

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

In the Matter of the Application of Evergy	)	
Missouri West, Inc. d/b/a Evergy Missouri	)	
West for Permission and Approval of a	)	
Certificate of Public Convenience and	)	No. EA-2022-0328
Necessity Authorizing It to Purchase, Own,	)	
Operate, Maintain and Otherwise Control and	)	
Manage an Existing Wind Generation Facility	)	
in Oklahoma	)	

**EVERGY MISSOURI WEST'S  
POST-HEARING REPLY BRIEF**

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## **EVERGY MISSOURI WEST'S REPLY BRIEF**

**COMES NOW**, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West,” “EMW,” or the “Company”) and for its *Post-Hearing Reply Brief* (“Reply Brief”), states as follows:

### **I. Introduction**

The initial briefs of Staff and the Office of the Public Counsel (“OPC”) reflect their narrow views of need and economic feasibility under Tartan factors,<sup>1</sup> as well as whether granting an Operating Certificate of Convenience and Necessity (“CCN”) under Section 393.170<sup>2</sup> and the CCN Rule (20 CSR 4240-20.045<sup>3</sup>) for the 198.6 MW Persimmon Creek wind farm is necessary or convenient for the public service.<sup>4</sup>

Staff opposition to the Company’s Application continues to be based on an inaccurate view of the clear benefits that Persimmon Creek will provide to customers that mis-states or ignores the evidence of its solid record of operational performance, its capacity and energy market benefits, and its value as an addition to EMW’s portfolio of owned generation resources.<sup>5</sup> Its citation to negative pricing without a proper discussion of the production tax credit (“PTC”) and the sale of renewable energy credits (“RECs”), as well as the expansion of transmission infrastructure in Southwest Power Pool (“SPP”) that is occurring is misleading.<sup>6</sup>

Staff’s attacks on the Company’s Integrated Resource Planning (“IRP”) process and its use of the well-respected levelized cost of energy (“LCOE”) financial tool are misplaced, given the

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<sup>1</sup> Missouri Landowners Alliance v. PSC, 593 S.W.3d 632, 638 & n.6 (Mo. App. E.D. 2019); In re Tartan Energy Co., 1994 WL 762882, No. GA-94-127 (1994).

<sup>2</sup> All citations are to the Missouri Revised Statutes (2016), as amended, unless otherwise noted.

<sup>3</sup> Section (5) of the CCN Rule requires the Application to include: (A) a description of the asset, (B) the value of the asset, (C) the purchase price and plans for financing the operation, and (D) plans and specifications of the asset, including as-built drawings.

<sup>4</sup> The Company has also requested approval to acquire Persimmon Creek under Section 393.190.

<sup>5</sup> Staff Initial Brief at 3-4, 15-16.

<sup>6</sup> Staff Brief at 5, 16-17.

Commission’s reliance on them for many years.<sup>7</sup> Finally, Staff’s frequent resort to arguments more properly asserted in a general rate case must be disregarded in this Operating CCN case where the issue is simply whether Persimmon Creek is “necessary or convenient for the public service” under Section 393.170.3. Because this is not a general rate case where “all relevant factors are considered,”<sup>8</sup> Staff’s arguments regarding rate increase and risks without any discussion of the benefits offered by Persimmon Creek must be rejected.<sup>9</sup> In particular, Staff’s misrepresented view of the SPP energy markets in the ratemaking process and the impossible standard it proposes that Persimmon Creek’s market revenues must exceed its “true costs” or “total costs” (i.e., its annual revenue requirement) are grossly misleading.<sup>10</sup> As explained by Evergy’s Kayla Messamore, “SPP market energy prices are not designed to cover fixed costs” or the Company’s annual revenue requirement because the markets are based on “short-run marginal cost.”<sup>11</sup>

OPC’s brief is a confusing 36-page diatribe that defies the Commission’s mandate in Section 3 of the Order Setting Procedural Schedule: “The parties shall comply with the following procedural requirements: ... (d) Briefs shall follow the same list of issues as filed in the case ....”<sup>12</sup> OPC’s contention that the list of issues filed by the parties (including OPC) “does not put the remaining issues in this case in an order that is conducive to sound legal analysis” and it “will not address them in the same order that they are presented in that list of issues” is troubling.<sup>13</sup> Given

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<sup>7</sup> Staff Brief at 17-20. OPC similarly attacked Evergy Missouri West’s IRP efforts and LCOE analysis. See OPC Initial Brief at 4.

<sup>8</sup> State ex rel. Util. Consumers Council of Mo., Inc. v. PSC, 585 S.W.2d 41, 49, 56 (Mo. en banc 1979).

<sup>9</sup> Staff Initial Brief at 4, 6, 10-11 (references to “rate base” and “rates”).

<sup>10</sup> Staff Initial Brief at 5 (“true costs”), 19 (“total costs”).

<sup>11</sup> Tr. 175-76 (Messamore). Ms. Messamore testified that offering a resource into the market such that all fixed costs, including return of capital, are recovered is not permitted under the FERC market rules. She illustrated this point in a confidential chart regarding the costs and revenues of EMW’s generating assets. See Ex. 9 & 9(C) at 19-20.

<sup>12</sup> Order Setting Procedural Schedule at 3 ( Dec. 8, 2022) (emphasis added).

<sup>13</sup> OPC Initial Brief at 5 (“Guide to the Brief”).

OPC's failure to comply with the Order, it would not be inappropriate for the Commission to take action.<sup>14</sup>

OPC's reference to customers being "stuck scrubbing the red from their books"<sup>15</sup> when its witness Ms. Mantle acknowledged that EMW's rates are lower than its affiliate Evergy Metro<sup>16</sup> is nonsensical. If this reference is to the volatile wholesale energy markets and costs passed to customers through the fuel adjustment clause, then OPC should welcome the Company's proposal to add Persimmon Creek to its generation assets as a first step to remedy this situation.

The tiresome references by OPC to "captive customers" fail to recognize Missouri's regulatory compact where utilities' rates, capital structure, and cost of capital are set by the Commission pursuant to Sections 393.130-140 and 393.150. There's also an odd reference to the "shareholders at GSQ" which is out of place.<sup>17</sup>

OPC's continuing reference to EMW's purchased power agreements ("PPAs")<sup>18</sup> that were found to have been prudent<sup>19</sup> when they were entered into in 2015 after EPA's announcement of the Clean Power Plan in 2014 has no relevance to this CCN case. It is also surprising that OPC opposes the Company's efforts to broaden its generation portfolio with a variety of resources that reflect the "holistic view of its fleet" that OPC purports to favor<sup>20</sup> and to acquire a quality asset like Persimmon Creek, as it moves away from reliance on PPAs and the volatile wholesale energy markets. Both OPC and Staff fail to grasp that Persimmon Creek is a "first step" in a "multi-part

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<sup>14</sup> See 20 CSR 4220-2.080(12) ("... briefs which are not in substantial compliance with this rule, applicable statutes or commission orders may not be accepted for filing ....").

<sup>15</sup> OPC Initial Brief at 3.

<sup>16</sup> Tr. 344 (Mantle).

<sup>17</sup> OPC Initial Brief at 22. GSQ is the symbol of Gamesquare Esports Inc. which is traded on the Canadian Stock Exchange. See [www.Bloomberg.com/quote/GSQ:CN](http://www.Bloomberg.com/quote/GSQ:CN).

<sup>18</sup> OPC Initial Brief at 1, 4, 7, 13, 24.

<sup>19</sup> In re Eighth Prudence Review of FAC Costs of KCP&L Greater Mo. Operations Co., Report & Order at 15-18, 26-27 (No. EO-2019-0067) (Nov. 6, 2019). See Ex. 5 at 2-4 (Crawford Direct) & Ex. 101 at 14 (Mantle Rebuttal), Id.

<sup>20</sup> OPC Initial Brief at 19.

plan” to use a variety of resources, renewable and conventional, to manage customer risk as part of an “integrated generating portfolio” that is called for by the Commission’s IRP process. See Ex. 8 at 22 (Humphrey Surrebuttal); Ex. 6 at 17 (Messamore Supp. Direct); Ex. 9 at 21-22 (Messamore Surrebuttal).

Given the substantial evidence supporting positive findings under the Tartan factors, as well as Sections 393.170 and 393.190, the Application should be granted.

**II. Does the evidence establish that granting an Operating Certificate of Convenience and Necessity (“CCN”) to Evergy Missouri West to own, operate, and maintain the wind generation facility located in Woodward, Ellis and Dewey Counties in Oklahoma (“Persimmon Creek” or the “Project”) is necessary or convenient for the public service, pursuant to Section 393.170(2)-(3) and 20 CSR 4240-20.045(2)-K(3)?**

1. Does the Evidence establish that there is a Need for EMW to operate Persimmon Creek?

Yes. None of the arguments of Staff and OPC detract from the need for Evergy Missouri West to acquire and operate Persimmon Creek to address the long-term capacity and economic energy needs of its customers.

Staff can’t seem to make up its mind whether EMW has a capacity need. On the one hand, it concedes that SPP’s reserve margin requirements have increased and will likely increase in the future. See Staff Brief at 6, 10, 15-16. However, Staff’s frequent reference to an “alleged capacity need”<sup>21</sup> and in one passage denying a capacity need altogether<sup>22</sup> shows that it is in denial about what the Company, SPP, Renew Missouri,<sup>23</sup> this Commission,<sup>24</sup> and even OPC’s Ms. Mantle<sup>25</sup> believe is a need that EMW must fill.

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<sup>21</sup> Staff Initial Brief at 4, 6, 8, 12, 28 (references to “alleged” capacity need).

<sup>22</sup> Id. at 5.

