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 Convenience and Necessity for Natural Gas Electrical Production Facilities	))))))	**Case No. EA-2025-0075**

INITIAL BRIEF OF STAFF

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TABLE OF CONTENTS

CASE NO. EA-2025-0075

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INITIAL BRIEF

COMES NOW, the Staff of the Missouri Public Service Commission ("Staff"), and for its *Initial Brief* respectfully states as follows:

Introduction

On November 15, 2024, Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("EMW") and Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("EMM") (collectively, "Evergy"), pursuant to §§ 393.170.1 and 393.140(4),[1] and Commission Rules 20 CSR 4240-2.060 and 20.045(1)-(3) and (6), filed an application ("Application") with the Commission requesting a Certificate of Convenience and Necessity ("CCN") to construct, install, own, operate, control, manage and maintain three natural gas electrical production facilities.

The requested facilities are (1) an advanced class 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 to be located in Nodaway County, Missouri ("Mullin Creek #1); and (3) a second advanced

[1] All citations are to the Revised Statutes of Missouri (2016), as amended.

class 710 MW CCGT generating facility to be located in Reno County, KS ("McNew") (collectively, the "Projects").

In its Application, Evergy proposed that one half of Viola would be owned by EMW, with the other half owned by Evergy Kansas Central ("EKC"); EMW would own 100% of Mullin Creek #1; and through its supplemental testimony filed on February 19, 2025, Evergy confirmed that 50% of McNew would be owned by EMW, with the other half going to EKC. EMM ultimately will have no ownership interest in any of the Projects.

Evergy also requests (1) variances from 20 CSR 4240-20.045(3)(C) to provide plans for restoration of safe/adequate service and as-built design drawings in a later submission; (2) construction accounting; and (3) that the Commission determine that EMW's decision to acquire, construct, and operate the Projects is prudent under 20 CSR 4240-20.045(2)(C).

Following settlement talks, EMW, Staff, and the Midwest Energy Consumers Group ("MECG") (collectively, "Signatories") entered into and filed a *Non-Unanimous Stipulation and Agreement* ("Agreement") on May 29, 2025, stipulating that the Commission should grant EMW the requested CCNs under § 393.170 authorizing EMW to construct, install, own, operate, maintain, and otherwise control and manage the Projects, subject to conditions outlined within the Agreement.[2] The Agreement also confirms that EMW intends to seek Construction Work in Progress ("CWIP") and Plant in Service Accounting ("PISA") for the Projects subject to and consistent with the limitations and conditions as provided for in Section 393.135.2 and Section 393.1400, pursuant to Senate Bill 4;[3] this provision does not limit the positions Signatories may take in future

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[2] *Non-Unanimous Stipulation and Agreement*, EFIS item No. 65, pg. 1, para. 1.
[3] *Id* at pg. 3, para. 8.

cases.[4] In addition, the Agreement requests that the Commission approve EMW's requested variances from 20 CSR 4240-20.045(3)(C).[5] The Agreement leaves the issue of decisional prudence under 20 CSR 4240-20.045(2)(C) for the Commission to decide.[6]

While not a signatory to the Agreement, the Office of the Public Counsel ("OPC") indicated that it had no objection.[7] However, Sierra Club and Renew Missouri Advocates d/b/a Renew Missouri ("Renew Missouri") objected to the Agreement. Renew Missouri objected on the basis that the Projects did not satisfy the Tartan factors of economic feasibility and public interest, and thus should be rejected.[8] Sierra Club objected on the basis that building the Projects is not a cost-effective use of customers' money, and that the Projects do not satisfy the Tartan factors regarding need, economic feasibility, and whether the Projects are in the public interest.[9]

With the filing of the Agreement and the subsequent objections from Renew Missouri and Sierra Club, the issues for the Commission to decide are as follows:

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 to be 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

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[4] *Ibid*.
[5] *Id* at pg. 4, para. 12.
[6] *Id* at pg. 2, para. 2.
[7] *Id* at pg. 7, para. 26.
[8] *Objections to the Non-Unanimous Stipulation and Agreement*, EFIS item 90.
[9] *Sierra Club's Objections to the Non-Unanimous Stipulation and Agreement*, EFIS item 89.

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?

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

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?

D. Should the Commission approve the Agreement?

The Commission has the power to grant a CCN whenever after due hearing it shall determine that such is necessary or convenient for the public service.[10] In determining whether granting a CCN is necessary or convenient for the public service, the Commission has historically applied the *Tartan* factors.[11] The factors considered are: a) there must be a need for the service; b) the applicant must be qualified to provide the proposed service; c) the applicant must have the financial ability to provide the service; d) the applicant's proposal must be economically feasible; and e) the service must promote the public interest.[12]

The Agreement, with the conditions outlined within, shows that the Projects are necessary and convenient for the public service. Staff recommends that the Commission approve the Agreement as filed on May 29, 2025. If the Commission does not approve

[10] Section 393.170.3, RSMo.
[11] In re Tartan Energy, Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).
[12] *Id*.

the Agreement, Staff recommends that the Commission approve EMW's request for a CCN for the Projects, subject to the conditions outlined in Staff's Recommendation.[13]

Regarding the issue of decisional prudence pursuant to 20 CSR 4240-20.045(2)(C), the Commission does not need to grant this request in order to issue a CCN to EMW, and Staff recommends that the Commission deny EMW's request.

