BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Second Prudence Review)
of the Missouri Energy Efficiency Investment)
Act (MEEIA) Cycle 2 Energy Efficiency) File No. EO-2020-0227
Programs of Evergy Metro, Inc. d/b/a Evergy)
Missouri Metro)

In the Matter of the Second Prudence Review)
of the Missouri Energy Efficiency Investment)
Act (MEEIA) Cycle 2 Energy Efficiency) File No. EO-2020-0228
Programs of Evergy Missouri West, Inc. d/b/a)
Evergy Missouri West)

Public Counsel's Initial Post-Hearing Brief

Introduction

Evergy Missouri Metro and Evergy Missouri West (collectively "Evergy" or "Company") operate energy efficiency and demand-response programs approved by the Missouri Public Service Commission (Commission) per the Missouri Energy Efficiency Investment Act (MEEIA). Two such demand-response programs are the residential thermostat program and the demand response incentive (DRI) program. The logic of these programs is that curtailing residential energy demand can serve as a secondary energy resource. Evergy subsidizes smart thermostats with ratepayer money for individual residences, and the Company is consequentially able to lower residential temperatures during times of peak energy need. This control period is colloquially referred to as a "curtailment event," and is meant to benefit customers by supplying the utility with an additional energy resource to defer the need for a future supply-side investment. The DRI program has a similar design in terms of curtailing demand during peak hours with demand-side infrastructure, but targets larger, industrial energy users.[1] Conceptually, if an electric utility can shave demand during peak hours, it can avoid periods of high locational marginal pricing (LMP) on the grid, and contract excess capacity into the transmission network to provide customer savings.

Commission Rule 20 CSR 4240.093(11) requires the Staff of the Public Service Commission (Staff) to conduct a prudency audit of MEEIA[2] programs every two years. The Commission authorized Evergy to engage in its second cycle of MEEIA demand-side management programs in EO-2015-0240, and authorized a one-year extension of those programs through calendar year 2019 in its *Order Approving Stipulation and Agreement* on February 27, 2019.[3] Staff initiated its prudence review of Evergy's operation of its MEEIA cycle 2 programs on February 3, 2020. Staff's review focused on Evergy's operation of MEEIA programs from April 1, 2018, through December 31, 2019. Staff then reported on June 30, 2020, that Evergy imprudently failed to utilize its demand-response programs to produce benefits for its customers. Accordingly, Staff recommended a disallowance of approximately $2.1 million from Evergy Missouri Metro and $2.3 million from Evergy Missouri West related to Evergy's thermostat demand-response programs and DRI business program. Missouri's Office of the Public Counsel (OPC) independently reviewed Evergy's MEEIA cycle 2 costs in the review period, and discovered that Evergy failed to maintain administrative costs comparable with prior MEEIA program years. OPC accordingly recommended a $1.9 million disallowance from Evergy Missouri West.[4]

Following the pre-filed testimony stages, each party filed its position statement on October 28, 2020, and settlement discussions continued. To facilitate further discussions, parties requested

[1] Transcript (Tr.) p. 81.
[2] Mo. Rev. Stat. § 393.1075.
[3] EO-2019-0132.
[4] Rebuttal Testimony of Geoff Marke, EO-2020-0227 p.2.

that the Commission suspend the procedural schedule on October 29, 2020, which the Commission granted the next day. Staff and Evergy resolved a portion of Staff's recommended disallowance of certain administrative expenses on January 8, 2021, and discussions continued as to OPC and Staff's remaining recommended disallowances. Unable to reach a settlement of all remaining issues, the Commission held an evidentiary hearing on April 21 and 22, 2021.

Prudence Review Standard

In a Commission prudence review of utility actions, the practice followed by the Commission has been to employ a "presumption of prudence."[5] The Court of Appeals explained that while a court has never ruled on the validity of the Commission's presumption, the Commission's practice is as follows:

> While the burden of proof rests on the [utility], the PSC's practice has been to apply a "presumption of prudence" in determining whether a utility properly incurred its expenditures. The presumption of prudence is not a creature of statute or regulation. It first was recognized by the PSC in *Matter of Union Electric,* 27 Mo. P.S.C. (N.S.) 183 (1985) and has been applied by it since that point.
>
> Under the presumption of prudence, a utility's costs "are presumed to be prudently incurred.... However, the presumption does not survive a showing of inefficiency or improvidence" that creates "serious doubt as to the prudence of an expenditure." *Id.* at 193, quoting *Anaheim, Riverside, Etc. v. Fed. Energy Reg. Com'n,* 669 F.2d 799, 809 (D.C.Cir.1981). If such a showing is made, the presumption drops out and the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent. *Id.*[6]

[5] *Off. of the Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.3d 371, 376 (Mo. 2013).

[6] *Id.*

Once a party presents evidence rising as to "serious doubt as to the prudence of an expenditure" that presumption falls, and the utility bears the burden of proof to demonstrate that the contested charges or actions were prudent.[7] Just as an electric utility seeking Commission authorization to impose a demand-side investment mechanism (DSIM) surcharge per a MEEIA portfolio, it then also bears the burden of demonstrating the prudency of its DSIM charges and actions pursuant to its MEEIA programs following the requisite showing of doubt as to prudency.[8] A utility must accordingly demonstrate that it acted reasonable and prudent by showing that its conduct "was reasonable at the time, under all the circumstances considering that the company had to solve its problem prospectively rather than in reliance on hindsight."[9]

In this case, both Staff and OPC have raised significant doubts as to the prudency of Evergy's actions, and the Commission should accordingly conclude that Evergy has the burden of demonstrating prudence.

Argument

The Commission should order the disallowances as recommended by Staff because Evergy acted imprudently when it failed to utilize its demand-side measures after asking for Commission authority to utilize them to achieve customer benefits. This action was imprudent because Evergy knew or should have known about the potential benefits of its own programs, but failed to use them to the extent reasonably possible. The Commission should also approve OPC's recommended

[7] *Id.* (quoting *Matter of Union Elec.*, 27 Mo. P.S.C. (N.S.) 183 (1985).

[8] *See* Mo. Rev. Stat. § 393.150 (stating that the utility seeking to impose a new rate or charge on customers has the burden to establish the rate or charge is warranted).

