

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

In the Matter of Evergy Missouri West, Inc.)	
d/b/a Evergy Missouri West's Request for)	
Authority to Implement a General Rate)	File No. ER-2024-0189
Increase for Electric Service)	

REPLY BRIEF

COMES NOW the Midwest Energy Consumers Group (MECG), and for its Reply Brief, respectfully states:

Overview

In ER-2010-0356 the Commission decided that including Crossroads in the generation fleet at an appropriate value was prudent with the exception of the additional transmission expense, concluding “it is not just and reasonable for GMO customers to pay the excessive cost of transmission from Mississippi and it shall be excluded.”¹ Later, in ER-2012-0175, the Commission reiterated that “including the Crossroads transmission costs does not support safe and adequate service at just and reasonable rates, and the Commission will deny those costs.”² This is the status quo, where customers pay for value that the Commission has determined is just and reasonable for the Crossroads plant. As the Staff notes in its brief, that value is inextricably linked to no recovery of transmission costs.³

Evergy's brief reiterates that the company is seeking to *change* the status quo for Crossroads.⁴ In contrast, Staff, OPC, and MECG each argue the status quo either cannot or should not be changed in this case. MECG asks the Commission to reject Evergy's request.

¹ Report and Order, ER-2010-0256 at p. 91 and 100.

² Report and Order, ER-2012-0175 at p. 59.

³ Staff Br. at 13.

⁴ See Evergy Br. at 25.

Evergy's Arguments

Evergy's initial brief generally argues that the company is (1) not asking for an impermissible advisory opinion and (2) that renewing the Crossroads transmission path service agreement is prudent. Each of those points will be discussed in more detail below, but a few additional arguments put forward by Evergy require being addressed upfront.

To start, the Company inappropriately attempts to create and shift a burden of proof onto other parties. It states:

[n]o party in this proceeding has provided sufficient evidence to rebut Evergy's presumption of prudence by creating "a serious doubt as to the prudence of" renewing the transmission path agreement. Therefore, the Commission should determine that it would be prudent for Evergy Missouri West to renew Crossroads transmission path.⁵

There are several problems with Evergy's assertion. First, all parties except Evergy are satisfied with the current treatment of Crossroads costs. Only the Company wishes to change the treatment of Crossroads' value determined in multiple prior orders, and so, it bears the burden on that point.⁶ As such the Company's attempts to mislead the Commission down a different path on burden of proof should be rejected. Second, there is no presumption of prudence for an action that has not yet been taken (and may or may not ever be taken). To say there is a presumption of prudence to benefit Evergy here is nonsensical. Instead, Evergy is seeking pre-determination so that it might eventually argue that cost recovery is pre-ordained in a later rate case.

Next, Evergy contends it "does not seek to relitigate the issues raised in past rate cases, to recover any transmission costs that were disallowed in the past, or to raise any issue regarding the

⁵ Evergy Br. at 12.

⁶ The Commission discussed burdens in its prior decision related to Crossroads. *See* Report and Order, ER-2012-0175 at p. 53; *See also* Sections 386.490.2 and 386.430 RSMo.

Commission decision on Crossroads' rate base valuation.”⁷ Besides not seeking to recover past costs, almost none of its statement is accurate. The Company's reason for bringing this issue to hearing is that it wants to *fundamentally change* the value and treatment of Crossroads because it must click a few buttons prior to 2029⁸. As mentioned above, when the Commission included Crossroads in Evergy's generation fleet it set a rate base value that excluded all additional transmission expense. Those components were linked. When the Commission held GMO's actions to acquire Crossroads from its affiliate were prudent it did so only if the valuation package was maintained:

The Commission concludes that if included in rate base at a fair market value, rather than the higher net book value paid to its affiliate, and except for the additional cost of transmission from Mississippi to Missouri, the Company's 2004 decision to pursue the construction of three 105 MW combustion turbines at South Harper and pursue a 200 MW system-participation based purchased power agreement, and the Company's decision to add the Crossroads generating facility to the MPS generation fleet were prudent and reasonable decisions.⁹

Since that time, Customers have paid for a return “on” and “of” that value. If Evergy gets its way and is able to pass 100% of transmission costs onto customers after 2029 then customers necessarily lose the benefit of the plant which may have been given a much lower rate base value if the Commission had permitted transmission expenses to be recovered. The Commission should

⁷ Evergy Br. at 6.

⁸ At the hearing, Evergy's witness described the process of renewing the reservation agreement as a kind of ministerial act: “you literally send it in or click a few buttons and you have that – those terms and conditions all apply.” See Tr. Vol. 9, p. 72. This raises the question – can Evergy withhold clicking a few buttons to preserve a transmission path for a plant that has been included in rate base at a Commission approved value? Or would that decision by Evergy be imprudent, as Staff suggests in its Brief. See Staff Br. at 18 stating “Failure to provide or appropriately replace the Crossroads capacity, regardless of the ability to recover any portion of the costs associated with such capacity, is a very concerning hypothetical introduced by Evergy on this issue.”

