

**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) **File No. EA-2025-0075**
Missouri Metro for Permission and Approval)
of a Certificate of Public Convenience and)
Necessity for Natural Gas Electrical)
Production Facilities)

REPLY BRIEF OF STAFF

The purpose of a reply brief is to respond to the arguments made by party opponents. Rather than replying to every argument other parties make in their initial briefs, and having presented and argued its positions in its *Initial Brief*, Staff is limiting its replies to where it views further explanation will most aid the Commission in its deliberations.

The main contention points, from the perspective of Staff, are (1) the approval of the *Non-Unanimous Stipulation and Agreement* (“Agreement”) and (2) the rejection of Evergy Missouri West, Inc. d/b/a Evergy Missouri West’s (“EMW” or “Company”) request for decisional prudence. Staff’s *Reply Brief* is organized to address these points; therefore, Staff will not address each and every sub-issue or argument made by the parties to this matter. Staff stands on the arguments as presented in its *Initial Brief*, and silence on any argument or position should not be taken as acceptance.

In determining each contested issue, the Commission should be mindful that the law places the burden of proof on EMW to prove that a Certificate of Convenience and Necessity (“CCN”) and its request for decisional prudence should be granted. This burden does not shift away from EMW.

In this matter, through the Agreement reached with Staff and the Midwest Energy Consumers Group (and subject to the conditions therein), EMW has met its burden, 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), regarding its request for a CCN to construct, install, own, operate, control, manage and maintain three natural gas electrical production facilities (the “Projects”). Staff recommends that the Commission approve the Agreement as filed on May 29, 2025.

As for EMW’s request for decisional prudence pursuant to Commission Rule 20 CSR 4240-20.045(2)(C), EMW has not met its burden, and the Commission should reject this request.

I. The Agreement and Conditions Within Provide That the Projects Are Needed and Economically Feasible

A. The Lack of Service is Such an Inconvenience That the Projects Are Effectively a Necessity

Sierra Club correctly points out² that Missouri case law interprets the meaning of “necessity” as “an improvement justifying its cost.”³ However, other Missouri cases articulate a legal test which provides a more expansive scope to the meaning of “necessity” in CCN cases:

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

² *Sierra Club Initial Post-Hearing Brief*, page 5.

³ *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993).

“Necessity” as used in the phrase “convenience and necessity”, as applied to regulations by Public Service Commissions, does not mean essential or absolutely indispensable, but is used in the sense that the...service would be such an improvement as to justify or warrant the expense of making the improvement; that the inconvenience of the public occasioned by the lack of [service]....is so great as to amount to a necessity.⁴

Sierra Club correctly notes that the first part of the test above is functionally the same as the economic feasibility factor under the Tartan Criteria.⁵

In its *Initial Post-Hearing Brief*, Sierra Club specifically relies on the issues of congestion and Locational Marginal Prices (“LMPs”) as they pertain to the siting of the Projects to argue that the Projects do not justify the costs and thus that the “need” Tartan factor has not been satisfied.⁶ The LMP and congestion issues were considered by Staff.⁷ Based upon these and other issues presented by the Projects, Staff recommended (and still recommends) that the Commission either approve the Agreement or approve the Projects, subject to Staff’s recommended conditions.⁸

As a result of its investigation, Staff determined the additional capacity (to be provided by the Projects) is “a necessity because the lack of the service is such an inconvenience.”⁹ This is effectively the same analysis required by the second portion of the legal test above. Staff came to the conclusion that the Projects are

⁴ State ex rel. Missouri, Kansas & Oklahoma Coach Lines v. Pub. Serv. Comm'n, 238 Mo. App. 317, 179 S.W.2d 132, 136 (1944); State ex rel. Pub. Water Supply Dist. No. 8 of Jefferson Cnty. v. Pub. Serv. Comm'n, 600 S.W.2d 147, 154 (Mo. Ct. App. 1980); State ex rel. Beaufort Transfer Co. v. Clark, 504 S.W.2d 216, 219 (Mo. App. 1973); State ex rel. Transp. Delivery Co. v. Burton, 317 S.W.2d 661, 664 (Mo. App. 1958).

⁵ *Sierra Club Initial Post-Hearing Brief*, page 8.

⁶ *Sierra Club Initial Post-Hearing Brief*, pg. 6.

⁷ *Initial Brief of Staff*, pgs. 12-14; Ex. 200, pgs. 33-36

⁸ *Initial Brief of Staff*, pg. 6.

⁹ Exhibit 200, *Staff Recommendation*, pg. 19, lines 9-12.

needed not by simply looking at the present state of affairs.¹⁰ It considered the implications of future developments, such as: (1) changes in the regulatory landscape, (2) additional EMW large load customers (confirmed and potential), and (3) the present and future capacity issues presented by Dogwood.¹¹

Moreover, in its Agenda meeting held on December 4, 2024, the Commission made it clear that EMW “should own and build their own generating capacity.” Later in the meeting, the Commission stated that EMW was “rising to the occasion” by filing CCN applications.¹²

In sum, Staff recommends that the Commission either approve the Agreement or approve the Projects (subject to Staff’s recommended conditions). Staff is also of the opinion that the lack of service is such an inconvenience that the Projects are effectively a necessity.

