

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

In the Matter of the Petition of Evergy Missouri)
West, Inc. d/b/a Evergy Missouri West for a)
Financing Order Authorizing the Financing of) No. EF-2022-0155
Qualified Extraordinary Storm Costs Through an)
Issuance of Securitized Utility Tariff Bonds)

**OPPOSITION TO PUBLIC COUNSEL’S MOTION FOR CLARIFICATION, AND
CONDITIONALLY, APPLICATION FOR REHEARING**

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West,” “EMW,” or “Company”) and respectfully submits the following *Opposition* to the Office of Public Counsel’s (“OPC”) *Motion for Clarification*, and *Conditionally, Application for Rehearing* (the “Motion”) regarding the Missouri Public Service Commission’s (“PSC” or “Commission”) October 7, 2022 *Report and Order* that issued the Financing Order (“Financing Order”).

I. INTRODUCTION

The Commission’s Financing Order correctly approved Evergy Missouri West’s petition for the issuance of a financing order under Section 393.1700,¹ and authorized the Company to finance the Qualified Extraordinary Costs that it incurred as a result of Winter Storm Uri, related Financing Costs, and other expenses through the issuance Securitized Utility Tariff Bonds. The Company, Staff, and OPC filed motions for clarification and/or applications for rehearing on November 4, 2022 for differing reasons. While Staff’s, OPC’s, and the Company’s papers overlap in some respects,² no party’s filings align with OPC’s primary aim in the instant Motion.

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

² Staff, OPC, and the Company agree that the Financing Order’s Paragraph 39 violates Sections 386.500, 386.510, and 393.1700.2(3)(a)c, and that certain numerical errors in the Financing Order’s paragraphs should be corrected. See OPC’s Application for Rehearing; see also Staff’s and the Company’s respective motions/applications for clarification/rehearing filed November 4, 2022.

OPC's Motion seeks to distort certain language of the Financing Order in an effort to re-hash tax arguments that OPC already raised in post-hearing briefing, and which were properly denied by the Commission. OPC's re-packaged contentions remain erroneous, and thus should be again rejected.

II. ARGUMENTS & AUTHORITIES

OPC initially asserts that "the Commission included a finding of fact that appears to suggest Evergy West's ratepayers will not be responsible for paying the taxes associated with the revenues generated by" the Securitized Utility Tariff Charge (SUTC). See OPC's Motion at 1. Operating from this misguided premise, OPC then requests for the Commission to either: (1) reverse its Financing Order to now "preclude Evergy West from collecting from its ratepayers the amount necessary to pay the taxes associated with the revenues generated by Evergy West's collection of the SUTC," or (2) grant rehearing so that the OPC can again present the same arguments it did in post-hearing briefing. See OPC Motion at 1-2. Because OPC's interpretation of the Financing Order's plain language as to taxes is wrong, the Commission should deny OPC's Motion on its face. Further, as discussed herein, each of OPC's alternative requests for relief are meritless.

A. OPC Misinterprets the Financing Order

As numbered in the Financing Order, the Commission's tax-related findings of fact in Paragraphs 58-71 are correct and based on the substantial and competent evidence presented by both the Company and Staff. See EMW Initial Post-Hearing Brief at 26-30; EMW Reply Post-Hearing Brief at 16-21. Notwithstanding, OPC declares that two sentences in Ordering Paragraph 64 — "This is incorrect. If Evergy West's customers were also to be responsible for the taxes, those taxes would be in the securitized amount." — should somehow mean that EMW cannot collect or pay taxes from the SUTC.

However, OPC ignores that the Commission's findings of fact regarding the Company's collecting and then ultimately paying the required taxes through the SUTC properly stated:

61. The revenue collected from customers to repay the bonds will be taxable and the SPE will have to pay tax on those revenues. The SPE will not be entitled to a tax deduction for the Winter Storm Uri costs since they were already deducted by Evergy West. The SPE will file a tax return as part of the consolidated income tax return filed by Evergy Inc.

...

63. Public Counsel contends that ratepayers will pay for Evergy West's tax write-off of \$72.2 million, which will cost them \$135 million over the 15-year term of securitization. Public Counsel argues this tax benefit should be recognized as a reduction in the securitization amount.

