

**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 for Permission and Approval of a)
Certificate of Public Convenience and) No. EA-2022-0328
Necessity Authorizing It to Purchase, Own,)
Operate, Maintain and Otherwise Control and)
Manage an Existing Wind Generation Facility)
in Oklahoma)

EVERGY MISSOURI WEST’S POSITION STATEMENT

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West,” “EMW,” or the “Company”), and hereby submits its Statement of Positions (“Position Statement”) in this case.

LIST OF ISSUES

- A. Does the evidence establish that granting an Operating Certificate of Convenience and Necessity (“CCN”) to Evergy Missouri West to own, operate, and maintain the wind generation facility located in Woodward, Ellis and Dewey Counties in Oklahoma (“Persimmon Creek” or the “Project”) is necessary or convenient for the public service, pursuant to Section 393.170(2)-(3), RSMo and 20 CSR 4240-20.045(2)-(3)?**

EMW POSITION: Yes. Persimmon Creek is a 198.6 MW wind farm that spans approximately 17,000 acres in Woodward, Ellis, and Dewey Counties in northwestern Oklahoma. The Project consists of 80 General Electric (“GE”) wind turbine generators and began operating in August 2018.

Because Persimmon Creek has been generating renewable energy for over four years, it does not require a construction or line CCN under Section 393.170.1. Because EMW does not seek to expand its Missouri service territory, it does not require an area certificate under Section 393.170.2. However, under the 2018 revisions to the Commission’s rules, the Company is required

to obtain a CCN prior to operating the Project under Section 393.170.2 (“Operating CCN”). See 20 CSR 4240-20.045(2)(A)3 (“CCN Rule”).

In addition to the general filing requirements, the CCN Rule’s Section 5 specifies only four other requirements that an Operating CCN application must include: (A) a description of the asset; (b) the value of the asset; (c) the purchase price and plans for financing the operation; and (d) plans and specifications of the asset. The Company’s Application contains this information.

EMW signed an agreement on August 8, 2022 to purchase acquire the Project from its owner Scout Clean Energy, LLC for approximately \$245.7 million, plus working capital adjustments and adjustments for production tax credits. The purchase price was reached through a competitive request for proposal (“RFP”) process, including comparative valuations of other similar projects that have been offered for sale. (Humphrey Direct at 5-7; Humphrey Supp. Direct at 2-5). Persimmon Creek generates renewable energy today that will provide renewable energy certificates and is 100% eligible for federal production tax credits. (Humphrey Direct at 9; Humphrey Supp. Direct at 3).

In United for Missouri v. PSC, 515 S.W.3d 754 (Mo. App. W.D. 2016), the Court discussed the legal requirements for obtaining a CCN in a case which affirmed the Commission’s approval of the CCN application of EMW’s predecessor to build its first solar plant. The request was opposed by the Office of the Public Counsel (“OPC”) and United for Missouri. The plant was constructed at EMW’s Greenwood Energy Center in Jackson County where four natural gas combustion turbines are also located.

The Court of Appeals found that no specific criteria have been set out by statute as to when a CCN should be granted. However, it stated that the Commission has the discretion to determine whether the evidence indicates the public interest would be served by the issuance of a CCN. The

Court also cited long-standing Missouri law 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.” Id. at 759. 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. State ex rel. Beaufort Transfer Co. v. Clark, 504 S.W.2d at 219.

The Court of Appeals has also noted that “the future must be part of a comprehensive evaluation in matters of public convenience and necessity,” and that the Commission may properly consider “Missouri’s demonstrated public policy of conserving natural resources and pursuing renewable energy sources” when it grants a CCN. United for Missouri v. PSC, 515 S.W.3d 754, 760, 764 (Mo. App. W.D. 2016).

In determining whether an applicant meets these standards and “is necessary or convenient for the public service,” the Commission has frequently considered the five following factors as guidelines, known as the Tartan factors. In re Tartan Energy Co., 1994 Mo. PSC LEXIS 26 at *9-10, *17-46, 1994 WL 762882 at *6-15, No. GA-94-127 (1994). See Missouri Landowners

Alliance v. PSC, 593 S.W.3d 632, 638-39 (Mo. App. E.D. 2019); In re KCP&L Greater Mo. Operations Co., 2016 WL 946579, No. EA-2015-0245 (2016), aff'd United for Missouri v. PSC, 515 S.W.3d 754 (Mo. App. W.D. 2016).

