CIVIL PROCEDURE FORM NO. 8-A(2)

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Judge or Division:	**Circuit Court Case Number:** **EO-2019-0132**		
Plaintiff/Petitioner: Office of the Public Counsel	Appellate Number:	☐ Filing as an Indigent	
	Date of Judgment/Decree/Order: (ATTACH A COPY) Issued: March 11, 2020 Effective: April 10, 2020	Court Reporter:	
vs.	Date Post Trial Motion Filed: April 8, 2020	☐ Sound Recording Equipment	
Defendant/Respondent: Missouri Public Service Commission	Date Ruled Upon: May 28, 2020	The Record on Appeal will consist of: ____Legal File only or X Legal File and Transcript	(Date File Stamp)

Notice of Appeal to Missouri Court of Appeals - Civil

District: ☒ Western ☐ Eastern ☐ Southern

Notice is given that the Office of the Public Counsel____ appeals from the judgment/decree/order entered in this action on January 25, 2019.

Appellant's Name (If multiple, list all or attach additional pages) Office of the Public Counsel	Respondent's Name (If multiple, list all or attach additional pages) Missouri Public Service Commission
Address Governor Office Building, Suite 650 200 Madison St, PO Box 2230 Jefferson City, MO 65102	Address Governor Office Building 200 Madison St, PO Box 360 Jefferson City, MO 65102
Appellant's Attorney/Bar Number (If multiple, list all or attach additional pages) Caleb Hall #68112	Respondent's Attorney/Bar Number (If multiple, list all or attach additional pages) Shelley Brueggemann, #52173
Address Governor Office Building 200 Madison St, PO Box 2230 Jefferson City, MO 65102	Address Governor Office Building 200 Madison St, PO Box 360 Jefferson City, MO 65102
E-mail Address Caleb.hall@opc.mo.gov	E-mail Address shelley.brueggemann@psc.mo.gov
Telephone 573-526-1445	Telephone 573-526-7393

Brief Description of Case (May be completed on a separate page)

The Commission approved Evergy Missouri Metro and Evergy Missouri West's application for an energy efficiency program portfolio and earnings opportunity per the Missouri Energy Efficiency and Investment Act, Section 393.1075, RSMo.

Issues Expected To Be Raised On Appeal (May be completed on a separate page. Appellant is not bound by this list.)

The Public Service Commission's order is unlawful and arbitrary because it approved a utility energy efficiency portfolio under the Missouri Energy Efficiency and Investment Act that does not equally value demand-side and supply-side utility resources or benefit all customers in their customer class regardless of participation in energy efficiency programs, contrary to statute. The Commission also departed from the total resource cost test used to determine benefits without justification, and arbitrarily decided findings of fact contrary to the record. The Commission's order also unlawfully permits high energy consumers to participate in energy efficiency programs while not financially supporting those programs, but not permitting residential customers to have the same privilege.

Signature of Attorney of Appellant Caleb Hall	Date 6/3/20

Certificate of Service on Persons other than Registered Users of the Missouri eFiling System

I certify that on June 4, 2020 (date), a copy of the foregoing was sent to the following by facsimile, hand-delivery, electronic mail or U.S. mail postage prepaid to their last known addresses.

The Missouri Public Service Commission

Caleb Hall

Appellant or Attorney for Appellant

Directions to Clerk

Transmit a copy of the notice of appeal and all attached documents to the clerk of the Court of Appeals and to any person other than registered users of the eFiling system in a manner prescribed by Rule 43.01. Clerk shall then fill in the memorandum below. See Rule 81.08(i). Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice by ☐ regular mail ☐ registered mail ☐ certified mail ☐ facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

I have transmitted a copy of the notice of appeal to the clerk of the Court of Appeals, Western District.

☐ Docket fee in the amount of $70.00 was received by this clerk on _____ (date) which will be disbursed as required by statute.

☒ No docket fee was received because:

☒ a docket fee is not required by law under Mo. Rev. Stat. § 386.440.3 & Rule 100.02(b) (cite specific statute or other authority).

☐ a motion to prosecute the appeal in forma pauperis was received on _____ (date) and was granted on _____ (date).

Date

Clerk

Additional Parties and Attorneys

List every party involved in the case not listed on page 1, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Court of Appeals (e.g. appellant or respondent) and the name ofthe attorney of record, if any, for each party. Attach additional pages to identify all parties and attorneys if necessary.

Party Name	Attorney Name
Every Metro, Inc. d/b/a Evergy Missouri Metro, plaintiff/respondent	Robert Hack; Roger Steiner
Address	Address
P.O. Box 418679 1200 Main St.	P.O. Box 418679 1200 Main St. 16th Fl
City, State, Zip Code	City, State, Zip Code
Kansas City, MO 64105	Kansas City, MO 64105
	E-mail Address
	Rob.hack@evergy.com
	Telephone
	816-556-2791; 816-556-2314
Party Name	Attorney Name
Every Missouri West, Inc. d/b/a Evergy Missouri West, plaintiff/respondent	Robert Hack; Roger Steiner
Address	Address
P.O. Box 418679 1200 Main St.	P.O. Box 418679 1200 Main St. 16th Fl
City, State, Zip Code	City, State, Zip Code
Kansas City, MO 64105	Kansas City, MO 64105
	E-mail Address
	Rob.hack@evergy.com
	Telephone
	816-556-2791; 816-556-2314
Party Name	Attorney Name
Division of Energy, intervener	Jacob Westen
Address	Address
P. O. Box 176 1101 Riverside Dr	P. O. Box 176 1101 Riverside Dr
City, State, Zip Code	City, State, Zip Code
Jefferson City, MO 65102	Jefferson City, MO 65102
	E-mail Address
	Jacob.westen@dnr.mo.gov
	Telephone
	573-751-5464

Party Name	Attorney Name
Natural Resources Defense Council, intervener	Henry Robertson
Address	Address
20 North Wacker Dr, Suite 1600	319 N. Fourth St, Suite 800
City, State, Zip Code	City, State, Zip Code
Chicago, IL 60606	St. Louis, MO 63102
	E-mail Address
	hrobertson@greatriverslaw.org
	Telephone
	314-231-4181
Party Name	Attorney Name
National Housing Trust, intervener	Andrew Linhares
Address	Address
3115 S Grand Ave	3115 S Grand Ave
City, State, Zip Code	City, State, Zip Code
St. Louis, MO 63118	St. Louis, MO 63118
	E-mail Address
	andrew@renewmo.org
	Telephone
	314-471-9973
Party Name	Attorney Name
Renew Missouri Advocates, intervenor	Tim Opitz
Address	Address
409 Vandiver Dr Bldg 5, Suite 205	409 Vandiver Dr Bldg 5, Suite 205
City, State, Zip Code	City, State, Zip Code
Columbia, MO 65202	Columbia, MO 65202
	E-mail Address
	tim@renewmo.org
	Telephone
	573-825-1796
Party Name	Attorney Name
City of St. Joseph, Missouri, intervener	William Steinmeier
Address	Address
1100 Frederick Ave	2031 Tower Dr
City, State, Zip Code	City, State, Zip Code
St. Joseph, MO 64501	Jefferson City, MO 65109
	E-mail Address
	wds@wdspc.com
	Telephone
	573-659-8672