...

68. Evergy West is not taxed when the securitization bonds are issued.⁹³ Internal Revenue Service (IRS) Revenue Procedure 2005-62 at .03 states that Evergy West does not have to recognize the income upon the issuance of the bonds or the receipt of the cash but does have to recognize the income as the nonbypassable charges are incurred or put on the customers' bills.

69. IRS Revenue Procedure 2005-62 provides a safe harbor for public utility companies that, pursuant to specified cost recovery legislation, receive an irrevocable financing order permitting the utility to recover certain specified costs through a qualifying securitization. Under this revenue procedure, Evergy West will not recognize taxable income upon the receipt of the financing order, the transfer of Evergy West's rights under the Financing Order to the SPE, or the receipt of cash in exchange for the issuance of the Securitization Bonds. Evergy West will treat the SUTC as gross income to Evergy West.

70. Any tax benefits associated with the Winter Storm Uri costs will be given to customers in future general rate cases over the life of the securitized bond. To include those benefits directly in the SUTC would double-count those benefits.

71. The deferred taxes will be included in rate base until all the Winter Storm Uri costs are collected through the securitization financing. The revenues collected from Evergy West customers through the nonbypassable charge will be taxed to Evergy Inc. in its consolidated tax returns. Evergy Inc. is the parent company of Evergy West.

See Financing Order at 33-35.

OPC also ignores that the Financing Order’s Conclusion of Law “WW” recognized and adopted the provisions of IRS Revenue Procedure 2005-62, and found in its Decision:

All revenues collected from Evergy West customers as part of the SUTC will be taxed in the tax periods received or recognized. Those amounts will be accounted for in Evergy Inc.’s consolidated tax returns. The deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit to Evergy West’s rate base over the life of the securitization bonds corresponding to the income tax periods in which the revenues are recognized.

See Financing Order at 36-37.

As a result, OPC’s two-sentence misconstruction is nonsensical, particularly when “OPC does not dispute” the authority of Revenue Procedure 2005-62. See OPC Motion at 5, n.5.

OPC’s attempts to re-write and take such sentences entirely out of context fail under long-standing, basic principles of construction of administrative rulings. E.g., State ex rel. Gehrs v. PSC, 114 S.W.2d 161, 167 (Mo. Ct. App. W.D. 1938) (Commission orders afforded a “reasonable” and “fair construction,” and are “to be liberally construed so as to make them operative if possible”). A reasonable, fair reading of the Financing Order does not logically permit the OPC’s post-hoc re-interpretation. For this reason alone, the Commission need not proceed any further with the OPC’s remaining arguments which were fully considered and rejected by the Financing Order. OPC’s Motion should be denied.

B. OPC’s Repeated Tax Arguments Are Still Incorrect

Even if the Commission entertains the remainder of OPC’s Motion, it is without merit. As previously addressed in EMW’s post-hearing briefing regarding OPC’s first statutory interpretation argument, the Securitization Law’s “Financing Costs” definition does include a provision on taxes: “Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including commission assessment fees, whether paid, payable or accrued.” See § 393.1700.1(8)(e). However, this reference is to taxes associated with the “securitized utility tariff

bonds,” not the deferred tax liability or resulting tax-timing difference at issue. See § 393.1700.1(8).³

If EMW’s customers were to be responsible for taxes, they would be “directly built into the securitized amount,” but “[t]his is not how Evergy or Staff has calculated the securitized amount. In a rate case the amount of taxes associated with the revenue the company will collect is included in the base rates. There is no separate line item on a customer’s bill for federal or state income taxes, which the company will have to pay.”⁴ Moreover, if the proposed securitized amount was reduced by the tax savings at EMW, then there would not be sufficient funds to recover all of the Winter Storm Uri costs, including the income tax expense at the SPE.⁵ Even OPC admits that “the Securitization Law appears to specifically allow Evergy West to recover the amount necessary to pay” taxes. See OPC’s Motion at 4.