<sup>23</sup> Renew Missouri Initial Brief at 9-10.

<sup>24</sup> See Amended Report & Order at 30, In re Evergy Mo. West Application for Financing Order, No. EF-2022-0155 (Nov. 17, 2022).

<sup>25</sup> Tr. 281. Ms. Mantle stated that “wind is a great resource,” and “if Evergy West had that generation that was dispatchable, then wind is a great addition.” The evidence is that Evergy Missouri West is evaluating dispatchable resources as it moves forward with its resource acquisition plan. See Ex. 108(C) at 7-8; Tr. 182-83, 199 (Messamore:

The Company presented evidence that while Persimmon Creek is conservatively expected to provide 20 MW of accredited capacity, its net capacity factor over four years of operation beginning in 2018 is approximately 50%.<sup>26</sup> Although Staff belittles EMW's reliance on historical data, it only countered with estimates of future performance,<sup>27</sup> without taking into consideration the fact that Persimmon Creek was judged in a study by an independent expert to have the best transmission path in all scenarios evaluated through 2028<sup>28</sup> and, of course, no interconnection risk because it has been connected to the SPP grid since 2018. As Ms. Messamore explained, this study, "a production cost model factoring in transmission topology and changes over time," concluded that "Persimmon Creek was the best option from a deliverability and ... a congestion risk" perspective "between the [generating] node and the Missouri West load."<sup>29</sup> Staff also failed to consider the transmission projects that are now underway in Oklahoma, Kansas and Missouri, and that are planned on the SPP/MISO seams that will reduce congestion and negative pricing.<sup>30</sup>

Moreover, the Company's ownership of Persimmon Creek will allow EMW to take advantage of new technologies, including battery storage, to provide capacity at a much higher level in the future, as well as today, given that short-term "summer capacity that could have been purchased for \$4-\$8 per kW/season 3 to 4 years ago is now priced in the range of \$16-\$18 per kW season."<sup>31</sup> The evidence is clear that there is a need for capacity by Evergy Missouri West, especially in light of SPP's increase of its planning reserve margin requirement from 12% to 15%,<sup>32</sup> and the position of all parties that the Company must reduce its reliance on the SPP energy markets.

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"In our current resource plan it's a mix of wind and thermal and capacity contracts, market capacity contracts, as well as wind").

<sup>26</sup> Ex. 8 & 8(C) at 21-22 (Humphrey Surrebuttal); Tr. 124, 129 (Humphrey); Tr. 167-68 (Messamore).

<sup>27</sup> Staff Initial Brief at 5, citing Tr. 474 (Luebbert).

<sup>28</sup> Ex. 5 & 5(C) at 19 & Sched. JH-11(C) (Humphrey Supp. Direct).

<sup>29</sup> Tr. 176 (Messamore); Tr. 119-20 (Humphrey: battery technology).

<sup>30</sup> Tr. 176-77 (Messamore).

<sup>31</sup> Ex. 9 & 9(C) at 33 (Messamore Surrebuttal).

<sup>32</sup> Ex. 6 at 5 (Messamore Supp. Direct); Ex. 9 & 9(C) at 8-11 (Messamore Surrebuttal).

Staff also denies that the Company’s ownership of Persimmon Creek will fulfill its need for economic energy in the SPP markets. See Staff Brief at 21-22, 28. This contention demonstrates Staff’s failure to understand that EMW’s “need is for economic generation sources to mitigate exposure to market energy costs” in the volatile SPP wholesale market which it has depended on for many years. See Ex. 6 & 6(C) at 5 (Messamore Supp. Direct). Ms. Messamore explained that “Persimmon Creek will offer SPP margins to meet EMW’s need for economic energy,” citing *confidential* revenues through October 2022 (which Mr. Humphrey updated during the evidentiary hearing during the February 21 *in camera* session). Ms. Messamore concluded: “If this resource had been in EMW’s portfolio this year [2022], these margins would have reduced EMW’s annual fuel and purchased power costs over the same time period by 3%.”<sup>33</sup>

However, Staff’s evidence fails to comprehend this benefit, confusing it with the provision of physical electrons that are always available from the SPP energy market, unless affected by transmission constraints, or by an SPP system-wide shortage, either of which could be caused by an external event such as a blizzard, another weather event, or some other disruption.<sup>34</sup> As Ms. Messamore testified: “Staff implies that a financial need for energy is not a legitimate need, given its focus on physical needs for energy.”<sup>35</sup> Given its annual generation of 875,000 MWh, Persimmon Creek will *reduce* EMW’s typical net short position of near 3.9 million MWh by 23%.<sup>36</sup> Even with Staff’s pessimistic adjusted capacity factor which assumes the wind farm is curtailed at all negative prices when it is no longer PTC-eligible in 2028, the wind farm would *still reduce* this net short position by 15%.<sup>37</sup>

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<sup>33</sup> Ex. 6 & 6(C) at 20 (Messamore Supp. Direct); Tr.(C) 105-06 (Humphrey).

<sup>34</sup> Ex. 9 at 10-11 (Messamore Surrebuttal).

<sup>35</sup> Id. at 12 (Messamore Surrebuttal).

<sup>36</sup> Id. at 13.

<sup>37</sup> Id.



Staff's failure to appreciate the economic benefits that Persimmon Creek's energy production will provide to the Company is illustrated by its citation to the testimony of EMW outside expert witness John Reed who testified on prudence issues in the 2022 Financing Order case under the new Securitization Law.<sup>38</sup> In response to a question from the Bench, Mr. Reed stated that a load-serving entity like Evergy Missouri West "buys all of [its] needs from SPP whether you're long or short of generation ... which doesn't affect reliability. Reliability comes from the transmission reliability to get the power from SPP to the distribution system." See Ex. 107 at 6 (Tr. 260).

What Mr. Reed did not testify about was the *economic* cost to secure the power which is what Ms. Messamore stressed is the benefit that Persimmon Creek provides, both as an owned asset and as a participant in the SPP energy market. The Commission recognized this critical difference when it noted that if EMW "had more capacity available to sell into the SPP market during Winter Storm Uri, it could have earned enough from those sales to offset the fuel costs that it now seeks to securitize."<sup>39</sup> If EMW's proposal to acquire, own and operate Persimmon Creek is approved, it will reduce the Company's reliance on the unpredictable wholesale energy markets and its exposure to high prices. It is an essential element of the EMW's plan to meet both its energy and capacity needs. See Ex. 9 at 15, 20-22 (Messamore Surrebuttal). Persimmon Creek's excellent performance during Winter Storm Elliott in mid-December 2022, as well as that of wind generally, is evidence of the benefits that it can provide.<sup>40</sup>

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<sup>38</sup> Staff Brief at 11, citing Ex. 107, an excerpt of the oral testimony of Mr. Reed, EMW's prudence witness. See Amended Report & Order, In re Evergy Mo. West Application for Financing Order, No. EF-2022-0155 (Nov. 17, 2022).

<sup>39</sup> See Amended Report & Order at 33, In re Evergy Mo. West Application for a Financing Order, No. EF-2022-0155 (Nov. 17, 2022), *quoting* Amended Report & Order at 33, In re Empire Dist. Elec. Co. Petition for a Financing Order, No. EO-2022-0040 (Sept. 22, 2022). The Commission noted that its "analysis in Liberty's securitization case is equally applicable here." Id.

<sup>40</sup> Tr. 148, 202-07 (Messamore); Ex. 12 (SPP Report on Winter Storm Elliott).

Finally, Staff criticizes Persimmon Creek’s ability to serve as a hedge against high energy prices,<sup>41</sup> while overlooking its role in providing a hedge that EMW does not currently possess and fitting into a program of hedges that will help insulate customers from market volatility. Ms. Messamore testified that the IRP considers the fact that wind production is typically not the “highest when load and market prices are highest” in its “analysis of potential revenues and thus the economic benefits of this project.”<sup>42</sup> She explained in her Surrebuttal Testimony that wind, solar, natural gas and other resources all “play a role in managing risk for customers as part of an overall integrated generating portfolio called for by the Commission’s IRP process.”<sup>43</sup>

Responding to Staff’s and OPC’s view that natural gas resources are the solution, Ms. Messamore stated in response to Chairman Rupp’s inquiry that gas is “not a great energy hedge because you essentially move your exposure ... from the wholesale [energy] market to gas prices for the actual fuel ...”<sup>44</sup> By contrast, because wind energy “has no marginal cost” as a zero-cost fuel resource, “as long as the wind is blowing and your prices are above your short-run marginal cost, which for wind is going to be [the] negative grossed up value of PTC, the wind will be dispatched, [and] you’re not as dependent on the [gas] commodity price.”<sup>45</sup> As a result, “there’s a much larger margin opportunity whereas with a gas generator you’re wholly dependent” on its marginal costs, including “your exposure ... to gas prices for the actual fuel ...” See Tr. 181:20-23 to 182:6 (Messamore).

Ms. Messamore added that although natural gas prices have recently declined, “the latest ten-year futures I’ve seen still had gas in the \$3.60 to \$4.00 MMBtu [range] on average” and “higher than

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<sup>41</sup> Staff Initial Brief at 12-14.

<sup>42</sup> Ex. 9 at 21 (Messamore Surrebuttal).

<sup>43</sup> Id. at 21-22.

<sup>44</sup> Tr. 182:4-6 (Messamore).

