

**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) **EA-2025-0075**
Missouri Metro for Permission and Approval)
of a Certificate of Public Convenience and)
Necessity for Natural Gas Electrical)
Production Facilities)

**EVERGY MISSOURI WEST’S
POST-HEARING REPLY BRIEF**

COMES NOW, Applicant Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West,” “EMW,” or the “Company”), and for its *Post-Hearing Reply Brief* (“Brief”) states as follows:

INTRODUCTION

As the parties’ initial post-hearing briefs confirm, Evergy Missouri West, Midwest Energy Consumers Group (“MECG”),¹ and Staff of the Commission (“Staff”)² signed a Non-Unanimous Stipulation and Agreement³ (“Agreement”) urging a negotiated resolution to all issues in this proceeding, with the Commission to determine decisional prudence for the Projects⁴ pursuant to Section (2)(C) of the CCN Rule.⁵ The Agreement represents a collective recognition that EMW

¹ See MECG Initial Brief (“The requested CCNs, if granted subject to the provisions in the non-unanimous stipulation and agreement, serve the public interest and should be approved.”).

² See Staff Initial Brief at 28-29 (“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.”).

³ See Non-Unanimous Stipulation and Agreement, In re Evergy Missouri West CCN App. for Natural Gas Facilities, No. EA-2025-0075 (May 29, 2029).

⁴ Evergy Missouri West’s decision to obtain Certificates of Convenience and Necessity (“CCN”), pursuant to Sections 393.170.1 and 393.140(4), 20 CSR 4240-2.060, and 20 CSR 4240-0.045(1)-(3) and (6), to construct, install, own, operate, manage, maintain, and control: an advanced class 710 megawatt (“MW”) combined-cycle gas turbine (“CCGT”) generating facility known as the Viola Generating Station (“Viola”), to be located in Sumner County, Kansas; a second 710 MW CCGT generating facility known as the McNew Generating Station (“McNew”), to be located in Reno County, Kansas; and a 440 MW simple-cycle gas turbine (“SCGT”) generating unit known as the Mullin Creek #1 Generation Station (“Mullin Creek #1”), to be located in Nodaway County, Missouri. All citations are to the Revised Statutes of Missouri (2016), as amended.

⁵ 20 CSR 4240-0.045 will be referred to as the “CCN Rule.”

has a demonstrated need for additional capacity and energy, as it has an “obligation to serve” and provide safe and adequate service to its customers, which “trumps all of the other conditions” proposed by non-signatories.⁶ The Projects offer needed operational flexibility, especially during peak load conditions and periods of renewable intermittency, and will help ensure that EMW can continue to meet its statutory obligation under Section 393.130.1. Additionally, “the conditions agreed to within the Agreement help mitigate... concerns regarding the economic feasibility of the Projects,... ensure that the Projects are in the public interest... improve the CCN process going forward, and will help ensure a better process in place for future projects,” in accord with industry standards and regulatory requirements.⁷ “The Agreement, with the conditions outlined within, shows that the Projects are necessary and convenient for the public service.”⁸

The Office of the Public Counsel (“OPC”) did not sign or object to the Agreement and does not oppose the Commission’s approval thereof. Sierra Club and Renew Missouri Advocates (“Renew Missouri” or “Renew Mo.”) filed certain objections, which are unsupported by the Commission’s standards and Rules, the Agreement, and the evidentiary record. The initial post-hearing briefs of Staff and OPC as to decisional prudence, and those of Sierra Club and Renew Missouri as to the remaining Tartan⁹ factors at issue, respectively reflect their misapprehension of these legal standards and, as a necessary result, are not substantiated by evidence on the record as a whole.

Evergy Missouri West has provided substantial evidence on the record for the Commission to determine that the Projects are prudent, necessary, convenient, and in the public interest. Thus,

⁶ Sierra Club Initial Brief at 10; Mo. Rev. Stat. § 393.130.1.

⁷ See Staff Initial Brief at 28-29.

⁸ Id. at 4.

⁹ In re Tartan Energy Co., 1994 WL 762882, No. GA-94-127 (1994)

the Commission should grant Evergy Missouri West CCNs for the Projects, along with decisional prudence, and should approve the Agreement.¹⁰

ISSUES

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?

Yes. As illustrated in Evergy Missouri West’s *Initial Post-Hearing Brief* and the evidence on the record, and as further discussed herein, the Company has provided more than sufficient evidence to determine that the Projects satisfy Section 393.170.1, the CCN Rule, and the Tartan factors.

