BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro 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	)))))	**<u>File No. ER-2022-0025</u>** Tariff No. JE-2022-0024

INITIAL BRIEF

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and submits its *Initial Brief*.

BACKGROUND

On July 30, 2021, Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro ("Evergy Missouri Metro") filed a proposed tariff sheet, bearing an effective date of October 1, 2021, to revise its Fuel Adjustment Rate ("FAR") for the 12th Accumulation Period ("AP12") of its Fuel Adjustment Clause ("FAC"). AP12 was January 1, 2021 through June 30, 2021.

Evergy Missouri Metro had increased fuel and purchased power costs during AP12 due to Winter Storm Uri, but these costs were more than offset by increased off-system sales revenues, due to Winter Storm Uri, resulting in a net consumer benefit. Instead of including all FAR-includable costs and revenues in its AP12 FAR filing, Evergy Missouri West normalized its February FAR costs and revenues based on a three-year average from February of years 2018, 2019, and 2020. It included the net of normalized costs and revenues in its AP12 FAR filing. If Evergy Metro Inc.'s net booked actual February 2021 FAR costs and revenues were immediately reflected in the FAC, there would be approximately $56.8 million more in customer benefit on a total company basis than if Evergy Metro Inc.'s net normalized February FAR costs and revenues were used. This results in an approximately $32 million net customer benefit for Missouri after applying the jurisdictional allocation percentage for Evergy Missouri Metro.[1] Once the 95/5 sharing percentage is applied, Evergy Missouri Metro has therefore proposed to exclude approximately $30.4 million from the AP12 FAR which would have otherwise quickly benefited its customers through decreased energy costs.

Evergy Missouri Metro seeks an accounting authority order ("AAO") in Case No. EU-2021-0283, requesting that the Commission allow it to accumulate and defer to a regulatory liability the net customer benefit of approximately $32 million that it did not include in its AP12 FAR filing.[2] Evergy Missouri Metro proposes to flow back the benefits of the AP12 off-system sales revenues in a future FAR accumulation period.[3] A procedural conference was held in the AAO case, but there is no procedural order. Staff believes that the instant FAR case may resolve many issues in the AAO case and therefore, the FAR case should be handled first.

Staff filed its recommendation on August 27, 2021 in this FAR case, recommending that the Commission reject Evergy Missouri Metro's proposed revised tariff and direct Evergy Missouri Metro to file a substituted tariff sheet that includes its AP12 net revenues. The Commission rejected the tariff sheet Evergy Missouri Metro filed on July 30, 2021.[4]

The parties agree that the disputed amount in this proceeding is the difference between Evergy Missouri Metro's net normalized February FAR costs and revenues and

[1] *Direct Testimony of Lisa A. Starkebaum*, 5:22-6:6, 7:6-18 (Jul 30, 2021). See also *Joint Stipulation of Facts*, §5 (Dec 15, 2021).
[2] *Direct Testimony of Lisa A. Starkebaum*, 6:6-9, 7:16-19 (Jul 30, 2021).
[3] *Id.* at 6:12-14.
[4] *Joint Stipulation of Facts*, §6 (Dec 15, 2021).

its net booked actual February 2021 FAR costs and revenues.[5] The parties agree that this issue can be resolved with briefing, so no hearing is scheduled.

ISSUE

Pursuant to 20 CSR 4240-20.090(8)(A)2.A.(XI), may Evergy Missouri Metro defer its net extraordinary February 2021 revenues that would normally be included in its FAR calculation?

DISCUSSION

Evergy's request to defer extraordinary revenues violates the relevant portion of 20 CSR 4240-20.090(8)(A)2.A.(XI) (attached), which authorizes Evergy Missouri Metro to include in its FAR filings: "Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation or for any other reason[.]" Under the rule's plain language, Evergy Missouri Metro cannot defer revenues in its FAR.

This rule refers only to extraordinary costs, not extraordinary revenues. A judicial body will look beyond the statute for guidance "only when the meaning of a statute is 'ambiguous or would lead to an illogical result that defeats the purpose of the legislation.'"[6] "Regulations are interpreted according to the same rules as statutes."[7] On its face, 20 CSR 4240-20.090(8)(A)2.A.(XI) refers only to extraordinary costs, not extraordinary revenues. The plain and ordinary meaning of "extraordinary costs" is "extraordinary costs," not "extraordinary costs and revenues." Therefore, because 20 CSR 4240-20.090(8)(A)2.A.(XI) unambiguously refers only to extraordinary costs and not

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[5] *Id.* at §7.