1. Does the Evidence establish that there is a Need for EMW to operate Persimmon Creek?

EMW POSITION: Yes. EMW proposes to acquire Persimmon Creek to help meet its current need for an economic energy source, particularly given the high prices in today's wholesale energy markets, and to provide some accredited capacity to meet its needs by 2024. Adding Persimmon Creek to the Company's generation portfolio is consistent with the Preferred Plan of its Integrated Resource Plan ("IRP") which shows that the Project provides benefits to customers. Overall, Persimmon Creek would be a valuable addition to EMW resources because of its long-term low-cost energy, its renewable capacity, and its ownership structure. (Messamore Direct at 6; Messamore Supp. Direct at 2-3).

a. EMW has a Need for both Capacity and Energy

As stated in EMW's Notice of Preferred Plan Change in Case No. EO-2023-0115 (Sept. 27, 2022), the Company was forecasted to need 150 MW of market capacity, in addition to Persimmon Creek, to be able to meet its 2024 capacity requirements. However, that forecast was based on a 12% planning reserve margin which is now understated, given SPP's decision in mid-2022 to increase in the planning reserve margin to 15% in the summer of 2023. (Messamore Supp. Direct at 8-10 & Sched. KM-1).

The Preferred Plan assumed that Persimmon Creek would provide 20 MW of accredited capacity which means that EMW's capacity need is at least 170 MW in 2024. (Messamore Supp. Direct at 10).

EMW also needs additional energy resources since it has been a net purchaser of energy from

the SPP energy markets since the market was created in 2014. (Messamore Supp. Direct at 10). The last two years have demonstrated the impact that elevated gas prices have on EMW, given its market dependence. When market prices were approximately \$20/MWh in 2019-2020 and were forecasted to remain low because of plentiful shale gas production driving low natural gas prices, EMW was often able to purchase energy from the market more cost-effectively in the short-term, instead of building or acquiring new resources.

However, electricity prices have now climbed to an average of \$55/MWh. The expansion of liquified natural gas (LNG) exports, combined with tighter domestic production, have created an expectation of high gas and energy prices for the long-term. Moreover, the prospect of additional environmental regulations (e.g., carbon tax or emissions restrictions) on fossil-fuel resources will also create upward market price pressures as fixed-cost baseload resources, including coal-fired plants, are retired and market prices become even more dependent on gas units that are impacted by high gas prices. (Messamore Supp. Direct at 11-12). As a result, EMW needs additional energy resources like Persimmon Creek to serve as a hedge against increasing market prices.

b. Integrated Resource Planning: Options and Results

The basic resource options that have been evaluated in recent IRPs to meet capacity and energy needs are wind, solar, natural gas, and market capacity purchases.

As described in the Direct Testimonies of Ms. Messamore and Mr. Dority, the addition of the Persimmon Creek to the Company's generation fleet is projected to reduce EMW customer costs through long-term, low-cost energy and capacity to meet EMW's needs. The Project will provide renewable energy credits ("RECs") and is eligible for 100% of the available federal production tax credits ("PTCs"). Moreover, having Persimmon Creek as a resource that EMW owns and operates will allow the Company to mitigate exposure to rising and volatile energy costs

in the wholesale energy markets as a resource with essentially no variable costs because the Project will eventually be included in EMW's rate base.

Adding Persimmon Creek to EMW's generation portfolio is consistent with positions taken by the Commission, Staff, and other parties who have encouraged EMW and its predecessors to invest in its own generation, especially renewable resources, instead of relying on the wholesale electricity markets. There is a clear need for Evergy Missouri West to add capacity and energy to its generation portfolio, and specifically Persimmon Creek represents the least cost wind resource available at this time that will provide customers with the greatest benefits. (Messamore Surrebuttal at 32-33).

Staff has previously interpreted "need" as a requirement for the applicant to demonstrate that there are benefits to the project that justify its cost. However, in this case the Staff's approach is based on the idea that the only prudent path available to a utility is to add resources only when it is facing regulatory mandates or other external forces. This is an unwise and risky approach for the Company and its customers, particularly when the need to transition EMW's generating fleet to lower-carbon or no-carbon sources responsibly over time is recognized by all parties. (Messamore Surrebuttal at 2).

Staff's arguments are purportedly based on Persimmon Creek, but they create a barrier to adding any renewable resources that are not specifically needed for statutory Renewable Energy Standard ("RES") compliance. If Staff's "do nothing" position is adopted in this case or as a guiding principle for other proposed utility resource additions, there will be no realistic options available to meet EMW's current and increasing future needs, leaving customers exposed to rely only on the wholesale market to meet their long-term needs. (Messamore Surrebuttal at 11-12, 32-34).

Staff's narrow approach to the question of "need," which is echoed by OPC, must be rejected if Evergy is to move responsibly forward as part of the national transition from older fossil-fuel generating units to newer renewable energy solutions such as wind and solar generation. (Messamore Surrebuttal at 9-12).

2. Does EMW have the financial ability to operate Persimmon Creek?

EMW POSITION: Yes. EMW has demonstrated that it has the financial ability to operate the Persimmon Creek Wind Farm. (Dority Direct at 9; Humphrey Supp. Direct at 7-8).