A finding of decisional prudence at this time is neither justified nor reasonable.[14] Without a level of certainty regarding what, exactly, EMW is requesting the Commission decide is prudent, the Commission may inadvertently raise the barrier for parties in future proceedings to challenge nonsensical decisions made by EMW regarding the Projects.[15] As noted by Staff witness J Luebbert in the Staff Recommendation:

> Given the uncertainty with the costs of completing the project, the cost of natural gas pipeline infrastructure, ongoing costs of firm transportation of natural gas, and the unreliability of EMW's projections of market revenue, as well as the inflationary and competitive forces regarding material and supply chain disruptions from tariffs on steel and aluminum, it is inappropriate to determine the decision to move forward with this project is prudent.[16]

[13] Exhibit 200, Staff Recommendation, pg. 53, ln. 12-22 and pg. 53, ln. 11 - pg. 54, ln. 8
[14] *Id* at pg. 55, ln. 17-18.
[15] Transcript - Volume 2 (Evidentiary Hearing – Jefferson City, MO – May 29, 2025), pg. 77, ln. 15-25 and pg. 78, ln. 1-3.
[16] *Id* at pg. 56, ln. 1-5.

Argument

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 to be 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?

Staff recommends the Commission approve the Agreement entered into by EMW, Staff, and MECG. If the Commission does not approve the Agreement, Staff recommends the Commission approve EMW's request for a CCN, subject to the conditions below.

<u>Economic Conditions</u>

- The Applicants should re-model the capacity expansion aspect of its Integrated Resource Plan ("IRP") and allow the model to select the retirement dates.
- Given that the costs of these projects are very high, the Applicants should delay the retirements of their generation assets and conform to the model's selection date, to reduce the cost burden on rate payers.
- The Applicants should consider establishing a range of values for each level of the critical uncertain factor to make the results more robust.
- The Applicants should lower the annual capacity factor in the capacity expansion model for Viola, McNew, and Mullin Creek to no greater than the maximum allowable to comply with the Environmental Protection Agency ("EPA") Greenhouse Gas ("GHG") regulation and allow the model to select alternative generation resources to meet resource adequacy requirements.

Engineering Conditions

- EMW shall file in this docket a site-specific Emergency Action Plan as well as Operations and Maintenance Plan for McNew, Mullin Creek #1, and Viola within 60-days of that facility being placed in service.
- EMW shall provide quarterly reporting of the progress of construction of the Projects. This report shall include, but not be limited to: quarterly progress reports on permitting, plans, specifications, and construction progress for the Projects.
- EMW shall use the in-service criteria set forth in Confidential Schedule 4.[17]

1. Should the Commission find that the Projects satisfy the first Tartan Factor of need?

Yes. Under In re Tartan Energy, the Commission determined that one of the five criteria to be satisfied by an applicant in obtaining a CCN is "there must be a need for the service."[18] Commission Staff applied the following analysis, as is common in cases of this type, to determine whether or not there is a need for the facilities proposed in this case:

(a) Is the project both important to the public convenience and desirable for the public welfare?

(b) Or, is the project effectively a necessity because the lack of service is such an inconvenience?[19]

[17] Ex. 200, p. 53, lines 11-22 and pg. 54, lines 1-8.
[18] Commission File No. GA-94-127, In the Matter of the Application of Tartan Energy Company, pg. 6.
[19] Ex. 200, p. 7, lines 5-8.

Staff determined there is a need for the proposed Projects "because the lack of the service is such an inconvenience."[20]

The Lack of the Projects is Such an Inconvenience that the Projects are Effectively a Necessity

A. Capacity Positions

A utility's Capacity Position (defined in the *Staff Recommendation* as: "[t]he relationship between demand on the system and capacity to serve that demand")[21] is significant because "[e]lectric utilities must ensure there is enough power being produced and delivered to meet its customers' demand."[22] Staff estimated EMW's need for summer and winter capacity within the next 10 years.[23] There is presently a CCN case before the Commission (Case No. EA-2024-0292) in which EMW is requesting that two solar facilities be added. If the Commission approves this request, the need for summer capacity would decrease. However, the Projects can contribute to winter capacity when natural gas is available.[24]

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[20] *Id.* at p. 7, lines 7-8.
[21] *Id.* at p. 7, lines 18-19.
[22] *Id.* at p. 7, lines 14-15.
[23] *Id.* at p. 9, lines 4-13 and p. 10.

- Staff's estimated EMW Summer Capacity Position: 1). takes into consideration the potential change in the SPP accreditation methodology, 2). accounts "for Dogwood and any known capacity contracts", 3). accounts for the "SPP summer reserve margin change", and 4). "depicts EMW's load as filed in its most recent IRP and its [s]upplemental [d]irect [testimony] in Case No. EA-2025-0075."
- Staff's estimated EMW Winter Capacity Position: 1). takes into consideration the potential change in the SPP accreditation methodology, 2). accounts "for Dogwood and any known capacity contracts", 3). accounts for the "SPP winter reserve margin change", and 4). "depicts EMW's load as filed in its most recent [d]irect filing in this case and its [s]upplemental [d]irect in Case No. EA-2025-0075."

Staff witness, Shawn Lange, states in footnote 17, "[t]he GHG Rule, if it were to continue as constituted, would either require hydrogen gas co-firing and/or Carbon Capture and Sequestration (CCS). If that were to happen, additional renewable energy resources may help replace the loss of fossil generation from the EPA's GHG Rule assuming it largely stays intact going forward."[24] *Id.* at p. 10, lines 4-8.
[24] *Id.* at p. 10, lines 4-8.