Party Name	Attorney Name
Spire Missouri, intervener	Rick Zucker
Address	Address
14412 White Pine Ridge Ln	14412 White Pine Ridge Ln
City, State, Zip Code	City, State, Zip Code
Chesterfield, MO 63017	Chesterfield, MO 63017
	E-mail Address
	Zuckerlaw21@gmail.com
	Telephone
	314-575-5557
Party Name	Attorney Name
West Side Housing Organization, intervener	Andrew Linhares
Address	Address
3115 S Grand Ave	3115 S Grand Ave
City, State, Zip Code	City, State, Zip Code
St. Louis, MO 63118	St. Louis, MO 63118
	E-mail Address
	andrew@renewmo.org
	Telephone
	314-471-9973
Party Name	Attorney Name
Midwest Energy Consumers Group, intervener	David Woodsmall
Address	Address
308 E. High St, Suite 204	308 E. High St, Suite 204
City, State, Zip Code	City, State, Zip Code
Jefferson City, MO 65101	Jefferson City, MO 65101
	E-mail Address
	David.woodsmall@woodsmalllaw.com
	Telephone
	573-797-0005

LIST OF PARTIES TO THE COMMISSION PROCEEDINGS

(As required by § 386.510 RSMo)

The following parties participated in Public Service Commission Case Number EA-2018-0202.

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Phone: 573-751-2690
staffcounselservice@psc.mo.gov

Office of the Public Counsel
Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
Phone: 573-751-5318
opcservice@opc.mo.gov

Missouri Public Service Commission
Kevin Thompson
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
kevin.thompson@psc.mo.gov

Office of the Public Counsel
Caleb Hall
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
caleb.hall@opc.mo.gov

Evergy Metro, Inc. d/b/a Evergy Missouri Metro
Rob Hack
P.O. Box 418679
1200 Main St. 16th Floor
Kansas City, MO 64104
rob.hack@evergy.com

Evergy Missouri West, Inc. d/b/a Evergy Missouri West
Rob Hack
P.O. Box 418679
1200 Main St. 16th Floor
Kansas City, MO 64104
rob.hack@evergy.com

City of St. Joseph, MO
William Steinmeier
2031 Tower Dr
Jefferson City, MO 65109
wds@wdspc.com

Department of Natural Resources – Division of Energy
Jacob Westen
P.O. Box 176
1101 Riverside Dr
Jefferson City, MO 65102
jacob.westen@dnr.mo.gov

Midwest Energy Consumers Group
David Woodsmall
308 E. High St, Suite 204
Jefferson City, MO 65101
david.woodsmall@woodsmalllaw.com

Natural Resources Defense Council
Henry Robertson
319 N. Fourth Street, Suite 800
St. Louis, MO 63102
hrobertson@greatriverslaw.org

Spire Missouri
Rick Zucker
14412 White Pine Ridge Ln
Chesterfield, MO 63107
zuckerlaw21@gmail.com

Renew Missouri Advocates
Tim Optiz
409 Vandiver Dr Bldg 5, Suite 205
Columbia, MO 65202
tim@renewmo.org

Spire Missou
Rick Zucker
14412 White
Chesterfield,
zuckerlaw21@

National Housing Trust
Andrew Linhares
3115 S Grand Ave
St. Louis, MO 63118
andrew@renewmo.org

West Side Housing Organization
Andrew Linhares
3115 S Grand Ave
St. Louis, MO 63118
andrew@renewmo.org

STATEMENT OF THE ISSUES

(As required by § 386.510 RSMo)

Appellant Public Counsel will raise the following issues on appeal:

1. The Office of the Public Counsel challenges the lawfulness and reasonableness of the Public Service Commission's March 11, 2020, Amended Report and Order for its approval of an energy efficiency program portfolio that does not equally value demand-side and supply-side utility resources contrary to statute.

2. Public Counsel also challenges the lawfulness and reasonableness of the Commission's Order because, by not equally valuing demand and supply-side resources, the Commission approved an energy efficiency portfolio program that does not benefit all customers in their class regardless of whether customers participate in energy efficiency programs or not, contrary to statute.

3. Public Counsel also challenges the lawfulness and reasonableness of the Commission's Order on the basis that the Commission approved the requested energy efficiency portfolio by departing from the statutorily preferred total resource cost test without sufficient justification. The Missouri Energy Efficiency and Investment Act explicitly calls for the preferred use of the total resource cost test to determine cost effectiveness and benefits, but the Commission employed a supposed market-based equivalent standard instead by using unverified savings and using different regulatory rule chapters than those the Commission uses for Missouri Energy Efficiency and Investment Act applications. Moreover, the Commission's independent staff determined that the market-based equivalent approach does not even conclude that the proposed energy efficiency programs are cost effective contrary to the Commission Order's claims.

4. Public Counsel also challenges the lawfulness of the Commission's Order on the grounds that the Commission's Order permits industrial customers that consume larger quantities of electric power to elect not to pay Missouri Energy Efficiency and Investment Act surcharges, while still participating in associated energy efficiency programs, but not extending this privilege to residential customers. This discriminatory treatment compels residential customers to subsidize industrial and other high energy consumers without sufficient legal basis.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Notice of Intent to File an Application for Authority to Establish a Demand-Side Programs Investment Mechanism	)))))	Case No: EO-2019-0132
In the Matter of KCP&L Greater Missouri Operations Company's Notice of Intent to File an Application for Authority to Establish a Demand-Side Programs Investment Mechanism	)))))	Case No: EO-2019-0133

PUBLIC COUNSEL'S SECOND APPLICATION FOR REHEARING

The Office of the Public Counsel (OPC) requests a rehearing before the Missouri Public Service Commission (Commission) pursuant to Section 386.500, RSMo.[1] The Commission should grant this request to rehear issues of fact and law to cure the unlawful and arbitrary nature of the Commission's Amended Report and Order. Those issues justifying a rehearing are as follows:

1. On December 11, 2019, the Commission issued its Report and Order approving Evergy Missouri Metro and Evergy Missouri West's[2] (collectively Evergy) joint application for demand-side programs and associated Demand-Side Investment Mechanisms (DSIM) under the Missouri Energy Efficiency Investment Act (MEEIA). Evergy's MEEIA Cycle 3 (MEEIA 3) application is the third in a series of demand-side program cycles offered by Evergy. The Commission's Amended Report and Order approved Evergy's application in substantially the same form as when the Companies filed it on November 29, 2018.

[1] All statutory references are to the 2019 rendition by the Missouri Revisor of Statutes unless otherwise noted.
[2] Kansas City Power & Light and KCP&L Greater Missouri Operations renamed themselves as Evergy Missouri Metro and Evergy Missouri West during the pendency of this case.

2. The OPC timely filed an Application for Rehearing on December 31, 2019.

3. The Commission did not rule on the OPC's Application, and instead issued an Amended Report and Order on March 11, 2020, in noticeably the same form as the original Report and Order.

4. The OPC attaches its first Application for Rehearing to this second Application, and incorporates all of the arguments therein.

5. Additionally, the OPC will address the still remaining legal failings and arbitrary nature of the Amended Report and Order.

I. The Commission's Report and Order Unlawfully and Arbitrarily does not Equally Value Demand-Side and Traditional Utility Investments.