[9] *State ex rel. Assoc. Natural Gas Co. v. Pub. Serv. Comm'n*, 954 S.W.2d 520, 528-29 (Mo. App. 1997) (citations omitted); *see also* Direct Testimony of Brad Fortson, Schedule BJF-d3, EO-2020-0227 p. 7.

disallowances because Evergy unreasonably increased administrative expenses, relative to program costs, without sufficient justification. Despite using the MEEIA tools less, Evergy failed to keep its ratio of administrative expenses relative to program costs in line with past years or the experience of comparable utilities. This action was imprudent because Evergy charged its customers for more non-incentive related costs and overhead with no commensurate benefits.

1. Are Staff and OPC's proposed prudence adjustments within the scope of a MEEIA prudence review as defined by 20 CSR 4240-20.093?

Yes. Commission Rule 20 CSR 4240-20.093 orders Staff to audit the "costs subject to the DSIM" for prudence, and then make recommendations as to what disallowance the Commission should issue, if any.[10] The Rule then legally authorizes the Commission to order disallowances recommended by Staff or other parties.

Both Staff and OPC identify certain imprudent acts relating to Evergy's demand-side programs and recovery thereof through the DSIM surcharge. The actual program and administrative costs that OPC and Staff take issue with are certainly "costs subject to the DSIM" because those costs literally flow through the DSIM onto customer bills. Customers directly paid for the infrastructure for the residential thermostat and DRI programs, as well as the administrative overhead that increased during the prudency review period. The foregone savings that Staff addresses in its prudence review are also "subject to the DSIM" because those are lost opportunities that customers should have received from the programs they supported but for Evergy's inaction. But for Evergy's MEEIA cycle 2 programs and DSIM, customers would not have been paying for programs that ostensibly would have been available to reduce Southwest Power Pool (SPP) fees, shift load to capitalize on lower day ahead LMP, or secure excess capacity

[10] 20 CSR 4240-20.093(11).

for bi-lateral capacity contracts. As Staff reports though, Evergy failed to utilize its MEEIA measures to reduce SPP fees, take advantage of LMP, or secure bi-lateral capacity contracts. This connection between the potential savings and program implementation makes Staff's recommended disallowances "subject to the DSIM."

As Staff witness J Luebbert explains:

> The disallowances that I recommend are the result of Evergy's decision-making associated with the implementation of its MEEIA Cycle 2 programs . . . Ratepayers paid for the demand response programs and the associated [earnings opportunity] through the DSIM with the expectation that the Evergy decision makers would implement the programs in a manner that would maximize the benefits realized through those programs.[11]

The Commission should not instead read the 20 CSR 4240-20.093(11) "subject to the DSIM" language hyper literally so as to only include sums that customers have paid for, while excluding savings they lost. This reading is invalid for two reasons.

For comparison, consider the judicial affirmation of this Commission's ordered prudence disallowance in the fuel adjustment clause (FAC) context. The Commission's prudency review rules for FACs use "subject to" language similar to what the Commission included in its MEEIA rules.[12] The Missouri's Western Court of Appeals upheld this Commission's decision to order disallowances in a prudence review because Ameren Missouri excluded the revenue from two off-system sales contracts from its FAC.[13] Ameren Missouri entered into those contracts due to the weather-related intermittent loss of the Noranda aluminum smelter. The Commission ordered Ameren Missouri to refund over $17 million to customers even as this sum of money did not relate to any fuel costs in the FAC. Ameren Missouri contended that its customers were not "harmed" because the off-system sales contract revenue merely replaced the lost revenue from Noranda. In

[11] Surrebuttal Testimony of J Luebbert, EO-2020-0227 p. 2.
[12] *Compare* 20 CSR 4240-20.090(11) *with* 20 CSR 4240-20.093(11).
[13] *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 399 S.W.3d 467, 491 (W.D. App. 2013).

Ameren Missouri's view, customers suffered no cost increase as the revenue from sales to Noranda was incorporated in Ameren Missouri's revenue requirement, and therefore customers had no expectation to receive off-system sales revenues that replaced revenues from Noranda. However, the Court responded:

> In any event, Ameren misapprehends the concept of harm. Ameren claims that but for the ice storm and Noranda's curtailed production resulting therefrom, Ameren would not have entered into the AEP and Wabash contracts. Thus, Ameren contends, the revenue from the AEP and Wabash contracts merely replaced the revenue it expected to receive from Noranda so that ratepayers suffered no harm. The PSC rejected Ameren's argument, finding that *Ameren's failure to include the revenue from the AEP and Wabash contracts in the actual net fuel costs calculation resulted in the ratepayers losing the benefit of the bargain reflected in the Ameren tariff*. We agree.[14]

Restated, the Court upheld the Commission's disallowance based on unrealized benefits. Likewise, the Commission is empowered to approve disallowances for unrealized benefits from DSIM supported programs.

2. Did Evergy act imprudently in its implementation of the Residential Programmable Thermostat program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Yes. Evergy's failure to utilize its residential programmable thermostat program to the extent possible minimized or negated customer benefits even as customers continued to pay for the program. A reasonable and prudent operator of demand-side programs is not expected to achieve every conceptual benefit through the technology, but is expected to utilize the programs meaningfully after asking for Commission approval for the programs. Evergy knew or should have known during the review period that its Cycle 2 demand-side programs should be utilized more to secure customer benefits and justify their costs. Evergy should have especially known given

[14] *Id.* at 491-92 (emphasis added).

that Evergy designed the programs to use them more.[15] Evergy's decision to not use its residential thermostat program to the extent possible is analogous to asking its customers to pay for a sports car, promising the benefits of speed and efficiency, but then leaving the ride to rust.

