393.150.2, Mo. Rev. Stat. (2016), as amended.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served upon counsel for all parties on this 23rd day of December 2022, by either e-mail or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner

Roger W. Steiner