No party disputes that EMW will be able to finance the purchase of Persimmon Creek. Staff's Dr. Won stated: "Considering the fact that the proposed cost for the purchase is less than 2.5% of the overall expected consolidated capital spending through 2025, it is reasonable to conclude that EMW has the financial ability to purchase, operate, manage, maintain, and control Persimmon Creek Wind Farm." (Dority Direct at 9; Staff witness Won Rebuttal at 2-3).

3. Is EMW qualified to operate Persimmon Creek?

EMW POSITION: No party disputes that EMW is qualified to operate Persimmon Creek. Staff witness Jordan Hull concluded: "Yes, based on Evergy Missouri West being able to utilize expertise and knowledge from its affiliated jurisdictions, Staff concludes that Evergy Missouri West is qualified to own, operate, maintain, and otherwise control and manage the project." (Dority Direct at 8; Staff witness Hull Rebuttal at 4).

4. Is EMW's proposed operation of Persimmon Creek economically feasible?

EMW POSITION: Yes. Evergy Missouri West's decision to add Persimmon Creek to its resources is economically feasible. High-capacity factor wind generation from western Oklahoma is one of the cheapest forms of renewable energy in the United States. After the competitive RFP process, Persimmon Creek was selected because it had the lowest levelized cost of energy ("LCOE") of all projects. (Humphrey Surrebuttal at 16-19). The Project was also attractive, compared to other

alternative projects from a permitting and supply chain perspective, because it is already operating with the lowest congestion risk for delivery of energy to Missouri customers. (Humphrey Surrebuttal at 20-21). Persimmon Creek is also one of the most advanced and efficient wind generating facilities now in operation, with a proven operational aggregate Net Capacity Factor of approximately 50% over the past four years. (Humphrey at 21-23).

Ms. Messamore described how the IRP process for Evergy Missouri West identified a Preferred Plan with wind that results in reduced costs for EMW customers over time compared to alternative resource plans. In her Supplemental Direct Testimony, Ms. Messamore provides additional detail related to the 2021 IRP demonstrated savings, the 2022 Annual Update, and the subsequently updated Preferred Plan. (Messamore Direct at 5; Messamore Supp. Direct at 5). When updated with Persimmon Creek, as opposed to a generic wind resource used in the 2022 IRP, the results showed a total of \$130 million in savings to customers, compared to a plan with no new wind additions. (Messamore Supp. Direct at 17, 21).

Persimmon Creek provides additional sources of value that are not reflected in the IRP. It is located in the western Oklahoma wind corridor which provides geographic diversity from EMW's wind and other resources located in eastern and western Kansas and western Missouri. While the Project can provide both capacity and energy today to EMW without firm transmission service, an SPP Aggregate Study may show that the any upgrade costs required to obtain firm service may be outweighed by the benefit of increased capacity accreditation and additional congestion hedging rights. (Messamore Supp. Direct at 28-30; Humphrey Direct at 15).

Mr. Humphrey describes in his Direct Testimony how this Project was chosen through a competitive RFP process for wind generation resources because Persimmon Creek had the lowest LCOE of all the offered projects. Persimmon Creek is also less risky from a permitting and supply

chain perspective because it has been operating since 2018, had the lowest congestion risk for delivery to Evergy Missouri West customers, and offered a well-performing facility with an aggregate net capacity factor of approximately 50%. (Humphrey Direct at 6-8; Humphrey Surrebuttal at 21-22).

The Inflation Reduction Act (“IRA”), which became law on August 16, 2022 (the week after EMW signed the agreement to purchase the Project), does not change the economics of Persimmon Creek as it already receives 100% of the PTCs as would a new wind resource. Persimmon Creek is not affected by supply chain, logistics, or the effects of economic inflation on construction and procurement costs. (Humphrey Supp. Direct at 12-17 & Confid. Sched. JH-8). Comparing Persimmon Creek with other projects that are likely eligible for IRA treatment shows that Persimmon Creek is currently and is likely to remain the lowest cost option to meet the needs of EMW’s customers. (Humphrey Supp. Dir. at 18-23).

5. Does EMW’s proposed operation of Persimmon Creek promote the public interest?

EMW POSITION: Yes. As the Company has explained in its Application and in supporting testimony, it is in the public interest for the Commission to grant an operating CCN for Persimmon Creek for the following reasons.

In its decision that established the Tartan Factors as factors to be considered in CCN cases, the Commission made the following observation regarding the public interest factor:

The requirement that an applicant’s proposal promote the public interest is in essence a conclusory finding as there is no specific definition of what constitutes the public interest. Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest [emphasis added].¹

¹ In re Tartan Energy Co., 1994 Mo. PSC LEXIS 26 at *40-46, 1994 WL 762882 at *13-14, No. GA-94-127 (1994).