Evergy's Residential Programmable Thermostat program uses ratepayer funds to subsidize programmable thermostats for Evergy's customers. Evergy can then use those thermostats to call "curtailment events" whereby Evergy reduces customer demand during peak hours to redirect it as a new source for capacity. The goal of the program and calling events is to reduce the high peak demands.[16] Participating customers still maintain the ability to override any reduced demand though.[17] In the case of the residential demand response program, a customer override involves merely adjusting one's thermostat. Evergy's tariff states that the purpose of the program is to "reduce system peak load and thus defer the need for additional capacity."[18] Evergy has invested in at least 65,000 thermostats since 2004 for the potential benefits of demand-response.[19]

The Commission should first note that Evergy overinvested in this resource, and did not curtail spending even as customer adoption exceeded expectations. Evergy learned during the first half of its Cycle 2 programs in 2017 that its incentive for customers to adopt the programmable thermostats was clearly more than necessary. Both Evergy companies "exceed the projected installations for the entire MEEIA Cycle 2 portfolio in 2017" alone.[20] At any point in 2017, and

[15] See Rebuttal Testimony of Brian File, EO-2020-0227 p. 7 (stating that Evergy designed the thermostat demand-response and DRI program for 15 and 10 maximum events, respectively) and compare to Mr. File's testimony (Tr. 86) that the company called only two thermostat demand-response events and two DRI program events.
[16] Cross-examination of John Carlson, Tr. 57.
[17] Surrebuttal Testimony of Geoff Marke, EO-2020-0227 p. 7.
[18] Staff Report, EO-2020-0227 p. 26.
[19] Rebuttal Testimony of Geoff Marke, EO-2020-0227 p. 14; Surrebuttal Testimony of Geoff Marke, EO-2020-0227 p. 6-7 fn1.
[20] Staff Report, EO-2020-0228 p. 25; Staff Report, EO-2020-0227, p. 25.

onward into this prudency review period, Evergy knew that its incentives paid to participants were more than necessary to meet expected installations. By failing to adapt and change this incentive level, Evergy maximized charges to non-participants, as they continued to subsidize thermostats for participants. Furthermore, over the review period in question, Evergy supplied 2,100 ratepayer-subsidized thermostats that customers did not activate within Evergy's demand-side management network.[21] Of those 2,100, customers returned only 856, meaning that Evergy gave over 1,000 thermostats to customers, somewhere, with no attendant benefits to non-participant or participant customers.

The Commission should next note that Evergy's maximization of charges to non-participants to distribute thermostats becomes indefensible in light of Evergy not using those thermostats to the extent possible. Despite supplying so many thermostats, Evergy failed to utilize the thermostats. Evergy entered into Cycle 2 after learning from the experiences of Cycle 1, and presumably wanted to utilize its Cycle 2 demand-side programs given that Evergy requested Commission authorization under the MEEIA for them. However, Evergy called only four curtailment events of a potential 168 thermostat events in 2018 and 2019.[22] Evergy only later called five curtailment events in 2019 in response to a stipulation and agreement with Staff and OPC.[23] Evergy may attempt to cast the five curtailment events in 2019 as an example of it prudently following the terms of a stipulation, but the stipulation expressly does not foreclose a future Commission prudency determination. Instead, the stipulation is limited "solely for the purpose of settling the issues/adjustments in [Evergy's MEEIA Cycle 3 application] explicitly set forth above. Unless otherwise explicitly provided herein, none of the Signatories to this Stipulation shall be

[21] Staff Report, EO-2020-0228 p. 26; Staff Report, EO-2020-0227, p. 26.

[22] Staff Report, EO-2020-0227 p. 29.

[23] Sur-Surrebuttal Testimony of Brian File, EO-2020-0227 p. 14.

deemed to have approved or acquiesced in any ratemaking or procedural principle."[24] In 2020, Evergy resumed calling fewer events in Cycle 3 with only two events for the year.[25] Meanwhile, "ratepayers paid the same amount of program costs regardless of the number of events called."[26] All signs indicate that Evergy will not utilize its demand-response programs to the extent possible unless ordered by this Commission. Evergy even admitted at the evidentiary hearing that it has never called the maximum amount of events possible.[27]

A reasonable and prudent operator of energy efficiency programs would utilize them to the extent possible, not call fewer events unless compelled by a stipulation. If instead Evergy can only properly use the thermostat program for two or three curtailment events annually, there is even more reason that Evergy should have modified incentive levels after 2017.

Continuing to use ratepayer funds for this demand response program is imprudent because "subsidizing programmable thermostats for demand-response does not benefit all customers if no actual demand response is called."[28] Whatever savings Evergy claims to have achieved from calling minimal events is irrelevant because those savings did not defer Evergy's need for a future supply-side asset.[29] By not using demand-side programs to defer future supply-side costs, Evergy did not provide benefits to all customers, and acted contrary to its MEEIA related tariff language to "defer the need for additional capacity."[30] Evergy's decision to not call events is also bizarre given that there "is literally no downside and only upside to calling events."[31] At the evidentiary

[24] Exhibit 1, para. 18.
[25] Cross-Examination of Brian File, Tr. 90.
[26] Direct Testimony of J Luebbert, EO-2020-0227 p. 5.
[27] Cross-Examination of Brian File, Tr. 102.
[28] Rebuttal Testimony of Geoff Marke, EO-2020-0227 p. 15.
[29] Surrebuttal Testimony of Geoff Marke, EO-2020-0227 p. 5; Surrebuttal Testimony of J Luebbert, EO-2020-0227 p. 8-10; Cross-Examination of J Luebbert, Tr. 147-148.
[30] *Contra* Mo. Rev. Stat. § 393.1075.4; Staff Report, EO-2020-0227 p. 26 (citing tariff language)
[31] Surrebuttal Testimony of Geoff Marke, EO-2020-0227 p. 7.

hearing, Evergy's own witness John Carlson said that every time Evergy calls curtailment events it achieves the benefits of reducing SPP fees.[32] With the knowledge that every time it called a demand-response event it would achieve savings, it was imprudent for Evergy not to call as many events as possible under its tariff or design. Supporting Carlson's remarks is the reality that customers need only adjust their thermostat to opt out of curtailment, and so any inconvenience is minor. Customers can even precool their homes in anticipation for a curtailment event.[33] Evergy also already paid the cost to set up the demand-side management infrastructure; it should have used it.

