

**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 Adjustments Required)
by 20 CSR 4240-20.090(8) and the) Case No. ER-2023-0011
Company’s Approved Fuel and Purchased)
Power Cost Recovery Mechanism)

INITIAL POST-HEARING BRIEF OF EVERGY MISSOURI WEST

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West,” “EMW” or “Company”) states the following to the Missouri Public Service Commission (“Commission” or “PSC”) as its initial post-hearing brief:

I. Introduction

This case arises from the confluence of the dramatic and continuing rise in natural gas and wholesale electricity prices in 2021 and 2022 with EMW’s regularly scheduled tariff changes to its fuel adjustment rate (“FAR”) that were required by the Commission to be filed by 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 for the 2022 Rate Case, 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

This situation exists because, pursuant to the rate adjustment mechanism approved by the Commission under Section 386.266, EMW “must rebase base energy costs in each general rate

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

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 (“FAC Rule”).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 statute’s Section 393.1655.5 (“Subsection 5”) requires 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 (“Subsection 3”) “are not triggered [emphasis added].”

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 ... [emphasis added].”

Because there is no reasonable doubt that the 3% CAGR limit will be exceeded, given the elevated price of natural gas and other fuels, the fuel adjustment rate (“FAR”) change filed in this case, and the rebasing of the Company’s base energy costs in the 2022 Rate Case, EMW proposed that only \$13.6 million of its total eligible fuel and purchased power (“FPP”) costs of \$44.6 million be recovered in its FAR change. The Company requested that the balance of \$31.0 million be deferred pursuant to the mandate of Subsection 5.

Since this FAR filing was made, the 2022 Rate Case evidentiary hearing has concluded and briefing has commenced. Having been filed on January 7, 2022, the operation of law date for rates in the 2022 Rate Case to become effective under Section 393.150 is December 6, 2022. Given that the exact amount to be deferred will be governed by decisions that the Commission will make in the 2022 Rate Case, as well as by the terms of the August 30, 2022 Stipulation & Agreement

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

that the Commission approved to settle many revenue requirement issues, the Commission should wait to issue its decision in this matter until after the report and order is issued in the rate case.

There is no operation of law date in this FAR filing and no reason to estimate the amount of the deferral. As Evergy Vice President Darrin Ives testified at the hearing, the actual deferral amount required under Subsection 5 will be well below the \$31.0 million initially requested. He estimated that, depending on the decisions made by the Commission in the 2022 Rate Case, the deferral amount would range between \$11 million and \$19 million. See Tr. at 70-71. The Commission should make the deferral in this case after it decides the issues in the rate case so that the exact of amount of the deferral can be calculated.

In opposing EMW's request, the Office of the Public Counsel ("OPC") overlooks critical facts regarding the significant increase in FPP costs that were caused by major increases in the price of gas and other commodities. It relies on a Motion for Summary Determination that is not permitted under the Commission's rules in cases "seeking a rate increase" such as this proceeding. But both the motion and the rebuttal testimony of OPC witness Lena Mantle misinterpret how the Legislature intended the PISA statutes (Sections 393.1655 and 393.1400) to deal with volatile FPP cost increases under the FAC-enabling statute (Section 386.266) where the required rebasing of rates under the FAC Rule in a general rate case would cause EMW to exceed the CAGR ceiling.

Also opposing EMW's request, Staff's Recommendation of July 28, 2022 fails to acknowledge the effect of the surge in FPP costs on EMW over the past twelve months in relation to the PISA statute and the 2022 Rate Case. Although Staff admitted that "these increased fuel costs are, unfortunately, the norm for all utilities for the current time period,"³ the fact that EMW is not alone in facing extraordinary and unusual FPP costs does not undercut the Company's position that a deferral is required in this FAR filing. Like OPC, Staff argues that the impact of

³ See Memorandum of Staff Recommendation at 3 (July 28, 2022).

required rebasing base energy costs in the 2022 Rate Case cannot be considered in calculating the CAGR cap, narrowly interpreting Subsection 5 to oppose EMW's request to defer FPP costs that "would cause" the Company to breach the CAGR limit because of the rebasing of base energy costs in the 2022 Rate Case.