As discussed above, EMW's proposed Project meets the four Tartan factors of (1) Need, (2) Operational Qualifications, (3) Financial Capability, and (4) Economic Feasibility. As a result, these positive findings will support a finding that the application for a CCN will promote the public interest. However, the competent and substantial evidence also supports a more specific finding that the CCN will promote the public interest.

First, the addition of Persimmon Creek to the Company's generation fleet is projected to reduce customer costs through long-term, low-cost energy and capacity to meet the needs of EMW and its customers. The Project will provide RECs and is eligible for 100% of the available federal PTCs. As a resource that the Company will own and operate, Persimmon Creek will allow EMW to avoid reliance on the wholesale energy markets and their rising and volatile costs. Adding the Project to the Company's generation portfolio is consistent with positions taken by the PSC, its Staff, and other parties that have encouraged EMW and its predecessors to invest in generation, especially renewable resources, instead of relying on PPAs and the wholesale market.

Furthermore, adding Persimmon Creek to the Company's resources is economically feasible because electricity generated from a high capacity factor wind generation facility from western Oklahoma is one of the cheapest forms of renewable energy available today. After the competitive RFP process, Persimmon Creek was selected because it had the lowest LCOE of all projects. Furthermore, the Project is attractive compared to alternative available projects from a permitting and supply chain perspective because it is already operational with the lowest congestion risk for delivery to Missouri customers. Persimmon Creek is one of the most advanced and efficient wind generating facilities now in operation, with a proven operational aggregate Net Capacity Factor of approximately 50% over the past four years. (Humphrey Supp. Direct at 17-19; Humphrey Surrebuttal at 21-23).

Persimmon Creek will broaden the renewable generation portfolio of EMW which currently owns no wind resources. The addition of Persimmon Creek's 198.6 MW will bring the Company in line with Evergy's other public utilities which collectively own and operate over 575 MW of wind resources. (Humphrey Direct at 14).

In addition, having EMW own and operate Persimmon Creek aligns with Missouri's renewable energy policies, including the Renewable Energy Standard Law² and provisions of the Plant-in-Service Accounting ("PISA") Law.³ The addition of Persimmon Creek to EMW's resources will provide environmental benefits and provide a diversified energy resource to serve the community as EMW moves to achieve its targeted 70% reduction from CO₂ emissions levels by 2030 and net-zero emissions by 2045. (Humphrey Surr. at 7).

Taken together, all these factors, including other factors discussed in the Company's supporting testimony, demonstrate that granting EMW an Operational CCN for Persimmon Creek is in the public interest. (Application at 7-10; Dority Direct at 9-10; Dority Supp. Direct at 7-9; Dority Surrebuttal at 7-14).

B. If the Commission grants the CCN for the Project, what conditions, if any, should the Commission impose on the CCN?

1. Should a Production Tax Credit tracker be established?

Staff recommends that the Commission order EMW to track the PTCs accrued on its books so that they are available for the Commission's consideration in the Company's next rate case. (Luebbert Rebuttal at 5, 57; Young at 4-5).

EMW POSITION: EMW is opposed to this condition to the extent that Staff's proposed condition to track PTCs would invoke deferral accounting principles and require the establishment

² §§ 393.1020-.1030.

³ § 393.1400.4(3) ["Deployment and integration of ... renewable resources"]; § 393.1655.

of regulatory liability and asset accounts under the FERC Uniform System of Accounts.

Such a condition is inconsistent with the Commission's previous decisions on tracker requests and accounting authority orders ("AAOs"). The Commission has held that trackers and other deferrals should be infrequent and used only when circumstances are unusual. Trackers typically apply to extraordinary costs that are significant or volatile, and not routine. The PTC does not meet any of these requirements. It is not extraordinary, unusual, or infrequent. It has existed for many years and is intended to promote the construction and operation of wind and other renewable energy facilities. (Dority Surrebuttal, pp. 21-24).

The Commission has previously decided, upon Staff's recommendation, and it has been affirmed by the Missouri Court of Appeals, that the "use of trackers should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri." Kansas City Power & Light Co. v. PSC, 509 S.W.3d 757, 769 (Mo. App. 2016), aff'g In re Kansas City Power & Light Co., Report and Order at 50-51, No. ER-2014-0370 (Sept. 2, 2015).

When the acquisition of Persimmon Creek by EMW is closed, customers will immediately receive the benefits of this resource and its zero-cost energy which will flow through the FAC. This will occur before the value of Persimmon Creek and its operating and maintenance costs are reflected in base rates. Under the PISA Law, 85% of the plant's depreciation expense with carrying costs will be deferred until the asset is reflected in rates.⁴ (Humphrey Surrebuttal at 13-14).