The Commission should also consider that Evergy knew or should have known generally when to call more curtailment events to hit peak demand and to produce customer benefits. Evergy may claim that knowing when to call curtailment events to achieve customer benefits requires unobtainable clairvoyance. Carlson seemed to indicate at the evidentiary hearing at one point that the drivers of peak demand on an electrical grid are so varied as to make the entire system unpredictable.[34] However, Evergy's own practices dispute this. The date and time for each called demand-response event in 2019 is as follows:

Event #1 – July 18, 2019 (4-6 PM)
Event #2 – July 19, 2019 (4-6 PM)
Event #3 – Aug 6, 2019 (4-6 PM)
Event #4 – Aug 7, 2019 (2-4 PM)
Event #5 – Aug 12, 2019 (4-6 PM)[35]

Note that Evergy called all but one of the events over the 4:00 to 6:00 p.m. period, and that Evergy called all of them on afternoon days in the middle of summer. This is not happenstance, and Evergy

[32] Cross-Examination of John Carlson, Tr. 58-59.
[33] Surrebuttal Testimony of Geoff Marke, EO-2020-0227 p. 7.
[34] Cross-Examination of John Carlson, Tr. 60.
[35] Rebuttal Testimony of Brian File, EO-2020-0227 p. 11.

did not choose these times at random.[36] Rather, this timing makes sense because Evergy, as an electric utility in Missouri, has its most regular energy demand in the summer when people are using air conditioning systems.[37]

Evergy also has weekly meetings to determine and confirm the appropriate time to curtail demands and extract benefits from its demand-response resource.[38] Carlson's market operations and procurement team, which he referred to as a "power marketing" team, and Brian File's demand-response team meet regularly during the summer months to decide optimal times to curtail demand.[39] There is at least one meeting per week to analyze energy markets and the status of SPP, and at least one check in point later just before calling a demand event to confirm whether it was still a good time to initiate a demand-response protocol.[40] With four months in Evergy's summer period, and four weeks in a month, this means Evergy had at least sixteen initial check in meetings to ascertain the best time to use its programmable thermostats to curtail peak demand.[41] Evergy then also had at least sixteen later, additional check in points to confirm that a scheduled demand-response event should continue. Altogether, this means Evergy has thirty-two minimum checkpoints over the summer to confirm whether it was hot outside, and thus whether Evergy would be likely to shave peak demand. This regular meeting demonstrates that Evergy knew or should have known when to call more demand-response events with its thermostat program, and therefore Evergy's failure to call events despite having this knowledge is imprudent.

[36] Cross-Examination of Brian File, Tr. 89.

[37] Cross-Examination of John Carlson, Tr. 57; Cross-Examination of Brian File, Tr. 89.

[38] Cross-Examination of John Carlson, Tr. 60-61.

[39] Cross-Examination of John Carlson, Tr. 59-60.

[40] Cross-Examination of John Carlson, Tr. 62-63.

[41] *See id.*

In addition, the meetings may have been good practice, but one need simply experience a material time on Missouri soil, as Evergy has, to know the best time of the year to call more curtailment events to maximize benefits and assuage annual peak demands. There is simply no reason why Evergy should not have called more demand-response events over this prudency review period. Evergy's failure to meaningfully call events, despite this knowledge, meeting, and spending more than necessary to encourage thermostat adoption is imprudent.

The Commission should disallow $287,680 for Evergy Missouri Metro's imprudence on this point.[42] The Commission should also disallow $577,865 for Evergy Missouri West's imprudence on this point.[43]

3. Did Evergy act imprudently in its implementation of its Demand Response Incentive Program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Yes. Like the programmable thermostat program, the DRI program is meant to curtail larger energy users' demand during peak times to produce benefits for customers. [44] Also like the thermostat program, the DRI program can only achieve that goal if it is actually used. Unfortunately, despite building on the knowledge from Cycle 1, and knowing the best times to call demand response events, Evergy failed to call DRI events to the extent possible during the review period.

[42] Staff Report, EO-2020-0227 p. 30-31.
[43] Staff Report, EO-2020-0228 p. 30.
[44] Surrebuttal Testimony of Geoff Marke, p. 8; Ex. 106, Tariff Sheet 2.09.

Evergy called only two DRI events of a potential 20 in 2018, and only one test event and one actual event in 2019.[45] This pattern mirrors Evergy's failure to utilize its programmable thermostat program prudently. A prudent operator would use a tool after asking for regulatory authority to acquire the tool. Alternatively, a prudent operator would minimize the costs associated with a tool if it ended up not being useful. A prudent operator would also follow its tariff language to use its demand-side programs to produce avoided costs to defer supply-side costs.[46] Evergy did not comport with any of this prudent behavior.

Instead of minimizing DRI's program costs, Evergy continued to spend ratepayer money ineffectively. Evergy used ratepayer dollars to incentivize customers to participate in the DRI program. These were often the same higher energy customers who also opted out of paying DSIM surcharges.[47] Although these customers signed up for the DRI program, they could also opt out of participating in DRI curtailment events. Evergy did assess penalties for DRI customers who did not participate in DRI protocols, but the penalty did not come close to offsetting or meeting the initial incentive amount. As the confidential numbers in Staff's reports demonstrate, DRI customers could acquire considerable sums of ratepayer money for doing nothing more than signing up for the DRI program. It is obvious that if "an enrolled customer can earn more profit than the minimal event penalty costs, the customer is unlikely to participate meaningfully."[48] Once a prudent operator realized that its demand-response program was inducing no behavior from DRI customers, but was still charging non-participants, it would change course and begin immediately

[45] Staff Report, EO-2020-0227 p. 29; Cross-Examination of Brian File, Tr. 86, 88.

[46] *See* Staff Report, EO-2020-0227 p. 26 (citing tariff language).

[47] Staff Report, EO-2020-0228 p. 27; *see* Mo. Rev. Stat. § 393.1075.7.

[48] Staff Report, EO-2020-0227 p. 27-28.

to redesign the program. If redesign were not possible, a prudent operator would at least call more events with DRI to justify customer costs. Evergy did neither.

Evergy may defend itself by claiming that minimal demand-response events nonetheless means that the DRI program was cost-effective or produced some measure of savings, but those "benefits" are washed away by Evergy's failure to avoid future supply-side investment. Without avoided costs, Evergy's customers will continue to pay for both demand-side and supply-side costs. In fact, "Evergy has decided to enter into Purchase Power Agreements for several hundred megawatts of wind projects since the start of MEEIA Cycle 2."[49] One can only imagine the additional supply-side investment expected in Evergy's next general rate case given the Company's adoption of plant-in-service accounting.[50] Because Evergy did not use its DRI in line with its tariff to avoid future supply-side costs, Evergy was imprudent and harmed its customers.