II. Statement of Facts

EMW has presented uncontested evidence that the cost of power spiked during the 30th Accumulation Period as natural gas costs continued to be volatile and high in reaction to economic and political events beyond EMW's control. See Ives Direct at 5-7. In May 2022, Henry Hub gas prices averaged \$8.14/MMBtu, and remained at elevated levels of \$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). Prices rose to \$8.37/MMBtu on July 29, 2022 "because of continued high demand for natural gas from the electric power sector." Id.

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).

As Mr. Ives testified, high natural gas prices, as well as high electricity prices have affected and continue to affect EMW. See Ives Direct at 7-8. This trend was evident in the Spring of 2022. The Market Monitoring Unit of Southwest Power Pool, Inc. (SPP), the regional transmission organization 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 includes EMW’s service territory. Id. at 2.

The recent dramatic rise in natural gas and wholesale power prices 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.

III. Energy Missouri West’s FAR Filing and Deferral Request Properly Include Rebased Fuel and Purchased Power Costs that will Occur in its 2022 Rate Case

OPC’s attempt to exclude increases in rates that will be caused by rebasing EMW’s base energy costs in the 2022 Rate Case ignores the plain language of Subsection 5 and the PISA law’s intent to deal with FPP costs –largely beyond the utility’s control -- differently from “qualifying electric plant” costs and other costs recovered through base rates.⁴

The reference in Subsection 5 to the FAC enabling statute (Section 386.266) accounts for the effects of rebasing of energy costs in general rate cases which the Commission’s FAC Rule has required for the past 15 years. 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 the FAC enabling statute and the FAC Rule.

⁴ To be clear, § 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 FAR case, only FPP costs are at issue and only they will be discussed in the context of the PISA statutes.

EMW made its FAR filing in furtherance of the goal of Subsection 5, which is to remove FPP costs from the CAGR analysis if such costs would cause the CAGR limits to be exceeded.

The General Assembly required in Subsection 5 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.” (emphasis added). This mandate is premised on a fundamental principle that FPP costs, like other costs recovered by rate changes made under the rate mechanisms approved by the Commission pursuant to the FAC enabling statute and section 393.1030(the renewable energy standard statute), 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 PISA costs which could result in a performance penalty under Subsection 3.

When approving FACs, the Commission has agreed with this core 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 PSC 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.

Similarly, 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

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

Based on this economic fact of life, FPP costs charged under a rate adjustment mechanism that would exceed the CAGR limit are deferred to a regulatory asset under PISA Section 393.1400. They are not disallowed, 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.

There is no language in Subsection 5 that directs the electrical corporation or the Commission to exclude the rebasing of base energy costs that are required in general rate cases (pursuant to the FAC Rule approved by the Commission) from the calculation of the 3% CAGR and the mandate to ensure that the CAGR cap is “not exceeded” and that the “performance penalties ... are not triggered.”

The first sentence of Subsection 5 plainly requires that “a change in any rates charged under a rate adjustment mechanism” that “would cause an electrical corporation’s average overall rate to exceed” the CAGR 3% growth limitation requires action by the electric utility to reduce rates in order to “ensure” that (a) the CAGR cap “is not exceeded and (b) the “performance penalties ... are not triggered.” OPC has argued that the re-base of energy costs in the general rate case does not constitute a change in any rates charged under a rate adjustment mechanism, but this argument ignores the provision of the FAC Rule that requires a utility to re-base energy costs in any general rate case in which an FAC is continued or approved. 20 CSR 4240-20.090(2). Given this requirement, there is no plausible rationale to conclude, that the effect of re-basing energy costs in a general rate case, explicitly required by the FAC Rule, should be excluded from consideration

⁵ Accord Report & Order at 38, 40, In re Empire Dist. Elec. Co., No. ER-2008-0093 (July 30, 2008) (“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.”).

as “any change in rates under a rate adjustment mechanism” as provided in the first sentence of Subsection 5.