Between the closing of the acquisition and the conclusion of EMW's next rate case, the PTCs that will flow to the Company will offset the regulatory lag that EMW will experience on

⁴ § 393.1400.2(1).

the investment until such time as Persimmon Creek is reflected in rates approved by the Commission and charged to customers. This is an appropriate result that is fully supported by the Company's FAC tariff, the PISA Law, and Missouri ratemaking principles. The Commission should reject Staff's condition regarding a PTC tracker. (Humphrey Surrebuttal at 13-14; Dority Surrebuttal at 25-26).

Given that customers will receive the benefits of Persimmon Creek's energy through the FAC prior to the wind farm's costs being reflected in rates, and that only a partial 85% of the Project's depreciation expenses with carrying costs will be deferred, this resulting balance is consistent with Section 386.610 which directs that the Public Service Commission Law "shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities."

2. Should the Commission order that EMW track revenues produced by Persimmon Creek for ratemaking purposes?

If Staff's condition is that EMW record and accumulate on its books in separate accounts the revenues and expenses from the Project only to the extent that these revenues and expenses would be tracked in a similar manner regarding the Company's other generating units, EMW does not object. This would be consistent with the Commission's 2019 decision that granted Empire's request for CCNs to construct three wind generating facilities.⁵

* * *

Staff proposed other conditions in its Rebuttal Testimony if the Commission grants an Operating CCN for Persimmon Creek. EMW provides the following responses to them.

⁵ In re Empire Dist. Elec. Co. App. for a CCN related to Wind Generation Facilities, Report & Order at 52, 60 (Ordered ¶ 7), No. EA-2019-0010 (June 19, 2019).

3. Condition regarding In-Service Criteria

Staff recommends the Commission find that the in-service criteria contained in Schedule SEL-r-2 to the Rebuttal Testimony of its witness Shawn Lange “are appropriate for use in a future case to determine whether the Persimmon Creek project is in-service.” (Lange Rebuttal at 3).

EMW POSITION: The Company believes that the conditions in Schedule SEL-r-2 are reasonable if they are appropriately implemented for Persimmon Creek which has been operating in SPP since 2018. (Humphrey Surrebuttal at 12-13).

All items in Schedule SEL-r-2 have been previously satisfied except for Section 2.b which relates to EMW’s supervisory control and data acquisition (“SCADA”) capabilities. Once the SCADA functionality is transferred to the Company, its capabilities can be tested.

Otherwise, conducting tests and incurring the expense to recertify an asset that has been operating in SPP for the past four years is unnecessary. The site was commissioned in 2018 after an independent engineering due diligence review was conducted by Black & Veatch which issued a formal report.⁶ Reviews were also conducted by General Electric Company, the manufacturer of the wind turbines, as well as by the site owner. EMW has provided significant data to Staff during discovery on this topic which confirms the operational status of Persimmon Creek. (Humphrey Surrebuttal at 13).

4. Condition Regarding Future Loss of Existing Tax Benefits or Future Costs to Comply with Environmental Regulations

Staff presented the following recommendations in the Rebuttal Testimony of its witness Mr. Luebbert:

“Staff recommends the CCN should be conditioned on any future moneys lost due to loss of Production Tax Credits, Investment Tax Credits and market energy sales, or moneys paid for additional projects to meet compliance with the Southwest Power Pool resource adequacy requirement,

⁶ See Humphrey Supp. Direct at 2-3, 23-24 & Confid. Sched. JH-9.

associated with any change in operating the facility due to an ITP [Incidental Take Permit], HCP [Habitat Conservation Plan], or the like should not be borne by the ratepayers but by the shareholders.”

“Further, Staff recommends that any future expense for any equipment that may be used to study or alter migratory or flight patterns of any aviaries that is threatened or endangered in the region that this facility is sited, should not be borne by ratepayers but by the shareholders.” (Luebbert Rebuttal at 4-5).

EMW POSITION: EMW is opposed to these recommendations and conditions.

Staff’s recommendation is unprecedented and contrary to Missouri regulatory principles. Under Missouri law, customers pay for the cost of a public utility’s fulfilling its statutory obligation to serve them, pursuant to rates set by the Commission that are just and reasonable under Section 393.130. Shareholders provide the capital for the utility to serve the public and, in return, the Commission grants the utility the opportunity to earn a reasonable return on its investments and to recover its reasonable expenses. In evaluating the decisions that a utility makes that result in costs, including decisions to acquire generating assets, the Commission does not use hindsight. Such decisions are evaluated based upon information that was known or knowable at the time of the decision. (Dority Surrebuttal at 17).

Missouri and federal courts, including the Supreme Court of the United States, have upheld these principles since the advent of public utility regulation. Staff’s proposed recommendations and conditions violate the statutory and regulatory compact between public utilities and their customers. It would unlawfully condition the acquisition and operation of an asset in an Operating CCN proceeding upon speculative legislative, regulatory, and market events that may occur in the future.