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

Yes. Sierra Club’s lone arguments do not rebut Evergy Missouri West’s need to obtain CCNs for the Projects to address the long-term capacity and economic energy deficit, so the Company can provide safe and adequate service to its customers.¹¹

¹⁰ On July 7, 2025, in Docket No. 25-EKCE-207-PRE, the Kansas Corporation Commission approved the requested ratemaking treatment sought by Evergy Kansas Central, Inc. for its 50% equity investment and ownership in Viola and McNew. See Order Approving Non-Unanimous Partial Settlement Agreement Regarding Natural Gas Facilities at 48, In re Evergy Kansas Central, Evergy Kansas South, Inc., and Evergy Metro, Inc. for Determination of Natural Gas Facilities, Docket No. 25-EKCE-207-PRE (Kan. Corp. Comm’n July 7, 2025). The Commission found the projected increase in capacity demand determined by the utilities’ IRPs to be well-supported. Id. at 47. It further recognized that revised Southwest Power Pool accreditation rules will emphasize actual historical performance over nameplate capacity, requiring utilities to meet higher reserve margins under more stringent accreditation standards. Id. at 40. Additionally, in approving the settlement the Commission determined that the cost estimates of the natural gas facilities are reasonable and that the combined-cycle gas turbines offer superior reliability compared to alternative resources, including batteries, as modeled in the IRPs. Id. at 42-43, 45. As a result, and while acknowledging capital cost concerns and the utilities’ need to maintain a diverse and reliable generation portfolio, the Commission found that the facilities will materially enhance fleet reliability and that the settlement includes adequate safeguards to protect ratepayers. Id. at 34. Thus, the Commission concluded that the utilities’ decision to proceed with Viola and McNew is prudent and in the public interest. Id. at 34, 46.

¹¹ Sierra Club is the only party contending that EMW has not demonstrated a need for the Projects.

i. EMW Needs the Projects As They Are Essential to the Changing Energy Market and Landscape

In its brief, Sierra Club dedicates roughly three pages of its approximately eight pages of “substantive” argument to the Tartan factor of need where it makes contradictory factual and legal conclusions. First, on page six, “Sierra Club concedes that Evergy articulated a generic ‘need’ for capacity and energy due to load growth.”¹² However, four pages later, when discussing the Tartan factor of public interest, Sierra Club contradicts itself by stating that the “McNew plant was originally predicated upon the addition of an incremental large load customer and, when that speculative load did not materialize, Evergy decided to move forward with McNew anyway,” arguing that the Company is exposing customers to unnecessary risk.¹³ Sierra Club makes no effort to analyze any evidence on the record and/or to reconcile these mutually exclusive statements or flat assertion.¹⁴

In contrast, Evergy Missouri West, Staff, OPC, and MECG are all in agreement that the Company is in “dire” need of capacity and energy to provide safe and adequate service to its customers.¹⁵ As demonstrated in Evergy Missouri West’s 2024 Triennial Integrated Resource Plan (“IRP”), CCN Supplemental Direct modeling analysis, and 2025 Annual IRP Update,¹⁶ the Company identified a clear need for the Projects because the Company’s owned and contracted

¹² Sierra Club Initial Brief at 6.

¹³ Id. at 10.

¹⁴ See Ex. 3, K. Gunn Supp. Direct at 1-2; Ex. 7, C. VandeVelde Direct at 6; Ex. 16, C. VandeVelde Surrebuttal at 20; Tr. at 31-32.

¹⁵ See Staff Initial Brief at 9, 10; OPC Initial Brief at 4; Tr. 96:20-23 (J Luebbert); Ex. 16, C. VandeVelde Surrebuttal at 17. See also MECG Initial Brief at 1. Renew Missouri does not contend that EMW needs capacity but also opposes the need for dispatchable generation. See generally Renew Mo. Initial Brief at 14-17 (arguing for batteries); Ex. 500, W. Jones Rebuttal at 36 (“I am neither endorsing nor opposing the Company’s assertion that there exists need for new capacity, but I can show that alternative resources could potentially be more economically feasible and better serve the public interest.”).

¹⁶ Contrary to Sierra Club’s argument, EMW’s 2025 Annual IRP Update confirmed its CCN Supplemental Direct modeling analysis which determined EMW’s need for McNew based upon an influx of large load customers. See Ex. 16, C. VandeVelde Surrebuttal at 20; Tr. at 31-32; Schedule CV-1, Southwest Power Pool, “Our Generational Challenge: A Reliability Future for Electricity” at 10-11 (“SPP Our Generational Challenge”).

generation resources are not sufficient to meet the current and future capacity needs of its customers.¹⁷

Electricity demand is rising significantly in the Southwest Power Pool (“SPP”), driven by the rapid expansion of electrification, including the proliferation of electric vehicles, data centers, artificial intelligence applications, and other emerging technologies, along with the changes in SPP’s accreditation methodology and increased planning reserve margins.¹⁸ Currently, EMW is experiencing an influx of large load customers with a potential Company load “somewhere in the 3 to 5 gigawatt range,” with 400 MW only having been modeled in EMW’s 2025 Annual IRP Update.¹⁹

Moreover, the SPP is “facing an increase in extreme weather events that are causing grid emergencies, tight operating conditions, and risks to human health and safety” throughout the summer as well as the winter.²⁰ By adding the Projects to EMW’s generation fleet, the Company, as a load-responsible entity, is answering stakeholders’ call “to add more reliably dispatchable generation”²¹ and responding to real-time operations in the SPP and the need for additional gas “generation that can run at any time, whether ... that’s summer and winter, and at all temperatures.”²² These highly efficient and reliably dispatchable²³ “natural gas-fired generation are crucial for addressing the intermittent nature of variable, weather dependent generation like

¹⁷ See OPC Initial Brief at 4; Ex. 7, C. VandeVelde Direct at 8-9; EMW’s 2024 Triennial IRP, Volume 6: Integrated Resource Plan and Risk Analysis at 6, 9, In re EMW’s 2024 Triennial IRP Filing, No. EO-2024-0154 (Apr. 1, 2024); EMW Initial Brief at 7, 9-10.

