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 Company's Approved Fuel and Purchased Power Cost Recovery Mechanism	))))))))	Case No. ER-2023-0011

REPLY 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 *Reply Brief*:

I. Overview

Despite the overheated rhetoric of OPC and its tiresome cries of manipulation and gaming,[1] this case boils down to a simple issue of interpreting how the compound annual growth rate ("CAGR") limit of 3% under Subsection 3 of the Plant-in-Service Accounting ("PISA") Law's Section 393.1655[2] should function in light of the raging economic inflation that is causing the Company's fuel and purchased power costs to skyrocket.

OPC seeks to impose a performance penalty on EMW for fuel and purchased power costs under Section 393.1655.3 ("Subsection 3") when the clear purpose of the PISA Law in Section 393.1655.5 ("Subsection 5") is to *exclude* such costs from the CAGR calculation and to defer them.

This situation exists because, pursuant to the rate adjustment mechanism approved by the Commission under Section 386.266 for fuel and purchased power ("FPP") costs, EMW "must

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[1] See OPC Initial Brief at 38, 40; Ex. 200 at 1, 3-5, 22, 28 (Mantle Rebuttal).
[2] All statutory citations are to the Missouri Revised Statutes (2016), as amended.

rebase base energy costs in each general rate 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").[3] "Base energy costs" are defined as "fuel and purchased power costs net of fuel-related revenues determined by the commission to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case; …" See 20 CSR 4240-2.090(1)(C). OPC's argument is that the base energy costs that the FAC Rule requires to be rebased in rates during a general rate case are not within the FAC Rule's definition of a "rate adjustment mechanism" because they are not to be charged under a fuel adjustment clause ("FAC"). See OPC Brief at 9. This is why OPC eliminates the "rate adjustment mechanism" from its statutory argument, replacing it in brackets with "Evergy West's FAC." Id. at 10. With this sleight of hand and obvious denial of the definition of "Base energy costs" in the FAC Rule itself, OPC wrongly eliminates the rebased base energy costs from the calculation to support its argument that the CAGR cap will not be breached by FPP costs.

Rebased base energy costs were properly considered by EMW in its Fuel Adjustment Rate ("FAR") filing in this case for purposes of calculating the deferral required by Subsection 5, and they support the Company's position that a deferral is required because its fuel and purchased power costs will otherwise cause the 3% CAGR cap to be exceeded.

Staff views Subsection 3 in a different way. It believes that the 3% CAGR is measured from the effective date of prior base rates to the effective date of new base rates. See Staff Initial Brief at 2. It is important to note, however, that EMW agrees with Staff, as well as OPC) that the starting point is the effective date of rates in its last general rate case, No. ER-2018-0146. Those rates became effective December 6, 2018.

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

Staff apparently believes that a deferral under Subsection 5 is not appropriate because a breach of the 3% CAGR cap will not occur until new base rates in EMW's pending general rate case No. ER-2022-0130 ("2022 Rate Case) become effective on December 6, 2022. See Staff Initial Brief at 2-3. While articulated a bit differently than OPC, Staff's argument is that the rebase of base energy/FPP costs in the rate case cannot be considered for purposes of determining the deferral required by Subsection 5. Given the effect of Commission's approval of the Stipulation & Agreement filed on August 30, 2022 that resolved various revenue requirement issues, however, there is no doubt that the Company will exceed the CAGR cap in a range of $11 million to $19 million, depending on the Commission's decisions in the 2022 Rate Case.[4]

That is why the "would cause" language in the first sentence of Subsection 5 would justify a decision by the Commission to approve the required deferral now before rates in the 2022 Rate Case are effective. However, EMW agrees with Staff that waiting until after the Commission issues its decision in the 2022 Rate Case will allow the exact amount of the deferral to be calculated. See Tr. 95-96 (B. Mastrogiannis).

That is why the Company recommends the decision in this FAR proceeding should occur after the report and order in the 2022 Rate Case is issued, as explained below in Section V.

II. The Performance Penalty under Section 393.1655.3

The utility performance penalty provision of Subsection 3 is unique to the PISA Law, but its purpose is clear. Given the favorable treatment that PISA afforded investments in "qualifying electric plant"[5] projects by allowing the deferral to a regulatory asset of 85% of all associated

[4] See Tr. 51-52, 57-58, 70-71 (Ives).

[5] Section 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.

depreciable expense and return,[6] the General Assembly was concerned with the potential growth in electric utility rates.

