

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

In the Matter of Evergy Missouri West, Inc.            )  
d/b/a Evergy Missouri West’s Request for            )  
Authority to Implement a General Rate                )  
Increase for Electric Service                            )            **File No. ER-2022-0130**

**INITIAL POST-HEARING BRIEF OF ST. JOSEPH, MISSOURI**

COMES NOW the City of St. Joseph, Missouri, intervenor, and presents its Initial Post-Hearing Brief for the Commission’s consideration in this matter.

**Issue No. XLIII: Streetlighting (West Only)<sup>1</sup>**

The City of St. Joseph (“the City”) brings a unique issue to this case in the hope of restoring a practice that had been employed successfully for at least two decades before it quietly disappeared in the 2016 rate case of KCP&L-Greater Missouri Operations, which is now Evergy Missouri West. Prior to the 2016 rate case, when a new commercial or residential development was built that included streetlights, those streetlights were built by the developer – not by the electric utility – and were a capital cost of the development. And when the City hired a contractor for a public road construction project, those streetlights were built by the City’s contractor – not by the electric utility – and were a capital cost of the road project. When the development or road project was completed, the streetlights were inspected by the electric utility, which then accepted ownership of those streetlights. (Exh. 850, Carter Direct, pp. 1-2, 4-6)

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<sup>1</sup> Issue Numbering and format of this brief are based on the *Corrected List of Issues, Order of Cross-Examination and Order of Opening Statements and Motion for Extension of Order of Witnesses* filed in this case on August 19, 2022.

These capital costs became costs of the developer to recoup from the development project, or of the City's contractor being paid from a public funding mechanism such as the capital improvements sales tax or grant funding. If undergrounding of power lines to a streetlight was required, the cost of undergrounding was borne by the developer or contractor. This was true of breakaway bases, rock removal or other trenching or boring, as well. At the end of the project, Evergy would inspect the streetlights to ensure compliance with appropriate standards and would accept ownership of the streetlights. (*Id.*)

The importance of this practice to the City of St. Joseph was at least two-fold. It gave the City the ability to competitively bid the installation of streetlights, realize other possible savings on City projects and have more management control over those projects. It also ensured that the installation cost of new streetlights were *capital* costs to the City and not *operating* costs paid by taxpayers when the City pays its electric bill to Evergy. (Exh. 851, Carter Surrebuttal, p. 2) Making these costs *operating* costs to the City diverts City resources that would otherwise be used to provide public services. (Exh. 850, Carter Direct, p. 4, ll. 3-11; Exh. 851, Carter Surrebuttal, pp. 4-5)

When the Company sought to consolidate the tariffs of the former St. Joseph Light & Power (SJLP) and the former Missouri Public Service Company (MPS) in its 2016 rate case, it decided it would like to simplify its streetlight practices and it did so in that case by quietly eliminating this longstanding practice with the City of St. Joseph. Based on its Revised Sheet 150 approved in that case, Evergy West now asserts that the Company, and *only* the Company, may install streetlights within its service territory to receive service under Tariff 150. This only became clear to the City in 2018 when the Company made an issue of

it regarding a development or two in progress within the City of St. Joseph. (Exh. 850, Carter Direct, p. 2; Exh. 851, Carter Surrebuttal, pp. 1-3; Exh. 854; Tr. 874)

The City of St. Joseph proposes that language be added to the Company's streetlighting tariff that restores the long-standing historic practice used successfully by the City and the Company before the 2016 rate case. The City also proposes that language be added to that tariff that prohibits the Company from charging it for breakaway bases, undergrounding, metal poles and other streetlighting costs that were already absorbed by a City contractor or a City-approved developer. (Exh. 850, Carter Direct, pp. 7-8; Exh. 851, Carter Surrebuttal, p. 10, ll. 13-22)

**Issues from List of Issues:**

*A. Should language be added to Evergy West's Municipal Street Lighting Service Tariff providing that streetlights installed by a city contractor or a city-approved developer shall be deemed to be owned by Evergy, after inspection and approval by the Company, and shall not be subject to additional installation or structure charges?*