EMM and EMW have added and will continue to add a number of large load customers. Moreover, Evergy is currently working with potential customers within the EMM and EMW service areas.[25] It is not known at this time how much more capacity/energy these customers will need, and some of these customers may have policies incentivizing sourcing power from sources that have low to zero carbon emissions.[26]

B. Southwest Power Pool ("SPP") Accreditation Methodology

On October 1, 2025, the SPP filed a proposal with the Federal Energy Regulatory Commission ("FERC") to implement a new accreditation methodology changing the method used to measure the dependability of generation resources.[27] The new accreditation methodology applies to intermittent resources and conventional resources, like the resources at issue in this case.[28] This new accreditation methodology was used in the EMW 2024 IRP; as a result, EMW's wind generation assets declined in capacity by about 147 MW[29] for the summer of 2026.[30] However, this changes beginning in winter of 2027.[31]

C. Planning Reserve Margin Increases

In 2024, the SPP increased its planning reserve margins or "PRMs" (defined in the *Staff Recommendation* as "the amount of back-up capacity utilities must have to guard against unplanned conditions or events on the regional power grid") with which SPP

[25] *Id.* at p. 8, lines 1-10.
[26] *Id* at p. 9, lines 1-3.
[27] *Id.* at p. 13, lines 4-5 and 6-15.
[28] *Id.* at p. 13, lines 10-14.
[29] 147 MW is the most current figure received by Commission Staff.
[30] *Id.* at p. 14, lines 1-4.
[31] *Id.* at p. 14, lines 7-8.

members are required to comply.[32] Effective beginning winter 2026/27 and summer 2026, load responsible entities ("LREs") within SPP, such as EMW,[33] will be subject to the "minimum requirements of a 36% winter-season PRM and a 16% summer-season PRM." The affected utilities within the SPP region (LREs) "must have access to enough generating capacity to serve their peak consumption with at least 36% margin during the winter season and at least 16% margin during the summer."[34]

D. Reliability Standards

In its January 2025 Regional Risk Assessment in response to risks evaluated by the North American Electric Reliability Organization ("NERC"), the Midwest Reliability Organization ("MRO")[35] recommended the following (among other actions):

> Flexible, on-demand resources, currently provided by natural gas-fired generation, are crucial for addressing the intermittent nature of variable, weather dependent generation like wind and solar. On-demand resources are capable of filling multi-day supply gaps when variable output is low and will be needed to meet anticipated increases in demand.[36]

Natural gas plants, like the ones proposed in this case, may assist with compliance with the recommended action above.[37]

E. Dogwood

As it pertains to this case, EMW's need for capacity begins in 2025.[38] Although EMW's request to acquire the Dogwood Energy Facility was granted in File No. EA-2023-0291, capacity from Dogwood is currently "sold to other parties and will not be used to

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[32] *Id.* at p. 14, lines 14-16 and footnote 32.
[33] *Id* at p. 12, line 12.
[34] *Id.* at p. 15, lines 1-5.
[35] The Midwest Reliability Organization ("MRO") is a regional entity which receives oversight from NERC. NERC is subject to oversight by the FERC. *Id.* at p. 16, lines 12-13; https://www.nerc.com/AboutNERC/keyplayers/Pages/default.aspx accessed 06/20/2025.
[36] *Id.* at p. 17, lines 25-29.
[37] *Id.* at p. 18, line 8.
[38] *Id.* at p. 18, lines 12-13.

serve EMW customers until 2026."[39] The entirety of EMW's approximate 143 MW capacity interest in Dogwood will not phase in until 2031.[40]

EMW's need for capacity is estimated by Staff to grow in the near future. This estimation is compounded with: 1) changes in SPP accreditation methodology, 2) increased PRMs, 3) the newly-recommended actions from the MRO (which specifically state that natural gas-fired generation is "crucial"[41] to address intermittent generation from solar or wind sources), and 4) the fact that EMW's capacity interest in Dogwood does not fully vest until 2031 show that the lack of these Projects is such an inconvenience that these Projects are – for all intents and purposes – a necessity. Thus, per Staff's analysis, the first *Tartan* Factor requiring that there be a need for the Projects is satisfied.

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

Staff, EMW, and MECG entered into an Agreement which reduces Staff's concerns with respect to the *Tartan* Factor of economic feasibility. Staff recommends that the Commission approve the Agreement.

However, should the Commission decline to approve the Agreement, then Staff argues in the alternative that the Commission should not find that the Projects satisfy the second *Tartan* Factor of economic feasibility as no competent evidence has been provided by EMW that its request to construct and operate the Projects is economically feasible. EMW primarily relies upon the results of the company's IRP and states that because EMW follows the guidelines for resource planning at the portfolio level, it is

[39] *Id.* at p. 18, lines 11-12, p. 19, line 1-4.
[40] *Id.* at p. 18, lines 14-16.
[41] *Id.* at p. 17, line 26.

reasonable to apply the same metrics when evaluating the prudency of an individual asset for purposes of a *Tartan* Factor analysis for a certificate of convenience and necessity.[42] To be clear, *In Re Tartan Energy* refers to the economic feasibility of the proposal rather than the economic feasibility of the portfolio, and any reference to EMW's portfolio should not be solely relied on when the Commission makes its determination.[43]

Economic feasibility relates to "the degree to which the economic advantages of something to be made, done, or achieved are greater than the economic costs" and feasibility studies should assess whether a proposed project or solution is financially viable and cost-effective with respect to given alternative solutions.[44] EMW has not met its burden to establish that its proposals are economically feasible, where the economic analysis EMW provided is flawed and where significant uncertainty still exists with the costs of completing the Projects – for instance, the cost of natural gas pipeline infrastructure, ongoing costs of firm transportation of natural gas, as well as the inflationary and competitive forces regarding material and supply chain disruptions are all unknown at this time.