¹⁸ See SPP Our Generational Challenge at 4.

¹⁹ See Tr. at 31-32; SPP Our Generational Challenge at 3-5, 10-11; EMW Initial Brief at 5-6, 8; Staff Initial Brief at 9-10.

²⁰ See SPP Our Generational Challenge at 3, 5.

²¹ See OPC Initial Brief at 2-3, 6.

²² Statement of Bruce Rew at 1:25:44-26:54, Public Meeting MTGR-2025-0005 (Mo. P.S.C., May 21, 2025). See EMW Initial Brief at 10 and Staff Initial Brief at 8 rebutting Renew Mo.’s statement on page 17 of its initial brief that the “Projects aren’t even effective hedge against winter storm volatility...”

²³ See EMW Initial Brief at 9-11 (discussing how the Projects are “advanced, high-efficiency dispatchable natural gas assets, which support flexible seasonal dispatch and enhance operational efficiency during peak load periods, thereby optimizing market participation and resource utilization.”).

wind and solar,”²⁴ extreme weather events, SPP’s requirements, along with EMW’s increased load.²⁵

Thus, all parties except Sierra Club agree that the Commission should grant EMW CCNs for the Projects because the Company’s need for “additional capacity is effectively a necessity because of the lack of the service is such an inconvenience,”²⁶ and because “the public is better off if Evergy Missouri West builds, owns, and operates them than if it does not.”²⁷

ii. Transmission Congestion

As discussed in EMW’s *Initial Post-Hearing Brief* at 6-8 and 18-20, Sierra Club’s reliance on Mr. Goggin’s speculative assertions about transmission congestion by citing alleged IRP deficiencies, in its effort to challenge EMW’s demonstrated need for the Projects, are without merit.

As discussed by Evergy witness Mr. VandeVelde, the Projects “are not built and therefore do not have an existing SPP pricing node to leverage for IRP modeling,” so EMW did not fail to “capture” the impact of transmission congestion.²⁸ As such, EMW completed “a congestion analysis, assessing the economics of the” Projects “based on historical and projected patterns of

²⁴ Ex. 200 Staff Report and Recommendation (“Staff Rec.”) at 17 (citing Midwest Reliability Organization (“MRO”), *MRO 2025 Regional Risk Assessment*, at 22-23 (Jan. 2025)).

²⁵ See SPP Our Generational Challenge at 3 (“We need dispatchable generation for times when the wind isn’t blowing and the sun isn’t shining ...”), 8, 12 (discussing how natural gas balances out “variable resources,” such as wind and solar) and 34.

²⁶ *Id.* at 5; Ex. 200 Staff Rec. at 19.

²⁷ When evaluating “need,” the Court of Appeals determined that “necessity” does not mean “essential” or “absolutely indispensable,” but that a CCN is appropriate if the “additional service would be an improvement justifying its cost.” United for Missouri v. PSC, 515 S.W.3d 759 (Mo. App. W.D. 2016); see State ex rel. Pub. Water Supply Dist. No. 8 v. PSC, 600 S.W.2d 147, 154 (Mo. App. W.D. 1980); State ex rel. Beaufort Transfer Co. v. Clark, 504 S.W.2d 216, 219 (Mo. App. K.C.1973). “Any improvement which is highly important to the public convenience and desirable for the public welfare may be regarded as necessary. If it is of sufficient importance to warrant the expense of making it, it is a public necessity.” State ex rel. Mo., Kan. & Okla. Coach Lines, Inc. v. PSC, 179 S.W.2d 132, 136 (Mo. App. K.C. 1944). The concept of necessity is that the additional service would be “desirable for the public welfare.” United for Missouri v. PSC, 515 S.W.3d 754, 759 (Mo. App. W.D. 2016); State ex rel. Intercon Gas, Inc. v. PSC, 848 S.W.2d 593, 597-98 (Mo. App. W.D. 1993). If “the public convenience will be enhanced” and “there is [a] reasonable necessity” for the service, then the public “convenience and necessity” and “need” is served by granting the CCN. See State ex rel. Beaufort Transfer Co. v. Clark, 504 S.W.2d at 219.

²⁸ See EMW Initial Brief at 6; Ex. 16, C. VandeVelde Surrebuttal at 12; Ex. 600, M. Goggin Rebuttal at 29-30.

congestion and locational marginal prices (“LMP”) in the SPP.”²⁹ Because the Projects are not yet built, EMW modeled the Projects “at an aggregated pricing node of generation resources” as any utility would for “new-build resources.”³⁰ Contrary to Sierra Club’s unsubstantiated statements, the Projects’ sites in central Kansas and northwestern Missouri are not near SPP’s areas of greatest transmission congestion.³¹ Staff affirms that “Evergy has done its due diligence in evaluating, assessing, and selecting its proposed sites for the electrical generation facilities in Kansas and in Missouri.”³²

Sierra Club’s claim that existing transmission congestion and currently negative LMPs at the Projects’ sites negate EMW’s demonstrated need for the Projects is also a red herring.³³ The SPP integrated market is not and can never reasonably be expected to offset with its revenues the all-in cost of a regulated utility providing service to customers.³⁴ This line of reasoning is speculative and misconstrues the foundational principles of long-term utility planning. If adopted, it would effectively preclude the development of any new generation facilities in areas subject to temporary congestion or price volatility, regardless of long-term system needs, reliability considerations, or broader planning objectives.