<sup>45</sup> Tr. 181:20, 182:10-14 (Messamore).

what we'd seen back in 2019 and 2020."<sup>46</sup> She noted that the U.S. Energy Information Administration still considers gas prices to be "volatile."<sup>47</sup>

In its attack on the Company's IRP reports, Staff and OPC accuse Evergy Missouri West of presenting data that "exaggerate the capacity need" (Staff Brief at 10) or that "manipulated" the IRP process to choose a particular asset (OPC Brief at 4, 17). Staff's questions to Ms. Mantle regarding the chart on page 10 of Ms. Messamore's Surrebuttal, which Staff considers an "exaggeration," clearly indicate the Company's capacity need under three specific scenarios, just as it did on the previous page 9 where it assessed EMW and Evergy Metro on a combined basis. The three variables on each chart are (a) "No New Supply-Side Resources," (b) "Updated [SPP] Planning Reserve Margin (15%)," and (c) "Exclude New Demand-Side Management."<sup>48</sup> Each chart contains an explanation of how they were developed. In EMW's case the chart shows the Company's capacity sale of 325 MW from Evergy Metro with no new supply-side resource additions added, demonstrating both its "imminent and long-term capacity need."<sup>49</sup>

The suggestion that the Company has "manipulated" its IRP analysis and process is unfounded. As EMW has explained throughout this case, the manual adjustments to the first three years of the 2022 IRP annual update were fully documented and supported.<sup>50</sup> Ms. Messamore testified that "any such adjustments in future IRPs will also be described and supported," consistent with the IRP Rule's requirements for changes in plans to be updated.<sup>51</sup> "This hybrid approach of both discrete, manual moves and capacity expansion modeling is likely to be valuable in future IRPs" as EMW strives "to

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<sup>46</sup> Tr. 180:14-20 (Messamore).

<sup>47</sup> Tr. 201:9-10 (Messamore). See EIA Short-Term Energy Outlook at 7 (Feb. 2023) ("Natural gas prices remain very volatile.").

<sup>48</sup> Ex. 9 at 9-10 (Messamore Surrebuttal).

<sup>49</sup> Id. at 10.

<sup>50</sup> Id. at 25 (Messamore Surrebuttal).

<sup>51</sup> Id.

blend knowledge of more specific projects ... with more general market knowledge in later time periods.”<sup>52</sup>

Without the Persimmon Creek wind farm, EMW will remain in the same position of need where it is today and its exposure to the volatile wholesale energy market will continue. Although Evergy agrees that Persimmon Creek does not resolve all the Company’s capacity needs and does not provide a consistent energy hedge during all peak hours, it will supply a capacity need it currently lacks and will provide an energy hedge that it does not have. There is no assurance that any future project would be any better, particularly at the price that Evergy Missouri West has negotiated for the wind farm.<sup>53</sup>

Persimmon Creek is a critical step in EMW’s plans to meet its customers’ long-term energy and capacity needs in an overall integrated resource plan that avoids multiple risks posed by the energy markets, transmission interconnection delays, and the cost of future renewable resources.<sup>54</sup> As Mr. Humphrey noted in response to Commissioner Holsman’s question, the cost of a new project today would likely be 40% higher than the cost of acquiring Persimmon Creek, based on publicly available information.<sup>55</sup>

Staff’s narrow approach to the Tartan need factor, which is echoed by OPC, must be rejected if Evergy is to move responsibly forward as part of the national transition from older fossil-fuel generating units to renewable energy and other advanced solutions like battery storage.

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<sup>52</sup> Ex. 6 at 18 (Messamore Supp. Direct).

<sup>53</sup> Ex. 6 at 3 (Messamore Supp. Direct); Ex. 9 at 15 (Messamore Surrebuttal).

<sup>54</sup> Ex. 6 at 6 (Messamore Supp. Direct); Ex. 9 at 32-34 (Messamore Surrebuttal).

<sup>55</sup> Tr. 122-23 (Humphrey). See Ex. 5 & 5(C) at 18 (Humphrey Supp. Direct) (citing the construction cost of an American Electric Power Co. agreement for a combined wind and solar unit). OPC did not disagree. See Tr. 239 (OPC’s Jordan Seaver: “I don’t have a reason to doubt that [40% figure] ....”).

Given Staff's agreement that EMW has the financial ability and the qualifications to operate Persimmon Creek<sup>56</sup> under the second and third Tartan factors, the Company will move to the fourth factor of economic feasibility.

2. Is EMW's proposed operation of Persimmon Creek economically feasible?

Yes. Nothing in the initial briefs of Staff or OPC refute the facts which show that Evergy Missouri West's decision to add Persimmon Creek to its resources is economically feasible under the standards set by the Commission's prior decisions.

Staff's and OPC's initial briefs are glaringly anti-wind energy, anti-renewable resource, and anti-Integrated Resource Planning. They ignore both the Missouri regulatory utility compact and the realities of the SPP Integrated Marketplace, as well as the evidence provided by the Company.

First, Staff's strawman attempts to mischaracterize EMW's decision-making process and underpinning analyses fall flat. Staff has overlooked significant portions of EMW's testimony that go beyond the favorable results of its IRP reports, the LCOE analysis, and the cost-per-kW of nameplate capacity in selecting Persimmon Creek. However, even if the results of these three standards were the only support for the economic feasibility for Persimmon Creek, they more than satisfy the economic feasibility test. The IRP results established that Persimmon Creek would provide \$130 million in cost savings to customers. Persimmon Creek also boasted the lowest LCOE and cost-per-kW compared with all other available projects in the arms-length, competitive request for proposal ("RFP") process. These are more than enough to satisfy the fourth Tartan factor.

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<sup>56</sup> Staff Initial Brief at 14.

As Missouri appellate courts and this Commission have repeatedly held, “economic feasibility” may be shown even where a “plant is not currently needed to supplement [a utility’s] load capacity” (unlike Persimmon Creek), “is not the least-cost alternative” (unlike Persimmon Creek), and “is not needed to comply with current environmental regulatory requirements.”<sup>57</sup> The Commission’s CCN decisions based on the value of wind generation have been recognized by the courts.<sup>58</sup> And, the Commission has undisputedly described the LCOE analysis as “the best financial technique to compare different energy generation sources.”<sup>59</sup>

Indeed, an Operating CCN does not and was not meant to present an onerous burden for a utility to meet, which EMW amply has for Persimmon Creek (a relatively small project compared to Evergy’s operations as a whole). See Report & Order at 35, In re Application of KCP&L Greater Mo. Operations Co. for a CCN, No. EA-2009-0118, (Mar. 18, 2009) (approving CCN for South Harper plant, noting that “[t]he Facilities provide sufficient additional service to justify their cost, and the inconvenience of GMO not having them is sufficient to arise to the level of them being necessities.”); Report & Order at 7, In re Application of Ozark Energy Partners, LLC for a CCN, No. GA-2006-0561 (“Whether the proposal is economically feasible is a test better used in obtaining financing. The Commission finds that its discussion in this regard is better suited for discussion regarding Ozark’s ability to obtain financing and reserves its findings for that context. Securing financing would be overwhelming evidence that the proposal is economically feasible.”); Report & Order, In re Empire Dist. Elec. Co., No. EA-99-172, 2000 WL 228658 at 5 (Feb. 17,

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<sup>57</sup> United for Missouri v. PSC, 515 S.W.3d 754, 764 (Mo. App. W.D. 2016) (approving Greenwood solar CCN). See Report & Order at 18, In re Union Elec. Co. CCN Application for a Distributed Solar Pilot Program, No. EA-2016-0208 (Dec. 21, 2016) (“While the immediate benefits to Ameren Missouri and its ratepayers are not easily quantifiable, in light of the need for additional solar generation in the future, it is likely that those future cost savings will be substantial.”).

<sup>58</sup> Missouri Landowners Alliance v. PSC, 593 S.W.3d 632, 643 (Mo. App. E.D. 2019) (citing “testimony about the economic feasibility of producing inexpensive wind energy” to support affirming PSC’s grant of a CCN).

<sup>59</sup> Report & Order on Remand at 26, In re Grain Belt Express Clean Line LLC, No. EA-2016-0358 (Mar. 20, 2019).

2000) (in noting that the economic feasibility standard was satisfied, “A utility’s customers and the public could be harmed if the utility jumped into a project that would be a financial drain on the company. . . . In this case, Empire’s possible expansion is a very small project for a rather large utility.”).

Although such showing abundantly demonstrates Persimmon Creek’s economic feasibility, EMW does not just rely on Persimmon Creek’s value as the lowest LCOE, lowest cost/kW, and providing \$130 million in benefits to ratepayers. Persimmon Creek is also attractive compared to other alternative projects from a permitting and supply chain perspective because it is already operating with the lowest congestion risk for delivery of energy to Missouri customers. See Ex. 8/8C at 20-21 (Humphrey Surrebuttal). As Ms. Messamore explained, there are “several ongoing transmission projects that continue to improve that [congestion risk] position over time.” Tr. 176-77. These include the Sooner to Wekiwa transmission project in Oklahoma, the Wolf Creek to Blackberry project in Kansas and Missouri, and “the joint targeted interconnection queue [projects] that SPP is performing with MISO [which] will be a help as well.” Tr. 177.<sup>60</sup>

Moreover, high-capacity factor wind generation from western Oklahoma is one of the cheapest forms of renewable energy in the United States. See Ex. 7 at 13 (Dority Surrebuttal). Persimmon Creek is in the western Oklahoma wind corridor, which provides geographic diversity from EMW’s wind and other resources located in eastern and western Kansas and western Missouri. While the Project can provide both capacity and energy today to EMW without firm transmission service, the benefit of firm service would be potentially higher capacity accreditation

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<sup>60</sup> Ms. Messamore added: These projects weren’t “factored into the assessment of Persimmon Creek and really doesn’t impact it, but I do think that SPP is making good progress on starting to identify transmission solutions to this congestion and that’s . . . why we use SPP’s transmission models as the basis for our market prices so we know what they’re planning to implement and how they’re planning to expand transmission capacity and know what impact that has on locational prices in our model.” Tr. 177.

for the resource and allocated congestion hedging rights. See Ex. 6/6C at 29 (Messamore Supp. Direct). Evergy will also own Persimmon Creek and control its future operations. See Ex. 8 at 3 (Humphrey Surrebuttal); Tr. 119-20 (Humphrey). In addition, Persimmon Creek is one of the most advanced and efficient wind generating facilities now in operation since 2018, with a proven operational aggregate net capacity factor (“NCF”) of approximately 50% over the past four years. Id. at 21-23; Ex. 2/2C, Humphrey Direct at 6-8.