Today Persimmon Creek fully complies with all environmental laws and regulations. The developers of the Project specifically sited the facility to minimize wildlife impacts by voluntarily developing a Bat and Bird Conservation Plan. Persimmon Creek has operated within the

parameters of the Plan since its construction. If changes in environmental or other laws or regulations occur, the costs to comply with new mandates will be evaluated under the Commission's prudence standard which forbids the use of hindsight. (Humphrey Surrebuttal at 9-12).

The Commission's acceptance of Staff's condition and its recommendations would be unprecedented and would have far reaching negative impacts on Missouri public utilities. (Dority Surrebuttal at 17-18).

5. Hold Harmless Condition

Staff recommends that the Commission hold EMW's ratepayers harmless if the costs of Persimmon Creek exceed the wholesale market revenues and ratepayer realized tax benefits. (Luebbert Rebuttal at 5).

EMW POSITION: EMW is opposed to this condition.

Mr. Luebbert incorrectly states that "market revenues and ratepayer realized benefits of the production tax credits will need to exceed the overall cost over the asset's life in order to ultimately be economic from a ratepayer perspective." (Luebbert Rebuttal at 58). Based upon Staff's inappropriate analysis of the economics of the Project, Staff recommends that if the Commission approves the CCN, it be conditioned on EMW holding ratepayers harmless "if the costs of Persimmon Creek exceed the market revenues and ratepayer realized tax benefits." Id.

There are several reasons why such an unprecedented condition is both unreasonable and unjust.

First and foremost, EMW will not proceed with the Persimmon Creek acquisition if such a condition is imposed on an approved CCN. It would break the longstanding regulatory compact where the balance between providing a utility the opportunity to earn a reasonable return is exchanged for its obligation to serve. Under Staff's condition EMW's return could be determined

by the conditions of SPP's wholesale energy market which the Company cannot control. If wholesale energy revenues in combination with the Project's tax credits are below what is needed to recover EMW's costs (including capital costs), this condition would require the Company to absorb the difference. This would be both unreasonable, unlawful, and confiscatory.

The SPP energy market was not designed to recover all costs related to generating electricity. Rather, it was intended to dispatch available generation reliably and efficiently across its 14-state footprint on a real-time basis. Because the dispatch of energy in the SPP market is generally based on short-run marginal costs, offering a generation resource into the market to recover all its fixed costs, including a return on its capital investment, is not permitted under the wholesale energy market rules approved by FERC. (Messamore Surrebuttal at 18-20).

None of EMW's existing plants typically receive SPP revenues that exceed their respective revenue requirements. Yet, this does not mean that EMW's existing plants are not meeting customers' need for service. Taken to its logical conclusion, Staff's condition means that many of the Company's existing resources should not be a part of its fleet and that it should procure all its energy from the SPP market. As this would subject EMW's customers to the volatile prices of the wholesale energy markets, this would not be reasonable or in the public interest. (Messamore Surrebuttal at 19-20).

Moreover, not all generation resource benefits are reflected in market revenues and tax credits. Persimmon Creek is in service, operating efficiently, and does not present construction, procurement, transmission interconnection, and other risks. Because the Project has already addressed these typical risks that would face a future project, Persimmon Creek will clearly provide benefits to EMW customers today. (Humphrey Supp. Direct at 26). Staff fails to account for these benefits in this proposed condition.

Similarly, there are no capacity benefits included in Staff's analysis to reflect the fact that EMW would have to buy additional capacity if Persimmon Creek is not part of the Company's portfolio. While the accredited capacity value of the Project has been conservatively estimated to be 10%, it does provide a real benefit. (Messamore Surrebuttal at 20).

Because Persimmon Creek would provide both capacity and an energy market cost hedge, the benefits of this "insurance policy" are also not directly reflected in the energy market revenues. Stating that a hedge is only beneficial when it generates net profits in a particular scenario misstates the value of a hedge. There is no such thing as a free hedge or a hedge that is guaranteed to be profitable. Hedges provide insurance that mitigates the impact of negative events that cause customer bill volatility. Adding Persimmon Creek to EMW's generation portfolio will help to mitigate the price volatility that Mr. Luebbert acknowledges is likely to increase over time, thus directly affecting customer bills. (Messamore Surrebuttal at 20-22).

In Empire District Electric Company's recent request for three CCNs to construct and operate wind facilities with a total nameplate capacity of 600 MW in southeastern Kansas and southwestern Missouri, the Commission rejected a "hold harmless" and a "customer protection plan" proposed by the Public Counsel. In its Report and Order, the Commission stated:

Public Counsel's proposed "hold harmless" and "customer protection plan" conditions would require Empire to make the ratepayers whole through rates if the Wind Projects did not generate cash through the holding companies equal to or greater than the costs of the Wind Projects. These proposed conditions are not reasonable because they would require Empire through rates to forgo any return on or return of its authorized capital investments.⁷

⁷ In re Empire Dist. Elec. Co. App. for a CCN related to Wind Generation Facilities, Report & Order at 30, ¶ 72, No. EA-2019-0010 (June 19, 2019).