6. Commission Orders must act within the bounds of laws passed by Missouri's Legislature.[3] Commission Orders must also be reasonable, being based on "substantial, competent evidence on the whole record" rather than being arbitrary or capricious or an abuse of discretion.[4]

7. The MEEIA statute provides that it is State policy to "value demand-side investments equal to traditional investments in supply and delivery infrastructure."[5] Equally valuing demand-side and supply-side investments requires three components: 1) providing "timely cost recovery," 2) aligning utility incentives to encourage energy efficiency, and 3) approving applications with "cost-effective measurable and verifiable efficiency savings."[6]

8. A DSIM surcharge satisfies the "timely cost recovery" component of cost recovery, and the Amended Report and Order claims to encourage energy efficiency, but it fails to meet the third prong. This failure makes the Commission's Amended Order unlawful and arbitrary.

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[3] *State ex rel. Utility Consumers Council v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo. 1979); *Pub. Serv. Comm'n v. Mo. Gas Energy*, 388 S.W.3d 221, 230 (Mo. Ct. App. 2012).
[4] *State ex rel. Praxair, Inc. v. Pub. Serv. Comm'n*, 344 S.W.3d 178, 184 (Mo. banc 2011).
[5] Mo. Rev. Stat. §393.1075.3.
[6] *Id.*

9. Demand-side and supply-side investments are equally valued when MEEIA programs place "shareholders in a financial position comparable to the earnings opportunity they would have had if those shareholders made a future supply-side investment."[7] If an earnings opportunity with a DSIM is not coupled with a deferral of a supply-side or other identifiable investment then "such a performance incentive would compensate [Evergy] for foregone earnings opportunity that are not actually foregone."[8]

10. If a utility's MEEIA application does not defer any cost, the earnings opportunity will reward the utility more than if the company had instead invested into a future supply-side investment alone. This excessive earnings opportunity is because, without proving avoided costs associated with a MEEIA proposal, a utility can invest in both demand-side programs and additional investments with their own separate return. Investing in both simultaneously provides a DSIM earnings opportunity and the earnings on the new traditional investment. Restated, in the Commission's words, a MEEIA application with no avoided costs produces a "double-recovery windfall", and does not equally value demand-side and supply-side measures.[9] This double-recovery scenario does not equally value demand and supply-side or other traditional resources because the utility's finances are positioned far greater with an approved MEEIA program than had it invested in a supply-side asset. An equal valuation would approve demand-side programs that place the utility in the same or similar financial situation as if it invested in traditional utility investments.

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[7] *Report and Order*, EO-2015-0055 p. 11 (Oct. 22, 2015) ("A successfully implemented performance incentive would accomplish the policy goal of valuing equally supply-side and demand-side investments").
[8] *Id.* at 12.
[9] *Report and Order*, EO-2015-0055 p.13.

11. The Commission's original Report and Order acknowledged that Evergy is not deferring the cost of any identifiable traditional investment, supply-side or otherwise.[10] The Amended Report and Order likewise admits that Evergy's "capacity exceeds the needs of its customers and the resource adequacy of SPP" and that it will not invest in a new combined cycle turbine until at least 2033.[11] Without the deferral of any investment, Evergy will be charging customers for two earnings opportunity: one for the authorized return on traditional investments, and the second on the MEEIA programs that are supposed to defer traditional utility costs. This is not equally valuing demand and supply-side infrastructure.

12. The Commission's Amended Report and Order attempts to correct the prior Report and Order by now justifying the lack of avoided traditional investment costs with potentially reduced Southwest Power Pool (SPP) fees. The Amended Report and Order notes that "SPP member fees could be reduced through average monthly reductions in energy and demand" and that "additional savings from demand response reductions would increase SPP member fees savings."[12] For these points the Amended Report and Order relies upon the Rebuttal Report from the Staff of the Public Service Commission (Staff) and Evergy's Surrebuttal Report.

13. Of course "would" and "could" are the operative words in this justification. Sure, if SPP fees could be reduced then Staff acknowledges that may be an avoided cost, and the Commission's Amended Report and Order cites to Staff's Rebuttal Report on this point.[13] However, what Staff actually told this Commission is that Evergy "has not designed the proposed programs to minimize SPP fees."[14] By not designing its MEEIA programs to reduce monthly zonal

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[10] *Report and Order*, EO-2019-0132 p. 10-11 (Dec. 11, 2019).
[11] *Amended Report and Order*, EO-2019-0132 p. 11 (Mar. 11, 2020).
[12] *Id.* at 12-13.
[13] *Id.*
[14] Exhibit 101, *Staff Rebuttal Report*, EO-2019-0132 p. 24 (Aug. 19, 2019).

peaks, SPP fees will not be impacted by Evergy's demand-side measures. For whatever reason, the Commission's Amended Report and Order relies upon Staff's conclusions for the opposite proposition that what Staff offers. This behavior is arbitrary and results in unlawfully approving a MEEIA portfolio that does not equally value demand-side and traditional utility investments.

14. The Amended Report and Order's reliance upon Evergy's Surrebuttal Report is also misplaced. Evergy's Surrebuttal Report claims avoided costs can be presumed based on reduced SPP fee savings being compounded by demand-response reductions.[15] However, there is no evidence of any actual demand-response reductions. Demand-response reductions occur when the energy on the demand side of the meter (i.e. the customer) is curtailed to reduce usage and provide a secondary energy resource. Evergy's experience with its Residential Demand Response program though is to continually spend more customer money on demand-response infrastructure, while calling fewer and fewer curtailment events.[16] Evergy's earnings opportunity is not tied to actually calling curtailment events, but rather simply spending program money, and nothing in Evergy's MEEIA application or the record demonstrates that this pattern will change. There is therefore no rational basis to conclude that any actual demand-response response reductions will occur, and that those reductions will intensify any SPP fee savings.

II. The Commission's Report and Order Unlawfully and Arbitrarily Departs from the Total Resource Cost Standard.

15. Cost-effectiveness is another factor underpinning the statutory requirement of equally valuing demand-side and traditional utility investments.[17]

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[15] Exhibit 4, *Surrebuttal Report*, EO-2019-0132 p. 24 (Sep. 16, 2019).
[16] Transcript of Proceedings, Evidentiary Hearing, EO-2019-0132 p. 146 (Sep. 23-24, 2019).
[17] Mo. Rev. Stat. §393.1075.3.

16. The total resource cost (TRC) test is the statutorily preferred test to determine cost-effectiveness.[18] Although other Missouri statutes may request cost-effectiveness, only the MEEIA statute also specifically instructs on the best way to verify cost-effectiveness. The TRC test requires a comparison of avoided utility costs to the costs of the energy efficiency measures. A TRC test result of at least one demonstrates a preliminary showing of cost-effectiveness. Therefore, avoided costs are necessary for the TRC, which in turn underlies the foundation of cost-effectiveness, which is itself a key requirement of equally valuing demand-side and supply-side resources per the MEEIA statute.[19]

17. By Commission definition, avoided costs are "the cost savings obtained by substituting demand-side programs for existing and new supply-side resources."[20] Commission rules determine benefits and cost-effectiveness of demand-side programs by measuring a company's avoided costs as a result of a MEEIA portfolio.[21]

18. The first Report and Order noted that Evergy's avoided cost calculations overstated any actual savings and that they relied upon "outdated data from 2015" used for Evergy's 2018 Integrated Resource Plan (IRP).[22] The Amended Report and Order repeats those observations, and notes that Evergy's reliance on the hypothetical cost of a combined-cycle turbine (CT) is an inappropriate benchmark for avoided costs "because Evergy is not avoiding the cost of building a CT" with its MEEIA application or otherwise.[23]

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[18] Mo. Rev. Stat. § 393.1075.4.
[19] *See* Mo. Rev. Stat. §393.1075.3
[20] 20 CSR 4240-20.092(1)(C).
[21] *See id.*
[22] *Report and Order*, p. 10-11.
[23] *Amended Report and Order*, p. 11-12.

