

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

In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri)
West for Authority to Implement Rate)
20 CRS 4240-20.090(8) and the Company's)
Approved Fuel and Purchased Power Cost)
Recovery Mechanism)

File No. ER-2023-0011

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW” or “Company”), pursuant to the Commission’s September 23, 2022 Order Directing Filing of Proposed Findings of Fact and Conclusions of Law, submits the following:

I. Findings of Fact

1. This case arises from the confluence of the dramatic and continuing rise in natural gas and wholesale electricity prices in 2022 with EMW’s regularly scheduled tariff changes to its fuel adjustment rate (“FAR”) that were required by the Commission to be filed on July 1, 2022. These events, combined with the impact of rebasing base energy costs in the Company’s pending general rate case, No. ER-2022-0130 (“2022 Rate Case”) required under the fuel adjustment clause (“FAC”) approved by the Commission and the December 6, 2022 operation of law date, have created a virtual certainty that a change in EMW’s rates under its FAC will cause the Company’s average overall rate to exceed the compound annual growth rate (“CAGR”) limit of 3% under Subsection 3 of the Plant-in-Service Accounting (“PISA”) Law’s Section 393.1655.¹ See Ex. 1 at 2-14 (Ives Direct); Tr. 51-52, 57-58 (Ives).

2. EMW’s July 1, 2022 Fuel Adjustment Rate (“FAR”) tariff filing consists of actual fuel and purchased power costs (“FPP”), net of off-system sales revenues incurred by EMW, and

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

an updated adjustment for “extraordinary costs” incurred as a result of the mid-February 2021 cold weather event known as Winter Storm Uri. See Ex. 2, Starkebaum Direct at 1-5. EMW originally proposed deferring \$31 million to the PISA regulatory asset deferral account for consideration in a subsequent general rate case and proposed an FAR charge for residential customers of \$0.00737 per kilowatt-hour (“kWh”). See Ex. 2, Starkebaum Direct at 4-5. Based on usage of 1,000 kWh per month, the customer would receive a monthly charge of \$7.37, which would represent an increase of \$0.87 to an EMW residential customer’s monthly bill compared to the prior FAC. Id. at 5.

3. The high cost of power persisted during the 30th Accumulation Period (December 2021 to May 2022) as natural gas costs continued to be volatile and high in reaction to economic and political events beyond EMW’s control. See Ex. 1, Ives Direct at 5-7. Because EMW’s Actual Net Energy Costs (“ANEC”) – less the \$3.2 million in Southwest Power Pool, Inc. (“SPP”) resettlements of February 2021 related to Winter Storm Uri that EMW has removed due to seeking their recovery through the securitization filing in Case No. EF-2022-0155 – exceeds the base energy costs included in base rates by approximately \$46 million, EMW calculated the FAC tariff to provide for a change in rates to recover 95% of those cost changes (approximately \$43.7 million plus \$562,597 in interest before true-up or other adjustments). See Ex. 2, Starkebaum Direct at 5-7.

4. The Company also submitted a true-up filing on July 1, 2022 in Case No. EO-2023-0010, which concluded that EMW had under-collected \$351,155 from customers which brought the total fuel and purchased power costs experienced during the 30th Accumulation Period to approximately \$44.6 million. Id. at 6. Staff agreed with this recommendation which the

Commission approved. See Order Approving Fuel Adjustment Clause True-Up, No. EO-2023-0010 (Aug. 24, 2022).

5. Including \$44.6 million would cause EMW to exceed the CAGR 3% cap under the PISA Law's Section 393.1655.5. In its July 1, 2022 FAR filing, the Company proposed that \$13.6 million of the FAC-related costs be included in its fuel adjustment rate, to be effective September 1, 2022, and that the balance of \$31 million be deferred under Subsection 5 for further treatment in a subsequent general rate case. See Ex. 1, Ives Direct at 10; Ex. 1, Starkebaum Direct at 6, 10.

6. When compared to the prior 29th Accumulation Period, the 30th Accumulation Period's ANEC is \$11.7 million lower. See Ex. 2, Starkebaum Direct at 6-7. This is due to a \$9.1 million (-7.0%) decrease in purchased power expense, and a \$10.7 million (-8.0%) decrease in fuel costs, driven by 41% less generation (which included the sale of Renewable Energy Credits). Id. The 30th Accumulation Period of December through May also typically has lower retail load requirements. In December 2021, weather was warmer than normal by 305 heating degree days, resulting in a 7% decrease in demand. However, this decrease in demand was offset by much higher natural gas prices. Id.