In rejecting OPC's conditions, the Commission concluded in its Decision that "all ratemaking determinations will be made in a rate case where all factors can be considered to determine 'just and reasonable' rates."⁸

The Commission should reaffirm its decision in Empire's CCN case and reject the "hold harmless" condition proposed by Staff in this case.

C. Should the Commission order EMW to provide resource-specific economic analysis utilizing reasonable assumptions beyond the IRP results, LCOE estimates, and installed capacity costs in support of future CCN applications?

EMW POSITION: No. The Commission should not order EMW to provide such economic analysis in all future CCN applications, regardless of the facts and circumstances that may be presented in such applications and the issues that are raised in their proceedings. The nature of such future cases will be highly dependent on the facts and circumstances of each application.

To the extent a particular economic analytical framework or specific economic data is relevant to the application, discovery is available to any party to request production of such information from the applicant. Parties are also free to present additional economic testimony and analysis in support of their positions.

Moreover, Staff has not provided detail on what type of analysis they are seeking and ignores the fact that the IRP and LCOE are well established mechanisms that have been utilized by the Commission (Humphrey Surrebuttal at 5-6, 16).

The Commission should not in this case establish a general rule applicable to all future CCN applications that EMW may file, but which is not applicable to other Missouri public utilities that may seek a CCN under Section 393.170. Any changes to CCN requirements are more

⁸ Id. at 51.

appropriate for consideration in a rulemaking proceeding pursuant to Chapter 536 of the Missouri Revised Statutes that would be open to all public utilities, other stakeholders, and the public at large. Such a process would inquire into whether certain filing requirements should be contained in a revised and properly promulgated amendment to the current CCN rule at 20 CSR 4240-20.045.

However, establishing a rule for one utility that would be applied in all future CCN applications would violate Chapter 536 and exceed the Commission's jurisdiction.⁹ It would also be arbitrary, unreasonable, an abuse of discretion, as well as a due process violation.¹⁰

D. What, if any, additional project-specific analysis requirements should the Commission order from EMW for future CCN requests?

For the reasons noted above in Section C, EMW is opposed to the imposition of any other unspecified requirements in all future CCN applications regardless of the type of CCN that is sought or the facts and circumstances of the requests.

Public Counsel has recommended vaguely that future applications' "regulatory treatment" or "timing" be "accurately modeled," and that "an estimate of the costs and benefits of the specific resource to the customers' rates" be required, presumably beyond the multitude of details and data that EMW has presented in this case. (L. Mantle Surrebuttal at 8, 10). If the Commission conducted such a purported rulemaking in this Operating CCN case and set requirements for *all* future CCN proceedings of any kind for EMW, it would also violate the provisions of Chapter 536, exceed the Commission's jurisdiction, and be arbitrary, unreasonable, and an abuse of discretion. While the Commission has the regulatory power to correct the abuse of any property right by a public utility, it does not have the power to direct the use of its property or exercise the

⁹ NME Hospitals, Inc. v. Department of Social Services, 850 S.W.2d 71, 74 (Mo. 1993); State ex rel. PSC v. Bonacker, 906 S.W.2d 896, 900-01 (Mo. App. S.D. 1995).

¹⁰ State ex rel. Chicago, Rock Island & Pac. R.R. v. PSC, 312 S.W. 2d 791, 805 (Mo. 1958); State ex rel. Fischer v. PSC, 645 S.W.2d 39, 43-44 (Mo. App. W.D. 1982).

general power of management incident to ownership. “The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.”¹¹

E. Does the evidence establish that it is not detrimental to the public interest for the Commission to authorize EMW under Section 393.190.1 to complete the asset transfer and merger described in the Application so that it may own and operate Persimmon Creek?

EMW POSITION: Yes. The standard that the Commission applies in determining whether a transfer, merger or other transaction under Section 393.190.1 should be approved is whether the proposal is not detrimental to the public interest. See 20 CSR 4240-10.105(1)(D) [sale, assignment, or transfer]; 20 CSR 4240-10.115(1)(D) [merger or consolidation].

Although Section 393.190.1 does not specify a standard, the Commission Rule’s “not detrimental to the public interest” language follows the holdings of the Missouri judicial decisions that established this criterion. State ex rel. City of St. Louis v. PSC, 73 S.W.2d 393, 400 (Mo. en banc 1934); State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

Among the factors that the Commission has considered in past cases is the applicant’s experience in the utility industry, its history of service difficulties, the applicant’s general financial health and ability to absorb the proposed transaction, and its ability to operate the asset safely and efficiently. In re Great Plains Energy Inc., 2008 Mo. PSC LEXIS 693, *454-55, 2008 WL 2648913 at 91, No. EM-207-0374, Report & Order at 229 (2008), *quoting* In re Union Elec. Co., 2005 WL 433375, No. EO-2004-0108, Report & Order at 45-46 (2005). No party opposes EMW’s request to acquire Persimmon Creek for any of those reasons.