The Commission should disallow $111,363 for Evergy Missouri Metro's imprudence on this point.[51] The Commission should also disallow $990,137 for Evergy Missouri West's imprudence on this point.[52]

4. Did Evergy act imprudently by not calling more demand response events for the purpose of reducing Southwest Power Pool (SPP) fees? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Yes. Evergy knew or should have known that it should have used its MEEIA Cycle 2 demand-response programs to minimize monthly peaks and thus reduce fees paid to SPP. Evergy's

[49] Surrebuttal Testimony of J Luebbert, EO-2020-0227 p. 10.
[50] *See* Mo. Rev. Stat. § 393.1400.
[51] Staff Report, EO-2020-0227 p. 30-31.
[52] Staff Report, EO-2020-0228 p. 30.

decision makers knew of this potential benefit because reducing SPP fees was a key component for Evergy's basis to continue its thermostat and DRI demand-response programs into Cycle 3. The Commission agreed with Evergy and recognized the benefit of reduced SPP fees through demand-response.[53]

What is frustrating about Evergy's failure to reduce SPP fees with its Cycle 2 programs is that it appears relatively easy for Evergy to have done so. Evergy had already implemented the demand-side infrastructure to curtail demand to reduce monthly peaks. Evergy also told Staff the following in January of 2019:

> The Company has additional economic incentives to call demand response events during the summer. Two specific items are the following:
>
> 1. Reduction in Southwest Power Pool Schedule 11 and 1a fees (attached spreadsheet estimates the approximate cost reductions associated with programs).
>
> 2. SPP day ahead pricing market opportunities (not estimated at this time).[54]

Clearly, Evergy knew of the benefit of reducing SPP fees through demand-response before the summer of 2019. Evergy's Carlson also testified at the evidentiary hearing that every time Evergy calls an event it achieves savings.[55] Carlson further testified that Evergy is more likely to "hit" its monthly annual peak if it calls more demand-response events.[56] Evergy also knew during the prudency review period that its demand would peak in summer with the heat of the day.[57]

[53] Surrebuttal Testimony of Geoff Marke, EO-2020-0227 p. 8 (quoting Amended Report and Order, EO-2019-0132 p. 12-13).

[54] Surrebuttal Testimony of J Luebbert, EO-2020-0227 p. 3 (Staff treated the quoted language as confidential, but Evergy's witness File explained at the evidentiary hearing that it need not be treated as confidential. Tr. 83-84).

[55] Cross-Examination of John Carlson, Tr. 58-59.

[56] Cross-Examination of John Carlson, Tr. 58.

[57] Cross-Examination of John Carlson, Tr. 57; Cross-Examination of Brian File, Tr. 89.

Therefore, given Evergy's admitted incentive and knowledge that it would achieve benefits for every called event, the best way to maximize its opportunity to reduce monthly peak demand would have been to call as many events as possible during the summer months.

Evergy's defense of it not minimizing SPP fees is that Evergy focuses its demand-side programs on reducing annual peak demand instead of monthly peak demand.[58] Evergy misses the point here. Evergy is a summer peaking utility, meaning that its annual peak is more than likely going to be in the summer. Therefore, the optimal way to maximize its chances of reducing annual peak would be to target monthly peak demand during the summer months. Unfortunately, Evergy did not do so, and consequentially it did not minimize SPP fees.

Staff initially calculated that if Evergy had utilized demand-response as intended, and alleviated the need to rely on SPP transmission, Evergy would have avoided over half a million dollars in SPP expenses. [59] Staff modified its calculations in light of corrections from Evergy, but the total amount of lost savings still amounted to over half a million dollars. Evergy's quibbling with the numbers thus does nothing to negate the harm of lost benefits its customers suffered.

The Commission should disallow $397,002.28 for Evergy Missouri Metro's imprudence on this point.[60] The Commission should also disallow $666,008.23 for Evergy Missouri West's imprudence on this point.[61]

5. Did Evergy act imprudently by not calling more demand response events for the purpose of reducing the costs associated with day-ahead locational marginal prices? If the

[58] Cross-Examination of J. Luebbert, Tr. 170.
[59] Staff Report, EO-2020-0227 p. 29; Staff Report, EO-2020-0228 p. 29.
[60] Surrebuttal Testimony of J Luebbert p. 14.
[61] *Id.*

Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Yes. Similar to Evergy's failure to utilize demand response in a manner to reduce SPP fees, Evergy failed to utilize its customer-supported infrastructure to reduce load to take advantage of day-ahead (DA) higher locational marginal prices (LMP). LMP refers to the wholesale value of electricity at isolated points on the regional transmission operator's network. During peak demand, when it is more expensive to serve customers, LMP is also higher. A DA LMP then reflects the price of wholesale electricity one day before the market opens. SPP participants, like Evergy, can take advantage of DA LMP to budget expenses and meet resource needs. One method of taking advantage of DA LMPs is to shift load prospectively to avoid purchases at higher periods, while shifting Evergy's load to periods of lower LMP. As Staff explains, Evergy "could have targeted demand response events to pre-cool residential homes with the goal of minimizing the cost of serving load" at high LMP times, while shifting load conversely to meet lower expected LMP periods.[62]

Evergy did not take advantage of higher LMP despite having the demand-response infrastructure in place, knowing of the potential benefit, and having every opportunity to shift load away from periods of high LMP. As previously discussed, Evergy's power marketing and demand-response teams meet regularly during Evergy's highest demand peaking months to analyze the best times to curtail demand.[63] Evergy discussed SPP factors to take into account during these meetings.[64] Given Evergy's regular checking and analysis, it knew or should have known that it could prevent harm to its customers by shifting load away from periods of high LMP with existing

[62] Staff Report, EO-2020-0228 p. 28.
[63] Cross-Examination of John Carlson, Tr. 60.
[64] *Id.*

demand-side resources. Putting aside the meeting circumstances showing that Evergy should have known and acted upon the potential benefit of capitalizing on the LMP market, one need only consider that Evergy told Staff that the Company had a market incentive to call demand response events to address SPP's day ahead pricing in January 2019.[65] Evergy clearly knew that it could take advantage of day ahead LMP, and in actuality claimed that it was incentivized to act upon the day ahead market. Evergy's decision to not act upon this benefit was then imprudent.