The second sentence specifies that “[s]ums not recovered under any such mechanism ... shall be deferred to and included in the regulatory asset arising under section 393.1400”

Giving effect to the “plain and ordinary meaning” of Subsection 5, and to avoid an “illogical or absurd result”⁶ – such as equating wholesale commodity and power prices with a utility’s construction of its electric plant – it is clear that FPP costs must be treated differently than other costs.

That is what the Commission intended when it promulgated its FAC Rule pursuant to Section 386.266.10 which authorized it 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.” The rebasing requirement of FAC Rule Section (2) is a valid exercise of the Commission’s broad authority explicitly granted by the General Assembly.⁷

Indeed, 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).

OPC argues that because EMW’s rate increase is actually caused by the Company’s original request to recover \$82.9 million for infrastructure improvements in the rate case, not the \$44.6 million in FPP costs, the CAGR cap is not exceeded and the deferral should be denied. See OPC Motion at 8-9; OPC Legal Memorandum at 22-23. However, this argument cannot hold due

⁶ 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).

⁷ It is also consistent with 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).

to the fact that OPC has ignored the financial ramifications of the Stipulation & Agreement filed on August 30 in the 2022 Rate Case and approved by the Commission in its recent Order Approving Four Partial Stipulation & Agreements.⁸

As Evergy's Vice President of Regulatory Affairs Darrin Ives explained at the evidentiary hearing, with the settlements approved by the Commission, EMW is rebasing \$56.1 million of FPP costs, as required by the FAC Rule, while the overall revenue requirement increase is only \$42.5 million. See Tr. 60, lines 6-16; Exhibit 4 (filed Oct. 5, 2022). 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* (\$56.1 million minus \$42.5 million) in EMW's revenue requirement. See Tr. 12. In other words, in the 2022 Rate Case the rebasing of fuel and purchased power cost is the reason why there will be an increase in rates. See Tr. 58, lines 16-25. In fact, since the Company elected PISA in 2018, over 100 percent of the increases in rates have been due to fuel and purchased power increases. See Tr. 69, lines 6-10.

Accepting OPC's argument in favor of a performance penalty – particularly under the circumstances of this case and the 2022 Rate Case – would directly undermine the purpose of the PISA statute which encourages "qualifying electric plant" investments, especially in the area of "grid modernization projects" under Section 393.1400.4. It would also ignore the specific intent of PISA to treat FPP costs differently from electric plant investments because FPP costs reflect wholesale commodity and electricity prices that are beyond the control of the utility. The language of Subsection 5 is clear that a change in rates under a rate adjustment mechanism that "would cause" an electric utility's "average overall rate to exceed" the CAGR includes a change that is

⁸ Order Approving Four Partial Stipulations & Agreements at 2-3, In re Evergy Metro, Inc. & In re Evergy Mo. West, Inc., No. ER-2022-0129/-130 (Sept. 22, 2022). The August 30 stipulation covered a variety of revenue issues and is referred to the First Stipulation.

imminent and certain to occur. Such a change will occur in EMW's 2022 Rate Case due to the rebasing of FPP costs required by the Commission's FAC Rule.

IV. The Fuel and Purchased Power Costs that must be Deferred are Extraordinary

Beyond the statutory deferral requirement of Subsection 5, it is obvious that the FPP costs that Evergy Missouri West has incurred are extraordinary under any definition of the word.

Deferring the amount of costs that cause the 3% CAGR cap to be exceeded is consistent with Paragraph XI of the Commission's FAC Rule Section (8). Paragraph XI calls for a utility submitting 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."⁹ 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.¹⁰ OPC witness Mantle argued at the hearing (Tr. 105) that this aspect of the FAC rule is only a reporting requirement and does not allow deferral of extraordinary costs. The rule clearly provides otherwise, however, that the Company is allowed to propose fuel adjustment rates that exclude extraordinary costs for any reason that are not to be passed through the FAC. Ives Direct, p. 13 (Ex. 1).