Staff and OPC fail to rebut the above record evidence (all of which again surpasses the fourth Tartan factor’s requirements), resorting instead to criticizing Persimmon Creek’s current capacity accreditation. See Staff Initial Brief at 15-16; OPC Initial Brief at 13-15. This argument is belied by the record evidence that EMW nonetheless has capacity and energy need that Persimmon Creek will undeniably partially satisfy,<sup>61</sup> and that EMW’s ownership of the Project allows opportunities to raise its accreditation capacity (as noted above). Furthermore, Staff and OPC already conceded that EMW needs more owned capacity and generation. See Tr. at 227:8-22 (Seaver); Tr. at 257:7-14. See also Ex. 100/100C at 3 (Eubanks Rebuttal) and Tr. 384:13-25 (Fortson) (both agreeing that on a stand-alone basis, EMW has a capacity need).

The same is true for Staff’s and OPC’s red herring arguments about whether wind will provide a good market hedge, whether there exists some other unidentified project that could somehow be better than Persimmon Creek, and the IRP process. As for whether market hedges are viable when supply and other costs are indisputably volatile, Staff agrees that like Persimmon Creek, even “natural gas utilities are encouraged sometimes to hedge so that there’s not so much volatility in

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<sup>61</sup> See Ex. 9/9C, Messamore Surrebuttal at 3-4 (“Stating that something is not needed simply because it does not completely fulfill the full need is illogical. Persimmon Creek is simply a step in executing the long-term plan necessary to responsibly transition from the use of fossil fuels to low- or non-emitting resources over time. Staff’s assertion that EMW should not make this step because Persimmon Creek does not fully satisfy the full need essentially guarantees that EMW’s only option is to do nothing. Adding new generation capacity in increments has been a long-standing accepted approach in Missouri, as well as in the electric utility industry generally.”).



their supply costs.” See Tr. at 424:3-12 (Eubanks: Agreeing that “most of the time it’s a cost of keeping that like you have house insurance, you make sure you have house insurance so that if the worst happens, you’re not terribly hurt”).<sup>62</sup>

Staff’s and OPC’s conjecture about other projects or resources is likewise baseless. In Confidential Schedule JH-11 to Mr. Humphrey’s Surrebuttal testimony, an independent consultant that Staff agreed was credible (Tr. 356:9-21) evaluated all three concerns that Mr. Luebbert identified outside the LCOE analysis (curtailment risk, transmission risk, and market revenues) for the short-listed projects in the RFP. See Ex. 8/8C at 19-20 (Humphrey Surrebuttal). The study showed that Persimmon Creek additionally offered *the least curtailment risk, the least transmission risk, and the most market revenue* for the Company in each of the three future years that were studied.<sup>63</sup> While Mr. Luebbert presented unsupported hypotheticals, Staff never disputed (and tellingly ignored) that this analysis from a respected independent consultant shows that Persimmon Creek offers EMW’s customers the least risky investment even in light of Mr. Luebbert’s concerns. This analysis, combined with the LCOE analysis, established that despite future market conditions, Persimmon Creek is economically feasible and will benefit EMW’s customers.

The Inflation Reduction Act (“IRA”), which became law on August 16, 2022 (the week after EMW signed the agreement to purchase the Project), does not change the economics of Persimmon Creek as it already receives 100% of the PTCs as would a new wind resource. Persimmon Creek

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<sup>62</sup> See Ex. 9/9C, Messamore Surrebuttal at 20-22 (“Because Persimmon Creek would provide both capacity and an energy market cost hedge, the benefits of this hedge or ‘insurance policy’ are also not directly reflected in the energy market revenues. Stating that a hedge is only valid when it generates net profits in a single scenario built on recent history completely misses the value of a hedge. There is no such thing as a free hedge or a hedge that is guaranteed to be profitable. Hedges are insurance policies which mitigate the impact of negative events, namely customer bill volatility. In the case of Persimmon Creek, adding this energy resource helps to mitigate the price volatility (that directly impacts customer bills) which Staff acknowledges is likely to increase over time.”).

<sup>63</sup> The years studied were 2025, 2026 and 2028. See Ex. 5 & 5(C) at 19 & Confid. Sched. 11 (Humphrey Supp. Direct).

is not affected by logistics or the effects of inflation on construction and procurement costs. See Ex. 5/5C at 12-17 (Humphrey Supp. Direct) & Confid. Sched. JH-8. Comparing Persimmon Creek with other projects that are likely eligible for IRA treatment shows that Persimmon Creek is currently and is likely to remain the lowest cost option to meet the needs of EMW’s customers. See Ex. 5/5C at 18-21 (Humphrey Supp. Direct). Mr. Humphrey concluded that “Persimmon Creek is still the right decision for EMW at this time, given its cost of \$1,250/KW compared with comparable wind and solar projects whose costs are about twice as much.” Id. at 18, 21.

Staff and OPC next appear to disparage the Commission’s IRP rules, suggesting that the Company’s undisputed compliance with them is untrustworthy. In addition to the evidence establishing that Persimmon Creek will be a beneficial resource for EMW and its ratepayers, Ms. Messamore described how the IRP process for Evergy Missouri West identified a Preferred Plan with wind that results in reduced costs for EMW customers over time compared to alternative resource plans. In her Supplemental Direct Testimony, she provided more detail related to the 2021 IRP demonstrated savings, the 2022 Annual Update, and the subsequently updated Preferred Plan. See Ex. 6/6C at 5 (Messamore Supp. Direct). When updated with Persimmon Creek, as opposed to a generic wind resource used in the 2022 IRP, the results showed a total of \$130 million in savings to customers, compared to a plan with no new wind additions. See Ex. 6/6C at 17-21 (Messamore Supp. Direct). Staff’s and OPC’s apparent dissatisfaction with the Commission’s IRP Rules has no proper place in this proceeding, and their seeming disapproval of EMW’s updating its IRP once Persimmon Creek was identified is entirely illogical. See, e.g., Staff Initial Brief at 9-10; OPC Initial Brief at 15-16 (declaring without citation to the record or legal authority: “It is difficult to see how the Company can adequately choose a 20-year generation asset based off of a planning method that changes at least annually, if not multiple times a year.”).

Staff and OPC finally speculate that the Project may not cover its costs. This is really Staff's and OPC's thesis—that absent a Renewable Energy Standard (“RES”) compliance obligation or other regulatory mandate, and regardless of the unknowable future wholesale market, the Commission should never grant a CCN (not even an Operating CCN, which has the lowest threshold in the Commission's CCN Rules to meet) unless a company can prove revenues of a given project/asset will always exceed its own anticipated total costs. See Tr. at 270:18-272:20 (Mantle); *id.* at 476:1-478:25 (Luebbert). Contrary to Staff's and OPC's unprecedented arguments, the fourth Tartan factor was never intended to be, never has been, and never should be an impossible “crystal ball” standard that neither EMW nor any other utility could satisfy. As Ms. Mantle acknowledged, “[n]obody has that crystal ball” to know what energy market revenues are going to be in the future.<sup>64</sup>

Staff's and OPC's unusual stance that SPP revenues and tax credits must be expected to recover all of a plant's costs before a CCN may be granted is inconsistent with the Commission's previous standards for granting a CCN and completely inconsistent with ratemaking under Chapter 393. In rate cases in which new power plants are placed in an electrical corporation's rate base, RTO revenues, off-system sales, and/or wholesale revenues have been used as an offset to the cost of the plant, but in such cases the rates to customers have always increased in spite of the offsetting revenues from these sources.<sup>65</sup> There is a cost to customers to have resources to support their capacity needs and to offset the cost of market energy. This is the heart of the regulatory compact where the obligation on the electric utility to serve the public with safe and adequate service under Section 393.130.1 allows the utility to charge just and reasonable rates approved by the Commission. As Missouri courts have recognized for almost 100 years, “the ratemaking

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<sup>64</sup> Tr. 271 (Mantle).

<sup>65</sup> See EMW Initial Brief at 4, n.4 (past Commission decisions).

function must provide sufficient income to cover the utility's operating expenses and debt service . . . to assure confidence in the continued financial services of the business[.]”<sup>66</sup>

By contrast, the SPP Integrated Market is not and can never reasonably be expected to offset with its revenues the all-in cost of a regulated utility providing service to customers. See Ex. 9 at 19 (Messamore Surrebuttal). No utility regulated by the Commission is required to provide capacity support and energy to retail customers at a financial loss. Rather, the SPP Integrated Market is designed to recover the marginal cost of providing energy to the market through revenues to cover the variable costs to produce energy. In fact, as Ms. Messamore testified, utilities are not allowed by SPP market rules to build fixed cost recovery into their market offers. See Ex. 9 at 19. In none of these rate cases have customers' rates gone down as a result of the inclusion of the new power plants in rates, as would be expected if the Staff's and OPC's approach in this case was required before the new plant could be constructed and/or operated. Staff's and OPC's overly narrow view would put customers at risk, exposing them to rely only on the wholesale market to meet long-term needs.