19. The Amended Report and Order also notes that Evergy's "demand-side programs do not defer the construction, or hasten the retirement of any specific identifiable supply-side resource."[24] Quite the opposite, rather than deferring any resource expense, Evergy is spending upwards of a billion dollars in capital investment through plant-in-service accounting.[25] In fact, while its MEEIA 3 application was still pending, **_____

_____

_____

_____ **

20. By not deferring any traditional cost, Evergy's MEEIA application fails the TRC test, and is thus not cost-effective. The Amended Report and Order points to potentially avoided SPP fees, but, as discussed previously, those are not substantiated by the evidentiary record.

21. However, after acknowledging that Evergy's MEEIA 3 is not deferring any traditional investments, and hence will not create any avoided costs, the Amended Report and Order then admonishes its Staff for concluding that Evergy's avoided costs are zero.[27] Recall that the definition the Commission selected for "avoided costs" within its MEEIA rules is "the cost savings obtained by substituting demand-side programs for existing and new supply-side resources."[28] With Evergy substituting no supply-side resources for demand-side programs, and

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[24] *Id.*
[25] *See* Exhibit 200, *Rebuttal Testimony of Geoff Marke*, EO-2019-0132 p. 12 (Aug. 19, 2019); *see also* Transcript of Proceedings, p. 398.
[26] *Evergy Missouri West Integrated Resource Plan 2020 Annual Update*, EO-2020-0281 p. 82 (Mar. 10, 2020).
[27] *Amended Report and Order*, p. 12.
[28] 20 CSR 4240-20.092(1)(C).

actually investing more in supply-side resources, there are no cost savings, and thus by definition zero avoided costs.

22. The Amended Report and Order ignores this logical trail, and instead concludes instead that "using capacity bids from late 2017 yields more current data to calculate avoided costs."[29] The 2017 data referred to is the so-called "market-based approach" offered in Evergy's Surrebuttal Report. This approach is not truly based on markets though.

23. Evergy's offered number through its "market-based equivalent" is an average of several bids that Evergy Missouri West put out for capacity in 2017. It is more accurate to call this an "average-of-the-bids" approach. The bids received were for varying time durations and amounts, making any average of the units circumspect, but most undermining is the realization that the winning bid was offered by Evergy Missouri Metro.[30]

24. Both the original and Amended Report and Order decide to "consolidate Evergy Missouri Metro's and Evergy Missouri West's applications, because the SPP treats Evergy Missouri Metro and Evergy Missouri West as a single load serving entity."[31] It is arbitrary to evaluate Evergy's MEEIA 3 application as if it is one entity, but also approve that application using a number premised on a legal fiction that Evergy is actually two separate companies.

25. Beyond the inherent flaw with the average-of-the-bids approach, simply supplanting the number generated therefrom to produce a satisfactory avoided cost number is not the TRC. The Amended Report and Order does not even describe what cost-effectiveness test it is utilizing.

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[29] *Amended Report and Order*, p. 26.
[30] *See* Exhibit 4, p. 18.
[31] *Amended Report and Order*, p. 25; *Report and Order*, p. 18.

26. Instead, the Amended Report and Order departs from the TRC without justification seemingly only because under the TRC Evergy's proposal fails. As the original one did, the Amended Report and Order claims that the Commission's IRP rules "permit the use of a market-based equivalent for calculating avoided costs" for modeling purposes.[32] From this assertion the Amended Order then cites solely to an in-camera portion of the evidentiary hearing to claim that if a market-based approach is used to calculate avoided costs, then all but one of Evergy's proposed MEEIA programs is cost effective.[33] The pertinent quote is as follows:

> **_____
> _____
> _____
>
> _____
> _____
> _____ **[34]

A leading question from Evergy's counsel, with an answer of **_____** and **_____ _____ ** is not substantial or competent evidence supporting a finding that the market-based approach actually creates avoided costs. Relying on a witness who says **_____ _____ ** for a statement to the contrary is de facto arbitrary. Such reliance is also not "verifiable" or "measurable," and thus does not equally value demand-side and traditional investments.

27. Furthermore, Staff witness Brad Fortson went on to say in another exchange during that same in-camera session:

> **_____
> _____

[32] *Amended Report and Order*, p. 14; *Report and Order*, p. 12.
[33] *Id.*
[34] Transcript of Proceedings, p. 424-25.

_____
_____
_____ **[35]

This is to say that Fortson clearly stated that he **_____
_____ ** and yet the Commission's Amended Report and Order relies directly upon Fortson for the conclusion that Evergy's MEEIA 3 application is cost-effective under a different metric. It is worth mentioning that neither Evergy's Counsel nor any Commissioner followed up those questions with Staff witness J Luebbert who did testify on avoided costs.

28. Relying on the average-of-the-bids to find cost-effectiveness is also misplaced because the underlying position is not true. As Staff calculated after the evidentiary hearing, the TRC test "for the Residential Heating, Cooling, & Home Comfort Program, Residential Home Energy Report Program, and Business Smart Thermostat Program for both Evergy Metro and Evergy West is not greater than one (1)" using the market-based equivalent approach for avoided costs.[36] A TRC result less than one means that at least three, not one as the Amended Report and Order claims, are not cost-effective even with the Evergy's "market" approach.

29. Consider also that Evergy did not use this "market-based approach" in its last IRP, but the Amended Report and Order jumps to IRP rules to satisfy avoided cost requirements within MEEIA rules.[37] Evergy did not find a market-based approach sufficient for its own resource

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[35] *Id.*
[36] *Staff's Amended Recommendation Regarding Approval of Compliance Tariff Sheets and Revised Technical Resource Manual*, EO-2019-0132 (Dec. 20, 2019).
[37] Although the OPC did not offer Evergy's IRP filings into evidence as separate exhibits, it notes that the Commission retains the ability to take notice of its own records sua sponte. *See Kansas City Power & Light Company (KCP&L) Integrated Resource Plan*, EO-2018-0268 Volume 5 Demand-Side Resource Analysis p. 54-55 & 112-16 (Apr. 2, 2018) (recounting Evergy's methodology for determining avoided demand and energy costs); *see also KCP&L Greater Missouri Operations Company Integrated Resource Plan*, EO-2018-0269 Volume 5

planning or as a basis for its MEEIA 3 when it initially filed its application. To rely upon an average of capacity bids now based on IRP rules is inconsistent and arbitrary.

30. Furthermore, the "market-based equivalent" is not used to calculate "avoided" costs" per the IRP rules as the Amended Order asserts. Rather, the market-based equivalent may be used when determining "utility avoided *demand* cost" and "utility avoided *energy* cost."[38] Those terms as used in Chapter 22 of the Commission's rules are not the same as "avoided costs" used in Chapter 20, which is specifically delineated to be the cost savings from deferring traditional utility investments.