It is beyond dispute that the current state of the economy is extraordinary. In the press release announcing its 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.

⁹ FAC Rule (8)(A)2.A(XI).

¹⁰ Order Approving Fuel Adjustment True-Up and Approving Tariff to Change Fuel Adjustment Rates, In re Evergy Mo. West Inc. Application to Implement Rate Adjustments, No. ER-2022-0005 (Aug. 18, 2021).

The [Federal Open Market] Committee is highly attentive to inflation risks.¹¹

In a recent speech the president of the Federal Reserve Bank of New York John C. Williams observed: “Clearly, inflation is far too high” and “suddenly soared,” “reach[ing] four-decade highs in recent months.”¹² 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.”¹³

Financial commentators have declared that “with inflation climbing to multi-decade highs and price pressures broadening to housing and other services, central banks recognize the need to move more urgently to avoid an unmooring of inflation expectations and damaging their credibility.”¹⁴ Others have stated this is “the worst inflation since the Carter administration,” “now reaching levels not seen in four decades.”¹⁵

The current economic circumstances, not seen in the past 40 years, are extraordinary, unusual, and infrequent. They certainly meet the Commission’s historical standard in its consideration of deferral of what is an “extraordinary item” in General Instruction 7 of FERC’s Uniform System of Accounts.¹⁶

Paragraph XI of the FAC Rule’s Section (8) provides just one more reason why a deferral of the unusual and extraordinary FPP costs incurred by Evergy Missouri West is appropriate.¹⁷

¹¹ Federal Reserve Press Release (Sept. 21, 2022).

¹² “A Bedrock Commitment to Price Stability,” Remarks to the U.S. Hispanic Chamber of Commerce (Oct. 3, 2022) www.newyorkfed.org/newsevents/speeches/2022/wil221003.

¹³ *Id.*

¹⁴ Tobias Adrian, et al., “Soaring Inflation Puts Central Banks on a Difficult Journey,” Int’l Monetary Fund (Aug. 1, 2022).

¹⁵ William C. Greenwalt, “Defense Inflation and the Need for Extraordinary Contractual Relief,” American Enterprise Institute (June 23, 2022)

¹⁶ General Instr. 7, Uniform System of Accounts, 18 CFR Part 101.

¹⁷ 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 accumulation period.

V. **The Decision in this FAR Filing Should Occur After a Decision is Issued in EMW's 2022 Rate Case**

Because neither the Commission nor the parties can know the exact amount that should be deferred under Subsection 5 until after decisions are reached in the 2022 Rate Case, the Commission should not render its decision in this case until after the rate case order is issued. This is appropriate because the deferral amount will be much smaller than the \$31.0 million initially requested.

Depending on the decisions made by the Commission in the 2022 Rate Case, the actual deferral amount is likely to be between \$11 million and \$19 million. See Tr. 70-71 (Ives).

If the Commission waits to rule in this FAR filing until after the rate case is decided, EMW, Staff and other parties will be able to calculate the amount by which the 3% CAGR cap will be exceeded. Such action will allow the PSC to confirm that the CAGR cap will be exceeded on the effective date of the 2022 Rate Case tariffs and to allow EMW to defer the appropriate amount of the overage which is required by Subsection 5. This would be consistent with the purpose of Subsection 5 which is intended to deal only with costs, like EMW's FPP costs at issue here, that are not within the control of electric utilities. In adopting the CAGR caps in Section 393.1655.3-.4 for electrical corporations, the Legislature intended to address general rate case increases that would raise rates *except for* increases in any rates changed under a rate adjustment mechanism under Sections 386.266 and 393.1030.