As Ms. Messamore explained: “If Staff's [and OPC's] position is adopted for Persimmon Creek or as a guiding principle for other resource procurements, there will be no realistic options available to meet EMW's current and increasing future needs, leaving EMW's customers exposed to rely only on the wholesale market to meet these needs for the long-term. Such an outcome would likely increase both the cost and volatility of customers' electricity bills which would not be in the public interest.” See Ex. 9/9C at 2 (Messamore Surrebuttal).

As this Commission is also well aware, Staff's and OPC's position indeed violates the traditional regulatory construct in Missouri. Customers under Missouri law and customary

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<sup>66</sup> See Aquila, Inc. v. PSC, 326 S.W.3d 20, 31 (Mo. App. W.D. 2010); State ex rel. Washington Univ. v. PSC, 272 S.W. 971, 973 (Mo. en banc 1925).

practice pay for the cost of providing service to them. See Ex. 7 at 19 (Dority Surrebuttal at 19); State ex rel. Harline v. PSC, 343 S.W.2d 177, 181 (Mo. App. W.D. 1960) (“The company had the legal duty to serve the public in the certificated Jackson County area. . . . The Jackson County franchise implies an obligation to serve the public in return for the privileges granted by it. The certificate of convenience and necessity is a mandate to serve the area covered by it, because it is the utility’s duty, within reasonable limitations, to serve all persons in an area it has undertaken to serve.”). Shareholders provide the capital for the service and are entitled to the opportunity to earn a reasonable return on their investments. Id. The Commission regulates the public utility in a manner that fairly weighs the interests of, and risks to, both customers and shareholders. Id. Neither the minimal requirements for Operating CCNs in Section (5) of the CCN Rule nor the Tartan factors change this historical balance between utilities and their ratepayers.

Staff’s and OPC’s approach must be rejected if the Commission desires to move forward with transitioning Evergy’s generation portfolio from old fossil-fueled units to newer, clean renewable technologies such as wind and solar generation. As noted above: “The public policy of the state to conserve natural resources and pursue renewable energy sources is reflected in Missouri’s RES.”<sup>67</sup> Adopted by Initiative Proposition C in 2008, the renewable energy standard is reflected in Section 393.1020-.1030. The economic feasibility of Persimmon Creek is buttressed by this demonstrated state policy of pursuing renewable energy sources, along with the PISA and Securitization statutes, and the public’s demonstrated interest in such resources.

This fourth Tartan factor is unquestionably met.

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<sup>67</sup> United for Missouri v. PSC, 515 S.W.3d 754, 763-64 (Mo. App. W.D. 2016) (noting the “enthusiasm” expressed by the customers of GMO, now EMW, for renewable resources).

### III. Does EMW's proposed operation of Persimmon Creek promote the public interest?

As the Company has explained in its Initial Brief at 26-29, it is in the public interest for the Commission to grant an operating CCN for Persimmon Creek. The requirement that an applicant's proposal promote the public interest is in essence a conclusory finding as there is no specific definition of what constitutes the public interest. Generally speaking, positive findings with respect to the other four Tartan standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest.<sup>68</sup>

EMW's proposed Project meets the four Tartan factors of (1) Need, (2) Operational Qualifications, (3) Financial Capability<sup>69</sup>, and (4) Economic Feasibility. As a result, these positive findings will support a finding that the application for a CCN will promote the public interest. However, as EMW specified in its initial brief (EMW Brief at 26-27), the competent and substantial evidence in the record also supports more specific findings that the CCN will promote the public interest. (Tr. 18-20, 26-27, 87)

Staff and OPC raised a few points in their briefs related to the public interest standard that need to be addressed.

#### 1. Response to Public Counsel

First, OPC raises a "red flag" because the proposed Persimmon Creek transaction even exists. OPC speculates that the reason that Persimmon Creek is available for purchase is its owners are "not making money." (OPC Brief at 21) However, OPC cites no evidence to support its speculation, and its witness Ms. Mantle conceded: "I don't know all about the company" that owns Persimmon Creek.<sup>70</sup>

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<sup>68</sup> In re Tartan Energy Co., 1994 Mo. PSC LEXIS 26 at \*40-46, 1994 WL 762882 at \*13-14, No. GA-94-127 (1994).

<sup>69</sup> Staff's Initial Brief (p. 14) states that EMW meets condition (2) Operational Qualifications and (3) Financial Capability.

<sup>70</sup> Tr. 346:7 (Mantle). The Bench sustained subsequent objections to Ms. Mantle's testimony, based on her lack of knowledge ("I think the witness just said she wasn't familiar with the company that was selling [Persimmon Creek].").

Whatever the reason that the current owners are selling this valuable generating resource, it is fortunate for EMW and its customers that this asset is currently available for purchase. As EMW has already explained, Persimmon Creek is an extremely valuable renewable option in that it: (1) Generates low-cost wind energy with an operational net capacity factor of approximately 50% with no known environmental issues; (2) Presents no risk of permitting disputes, supply chain delays, and rising construction costs; (3) Adds a geographically diverse physical asset to EMW's generation portfolio that presents opportunities related to battery storage and other options; (4) Is 100% production tax credit qualified, with six qualifying years remaining on its 20-year depreciable life; and (5) Will immediately provide benefits of capacity, energy, and an energy market cost hedge, with its revenues flowing to ratepayers under the FAC.<sup>71</sup> Furthermore, compared to available alternatives, Persimmon Creek offers the least curtailment risk and the least transmission risk to EMW, and the most market revenue in all scenarios that were studied.<sup>72</sup> The Commission Staff and OPC have not disputed these underlying supporting facts which make Persimmon Creek a very attractive option for EMW and its customers.

Perhaps most importantly, the purchase of Persimmon Creek reduces the expected net present value of revenue requirements by \$130 million when compared to other alternatives. This savings estimate was developed using the Commission-mandated IRP rules, 20 CSR 4240-22.010, et seq. In reality, the IRP process is indisputably a valuable tool in finding and developing the least cost alternatives for customers and not just a "modeling exercise" as suggested by Staff. The IRP process is the very foundation for utility planning decisions in Missouri.

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See Tr. 347.

<sup>71</sup> See Ex. 2 (Humphrey Direct) at 4, 8, 15; Ex. 5 (Humphrey Supp. Direct) at 18; Ex. 8 (Humphrey Surrebuttal) at 13-14, 18, 21-22; Ex. 9 (Messamore Surrebuttal) at 19-21.

<sup>72</sup> See Ex. 5 (Humphrey Supp. Direct) at 19; Ex. 8 (Humphrey Surrebuttal) at 20-21.

Second, OPC incorrectly asserts that “all of the benefits related to this wind project are provided for shareholders right away” (OPC Brief at 29). OPC completely ignores the fact that Persimmon Creek will be providing benefits to customers before the asset is placed in EMW’s rate base. This historic regulatory practice, sometimes referred to as “regulatory lag,” will delay EMW’s shareholders an opportunity to earn a reasonable return on their investment until the next rate case. OPC also ignores the fact that benefits to customers will also begin flowing immediately upon the closing of the transaction. EMW’s customers will not only receive capacity and energy from an EMW-owned resource, but they will also receive offsets to the fuel costs since the SPP revenues will immediately flow through the Fuel Adjustment Clause.<sup>73</sup>

Third, in its discussion of the public interest standard, OPC criticizes EMW’s refusal to accept Staff’s proposed sweeping conditions: (1) Condition Regarding Future Loss of Existing Tax Benefits or Future Costs to Comply with Environmental Regulations; and (2) Hold Harmless Condition. Since these conditions were adequately addressed in EMW’s initial brief, and are addressed below in reply to Staff, no additional reply is needed to OPC’s misplaced arguments in this section.

Fourth, OPC impugns the motives of EMW’s lawyers and witnesses when OPC suggests, without any foundation or citation to the record, that EMW is manipulating the regulatory process to disregard the public interest. (OPC Brief at 25-30). Such overzealous argument should be disregarded as little more than hyperbole. Amazingly, OPC goes so far as to argue that “EMW uses a combination of salesman tactics, logical fallacies, and renewable generation bias to respond to legitimate concerns highlighted by Staff and the OPC.” (OPC Brief at 25). OPC’s irresponsible

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<sup>73</sup> Tr. 445-46 [Luebbert].



assertions should be rejected, and the Commission should stay the course to follow the clear Missouri policies that encourage the development of renewable energy resources.

Accusing EMW of “deception” and “manipulative sales tactics,” OPC argues that there is no urgency to deciding the issues in this case. (OPC Brief at 26) Quite to the contrary, EMW has clearly explained without attempting to hide anything from the Commission or the parties that a decision needs to be made by the Commission for the Company to close the transaction in a timely manner to ensure that benefits of Persimmon Creek will flow to Missouri customers as soon as reasonably possible. See Application, ¶ 33 at 11. The Company originally requested that an order approving the transaction be issued by December 31, 2022. Id. at 12. However, this date was extended to allow the parties additional time to review the transaction. As explained by Mr. Dority, following discussions with Staff regarding additional information it desired prior to issuing a recommendation, Staff filed a proposed procedural schedule on November 23, 2022, with a proposed Commission Order date of April 6, 2023. This date allows EMW to complete the transaction before the outside closing date in the contract, but leaves essentially zero additional time for delay. See Ex. 4 at 8 (Dority Supp. Direct).

