

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

In the Matter of Evergy Metro, Inc. dba	)	
Evergy Missouri Metro’s Request for	)	<b><u>Case No. ER-2022-0129</u></b>
Authority to Implement a General Rate	)	Tariff No. YE-2022-0200
Increase for Electric Service.	)	and YE-2022-0201

In the Matter of Evergy Missouri West,	)	
Inc. dba Evergy Missouri West’s Request	)	<b><u>Case No. ER-2022-0130</u></b>
for Authority to Implement a General Rate	)	Tariff No. YE-2022-0202
Increase for Electric Service.	)	

**STAFF’S MOTION TO STRIKE**

**COMES NOW** the Staff of the Missouri Public Service Commission and for its *Motion to Strike*, states as follows:

1. Office of the Public Counsel (“OPC”) witness David Murray filed *Direct Testimony* in these cases on June 8, 2022; *Rebuttal Testimony* on July 13, 2022; and *Surrebuttal and True-up Direct Testimony* on August 16, 2022; as did OPC witness Angela Schaben.

2. Commission Rule 20 CSR 4240-2.130(7) provides:

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) **Direct testimony shall include all testimony and exhibits asserting and explaining that party’s entire case-in-chief;**

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party’s direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party’s direct case; and

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.

(Emphasis added.)

3. On August 22, 2022, the Office of the Public Counsel filed its *Position Statement* in these cases, stating its position on each issue submitted for litigation. That *Position Statement* stated, in pertinent part:

**(Issue I. Cost of Capital)**

A.1. What impact, if any, should the passage of RSMo. section 393.400 have in determining the appropriate return on common equity?

**Answer:** The passage of RSMO. section 393.400 reduces Evergy's exposure to risk relating to prudent or efficient property management and should therefore be considered when determining Evergy's approved return on common equity. (Surrebuttal Testimony of Angela Schaben, pg. 30 Ins. 9 – 13, ER-2022-0129, EFIS Item No. 216; Surrebuttal Testimony of Angela Schaben, pg. 30 Ins. 9 – 13, ER-2022-0130, EFIS Item No. 226).

E. Should Evergy's rate base be adjusted to reflect a lower Allowance for Funds Used During Construction ("AFUDC") rate?

**Answer:** For Evergy Metro, the answer is yes. (Rebuttal Testimony of David Murray, pg. 29 Ins. 3 – 20, ER-2022-0129, EFIS Item No. 150). Evergy Metro is retaining its earnings rather than supporting the dividend paid to Evergy's shareholders, which has resulted in only a minuscule percentage of its short-term debt (usually less than 2% of CWIP) contributing to its AFUDC capitalization rate. Id. This results in an over-inflation of Evergy Metro's rate base. Id. In order to resolve this unfair use of long-term capital costs to capitalize CWIP, Evergy Metro's rate base should be reduced by \$43 million. Id. No similar pattern of behavior currently exists for Evergy West, so no reduction of rate base is required.

F. Should the Commission order Evergy's AFUDC rate to be consistent with the cost of short-term debt?

**Answer:** Yes. (Rebuttal Testimony of David Murray, pg. 29 Ins. 3 – 20, ER-2022-0129, EFIS Item No. 150; (Rebuttal Testimony of David Murray, pg. 29 Ins. 3 – 20, ER-2022-0130, EFIS Item No. 160; Surrebuttal and True-Up Direct Testimony of David Murray, pg. 8 Ins. 7 – 17, ER-2022-0129, EFIS Item No. 213; Surrebuttal and True-Up Direct Testimony of David Murray, pg. 8 Ins. 7 – 17, ER-2022-0130, EFIS Item No. 223).

G. Should Evergy Metro's revenue requirement be reduced to capture the authorized financing charges/carrying costs for the loans Evergy Metro provided to Evergy MO West to finance Storm Uri?

**Answer:** Yes, but only if Evergy West is allowed to recover financing costs for winter Strom Uri above the cost of short-term debt. (Surrebuttal and True-Up Direct Testimony of David Murray, pg. 4 ln. 11 – pg. 6 ln. 13, ER-2022-0129, EFIS Item No. 213).

4. As is obvious from the citations to Mr. Murray's rebuttal and surrebuttal testimony included in its position statement set out above, and the citations to Ms. Schaben's surrebuttal testimony, each of these four issues is part of OPC's direct case and yet were raised only for the first time in rebuttal and/or surrebuttal testimony, in violation of Commission Rule 20 CSR 4240-2.130(7)

5. Portions of David Murray's rebuttal and surrebuttal testimony referred to in Paragraph 1, above, and portions of Angela Schaben's surrebuttal testimony, are subject to being stricken because they violate Commission Rule 20 CSR 4240-2.130(7)(D) in that they do not merely respond to matters raised in another party's direct or rebuttal testimony but raise new matters for the first time.

6. Not only does Mr. Murray's and Ms. Schaben's cited testimony therefore violate Commission Rule 20 CSR 4240-2.130(7)(D), but they necessarily prejudice Staff and every other party who will have no opportunity to reply to or rebut their assertions in contravention of those parties' right of Due Process of Law, leaving the Commission's rate case decision subject to reversal on appeal.

7. This Commission has previously struck improper testimony in other cases, for example:

- *Order Granting Motion to Strike*, Case no. ER-2016-0156, *In the Matter of KCP&L Greater Missouri Operations Company*, July 26, 2016 (portions of direct testimony of OPC witness Michael Gorman stricken as improper under rule 20 CSR 4240-2.130(7)).

**WHEREFORE**, Staff respectfully moves the Commission to strike the offending testimony, to-wit:

- Surrebuttal Testimony of Angela Schaben, pg. 30 Ins. 9 – 13, ER-2022-0129, EFIS Item No. 216;
- Surrebuttal Testimony of Angela Schaben, pg. 30 Ins. 9 – 13, ER-2022-0130, EFIS Item No. 226).
- Rebuttal Testimony of David Murray, pg. 29, ll. 3 – 20, ER-2022-0129, EFIS Item No. 150;
- Rebuttal Testimony of David Murray, pg. 29, ll. 3 – 20, ER-2022-0130, EFIS Item No. 160;
- Surrebuttal and True-Up Direct Testimony of David Murray, pg. 8, ll. 7 – 17, ER-2022-0129, EFIS Item No. 213;
- Surrebuttal and True-Up Direct Testimony of David Murray, pg. 8, ll. 7 – 17, ER-2022-0130, EFIS Item No. 223;
- Surrebuttal and True-Up Direct Testimony of David Murray, pg. 4, l. 11 – pg. 6, l. 13, ER-2022-0129, EFIS Item No. 213;

and grant such other and further relief as is just in the premises.

Respectfully submitted,

/s/ Kevin A. Thompson

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Missouri Public Service Commission.

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this **24th day of August, 2022**, to all parties and/or counsels of records.

/s/ Kevin A. Thompson