⁹ Report and Order, Case No. ER-2010-0356 at p. 99 (emphasis added).

recognize that despite its posture Evergy is, in fact, challenging the prior decisions on Crossroads valuation.

Impermissible Advisory Opinion

In its initial brief OPC lays out the means the Missouri Supreme Court has identified to evaluate advisory opinions¹⁰:

An opinion is advisory if there is no justiciable controversy, such as if the question affects the rights of persons who are not parties in the case, the issue is not essential to the determination of the case, or the decision is based on hypothetical facts.¹¹

MECG agrees with the OPC that Evergy's requested relief combines a request for an advisory opinion about prudence with an attempt to bind future Commissions on rate recovery. The Commission does not issue advisory opinions.¹²

Evergy, however, offers its view that the pre-determination it seeks here is okay because it is not based on a hypothetical situation¹³, it is a "relevant and critical issue"¹⁴, and it is an issue of "sufficient immediacy."¹⁵ Each of these arguments is unpersuasive here. First, Evergy cites to a case saying advisory opinions "have no practical effect and that are only advisory as to future, hypothetical situations."¹⁶ The Company says parties expressly agreed to resolve the Crossroads transmission issue in the Stipulation so it is not hypothetical.¹⁷ This is not quite right. Parties did agree to a path for the evaluation of what it would take to move the plant into the SPP footprint to avoid the transmission

¹⁰ OPC Br. at 8.

¹¹ *Trenton Farms Re, LLC v. Hickory Neighbors United, Inc.*, 603 S.W.3d 286, 293 (Mo. 2020).

¹² *See State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State of Missouri*, 392 S.W.3d 24, 38 (Mo. App., W.D. 2012).

¹³ Evergy Br. pp. 8-9.

¹⁴ Evergy Br. p. 8.

¹⁵ Evergy Br. pp. 10-11.

¹⁶ Evergy Br. p. 8.

¹⁷ Evergy Br. p. 9.

costs hoping for a suitable resolution but leaving the opportunity for a hearing. However, the stipulation also provided that “[a]t the time of such hearing Signatories will not be limited in presenting their arguments on the Crossroads issues.”¹⁸ This includes the positions of multiple parties on whether the Commission should make the prudence determination in this case. Moreover, as MCEG pointed out in its initial brief, the testimony at the hearing made clear this issue presented to the Commission was not well crafted by the parties and does not accurately reflect the facts as presented in the stipulated question. Evergy’s witnesses testified there is not a particular contract or negotiation to be done with Evergy Corp. Evergy’s Mr. Gunn explained:

... originally it was a transmission agreement with Evergy that would have the costs. But when Evergy entered into MISO, that contract was transformed to the MISO tariff, so now all of the -- all of the terms and everything that's surrounding that and what it -- what it takes into account and what those costs are, are now governed by the FERC-approved MISO tariff.¹⁹

Next, Mr. Gunn went on to say:

...today there's not a negotiation with Evergy, there's not a negotiation with MISO. The --It's formulaic based upon the FERC-approved MISO tariff. So all the -- all the terms, all of -- all of everything that governs that transmission path is done through the MISO tariff.²⁰

Given the forgoing testimony by Evergy at the hearing and the caveat permitting parties to make any argument on the Crossroads issue, the terms of the stipulation do not transform the pre-approval sought by Evergy into a non-hypothetical with a practical effect for this case. The fact remains, as OPC points out in its brief, that the outcome of this issue will not have a practical impact on this case and it is not essential to the resolution of the rate case for which rates have

¹⁸ Unanimous Stipulation and Agreement at. p. 4.

¹⁹ Tr. Vol. 9 at pp. 58-59.

²⁰ Tr. Vol. 9 at p. 61.

been in effect for nearly a year.²¹ Since it will not, Evergy's requested relief would be an advisory opinion.

Second, Evergy says the issue (however it may be defined now that the testimony at hearing might have materially changed it) of pre-approval of prudence is a "relevant and critical issue" regarding the renewal of the transmission path.²² Evergy cites to a case where the PSC considered a merger and declined to address an acquisition premium because it would be prejudging a ratemaking factor that properly should be done in a future rate case.²³ There the Court said it should have discussed the relevant and critical issue when ruling on the merger. That case does not support Evergy's claim that pre-approval of the prudence of a transmission path is a "relevant and critical issue" for the current rate case. This is evident in that the rates have been in effect for nearly a year. Further, an acquisition premium (i.e. the purchase price) may be relevant to an acquisition case. A transmission path agreement that does not expire until 2029 does not present a similar circumstance in this rate case.