Fifth, in an effort to clarify its “real argument,” OPC conceded that “there was no argument against using LCOE [levelized cost of energy] as a metric.” (OPC Brief at 27, lines 2-7.) However, OPC’s contention that EMW “is using LCOE alone” (id., line 8) to choose generation projects is wrong. In fact, as Mr. Humphrey explained, EMW relied upon LCOE for evaluating the price factor, but it also evaluated non-price factors. These included development and operational team experience, technical and value attributes, conformity to pro-forma agreements, and development milestones. Each member of the Company’s evaluation sub-teams voted “Yes” or “No” to proceed with a particular site to short list. A best and final offer was then

requested from the respondents. The final shortlist was selected to move forward with detailed evaluation and possible negotiations. See Ex. 2/2C at 7 (Humphrey Direct).

OPC also incorrectly argued: “Evergy claims that holding public utilities accountable for poor renewable generation projects would end investment in renewables.” (OPC Brief at 27). EMW has never argued or even hinted that the Commission should not review the prudence of resource additions, including renewable energy plants, in rate cases or other appropriate proceedings. EMW has argued, however, in this case that Staff and OPC have recommended a legal standard for the approval of a CCN (i.e. SPP revenues must exceed annual revenue requirements of the plant) which if adopted by the Commission, would be impossible to meet for renewable resources or any other generating resource. As Ms. Messamore testified:

If Staff’s [and OPC’s] position is adopted for Persimmon Creek or as a guiding principle for other resource procurements, there will be no realistic options available to meet EMW’s current and increasing future needs, leaving customers exposed to rely only on the wholesale market to meet these needs for the long-term. Such an outcome would likely increase both the cost and volatility of customers’ electricity bills which would not be in the public interest. See Ex. 9 at 2 (Messamore Surrebuttal).

The Commission should not accept OPC’s twisted advocacy on this point, but it should recognize the far-reaching policy implications of the adoption of OPC’s and Staff’s standard for obtaining a CCN for the future development of generation resources of any kind.

Finally, and perhaps most disappointingly, OPC seeks to denigrate EMW’s efforts to comply with the public policies of Missouri to encourage the development of renewable energy resources, including wind resources. (OPC Brief at 28-30) In so doing, OPC ignores the clear

statements of policy made by the legislature and the Commission. See Renewal Energy Standard Law,<sup>74</sup> Plant-in-Service Accounting Law,<sup>75</sup> and Securitization Law<sup>76</sup>.

The Commission itself has provided clear public policy guidance to public utilities and other stakeholders on the public interest question in the context of CCN cases involving renewable energy resources, and other transmission infrastructure necessary to support them. As early as 2013, the Commission found:

Electricity generated from renewable resources such as solar, wind, geothermal, small and low-impact hydropower, and biomass has proved to be environmentally preferable to electricity generated from conventional sources such as coal, oil, natural gas, and nuclear, which can have detrimental effects on human health and the environment through air emissions and other problems.<sup>77</sup>

In that same decision involving Ameren’s Pure Power program, the Commission concluded as follows:

The Commission also concludes that the Pure Power Program furthers the policy goal of encouraging renewable energy. Renewable energy generation provides a direct benefit to the public because it can reduce the problems associated with conventional sources of electricity, such as coal, oil, natural gas, and nuclear.... While the Commission highly encourages renewable energy generation, it acknowledges that programs such as the Pure Power Program can also provide a benefit to the public by supporting renewable energy.<sup>78</sup>

A recent expression of support for Missouri utilities’ development of wind generation involved Empire’s application for a CCN to acquire wind generation facilities to serve its Missouri retail customers in File No. EA-2019-0010. In that case, the Commission made the following findings of fact:

Wind generation has benefits other than cost savings, including helping to diversify Missouri’s energy generation mix, providing renewable energy,

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<sup>74</sup> §§ 393.1020-.1030.

<sup>75</sup> § 393.1400.4(3) [“Deployment and integration of ... renewable resources”]; § 393.1655.

<sup>76</sup> § 393.1700 et seq.

<sup>77</sup> Report and Order at 4, ¶ 9, In re Ameren Missouri’s Pure Power Program, No. EO-2013-0307 (April 24, 2013).

<sup>78</sup> Id. at 14 (emphasis added).

and providing local and state economic benefits such as property taxes, land lease payments, and jobs. Wind generation also helps corporations in Missouri to perform more competitively, as there is an emergence of corporate customer interest in renewable energy and corporations are seeking increased options for purchasing renewable power.

An increased number of energy customers (individuals, businesses, and governments) are seeking renewable energy to meet their own sustainability goals.<sup>79</sup>

[and in its conclusions of law, stated]:

It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources. The Commission has also previously expressed its general support for renewable energy generation because it provides benefits to the public.<sup>80</sup>

[and]

The Commission finds that the Wind Projects will promote the public interest. In addition to the low cost generation that the Wind Projects will provide, these projects meet the policy goals, as identified by the Commission in the Grain Belt Express Clean Line LLC case, to diversify energy resources and develop “economical renewable energy sources”.

Additionally, the Wind Projects are also important to satisfy the public interest in regard to the use of renewables, especially through the sale of RECs to non-residential customers as set out as a condition in the Non-Unanimous Stipulation and Agreement and adopted in this order as a condition of the certificates.<sup>81</sup>

In File No. EA-2016-0358, the Commission's order on remand in Grain Belt's CCN application for permission to construct a transmission facility designed to bring renewable energy into the state, the Commission stated:

Consistent with these state policies, this Commission has in the past expressed strong support for the “development of economical renewable energy sources to provide safe, reliable, and affordable service while

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<sup>79</sup> Report and Order at 21-22, In re Empire District Elec. Co., No. EA-2019-0010 (June 19, 2019) (Empire Wind CCN).

<sup>80</sup> Id. at 32, para. G. (emphasis added).

<sup>81</sup> Id. at 42, para. 5. (emphasis added).

improving the environment and reducing the amount of carbon dioxide released into the atmosphere.<sup>82</sup>

The Grain Belt Project will lower energy production costs in Missouri under future energy scenarios developed by MISO and will have a substantial and favorable effect on the reliability of electric service in Missouri, particularly through its effect on wind diversity in the region. Geographic diversity in wind resources inevitably helps to reduce system variability and uncertainty in regional energy systems. In addition, the Project will provide positive environmental impacts, since displacement of fossil fuels for wind power will reduce emissions of carbon dioxide, sulfur dioxide, and nitrogen oxide, and reduce water usage in Missouri.<sup>83</sup>

There can be no debate that our energy future will require more diversity in energy resources, particularly renewable resources. We are witnessing a worldwide, long-term and comprehensive movement towards renewable energy in general and wind energy specifically. Wind energy provides great promise as a source for affordable, reliable, safe, and environmentally-friendly energy. The Grain Belt Project will facilitate this movement in Missouri, will thereby benefit Missouri citizens, and is, therefore, in the public interest.<sup>84</sup>

Notwithstanding such clear and unequivocal Commission statements of public policy and directions to the public utilities of this State, the OPC chose to describe this important public policy euphemistically as “The Renewable Halo.” (OPC Brief at 28-30). Instead of suggesting how public utilities should promote this public policy, OPC has suggested a legal standard for the approval of CCNs for renewable resources which, if adopted by the Commission, would be impossible for public utilities to meet, ensuring that no renewable resources could be built or operated. OPC’s cavalier attitude toward the policy direction of this Commission should not be countenanced by the Commission.

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<sup>82</sup> Report and Order on Remand at 45-47, In re Grain Belt Express Clean Line LLC for a Line CCN, No. EA-2016-0358 (March 20, 2019).

<sup>83</sup> Id. at 46.

<sup>84</sup> Id. at 47 (emphasis added).

## 2. Response to Staff

Most of Staff's public interest arguments have already been addressed in the Tartan factors section of this brief, however, a few responses are appropriate.

First, Staff argues: "As proposed by Evergy, nearly all risks for the failure of the project to perform as assumed fall on ratepayers, and Evergy is insulated from not only those risks, but also any risk or cost associated with regulatory lag." (Staff Brief at 20). Evergy has already demonstrated that Persimmon Creek is needed and is the best resource for EMW's customers. However, Staff apparently is relying upon the fact that Persimmon Creek will be eventually included in the regulated company's rate base, and shareholders will be allowed to earn a return on their prudent investments as a part of the regulatory compact.

Staff witness Luebbert's rebuttal testimony itself discusses this regulatory compact when he observed:

Evergy Missouri West's ratepayers are captive because they do not generally have a choice of their electric provider and are required to pay the Commission approved tariffed rates for use of the service. In return, Evergy Missouri West is tasked with building and maintaining generation that is sufficient to serve the needs of the ratepayers. Evergy Missouri West will ultimately seek recovery of and a return on the initial investment for the Persimmon Creek project. These costs will be borne by its captive ratepayers who do not have a say in the generation procurement plans of the company. Due to its status as a monopoly, once the plant is included in Evergy Missouri West's rates, shareholders will be insulated from the risk that the revenues from the wind facility do not exceed the costs. That risk is borne by the captive ratepayers.<sup>85</sup>

This clearly demonstrates that Mr. Luebbert understands that if the Commission finds there is a need for Persimmon Creek and is granted an Operating CCN, it is reasonable for customers to assume the economic risks associated with it, just as they do and have with respect to all the other resources that the Company uses to serve them. See Ex. 7 at 18 (Dority Surrebuttal).

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<sup>85</sup> Ex. 104 & 104(C) at 10 (Luebbert Rebuttal).

