

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

In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri)
West and Evergy Metro, Inc. d/b/a Evergy)
Missouri Metro for Permission and)
Approval of a Certificate of Public)
Convenience and Necessity for Natural)
Gas Electrical Production Facilities)

Case No. EA-2025-0075

The Office of the Public Counsel's Initial Brief

Respectfully submitted,

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Chief Deputy Public Counsel

June 24, 2025

COMES NOW the Office of the Public Counsel (“OPC”) and for its Initial Brief states:

Introduction

Evergy Missouri West and Evergy Missouri Metro both were pursuing certificates of convenience and necessity for new generating stations; however, Evergy Missouri Metro elected to abandon its request(s). Specifically, Evergy Missouri West is seeking authority to construct, install, own, operate, maintain, and otherwise control and manage 100% ownership of a new generating station (“Mullin Creek generating station”), with a combustion turbine 440 MW simple-cycle gas turbine generating unit “Mullin Creek #1,” to be sited directly south of Evergy Missouri West’s existing Mullin Creek substation in Nodaway County, Missouri¹; 50% ownership of a new generating station (“McNew generating station”), with an advanced class 710 MW combined-cycle gas turbine generating unit “McNew,” to be sited near 38° 0’10.23” N and 97°55’11.10” W in Reno County, Kansas²; and 50% ownership of a new generating station (“Viola generating station”), with an advanced class 710 MW combined-cycle gas turbine generating unit “Viola,” to be sited near 37°20’00.5” N and 97°40’28.3” W in Sumner County, Kansas.³

Because Evergy Missouri West bids its generation into the SPP markets, its retail customers pay through their rates for the electricity used to serve them at the lower of Evergy Missouri West’s cost to generate that electricity or the SPP market prices of that electricity. For over a decade Evergy Missouri West’s generating portfolio has exposed its retail customers not only to high SPP market prices, but also to high costs of Evergy Missouri West wind purchase power agreements. For years running into decades Evergy Missouri West has needed to add more reliably dispatchable generation, generation that should be available during times of high prices in

¹ Ex. 5C, Evergy witness J. Kyle Olson, direct testimony, p. 17.

² Ex. 5C, Evergy witness J. Kyle Olson, direct testimony, p. 5.

³ Ex. 5C, Evergy witness J. Kyle Olson, direct testimony, p. 5.

the SPP markets.⁴ As Public Counsel stated in Public Counsel’s position statements, “[T]he natural gas-fired combined cycle and combustion turbine generating plants that are the subject of Evergy Missouri West’s certificate of convenience and necessity request are both ‘necessary’ and ‘convenient’ because of Evergy Missouri West’s historical deficiencies in its supply-side resources and because of its projected new data center loads.”

Invoking Commission rule 20 CSR 4240.045(2)(C) Evergy Missouri West also requests that the Commission determine the prudence of Evergy Missouri West’s decisions to operate and construct 100% of the Mullin Creek generating station, 50% of the McNew generating station, and 50% of the Viola generating station. In cases for certification of generating facilities the question before the Commission is controlled by statute—is the facility “necessary or convenient.” For reasons explained in this brief, Public Counsel opposes these Evergy Missouri West prudence requests.

Public Counsel’s arguments on the disputed issues presented to the Commission in this case in the revised list of issues follow.

Arguments

Issue A. Does the evidence establish that (1) the advanced 710 megawatt (“MW”) combined cycle gas turbine (“CCGT”) generating facility to be located in Sumner County, Kansas (“Viola”), (2) a 440 MW simple-cycle gas turbine (“SCGT”) generating facility located in Nodaway County, Missouri (“Mullin Creek #1”), and (3) the 710 MW CCGT generation facility to be located in Reno County, Kansas (“McNew”) (collectively, “Projects”) for which Evergy Missouri West is seeking a certificate of convenience and necessity (“CCN”) are necessary or convenient for the public service?

1. Should the Commission find that the Projects satisfy the first *Tartan* Factor of need?
2. Should the Commission find that the Projects satisfy the second *Tartan* Factor of economic feasibility?

⁴ Ex. 300C, Public Counsel witness Jordan Seaver rebuttal testimony, pp. 1-22.

5. Should the Commission find that the Projects are in the public interest and satisfies the fifth *Tartan* Factor?

Public Counsel’s position summary: While the listed factors can be helpful, the issue of certification boils down to whether the public is better off if the Commission issues the certificates, with any conditions the Commission determines appropriate. The Commission should issue to Evergy Missouri West a certificate to build, own, and operate 100% of the Mullin Creek generating station, 50% of the McNew generating station, and 50% of the Viola generating station as they are “necessary” and “convenient” within the meanings of those terms as they are used in in § 393.170 RSMo, *i.e.*, the public is better off if Evergy Missouri West builds, owns, and operates them than if it does not.