That is the sole purpose of Subsection 5. Contrary to OPC, Subsection 3 cannot be read in isolation from Subsection 5. Subsection 3 is not intended to levy a "performance penalty" where FPP costs would cause rates to exceed the 3% CAGR cap. It is not simply a "customer protection"

device, as asserted by OPC.¹⁸ Subsections 3 and 5 work together in a way that achieves “substantial justice between patrons and public utilities.”¹⁹

This balanced approach prevents sudden increases in FPP costs from flowing through the FAC to customers. Instead, it defers those costs and, under Section 393.1400.2(3), amortizes them over 20 years. This allows a utility to recover carrying costs at its weighted average cost of capital without sustaining a performance penalty for FPP costs that it incurred in competitive markets that are beyond the utility’s control. It also recognizes that FPP costs are to be carved out and treated differently from the cost of qualifying electric plant investments, and other items more susceptible to the utility’s control recovered through base rates, that PISA was designed to encourage.

Equally important, delaying a Commission decision until such time as it issues the report and order in the 2022 Rate Case will ensure that the Commission follows the statutory framework of the PISA law intended by the Legislature and is able to approve a specific amount of the deferral that can be calculated. Moreover, due to the timing of the two cases, there will be no undue delay of the decision in this case by waiting until after the Commission issues its 2022 Rate Case report and order. The reply briefs in this case and in the Rate Case are both scheduled for October 21, 2022 and it is likely that the Commission will issue its Rate Case report and order approximately 30 days before the December 6, 2022 effective date of rates. This means that the Commission can know the outcome of the rate case and the specific amount of the deferral and still issue its order in this FAR filing in a timely manner.

VI. OPC’s Motion for Summary Determination Must Be Denied

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.

¹⁸ See Mantle Rebuttal, Ex. 200 at 19, 27-28.

¹⁹ § 386.610.

The 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.²⁰ 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.”

OPC has provided no “good cause” reason under 20 CSR 4240-2.205 of the Practice and Procedure Rules to waive or grant a variance regarding the explicit language and purpose of the Summary Determination 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).

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 summary determination. To the best of Evergy’s knowledge, the PSC has never summarily disposed of an FAR filing under Rule 2.117.

²⁰ Case and Non-Case Designators are set forth on the Commission’s website under the “EFIS Help” link relating to general information.

OPC's request for a waiver also advanced a misleading view of the Summary Disposition Rule's clear statement in Sections 2.117(1)(A) and (2) that it cannot be used "in a case seeking a rate increase" to mean only a general rate case. See OPC Motion at 7, ¶ 23. However, this FAR filing is "a case seeking a rate increase" and that fact cannot be denied.

OPC cites to its own comments in the 2002 Rulemaking Proceeding where it "suggest[ed] that if the Commission adopts a summary judgment rule, that it exclude rate making and tariff filings or any changes in rates from the scope of the rule." See OPC Motion at 6 (emphasis added). That is what the Summary Determination Rule did in Sections 2.117(1)(A) and (2). And that is what this FAR case clearly involves: Ratemaking and tariff filings to change rates, as OPC recognized in its proposed Undisputed Fact 1. Id. at 2-3.

The Summary Determination Rule has remained unchanged since the FAC enabling legislation was passed in 2005 and became Section 386.266, and since other statutes and regulations affecting rates and tariffs were adopted. The provisions of this rule must be enforced in this fuel adjustment rate filing and OPC's Motion denied.

JOINT ISSUES LIST

The Company's arguments in support of its Application and its response to Staff and OPC are contained in sections I-VI above. In addition, the Company addresses the issues listed in the *Joint Issues List* filed with the Commission on September 26, 2022 in sections VII-XII below.

VII. Should the Commission approve EMW's request to defer \$31 million of FAC- fuel and purchased power costs for further treatment in a subsequent general rate case?

