

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

In the Matter of the Ninth Prudence Review of Costs)
Subject to the Commission-Approved Fuel Adjustment) File No. EO-2020-0262
Clause of Evergy Missouri West Inc., d/b/a Evergy)
Missouri West)

In the Matter of the Third Prudence Review of Costs)
Subject to the Commission-Approved Fuel Adjustment) File No. EO-2020-0263
Clause of Evergy Metro, Inc., d/b/a Evergy Missouri)
Metro)

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

COME NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West”) (collectively, “Evergy” or the “Company”), and for their Post-Hearing Reply Brief (“Brief”) in this matter, states as follows:

I. RESPONSE TO OPC

Introduction

OPC’s introductory salvo, in its Initial Brief (p. 3), reflects a fundamental lack of understanding in what demand response events accomplish. “If Evergy had properly utilized its demand response programs, less energy would have been required by its customers.” OPC Initial Brief, p. 3. This statement demonstrates a fundamental misunderstanding of the purpose of the Company’s demand response programs. Demand response events *shift* power usage in time away from hours of peak demand and therefore serve to reduce, or slow the growth of, the amount of generating capacity needed to meet customer demand. Demand response events do not, and are not intended to, *reduce* the amount of energy used by the customers.

Evergy's demand response programs were designed to maximize reducing the annual system peak demand because that is where the greatest value is derived. Additional SPP benefits would only be realized if Evergy successfully predicted the peak day of not one, but two or more months. OPC's disallowance is based on hitting all four demand response season monthly peaks (Jun-Sept).

Calling more events does not automatically mean that additional SPP benefits will be realized. In fact, reducing the focus on the annual system peak and increasing the focus on SPP fees could reduce the total overall benefit achieved if the annual system peak was missed.¹

However, this temporal shift in power consumption necessitates the Company correctly predict the right monthly peak load days.² OPC's misapprehension of what is being accomplished with demand response events evident in its Initial Brief³ is likely responsible for the flawed notion that literally *any* demand response event would result in energy savings. In fact, the arbitraging strategy that OPC recommends comes with significant downside risk, both in terms of its effect on customer behavior and the primary objective of these programs, as well as actual energy price risk from betting on the hour.

OPC fails to provide any predictive methodology by which a reasonable person would likely be successful in arbitraging LMP prices on a monthly basis and it fails to grasp the significant costs to customers that may result from this type of arbitrage strategy with energy prices.

Standard and Burden of Proof

OPC begins its Initial Brief with a lengthy non-sequitur on "burden shifting" to make the point that a utility company has the burden to prove its rates are just and reasonable. "An FAC

¹ Ex. 4, File Rebuttal, pp. 6-7.

² In fact, as explained in the surrebuttal testimony of Evergy witness John Carlson, to effectuate the LMP arbitraging strategy supported by Staff and OPC would not only require the Company to predict the right monthly day, but the right hour of that day. Ex. 3, Carlson Rebuttal, pp. 18-21.

³ See e.g., OPC Initial Brief at 3, 23.

prudence review case is, effectively, a retroactive analysis performed to determine if the FAC rates previously placed into effect were just and reasonable.” OPC Initial Brief, p. 12. OPC offers no support for this position and it is factually and legally wrong.

What OPC suggests is the purpose of an FAC prudency review would be retro-active ratemaking and is clearly unlawful. See generally, *State ex rel. Ag Processing vs. PSC*, 340 S.W.3d 146 (Ct. App. W.D. 2011). Rates are determined just and reasonable on a prospective basis only. *Id.* at 153. An FAC prudency review is an analysis of an electric utility’s *decision making* within the context of costs and revenues that flow through the FAC and whether those decisions lead to unnecessarily high costs borne by customers. What could be affected by the Company decisions, and is the subject of an FAC prudency review, is the total costs that are collected through the FAC, and whether there should be a prospective adjustment to account for imprudence on the part of the Company.