7. For December 2021 through May 2022, the published NYMEX natural gas contract settlement price averaged \$5.48, which is 22% higher than the \$4.51 averaged in June through November 2021. See Ex. 2, Starkebaum Direct at 7. The Company also experienced a decrease in off-system sales revenues of \$7.8 million, or 70%, compared to the prior 29th Accumulation Period. Id. Even though the ANEC is lower in the 30th Accumulation Period than in the 29th Accumulation Period, as explained above, both of these periods are substantially higher than EMW's historical ANEC. Id.

8. In May 2022 Henry Hub gas prices averaged \$8.14/MMBtu, decreasing somewhat to \$7.70 in June and \$7.28 in July. See U.S. Dep’t of Energy, Energy Information Admin. (“EIA”) Short-Term Energy Outlook at 1-2 (Aug. 2022).

9. However, prices increased by almost 50% from \$5.73/MMBtu on July 1 to \$8.37/MMBTU on July 29, 2022 “because of continued high demand for natural gas from the electric power sector.” Id. at 2.

10. This trend continued when Henry Hub prices rose significantly in August to \$8.80/MMBtu. See EIA Short-Term Energy Outlook at 1 (Sept. 2022). On September 1, 2022, the front-month natural gas futures contract for delivery at Henry Hub closed at \$9.26/MMBtu, up 12% (98¢/MMBtu) from August 1, 2022. See EIA Short-Term Energy Outlook at 10 (Sept. 2022). “Closing prices for front-end natural gas futures averaged \$8.78/MMBtu during August, the highest August monthly average in real terms since 2008.” Id. “We expect the Henry Hub price to average about \$9/MMBtu in 4Q 2022 and then fall to an average of about \$6/MMBtu in 2023 as U.S. natural gas production rises.” See EIA Short-Term Energy Outlook at 1 (Sept. 2022).

11. High natural gas prices, as well as high electricity prices have affected and continue to affect EMW. See Ex. 1, Ives Direct at 7-8; Tr. 65-67 (Ives). The Market Monitoring Unit of SPP, the regional transmission organization (“RTO”) that EMW belongs to, reported that the average gas price at the Panhandle Eastern hub remained high “with an average of \$6.02/MMBtu in spring 2022, up over double (145%) from \$2.45/MMBtu in spring 2021.” See State of the Market Spring 2022 Report at 2, SPP Market Monitoring Unit (July 20, 2022). Day-ahead average prices rose to \$31.66/MWh in the spring of 2022, a 98% increase, with real-time average prices rising to \$29.37/MWh, a 112% increase. Id. at 2. The RTO’s “highest prices, both on-peak and

off-peak, were found in the southeast portion of the SPP footprint” which included “western Missouri” and EMW’s service territory. Id. at 2.

12. The dramatic rise in natural gas and wholesale power prices well after Winter Storm Uri in February 2021 demonstrates “the unique inflationary period” that has caused EMW’s FPP costs to exceed the PISA annual 3% CAGR caps. See Ex. 1, Ives Direct at 8-9. Based on reports from the SPP Market Monitor and the EIA, “these prices are high, they’re abnormally high, and they are expected to persist for a period of time to be abnormally high.” See Tr. 66 (Ives).

13. EMW performed the PISA calculations to determine the impact on the Average Overall Rate and Class Average Overall Rate for the Large Power customer class. The CAGR cap provisions applied to this FAR filing are 11.6887% for the average overall rate cap and 7.6850% for the class average overall rate cap for Large Power customers. See Ex. 2, Starkebaum Direct at 11-12. After deferral, the FAC charge proposed does not exceed the average overall rate by more than 11.6887%. Id. In its July 1, 2022 filing, EMW estimated that the overall CAGR rate cap of 12.55% at December 6, 2022 would be exceeded because of (a) the increase in FPP costs from the 29th Accumulation Period and the 30th Accumulation Period, and (b) the rebasing of FPP/base energy costs in retail base rates in the pending general rate case No. ER-2022-0130 (“2022 Rate Case”), under the Commission’s FAC Rule, 20 CSR 4240-20.090(2), would amount to approximately 16.0%. See Ex. 1, Ives Direct at 11. The cost increases from the two FAC accumulations periods were, respectively, \$39.2 million and \$33.2 million. The cost increase caused by the rebasing of base energy costs was estimated at \$47.6 million. The total estimated increase was \$120 million. Id.