Because of this, Subsection 3 provided:

> If the difference between (a) the electrical corporation's average overall rate at any point in time while this section applies to the [EC], and (b) the [EC's] average overall rate as of the date new base rates are set in the [EC's] most recent general rate proceeding concluded prior to the date the [EC] gave notice under section 393.1400, reflects a [CAGR] of more than three percent, the [EC] shall not recover any amount in excess of such three percent as a performance penalty.

This potential penalty was intended to prevent undue increases in rates caused by the investments that PISA encourages. However, mindful of the express authority it granted to the Commission in Section 386.266 to design and authorize "rate adjustment mechanisms" related to "fuel and purchased power costs," the Legislature created an exception to the performance penalty in Subsection 5.

If the CAGR cap is exceeded due to any change in rates resulting from costs that were subject to rate adjustment mechanisms that the Commission had approved under Section 386.266, those costs will be deferred to a regulatory asset under Section 393.1400.2(1) so that the cap is not exceeded. Under Subsection 5 fuel and purchased power ("FPP") costs would be "recovered through an amortization in base rates in the same manner as deferrals" under Section 393.1400 are recovered in base rates.

Subsection 5 was designed to be a safety valve so that costs which were properly charged and collected under such a rate adjustment mechanism would not cause the CAGR cap to be breached and would not trigger a performance penalty.

Yet, this is precisely what OPC wants to do. It wants to use FPP costs that the Commission's FAC Rule requires to be rebased in the 2022 Rate Case to trigger a penalty, despite

[6] See § 393.1400.2(1).

the statute's intent and despite Missouri's clear public policy that such expenses are to be handled differently from other costs.

III. Evergy Missouri West's FAR Filing and Deferral Request properly Include Rebased Fuel and Purchased Power Costs that will occur in its 2022 Rate Case

Beyond the plain language of Subsection 5 requiring the deferral of FPP costs that would cause the 3% CAGR cap to be exceeded, the language of the FAC Rule and Missouri's regulatory policies upon which Section 386.266 and the PISA Law were enacted support a deferral in this case.

A. The Commission's FAC Rule

OPC's attempt to exclude increases in rates that will be caused by rebasing EMW's base energy costs in the 2022 Rate Case is grounded in a misreading of the Commission's FAC Rule to incorrectly exclude "base energy costs" from costs charged under a "rate adjustment mechanism." See OPC Initial Brief at 24-28.

Rebasing is required under the FAC Rule's Section (2) which is entitled: "Establishment, Continuance, or Modification of a RAM [rate adjustment mechanism]." It states that an electric utility "must rebase base energy costs in each general rate proceeding in which the FAC is continued or modified." See 20 CSR 4240-2.090(2)(A). "Base energy costs" are defined as "the fuel and purchased power costs net of fuel-related revenues determined by the commission to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case; …." See 20 CSR 4240-2.090(1)(C) [emphasis added].

The FAC Rule requires that a utility's request to continue its RAM "shall include a description of how its proposed RAM shall be applied to monthly bills, the amount of the proposed change in base rates caused by the rebase of energy costs, and the estimated impact on a typical residential customer's bill resulting from the rebase of energy costs; …." See 20 CSR 4240-2.090(2)(A)1 [emphasis added].

Read together, the plain language of these elements of the FAC Rule establishes that the energy costs to be rebased are "fuel and purchased power costs" that had been "included in a RAM [rate adjustment mechanism]" which will have an "impact" on a "customer's bill resulting from the rebase of energy costs."

Therefore, base energy costs required to be rebased under the FAC Rule are costs that clearly fit within the FAC Rule's definition of a rate adjustment mechanism as "a commission-approved fuel adjustment clause (FAC) …." See 20 CSR 4240-2.090(1)(W).

Consequently, FPP costs included in FAR filings and base energy costs that are rebased in a general rate case, as required by the FAC Rule, result in changes in rates charged under the FAC, a rate adjustment mechanism approved under Section 386.266. It follows then that the reference in Section 393.1655.5 to changes in rates under rate adjustment mechanisms approved by the Commission pursuant to Section 386.266 encompasses the effects of rebasing of energy costs in general rate cases which the Commission's FAC Rule has required for the past 15 years.

There can be no doubt that 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 Section 386.266 and the FAC Rule. See Ex. 1 at 10-12 (Ives Direct); Ex. 3-4 (charts calculating the effect of FPP costs on EMW rates and the CAGR limit).