If Evergy Missouri Metro had so reduced load, Evergy customers could have avoided an additional $54,227.[66] Every Missouri West customers could have seen a benefit of $86,303.[67] The Commission should disallow $54,227 for Evergy Missouri Metro's imprudence on this point.[68] The Commission should also disallow $86,303 for Evergy Missouri West's imprudence on this point.[69]

6. Did Evergy Missouri Metro act imprudently by not entering into more bi-lateral capacity contracts? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Yes. For all the reasons state above, Evergy knew or should have known that it should be utilizing its MEEIA Cycle 2 demand-side programs to curtail demand to benefit customers. One such benefit would be to curtail enough demand for Evergy to have excess capacity for sale in a bi-lateral capacity contract. The Commission recently recognized this benefit as a basis for continuing

[65] Surrebuttal Testimony of J Luebbert, EO-2020-0227 p. 3 (Staff treated the quoted language as confidential, but Evergy's witness File explained at the evidentiary hearing that it need not be treated as confidential. Tr. 83-84).
[66] Staff Report, EO-2020-0227 p. 30-31.
[67] Staff Report, EO-2020-0228 p. 30
[68] Staff Report, EO-2020-0227 p. 30-31.
[69] Staff Report, EO-2020-0228 p. 30.

Evergy's demand-side programs into Cycle 3.[70] However, Evergy did not achieve this benefit for customers in Cycle 2, and was imprudent in its failure to seek this benefit.

Staff's report documents that Evergy Missouri Metro's 2018 IRP expected the Metro Company to have an excess of more than 700 MW of capacity in 2018 and more than 370 MW in 2019.[71] Taken together, Evergy then knew that one of its Missouri entities would have 1,000 MW of capacity available for sale during this prudency review period. Staff notes that had Evergy entered into a capacity sale contract for far less than 1,000 MW in 2018 and 2019, Evergy's customers would have reaped a $1,161,474 benefit.[72] This benefit would have gone a long way towards justifying the implementation costs non-participants paid to set up Evergy's demand-side programs. Despite this known potential benefit, Evergy Missouri Metro did not use the demand-resources available to it to produce this marketable excess capacity.

Even if Evergy had not secured a bi-lateral capacity contract, Evergy should have known that it could have at least tried. Its own resource planning told Evergy that it would have capacity available. However, Evergy explained in response to Staff data requests that it "did not consider bidding its contracted demand response capacity into the SPP market."[73] This is contrary to Evergy's previous efforts to secure bi-lateral capacity contracts.[74] Given this, Evergy's lack of consideration was imprudent.

The Commission should also note that Staff's recommended disallowance based on a foregone capacity sales contract is simply holding Evergy to its word. Evergy premised the continuation of its demand-side programs into Cycle 3 on a so-called "market-based approach to

[70] Amended Report and Order, EO-2019-0132 p. 13.
[71] Staff Report, EO-2020-0227 p. 30.
[72] *Id.*
[73] *Id.* at 29.
[74] *See* Rebuttal Testimony of John Carlson, EO-2020-0227 p. 4.

valuing capacity" calculated by averaging several capacity bids.[75] Staff then judged Evergy's ability to sell excess capacity based on a dollar figure of kilowatts per year that was far less than the "market-based" kilowatt per year figure Evergy used for its proxy avoided costs.[76] Therefore, if Evergy's "market-based approach" is accurate, Evergy's Cycle 2 programs should have had no problem producing excess capacity for a capacity contract at that dollar amount. However, Evergy's response is to balk at that possibility and complain that "having excess capacity doesn't mean we can always sell it."[77] Given that response, it is doubtful that Evergy's experience with Cycle 3 will possibly meet "market-based" numbers Evergy used. Absent an order from this Commission now, Evergy's experience with Cycle 3 may instead look like its Cycle 2 experience of minimal events called.

Evergy Missouri Metro's customers continued to pay for the DSIM that made the benefits from a bi-lateral capacity contract possible. However, Evergy did not pursue this option for customers despite knowing of the potential benefit well in advance from the IRP. Evergy's actions on this point were imprudent, and the Commission should disallow $1,161,474 from Evergy Missouri Metro on this point.[78]

7. Did Evergy act imprudently by virtue of its MEEIA programs' incentive to non-incentive costs ratios?

Yes. In light of the foregoing, if Evergy was only going to use its demand-response programs to call minimal curtailment events, it should have decreased administrative expenses.

[75] Surrebuttal Testimony of J Luebbert, EO-2020-0227 p. 15.
[76] *Id.* at 16-17.
[77] Rebuttal Testimony of John Carlson, EO-2020-0227, p.6.
[78] Staff Report, EO-2020-0227 p. 30-31.

Evergy should have at least kept its ratio of administrative to program costs in line with Evergy's experience during the first half of Cycle 2. If anything, one would expect more administrative expense on the front end during Cycle 1 as opposed to the final days of Cycle 2. Contrary to common sense, Evergy actually charged its customers more for administrative costs.

Evergy harmed its customers by devoting an inordinate amount of its energy efficiency spending into administrative and overhead costs, as opposed to actual efficiency measures or savings. Over this prudency review period, OPC witness Dr. Geoff Marke determined that by 2018 over half of the DSIM monies paid for by customers was going to administrative and other non-incentive spending. Every month that an Evergy customer paid for a DSIM charge on her bill, most of her money was going into overhead instead of actual energy efficiency.

For Evergy Missouri Metro the figure is 55% of all program dollars went to administrative costs, and for Evergy Missouri West the ratio is 60%.[79] Although the ratio of administrative to incentive dollars has been high in past MEEIA program years, Evergy's actions in this prudency period are still an outlier and a significant increase when compared to previous years. Dr. Marke supplies the following charts in his testimony:[80]

Figure 5: Evergy Metro (formerly KCPL-MO) Energy Efficiency Spending (2013-2018), millions 2018 dollars

[79] Rebuttal Testimony of Geoff Mark, EO-2020-0227, p. 6.
[80] *Id.* at 6.