14. Mr. Ives explained at the evidentiary hearing that the table on page 11 of his testimony showed the 29th Accumulation Period as “FAC Accumulation – Part 1” and the 30th Accumulation Period as “FAC Accumulation – Part 2.” See Tr. 56-57 (Ives).

15. Exhibit 3, admitted into evidence at the hearing, updated the effect of the rebasing of base energy costs in the 2022 Rate Case, given the Stipulation and Agreement filed in that proceeding on August 30, 2022, and approved by the Commission. See Order Approving Four Partial Stipulations and Agreements, Nos. ER-2022-0129/-130 (Sept. 22, 2022).

16. At the request of the Regulatory Law Judge, a supplementary version of Exhibit 3 was prepared that shows the formulas that supported the calculations and was marked as Exhibit 4. See Tr. 86-88, 106. Exhibit 4 was submitted to the Commission on October 5, 2022 and admitted into evidence on October 7.

17. Both Exhibit 3 and Exhibit 4 show that the overall CAGR rate cap of 12.55% would be exceeded because (a) the increase in FPP costs from the 29th Accumulation Period and the 30th Accumulation, and (b) the rebasing of FPP/base energy costs in retail base rates in the pending general rate case No. ER-2022-0130 (“2022 Rate Case”), under the Commission’s FAC Rule, 20 CSR 4240-20.090(2), would amount to approximately 17.2%. See Ex. 3 & 4.

18. The actual deferral amount required under PISA Section 393.1655.5 will be below the \$31.0 million initially requested by EMW. Depending on the decisions made by the Commission in the 2022 Rate Case, the deferral amount will range between \$11 million and \$19 million. See Tr. at 70-71 (Ives).

19. The FPP costs that EMW has incurred are extraordinary because they reflect unusual and unprecedented events, including the highest inflation rates in the last 40 years, Russia’s war in Ukraine, and the significant and volatile increases in the price of natural gas and

wholesale power. These conditions are documented in the reports by the EIA, U.S. Department of Energy, and by the SPP Market Monitor. See Tr. at 65-67 (Ives).

20. In its September 21, 2022 press release announcing the decision to increase interest rates 75 basis points to 3.0% to 3.25%, the Federal Reserve Board declared:

Inflation remains elevated, reflecting supply and demand imbalances related to the pandemic, higher food and energy prices, and broader price pressures. Russia’s war against Ukraine is causing tremendous human and economic hardship. The war and related events are creating additional upward pressure on inflation and are weighing on global economic activity. The [Federal Open Market] Committee is highly attentive to inflation risks.

21. The New York Federal Reserve Bank president has observed: “Clearly, inflation is far too high” and “suddenly soared,” “reach[ing] four-decade highs in recent months.” See “A Bedrock Commitment to Price Stability,” Remarks of John C. Williams, U.S. Hispanic Chamber of Commerce (Oct. 3, 2022), www.newyorkfed.org/newsevents/speeches/2022/wil221003. He noted examples of large price increases, including “prices for furniture rose over 13 percent, new cars were up nearly 12 percent, and used vehicles skyrocketed an astounding 50 percent.” Id.

22. The current economic circumstances, not seen in the past 40 years, are extraordinary, unusual, and infrequent. They meet the definition of an “extraordinary item” under General Instruction 7 of FERC’s Uniform System of Accounts (“USOA”), as it has been interpreted by the Commission. See General Instr. 7, USOA, 18 CFR Part 101.

II. Conclusions of Law

A. EMW’s Application

1. Under the Company’s rate adjustment mechanism approved by the Commission under Section 386.266, EMW “must rebase base energy costs in each general rate proceeding in which the FAC is continued or modified” under 20 CSR 4240-20.090(2), the Fuel and Purchased

Power Rate Adjustment Mechanisms Rule, 20 CSR 4240-2.090(2) (“FAC Rule”).² The rebasing of base energy costs required by the FAC is a change in rates charged under a rate adjustment mechanism because the rebasing of such costs is required by the Company’s FAC approved by the Commission.

2. When “a change in any rates charged under a rate adjustment mechanism ... would cause” a breach of the CAGR cap, the first sentence of the PISA Law’s Section 393.1655.5 (also referred to as “Subsection 5”) states that “the electrical corporation shall reduce the rates charged under that rate adjustment mechanism in an amount to ensure that” (a) the CAGR cap “is not exceeded” and (b) “the performance penalties” under Section 393.1655.3 (also referred to as “Subsection 3”) “are not triggered.”

3. The second sentence of Subsection 5 provides that “[s]ums not recovered under any such mechanism” because of “any reduction in rates shall be deferred to and included in the regulatory asset arising under section 393.1400.”