Yes. The decades-old practice of the City of St. Joseph, described above, was quietly removed in the 2016 rate case. The change was so inconspicuous that it was not identified until 2018. St. Joseph was an intervenor in that case (ER-2016-0156). Mr. Carter, the City Manager of St. Joseph, testified that "City officials do not recall receiving notice that streetlighting tariffs were being changed in that case." He observed that the City "does not dedicate the resources of some other parties, like the MoPSC Staff or the Office of the Public Counsel, to review in detail the scores of pages submitted by the

Company in a general rate case.” (Exh. 851, Carter Surrebuttal, p. 1) The Company says its “normal practice” would have been to “have exchanges with the cities during rate cases to discuss matters like this.” (Tr. 889, Lutz Redirect) However, there is no evidence that the City of St. Joseph was ever given notice of that very significant change in Evergy’s policy and practice at the time of that case. The earliest communication with the City of St. Joseph concerning this matter that Mr. Lutz could identify was in 2018. (Tr. 888-889, Lutz Redirect)

**The primary importance of the Company’s application of its Revised Tariff 150 since the 2016 rate case is that it shifts what used to be *capital* costs of the City, borne by developers or contractors, to *operating* costs of the City, paid by the City’s taxpayers through the City, out of current revenues, when the City pays its electric bill to Evergy.** This has added to the necessary monthly expenditures of the City and has placed new and unacceptable strain on the City’s operating budget, redirecting City resources that would otherwise be used for street maintenance, police protection, fire protection and other critical operations upon which the public relies. (Exh. 850, Carter Direct, p. 4, ll. 3-11; Exh. 851, Carter Surrebuttal, pp. 4-5)

The Company’s application of its Revised Tariff 150 removed the City’s ability to allocate capital expense to developers and projects. On public projects, the City lost the ability to competitively bid the installation of streetlights through its well-established processes. It also lost the ability to realize a possible savings by having on-site contractors add streetlight installation to their scope of work in a way that, among other effects, avoided mobilization costs by separate contractors. (Exh. 851, Carter Surrebuttal, p.2)

There appears to be some uncertainty about the exact number of streetlights affected by Evergy's change in policy and practice after the 2016 rate case. The City did not maintain exact records because it thought it had no need to, since those streetlights were not going to be maintained by it, but by the Company. (Exh. 851, Carter Surrebuttal, p. 5) Mr. Carter testified of his belief that: "The individual utilities maintain records of those assets." (*Id.*) However, it now appears that Evergy did *not* maintain complete records of those assets. In its response to St. Joseph Data Request 2.2 (Exh. 853), the Company stated that its "available records are limited to 2017. Based on this, the Company identified 61 streetlights that were installed by Developers and transferred through the City to Evergy ..." (*Id.*)

The Company did not explain why its "available records are limited to 2017." The City understands the response to Data Request 2.2 (Exh. 853) to mean that, as of 2017, those 61 streetlights are the only ones the Company can document as having been installed by developers and transferred to Evergy between 1995 and 2017. The City is confident that more than 61 streetlights have been transferred to the Company since 1995. The historic practice between St. Joseph and the Company had been in place since 1995. (Exh. 850, Carter Direct, pp. 2-3; Exh. 851, Carter Rebuttal, pp. 5-6) Based simply on the fact that 45 developer-built streetlights have been installed in St. Joseph *since* 2017, the City asserts that no less than 188 or 189 streetlights have been transferred to the Company since 1995. (*Id.*) That number is derived by dividing the 45 known streetlights by 5.5, representing 5 and a half years between January 1, 2017 and mid-2022 (8.2) and assuming 8.2 lights per year since 1995 (188.6). For the City of St. Joseph to be paying a full, tariff rate, based on Company built streetlights, for these streetlights

is unjust and unreasonable. Those lights were built and paid for by contractors or developers. The City should not be required to pay for them again.