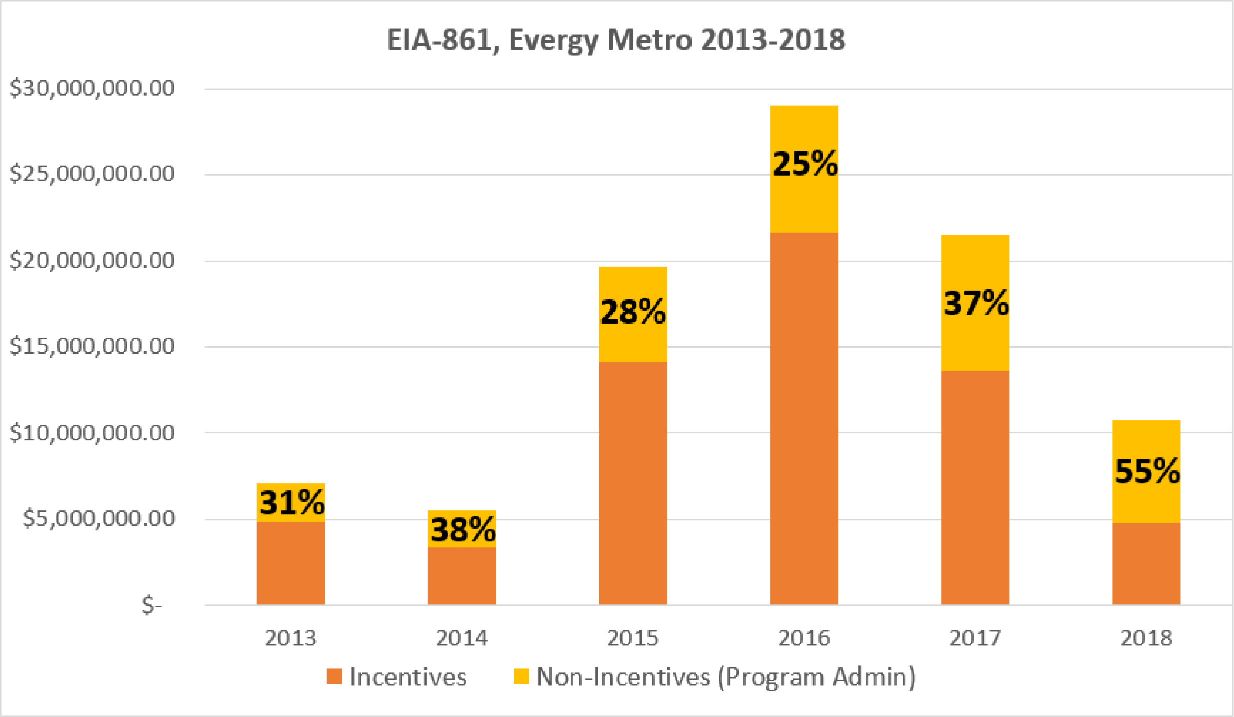
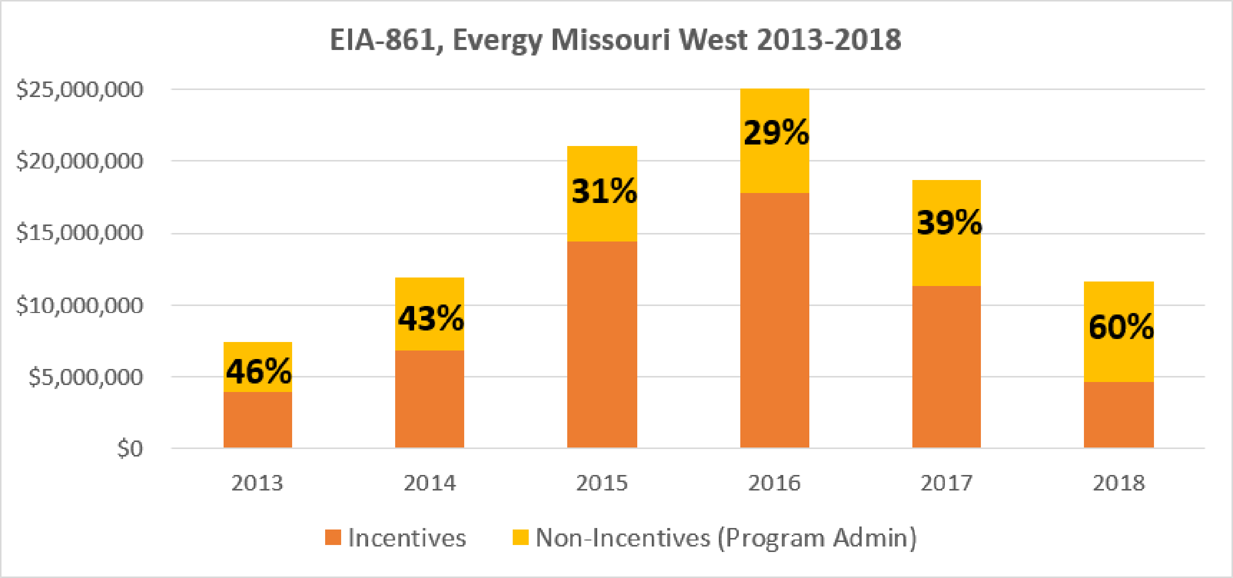


Figure 6: Evergy West (formerly KCPL-GMO) Energy Efficiency Spending (2013-2018), millions 2018 dollars



Dr. Marke made these charts from self-reported data Evergy provided to the U.S. Energy Information Administration (EIA). From these charts, the Commission can see that the administrative cost's share of total program budget has previously always been less than half, as low as 25% in 2016 for Evergy Missouri Metro, and started as low as 31% and 46% for Evergy Missouri Metro and Evergy Missouri West, respectively.