Additionally, transmission congestion is a known, system-wide issue in the SPP market which is actively being addressed through SPP’s robust transmission planning processes. The SPP has directed the investment of \$ 15.9 billion in necessary transmission upgrades over the last eighteen years, including projects near the proposed generation sites.³⁵ Moreover, transmission

²⁹ See Sierra Club Initial Brief at 11; Staff Initial Brief at 14.

³⁰ See Sierra Club Initial Brief at 2. See Ex. 16, C. VandeVelde Surrebuttal at 12; Staff Initial Brief at 14.

³¹ See EMW Initial Brief at 20; Sierra Club Initial Brief at 12; SPP Market Monitoring Unit, “State of the Market 2024” at 158 (May 28, 2025) (“SPP 2024 State of the Market Report”) (spp.org/documents/73953/2024_annual_state_of_the_market_report.pdf).

³² See EMW Initial Brief at 18-19; Ex. 200, Staff Rec. at 51. See also Staff Brief at 21.

³³ See Sierra Club Initial Brief at 9

³⁴ See EMW Initial Brief at 13-14.

³⁵ See SPP Our Generational Challenge at 15; SPP 2024 State of the Market Report at 159-160, 166; Staff Initial Brief

congestion is alleviated by the strategic and coordinated generation and transmission resource planning. EMW's Projects are aligned with regional planning efforts and will contribute to enhanced reliability, reduced price volatility, and improved market efficiency. Using current congestion to oppose needed infrastructure creates a circular argument that would ultimately stall progress and perpetuate system constraints.

Thus, the Commission should reject Sierra Club's line of reasoning and, recognizing the dire need for generation, grant EMW the CCNs.

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

Yes. Nothing in the initial briefs of Sierra Club³⁶ or Renew Missouri refute the facts demonstrating that Evergy Missouri West's decision to add the Projects to its generation fleet is economically feasible under the Commission's standards, especially CCN Rule (6)(H). Instead, these parties' initial briefs seem to espouse anti-dispatchable resources, anti-natural gas energy, and anti-IRP process positions, which blatantly ignore the Commission's Rules, the Missouri regulatory utility compact, and the evidence provided by the Company.

EMW has amply satisfied the Commission's evidentiary threshold to assess whether the Projects are economically feasible. See Report & Order at 5, In re Empire Dist. Elec. Co., No. EA-99-172, 2000 WL 228658 (Feb. 17, 2000) ("Empire Order"); Report & Order on Remand at 27, In re Grain Belt Express CCN, No. EA-2016-0358 (Mar. 20, 2019) ("Grain Belt Express Remand Order").³⁷ The most credible evidence and best measurement of economic feasibility in the regulated utility environment is to compare the net present value revenue requirement ("NPVRR")

at 15.

³⁶ Sierra Club's argument regarding transmission congestion, as it relates to economic feasibility, is refuted under section 1.ii..

³⁷ See EMW Initial Brief at 13 (discussing the Commission's evidentiary standard).

of the various alternatives in the Company’s IRP.³⁸ Evergy Missouri West’s 2024 Triennial IRP, CCN Supplemental Direct modeling analysis, and the 2025 Annual IRP Update are the only “production cost model[ing]” on the record that “do not contain clear errors or incorrect assumptions,” and they clearly demonstrate that the Projects are economically feasible.³⁹ See Grain Belt Express Remand Order at 27, ¶¶ 84-85. Sierra Club and Renew Missouri have simply failed to provide any opposing analysis or modeling that is not speculative or dependent on hindsight.

Importantly, Renew Missouri’s modeling analysis contains clear errors and incorrect assumptions, as it ignores EMW’s IRPs and Mr. VandeVelde’s testimony demonstrating that natural gas prices for the Projects were thoroughly evaluated with timely information.⁴⁰ Mr. Jones’s testimony, however, “relies on outdated natural gas forecasts from the Company’s 2021 Triennial IRP Report, filed in No. EO-2021-0036 (Apr. 30, 2021). As such, this data is irrelevant to the reasonableness of EMW’s current proposal to construct the Projects.”⁴¹

Further, Staff agrees that the Commission’s economic feasibility analysis should evaluate “the proposal rather than the economic feasibility of the portfolio.”⁴² (emphasis added). As discussed on pages 14 and 15 of EMW’s *Initial Post-Hearing Brief*, EMW agrees. In Tartan, the Commission concluded “that there is sufficient evidence from which to find that Tartan’s proposal, as modified by the Stipulation, represents a viable project.” Tartan, 1994 WL 762882 at 10, No. GA-94-127 (1994) (emphasis added). Sufficient evidence to determine whether a project is

³⁸ See Ex. 16, C. VandeVelde Surrebuttal at 3-5; 20 CSR 4240-22.010(2)(B).

³⁹ Id. at 4. See EMW Initial Brief at 15-16.