4. The reference in Section 393.1655.5 to Section 386.266 encompasses the effects of the rebasing of energy costs in general rate cases which the Commission’s FAC Rule has required for the past 15 years. Accordingly, EMW properly included: (1) prior recovery period adjustments, (2) the current fuel adjustment rate (“FAR”) filing costs, and (3) the rate increase that will occur as a matter of law when the 2022 Rate Case concludes with the rebasing of FPP costs under Section 386.266 and the FAC Rule.

5. The goal of Section 393.1655.5 is to remove and defer the effects of rate adjustment mechanisms (such as FPP costs under the FAC) from the CAGR analysis if such costs would cause the CAGR limits to be exceeded. However, there is no provision in Subsection 5 allowing deferrals

² The FAC Rule was filed June 15, 2006, becoming effective January 30, 2007.

of amounts for qualifying electric plant³ costs or other factors that cause the CAGR limits to be exceeded.

6. In Subsection 5 the General Assembly stated that electric utilities “shall reduce the rates charged under a rate adjustment mechanism” in an amount to “ensure” that (a) the CAGR limit “is not exceeded due to the application of the rate charge under such mechanism” and (b) “the performance penalties under such subsections are not triggered.”

7. This mandate is premised on the fundamental principle that FPP costs, like other costs recovered by rate changes that occur under the rate mechanisms approved by the Commission pursuant to Section 386.266,⁴ are subject to unregulated market prices that rise and fall, and other factors that cannot be controlled by the utility. Thus, they should be treated differently than other costs and factors that could result in a performance penalty under Subsection 3.

8. When approving FACs under Section 386.266, the Commission has agreed with this principle, finding that the “price of coal, natural gas, nuclear fuel, and oil ... are established by national or international markets” and that the utility “does not have control over commodity prices.” See Report & Order at 28-30, In re Kansas City Power & Light Co., No. ER-2014-0370 (Sept. 2, 2015). The Commission also found that utilities “cannot control the fundamentals that drive the short and long-term fuel markets, so fuel costs are beyond the control of [a utility’s] management” and are “volatile.” Id.

9. When EMW’s predecessor Aquila was first granted an FAC, the Commission concluded: “The price of natural gas, coal, and railroad freight rates to transport that coal are established by national, and in some cases, international markets. Aquila does not have control

³ Qualifying electric plant is defined in PISA Section 393.1400.1(3).

⁴ Section 393.1655.5 requires the deferral of amounts “charged under a rate adjustment mechanism approved by the commission” under both § 386.266 (fuel and purchased power costs) and § 393.1030 (renewable energy standard costs). In this proceeding, only FPP costs are at issue.

over those prices. Similarly, Aquila does not have control over the prices it must pay for purchased power.” See Report & Order at 36, In re Aquila, Inc., No. ER-2007-0004 (May 17, 2007).⁵

10. In its Report & Order at 38, 40, In re Empire Dist. Elec. Co., No. ER-2008-0093 (July 30, 2008), the Commission stated: “Natural gas and spot purchased power are traded in competitive markets. As a result, Empire has little control over the market price it pays for those commodities.”

11. The FPP costs that are to be charged under a rate adjustment mechanism which would exceed the CAGR limit are deferred to a regulatory asset under PISA Section 393.1400. See Ex. 3-4. They are not disallowed, unless under a prudence review, and they are not the basis for a performance penalty. Such FPP costs are recovered via a PISA regulatory asset deferral account established under Section 393.1400.2.

12. There is no language in Subsection 5 that directs the utility or the Commission to exclude the rebasing of base energy costs, required in general rate cases under the FAC Rule approved by the Commission pursuant to Section 386.266, from the calculation of the 3% CAGR cap and PISA’s mandate to ensure that the cap is “not exceeded” and the “performance penalties ... are not triggered.” Subsection 5 refers to “any rates charged under a rate adjustment mechanism.”

13. Rebasing is required under the FAC Rule’s Section (2) which is entitled: “Establishment, Continuance, or Modification of a RAM [rate adjustment mechanism].” It requires that an electric utility “must rebase base energy costs in each general rate proceeding in which the FAC is continued or modified.” See 20 CSR 4240-2.090(2)(A).

14. “Base energy costs” are defined as “the fuel and purchased power costs net of fuel-related revenues determined by the commission to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case;” See 20 CSR 4240-2.090(1)(C).