B. Staff Did Not Minimize its Economic Feasibility Analysis in Signing the Agreement

Sierra Club’s initial brief contains a section captioned “Staff’s Attempt to Minimize the Economic Feasibility Analysis Should be Rejected”¹³ and claims it ironic that Staff would sign the Agreement even though Staff did not agree that the economic feasibility Tartan Factor was satisfied.¹⁴ However, Staff’s Recommendation Report in this matter never hid the ball with respect to Staff’s position that even though not all Tartan Factors

¹⁰ Matter of Application of KCP&L Greater Missouri Operations Co. for Permission & Approval of a Certificate of Pub. Convenience & Necessity Authorizing It to Construct, Install, Own, Operate, Maintain & Otherwise Control & Manage Solar Generation Facilities in W. Missouri, 515 S.W.3d 754, 760 (Mo. Ct. App. 2016); Ringo v. Pub. Serv. Comm’n, 234 Mo.App. 549, 132 S.W.2d 1080, 1082 (1939).

¹¹ Ex. 200, pgs. 7-19.

¹² Missouri Public Service Commission, Agenda -12/4/2024 10:15 AM – AGND-2025-0024 – EFIS, <https://my.psc.mo.gov/VideoDetail.aspx?Id=6807>.

¹³ *Sierra Club Initial Post-Hearing Brief*, p. 9.

¹⁴ *Id.*

were necessarily satisfied, Staff nevertheless recommended approval of the CCN Application with Staff's recommended conditions.¹⁵ Furthermore, Staff did not and has not attempted to minimize the economic feasibility analysis. Staff's Recommendation Report relating to the topic of economic feasibility contained approximately 20 pages.¹⁶

There is nothing odd or otherwise ironic with Staff signing the Agreement. The parties spent a good amount of time together during Settlement Conference(s) discussing the issues of the case, and some parties were able to find areas for resolution. Staff, EMW, and MCEG entered into an Agreement which reduces Staff's concerns with respect to the Tartan Factor of economic feasibility.¹⁷ Many of the conditions contained in Staff's Recommendation Report¹⁸ are now contained in the Agreement including, for example, provisions relating to quarterly progress reports, in-service criteria, Emergency Action Plan and Operations and Maintenance Plan, future IRP filings containing certain information, and compliance filings.¹⁹ Therefore, Staff recommends that the Commission approve the Agreement.

II. The Commission Does Not Need to Grant EMW's request for Decisional Prudence In Order to Approve the CCN Request

As explained in Staff's initial brief, the Commission does not need to grant EMW's request for decisional prudence in order to approve a CCN for the Projects.²⁰ Due to the fact that no other party put forward testimony supporting EMW's analysis behind its request for decisional prudence due to the unreliability of EMW's analysis regarding the

¹⁵ Ex. 200, pg. 53, line 1 – pg. 54, line 8.

¹⁶ *Id.* at pg. 25, line 1 – pg. 46, line 25.

¹⁷ *Initial Brief of Staff*, pg. 11.

¹⁸ Ex. 200, p. 53, line 11 – p. 54, line 8.

¹⁹ *Non-Unanimous Stipulation and Agreement*, pg. 3 at Paragraphs 9 and 10, pg. 4 at Paragraphs 11, 13, and 15.

²⁰ *Initial Brief of Staff*, pg. 28.

economic feasibility of the Projects, and the vagueness in EMW's request for decisional prudence, the Commission should reject EMW's request for a finding of decisional prudence regarding the Projects.

EMW states that its support for a finding of decisional prudence is supported by EMW's 2024 Triennial Integrated Resource Plan ("IRP") process, its 2025 Annual IRP Update, and its competitive bidding evaluations.²¹ These same factors played a role in EMW's own analysis regarding the economic feasibility of the Projects.²²

However, as noted in the initial brief of Renew Missouri, no non-utility party provided testimony supporting EMW's economic feasibility analysis.²³ This is because, from Staff's perspective, EMW's economic analyses relying on the assumptions within its IRP is flawed, and fails to account for location specifics.²⁴ Further, EMW's analysis does not consider or otherwise account for uncertainty in completing the Projects with respect to resource adequacy requirements, generator interconnection costs, price uncertainty and energy hedge, value of capacity and energy, and natural gas procurement.²⁵ These flaws contribute to an application that is far from exhaustive, and does not provide a complete record allowing the Commission to conduct a thorough assessment of the decision to build the Projects.

Though EMW argues that Staff did not discuss the Company's decision-making process pursuant to the 2024 IRP, Staff did in fact point out multiple flaws in the process, highlighting that the economic justifications were incomplete and unreliable, and ultimately concluding that, in the Company's pursuit of a decisional prudence finding,

²¹ *Evergy Missouri West's Initial Post-Hearing Brief*, pg. 26.

²² Exhibit 200, pg. 54, ln. 11-16.