⁴⁰ See Ex. 16, C. VandeVelde Surrebuttal at 9-11, 13 (rebutting Renew Mo. Initial Brief).

⁴¹ Id. at 11.

⁴² See Staff Brief at 12.

economically feasible thus “assess[es] whether a proposed project or solution is financially viable and cost-effective.” See Staff Initial Brief at 12 (emphasis added).

EMW is the only party on the record that has presented sufficient competent evidence to determine that the Projects are “financially viable and cost effective,” pursuant to CCN Rule (6)(H). Id. No party has disputed that the Company’s estimate of the Projects’ cost was based on the competitive bidding process conducted by EMW and its Owner’s Engineer (“OE”), Burns & McDonnell (“BMcD”), for its Power Island Equipment (“PIE”) and the Engineer, Procure, and Construct (“EPC”) contractor, and Generator Step-Up (“GSU”) Transformers and related equipment.⁴³ Additionally, as discussed in Mr. Olson’s Surrebuttal, EMW has executed fixed-price PIE supply agreements with Mitsubishi Power Americas and is in the final stages of entering into a fixed-price EPC agreement.⁴⁴ The capital cost estimates for the Projects are consistent with those originally provided by Evergy in Mr. Olson’s Supplemental Direct and materially lower than those observed in comparable projects in the market.⁴⁵

Moreover, no party has disputed the reasonableness of Evergy Missouri West’s prudent decision to establish a contingency fund for the Projects, which is intended to address potential cost overruns resulting from both identified and unforeseen risks.⁴⁶ The reserve serves as a financial safeguard against external cost drivers such as regulatory changes, transmission interconnection requirements and network upgrades, procurement market volatility, and the complexities associated with project management.⁴⁷ Although final cost recovery remains subject to Commission approval, the inclusion of contingencies is a prudent measure to address potential

⁴³ See EMW Initial Brief at 16.

⁴⁴ See EMW Initial Brief at 16.

⁴⁵ Id.

⁴⁶ See EMW Initial Brief at 17; Ex. 5, K. Olson Direct at 32; Ex. 15, K. Olson Surrebuttal at 3; Ex. 13, K. Gunn Surrebuttal at 10.

⁴⁷ See EMW Initial Brief at 17.

capital expenditure variances and to mitigate financial risk throughout the course of project execution.⁴⁸

Objecting parties' lack of production cost modeling or feasibility studies was evident at this case's hearing. Importantly, Staff witness Ms. Bolin testified: "Based upon my prior research on the cost of constructing natural gas plants, yes, we find these to be reasonable."⁴⁹ As a result, similar to Tartan, EMW's Projects are "viable" as the cost estimates are "reasonable."⁵⁰

It is therefore undisputed that the Projects' cost estimates are economically feasible under Tartan, as demonstrated by EMW's IRPs and extensive competitive-bidding process based on facts reasonably known at the time EMW requested the CCNs and to date.

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

As Evergy Missouri West, Staff, OPC, and MECG have explained in their initial briefs, it is in the public interest for the Commission to grant Evergy Missouri West CCNs for the Projects.⁵¹

The claim by Sierra Club and Renew Missouri that batteries present a more viable alternative and are in the public interest when compared to the Projects lacks merit.⁵² While battery storage was thoroughly analyzed in both EMW's 2024 Triennial IRP and 2025 Annual IRP Update, it was ultimately excluded from the Preferred Plan because of its limited four-hour discharge duration and inability to cost-effectively meet sustained capacity and energy needs.⁵³

As explained in Schedule CV-1 of Mr. VandeVelde's Direct, the SPP needs dispatchable

⁴⁸ See Ex. 13, K. Gunn Surrebuttal at 10.

⁴⁹ Id. at 103:7-9 (K. Bolin).

⁵⁰ See EMW Initial Brief at 15; Ex. 15, K. Olson Surrebuttal at 3-4; Agreement.

⁵¹ EMW Initial Brief at 21; Staff Initial Brief at 20-21; OPC Initial Brief at 4; MECG Brief at 1.

⁵² See Sierra Club Initial Brief at 11; Renew Mo. Initial Brief at 14-15.

⁵³ See Ex. 16, C. VandeVelde Surrebuttal at 21; EMW Initial Brief at 9; Renew Missouri Initial Brief at 14-15; Sierra Club Initial Brief at 11; Agreement at 4 (the signatories agree that: "The Company currently considers battery storage as an option as part of its IRP process while continuing to utilize capacity expansion modeling and will continue to do so in future IRPs including the use of surplus interconnection.").

generation assets as battery energy storage is “not yet a reality... to offset low energy production from variable resources.”⁵⁴

Contrary to Renew Missouri, batteries are not expected to outperform natural gas plants in hedging against wholesale markets because “[b]atteries do not produce energy, but store energy for future use.”⁵⁵ Moreover, batteries lose some energy in the charging process.⁵⁶ So, unlike dispatchable resources like the Projects, batteries cannot reliably support system demands over extended periods, particularly during peak load or low renewable generation conditions.⁵⁷ As demonstrated on the record and in EMW’s *Initial Post-Hearing Brief*, the Projects’ advanced technology, along with its natural gas procurement strategy, is the best strategy to satisfy SPP’s generation need, and decrease economic and reliability risk to ratepayers, by reducing exposure to market volatility.⁵⁸

EMW’s proposed Projects satisfy the four Tartan factors of (1) need, (2) economic feasibility, (3) financial capability, and (4) operational qualifications. As a result, these positive findings support a decision that the CCNs will promote the fifth factor, public interest.