15. The utility’s request that its RAM be continued “shall include a description of how its proposed RAM shall be applied to monthly bills, the amount of the proposed change in base rates caused by the rebase of energy costs, and the estimated impact on a typical residential customer’s bill resulting from the rebase of energy costs;” See 20 CSR 4240-2.090(2)(A)1.

16. Because the rebasing of energy costs is an essential part of how rate adjustment mechanisms covering FPP costs operate in Missouri, there is no lawful basis to exclude rebased costs from the calculation of the 3% CAGR cap under Section 393.1655.5.

17. The Commission’s FAC Rule defines base energy costs as fuel and purchased power costs “to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case.” See 20 CSR 4240-2.090(1)(C). The FAC Rule has continued in effect without amendment in this respect since the PISA Law was enacted. There has been no effort to amend the FAC Rule to remove the rebasing of energy costs from the CAGR deferral calculation required by Section 393.1655.5.

18. By enacting Subsection 5 the Legislature did not exclude the rebasing of energy costs from the CAGR cap calculation which has been a part of the Commission’s FAC Rule since it was promulgated in 2006 and became effective January 30, 2007.⁶

⁶ Cf. Fenix Constr. Co. v. Director of Revenue, 449 S.W.3d 778 780 n.3 (Mo. en banc 2014) (“Had the legislature intended to exempt construction activities [from taxation], it could have included terminology referencing construction activities as it has done in other statutes included in chapter 144.”).

19. OPC’s argument would violate Missouri’s longstanding statutory interpretation rules of construing statutes *in pari materia* and in harmony rather than to create conflicts. “All consistent statutes relating to the same subject are in pari materia and are construed together as though constituting one act, whether adopted at different dates or separated by long or short intervals.” State ex rel. Rothermich v. Gallagher, 816 S.W.2d 194, 200 (Mo en banc 1991). “The rule of construction in such instances proceeds upon the supposition that the statutes in question are to be read consistently and harmoniously in their several parts and provisions.” Id. See Neske v. City of St. Louis, 218 S.W.3d 417, 424 (Mo. en banc 2007).

20. Therefore, both the periodic rate adjustments and the rebasing of base energy costs are changes in rates charged under a rate adjustment mechanism approved by the Commission under Section 386.266.

21. By reaching this conclusion, the Commission gives effect to the “plain and ordinary meaning” of Subsection 5. It avoids the “illogical result” that would occur if the Commission equated natural gas and other fuel commodity prices and wholesale electricity prices with a utility’s construction of a generation resource or other grid modernization projects listed in PISA Section 393.1400.4. It also avoids the “unjust, absurd” and “confiscatory” result that would occur if the Commission used an increase in fuel and purchased power costs required by rebasing to trigger a performance penalty under PISA Section 393.1655.3. See J.S. v. Beaird, 28 S.W.3d 875, 876 (Mo. en banc 2000); McAlister v. Strohmeyer, 395 S.W.3d 546, 552 (Mo. App. W.D. 2013); State ex rel. Killingsworth v. George, 168 S.W.3d 621, 623 (Mo. App. E.D. 2005). To find otherwise would be inconsistent with “the purpose of the whole act [which] must be considered.” Neske v. City of St. Louis, 218 S.W.3d 417, 424 (Mo. en banc 2007); State ex rel. Office of Public

Counsel v. PSC, 331 S.W.3d 677, 683-84 (Mo. App. 2011) (rejecting attacks on environmental cost recovery mechanism under Section 386.266).

22. This conclusion is consistent with Section 386.266.10 which authorized the Commission to promulgate rules, “as it deems necessary, to govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments.”

23. The rebasing requirement of FAC Rule Section (2) is a valid exercise of the Commission’s broad authority explicitly granted by the General Assembly under Section 386.410.1 which grants rulemaking authority to the Commission regarding hearing procedures, “a rather uncommon grant to an administrative agency.” State ex rel. Southwestern Bell Tel. Co. v. PSC, 645 S.W.2d 44, 50 (Mo. App. W.D. 1982).

24. The General Assembly’s language in Section 393.1655.5 is so strong that it can be read to mandate independent action by the electric utility to make such deferrals, subject only to subsequent prudence reviews by the Commission under Section 393.1400.2(2).