EMW's Economic Analysis Relying on IRP Assumptions is Flawed and Fails to Account for Location Specifics

Staff recommends that the Commission approve the Agreement; however, should the Commission not approve the Agreement, then Staff argues in the alternative that EMW has not shown that the economic advantages of the proposals are greater than the

[42] Ex. 13, *Surrebuttal Testimony of Kevin Gunn*, p.7, lines 9-14.
[43] In Re Tartan Energy Co., L.C., No. GA-94-127, 1994 WL 762882 at *3 (Sept. 16, 1994)("(4) the applicant's proposal must be economically feasible").
[44] Ex. 200, *Staff Recommendation*, p. 25, lines 16-19.

economic costs of the proposals and the IRP analysis should not be conflated as a review of the economic feasibility of individual generating assets.[45]

Staff compared the preferred resource plan ("PRP") in both the re-modeled 2025 IRP and the re-modeled 2024 IRP; both were similar, but notable changes did occur in the 2025 IRP, including thermal additions of 355 MW combined cycles in both 2030 and 2040 due to a purported increase in forecasted capacity needs.[46] Importantly, aspects of Evergy's 2025 IRP did not include objective criteria, including where assignment of probabilities to critical, uncertain factors is subjective because the probabilities are assigned by subject matter experts chosen by Evergy's management and can differ from person to person.[47] Moreover, demand-side resources and the retirement dates of generation assets are determined by subject matter experts and not determined by the model.[48] Evergy's alternative resource plans also may not be exhaustive and certain constraints chosen by Evergy for the modeling analysis may limit the selection of certain resources in specific years.[49] Additionally, the model only uses a single number to represent the low, medium, and high values of its critical uncertain factors,[50] like fuel costs.[51] EMW could establish a range of values to use for each level of the uncertain factors and then average over those values to derive a single end point, which would make the results more robust and therefore better support the reasonableness of the assumptions.[52]

[45] *Id.* at p. 26, lines 9-10.
[46] *Id.* at p. 36, lines 15-18.
[47] *Id.* at p. 37, lines 1-4.
[48] *Id.* at p. 37, lines 7-9.
[49] Ex. 200, p. 37, lines 5-7; *see also id.* at FN107 ("Examples include fixed retirement dates, carbon restrictions, natural gas prices, and purchase power agreements as mentioned in the 2025 IRP.").
[50] *Id.* at p. 37, lines 9-10.
[51] *Id.* at p. 37, lines 9-10; *Id.* at p. 28, line 13, to page 29, line 11.
[52] *Id.* at p. 37, lines 10-13.

EMW also failed to account for location specific information, which especially matters when considering the potential for revenue from SPP; for example, the cost of transmission upgrades, and the availability of firm transportation.[53] This kind of location-specific information is not well covered by the IRP or IRP analyses[54] on which EMW relies to support its economic feasibility conclusion. One example of location specific information is Locational Marginal Price (LMP), which is the price of one MWh of energy at a given location at a given point in time.[55]

LMPs are made up of three components: the marginal energy component, the marginal congestion component, and the marginal loss component.[56] Staff conducted a review of the LMPs of the proximal pricing nodes considered by EMW for its geographic proximity to those projects[57] and noted that on average the EMW load node LMP exceeds the average price of all three proxy generation nodes.[58] These differences in the LMPs and load node highlight the importance of location-specific analysis of the economics of new generation additions.[59] Additionally, the cost of procuring firm transportation of natural gas for each facility will factor into the EMW bid for each plant into the SPP markets and is still largely uncertain.[60]

Consideration of locational differences should also be given with respect to transmission pricing.[61] For example, in October 2024, SPP announced its $7.7 billion 2024 Integrated Transmission Plan that proposes to add more than 2,000 miles of new

[53] Tr. Vol. II, p. 74, line 15 – p. 75, line 6.
[54] Tr. Vol. II, p. 75, line 6-9.
[55] Ex. 200, p. 33, lines 14-15.
[56] *Id.* at p. 33, lines 15-16.
[57] *Id.* at p. 34, lines 1-2.
[58] *Id.* at p. 34, lines 8-9.
[59] *Id.* at p. 35, lines 1-3.
[60] Ex. 200, p. 35, lines 3-6.
[61] *Id.* at p. 36, line 3.

and upgraded transmission lines, which are designed in part to more efficiently dispatch generation, and the location of which may further exacerbate the West-to-East congestion issues that are consistently driving transmission expansion projects in SPP.[62] Future expansion projects will likely have higher evaluated benefit-to-cost ratios to Missouri and increase the assigned costs of the transmission expansion projects to Missouri utilities, while increasing the estimated benefits of participating in SPP, and increasing the exit fees to leave SPP.[63]

Staff recommends that the Commission approve the Agreement, as it contains provisions to lessen Staff's concerns, including for example that EMW will explore setting value ranges for each level of critical uncertain factors.[64] However, should the Commission not approve the Agreement, then Staff argues in the alternative that the lack of detail and specificity, transparency, and inclusion of generic assumptions in the IRP are inadequate to justify the economic feasibility of the Projects, EMW has conflated its flawed IRP analysis as a review of the economic feasibility of individual generating assets, and EMW has not shown that the economic advantages of the proposals are greater than the economic costs of the proposals.

Uncertainty in Completing the Projects

To the extent additional argument in the alternative is necessary,[65] EMW has likewise not demonstrated the economic feasibility of the Projects where EMW has not considered or otherwise accounted for uncertainty in completing the Projects with respect

[62] *Id.* at p. 36, lines 4-9.
[63] *Id.* at p. 36, lines 9-12.
[64] Agreement, p. 4, paragraph 13.
[65] Staff recommends the Commission approve the Agreement. *See infa*, Section D.

to resource adequacy requirements, generator interconnection costs, price uncertainty and energy hedge, value of capacity and energy, and natural gas procurement.