Yes. As explained in Section III above, this deferral treatment is explicitly required by section 393.1655.5. The Company's FAC related costs are significantly impacted by factors outside of its control and have been subject to inflationary pressures not seen for many years due to the extraordinary events of the pandemic and Russia's war on Ukraine. Ex. 1, pp. 11-12 (Ives Direct). The Company estimated a deferral amount of \$31 million based on information in the

general rate case available at the time of filing on July 1, 2022. This amount has changed based on settlement of issues and true-up positions taken in the rate case, and may change further based on decisions the Commission makes regarding litigated issues. As also explained in Section III above, there is no question that over 100% of the increase above the PISA base impacting the compound annual growth rate limitation set forth in subsection 3 of Section 393.1655 results from increases in FPP, either through FAC accumulation period updates or from the FAC-required rebase of fuel and purchased power in EMW's general rate case. See Tr. 60, Ex. 4. As such, the Commission should decide the rate case and then ask the parties to quantify the amount of the deferral necessary in this proceeding to comply with section 393.1655.5.

Moreover, a deferral of FPP costs in this case instead of the 2022 Rate Case would ensure that the Company's revenue requirement resulting from the rate request does not include an artificially low level of base energy costs in base rates. For example, if the Commission approved a \$42.5 million (this amount represents the settled issues only and does not consider the impact of litigated issues) rate increase in the 2022 Rate Case, the effect of a deferral of \$31 million in the rate case would effectively reduce the rate increase to \$11.5 million. This effect would provide for less annual revenues to the Company than should be provided were the deferral addressed in the FAR case. Such a rate case deferral would also necessarily lead to higher FAR filings subsequent to the 2022 Rate Case because the difference between actual energy costs and the artificially low level of base energy costs included in base rates due to the deferral of such costs in the rate case will be greater than if base energy costs in the rate case are set at the higher level that will result if the deferral is made in the FAR case and not the rate case.

A deferral in the rate case will artificially lower the base energy cost in base rates which, pursuant to the operation of EMW's FAC, will result in higher fuel adjustment rates subsequent to the rate case and correspondingly higher fuel cost disallowances under the 95/5 mechanism in the

Company's FAC. Deferral in the general rate case will therefore have an adverse impact on the Company by lowering the expected earnings, and as a result, it will be detrimental to the financial condition of the Company. See Tr. 72, lines 3-16.

VIII. Should the Commission consider the FAC rate adjustment mechanism's requirement that fuel and purchased power costs will be rebased in EMW's general rate case (No. ER-2022-0130) in determining the amount of EMW's requested deferral in this FAC proceeding?

Yes. As explained in Section III above, section 393.1655.5 provides that "[I]f a change in any rates charged under a rate adjustment mechanism approved by the commission under section 386.266 ... would cause an electrical corporation's average overall rate to exceed the compound annual growth rate limitation set forth in subsection 3 . . of this section, the electrical corporation shall reduce the rates charged under that rate adjustment mechanism in an amount sufficient to ensure that the compound annual growth rate limitation set forth in subsection 3 ... of this section is not exceeded due to the application of the rate charged under such mechanism and the performance penalties under such subsections are not triggered." The FAC rule (20 CSR 4240-20.090(2)) requires the re-base of fuel and purchased power costs in each general rate case in which the fuel adjustment clause is adopted or continued. Therefore, the full impact of FPP costs on rates can only be understood and measured by calculating all FPP costs, meaning the PISA base level and the difference from the PISA base level that is recovered through the fuel adjustment rate and any incremental amount from the PISA base level that is required under the FAC rule in rebasing FPP costs in the pending general rate case. Both the rebased FPP costs and the difference from the PISA base fuel costs are charged under the FAC, a rate adjustment mechanism adopted by the Commission.

As argued in Section V above, the Company recommends that the Commission decide the rate case, and then ask the parties to quantify the amount of the deferral needed to comply with

section 393.1655.5. This will ensure that the compound annual growth rate limitation is not exceeded and will limit the magnitude of the deferral to no more than the amount needed to achieve that purpose, which is the express purpose and intent of section 393.1655.5.

IX. What is the full amount of the current FPA for the 30th accumulation period?

The full amount of the current FPA for the 30th accumulation period is \$44,604,020. Ex. 2, Schedule LAS-1 (Starkebaum Direct).