As Public Counsel stated in its position statements, “[T]he natural gas-fired combined cycle and combustion turbine generating plants that are the subject of Evergy Missouri West’s certificate of convenience and necessity request are both ‘necessary’ and ‘convenient’ because of Evergy Missouri West’s historical deficiencies in its supply-side resources and because of its projected new data center loads.”⁵ When lawfully issuing a certificate of convenience to KCP&L Greater Missouri Operations Company, n/k/a Evergy Missouri West, for its South Harper combustion turbine generating station, citing to statute and Court opinions explicating it (citations omitted), the Commission said:⁶

Section 393.170[RSMo] authorizes the Commission to grant a certificate of convenience and necessity when it determines, after due hearing, that the proposed

⁵ Ex. 300C, Public Counsel witness Jordan Seaver rebuttal testimony, pp. 1-22. See also, *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 Missouri West for Approval of New and Modified Tariffs for Service to Large Load Customers*, Case No. [EO-2025-0154](#).

⁶ *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Acquire, Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage Electrical Production and Related Facilities in Certain Areas of Cass County, Missouri Near the City of Peculiar*, Case No. EA-2009-0118, *Report and Order* effective March 28, 2009, [18 Mo. P.S.C. 3d 469](#); [2009 Mo. PSC LEXIS 200](#), [2009 Mo. PSC LEXIS 200](#) (South Harper station final CCN).

project is "necessary or convenient for the public service. " The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity. It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

After which the Commission discusses the *Intercon* (a line certificate)/*Tartan* (an area certificate) factors it created and often cites when evaluating applications for certificates of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

One upshot of the series of South Harper certificate cases and court opinions is that generating station location is important. See the last two Commission Reports and Orders from the South Harper certificate cases: *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Acquire, Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage Electrical Production and Related Facilities in Certain Areas of Cass County, Missouri Near the City of Peculiar*, Case No. EA-2009-0118, Report and Order effective March 28, 2009, [18 Mo. P.S.C. 3d 469](#), [2009 Mo. PSC LEXIS 200](#), [2009 Mo. PSC LEXIS 200](#) (South Harper station final CCN) and *In the Matter of the Application of Aquila, Inc. For Permission and Approval and a Certificate Of Public Convenience and Necessity Authorizing it To Acquire, Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage Electrical Production and Related Facilities in Unincorporated Areas of Cass County, Missouri*

Near the Town of Peculiar, Case No. EA-2006-0309, *Report and Order* effective May 31, 2006, 14 Mo. P.S.C. 3d 327, **2006 Mo. PSC LEXIS 614** (South Harper station penultimate CCN).

For over a decade Evergy Missouri West's generation portfolio has exposed its retail customers not only to high SPP market prices, but also to the high costs of Evergy Missouri West wind purchase power agreements. Public Counsel agrees that Evergy Missouri West needs to enlarge its generation portfolio with more reliably dispatchable generation, generation that should be available during times of high prices in the SPP markets.⁷ These proposed generating stations and units will do that and, if built, will be sited near existing natural gas and electric line infrastructure.⁸

Issue C. Should the Commission grant Evergy Missouri West's request that its decision to acquire, construct, own, and operate the Projects is prudent under Section 2(C) of Commission Rule 20 CSR 4240-20.045?

Commission Rule 20 CSR 4240-20.045(2)(C) follows:

In determining whether to grant a certificate of convenience and necessity, the commission may, by its order, make a determination on the prudence of the decision to operate or construct an asset subject to the commission's subsequent review of costs and applicable timelines.

Public Counsel's position summary: No. There is no reason for the Commission to make such a determination. What the Commission is to determine in this case is whether Evergy Missouri West building, owning, and operating 100% of the Mullin Creek generating station, 50% of the McNew generating station, and 50% of the Viola generating station is "necessary" and "convenient" within the meanings of those terms as they are used in in § 393.170 RSMo, *i.e.*, the public is better off if Evergy Missouri West builds, owns, and operates these generating stations than if it does not.

⁷ Ex. 300C, Public Counsel witness Jordan Seaver rebuttal testimony, pp. 1-22.

⁸ Ex. 5C, Evergy witness J. Kyle Olson, direct testimony, pp. 12-15.

To separately determine that Evergy Missouri West's decisions to construct or operate 100% of the Mullin Creek generating station, 50% of the McNew generating station, and 50% of the Viola generating station would be mere surplusage and of no effect for binding the Commission in the future when deciding what recovery to allow Evergy Missouri West for those generating stations through rates in some future rate case(s).

Further, the Commission can only make its decisions in this case based on the evidence that is before it in this case. If Public Counsel viewed that Evergy Missouri West's decisions to acquire, construct, own and operate these natural gas-fired combined cycle and combustion turbine generating plants were imprudent Public Counsel would have opposed certifying them.

As presented in the testimony of its witness Jordan Seaver, it is Public Counsel's position that the circumstances in which Evergy Missouri West made those decisions are the product of its earlier imprudent decisions.⁹ Further, decisions and circumstances may change in the future that would render Evergy Missouri West going forward with construction of one or more of these plants imprudent—those also are issues for one or more future rate cases. Historically, the Commission has recognized the independence of certification and ratemaking.