For example, SPP requires all load-serving entities to meet Resource Adequacy Requirements ("RAR") based on forecasted non-coincident peak plus planning reserve margins.[66] EMW expects significant changes to RAR, where SPP will file tariff changes to implement winter RAR, performance-based accreditation, and an effective load carrying capacity ("ELCC") accreditation methodology.[67] With minimum requirements of a 36% winter-season PRM and a 16% summer-season PRM, EMW will have to acquire additional capacity, which could further impact the economic feasibility of the Projects.[68] With respect to Generator Interconnection Costs and Costs Uncertainty, EMW submitted Generator Interconnection requests for the Projects in October 2024, and unless and until studies are completed, the costs are not known.[69] While interconnection and upgrade cost estimates were submitted, those estimates are not the final costs as determined by SPP.[70]

More uncertainty exists regarding prices and energy hedge and the value of capacity and energy. EMW asserts that when the Viola combined cycle plant and the Mullin Creek #1 simple cycle plant become fully operational, the plants will be critical elements to meet EMW's near-term requirement for capacity starting in 2029-2030 and will help advance EMW's long-term capacity needs by providing a hedge against risks associated with energy and fuel prices.[71] EMW further asserts that variability of energy

[66] Ex. 200, p. 26, lines 25-26.
[67] *Id.* at p. 27, lines 2-3; *id.* at p. 13, lines 10-11.
[68] *Id.* at p. 27, lines 3-7; *see also* at p. 16, lines 12-13.
[69] *Id.* at p. 27, lines 10-12. Further, the costs may not be known until November 2026. *Id.* at lines16-17.
[70] *Id.* at p. 27, lines 11-12. The Agreement contains a provision that EMW will submit quarterly progress reports and EMW will work with Staff to develop a reporting template. Agreement, p. 3, paragraph 9.
[71] Ex. 200, p. 28, line 14 – p. 29, line 1.

and fuel prices have financial implications on a utility's cost to serve customers and therefore have some level of inherent risk.[72] However, EMW is unable to provide an estimated quantification of the risks, and instead simply points out, for example, that fuel prices were identified as a Critical Uncertain Factor in EMW's 2024 Triennial IRP.[73] Additionally, current uncertainty in the industry due to tariffs imposed on foreign materials could affect the overall cost of the materials and services for the construction and operation. The inherent risk of price materials adds further uncertainty to the economic feasibility of the Projects.[74]

The economic effect of the U.S. Environmental Protection Agency's ("EPA") new power plant rules requiring that new natural gas plants operating over 40% of the time achieve emissions reductions equivalent to 90% carbon capture and sequestration by 2032 should also be considered.[75] Most of Evergy's modeling scenarios restrict fleet-wide greenhouse gas ("GHG") emissions as opposed to unit specific capacity factor or emissions restrictions that would result from the GHG Rule implementation.[76] Imposing restrictions in the capacity factor could limit the energy being produced and delivered, and therefore affect the revenues generated.[77] If EMW does not account for the reduction in generation to meet the EPA GHG Standards, and therefore reduced SPP market revenue, the results of the IRP analysis will be skewed with revenues from natural gas units that are too high.[78] If EMW does not account for the increased costs that would occur in order to meet the EPA GHG Standards for emissions, (i.e. the cost of carbon

[72] *Id.* at p. 29, lines 2-4.
[73] *Id.* at p. 28, line 13, to page 29, line 11.
[74] Ex. 200, p. 30, lines 17-18.
[75] *Id.* at p. 31, lines 10-12. It is anticipated that the EPA rule will continue to be litigated. *Id.* at FN96.
[76] *Id.* at p. 32, lines 8-10.
[77] *Id.* at p. 32, line 11-12.
[78] *Id.* at p. 33, line 4-6.

capture), then the results of the IRP analysis will be skewed with costs for natural gas units that are too low.[79] EMW's base case model appears to have included both of these flaws.[80]

One key element regarding the economic feasibility of EMW's CCN request is the availability and cost of firm transportation to supply the generating facilities.[81] EMW intends to acquire firm transportation for the Projects only after conducting a bid process for pipelines in the area – in fact, EMW has not even obtained detailed studies from the pipeline(s).[82] Questions still remain relating to the costs of possible laterals or spurs for connection necessary to provide firm transportation from an interstate pipeline's mainline to the generation plant.[83] Overall, there is a general lack of detail with respect to Evergy's gas procurement plans.[84] There are no detailed cost estimates regarding necessary pipeline spurs or laterals and EMW does not have detailed pipeline bids.[85] Furthermore, at least seven questions remain, including (1) what mainline rates will be offered, (2) what receipt and delivery points will be applicable, (3) what pipeline path on the pipeline will be used, (4) how long is the duration of any required firm transportation contract, (5) what will be the specific pipeline capacity level needed and contracted for to each plant, (6) what firm supply options have been considered, and (7) what definite cost estimates are associated with building required laterals.[86] There is not enough detail provided by EMW to make a recommendation with respect to reliability and cost impacts on this

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[79] *Id.* at p. 33, line 6-9.
[80] Ex. 200, p. 33, line 9.
[81] *Id.* at p. 37, lines 16-18.
[82] *Id.* at p. 38, lines 5-13.
[83] *Id.* at p. 38, line 16-17.
[84] *Id.* at p. 41, line 6.
[85] *Id.* at p. 41, lines 7-8.
[86] Ex. 200, p. 41, lines 9-14.

issue.[87] Therefore, Staff cannot conclude that the proposed Projects are economically feasible.