B. The Regulatory Policies on which Section 386.266 and Section 393.1655.5 are Based support a Deferral

The General Assembly required in Subsection 5 that "an electrical corporation 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 charged under such mechanism" and (b) "the performance penalties under such subsections are not triggered." This requirement is based on the fundamental principle that FPP costs approved under the rate mechanisms of Section

386.266 are subject to unregulated market prices that rise and fall, and other factors like economic inflation that cannot be controlled by the utility. Thus, they should be treated differently than other costs, such as investments in qualified electric plant that PISA serves as an incentive to make, that could result in a performance penalty under Subsection 3 if the 3% CAGR cap is exceeded.

Before Section 386.266 was enacted by the General Assembly, FACs and similar rate adjustment mechanisms were not permitted under Missouri law, however, their value was recognized. Although the Missouri Supreme Court struck down the Commission's orders in the 1970's that implemented a variety of rate adjustment mechanisms during the country's last period of severe economic inflation, the Court noted the benefits of an FAC:

> The fuel adjustment clause is considered a more efficient and effective substitute [for traditional ratemaking] because, among other reasons, it reduces 'regulatory lag' and thus permits a utility to recover increased fuel costs in times of inflation without undue delay that could be harmful to its economic structure and thus reduce investors' incentives to invest in the utility. Permitting such automatic adjustment would also reduce the expense of the regulatory process by decreasing both the magnitude and frequency of rate cases.[7]

The Court observed that "[n]umerous public service commissions have approved fuel adjustment clauses … principally because of a fear of inflation."[8] Nonetheless, having not been authorized by the Legislature, the Supreme Court held that the Commission's orders exceeded the scope of state law.[9] A concurring opinion declared: "In these times of energy crises it seems regrettable that we must reach this result. I hope the Legislature will address the problem without undue delay."[10]

Although it took the General Assembly over 25 years to act, it finally did when it passed Senate Bill 179 which became Section 386.266. Despite efforts by OPC and others to block the

[7] State ex rel. Util. Consumers Council of Mo., Inc. v. PSC, 585 S.W.2d 41, 50 (Mo. en banc 1979).
[8] Id.
[9] Id. at 57-58.
[10] Id. at 60 (Rendlen, J., concurring)

effect of these rate adjustment mechanisms,[11] the FACs adopted by Missouri electric utilities and approved by the Commission reflect the principles noted by the Supreme Court, as well as other policies that reflect the economic reality of markets.

The Commission has found 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). It 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.

When EMW's predecessor was 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).[12]

In determining the purpose and operation of the deferral mechanism in Subsection 5 of the PISA Law, and its reference to Section 386.266 and Section 393.1030 (the renewable energy standard), the Commission should consider "statutes involving similar or related subject matter when such statutes shed light upon [the] meaning of the statute being construed. … All consistent statutes related to the same subject are in pari materia and are construed together as though constituting one act, whether adopted at different dates or separated by long or short intervals [emphasis added]."[13]

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[11] See State ex rel. Ag Processing, Inc. v. PSC, 340 S.W.3d 146 (Mo. App. W.D. 2011); State ex rel. Ag Processing, Inc. v. PSC, 311 S.W.3d 361 (Mo. App. W.D. 2010).

[12] 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.").

[13] State ex rel. Rothermich v. Gallagher, 816 S.W.2d 194, 200 (Mo. en banc 1991).

The Missouri Supreme Court has clearly stated: "The rule of construction in such instances proceeds upon the supposition that the statutes in question are intended to be read consistently and harmoniously in their several parts and provisions."[14] In determining the meaning of a statute, courts "seek to ascertain the intention of the lawmakers by giving the words used their ordinary meaning, by considering the entire act and its purposes, and by seeking to avoid unjust, absurd, unreasonable, confiscatory or oppressive results [emphasis added]."[15] "Further, in ascertaining the meaning of a particular statute, resort may be had to the established policy of the legislature as disclosed by a general course of legislation."[16]

OPC's proposed exclusion of base energy costs that must be rebased into rates during a general rate case under the FAC Rule is contrary to these statutory interpretation rules, especially in its quest for a performance penalty that would be "confiscatory" to Evergy Missouri West and contrary to the intent of Subsection 5 to defer FPP costs.

Nothing in Subsection 5 directs the utility or the Commission to exclude the rebasing of base energy costs that is required in general rate cases (pursuant to the FAC Rule approved by the PSC under Section 386.266) 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 directs that the electric utility "shall reduce the rates charged" in order to "ensure" that (a) the CAGR cap "is not exceeded and (b) the "performance penalties … are not triggered."

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[14] Neske v. City of St. Louis, 218 S.W.3d 417, 424 (Mo. en banc 2007), citing State ex rel. Rothermich v. Gallagher, 816 S.W.2d at 200.
[15] State ex rel. Killingsworth v. George, 168 S.W.3d 621, 623 (Mo. App. E.D. 2005).
[16] Id.