Second, Staff suggests that passage of the Inflation Reduction Act of 2022 (“IRA) “warrant[s] additional analysis by Evergy Missouri West prior to building or acquiring another generating resource.” (Staff Brief at 21). Evergy has already re-evaluated Persimmon Creek in light of the passage of the IRA. As noted by Mr. Humphrey, the inclusion of the impacts of the IRA on other asset types did not change the relative ranking of Persimmon Creek versus other projects evaluated. This is an extremely important fact to highlight as the alternative projects from the RFP are susceptible to the other market risks identified, and are being priced at far higher costs today. See Ex. 5 & 5(C) at 18-21. The IRA analysis re-emphasizes what a unique, de-risked, and customer-friendly opportunity Persimmon Creek is rather than any reason to not proceed. See Ex. 8 & 8(C) at 19 (Humphrey Surrebuttal).

When discussing the public interest standard, Staff fails to understand that the purchase of Persimmon Creek is just one step in EMW’s Preferred Plan for adding generating resources in the future. The Company will continue to evaluate renewable and conventional resources as they become necessary and are available in the future. This analysis will include the construction or purchase of dispatchable, fossil-fuel generating resources.

Staff’s overall position also fails to acknowledge that circumstances in the industry generally, and, for EMW specifically, have changed in such a way that there is a clear need for new renewable generation resources now. As the Company’s IRP analysis shows, this need will grow in the years to come because such renewable resources will result in the least cost option to meet customers’ energy needs.

On June 10, 2022, Evergy Missouri West submitted its annual IRP update in Case No. EO-2022-0202 where it selected a Preferred Resource Plan that included 150 MW of wind additions in 2024, 72 MW of wind additions in 2026, 48 MW solar additions in 2028, 72 MW of

solar additions in each of the years 2029-2035, and combustion turbine additions in 2036 and 2040. The Preferred Resource Plan also included postponing the retirement of Lake Road 4/6 to 2030, and retiring coal resources at Jeffrey 3 in 2030, and Iatan 1, Jeffrey 2, and Jeffrey 3 in 2039.

Over the next ten years, Evergy (on a total company basis) plans to add more than 3,500 MW of renewable energy and retire more than 1,900 MW of coal-based fossil generation. In fact, on January 18, 2023, Evergy announced its intent to issue RFPs to acquire more generation resources to serve its customers. See Ex. 7 at 5 & Sched. MWD-1 (Dority Surrebuttal). Persimmon Creek is simply the near-term step in executing on that long term plan. As both Mr. Humphrey and Ms. Messamore have described in detail, Persimmon Creek fulfills a need today and will immediately start providing benefits to EMW customers. See Ex. 8 at 14, 22-23 (Humphrey Surrebuttal); Tr. [C] 103-06 (Humphrey); Ex. 9 at 32-34 (Messamore Surrebuttal).

In summary, the Commission should find that the acquisition of the facility and the granting of a CCN to operate the Persimmon Creek, as proposed by EMW, is a reasonable and prudent step toward fulfilling the Company's need for renewable generation in the future that will promote the public interest. On the other hand, Staff's and OPC's "do nothing" recommendation in this case is not in the public interest, and it should be soundly rejected by the Commission.

**IV. If the Commission grants the CCN for the Project, what conditions, if any, should the Commission impose on the CCN?**

1. Should a Production Tax Credit tracker be established?

Although Staff's and OPC's proposal regarding this condition remains unclear, EMW reiterates that it is opposed to this condition to the extent that tracking PTCs would invoke deferral accounting principles and require the establishment of regulatory liability and asset accounts under the FERC Uniform System of Accounts. Staff and OPC do not rebut that such a condition would be inconsistent with the Commission's previous decisions on tracker requests and accounting



authority orders (“AAOs”), and so EMW will not repeat its arguments from its initial brief. See Ex. 7 at 21-24 (Dority Surrebuttal) (citing cases and legal authorities); Kansas City Power & Light Co. v. PSC, 509 S.W.3d 757, 769 (Mo. App. 2016) (the “use of trackers should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri.”), aff’g In re Kansas City Power & Light Co., Report and Order at 50-51, No. ER-2014-0370 (Sept. 2, 2015).

As noted above, and despite Ms. Mantle’s recommendation that benefits should not flow immediately to customers under the FAC, but rather await a future rate case to offset capital costs (Tr. 264), when the acquisition of Persimmon Creek by EMW is closed, customers will immediately receive the benefits of this resource and its zero-cost energy which will flow through the FAC. This is an appropriate result that is fully supported by the Company’s existing FAC tariff, the PISA Law, and Missouri ratemaking principles, and no party has introduced any competent evidence or legal authority otherwise. See Ex. 8/8C at 13-14 (Humphrey Surrebuttal); Ex. 7 at 35-36 (Dority Surrebuttal).

Based on Persimmon Creek’s 2022 revenues, the revenue that will flow through the FAC post-closing, along with revenue from the sale of RECs, will offset and likely exceed the PISA deferral and the property tax tracker until the next rate case when Persimmon Creek will be put into base rates. Tr. (in camera) 105:3-106:16 (Humphrey). Customers will also not bear any costs related to the operation and maintenance (“O&M”) of Persimmon Creek, as well as the 15% of depreciation expense and return that is not deferred under Section 393.1400.2. See id. at 103-04 (Humphrey); Ex. 13, ¶ 4 at 2 & Ex. 14, ¶ 7 at 2-3 (EMW statements regarding FAC flow-through of revenues and pre-rate case costs).

The Commission should reject this proposed condition regarding a PTC tracker.

2. Should the Commission order that EMW track revenues produced by Persimmon Creek for ratemaking purposes?

Staff has not clarified whether it supports this condition or not, and OPC's proposal remains unclear. As stated in its initial brief, EMW is willing to record and accumulate on its books in separate accounts the revenues and expenses from the Project to the extent these revenues and expenses would be tracked in a manner similar to how the Company accounts for its other generating units.<sup>86</sup> Otherwise, this condition should be rejected, as described in EMW's initial brief.

3. Condition regarding In-Service Criteria

OPC supports Staff, but neither party's position statement nor initial brief specified whether EMW's response satisfies any unidentified concerns giving rise to this proposed condition. The Company believes that the conditions in Schedule SEL-r-2 are reasonable if they are appropriately implemented for Persimmon Creek which has been operating in SPP since 2018. See Ex. 8/8C at 12-13 (Humphrey Surrebuttal). All items in Schedule SEL-r-2 have been previously met except for Section 2.b, which relates to EMW's supervisory control and data acquisition ("SCADA") capabilities. Once the SCADA functionality is transferred to the Company, its capabilities can be tested.<sup>87</sup> This condition should be rejected to the extent it will create unnecessary costs given the operational status of Persimmon Creek, but otherwise is already satisfied. Id. at 13 (Humphrey Surrebuttal).

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<sup>86</sup> See In re Empire Dist. Elec. Co. App. for a CCN related to Wind Generation Facilities, Report & Order at 52, 60 (Ordered ¶ 7), No. EA-2019-0010 (June 19, 2019).

<sup>87</sup> See Humphrey Supp. Direct at 2-3, 23-24 & Confid. Sched. JH-9.

4. Condition Regarding Future Loss of Existing Tax Benefits or Future Costs to Comply with Environmental Regulations

Staff's and OPC's arguments are largely unchanged from their position statements, and so EMW will not repeat the arguments in its initial brief. It is undisputed that Persimmon Creek fully complies with all environmental laws and regulations today and that Staff agrees. Tr. 356:9-11. The developers of the Project specifically sited the facility to minimize wildlife impacts by voluntarily developing a Bat and Bird Conservation Plan. Persimmon Creek has operated within the parameters of the Plan since its construction. If changes in environmental or other laws or regulations occur, the Company's costs to comply with new mandates will be reviewed by the Commission under its Commission's prudence standard which forbids the use of hindsight. See Ex. 8/8C at 9-12 (Humphrey Surrebuttal).

The concerns of Staff and OPC about bat conservation admittedly stem only from unrelated experience with an Ameren wind farm in northern Missouri, as Staff has no experience or expertise in Oklahoma or with Oklahoma's conservation or environmental regulations or policies. See Tr. 220-23, 229-31 (J. Seaver). What's more, Persimmon Creek's owners voluntarily shared the results of its Bat and Bird Conservation Plan with the Oklahoma Department of Wildlife and Conservation in November 2019, and no action was taken by that agency then or thereafter. See Tr. (in camera) 112:5-113:5, 114:11-115:6; Tr. 127:14-128:24. OPC likewise agreed that in the four years of Persimmon Creek's operations, "there haven't been any curtailments or operational issues," or "any issues" at all, "as a result of bat take." See Tr. 227:23-228:23.

The Commission's acceptance of Staff's/OPC's condition and its recommendations would be unprecedented, would have far reaching negative impacts on Missouri public utilities, and as stated would not allow EMW to close the acquisition of Persimmon Creek. Ex. 7 at 17-18 (Dority Surrebuttal). It must be rejected.

5. Hold Harmless Condition

Staff devotes a mere four sentences regarding its “hold harmless” proposal. See Staff Initial Brief at 24. The only proceeding that it cites in support of its position is the Commission’s approval of a negotiated stipulation among a variety of parties in applications filed by Empire District Electric Company (“Empire”) to obtain a Section 393.170.1 Line or Construction CCN. Although a market price protection mechanism proposed in a non-unanimous stipulation was approved, it was most definitely not a hold-harmless agreement. In fact, the hold-harmless proposal submitted by OPC was rejected by the Commission.