31. The Amended Order's tangent into the IRP rules is additionally inconsistent because the Commission's Amended Order explains earlier that relying on Evergy's prior IRP data from 2018 is "outdated," but then turns immediately back to the IRP rules to justify this average-of-the-bids alternative because data from 2017 is supposedly "more current."[39] This reasoning simply does not make sense. The Commission's Amended Order is consequentially counter to statute in that it approves programs that are not proven to be cost-effective based on arbitrary reasoning, and selective readings of regulatory language to find a more convenient definition of "avoided cost."

III. The Commission's Report and Order Unlawfully and Arbitrarily Approves Demand-Side Programs that are not Beneficial to All Customers.

32. The MEEIA statute requires demand-side programs to benefit all customers "in the customer class in which the programs are proposed, regardless of whether the programs are utilized

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Demand-Side Resource Analysis p. 54-55 & 102-07 (Apr. 2, 2018); *Reply Brief of Staff*, EO-2019-0132 p. 15 (Oct. 21, 2019) (detailing Staff's objections to Evergy's avoided cost calculations in Evergy's 2018 IRP).

[38] 20 CSR 4240-22.050(5)(A) (emphasis added).

[39] *Amended Report and Order*, p. 11 & 26.

by all customers."[40] Benefit is shown by a demand-side program being cost-effective, which, again, the MEEIA statute directs the TRC to be the preferred method of determining cost-effectiveness.[41]

33. However, as previously discussed, the Amended Report and Order abandons the TRC test, and substitutes the average-of-the-bids approach for an actual showing of avoided costs or cost effectiveness. Because the formula did not produce the numbers Evergy liked, it simply inserted a new value, and the Amended Report and Order accepts that exchange.

34. The Amended Report and Order postulates that by using the average-of-the-bids approach, all but one of Evergy's MEEIA 3 programs are cost effective, and therefore there are necessarily benefits to all customers because of this supposed cost-effectiveness.[42] The Amended Report and Order also points to "indirect societal benefits" as an ancillary reason why all customer classes benefit from Evergy's MEEIA 3.[43] Neither consideration rehabilitates Evergy's application.

35. As previously discussed, Evergy's MEEIA 3's cost-effectiveness is not substantiated with the average-of-the-bids approach. That approach is not actually showing any benefits, but rather theorizing that some might occur based on a theoretical cost for capacity. This approach violates MEEIA law by approving a MEEIA application without proven benefits for all customer classes with "measurable and verifiable" accuracy.[44] This approach is also arbitrary in that the Amended Report and Order acknowledges that using a "hypothetical CT to value avoided costs in this instance is not appropriate because Evergy is not avoiding the cost of building a CT,"

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[40] Mo. Rev. Stat. § 393.1075.4.
[41] *See id.*
[42] *Amended Report and Order*, p. 15.
[43] *Id.*
[44] Mo. Rev. Stat. § 393.1075.3.

but accepts a hypothetical capacity cost without evidence that Evergy is deferring any actual capacity costs.[45]

36. The Amended Report and Order's citation to indirect societal benefits is misplaced because the Staff Rebuttal Report the Order relies upon for those benefits does not actually show that Evergy's MEEIA 3 produces any particular indirect societal benefits. Staff's Rebuttal Report only speaks to the benefits of energy efficiency in the abstract, noting that "studies recognize there are societal benefits to energy efficiency."[46] The studies Staff refers to do not evaluate Evergy's MEEIA 3 proposal. Abstract benefits alone are not enough to verify that Evergy's MEEIA 3 produces those benefits. In the abstract, dieting is beneficial. That does not mean that starvation is healthy. In the abstract, energy efficiency is beneficial. That does not mean that everything under the guise of energy efficiency then produces the same benefits.

37. Consider also that the Commission may evaluate indirect societal benefits of MEEIA programs per the societal cost test (SCT). The SCT is the TRC plus additional substantiated societal benefits.[47] Since this Amended Report and Order rejects the TRC, it should not then be able to turn back to societal benefits, especially without concrete numbers, to redeem a MEEIA 3 portfolio that is otherwise not cost-effective. If this benefit determination stands, then all future MEEIA applications will assert cost-effectiveness simply by likewise gesturing to theory and meta-analysis. Allowing MEEIA applications to be approved in this manner robs the MEEIA statute's prescription for economic and cost-effective measures, with benefits for all customers, of

[45] *Amended Report and Order*, p. 12.
[46] Exhibit 101, p. 10.
[47] 20 CSR 4240-20.092(1)(PP).

any meaning. This treatment devalues all meaning from the MEEIA statutes' language of requiring "cost-effective measurable and verifiable efficiency savings."[48]

38. The Amended Report and Order's reliance on theoretical cost-effectiveness is also contrary to prior Commission practice without sufficient basis. Compare these latest determination of benefits with this Commission's denial of Union Electric d/b/a Ameren Missouri's MEEIA Cycle 2. Rather than pointing to ephemeral benefits that might exist for Missouri's customers based on abstract research, the Commission previously voiced that "reducing annual sales of kWh can benefit ratepayers. But not all kWh are the same."[49] The Commission continued:

> "Even if thousands of kWh were saved, if the summer peak demands are the same with and without a MEEIA Cycle 2, then Ameren Missouri would likely require the same capacity. Thus it would not forego a future supply side investment opportunity. In other words, such a performance incentive would compensate Ameren Missouri for foregone earnings opportunities that are not actually foregone."

39. This logic was rooted in the expectation that the applicant utility needs to demonstrate verifiable avoided costs to substantiate cost-effectiveness, and to then rely upon cost-effectiveness to justifiably conclude that customers would benefit from demand-side programs regardless of whether customers participate in them. By contrast, the Commission's Amended Order approving Evergy's MEEIA 3 adopts a new cost-effective test using an average-of-the-bids approach to decree that there are cost-effective benefits. The Commission correctly scrutinizes Evergy's CT methodology for being hypothetical, but then supports a new methodology concluding that hypothetical benefits are sufficient. The Commission is not just being arbitrary, but inexplicably so.

IV. The Commission's Report and Order Arbitrarily Found that Demand-Side Programs have Avoided Costs Even if a Utility is Long on Capacity.

[48] *Contra* Mo. Rev. Stat. § 393.1075.
[49] *Report and Order*, EO-2015-0055, p. 12.

40. The Amended Report and Order is additionally arbitrary and capricious by declaring that demand-side programs avoid utility costs even when a utility is long on capacity, and that demand-side programs categorically replace supply-side resources merely by existing.

41. The Commission may enjoy an "indulgence of deference" for evidentiary decisions, but that is not license to make conclusory opinions without backing.[50]

42. The Amended Report and Order treats as fact that "demand-side programs that produce capacity savings have an avoided cost greater than zero even if the subject utility is long on capacity."[51] As a matter of language though, no costs are being avoided when a utility with surplus capacity continues to not defer any future or current cost.

43. Nonetheless, the Commission relies on Evergy witness Charles Caisely for its statement. Caisely made no such assertion though. He did not speak of capacity savings, but rather that when "a resource reduces the present value of long-run utility costs, the benefits of choosing that resource are independent of whether the utility is long or short on capacity."[52] "Present value of long-run utility costs" does not consider the known concurrent supply-side investments that will increase Evergy's revenue requirement far beyond any supposed reduction offered by MEEIA 3. By using the phrase "present value," Caisely is instead referring to the logic that the net present value of a utility's revenue requirement is reduced with demand-side programs as compared to a situation without those demand-side programs. This is the same logic that the Commission rejected as speculative when Evergy presented its CT valuation proposal. To accept this "present value" logic here when it is simply rephrased with an average-of-the-bids approach is inconsistent.