Other than erroneously conflating the purpose of a prudency review with that of a rate case and then grafting an inapplicable burden onto the Company, OPC accurately states the general burden-shifting paradigm of a prudency review.⁴ The Company does not have any initial burden in this FAC case to prove all of its actions were prudent unless a party can create a “serious doubt” as to the prudency of Evergy’s decisions. The OPC and Staff have not created such a doubt. However, even if the Commission believes a doubt has been raised, the competent and substantial evidence demonstrates that Evergy has dispelled that doubt. The Commission should conclude that Evergy’s actions were prudent, given all the facts and circumstances that its decisionmakers had to deal with at the time the decisions were made.

⁴ *State ex rel. Associated Natural Gas v. Public Serv. Comm’n*, 954 S.W.2d 520 (Mo. App. W.D. 1997).

Evergy Managed its Demand Response Programs Prudently

First, OPC argues that Evergy’s tariff allows for the Company to call demand response events for economic reasons and does not cap the number of events to be called. OPC Initial Brief p. 22-23. Evergy was bound by the terms of the Stipulation and Agreement entered into between the parties in the MEEIA Cycle 2 proceeding for the curtailment season of 2019 and approved by the Commission. This Stipulation and Agreement required five demand response events to be called by Evergy for its Residential Programmable Thermostat program in the 2019 curtailment season. Evergy abided by the terms of this agreement. Moreover, while the tariffs do define an option for economic curtailment, it does not simply mean that more events can be called to make money without fully evaluating the market. Tariff sheets 2.12 and 2.33 (Metro) and tariffs Sheets R-89 and R-108 (West) indicate that an economic curtailment may occur when the marginal cost to produce or procure energy, or the opportunity to sell the energy in the wholesale market is greater than the customer’s retail price. Ms. Mantle did not account for the fact that if load is shifted to a different time of the day, there are still day ahead marginal locational prices to be paid for the shifted load. In other words, contrary to Ms. Mantle’s assumptions in developing her disallowances, there are still costs to be considered and netted for the shifted load. Nor did she account for net revenue decrease to the company based on DR events if load was ultimately reduced and not shifted. (Tr. 129-30)

Second, OPC argues that “*the question*” in determining whether Evergy acted reasonably in the management of its demand response programs is not whether Evergy could have predicted the highest energy prices and then called curtailment events accordingly, but rather whether “there were **any** time times during the curtailment season when the Company could have called a curtailment event in a manner that would have reduced energy costs?” (Emphasis in original). OPC Initial Brief, p. 25.

OPC does not provide any supporting facts or analysis as to how a reasonable person, with the information and knowledge possessed by Evergy's management at the time of the relevant decisions, would have effectuated OPC's monthly arbitraging strategy to the benefit of customers. Rather, OPC simply argues that Evergy did not attempt to undertake OPC's recommended LMP arbitraging strategy and thus was *per se* imprudent. As explained above, OPC's analysis did not look at the extra costs in the day ahead marginal locational prices to be considered and netted for the shifted load. Without evidence of how this strategy would have been successfully effectuated, OPC has not raised a doubt as to the prudence of the Company's management of the program, let alone a serious one.

OPC also failed to explain in its initial brief how it is appropriate for OPC's witness to rely upon hindsight in developing her disallowance. Instead, OPC held back any explanation of this fatal flaw in OPC's approach and stated "OPC will address this argument at length in its reply brief, if necessary. . ." (OPC Br. at 24). OPC merely pointed to six lines of testimony on redirect. In that passage of the transcript Ms. Mantle did not dispute that she relied upon hindsight in developing her proposed disallowance. (Id.) While Ms. Mantle conceded throughout the hearing that it was not possible to know the exact time that monthly peaks would occur throughout the summer months (Tr. 278, ln. 7-8; Tr. 274, ln 10-12; Tr. 274, ln. 21-24), she nevertheless developed her proposed disallowance assuming the Company decisionmakers should have called curtailable events on the "five highest market priced hours for two summers and that's the information I have." (Tr. 273). In other words, Ms. Mantle used the five highest market priced hours for each of the four summer months to develop her proposed disallowance, information which is impossible to know except through hindsight analysis after-the-fact, even though Evergy's decisionmakers would not have had that information available at the time they were deciding when to call curtailment events.