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?

Yes. As explained in its *Initial Post-Hearing Brief* at 21-27, Evergy Missouri West is the only party that has provided ample competent evidence on the record for the Commission to conclude that EMW’s decision to obtain CCNs for the Projects is prudent and in accord with CCN Rule (2)(C), Section 393.170.1, and the Tartan factors. EMW has provided exhaustive documentation in its Application, testimony and supporting schedules, IRPs, competitive bidding

⁵⁴ See SPP Our Generational Challenge at 9.

⁵⁵ See EMW 2024 Triennial IRP, Vol. 4: Supply-Side Resource Analysis at 58.

⁵⁶ Id.

⁵⁷ See Ex. 16, C. VandeVelde Surrebuttal at 13.

⁵⁸ See EMW Initial Brief at 10-12.

processes, updated capital cost estimates, supplemental resource planning models, due diligence on technical and operational factors, site selection, ownership structure, and finalized transaction pricing, all which have been undisputed on the record, for the Commission to determine that the Projects reflect sound and prudent utility decision-making.

Contrary to Staff’s briefing, decisional prudence is based on a “single point in time decision” and should not incorporate “[a]dditional decisions” beyond those considered at the time EMW decided to obtain CCNs for the Projects, which would instead be implementational prudence.⁵⁹ As Chair Hahn stated at hearing, decisional prudence is based on “what [EMW] knew at the time that the CCN was requested and granted ... and it has nothing to do with future costs being reviewed.”⁶⁰ There is a clear line of demarcation between the two standards.⁶¹ Under Staff’s view, the Commission would never grant decisional prudence for a utility’s new generation build as there are an “infinite number of intervening events that could happen” from the date the Commission grants the CCN and when the facility becomes operational, which are entirely out of the utility’s control.⁶² The Commission should certainly not adopt this position, as it would violate its own CCN Rule providing for decisional prudence.

Additionally, Staff unavoidably contradicts its position on decisional prudence as a signatory to the Unanimous Stip. & Agmt. at 1-2, In re Evergy Mo. West App. for CCNs to Construct Two Solar Gen. Facilities, No. EA-2024-0292 (May 29, 2025).⁶³ In its initial brief, Staff analogizes to the uncertainty surrounding the Inflation Reduction Act (“IRA”) for the solar facilities and whether Staff should be permitted “to take another look at whether moving forward

⁵⁹ Id. at 26; EMW Initial Brief at 22.

⁶⁰ See Tr. 41:15-19 (Chair Hahn).

⁶¹ Id. at 47-49. See Order of Rulemaking at 7, 4 CSR 240-20.045 Elec. Util. Apps. for CCNs Adopted, No. EX-2018-0189 (Aug. 8, 2018) (All parties, including the Commission, were in agreement that the adopted rule grants the Commission the power to determine decisional prudence.) (“Order of Rulemaking”).

⁶² See Tr. 41:20-42:5 (K. Gunn).

⁶³ See EMW Initial Brief at 24-25.

with a project” if those tax credits become unavailable.⁶⁴ However, despite acknowledging the uncertainties around the tax credits which could potentially affect project costs and future tax revenues, Staff signed the Unanimous Stip & Agreement at 1-2, No. EA-2024-0292 granting EMW decisional prudence for the two solar facilities.

Similarly, here, Staff’s position on decisional prudence in its initial brief is equally contradictory and without precedent. On pages 11-20 of Staff’s initial brief, Staff appears to propose an “in the alternative” position regarding conditions and arguments that were already fully resolved in the signed Agreement, which is improper.⁶⁵

Stipulations such as the Agreement are “controlling and conclusive” judicial admissions, “and courts are bound to enforce them.” See Spacewalker, Inc. v. Am. Fam. Mut. Ins. Co., 954 S.W.2d 420, 424 (Mo. App. E.D. Aug. 12, 1997) (“Litigation stipulations can be understood as the analogue of terms binding parties to a contract.”); Moore Auto. Grp., Inc. v. Goffstein, 301 S.W.3d 49, 54 (Mo. en banc Dec. 22, 2009) (“[a] judicial admission is an act done in the course of judicial proceedings that concedes for the purpose of litigation that a certain proposition is true.”); Thornton v. Rowlett, 613 S.W.2d 177, 179 (Mo. App. W.D. Mar. 12, 1981) (“A judicial admission is conclusive upon the party making it.”).

As a signatory to the Agreement, Staff is bound to its position that the Projects’ cost estimates are reasonable, as “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.”⁶⁶ See Spacewalker, 954 S.W.2d at 424 (“stipulations must be viewed in light

⁶⁴ See Staff Initial Brief at 26-27; EMW Initial Brief at 24-25.

⁶⁵ Staff repeatedly states that: “Staff recommends that the Commission approve the Agreement.” See Staff Initial Brief at 11.