²³ *Initial Brief of Renew Missouri*, pg. 17.

²⁴ *Initial Brief of Staff*, pg. 12-15 and 26.

²⁵ *Id.*, pg. 15-19.

it appeared to be “agnostic to actual revenues that are expected to result from generation assets.”²⁶

Rather than issue an unnecessary finding of decisional prudence in this case, and given the uncertainty that still exists with the costs of completing these Projects, 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,²⁷ and the safer route for ratepayers is to withhold such a finding.

Another issue with EMW’s request for decisional prudence involves the vagueness of what the Company is requesting.²⁸ Though the Company attempts to clarify its request by differentiating between “decisional” and “implementation” or “execution” prudence,²⁹ it is still not clear what exactly EMW hopes to gain with an order of decisional prudence.

As Staff witness J Luebbert testified:

[I]f the Commission orders granting a CCN and just states a blanket, you know, a plant of this size located in a certain county is approved, I think -- and I guess goes a step further and were to state that it's decisional prudent, without having kind of a narrow scope of what it is that you're granting or defining what -- what authority you're really granting, I think it makes that barrier harder for other parties than maybe what is reasonable to kind of bring something forward to you and explain that there are decisions made along the way that didn't make sense.³⁰ (emphasis added)

I think an important aspect would be a very clear definition of what is being determined to be prudent. I -- I think Evergy's testimony in this case regarding decisional prudence talks about a decision being made at the time that an application is filed, right. And if -- if what the Commission is determining was was[sic] it prudent for Evergy's management to file an

²⁶ Exhibit 200, pg. 54, ln. 17-24.

²⁷ Exhibit 200, pg. 56, ln. 1-5 and *Initial Brief of Staff*, pg. 23.

²⁸ Transcript - Volume 2 (Evidentiary Hearing – Jefferson City, MO – May 29, 2025), pg. 78, ln. 4-8.

²⁹ *Evergy Missouri West's Initial Post-Hearing Brief*, pg. 22.

³⁰ Tr. Vol. II, pg. 77, ln. 15-25 and pg. 78, ln. 1-3.

application for a CCN, I think that question is very different than does it -- is it prudent from now until you get to the time that these -- that the Company requests these to be in rates, is it prudent for all of those decisions to be determined to be prudent. And I think it -- it shouldn't be -- you shouldn't go that far in this case, right.³¹ You don't want to get into a situation where you've kind of provided a blank check and said everything that happens from here forward is, you know, is going to be deemed as prudent.³²

If the Commission were to determine that a finding of decisional prudence is appropriate, it is essential that such order is specific on what, exactly, is covered under such a finding.

While the Company points back to the Stipulation and Agreement in File No. EA-2023-0291, involving the acquisition of the Dogwood natural gas facility, as support for the Commission to follow its own precedent in granting decisional prudence,³³ it is important to note that (1) the Commission should reserve such a decision on a case-by-case basis, and (2) in the EA-2023-0291 case, EMW requested a CCN to manage the already existing Dogwood facility pursuant to § 393.170.2, RSMo. The Company is requesting a CCN to construct the Projects pursuant to § 393.170.1, RSMo, in this proceeding. As explained by Mr. Luebbert:

[T]he 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 kind of their -- I don't want to say their infancy, but 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.³⁴

³¹ *Id.*, pg. 81, ln. 2-16.

³² *Id.*, pg. 81, ln. 23-25 and pg. 82, ln. 1.

³³ *Evergy Missouri West's Initial Post-Hearing Brief*, pg. 21.

³⁴ Tr. Vol. II, pg. 82, ln. 23-25 and pg. 83, ln. 1-8; see also *Initial Brief of Staff*, pg. 27.

As put forward by Renew Missouri, the Commission should be hesitant in granting a finding of decisional prudence in this matter, and fall back on its prior denials of such requests in light of EMW's lack of support for a finding of decisional prudence.³⁵

III. Conclusion

Staff recommends that the Commission issue an order approving the Agreement and grant EMW a CCN to construct, install, own, operate, control, manage and maintain the Projects. Staff further recommends that the Commission issue an order rejecting EMW's request for a finding of decisional prudence, pursuant to Commission Rule 20 CSR 4240-20.045(2)(C).

Respectfully submitted,

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³⁵ *Initial Brief of Renew Missouri*, pg. 57, footnote 67, which states: "See for instance, In the Matter of the Application of The Empire District Electric Company d/b/a Liberty to Obtain a Certificate of Convenience and Necessity to Enhance System Resiliency, File No. EA-2023-0131, *Order Approving Stipulation And Agreement And Granting Certificate Of Convenience And Necessity*, p. 5., In the Matter of the Application of The Empire District Electric Company for a Certificates of Convenience and Necessity Related to Wind Generation Facilities, File No. EA-2019-0010, *Report and Order*, p. 57, In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan, File No. EO-2018-0092, *Report and Order*, (p. 22, "While the Commission cannot make the legal conclusion that Empire requests")."

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 8th day of July, 2025.

/s/ Travis J. Pringle