As for the future, Ms. Mantle testified that it was appropriate for Evergy to call fifteen curtailment events for the residential thermostat program and ten curtailment events for the Demand Response Initiative program for the upcoming 2021 summer (Tr. 276) However, she provided no industry standard or any other standard for deciding that number of recommended curtailment events is appropriate for the future. When asked what days in the summer of 2021 Evergy decisionmakers should call the fifteen curtailment events, she candidly admitted that she did not know:

[Fischer]: But at this point sitting on the stand, you can't tell us what days we ought to do it [call curtailment events]?

[Mantle]: No one can. (Tr. 277-78)

If no one can predict the days with highest monthly peaks in the summer with accuracy, it is not appropriate to disallow costs on a retrospective basis assuming that decisionmakers at the time the curtailment decisions were made could accurately predict the highest monthly peaks when the after-the-fact hindsight information regarding the monthly summer peaks was not available to them. OPC's proposed disallowance is not based upon information that was available at the time the decisions were made, and therefore is not lawful or reasonable.

Third, OPC argues that because Evergy's demand response tariff allows significant flexibility in the number of demand response events and for such events to be called based on economic reasons that such flexibility "inherently undermines" the idea that calling additional demand response events harm the underlying purpose of the programs. OPC Initial Brief, p. 28-29. It does not. It is correct that under the applicable tariffs the Company had legal authority to call more demand response events. The Company also had legal authority to call the number of demand response events that it called. The legal authority under the applicable tariffs provides no insight – *either way* – as to whether Evergy acted prudently. It also does not provide any insight as to the design and purpose of the demand response programs themselves.

OPC offered zero evidence to rebut the fact that the primary objective of these demand response programs was to reduce system-wide peak load and that the Company managed these demand response programs in a way that was consistent with that purpose and design. In so doing, the Company succeeded in achieving the cost-effectiveness goal for those programs, which had previously been approved by the Commission.

Fourth, paradoxically, OPC also seems to understand that the legal authority of Evergy under the applicable demand response tariffs is of zero significance, because OPC stresses the point that it is not advocating for the *maximum* number of demand response events possible under the tariff. OPC, Initial Brief, p. 27-28. Rather, OPC’s recommended number of demand response events appear now to be nine or ten events, but not for the full four hours. OPC Initial Brief, p. 32. OPC finally concedes that its real complaint is not based on a specific number, but “premised on Evergy’s conscious decision not to even attempt to employ its demand response programs for the ‘economic reasons’ stated in the relevant tariffs.” OPC Initial Brief, p. 33-34. However, as previously explained, OPC fails to understand that a demand response event is *shifting* energy from one timeframe to another, and not simply reducing energy consumption. Further, OPC fails to compare a customer’s retail price of power from the load shifting of a demand response event with the marginal cost to produce and procure power, which would be required per the definition of “economic reason” under the applicable tariff.

OPC offered no evidence of an industry standard or any standard at all supporting the reasonableness of attempting to make monthly predictions on peak load without a predictive methodology or a strategy for preserving the underlying purpose of the demand response programs when customers find themselves with less control of their home and business environments. Instead of evidence OPC relies on inapplicable metaphors like “hitting a button” and a man “owning a riding

lawn mower.” OPC Initial Brief, p. 35. Effectively managing demand response events, which turns the homes and business of Evergy’s customers into capacity resources, is not like hitting a button or owning a riding lawn mower.

II. RESPONSE TO STAFF

Introduction

Evergy agrees with the procedural background of this case as set forth in Staff’s Initial Brief. Staff Initial Brief, p. 1-4. Likewise, the Company agrees with Staff’s analysis of the legal standard and burden-shifting framework of the FAC prudency review. *Id.* at 3-4. Notably, Staff does not appear to support OPC’s position that an FAC prudency review is a rate case.