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[50] *State ex rel. Marco Sales, Inc. v. Pub. Serv. Comm'n*, 685 S.W.2d 216, 220 (Mo. App. W.D. 1984).
[51] *Amended Report and Order*, p. 13.
[52] Exhibit 5, *Surrebuttal Testimony of Charles Caisely*, EO-2019-0132 p. 6 (Sept. 16, 2019).

44. Nothing in Caisley's general assertion or the record supports the conclusion that Evergy's proposed demand-side programs actually produce capacity savings. Remember, Evergy's surrebuttal report did not support its application with actual "capacity savings." Evergy attempted to salvage its argument by resorting to hypothetical valuations from an average-of-the-bids approach for the cost of capacity. An approach premised on a request-for-proposal that Evergy itself won. The Commission's Order is not relying on a competent and substantive record, but rather a new, hypothetical number that Evergy created at the eleventh hour to justify itself after its original numbers could not show any "cost savings obtained by substituting demand-side programs for existing and new supply-side resources."[53]

45. The Amended Report and Order also relies upon Evergy's Surrebuttal Report for the supposed fact that demand-side program automatically substitute supply-side resources.[54] Evergy may claim such automatic avoided costs, but it apparently cannot point to a single supply-side resource that is actually be replaced. If Evergy's assertion is true, it should be able to quantify and demonstrate those replacements, but it has not.

V. The Commission's Report and Order Arbitrarily Invented a New Definition of Avoided Costs.

46. The Commission's Amended Report and Order is also arbitrary in that it reconstructed a new conceit for avoided costs in order to justify a MEEIA proposal that does not benefit all of Evergy's customers.

47. As previously noted, the Amended Report and Order agrees that Evergy's avoided cost methodology is out of date and overstated.[55] The Commission's Amended Order still grants "the fifth variance even though the Commission is not approving Evergy Missouri's avoided costs"

[53] 20 CSR 4204-20.092(1)(C).
[54] *Amended Report and Order*, p. 13.
[55] *Amended Report and Order*, p. 11.

in order to utilize the average-of-the-bids approach.[56] The Commission felt the need to do this presumably because using the TRC test with Evergy's avoided costs reveals that its proposed MEEIA 3 is not cost-effective.

48. Rule variances may be necessary for particular, discrete fact circumstances. In this instance though, the Amended Report and Order does not vary Commission rules for one instance or based on any particular good cause. Although called a variance, rewriting a definition because it is inconvenient for a utility is simply rewriting the rules after the game started. The Commission did not grant variances from the rules. The Commission is rewriting them ad hoc.

49. Missouri Courts explain that "arbitrary and capricious" in the context of rules is "willful and unreasoning action, without consideration of and in disregard of the facts."[57] A Commission decision "that completely fails to consider an important aspect or factor of the issue before it may be found to have acted arbitrarily and capriciously."[58] Approving Evergy's MEEIA 3 requires disregarding that Evergy's application presents no avoided costs, and instead reinvents a new definition of "avoided costs."

50. Simply changing the rules when an applicant does not measure up is unlawful and arbitrary. If rules are to be varied, they can only be so for good cause and should only be done when necessary. Evergy's variances are only necessary in the sense that the bar had to be reimagined so its insufficient application could clear the Company's burden of proof.

VI. The Commission's Report and Order Unlawfully Permits Industrial Customers with the Privilege of Participating in Demand-Side Programs at the Expense of Customers who Cannot Elect to Not Pay DSIM.

[56] *Id.* at 28.
[57] *Beverly Enterprises-Missouri, Inc. v. Dep't of Soc. Servs., Div. of Med. Servs.*, 349 S.W.3d 337, 345 (Mo. Ct. App. W.D. 2008).
[58] *Id.*

51. The Commission's Amended Report and Order allows industrial customers to opt out of paying Evergy's DSIM charge while still being able to participate in MEEIA programs just as the original Report and Order did.[59]

52. Beyond being inequitable, this free-ridership upon the backs of residential customers is contrary to the MEEIA statute and hence unlawful.

53. The MEEIA statute provides that customers meeting certain size and demand parameters may choose to not pay the DSIM charge associated with a utility's MEEIA programs.[60] The statutory parameters for eligible customers effectively designate industrial customers as having this privilege as opposed to residential customers. This opt-out privilege is one afforded to them by the Legislature. The OPC takes no issue with that privilege alone, but permitting those opt-out customers to still participate in MEEIA programs while residential customers must pay for the opt-out customers is unlawful and discriminatory towards residential customers.

54. The Commission's Order only addresses this issue by determining that Evergy's proposed Business Demand Response program is "interruptible or curtailable," and therefore opt-out customers may participate in the Business Demand Response program without paying a DSIM. This reasoning ignores Evergy made no showing that any actual demand curtailing or interruption is occurring for those industrial customers on the supposedly interruptible or curtailable rate. To the contrary, evidence in the record shows that Evergy has not been calling curtailment events in the Residential Demand Response program despite spending ever more customer money on those demand-side measures.[61] Nothing in the record dispels doubt that this is the opposite case with the Business Demand Response program.

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[59] *Amended Report and Order* p. 24.
[60] Mo. Rev. Stat. § 393.1075.7.
[61] Transcript of Proceedings, p. 146.

55. The OPC also explained in its briefing that after electing to not support MEEIA charges, opt-out customers "shall not subsequently be eligible to participate in demand-side programs except under guidelines established by the commission in rulemaking."[62] This Commission has drafted no rules on point, but the Commission's Amended Order does not explore this oversight.

56. The Commission's Amended Order also fails to account how the MEEIA's language of opt-out customers still being "allowed to participate in interruptible or curtailable rate schedules or tariffs" does not refer to MEEIA specific tariffs.[63] Instead the statute broadly refers to tariffs and schedules, including those demand-side response tariffs that Evergy had for industrial customers before MEEIA was enacted.

57. The Legislature's use of the phrase "schedules or tariffs" demonstrates its knowledge of those pre-existing offerings, and therefore the language at issue simply protects industrial customers' existing ability to otherwise participate in demand response tariffs outside of MEEIA rather than codifies inequity discriminatory inequity whereby residential classes are forced to support industrial customers' DSIM charges.

VII. Conclusion and Additional Considerations.

58. When Evergy filed its MEEIA 3 application nearly a year and a half ago, it did not identify any specific avoided costs associated with its demand-side programs to demonstrate cost-effectiveness and benefits. Evergy changed nothing in its application to pass muster, but did ask that the standard used to measure its application be changed to a theoretical average of capacity bids approach.

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[62] Mo. Rev. Stat. § 393.1075.8.
[63] *See* Mo. Rev. Stat. § 393.1075.10.