X. If EMW's current FAC rate is changed to allow for full recovery of the FPA or the 30th accumulation period and no other changes were made to the rates currently in effect, what would the resulting average overall rate for EMW be?

If EMW's current FAC rate is changed to allow for the full recovery of the FPA amounting to \$44,604,020 for this 30th accumulation period, the resulting average overall rate for EMW would be \$0.10223 per kWh. Ex. 200, LMM-R-4 Page 4 of 63 (Mantle Rebuttal).

a. What is the percentage difference between this rate and EMW's average overall rate as of the date new base rates were set in EMWs most recent general rate proceeding concluded prior to the date the EMW gave notice under section 393.1400?

When considering only the FPA for this 30th accumulation period, the percentage difference in the resulting average overall rate of \$0.10223/kWh and the average overall rate as of the date new base rates were set in EMWs most recent general rate case of \$0.09367/kWh, is 9.14%. Ex. 200, LMM-R-4 Page 4 of 63. (Mantle Rebuttal).

However, as EMW asserts must be done, when the two FAC accumulation periods (29th and 30th) covering the periods of June 2021 through May 2022 are considered together with the FAC Rate Adjustment Mechanism RAM rebase for the May 31, 2022 true-up period that is currently reflected in parties' August 30, 2022 settlement agreement approved by the Commission in EMW's current pending rate case, the calculation results in 17.2% increase. Tr. at 56-57; Ex. 3.

The impact of fuel cost alone on customers' rates exceeds the average overall rate cap of 12.55% as of December 6, 2022, the effective date of new rates in the pending rate case.

XI. Does allowing for recovery of the full FPA for the 30th FAC accumulation period through EMW's FAC result in a change in the rates charged under EMW's FAC that would cause EMW's average overall rate to exceed the 3% annual compound growth rate cap set forth in section 393.1655.3 RSMo.?

This issue statement is incomplete because it ignores the re-base of FPP base energy costs in EMW's ongoing general rate case that is required by 20 CSR 4240-20.090(2) of the FAC rule. To consider the FAC accumulation period impacts while ignoring the rebase of FPP base energy costs in EMW's ongoing general rate case is contrary to the language and intent of Section 393.1655. This argument is fully addressed in section III above.

XII. Should EMW be permitted to defer any portion of the costs related to the 30th accumulation period on the basis of the company's claim that those costs are extraordinary?

Yes. See discussion in Section IV above. The Commission should determine the revenue requirement from the rate case, ask the parties to calculate the necessary deferral to be recorded in this proceeding to apply the criteria of section 393.1655.5 and order such level of deferral in this proceeding.

a. If so, what accounting treatment should the deferral receive?

As discussed on p. 14 of Ex. 1 (Ives Direct), amounts deferred pursuant to section 393.1655.5 should be recorded to the PISA regulatory asset account in compliance with section 393.1400.2. Under section 393.1400.2, the deferred amount shall be included in rate base in EMW's next general rate case. Amounts of the regulatory asset not yet being recovered in rates shall include carrying costs at EMW's weighted average cost of capital including applicable taxes. Amounts to be recovered in the next general rate case shall be recovered over 20 years with the

unrecovered regulatory asset reflected in rate base and earning EMW's then current weighted average cost of capital including applicable taxes, pursuant to section 393.1400.2(3).

WHEREFORE, Evergy Missouri West requests that, pursuant to Section 393.1655.5, the Commission allow a deferral of the fuel and purchased power costs that would cause the Company to exceed the 3 percent statutory CAGR cap as a result of rates charged under the Company's rate adjustment mechanism approved by the Commission under Section 386.266 and the FAC Rule, and that a decision in this proceeding occur after the Commission issues its report and order in the 2022 Rate Case (ER-2022-0130) so that the specific amount of the deferral can be calculated and ordered in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon counsel for all parties on the 14th day of October 2022, by either email or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner

Attorney for Evergy Missouri West