Evergy Managed its Demand Response Programs Prudently

First, Staff argues that “it was hardly an unknown to customers who signed up for Evergy’s demand response programs that multiple events could be called.” Staff Initial Brief, p. 7. Evergy simply does not support the “they get what they deserve for signing up” position that Staff seems to be supporting. It is true that Evergy’s customers knew of the outer limits of demand response events which could be called under the agreement. This does not “undermine the theory that maximizing the number of events could result in diminishing returns.” *Id.* at 8. To the contrary, it highlights the importance of trust between Evergy and its customers which is inherent in the demand response programs.

Second, Staff grossly misrepresents the testimony of Evergy witness Brian File. Staff provides, “However, Mr. File also explained that Evergy understands that it would be reasonable to call events in other months to further decrease Southwest Power Pool (“SPP”) Schedules 11 fees.” Staff’s Initial Brief, p. 8 (citing Transcript Vol. II, pg. 138, ln 18-24). Witness File’s testimony as cited is the following:

Q. Thank you, sir. And also earlier in a response to Judge Dippell's questioning, hitting the system annual peak would decrease SPP Schedule 11 fees for that one month, correct?

A. That is correct.

Q. So wouldn't it be reasonable to also think that calling events in the other three months to try and hit those months' peaks would provide an event greater decrease to SPP Schedule 11 fees?

A. Right. I think the answer to your question is yes, *that the other months do have SPP fees associated with what the peak is, correct. (Emphasis added.)*

The underlying assumption is the Company's ability to predict the monthly peak. Witness File never conceded to the reasonableness of attempting to predict the monthly peak. He states the fact that all months have SPP fees associated with the monthly peak.

Finally, Evergy agrees with Staff that it makes no sense to address the same issues in both FAC prudence audits and MEEIA prudence audits, or in subsequent general rate cases. (Staff Brief at 12-13) Evergy would re-iterate its position, however, that that future audits of MEEIA programs should occur in the MEEIA audit docket. If Staff or OPC prevail on any issue that impacts the Company's FAC, then that adjustment should be made in the next FAC case. If Staff or OPC prevail on any issue that impacts the DSIM, then that adjustment should be made in the DSIM in the MEEIA audit case.

III. CONCLUSION

Evergy acted prudently in the management of its demand response programs by managing those programs as designed and approved by the Commission. Neither Staff, nor OPC have raised a serious doubt as to the prudence of Evergy's decision-making with regard to its demand response programs. Taking control of customers' home and business environments via demand response events is not an action which should be taken lightly and in contravention to the design and purpose

of those programs. It is undisputed that Evergy achieved the cost-effectiveness goals of the demand response programs as approved by the Commission. OPC and Staff have clearly used an FAC prudency review to litigate their policy preferences on Evergy's demand response programs. The Commission should recognize this and find that Evergy did not act imprudently in regards to their demand response events.

WHEREFORE, the Company respectfully submits its Brief for consideration by the Commission.

Respectfully submitted,

/s/ Roger W. Steiner

Robert J. Hack, MBN 36496
Roger W. Steiner, MBN 39586
Evergy, Inc.
1200 Main Street
Kansas City, Missouri 64105
Phone: (816) 556-2791
rob.hack@evergy.com
roger.steiner@evergy.com

James M. Fischer MBN 27543
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101
Telephone: 573-636-6758
jfischerpc@aol.com

Joshua Harden MBN 57941
Collins & Jones, P.C.
1010 W. Foxwood Dr.
Raymore, MO 64083
Telephone: 816-318-9966
jharden@collinsjones.com

**Attorneys for Evergy Missouri Metro and
Evergy Missouri West**

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 15th day of March 2021, to all counsel of record.

/s/ Roger W. Steiner

Roger W. Steiner