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"[17] – such as equating wholesale commodity and power prices with a utility's construction of its electric plant – 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."

Evergy explained at the evidentiary hearing that with the settlements approved by the Commission, EMW is rebasing increased FPP costs of $56.1 million, as required by the FAC Rule, while the overall revenue requirement increase is only $42.5 million.[18] See Tr. 60 (Ives); Exhibit 4 (filed Oct. 4, 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*** in EMW's revenue requirement. See Tr. 60.[19]

Accepting OPC's argument in favor of a confiscatory 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.

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[17] 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).

[18] 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.

[19] $13.6 million is the difference between $56.1 million and $42.5 million.

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 imminent and certain to occur. Such a change will occur in EMW's 2022 Rate Case.

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 and consistent with the spirit of Paragraph XI in FAC Rule Section (8).

It is beyond dispute that the current state of the economy is extraordinary.

The Bureau of Labor Statistics recently reported that in "the last 12 months, the all-items index increased 8.2 percent before seasonal adjustment."[20] Over that period the electricity index rose 15.5% and the natural gas index increased 33.1%.[21]

The most recent Short-Term Energy Outlook issued by the Energy Information Administration "forecast that wholesale electricity prices at major power trading hubs will be about 20-60% higher on average this winter."[22] The U.S. residential price of electricity is forecast to average 14.9¢/KWh in 2022, "up 8% from 2021," largely reflecting "an increase in wholesale power prices, which are driven by higher natural gas prices."[23]

The banner headline on The Wall Street Journal published last Friday was "Core Inflation Revs to New High."[24]

The current economic circumstances, not seen in the past 40 years, are extraordinary, unusual, and infrequent. They certainly meet the standard of what is an "extraordinary item" in

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[20] News Release, "Consumer Price Index – September 2022," Bureau of Labor Statistics, U.S. Dep't of Labor (Oct. 13, 2022).
[21] Id. at 3.
[22] EIA Short-Term Energy Outlook at 2 (Oct. 2022).
[23] Id.
[24] The Wall Street Journal at 1 (Oct. 14, 2022) ("U.S. consumer inflation excluding energy and food accelerated to a new four-decade high in September, a sign that strong and broad price pressures are persisting.")

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the Commission's historical use of General Instruction 7 of FERC's Uniform System of Accounts.[25]

V. The Decision in this FAR Filing should Occur after a Decision is issued in EMW's 2022 Rate Case

OPC repeatedly begs the Commission to issue its decision in this proceeding so that EMW's FAR becomes effective before the rates are effective in the 2022 Rate Case. See OPC Initial Brief at 36-39. This insistence is apparently based on OPC's mistaken belief that any breach of the 3% CAGR cap that occurs in the 2022 Rate Case must be absorbed by EMW as a performance penalty under Subsection 3 even if it is caused by the rebasing of FPP costs as required by the FAC Rule.

As discussed above, OPC relies solely on Subsection 3 for this timing argument by misconstruing the deferral requirement of Subsection 5, ignoring the nature of FPP costs, and disregarding the policy decisions of both the Legislature and the Commission that underlie Subsection 5, Section 386.266 and the FAC Rule. This is why Subsection 5 requires the deferral of any CAGR cap overrun that is driven by FPP costs, whether in an FAR filing or in a general rate case, and irrespective of the sequence in which those proceedings are resolved.

The crux of OPC's argument is that rebasing of FPP costs in a general rate case does not constitute "a change in any rates charged under" the FAC. See OPC Initial Brief at 24-25. Such a view is nonsensical. The FAC Rule requires the rebasing of FPP costs in any general rate case in which an FAC is approved or continued. The FAC Rule, in fact, defines "Base energy costs" as "the fuel and purchased power costs net of fuel-related revenues determined by the commission to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case; …." See 20 CSR 4240-2.090(1)(C) [emphasis added]. As such, any change in

[25] General Instr. 7, Uniform System of Accounts, 18 CFR Part 101.

rates from a general rate case that results from the rebasing of FPP costs required by the Commission's FAC Rule amounts to a change in rates charged under the FAC.

The evidence has established that EMW's CAGR cap will be exceeded because of FPP costs, whether in this FAR case after the rate case has been decided or in the 2022 Rate Case when base energy FPP costs are rebased. <u>See</u> Tr. 70-72 (Ives); 94-96 (Mastrogiannis). No party has disputed this.