In addition to the flaws associated with the IRP, within the past few years, Evergy's estimated cost of building a new natural gas combined cycle generating unit has increased substantially and the final costs for the Projects are largely uncertain.[88] Staff's comparison of the costs of capacity of the existing owned generation fleet and what that same metric would be after the inclusion of the Viola and McNew plants[89] shows that the additions of the two combined cycle plants will have a substantial impact on not only the revenue requirement of the production fleet, but also on the cost of capacity.[90] The costs will impact the bills of Evergy's current ratepayers by potentially doubling the revenue requirement of the owned production fleet.[91]

In conclusion, Staff recommends that the Commission approve the Agreement, as it contains provisions to lessen Staff's concerns, including for example that EMW will collaborate with Staff and OPC during the development of a Gas Purchasing Plan.[92] However, should the Commission not approve the Agreement, then Staff argues in the alternative that the economic analysis provided by EMW is flawed, deciding to move forward with the Projects based upon the results of such analysis introduces unnecessary risk for ratepayers,[93] the Commission should require EMW to demonstrate that the

[87] *Id.* at p. 41, lines 19-21.
[88] *Id.* at p. 43, lines 7-9.
[89] *Id.* at p. 43, lines 10-11.
[90] *Id.* at p. 43, line 10 - p. 45, line 2.
[91] Ex. 200C, p. 45, lines 2-5.
[92] Agreement, p. 4, para. 16.
[93] Ex. 200, p. 46, lines 21-23.

specific Projects are and continue to be economically feasible,[94] and thus Staff recommends that the Commission order the following economic conditions:

Economic Conditions

- The Applicants should re-model the capacity expansion aspect of its Integrated Resource Plan ("IRP") and allow the model to select the retirement dates.
- Given that the costs of these projects are very high, the Applicants should delay the retirements of their generation assets and conform to the model's selection date, to reduce the cost burden on rate payers.
- The Applicants should consider establishing a range of values for each level of the critical uncertain factor to make the results more robust.
- The Applicants should lower the annual capacity factor in the capacity expansion model for Viola, McNew, and Mullin Creek to no greater than the maximum allowable to comply with the EPA GHG regulation and allow the model to select alternative generation resources to meet resource adequacy requirements.[95]

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

The Commission should find that the Projects are in the public interest and can do so by either approving the Agreement or ordering the conditions recommended by Staff in the Staff Recommendation.[96] The public interest assessment involves the evaluation

[94] *Id.* at p. 46, lines 1-2.
[95] *Id.* at p. 46, lines 7-19.
[96] *Id.* at p. 53, lines 5-6.

of the other *Tartan* criteria, which are evaluated separately and balanced when considering whether or not a project promotes the public interest.[97] Staff also reviews the in-service criteria, the site of construction evaluations, and public engagement in considering whether the Projects are in the public interest.[98] For instance, in-service criteria are a set of operational tests or operational requirements developed to determine whether a new unit is "fully operational and used for service"[99] and Staff's recommended in-service criteria should be ordered in this case to promote the public interest.[100]

In summary, and on balance, based on Staff's review: 1) the Projects are needed; 2) EMW is qualified to construct, install, operate, maintain, and otherwise control and manage the Projects; 3) EMW has the financial ability to complete the Projects; 4) Staff cannot determine that the Projects are economically feasible; and 5) the Projects are in the public interest with conditions recommended by Staff.[101] As such, the Commission should approve the Projects by either approving the Agreement or ordering approval, subject to the following conditions from the Staff Recommendation:

<u>Economic Conditions</u>

- The Applicants should re-model the capacity expansion aspect of its Integrated Resource Plan ("IRP") and allow the model to select the retirement dates.

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[97] *Id.* at p. 47, lines 1-6.
[98] *Id.* at p. 47, lines 6-8.
[99] Ex. 200, p. 51, lines 22-23.
[100] *Id.* at p. 52, lines 4-5.
[101] *Id.* at p. 53, lines 2-6. The Agreement has a provision that EMW shall use the in-service criteria set forth by Staff. *See* Agreement, p. 3, para. 10.

- Given that the costs of these projects are very high, the Applicants should delay the retirements of their generation assets and conform to the model's selection date, to reduce the cost burden on rate payers.
- The Applicants should consider establishing a range of values for each level of the critical uncertain factor to make the results more robust.
- The Applicants should lower the annual capacity factor in the capacity expansion model for Viola, McNew, and Mullin Creek to no greater than the maximum allowable to comply with the EPA GHG regulation and allow the model to select alternative generation resources to meet resource adequacy requirements.[102]

Engineering Conditions

- EMW shall file in this docket a site-specific Emergency Action Plan as well as Operations and Maintenance Plan for McNew, Mullin Creek #1, and Viola within 60-days of that facility being placed in service.
- EMW shall provide quarterly reporting of the progress of construction of the Projects. This report shall include, but not be limited to: quarterly progress reports on permitting, plans, specifications, and construction progress for the Projects.
- EMW shall use the in-service criteria set forth in Confidential Schedule 4.[103]

[102] Ex. 200, p. 53, lines 12-22.
[103] *Id.* at p. 53, line 11 - p. 54, line 8. The Agreement contains provisions relating to quarterly progress reports, in-service criteria, Emergency Action Plan and Operations and Maintenance Plan, future IRP filings containing certain information, development of a Gas Purchasing Plan, reconsideration of the S&A hedge requirement approved in ER-2024-0189, and compliance filings. Agreement, pgs. 3-5.

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?

As noted throughout this brief, Staff has recognized areas of agreement and disagreement with other parties and with EMW. As a result of talks, Staff reached a non-unanimous agreement with EMW and MECG that resolves the majority of the issues in this case. Staff recommends that the Commission approve this agreement. With approval of the agreement, the one issue that this Commission needs to decide, from Staff's perspective, is whether to grant the Company's request for decisional prudence under Section 2(C) of Commission Rule 20 CSR 4240-20.045. The rules states:

> 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.