25. With the settlements approved by the Commission, EMW is rebasing increased FPP costs of \$56.1 million, as required by the FAC Rule, while the overall revenue requirement increase is only \$42.5 million. See Tr. 60 (Ives); Ex. 4. Except for the increase in base energy costs resulting from the FAC Rule’s requirement that the Company “must rebase base energy costs,” there would be a \$13.6 million reduction in EMW’s revenue requirement. See Tr. 59-61 (Ives). Accordingly, a performance penalty as advocated by OPC is unsubstantiated and unwarranted, as Subsection 3 is not intended to levy a “performance penalty” where FPP costs would cause rates charged under the FAC (a rate adjustment mechanism approved by the Commission pursuant to

Section 386.266) to exceed the 3% CAGR cap. Subsections 3 and 5 work together in a way that achieves “substantial justice between patrons and public utilities.” See § 386.610.

26. Although a “force majeure event” under § 393.1655.2 and .7(7) has not occurred, the existence of the concept in the PISA Law demonstrates the Legislature’s intent that an electric utility should not suffer a penalty for costs incurred beyond its control such as the extraordinary fuel expenses experienced by EMW during this 30th accumulation period, in combination with the prior 29th accumulation period and rebasing of base energy costs in EMW’s pending rate case.

27. Deferring the amount of FPP costs that cause the 3% CAGR cap to be exceeded is also consistent with Paragraph XI of the Commission’s FAC Rule Section (8). Paragraph XI calls for a utility to submit its FAR filing to include with its tariff sheets for “the period of historical costs which are being used to propose the fuel adjustment rates” any “[e]xtraordinary costs not to be passed through ... for any other reason.” See FAC Rule (8)(A)2.A(XI). Such a deferral would be appropriate in this FAR filing, just as it was for the 28th Accumulation Period when Winter Storm Uri costs were deferred with Staff’s support. See Order Approving Tariff to Change Fuel Adjustment Rates, In re Evergy Mo. West, Inc., No. ER-2022-0005 (Aug. 18, 2021).

28. Because it is a virtual certainty that the 3% CAGR limit will be exceeded by the FAR increases and the rebasing of the Company’s base energy costs in the 2022 Rate Case pursuant to the rate adjustment mechanism required by the FAC Rule promulgated by the Commission under Section 386.266, the decision in this case must occur after the Commission’s report and order is issued in EMW’s 2022 Rate Case to fulfill the intent of Section 393.1655. Otherwise, the 3% CAGR rate cap will be exceeded because of the FPP cost-driven increase in rates charged under a rate adjustment mechanism approved by the Commission under Section 386.266. That would be contrary to the intent of Subsection 5 and the PISA Law.

B. OPC's Motion for Summary Determination

29. The Commission's Summary Determination Rule explicitly states in two subsections that such motions are appropriate in any case "[e]xcept in a case seeking a rate increase" See § 2.117(1)(A) & (2). This matter is an electric company rate case, having been designated under the Commission's case designator docket protocols as an "ER" proceeding.⁷ It will result in an adjustment to EMW's rates under Section 386.266, having been filed under the FAC Rule's Section (8), entitled "Periodic Changes to Fuel Adjustment Rates."

30. OPC has provided no "good cause" reason under 20 CSR 4240-2.205 of the Commission's Practice and Procedure Rules to waive or grant a variance regarding the explicit language and purpose of the Summary Disposition Rule. Good cause exists if "the particular facts" of a case show that a party acted reasonably and in good faith. Darr v. Roberts Mktg. Group, LLC, 428 S.W.3d 717, 724-25 (Mo. App. E.D. 2014); Miller v. Bank of the West, 264 S.W.3d 673 678 (Mo. App. W.D. 2008). "And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney." See Order Regarding Order to Show Cause at 3, In re Union Elec. Co. Applic. to Sell Assets to St. James Mun. Utilities, No. EO-2010-0263 (Sept. 1, 2010) (good cause not found).

31. In this case the "good cause" cited by OPC is based entirely on the argument of OPC's attorney that Section 393.1655.5 should be interpreted in an unreasonably narrow manner that would deny EMW's request for the \$31 million deferral. See OPC Motion at 7-14. Given the rebuttal testimony filed on September 21 and the evidentiary hearing with live surrebuttal on September 30 that provided testimony on the facts, the posture of this case is inconsistent with

⁷ Case and Non-Case Designators are set forth on the Commission's website under the "EFIS Help" link relating to general information.

summary determination. OPC's Motion is contrary to the purpose of the Commission's Rule on Summary Determination, 20 CSR 4240-2.117, and must be denied.

Respectfully submitted,

/s/ Roger W. Steiner

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed, or mailed, postage prepaid, to the Staff of the Commission, the Office of the Public Counsel, and all parties of record, this 21st day of October 2022.

/s/ Roger W. Steiner

Attorney for Evergy Missouri West