As established in this record and has been well understood for years, FPP costs are volatile, subject to the vagaries of market forces, and not within the control of electric utilities. Furthermore, because FPP costs comprise such a significant proportion of an electric utility's operating costs, the vast majority of utility regulators in the United States use FACs to adjust rates for fluctuations in FPP costs without requiring the filing of a general rate case.

OPC's timing argument recognizes these fundamental principles, but stubbornly denies the legitimacy of the tools developed to address EMW's current situation where the 3% CAGR cap will be exceeded by the impacts of FAR filings and the rebasing of FPP costs in the 2022 Rate Case because of Section 386.266 and the FAC Rule. The Company's FPP costs are the same, whether contained in an FAR filing or rebased under the FAC Rule. OPC has made no showing otherwise. In light of this fact, there is no basis to treat FPP-driven CAGR cap exceedances differently depending on whether they are reflected in a FAR filing or rebased in base rates as required by the FAC Rule. Consequently, under the plain language of Subsection 5,[26] the FPP-driven amounts that will cause EMW to exceed the 3% CAGR cap must be deferred.

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[26] The first sentence of Section 393.1655.5 states: "If 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 <u>shall reduce</u> the rates charged under that rate adjustment mechanism <u>in an amount sufficient to ensure</u> that the compound annual growth rate limitation set forth in section 3 … of this section <u>is not exceeded</u> due to application of <u>the rate charged under such mechanism</u> and <u>the performance penalties under such mechanism are not triggered</u> [emphasis added]."

The Company recommends that the Commission decide the 2022 Rate Case before deciding this FAR proceeding. That sequence will give the Commission the information it needs to quantify the amount of the deferral to the penny so that the 3% CAGR limit is not breached, and the magnitude of the deferral is minimized. The Commission can direct the parties to calculate the deferral after it has decided the rate case which will ensure no costs are deferred beyond the amount called for under Subsection 5. This action will also protect the Company from a confiscatory penalty under Subsection 3 and fulfill the purpose of Subsection 5.

The Commission could decide to issue its decision in this FAR case before it decides the 2022 Rate Case, but this course of action is not ideal. A deferral would still be required to meet the requirements of Subsection 5, given the clear evidence that the 3% CAGR limit will be overrun by the rebasing of FPP costs in the rate case. However, the precise amount of the deferral will not be known. The estimate in the record is that the deferral amount will likely be no more than $19 million and no less than $11 million. See Tr. 70-71 (Ives). Given this uncertainty, if the Commission acts in this FAR case before the rate case, it should defer $19 million to ensure that no penalty is assessed to the Company under Subsection 3 and that the goal of Subsection 5 is respected. Under this approach the amount that the Commission orders deferred will have to be revised after the rate case is decided and the actual amount that should have been deferred is calculated.

Although the Commission could order the deferral in the 2022 Rate Case, such a deferral would require the inclusion in base rates of an artificially low level of rebased FPP costs. See Tr. 72 (Ives). Deferral in the rate case "will understate the rebase[d] fuel costs" and result in much "higher accumulation period impacts moving forward out of the [rate] case which will create FAR volatility for customers compared to what it should be if the base is set appropriately …." See Tr.

55-56 (Ives). It would also require the Company to absorb a greater amount of FPP costs because of the 95%/5% sharing mechanism. Id. The Company does not support this approach.

Therefore, EMW recommends that the Commission wait until it decides the revenue requirement issues in the 2022 Rate Case before issuing its decision in this FAR proceeding so that it can order the precise amount of the deferral necessary to avoid the Company's breaching the CAGR cap under Subsection 5. The deferral must include consideration of the base energy costs that will be rebased in the rate case pursuant to the FAC Rule.

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

OPC made no effort in its Initial Brief to address the procedural defects in its Motion for Summary Determination, filed under 20 CSR 4240-2.117.

This rule explicitly states that such motions are appropriate in any case "[e]xcept in a case seeking a rate increase …." See § 2.117(1)(A) & (2). Because this FAR case is a proceeding where EMW seeks a rate increase under the FAC Rule, 20 CSR 4240-20.090(8) ("Periodic Changes to Fuel Adjustment Rates") that will result in an adjustment to EMW's rates under Section 386.266, OPC's motion must be denied.

WHEREFORE, Evergy Missouri West requests that:

1. 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 three percent (3%) 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, including rebased increased FPP base energy costs in the 2022 Rate Case, and

2. A decision in this proceeding occur after the Commission issues its report and order in the 2022 Rate Case so that the specific amount of the deferral can be calculated.

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 21st day of October 2022, by either email or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner

Attorney for Evergy Missouri West