Staff recommends that the Commission reject this request from EMW. While Staff concludes that additional capacity is effectively a necessity because the lack of the service is such an inconvenience,[104] the economic analyses provided by EMW are flawed, and deciding to move forward with the Projects based upon the results of such analysis introduces unnecessary risk for ratepayers.[105] Given the uncertainty that still exists with the costs of completing this project, the cost of natural gas pipeline infrastructure, ongoing costs of firm transportation of natural gas, and the unreliability of EMW's projections of market revenue, as well as the inflationary and competitive forces regarding material and supply chain disruptions from tariffs on steel and aluminum, it is inappropriate to determine the decision to move forward with this project is prudent.[106]

[104] Ex. 200, pg. 19, ln. 9-12.
[105] *Id*. at pg. 46, ln. 20-23 and pg. 57, ln. 4-8.
[106] *Id*. at pg. 56, ln. 1-5.

Though the Agreement resolves the issues surrounding approval of a CCN for the Projects, the uncertainty surrounding economic feasibility and managerial inaction cuts a different way from Staff's – and OPC's[107] – perspective when it comes to the Company's request for decisional prudence.

Company Witness Kevin Gunn's surrebuttal testimony cites to the Report & Order in EMW's 11th Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause for support that "A utility's costs are presumed to be prudently incurred" and that "The 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, [the] responsibility is to determine how reasonable people would have performed the tasks that confronted the company."[108]

EMW references the State Code of Regulations, Chapter 22, as it relates to resource planning.[109] With respect to referenced "burdens" in Commission rules, 20 CSR 4240-22.080(17) references burden of proof by stating in part that in certain proceedings "the utility bears the burden of proof that past or proposed actions are consistent with an acknowledged preferred resource plan or resource acquisition strategy and must explain and justify why it took any actions inconsistent with an acknowledged preferred resource plan or resource acquisition strategy." In a CCN case, per 393.170, the burden of proof that the construction of a Project and/or the exercise of the right,

[107] Exhibit 300, *Rebuttal Testimony of Jordan Seaver*, pg. 9, ln. 1-15.
[108] Ex. 13, page 12, line 19 to page 13, line 9.
[109] *See generally*, Exhibit 16, *Surrebuttal Testimony of Cody VandeVelde*, page 3, page 5, page 6, page 16.

privilege, or franchise granted by a CCN is necessary or convenient for the public service rests with the applying utility.

A 2013 Missouri Supreme Court Decision examining prudence in the context of affiliate transactions provides some insight into the presumption of prudence. The Supreme Court in *Office of The Public Counsel v. Missouri Public Service Commission and Atmos Energy Corporation* stated, "The presumption of prudence is not a creature of statute or regulation. It was first recognized by the PSC in the *Matter of Union Electric* in 1985 and has been applied by the Commission since that time."[110] The court goes on to say that:

> A change in the presumption of prudence does not change the burden of proof set out in the PSC governing statutes. The presumption of prudence does not address the burden of proof at all. It sets out *an evidentiary presumption* created by the PSC. That standard provides that the utility's expenditures are presumed to be prudent until adequate contrary evidence is produced, at which point the presumption disappears from the case. The presumption affects who has the burden of proceeding, but it does not change the burden of proof, which by statute must remain on the utility.[111]

Staff and OPC have both produced adequate contrary evidence regarding the prudency of the utility's expenditures and that presumption should disappear from this case, such that EMW has both the burden of proceeding and the burden of proof. From Staff's perspective, EMW has simply not provided adequate economic justification that the decision to move forward with the Projects is prudent, and has thus failed to carry its burden.[112] EMW has only provided high level estimates of the cost to provide firm natural gas transportation to the facilities.[113] Thanks to EMW's Fuel Adjustment Clause ("FAC"),

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[110] Off. of Pub. Couns. v. Missouri Pub. Serv. Comm'n, 409 S.W.3d 371, 378–79 (Mo. 2013), as modified (Sept. 10, 2013).
[111] *Id*. at pg. 379; *see also* Deck v. Teasley, 322 S.W.3d 536, 539 (Mo. ban 2010).
[112] Ex. 200, pg. 54, ln. 17-18.
[113] *Id*. at pg. 55, ln. 6-7.

EMW's shareholders are insulated from inaccurate revenue and fuel supply cost estimates regarding the Projects, while ratepayers bear the risk.[114] And EMW's reliance on its IRP analysis to select the Projects as a preferred resource relies upon a far greater level of generation from natural gas resources than permitted under current GHG standards promulgated by the United States Environmental Protection Agency.[115] To Staff's knowledge, EMW has not provided justification for modeling natural gas resources within its IRP in a way that would be contrary to federal regulations. As Staff witness J Luebbert put forward, when a company comes in with an IRP containing assumptions that are incorrect or fails to take into account current conditions, but the IRP remains the primary justification for moving forward with a project, this makes it difficult for Staff to conclude that a project is economically feasible, or prudent at the time of a CCN proceeding.[116]

Mr. Luebbert further stated that the decision to move forward with the Projects, or any project, isn't a "single point in time decision."[117] Additional decisions will have to be made beyond whether or not a utility should apply for a CCN, and some of those decisions will "have massive implications on what the economics of a project are…"[118] For an example, Mr. Luebbert highlights the current uncertainty surrounding tax credits for solar projects that were signed into law under the Inflation Reduction Act ("IRA"); if those tax credits are available when a CCN application is submitted, but are no longer available after an applicable project has been approved, it makes economic sense to take another

[114] *Id*. at ln. 7-9.
[115] *Id*. at ln. 3-5.
[116] Tr. Vol. II, pg. 73, ln. 17-25.
[117] *Id*. at pg. 78, ln. 21-24.
[118] *Id*. at pg. 79, ln. 1-2.

look at whether moving forward with a project is the best path forward in light of the new information.[119] Holding a utility accountable for containing costs is absolutely critical when considering EMW's request for decisional prudence.[120] While EMW ultimately received a finding of decisional prudence when acquiring the Dogwood assets, following the signing of an *Unanimous Stipulation and Agreement* in Case No. EA-2023-0291,[121] Dogwood was an existing asset with a set contract price.[122] As further explained by Mr. Luebbert:

> So the -- the risk or the decision making that happens after that point that you just execute that contract are vastly different than the -- the series of decision points that are going to happen over the next three to five years as these plants go from…the very start of kind of planning toward them until they're finally completed. There's just a lot more decision points that occur along the way with that type of -- with that type of project versus just executing a contract.[123]

In addition to cost impacts or increases, other facts could affect the prudency of the Projects going forward, like decreases in load within EMW's system.[124] As Mr. Luebbert further explained, large customers have dropped off of a utility's system in the past in a relatively quick timeframe, leading to large decrease in load.[125]

From OPC's perspective, granting EMW's request for decisional prudence would reward EMW for "managerial inaction and having an inordinate amount of focus on shareholders at the expense of ratepayers."[126] OPC notes that it has been calling out

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[119] *Id*. at ln. 8-15.
[120] *Id*. at pg. 81, ln. 20-23.
[121] *Report and Order*, pg. 4, para. 3, File No. EA-2023-0291, In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Permission and Approval of a Certificate of Public Convenience.
[122] Tr. Vol. II, pg. 82, ln. 18-22.
[123] *Id.* at pg. 82, ln. 23-25 and pg. 83, ln. 1-8.
[124] *Id*. at pg. 85, ln. 14-22.
[125] *Id*. at pg. 86, ln. 1-5.
[126] Ex. 300, pg. 9, ln. 3-5.

EMW's failure to build out new generation since at least 2018, highlighting that concerns over a lack of capacity have been known for some time, and that EMW's need for the Projects is not solely due to an "unexpected increase in load due to new data centers."[127] In light of this contrary evidence from Staff and OPC, EMW still needs to provide evidence that its decision to proceed with these projects is prudent. EMW has not provided any such evidence.

In short, the Commission does not need to grant a utility's request for decisional prudence when approving a CCN request. Withholding any decisions on prudence would give the Commission the opportunity to more thoroughly evaluate the prudency of EMW's decision to pursue the Projects when EMW requests inclusion of costs in ratebase in a future general rate case proceeding. From Staff's perspective, waiting until this later date will provide the Commission with more complete information, allowing for a more robust analysis of what the actual costs for these Projects are.[128] The Commission should avoid a finding of decisional prudence that shifts the risk of failure to contain the costs of the Projects on EMW's captive ratepayers while shielding shareholders.

D. Should the Commission approve the Agreement?

As a signatory to the Agreement, Staff recommends approval. Approving the Agreement would leave only the issue of decisional prudence for the Commission to decide. As noted throughout this brief, the conditions agreed to within the Agreement help mitigate Staff's concerns regarding the economic feasibility of the Projects, and help ensure that the Projects are in the public interest. And during the testimony of

[127] *Id*. at pg. 12, ln. 16-25 and pg. 13, ln. 1-18.
[128] Tr. Vol. II, pg. 99, ln 4-11.

Mr. Luebbert at the evidentiary hearing, he noted that the conditions agreed to within the Agreement will help improve the CCN process going forward, and will help ensure a better process in place for future projects.[129]

However, if the Commission does not approve the Agreement, Staff recommends the Commission deny EMW's request for decisional prudence, and grant EMW's request for a CCN, subject to the following conditions:

Economic Conditions

- The Applicants should re-model the capacity expansion aspect of its Integrated Resource Plan ("IRP") and allow the model to select the retirement dates.
- Given that the costs of these projects are very high, the Applicants should delay the retirements of their generation assets and conform to the model's selection date, to reduce the cost burden on rate payers.
- The Applicants should consider establishing a range of values for each level of the critical uncertain factor to make the results more robust.
- The Applicants should lower the annual capacity factor in the capacity expansion model for Viola, McNew, and Mullin Creek to no greater than the maximum allowable to comply with the EPA GHG regulation and allow the model to select alternative generation resources to meet resource adequacy requirements.[130]

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[129] *Id.* at pg. 76, ln. 4-11.
[130] Ex. 200, p. 53, lines 12-22.

Engineering Conditions

- EMW shall file in this docket a site-specific Emergency Action Plan as well as Operations and Maintenance Plan for McNew, Mullin Creek #1, and Viola within 60-days of that facility being placed in service.
- EMW shall provide quarterly reporting of the progress of construction of the Projects. This report shall include, but not be limited to: quarterly progress reports on permitting, plans, specifications, and construction progress for the Projects.
- EMW shall use the in-service criteria set forth in Confidential Schedule 4.[131]

Conclusion

In summary, Staff recommends that the Commission (1) approve the Agreement between EMW, Staff, and MECG filed on May 29, 2025, and (2) reject EMW's request for an order of decisional prudence per Commission Rule 20 CSR 4240-20.045(2)(C). A finding of decisional prudence is not necessary for the Commission to issue a CCN to EMW for the Projects.

If the Commission does not approve the Agreement, Staff recommends that the Commission still approve EMW's request for a CCN, subject to Staff's conditions outlined within this brief and the *Staff Recommendation*.

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[131] *Id.* at p. 53, line 11 - p. 54, line 8. The Agreement contains provisions relating to quarterly progress reports, in-service criteria, Emergency Action Plan and Operations and Maintenance Plan, future IRP filings containing certain information, development of a Gas Purchasing Plan, reconsideration of the S&A hedge requirement approved in ER-2024-0189, and compliance filings. Agreement, pgs. 3-5.

WHEREFORE, Staff respectfully submits this *Initial Brief* for the Commission's information and consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted by electronic mail to all parties and/or counsel of record this 24th day of June, 2025.

/s/ Travis J. Pringle