In its June 19, 1980, *Report and Order in In the matter of KANSAS CITY POWER & LIGHT COMPANY of Kansas City, Missouri, for authority to file tariffs increasing rates for electric and steam service provided to customers in the Missouri service area of the company*¹⁰ the Commission said:

The Company in its brief suggests that the absence of revocational language in Sections 393.170, RSMo 1978 and 393.230, RSMo 1978 taken together with Sections 393.130, RSMo 1980, 386.020(5), RSMo 1978 and Section 393.135 RSMo 1978, necessarily leads to the statutory requirement that the Commission include Iatan in its rate base. The Company's argument is essentially the following: The Commission granted the Company a Certificate of Convenience and Necessity

⁹ Ex. 300C, Public Counsel witness Jordan Seaver rebuttal testimony, pp. 1-22.

¹⁰ Case No. ER-80-48, 23 MoPSC (NS) 474, , 484-86; 38 PUR4th 1, [1980 Mo. PSC LEXIS 34](#).

which permitted construction of Iatan No. 1 under Section 393.170. When construction is complete the plant satisfies the tests of 393.135. Therefore the plant satisfies the statutory definition of electric plant under Section 368.020(12) and thus the Commission is required by statute to include the plant in rate base under Section 393.130.

Such interpretation of the Commission's powers would have the effect of emasculating the Commission's ability to insure that a utility shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable under Section 393.130, RSMo 1978.¹¹

Here Evergy Missouri is pursuing the same result—limiting ratemaking discretion by certification decisions—through the weaker thread of the Commission’s Rule 20 CSR 4240-20.045(2)(C). Evergy Missouri West urges that rule 20 CSR 4240-20.045(2)(C) means a Commission finding now that Evergy Missouri West’s decisions to construct and operate 100% of the Mullin Creek, 50% of the McNew, and 50% of the Viola generating stations were prudent would bar the Commission from making cost recovery disallowances for them in a future ratemaking for any reason other than costs attributable to their construction, including those incurred due to delay, and operation.¹²

With the correct understanding of the independence of the Commission’s certification—authority to construct, own and operate—and ratemaking—terms and conditions of service and authority to price—powers, Evergy Missouri West’s interpretation is without merit.

As Public Counsel indicated in its position statements, Public Counsel is not taking the position that in the present circumstances Evergy Missouri West’s decisions to acquire, construct, own and operate these natural gas-fired combined cycle and combustion turbine generating plants are imprudent and, therefore, the Commission should not issue the requested certificate(s). However, through its witness Jordan Seaver’s testimony Public Counsel has foreshadowed its

¹¹ *Id.* at 484-84.

¹² Ex. 2, Evergy witness Kevin D. Gunn direct testimony, pp. 22-25; Evergy witness Kevin D. Gunn, Tr. 2:59, ll. 5-25.

intent to challenge in one or more future rate cases Evergy Missouri West's earlier decisions that left Evergy Missouri West in the circumstances before it when it made its decisions to acquire, construct, own and operate these natural gas-fired combined cycle and combustion turbine generating plants. If those earlier decisions are raised in one or more future rate cases, then they will properly be before the Commission as relevant factors for the Commission to consider when developing Evergy Missouri West's just and reasonable retail rates.

Issue D. Should the Commission approve the Agreement?

Public Counsel's position: Public Counsel did not and does not oppose Evergy Missouri West, the Commission's Staff, and the Midwest Energy Consumers Group's settlement agreement that they filed in this case on May 29, 2025, but Sierra Club and Renew Missouri timely did. For purposes of the Commission's deliberations, by Commission Rule 20 CSR 4240-2.115(2)(D) the settlement agreement now is merely the positions of the signatories to it. Rather than approving the settlement agreement, the Commission should independently review it and accept only those portions it independently determines are supported by evidence and with which it agrees.

CONCLUSION

This Commission should issue Evergy Missouri West certificates of convenience and necessity authorizing Evergy Missouri West's to construct, install, own, operate, maintain, and otherwise control and manage 100% ownership of a new generating station ("Mullin Creek generating station"), with a combustion turbine 440 MW simple-cycle gas turbine generating unit "Mullin Creek #1," to be sited directly south of Evergy Missouri West's existing Mullin Creek substation in Nodaway County, Missouri¹³; 50% ownership of a new generating station ("McNew generating station"), with an advanced class 710 MW combined-cycle gas turbine generating unit

¹³ Evergy witness J. Kyle Olson, direct testimony, p. 17.

“McNew,” to be sited near 38° 0’10.23” N and 97°55’11.10” W in Reno County, Kansas¹⁴; and 50% ownership of a new generating station (“Viola generating station”), with an advanced class 710 MW combined-cycle gas turbine generating unit “Viola,” to be sited near 37°20’00.5” N and 97°40’28.3” W in Sumner County, Kansas, and deny Evergy Missouri West’s request for Commission Rule 20 CSR 4240-20.045 determinations that Evergy Missouri West’s decisions to construct or operate the foregoing generating stations are prudent subject to the commission’s subsequent review of costs and applicable timelines.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 24th day of June 2025.

/s/ Nathan Williams

¹⁴ Evergy witness J. Kyle Olson, direct testimony, p. 5.