¹¹ City of O’Fallon v. Union Elec. Co., 462 S.W.3d 438, 444 (Mo. App. W.D. 2015), *quoting* State ex rel. Harline v. PSC, 343 S.W.2d 177, 181 (Mo. App. K.C. 1960).

The issue in this case is whether the Company’s acquisition of Persimmon Creek “tends to make the power supply” to EMW’s customers “less safe or less adequate” or “tends to make rates less just or less reasonable.” *Id.*, Report & Order at 231-32, *quoting In re Union Elec. Co.*, Report & Order at 49. The Commission stated:

The presence of detriments, thus defined, is not conclusive to the Commission’s ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service. [*Id.*, Report & Order at 232, *quoting In re Union Elec. Co.*, Report & Order at 49.]

The evidence that EMW offers in this case shows why approval under Section 393.190.1 should be granted:

(1) The Company engaged in a comprehensive and analytical resource planning process, pursuant to the Commission’s IRP Rule, and identified in 2021 and 2022 a clear need for an additional 150 MW in wind resources by 2024. (Messamore Direct 3-4). As updated, the net present value of revenue requirement (NPVRR) benefits of Persimmon Creek is an estimated \$130 million. (Humphrey Surrebuttal at 20).

(2) The competitive RFP conducted by EMW in 2022 considered 16 proposals that were evaluated under the levelized cost of energy (LCOE) methodology which examined total construction cost, property taxes, tax incentives, internal labor, net capacity factor, anticipated O&M, and other variables to determine a levelized cost of each MW hour of generation over the project’s life. (Humphrey Supp. Dir. at 7). Based on this analysis, Persimmon Creek presented the lowest LCOE of all the proposals. (Humphrey Direct at 8). Even with the passage of the Inflation Reduction Act, the Project remains a clear winner on an LCOE basis. (Humphrey Supp. Direct at 19).

(3) EMW also considered non-LCOE and non-IRP factors that demonstrated the benefits of Persimmon Creek which included (a) the lack of permitting, supply chain, and construction issues because it had been operating since 2018 (Humphrey Direct at 4); (b) the Project is a well-performing asset with an operational net capacity factor of approximately 50% (Humphrey Direct at 8); (c) the Project adds geographical diversity to EMW's generation portfolio, given its location in the wind corridor of western Oklahoma (Id. at 15); (d) the Project will immediately provide both capacity and energy to EMW as it is connected to the grid and operating (Humphrey Surrebuttal at 13-14, 18); and (e) Persimmon Creek is 100% PTC qualified, with six qualifying years remaining on its 20-year depreciable life (Humphrey Supp. Direct at 18).

(4) The risks of *not* granting EMW an Operating CCN for Persimmon Creek and *not* approving the commercial transactions necessary for the Company to acquire the Project include: (a) Exposing EMW and its customers to future uncertain energy market risks and price volatility; (b) Failing to fulfill EMW's clear need for capacity today; (c) Compelling the Company to re-start the process to find a suitable renewable energy resource or other resource in the face of significant national supply chain, logistical, and permitting and siting issues, as well as general economic inflation and cost pressures; (d) Initiating a lengthy transmission interconnection process at SPP that could take three to five years; and (e) Facing a host of other unknown lost opportunity risks that could arise compared to the opportunity to own and operate a highly efficient and productive Persimmon Creek resource at a competitive price that will help the Company to meet customers' current and long-term energy needs and to serve the public interest. (Messamore Surrebuttal at 33-34).

Balancing these benefits and opportunities with the potential detriment clearly shows that the Commission should authorize EMW to complete the asset transfer and merger described in the

Application and the Membership Interest Purchase Agreement which is clearly not detrimental to the public interest. (Humphrey Direct at 17 & Confid. Sched. JH-4).

WHEREFORE, Evergy Missouri West respectfully submits its Position Statement and requests that the Commission adopt its positions in this case.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Evergy, Inc.
1200 Main – 16th Floor
Kansas City, Missouri 64105
Phone: (816) 556-2314
Fax: (816) 556-2110
E-mail: roger.steiner@evergy.com

Karl Zobrist, MBN 28325
Jacqueline M. Whipple, MBN 65270
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

James M. Fischer, MBN 27543
Fischer & Dority, P.C.
2081 Honeysuckle Lane
Jefferson City, Missouri 65109
Phone: (573) 353-8647
Email: 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 14th day of February, 2023, by either e-mail or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner

Roger W. Steiner