59. The Commission's Amended Order notes that avoided costs are necessary for the TRC, that Evergy's avoided cost calculations are not credible, and hence that Evergy's argument that its application passes the TRC test fails. After noting these issues, the Commission then decides it will depart from avoided costs as it defined them to be, admonishes its Staff for following the previous definition as written, and then turns to an entirely different regulatory chapter for a definition of avoided costs to suppose that an average-of-the-bids approach demonstrates avoided costs. After denouncing the Company's theoretical argument as to a CT valuation, the Commission then turns back to hypothetical net present value arguments to support its newly concocted average-of-the-bids approach.

60. The Commission's Amended Order grants Evergy's MEEIA 3 application by not equally valuing demand and supply-side resources, departing from the TRC test without explanation, assuming benefits not demonstrated in the record, contravening past Commission explanations of avoided costs and benefits, concluding that demand-side programs always have avoided costs without supporting evidence, inventing a new definition of "avoided cost," and by allowing opt-out customers to be subsidized by residential customers.

61. Further intensifying all of the aforementioned issues, Staff's later recommendation to the Commission notes that at least three of Evergy's MEEIA 3 programs are still not cost-effective even with the average-of-the-bids approach,[64] and yet the Commission still approved Evergy's tariffs implementing those programs without any rebuttal as to Staff's conclusions.[65] The

[64] *Staff's Amended Recommendation*.
[65] *Order Approving Tariff In Compliance with Commission Order*, EO-2019-0132 (Dec. 20, 2019).

MEEIA statute plainly, with few exceptions not at issue here, only permits the Commission to approve cost-effective energy efficiency programs.[66]

62. Any cost savings benefits of MEEIA 3 are also being undermined as Evergy continues to invest a billion dollars in plant-in-service accounting and more **_____ _____ **

rather than avoid any traditional utility cost.[67] Evergy notified the Commission of this latest development only after securing its MEEIA 3.

63. Even worse, as Evergy's 2018 MEEIA 3 application persists into 2020, Evergy's customers now face the fallout of unprecedented economic uncertainty due to a global coronavirus pandemic. If Evergy's customers are to pay for any demand-side programs and associated earnings opportunity in face of such hardship, those programs need to be cost-effective and produce actual benefits. Otherwise, we can only guarantee that non-participant customers will continue to face higher surcharges to subsidize participants.

64. A rehearing on these issues of fact and law is justified to correct these inconsistencies, and to judge Evergy's application on established statutory and regulatory frameworks.

Wherefore, the OPC applies for rehearing as to these issues of fact and law.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

/s/ Caleb Hall
Caleb Hall, #68112
Senior Counsel
200 Madison Street, Suite 650

[66] Mo. Rev. Stat. § 393.1075.4.
[67] *Notice of Determination of Change*, EO-2018-0268 (Dec. 16, 2019).

Jefferson City, MO 65102
P: (573) 751-4857
F: (573) 751-5562
caleb.hall@opc.mo.gov

Attorney for the Office of the Public Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 8th Day of April, 2020, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Evergy Missouri Metro and Evergy Missouri West's Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism	)))))	**File No. EO-2019-0132**

AMENDED REPORT AND ORDER

Issue Date: **March 11, 2020**

Effective Date: **April 10, 2020**

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In the Matter of Evergy Missouri Metro and Evergy Missouri West's Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism	)))))	**File No. EO-2019-0132**

AMENDED REPORT AND ORDER

APPEARANCES

Roger W. Steiner and **Robert Hack**, Corporate Counsel, P.O. Box 418679, 1200 Main Street 16th Floor, Kansas City, Missouri 64105, for Evergy Missouri Metro and Evergy Missouri West.

James M. Fischer, Fischer & Dority PC.,101 Madison Street, Suite 400, Jefferson City, Missouri 65101, for Evergy Missouri Metro and Evergy Missouri West.

Henry B. Robertson, Great Rivers Environment Center, 319 N. Fourth Street, Suite 800, St. Louis, Missouri 63102, for Natural Resources Defense Council.

Tim Opitz, 409 Vandiver Dr Building 5, Suite 205, Columbia, Missouri 65202, for Renew Missouri Advocates d/b/a Renew Missouri.

Jacob Westen, Deputy General Counsel, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102, for the Missouri Division of Energy.

Andrew Linhares, Suite 600, 3115 S. Grand Ave., St. Louis Missouri 63118, for The National Housing Trust and West Side Housing Organization.

David Woodsmall, 308 East High Street, Jefferson City, Missouri 65101, for Midwest Energy Consumers Group.

William D. Steinmeier, William D. Steinmeier, PC., 2031 Tower Drive, Jefferson City, Missouri 65109, for the City of St. Joseph.

Rick E. Zucker, Zucker Law LLC, 14412 White Pine Ridge Ln., Chesterfield, Missouri 63017, for Spire.

Caleb Hall, Senior Counsel, Office of the Public Counsel, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

Nicole Mers, Deputy Counsel, and **Travis J. Pringle**, Legal Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Regulatory Law Judge: John T. Clark

Procedural History

On November 29, 2018, Evergy Missouri Metro[1] and Evergy Missouri West[2] (collectively, "Evergy or the Companies") each applied to the Commission for approval of certain demand-side programs, a Technical Resource Manual (TRM), variances from five Commission rules, and a Demand-Side Investment Mechanism (DSIM) (collectively, "MEEIA Cycle 3") as contemplated by the Missouri Energy Efficiency Investment Act (MEEIA) and the Commission's implementing regulations. Those applications resulted in the opening of File Nos. EO-2019-0132 and EO-2019-0133. The Commission provided notice and set a deadline for applications to intervene in both files.

The Missouri Division of Energy; Midwest Energy Consumers Group; Renew Missouri Advocates d/b/a Renew Missouri; Natural Resources Defense Council; the City of St. Joseph; Spire; The National Housing Trust; and the West Side Housing Organization (collectively "Intervening Parties") timely filed intervention requests in each file. The Commission granted those requests.

On December 27, 2018, the Commission granted an unopposed motion to consolidate EO-2019-0133, Evergy Missouri West's MEEIA application, into EO-2019-0132, Evergy Missouri Metro's MEEIA application, as the two cases involve related questions of law and fact.

Commission Rule 20 CSR 4240-20.094(4)(H) states that the Commission shall approve, approve with modification acceptable to the company, or reject MEEIA applications within 120 days of their filing. The parties were unable to reach an agreement

[1] At that time, known as Kansas City Power & Light Company.
[2] At that time, known as KCP&L Greater Missouri Operations Company.

regarding the applications within the Commission's allotted period and on February 27, 2019, sought to suspend the procedural schedule to allow discussions to continue and consider pursuing an agreement to extend MEEIA Cycle 2 programs for an additional year.[3] The Commission approved the motion to suspend the procedural schedule until February 13, 2019[4] and a subsequent motion to extend the deadline to allow adequate time for parties to file a stipulation.[5] On February 15, 2019, the parties filed an unopposed stipulation and agreement requesting an extension of the Companies' MEEIA Cycle 2 programs which would allow the Companies to continue offering demand-side programs for an additional year and provide continuity between cycles while parties continued to conduct additional discussions regarding a potential MEEIA Cycle 3.[6] The Commission issued an order approving a stipulation and agreement between the parties extending MEEIA Cycle 2 until December 31, 2019, and rejecting the tariffs filed concurrently with the Companies' application.