Company also argues that the City of St. Joseph has the option under Revised Tariff Sheet 151 (Exh. 852, last page) of having City contractors and City-approved developers install streetlights. Under that tariff (“Municipal Off-Peak Lighting Service Electric”), the City of St. Joseph would own those streetlights. As explained by Mr. Carter, that would require adding to the City budget for liability insurance and for maintenance costs (personnel and materials) associated with streetlights. Having separate lighting systems with some being owned by Evergy and others being owned by the City would add complexity and require the City to create a new maintenance program for a relatively small number of streetlights. (Exh. 850, Carter Direct, pp. 3-4) The avoidance of such costs and management responsibilities is a key reason the City of St. Joseph sold all its streetlights to St. Joseph Light & Power Company in 1995. (Exh. 850, Carter Direct, pp. 2-3; Exh. 851, Carter Surrebuttal, pp. 5-6.)

The Company argues that if it restores the historic program to St. Joseph, it will have to offer it to every other city in its service territory and perhaps in Kansas, too. (Exh. 51, Lutz Rebuttal, pp. 12-13; Tr. 875, Lutz Cross.) However, the Company’s witness also testified that St. Joseph was the *only* municipality in its service areas that employed this practice. (Exh. 51, Lutz Rebuttal, p. 12, ll. 13-14.) As Mr. Carter testified for the City, “other customers are not likely to return to an approach they did not utilize when it was previously available. Nonetheless, the ability to require developers to install streetlighting at their cost is a policy decision that should be left to local municipalities.” (Exh. 851, Carter

Surrebuttal, p. 3.) There is no evidence that any other municipality has requested from Everyg the type of streetlight service that St. Joseph had before 2016.

To address Company's concern, the City of St. Joseph is agreeable to limiting its proposed tariff language to charter cities, or even to charter cities which, prior to 2016, had service under those terms. (Exh. 851, Carter Surrebuttal, pp. 3-4; Tr. 875, Lutz Cross.) For example, the Commission could order Everyg West to add to its tariff this language:

6.0 This provision is only available to a charter city which, before 2016, had a program in which streetlights installed by city contractors or city-approved developers, at their expense, became property of the Company, upon inspection and acceptance by the Company ("Qualifying City"). If new streetlights are built by a Qualifying City as part of a city-funded project, or by a contractor as part of a city-approved development or project, those streetlights may be deemed to be owned by Company, after inspection and approval by Company for compliance with applicable safety standards, and shall not be subject to additional installation or structure charges.

6.1 No RATE (Optional Equipment) MOMLL charges in Section 4.0 or 5.0 of this tariff will be charged to a Qualifying City for any streetlight fitting the description in Section 6.0.

Such a narrow category would minimize the type of domino effect about which Everyg has expressed concern. It would also address Mr. Lutz's express concern about such an approach being "preferential." (Tr. 875, Lutz Cross.) This proposed language would be consistent with many state statutes that are focused on a particular city, county or other entity.

The Commission should order Everyg West to add proposed sections 6.0 and 6.1 to its streetlighting tariff.

*B. Should language be added to Evergy West's Municipal Street Lighting Service Tariff providing that no "Optional Equipment" charges in Section 4.0 or 5.0 of Municipal Street Lighting Service Tariff will be charged to streetlight facilities which are deemed to be owned by the Company and installed by a city or its contractor, or by a developer of a city-approved development?*

Yes. There is no legitimate basis for charging the City of St. Joseph for breakaway bases, undergrounding and other "Optional Equipment" charges under Sections 4.0 and 5.0<sup>2</sup> of the tariff for streetlights that were installed by City contractors or City-approved developers, because those costs have already been borne by the contractor or developer. Thus, for Evergy to charge the City of St. Joseph for such "Optional Equipment" is unjust and unreasonable. (Exh. 850, Carter Direct, pp. 6-7; Exh. 851, Carter Surrebuttal, p. 6, l. 24 – p. 9.)