As to OPC’s second argument, the OPC is once more wrong that “the Commission does not address that Evergy West’s customers must both pay the taxes associated with the revenues generated by Evergy West’s collection of the SUTC and will pay a higher SUTC due to the Commission’s inclusion of the tax benefit that Evergy West received associated with the costs related to Storm Uri in the amount of qualified extraordinary costs that Evergy West may recover.” See OPC’s Motion at 7. As discussed above, the Financing Order’s findings of fact and conclusions of law specifically rejected this very contention of OPC, which was proper.

With respect to OPC’s third argument, in OPC’s post-hearing briefing, OPC had inappropriately argued for the first time that “to recognize the tax benefit in this manner over time

³ OPC confusingly argues that EMW did not address § 393.1700.1(8)(d) in post-hearing briefing, but this is plainly incorrect. See, e.g., EMW’s Reply Post-Hearing Brief at 16-21. In any event, OPC never before made arguments directed specifically at subsection (d) (much less offered any testimony in support thereof at hearing), and so they must now be rejected per Commission Rule 20 CSR 4240-2.130(7)(A)-(B), (D). In re Union Elec. Co., No. ER-2012-0166, 2012 WL 5984836, at *1.

⁴ See Ex. 101, Bolin Surrebuttal, at 3; see also Tr. at 341:2-24 and 352:16-353:15.

⁵ See Ex. 5, Hardesty Surrebuttal, at 2-5; Tr. at 228:8-229:23, 231:10-25, and 234:8-21.

comes at a great cost to ratepayers, approximately \$30 million.” See OPC Initial Brief at 33. However, OPC never presented this argument in any of its pre-filed testimony, and thus violated Commission Rule 20 CSR 4240-2.130(7)(A)-(B), (D). Therefore, the Commission properly rejected the argument, and OPC may not re-raise it on rehearing. Moreover, the new argument was also not based on substantial and competent evidence, and still is not. E.g., In re Joint Application of Empire Dist. Elec. Co. & White River Valley Elec. Coop., No. EO-2009-0428, 2009 WL 2136587 at *2. In fact, even OPC’s witness Mr. Riley agreed at hearing that EMW’s and Staff’s approach to and methodology regarding the tax issues in this proceeding “could be done.”⁶

In sum and contrary to OPC’s assertions, the competent record evidence established that Evergy Missouri West will not be enriched to the detriment of customers if the securitized amount is not reduced by taxes. As previously noted, EMW will be able to defer the taxation of the sale of the regulatory asset for the Winter Storm Uri costs to the Special Purpose Entity under IRS Revenue Procedure 2005-62, and then the Company will be required to include this deferred gain in taxable income at Evergy Missouri West as the amounts are collected and the revenue bonds are repaid. The tax benefit related to the exclusion from taxable income on the sale is temporary. It is merely deferred until funds are collected from customers. If the amount securitized is reduced by taxes, Evergy Missouri West will not have collected enough funds from customers to cover the Winter Storm Uri costs and cover its income tax obligations. OPC’s Motion is procedurally and substantively baseless for all these reasons, and so must be denied.

⁶ Tr. at 504:25-505:16.

C. OPC’s Request Regarding Reconciliation Is Incorrect

Lastly, OPC seeks to vaguely complain that “although the Commission references a future reconciliation process, the Commission fails to specify how this future reconciliation process would work[.]” See OPC’s Motion at 7. However, the Financing Order complies with the plain language of the Securitization Law regarding future reconciliation.

Indeed, as the Financing Order references and as noted above and in post-hearing briefing, Evergy Missouri West expects that all costs, including any taxes, will be included in the true-up process outlined in the Financing Order and any other separate reconciliation process is not needed. Additionally, if some permanent tax benefit is recorded on Evergy Missouri West related to this securitization notwithstanding the above and competent record evidence to the contrary, the benefit could readily be identified and included in a future general rate case for consideration.

III. CONCLUSION

For the foregoing reasons, the Commission should deny OPC’s Motion in its entirety. EMW respectfully requests all such further relief as the Commission deems just and proper.

Respectfully submitted,

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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 and to the Office of the Public Counsel this 10th day of November 2022.

/s/ Roger W. Steiner

Attorney for Evergy Missouri West