[6] *Ben Hur Steel Worx, LLC v. Dir. of Revenue*, 452 S.W.3d 624, 626 (Mo.banc 2015) (citations omitted).

[7] *Stiers v. Dir. of Revenue*, 477 S.W.3d 611, 614 (Mo.banc 2016) (citing *Dep't. of Soc. Servs., Div. of Med. Servs. v. Senior Citizens Nursing Home Dist. Of Ray Cnty.*, 224 S.W.3d 1, 9 (Mo.App.W.D. 2007)).

extraordinary revenues, there is no room for construction.[8] "Provisions not found plainly written or necessarily implied from what is written will not be imparted or interpolated therein."[9] There is no language stating that net extraordinary revenues may be deferred from the FAR calculation.

Even if Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI) were stretched beyond its plain meaning, the rule is simply a list of information that must be included with the FAR filing. The heading for this subsection describes the format in which the information must be filed – the information must be filed "in electronic format, where available, with formulas intact[.]"[10]

Furthermore, reading 20 CSR 4240-20.090(8)(A)2.A.(XI) in conjunction with its heading, it makes no sense that extraordinary costs are included in the FAR calculation "in electronic format, where available, with formulas intact[.]" It makes even less sense when read in conjunction with 20 CSR 4240-20.090(8)(A)3., which provides that workpapers supporting extraordinary costs shall be sent to Staff. It does make sense to interpret 20 CSR 4240-20.090(8)(A)2.A.(XI) within its heading's context that information about extraordinary costs must be included with the FAR filing in electronic format. The Commission should avoid interpreting 20 CSR 4240-20.090(8)(A)2.A.(XI) in a perverse manner.

This case is distinguishable from Evergy Missouri West's FAC case, File No. ER-2022-0005, in which Staff approved Evergy Missouri West deferring both extraordinary costs and revenues from its FAR calculation. In the Evergy Missouri West

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[8] *Kinder v. Dep't. of Corr.*, 43 S.W.3d 369, 372 (Mo.App.W.D. 2001).
[9] *Pub. Serv. Com'n. v. Platte-Clay Elec. Co-op, Inc*., 407 S.W.2d 883, 891 (Mo. 1966) (internal quotation marks and citations omitted).
[10] 20 CSR 4240-20.090(8)(A)2.

case, the company's off-system sales were less than its fuel and purchased power costs incurred due to Winter Storm Uri – the exact opposite situation from Evergy Missouri Metro. Thus, Evergy Missouri West is deferring a net extraordinary cost resulting from Winter Storm Uri in order to spread the burden among its customers over a period of time.

Here, in contrast, there is no reason to defer an approximately $30.4 million (plus interest) net benefit to Evergy Missouri Metro's customers. Fuel costs in the fuel adjustment clause are reduced by off-system sales because "the utility's fixed costs (which permit off-system sales to be generated) are paid by retail customers."[11] Customers who paid for the infrastructure which make off-system sales possible should receive the benefit of their investment as soon as possible. Evergy Missouri Metro, a large regulated utility, is appropriately positioned to mitigate the impact of extraordinary costs to customers through a deferral, but any concurrent action to defer revenues will result in an adverse financial impact on customers as a whole.

For these reasons, Staff recommends that the Commission find that 20 CSR 4240-20.090(8)(A)2.A.(XI) does not give Evergy Missouri Metro authority to defer its net extraordinary February 2021 revenues that would normally be included in its FAR calculation.

WHEREFORE, Staff submits this *Initial Brief* for the Commission's consideration and information.

[11] *State ex rel. Union Elec. Co. v. Pub. Serv. Com'n.*, 399 S.W.3d 467, 472 (Mo.App.W.D. 2013) (citing *State ex rel. Pub. Counsel v. Pub. Serv. Com'n.*, 274 S.W.3d 569, 585 (Mo.App.W.D. 2009).

Respectfully submitted,

***/s/* Karen E. Bretz**

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been emailed to all parties and/or counsel of record on this 22nd day of December, 2021.

***/s/* Karen E. Bretz**

2. Part II—Capitalization Quantifications. Part II shall consist of specific quantifications of the following capitalization-related items:

A. Common stock equity (net);

B. Preferred stock (par or stated value outstanding);

C. Long-term debt (including current maturities);

D. Short-term debt; and

E. Weighted cost of capital including component costs;

3. Part III—Income Statement. Part III shall consist of an income statement containing specific quantifications of—

A. Operating revenues, including revenues from sales to industrial, commercial, and residential customers, sales for resale and all other components of total operating revenues;

B. Operating and maintenance expenses in fuel expense, production expense, purchased power energy, and purchased power capacity;