For each streetlight in the City of St. Joseph, Evergy charges a monthly rate shown on Sheet 150 in Sections 1.0, 2.0 or 3.0, depending on the size and type of light fixture. Evergy then adds to that basic charge the applicable "Optional Equipment" charge(s) in Sections 4.0 and 5.0. (Exh. 851, Carter Surrebuttal, p. 6, l. 24 through p. 9, l. 21; Tr. 870-872, Lutz Cross) St. Joseph is paying Section 4.0 and 5.0 charges on streetlights constructed by City-approved developers and City contractors and those charges are significant. (*Id.*) Of the 61 developer-installed streetlights identified by Company,<sup>3</sup> all 61 of them had required undergrounding and 31 had breakaway bases. Even though all 61 had been installed and paid for by City-approved developers, and not by Evergy's investors, the City of St. Joseph is being billed by Evergy for undergrounding and

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<sup>2</sup> Exh. 852, Revised Sheets 150, 150.1 and 150.2.

<sup>3</sup> Exhibit 853.



breakaway bases. (*Id.*) And, as stated above, far more than 61 streetlights have actually become the property of Evergy West after being installed by city contractors or city-approved developers.

As Mr. Carter testified:

If just the undergrounding charge and breakaway base charge are billed to the City for the 61 streetlights identified by Evergy, those extra charges cost the City more than \$8,500 a year. If the undergrounding was under concrete or required rock removal or specialized trenching, the cost is even higher.

(Exh. 851, Carter Surrebuttal, p. 9, ll. 10-14.)

Company argues that these charges are “to cover the ongoing maintenance of the underground conductors and breakaway bases. These costs are not accounted for elsewhere in the rate paid by the City.” (Exh. 51, Lutz Rebuttal, p. 12; Tr. 869- 872, Lutz Cross) Each item of those charges on Revised Sheets 150.1 and 150.2 refer to installation or extension, not ongoing maintenance. Section 4.0 itself, on Revised Sheet 150.1 (Exh. 852) states: “The following rates for Optional Equipment may be added to the rate for basic installation.” Mr. Lutz did admit that these “Optional Equipment” charges *include* installation costs. (Tr. 871, ll. 15-18.)

For the City of St. Joseph to be paying for breakaway bases, undergrounding or other “Optional Equipment” charges for any of the 188 streetlights installed by city contractors or city-approved contractors is unjust and unreasonable. Even if the Commission were to decide not to restore the original service arrangement between the City and Evergy West, it should prohibit Evergy West from charging for breakaway bases, etc., for streetlights received by Evergy West under that arrangement.

*C. Should the Company be required to remove from its rate base streetlights that were installed by city contractors or city-approved developers?*

Yes. It was established at hearing that the 61 streetlights identified by the Company in Exhibit 853 are “in rate base” but valued at zero. (Tr. 872-873.) However, there are at least 127 additional streetlights of which the Company has gained possession that should also be valued at zero in the Company’s rate base. (See discussion under Item *B* above.) The Commission should direct the Company to value 127 additional streetlights at zero to ensure that streetlights the Company and its investors did not pay for are not earning a return, generating depreciation expense or otherwise being reflected in the Company’s rates.

*D. Should the Company be required not to charge the City of St. Joseph for breakaway bases, undergrounding and other “Optional Equipment” charges under Sections 4.0 and 5.0 of the tariff for streetlights that were installed by city contractors or city-approved developers?*

Yes. Please see the discussion under Item *B* above.

### **CONCLUSION**

WHEREFORE, the City of St. Joseph, Missouri respectfully requests the Commission to give serious consideration to the evidence and arguments submitted by the City in this matter.

Respectfully submitted,

***/s/ William D. Steinmeier***

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on the PSC Staff Counsel's office (at [staffcounsel@psc.mo.gov](mailto:staffcounsel@psc.mo.gov)), on the Office of the Public Counsel (at [opcservice@opc.mo.gov](mailto:opcservice@opc.mo.gov)) and on all parties of record on this 14<sup>th</sup> day of October 2022.

***/s/ William D. Steinmeier***

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William D. Steinmeier