In a lengthy Report & Order the Commission granted three CCNs for 600 MW of new wind generation facilities that were to be constructed on three sites, two located in Missouri and one in Kansas.<sup>88</sup> The two Missouri wind farms would each have a capacity of approximately 150 MW, with the Kansas facility having a capacity of about 300 MW, and a total of 280 wind turbines were to be erected.<sup>89</sup> Those CCN proceedings were vastly different from this Operating CCN case, involving the ownership by Empire and a tax equity partner of interests via tax equity financing in two holding companies which would, in return, own project companies that would construct the facilities.<sup>90</sup>

Given the complexities and uncertainty related to Empire’s CCN applications to construct these facilities which are more than three times the size of Persimmon Creek (198.5 MW), it made sense for the parties to negotiate a lengthy stipulation that dealt with the SPP energy markets, the

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<sup>88</sup> Report & Order at 4, 52-53, In re Empire Dist. Elec. Co. Application for CCNs related to Wind Generation Facilities, No. EA-2019-0010 (June 19, 2019) (“Empire CCN Cases”). The CCN application for the Kansas facility in No. EA-2019-0092, was consolidated with No. EA-2019-0010 which related to the CCNs for the two Missouri wind farms. Id. at 4 & n. 20.

<sup>89</sup> Id. at 10-11.

<sup>90</sup> Id. at 11-15.

mechanical completion of the projects, quarterly progress reports, tax equity financing, and a market price protection mechanism, among other issues.<sup>91</sup>

While the Commission approved that stipulation and its price protection mechanism, it rejected both the hold-harmless conditions proposed by OPC, as well as its customer protection plan. It found that these conditions “would require Empire to make the ratepayers whole through rates” if the projects didn’t generate revenues that were equal to or greater than the costs of the projects, finding that they would require Empire to give up any return on or return of its investments.<sup>92</sup> It concluded that those kinds of “ratemaking determinations will be made in a rate case where all factors can be considered to determine ‘just and reasonable rates.’”<sup>93</sup>

Because Persimmon Creek has been constructed, has been delivering power to the SPP grid since 2018, and is a well-performing asset, Staff’s proposal for a hold-harmless agreement is unnecessary. Given that Empire is half the size of Evergy Missouri West<sup>94</sup> and proposed to build projects three times the size of Persimmon Creek, the risks for Empire were quite different than in this case. There is no need for either a hold-harmless condition or other mechanism to share risks between the Company and its customers regarding an Operating CCN for Persimmon Creek.

OPC spends about a page arguing in favor of the Staff proposal. See OPC Initial Brief at 34-35. It confuses rate case concepts of prudent utility decision-making, the disallowance of imprudent costs, and return on investment with this Operating CCN case. As the Commission stated in its Report & Order in the Empire CCN Cases, these are issues to be decided in a general

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<sup>91</sup> Id. at 24-28. The stipulation noted that it “resulted from extensive negotiations among the parties” and was “based on the unique circumstances [Empire] presented to the non-utility Signatories.”) See Non-Unanimous Stipulation & Agmt. at 1-2 (Apr. 5, 2019), Empire CCN Cases.

<sup>92</sup> Report & Order at 30, Empire CCN Cases.

<sup>93</sup> Id. at 51.

<sup>94</sup> According to the Commission’s 2022 Annual Report at page 42, Empire had 159,370 Missouri customers compared to EMW’s 336,644. Empire sold 4,185,550 MWhs of electricity (Missouri jurisdictional) while EMW sold about 8,320,976 MWhs.

rate case where all factors are considered in setting rates. OPC cites no other authority in support of its position.

Staff's position that EMW should hold ratepayers harmless "if the costs of Persimmon Creek exceed" SPP market revenues and undefined "ratepayer realized benefits" sets a vague and impossible standard for the Company to meet. As noted above, the SPP energy market is not designed to recover all costs related to generating electricity. Rather, it was intended to dispatch available generation reliably and efficiently across its footprint on a real-time basis. Because the dispatch of energy in the SPP market is generally based on short-run marginal costs, offering a generation resource into the market to recover all its fixed costs, including a return on its capital investment, is not permitted under the wholesale energy market rules approved by FERC. See Ex. 9 (Messamore Surrebuttal at 18-20).

Moreover, as Ms. Messamore pointed out, none of EMW's existing plants typically receive SPP revenues that exceed their respective revenue requirements. See Ex. 9(C) at 19 (Messamore Confid. Surrebuttal). Yet, this does not mean that EMW's existing plants are not fulfilling their obligation to serve customers' need for electricity. Taken to its logical conclusion, Staff's condition would mean that many of the Company's existing and productive resources should not be a part of its fleet and that, apparently, Evergy should procure all its energy from the SPP market. As this would subject EMW's customers to the volatile prices of the wholesale energy market, this would be neither reasonable nor in the public interest. Id. at 19-20.

Persimmon Creek is in service today, operating efficiently, and does not present construction, procurement, transmission interconnection, and other risks that would face a new

project. Given these unknown risks, Chairman Rupp asked: “So, a bird in the hand?” Ms. Messamore replied: “Yes. I hesitated to say that [in outlining the risks] but yes.”<sup>95</sup>

Considering the benefits that Persimmon Creek will bring to Evergy Missouri West’s resource portfolio and the attributes that the Company will gain by owning and operating the wind farm, there is no good reason to impose a hold-harmless condition on an Operating CCN. The Commission should reject Staff’s recommendation for such a condition which would prevent the Company from closing the transaction to acquire Persimmon Creek.

**V. Should the Commission order EMW to provide resource-specific economic analysis utilizing reasonable assumptions beyond the IRP results, LCOE estimates, and installed capacity costs in support of future CCN applications?**

Staff spends three sentences arguing for the Commission to impose on Evergy Missouri West an ill-defined resource specific economic analysis requirement in all its future CCN applications, regardless of the factual and legal issues that may be presented in such proceedings. See Staff Initial Brief at 26. The only support it cites is two pages of Mr. Luebbert’s rebuttal testimony. Id., p. 174-76. Although OPC spends more time to support Staff’s proposal, its four pages consist more of asking questions that have already been answered or could have been answered if OPC had submitted discovery requests to the Company. See OPC Initial Brief at 17-21.

Both Staff and OPC demand an analysis related to energy production and market prices based on time and location, as well as other factors relating future acquisitions. See Staff Initial Brief at 26; OPC Initial Brief at 17-20. However, this is the kind of data that EMW’s IRP Reports contain and were available to all parties in this case. Ms. Messamore testified that “the IRP model dispatch is based on hourly market prices” and this pricing model “is based on SPP’s economic

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<sup>95</sup> Tr. 178:17-180:1 (Chairman Rupp and Ms. Messamore).

transmission model, driven by SPP’s assumptions around transmission and resource build-out for the pool overall, and Evergy’s commodity and carbon price scenarios.”<sup>96</sup>

In this case both a “generic wind” scenario as well as a Persimmon Creek scenario were run, using the wind farm’s historical capacity factor. As Ms. Messamore stated, Staff’s concerns regarding capacity factors and negative market revenues “do nothing to change the fact that Persimmon Creek’s cost and performance were *better* than what was assumed for the “generic” wind modeled in the IRP,<sup>97</sup> with total projected reduced costs to customers increasing from \$64 million to \$130 million.<sup>98</sup>

In supporting Staff’s request, OPC claims that “NCF [net capacity factor] does not address when the asset is generating energy,”<sup>99</sup> but it overlooks the fact that the “wind profile built on Persimmon Creek’s historical capacity factor is an input into the [IRP] model which is then dispatched (curtailed) as dictated by market prices.”<sup>100</sup> Its concerns are misplaced.

OPC also claims that “the introduction of ELCC accreditation in the summer of this year” could negatively affect Persimmon Creek’s accredited capacity.<sup>101</sup> However, as EMW noted in its Initial Brief,<sup>102</sup> FERC rejected SPP’s proposed tariff revisions regarding its effective load carrying capacity (ELCC) accreditation methodology on March 2, 2023. FERC directed SPP to prepare a new tariff, with one Commissioner raising specific concerns regarding wind and solar accreditation.<sup>103</sup>

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<sup>96</sup> Ex. 9 & 9(C) at 26-27 (Messamore Surrebuttal); Ex. 6 at 2 (Messamore Supp. Direct).

<sup>97</sup> *Id.* at 31.

<sup>98</sup> *Id.* at 27; Ex. 6 at 2 (Messamore Supp. Direct).

<sup>99</sup> OPC Initial Brief at 18.

<sup>100</sup> Ex. 9 at 28 (Messamore Surrebuttal).

<sup>101</sup> *Id.*

<sup>102</sup> EMW Initial Brief at 14 & n.26.

<sup>103</sup> See Order Addressing Argument Raised on Rehearing and Setting Aside Prior Order, and dismissing Compliance Filing as Moot, Southwest Power Pool, Inc., 182 FERC ¶61,100 at 102 (Mar. 2, 2023). One commissioner sent “SPP a clear signal of what I expect as it goes back to the drawing board,” stating that it must address her “view [that] the proposal that SPP submitted to the Commission was ... unduly discriminatory because it reduces the capacity



Given the sufficiency of the data produced in this case, there is no factual or legal basis for the Commission to establish a new filing and information requirement that would only apply to future Operating CCNs filed by Evergy Missouri West and not to any other Missouri electric utility.

**WHEREFORE**, Evergy Missouri West respectfully submits its Reply Brief to the Commission and requests that the Commission issue its Report and Order no later than April 6, 2023 granting the Application for an Operating Certificate of Convenience and Necessity.

Respectfully submitted,

*/s/ Roger W. Steiner*

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accreditation of wind and solar resources based on historically demonstrated performance, while failing to account in any way for non-performance of other resource types.” Id., Comm’er Clements Concurring Opinion, ¶ 2.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was served upon counsel for all parties on this 17<sup>th</sup> day of March 2023, by either e-mail or U.S. Mail, postage prepaid.

*/s/ Roger W. Steiner*

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Roger W. Steiner