⁶⁶ See Agreement at 2; Staff Initial Brief at 28-29; OPC Brief at 9 (“by Commission Rule 20 CSR 4240-2.115(2)(D) the settlement agreement now is merely the positions of the signatories to it.”).

of what the parties were attempting to accomplish”). Staff cannot sign the Agreement to approve the Projects, acknowledging the reasonableness of EMW’s prudent decision-making to obtain CCNs for the Projects, while attempting to reserve its now-abandoned and resolved argument that “EMW has simply not provided adequate economic justification that the decision to move forward with the Projects is prudent.”⁶⁷ The Agreement concedes the factual and legal conclusions proposed by the signatories, and Staff is not permitted to propose any alternatives or opposition at this time.⁶⁸ See Thornton v. Rowlett, 613 S.W.2d at 179 (a judicial admission concedes “some alleged fact so that one party need offer no evidence to prove it, and the other party ordinarily is now allowed to disprove it. It removes the proposition in question from the field of disputed issues in the particular case wherein it is made. It is a substitute for evidence in the sense that it does away with the need for evidence on that subject in that cause.”); Moore Auto. Grp., Inc., 301 S.W.3d at 54 (citing Lutsky v. Blue Cross Hosp. Serv., Inc., of Mo., 695 S.W.2d 870, 872 (Mo. en banc Aug. 7, 1985) (stating that when a judicial admission “is found on a written instrument, the execution of the instrument is deemed confessed unless the party charged with executing it denies the execution.”)).

Therefore, the “proposition” regarding economic feasibility of the Projects is removed from Staff’s “field of disputed issues.” See Thornton v. Rowlett, 613 S.W.2d at 179. Staff legally and factually concedes that Evergy Missouri West has satisfied all five Tartan factors, from which the Commission logically should conclude that Staff believes the Projects are prudent and should grant EMW decisional prudence. Indeed, Staff’s function is to recommend a single position on a

⁶⁷ See Staff Initial Brief at 25.

⁶⁸ Id. at 4.

case for the Commission’s benefit.⁶⁹ Therefore, the Commission should disregard Staff’s “alternative” briefing, and approve the Agreement as presented.⁷⁰

OPC misconstrues decisional prudence in an entirely different way. OPC claims that an order granting decisional prudence would have “no effect for binding the Commission” when the Projects costs are incorporated into the Company’s rate base.⁷¹ This is wrong. As its name indicates, an order for decisional prudence effectively protects the *decision* to proceed with the Projects from being second-guessed and having its costs totally disallowed in a future rate case.⁷² Such an order would foreclose OPC’s “foreshadowed... intent to challenge” EMW’s “earlier decisions” that the Company has been imprudent for relying on the SPP market, which has supposedly has resulted in losses for customers since 2019, in future rate cases.⁷³ To reiterate, the “Commission has never found EMW imprudent for resource planning decisions that rely on the SPP integrated energy marketplace to meet the Company’s energy needs in lieu of building or acquiring cost-effective generation.” See Report & Order at 9, In re EMW Rate Case, No. ER-2024-0189 (Dec. 4, 2024). Consequently, the Commission should reject OPC’s intent to bring forth its claim for the 13th time by confirming that it will not review OPC’s hindsight argument now or going forward. Further, Renew Missouri’s opposition to EMW’s request for decisional

⁶⁹ Staff of the Commission are independent technical advisors with “expertise in accounting, economics, finance, engineering/utility operations, law, or public policy.” Mo. Rev. Stat. § 386.135.1. Staff and its personal advisors shall render advice and assistance to the Commissioners and the Commission’s administrative law judges pertaining to technical matters within their area of expertise. Id. at § 386.135.4; In re Matter of Rate Increase Request for Liberty Utilities (Missouri Water), LLC, 592 S.W.3d 82, *85 (Mo. App. W.D. 2019).

⁷⁰ If the Commission is going to consider an already resolved issue, which OPC also did not raise in any objection to the Agreement, then EMW should be given proper notice so the Company can brief its alternative issues as well. Fairly to properly notice an issue is a violation of due process. See Jones v. Flowers, 547 U.S. 220, 226 (Mo. Apr. 26, 2006) (“due process requires the government to provide ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’”).

⁷¹ See OPC Initial Brief at 7.

⁷² See Tr. at 49.

⁷³ See OPC Initial Brief at 8-9; EMW Initial Brief at 26; Ex. 300, J. Seaver Rebuttal at 3; Report & Order at 12, In re Evergy Missouri West Eleventh Prudence Review FAC, No. EO-2023-0277 (Aug. 7, 2024); Ex. 13, K. Gunn Surrebuttal at 16.

prudence is legally and factually insufficient, as it relies on a conclusory argument unsupported by independent analysis.⁷⁴ Renew Missouri cannot piggy-back other parties' arguments without any further analysis or evidence of its own. See In re Empire Dist. Elec. Co. & White River Valley Elec. Coop., No. EO-2009-0428, 2009 WL 2136587, at *2 (July 8, 2009) (“Merely adopting” a party’s legal conclusion or “position on the ultimate legal issues is insufficient and does not satisfy the competent and substantial evidence standard embodied in the Missouri Constitution, Article V, Section 18.”).