C. Transmission expense;

D. Distribution expense;

E. Customer accounts expense;

F. Customer service and information expense;

G. Sales expense;

H. Administrative and general expense;

I. Depreciation, amortization, and decommissioning expense;

J. Taxes other than income taxes;

K. Income taxes; and

L. Quantification of heating degree and cooling degree days, both actual and normal;

4. Part IV—Jurisdictional Allocation Factors. Part IV shall consist of a list of the jurisdictional allocation factors used for determining the electric utility's rate base, capitalization quantification, and income statement;

5. Part V—Financial Data Notes. Part V shall consist of notes to the reported financial data including, but not limited to:

A. Out-of-period adjustments;

B. Specific quantification of material variances between actual and budget financial performance;

C. Specific identification and quantification of material variances between current twelve- (12-) month period and prior twelve- (12-) month period revenue;

D. The expense levels of each item the commission has ordered be tracked in the RAM;

E. Budgeted capital projects; and

F. Events that materially affect debt or equity surveillance components;

6. Part VI—Missouri Energy Efficiency and Investment Act (MEEIA). An electric utility with approved MEEIA demand-side management programs and/or an approved demand-side programs investment mechanism shall include all filing requirements of 4 CSR 240-20.093(10) for the entire period of program delivery approved by the commission, the last twelve- (12-) month period, and the last quarter.

(B) Each surveillance monitoring report shall include any additional information the commission has ordered be provided.

(C) If the electric utility has any other approved cost recovery mechanisms that require submission of surveillance monitoring reports, the electric utility shall submit a single surveillance monitoring report incorporating these reporting requirements for all cost recovery mechanisms.

(7) Budget Report. Annually the electric utility shall submit in EFIS and provide to staff, OPC, and other parties, its approved budget for the upcoming budget year, in electronic format with all links and formulas intact and in a layout similar to its surveillance monitoring report. The budget submission shall provide a quarterly and annual quantification of the electric utility's income statement. The budget report shall be submitted within thirty (30) days of when the electric utility's budget is approved by the electric utility's management or within sixty (60) days of the beginning of the electric utility's fiscal year, whichever is earliest. The budget submission shall be designated "confidential" and treated accordingly.

(8) Periodic Changes to Fuel Adjustment Rates. An electric utility that has a FAC shall file proposed tariff sheet(s) to adjust its FARs following each accumulation period. The FARs shall be designed to bill the electric utility's customers, in the aggregate, the FPA if the FPA is positive, or return the FPA to the utility's customers if the FPA is negative.

(A) When an electric utility files with the commission tariff sheet(s) to change its fuel adjustment rates and serves it upon parties, the filed tariff sheet(s) shall be accompanied by—

1. Prefiled testimony that shall include:

A. The proposed FARs;

B. The change in the FARs;

C. The impact of the proposed FARs on the monthly bill of the electric utility's typical residential customer, together with the definition of typical residential customer used to determine that impact;

D. The accumulation period NBEC, ANEC, and FPA; and

E. An explanation that details the factors which contributed to the FPA amount.

2. The following information in electronic format, where available, with formulas intact:

A. For the period of historical costs which are being used to propose the fuel adjustment rates—

(I) The calendar month actual energy sales in kWh by rate class and voltage level;

(II) The actual fuel costs designated in the FAC, listed by generating station and fuel type;

(III) The MWh and actual purchased power costs, as purchased power is defined in the electric utility's FAC, differentiated between energy costs and demand costs;

(IV) Transmission costs designated in the electric utility's FAC;

(V) Net off-system sales revenues;

(VI) Fuel-related revenues other than off-system sales revenues separated by type of fuel-related revenue;

(VII) Net base energy costs collected in permanent rates;

(VIII) Any additional requirements the commission ordered;

(IX) Calculation of each of the proposed fuel adjustment rates;

(X) Calculations of the voltage differentiation in the proposed FAC rates, if any, to account for differences in line losses by service voltage level; and

(XI) Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation or for any other reason;

B. The electric utility's monthly short-term borrowing rate, along with—

(I) An explanation of how that rate was determined;

(II) The calculation of the short-term borrowing rate;

(III) Identification of any changes in the basis(es) used for determining the short-term borrowing rate since the last FAC rate adjustment;

(IV) If there is a change in the basis(es) used for determining the short-term borrowing rate, a copy(ies) of the changed basis(es) or identification of where it/they may be reviewed;

3. Workpapers, in electronic format, where available, with all links and formulas intact, supporting all items in paragraphs (8)(A)1. and (8)(A)2. that are not provided in the electric utility's section (5) periodic monthly report submissions shall be submitted through EFIS and provided to staff, OPC, and other parties;