To put Evergy's administrative spending ratios in perspective, based on that same EIA data, Evergy Missouri Metro's administrative spending relative to total program spend is 17% higher than the national average for utility demand-side programs.[81] Evergy Missouri West is 21% higher.[82] This spending places Evergy Missouri Metro and Evergy Missouri West as the 23rd and 19th worst, respectively, out of 515 utilities in terms of non-incentive costs relative to efficiency incentives.[83] Evergy's ratio of non-incentive to energy efficiency spending is also the highest in Missouri on record.[84] For comparison, administrative expenses made up only 14% of Liberty Utilities' energy efficiency program spending in 2018.[85] For Ameren Missouri, the figure was 42%, in line with the EIA national average.[86]

OPC is not opposed to customers paying for overhead costs to administer energy efficiency programs, but as Evergy implements and spends more overall, customers should expect that most of their contributions are going to energy efficiency. A prudent and reasonable operator of demand-side programs would consider how to limit administrative costs, and therefore Dr. Marke recommends this Commission issue a disallowance to ensure that Evergy manages its budget prudently in the future. If the Commission does not find a utility devoting over half of its MEEIA budget to overhead to be imprudent, even as that same utility did not experience that same level

[81] Exhibit 202, Geoff Marke Errata Sheet.
[82] *Id.*
[83] Rebuttal Testimony of Geoff Marke, EO-2020-0227 p. 7.
[84] Rebuttal Testimony of Geoff Marke, EO-2020-0227 p. 3.
[85] *Id.* at 5.
[86] *Id.*

of spending previously for the same programs, then it should be prepared to see similar if not worse administrative spending in Evergy's Cycle 3 of MEEIA programs.

Dr. Marke recommended his disallowance based on the logic that reasonable operators keep administrative spending at certain threshold levels. Dr. Marke notes that for nonprofits, the expected threshold for administrative spending is markedly lower than what we should expect for an investor owned utility, but even in the utility context, this Commission and Evergy's tariffs limit the amount of administrative dollars in Evergy's Low Income Weatherization Assistance Program (LIWAP) to no more than 13% of total program funds.[87] This restriction follows the common sense that we should prioritize ratepayer benefits when spending ratepayer money for energy efficiency. Given this restriction on LIWAP funds, having a similar but far more lenient threshold at 50/50, as Dr. Marke recommends, is eminently reasonable.

The Commission can find additional precedent for employing a threshold basis in a prudency review in this Commission's past treatment of incentive mechanisms related to gas utility purchase gas adjustment (PGA) clauses. "A PGA clause allows a local distribution company to automatically adjust the rates it charges its customers in proportion to the change in the rate the local distribution company is charged by its wholesale suppliers."[88] Restated, the PGA addresses the increased fuel costs that rise following a gas utility's rate case, similar to how the FAC addresses fuel costs for electric utilities. In 1994, Missouri Gas Energy (MGE) requested Commission authorization for a PGA. The Commission approved the PGA as modified with an incentive mechanism. OPC and the Midwest Gas Users' Association challenged the Commission's Order, and the Missouri Court of Appeals affirmed the Commission's decision as not being single-

[87] *Id.* at 8-12.
[88] *State ex rel. Midwest Gas Users' Ass'n v. Pub. Serv. Comm'n*, 976 S.W.2d 470, 474 (Mo. App. W.D. 1998).

issue ratemaking. What is important for this case is the Missouri Appellate Court's discussion of the Commission-ordered incentive clause:

> The PSC also found that the experimental gas cost incentive mechanism proposed by MGE, as modified by the PSC in its order, was authorized and was of benefit to MGE and to ratepayers. Under the incentive mechanism, the PSC determines the price that it anticipates gas will cost over the following year, and then sets a benchmark price at 2% below this level. *At the end of the year, when the actual gas costs for the prior year are determined, the PSC and the company will look to see if actual costs and anticipated benchmark costs varied.* If the actual gas costs are determined to have met the benchmark amount or are up to 4% higher, the PSC will allow this amount of actual cost adjustment by the utility; in effect, it has determined that a 4% upward variation is prudent. *If the actual gas costs were between 4% and 10% higher than the benchmark amount, the PSC has determined in advance that the gas company may only recover 50% of that difference in a cost adjustment; in effect, it has determined that the remaining 50% is imprudent.* If actual gas costs are more than 10% above the benchmark, the PSC will undertake a traditional prudence review, and there will be a presumption that costs above this level were imprudent. If the actual gas costs were between the benchmark level and 94% of that level, then 50% of the savings are passed on to the ratepayers. If actual gas costs are less than 94% of the benchmark level, then 100% of the savings will be passed on to the ratepayers.
>
> *This incentive clause is in part intended to give the companies an incentive to buy gas as cheaply as possible; they know that if costs exceed the benchmark by more than 4% they will not be able to pass all of them on to ratepayers.*[89]

From this passage, we see that the prior Commission recognized that a threshold is a fair and reasonable baseline for a prudency determination. The Commission still enabled MGE to assert the prudency for any gas costs that exceeded 10% of the benchmark, but the Commission also incented MGE to keep gas costs below that threshold to ensure full recovery.

Dr. Marke bases his recommended disallowance on similar logic. He recommends enough of a disallowance to place Evergy's energy efficiency spending ratio to be 50% administrative and 50% non-administrative dollars. This 50/50 split gives Evergy room to spend roughly 10% more on administrative costs than the national average.[90] Dr. Marke's benchmark is then virtually the

[89] *Id.* at 475-76.

[90] Rebuttal Testimony of Geoff Marke, EO-2020-0227 p. 13.

same as this Commission's prior PGA incentive mechanism. Accordingly, Dr. Marke's recommended disallowance also incentivizes Evergy to continually keep administrative costs low even as overall energy efficiency budgets may grow.

The Commission should disallow $1,930,392 from Evergy Missouri West for its imprudence on this point.[91]

Conclusion

The Commission should judge Evergy's operation of its Cycle 2 of MEEIA programs based on how a reasonable and prudent operator knew or should have known during the prudency review period. Evergy knew or should have known that it should have been using its demand-side programs after specifically asking the Commission for authority to use them. Evergy knew or should have known about the potential benefits of reducing SPP fees, shifting loads to periods of low LMP, and selling excess capacity obtained through demand-side measures. Evergy also should have known to maintain administrative costs in line with its own experience and that of similarly situated utilities. Despite this knowledge, Evergy failed to use its demand-side programs to the extent possible, failed to capture potential benefits, and increased the ratio of administrative costs relative to incentive costs even as Evergy used the programs to call few curtailment events. Evergy's actions were imprudent based on what Evergy knew during the review period, and how it should have acted in response thereto. OPC supports Staff's recommended disallowances contained in its reports, and offers that the Commission disallow an additional $1,930,392 from Evergy Missouri West.

[91] *Id.* at 2.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 4th day of June 2021.

/s/ Marc Poston