Finally, the Commission should disregard Sierra Club’s untimely decisional prudence argument, as it was not raised prior to its initial brief.⁷⁵ On page 12 of Sierra Club’s initial brief, it claims that EMW selected the “worst sites in the United States for the Projects,” so the Commission should not decide that the Projects are prudent.⁷⁶ This contention is procedurally improper as it was not raised in testimony or presented at hearing. Additionally, it is completely unsubstantiated.⁷⁷ In re Union Elec. Co. No. ER-2012-0166, 2012 WL 5984836, at *1 (Nov. 14, 2012) (“The law is certainly clear that the Commission must make its decision based on competent and substantial evidence. The briefs filed by the parties are not evidence and the Commission cannot accept facts presented for the first time in a party’s brief as competent and substantial evidence.”). Additionally, like Renew Missouri, Sierra Club improperly piggy-backs Staff’s now-resolved and groundless economic feasibility analysis to attempt to refute EMW’s request for decisional prudence. See In re Empire Dist. Elec. Co. & White River Valley Elec. Coop., No. EO-

⁷⁴ See Renew Mo. Initial Brief at 17 (“no non-utility party who analyzed the Projects could state the Projects were economically feasible, no decisional prudence should be granted in this case.”); EMW Initial Brief at 26.

⁷⁵ See Sierra Club Initial Brief at 11-12.

⁷⁶ Id.

⁷⁷ See SPP 2024 State of the Market Report at 3; EMW Initial Brief at 20 (SPP locations which experienced the highest congestion costs in 2024 were in North Dakota, eastern Oklahoma, and New Mexico, not Missouri and/or Kansas).

2009-0428, at *2. Sierra Club’s initial brief regarding decisional prudence should be given no weight.

The record clearly supports a finding that the Projects satisfy Section 393.170.1 and the Tartan factors. The Commission should approve the CCNs without hesitation, as EMW’s decision to pursue the Projects reflects prudent and well-reasoned utility planning.

D. Should the Commission approve the Agreement?

Yes. EMW, Staff, and MECG filed the Agreement to resolve all issues in this proceeding other than the sole outstanding issue of decisional prudence. OPC neither signed the Agreement nor raised any objections to its terms.⁷⁸ As a non-signatory and non-objecting party, OPC has forfeited any right to challenge or interfere with the Agreement’s provisions in its briefs. See 20 CSR 4240-2.115(2)(B) (“failure to file a timely objection shall constitute a full waiver of that party’s right to a hearing.”). Its silence as a non-objector constitutes acquiescence, and it should be treated as having waived any claims or arguments concerning the Agreement. Id. The clear purpose of OPC’s initial brief is to undermine the Agreement by asserting matters that are immaterial and impertinent at this stage of the proceeding. See Mo. R. Civ. Proc. 55.27(e). Having waived all its rights to object to the Agreement, OPC is in no position to reserve its “foreshadowed” decisional prudence argument in future rate cases regarding EMW’s earlier decisions not to build generation assets but rely on the SPP market.⁷⁹

Further, as discussed in EMW’s *Initial Post-Hearing Brief* and herein, the objections raised by Renew Missouri and Sierra Club are baseless and should be disregarded. Their concerns, many

⁷⁸ See Agreement; Tr. 23:4-5 (OPC Opening Statement) (OPC’s “not opposing the stipulation and agreement in this case.”).

⁷⁹ See OPC Initial Brief at 8-9.

of which mischaracterize the record or rely on speculative assertions, do not justify rejection of the Agreement.

The Agreement establishes a clear framework for EMW's implementation of the Projects while ensuring accountability, transparency, and alignment with prudent utility practices. By defining capital cost expectations, outlining future oversight mechanisms, and promoting collaborative planning, the Agreement strikes an appropriate balance between regulatory certainty and consumer protection. It significantly narrows the scope of future disputes and enables timely deployment of generation resources necessary to ensure that EMW is able to provide its customers with safe and adequate service.

In sum, the Commission should approve the Agreement.

CONCLUSION

The Commission should grant EMW the requested CCNs and a finding of decisional prudence, as the Projects are essential to meeting the Company's demonstrated need for energy and capacity. By moving forward with these investments, EMW is strengthening system reliability and advancing a strategic, long-term generation plan to provide its customers with safe and adequate service. The Commission should also approve the Agreement as consistent with these objectives.

WHEREFORE, the Company respectfully submits its *Post-Hearing Reply Brief* to the Commission.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Cole Bailey, MBN 77268
Evergy, Inc.
1200 Main – 17th Floor
Kansas City, Missouri 64105
Phone: (816) 556-2314
roger.steiner@evergy.com
cole.bailey@evergy.com

Karl Zobrist, MBN 28325
Jacqueline M. Whipple, MBN 65270
Chandler Hiatt, MBN 75604
Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Phone: (816) 460-2400
Fax: (816) 531-7545
karl.zobrist@dentons.com
jacqueline.whipple@dentons.com
chandler.hiatt@dentons.com

James M. Fischer, MBN 27543
Fischer & Dority, P.C.
2081 Honeysuckle Lane
Jefferson City, MO 65109
Phone: (573) 353-8647
jfischerpc@aol.com

Attorneys for Evergy Missouri West

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 8th day of July 2025, by EFIS filing and notification, and/or e-mail.

/s/ Roger W. Steiner

Roger W. Steiner