Third, Evergy argues that "sufficient immediacy" exists to make pre-approval a non-advisory opinion. This is not what the evidence shows. Evergy's Mr. VandeVelde testified that the current transmission reservation agreement gives Evergy the right to extend so long as it elects to do so 12 months prior to February 2029.²⁴ He also described that the term of extension is a variable. MECG asserts there is time to further evaluate the Crossroads transmission reservation agreement and that the scenarios presented by Evergy are insufficient to determine the

²¹ OPC Br. p. 9.

²² Evergy Br. p. 8.

²³ Evergy Br. p. 8, *citing State Ex. rel. Ag Processing, Inc. v. PSC*, 120 S.W.3d 732, 736 (Mo. Banc 2003).

²⁴ Tr. Vol. 9 at p. 95.

most beneficial and appropriate path forward for the Company and its customers. Simply put, a sufficient immediacy does not exist even if that were the standard.

The Company's request that these transmission costs should be recoverable from ratepayers is not sufficiently supported by facts in this case to be pre-judged as prudent

Evergy argues that it is prudent for Evergy to renew the Crossroads transmission path service agreement.²⁵ The Company reprints the text of issue 5.C. and says that the answer is “clearly “yes””.²⁶ MCEG disagrees. The evidence shows that the agreement is with MISO not with Entergy. Even Evergy’s initial brief now says the agreement is with MISO.²⁷ The answer to the issue cannot be “yes” when it does not even accurately describe the present situation.

Next, Evergy argues the decision is prudent because its witness presented a net present value revenue requirement (“NPVRR”) analysis of three scenarios and the lowest NPVRR was for the company to renew the transmission service agreement and seek recovery of transmission expense in a future case.²⁸ While the pre-filed testimony in this case indicates that keeping the Crossroads facility in its current location is likely the least cost option compared to the alternatives presented there remain unknown material facts that should be explored further. At the hearing, Mr. VandeVelde testified that he did not know what the transmission point-to-point rate would be in 2029.²⁹ When asked to provide some understanding of what these transmission costs might be in the future, Mr. VandeVelde added that Evergy would know these cost figures “when the bill from MISO shows up, just like we do today.”³⁰ MCEG’s Witness testified we also do not know what the escalation to those charges may be.³¹ These unknowns call into question the sufficiency

²⁵ Evergy Br. p. 11.

²⁶ Evergy Br. p. 11.

²⁷ Evergy Br. p. 5.

²⁸ Evergy Br.p. 12.

²⁹ Tr. Vol. 9, p. 90, lines 17-20.

³⁰ Tr. Vol. 9, p. 90, lines 21-23.

³¹ Tr. Vol. 9, p. 129. Mr. Meyer discussing the lack of critical information.

of the NPVRR analysis and make it unreasonable for the Commission (or any party) to decide Evergy's approach is a prudent course of action, even if the law permitted that pre-approval. As MCEG pointed out –

... there is a situation where, depending on the escalation of the -- of the transmission cost, that you could actually flip the scenario where building with the offset that Mr. Ives didn't guarantee but suggested this morning from the sale of Crossroads, that that option could flip and, you know, within five to ten years or so making that option more beneficial for customers.³²

Importantly – MCEG's witness also added "[a]nd it could be more beneficial for the utility."³³ The Company does not need pre-approval to renew the transmission path agreement. However, if it is intent on doing so, there is time to evaluate the best path forward further. Evergy's Mr. VandeVelde testified that the existing transmission reservation agreement gives the Company the right to extend so long as it elects to do so 12 months prior to February 2029. There is no immediacy and Evergy can provide the Commission with better analysis and a better decision point. If the Commission is inclined to give some guidance to Evergy and stakeholders in this case it can find that:

- the Commission previously determined the value of the Crossroads plant and that value was linked with no transmission cost recovery and the Commission continues to recognize that customers have paid rates based on that value.

The Commission can also decide without determining prudence in this case that:

- (1) it wants more detailed information on the scenarios presented as solutions. For example, when does Evergy believe it becomes better for customers to build a new

³² Tr. Vol. 9, p. 129.

³³ Tr. Vol. 9, p. 129.

plant offset by the proceeds of the sale of Crossroads?

- (2) In addition, it should require the Company to present scenarios measuring high and low transmission cost estimates, including the basis for those estimates.

All of this analysis could be accomplished if Evergy exercises its right to extend the reservation agreement.

Conclusion

As discussed above, the Commission should not issue an advisory opinion granting the pre-approval sought by Evergy. Given the extensive background and prior decisions by Evergy management leading to the present Crossroads plant value and treatment of transmission costs, it is unreasonable for the Company to seek pre-approval and ask ratepayers to bear 100% of those costs in any scenario. For these reasons, MECG asks the Commission to reject Evergy's requests in this case. MECG reiterates it remains willing to discuss possible sharing of transmission expense with Evergy and stakeholders.³⁴

WHEREFORE, MECG submits its Reply Brief.

Respectfully,

/s/ Tim Opitz

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Certificate of Service

³⁴ Ex. 505 at p. 13.

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 5th day of December 2025.

/s/ Tim Opitz