On August 7, 2019, the Commission issued an order setting a procedural schedule. That order also granted Evergy a variance from filing a 2019 Integrated Resource Plan (IRP) annual update as required by Commission Rule 20 CSR 4240-22.080(3), because of uncertainty regarding the status of the MEEIA Cycle 2 and 3 programs. The Staff of the Commission (Staff) and the Office of the Public Counsel (OPC) supported the variance. Evergy will next file an Integrated Resource Plan update in 2020.

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[3] *Motion to Suspend Procedural Schedule,* page 1, File No. EO-2019-0132, filed January 28, 2019.
[4] *Order Granting Motion to Suspend Procedural Schedule,* page 2, filed January 28, 2019.
[5] *Order Extending Time to File Stipulation or Pleading,* page 1, filed February 14, 2019.
[6] *Stipulation and Agreement Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA 3 Case,* page 2, filed February 15, 2019.

On September 23 and 24, 2019, the Commission held an evidentiary hearing. During the hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. When it developed MEEIA Cycle 3, did the Companies value demand-side investments equal to traditional investments in supply and delivery infrastructure?

2. Is the proposed MEEIA Cycle 3, as designed by the Companies, expected to provide benefits to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers?

3. Should the Commission approve, reject, or modify the Companies' MEEIA Cycle 3, along with the waivers in the Companies' application intended to enable its implementation?

    a. If MEEIA Cycle 3 should be modified, how should the plans be modified?

4. If the Commission approves or modifies MEEIA 3, what DSIM provisions should be approved to align recovery with the MEEIA statute?

5. Should Opt-Out Customers be eligible to participate in Business Demand Response programs?

    a. Should Evergy Missouri West be required to publish in its tariff the participation payment to customers that participate in the Business Demand Response programs?

The Staff and OPC contested Evergy's MEEIA applications. The Intervening Parties supported Evergy's MEEIA Cycle 3 applications.

Initial post-hearing briefs were filed on October 11, 2019. Reply briefs were filed on October 21, 2019, and the case was deemed submitted for the Commission's decision on that date and the record closed.[7]

[7] "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

The Commission issued a Report and Order on December 11, 2019. On December 31, 2019, Evergy filed an application for clarification or rehearing, and OPC filed an application for rehearing

The Commission is amending this Report and Order to clarify how the Pay As You Save Program is configured, and to clarify and revise the Report and Order regarding avoided costs, benefits to all customers, and the business respond opt-out.

I. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Evergy Missouri Metro is a Missouri corporation with its principal office located in Kansas City, Missouri. Evergy Missouri Metro is engaged in the generation, transmission, distribution, and sale of electricity in western Missouri, operating primarily in the Kansas City metropolitan area.[8]

2. Evergy Missouri West is a Delaware corporation with its principal office located in Kansas City, Missouri. Evergy Missouri West is engaged in the business of providing electric utility service in Missouri to the public in its certificated areas.[9]

3. Evergy Missouri Metro and Evergy Missouri West are in the Southwest Power Pool (SPP), a Regional Transmission Organization, and the Companies have an

[8] *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule,* page 2, File No. EO-2019-0132, filed November 29, 2018.
[9] *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule,* page 2, File No. EO-2019-0133, filed November 29, 2018.

Joint Network Integrated Transmission Service Agreement with the SPP.[10] The SPP treats them as a single load serving entity.[11]

4. Staff is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.[12] Staff participated in this proceeding.

5. OPC is a party to this case pursuant to Section 386.710(2), RSMo,[13] and by Commission Rule 20 CSR 4240-2.010(10).

6. In 2009, the Missouri general assembly passed MEEIA. Participation under MEEIA is voluntary and companies do not have to offer demand side programs.[14] Utilities participate in MEEIA because it authorizes cost recovery that allows utilities to value demand-side efficiency equal to traditional investments as an incentive to participate in energy efficiency programs.[15]

7. On November 29, 2018, the Companies filed applications and accompanying tariffs with the Commission requesting approval of demand side programs, TRMs, and DSIMs under the MEEIA statute.[16]

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[10] Dietrich Rebuttal, Exhibit 100, page 6.
[11] Transcript, pages 388.
[12] Commission Rules 20 CSR 4240-2.010(10) and (21) and 2.040(1).
[13] All statutory references are to the 2016 Missouri Revised Statutes, as supplemented, unless otherwise indicated.
[14] Section 393.1075, RSMo.
[15] Evergy Surrebuttal Report, Exhibit 4, page 1.
[16] *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule,* page 2, File No. EO-2019-0132 and EO-2019-0133, filed November 29, 2018.

8. Evergy Missouri Metro and Evergy Missouri West have proposed separate demand side portfolios that contain the same programs, with the exception that only Evergy Missouri Metro's portfolio has an Income Eligible Home Energy Report.[17]

9. The applications indicate that the Companies are planning to invest $96.3 million with the anticipation of achieving 185.9 megawatts of capacity reduction in the first year of MEEIA Cycle 3's implementation.[18]

10. A successful MEEIA application is dependent on multiple program offerings in the categories of energy efficiency, demand response, low-income, and pilot programs.[19] Evergy has program offerings in all of those categories, including both business and residential programs.[20]

11. Evergy's MEEIA Cycle 3 programs are similar to the ones approved by the Commission in its MEEIA Cycle 1 and MEEIA Cycle 2.[21]

12. Evergy's portfolio of MEEIA Cycle 3 programs consists of a three-year plan for specific demand-side programs and a six-year plan for the income-eligible multi-family program, recovery of program costs and an offset of the throughput disincentive at the same time energy efficiency investments are made, and an opportunity to earn an incentive amount based upon demand and energy savings achieved.[22]

13. Evergy asks the Commission to approve MEEIA Cycle 3 for a three year period from the date of approval.[23]

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[17] Dietrich Rebuttal, Exhibit 100, page 3.
[18] Staff Rebuttal Report, Exhibit 101, page 3.
[19] Marke Rebuttal, Exhibit 200, page 21.
[20] MEEIA Cycle 3, Exhibit 2, pages 16 and 17.
[21] Caisley Surrebuttal, Exhibit 5, page 3.
[22] *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule,* page 5, File No. EO-2019-0132 and EO-2019-0133, filed November 29, 2018.
[23] Transcript, page 167.

Avoided Costs

14. Avoided costs are the cost savings obtained by substituting demand side programs for existing and new supply side resources.[24] The importance of avoided costs is that they are used to calculate whether a demand side program is cost-effective as part of the Total Resource Cost test (TRC test).[25]

15. The TRC test compares the costs to deliver the program (including incentives paid to customers, administrative costs, the costs to do the evaluation, measurement and verification, and any out of pocket expenses paid by the customer) to the value of the program benefits (calculated as any energy savings in kWh, times the avoided cost of energy plus any capacity savings times the avoided costs of capacity equals the present value of the benefits). If the TRC results for a program are greater than one, the benefits are greater than the costs and the program is determined to be cost-effective.[26]

16. The TRC test is a preferred cost-effectiveness test under MEEIA. The Commission allows recovery under MEEIA for cost-effective programs as determined utilizing the TRC test.[27]

17. The Commission's IRP rule requires that Evergy analyze combinations of demand-side management programs and supply side resources to look for the lowest net present value of revenue requirement.[28]

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[24] Commission Rule 20 CSR 4240-20.092(1)(C).
[25] Transcript, pages 393-394
[26] Transcript, pages 393-394.
[27] Section 393.1075.4 RSMo.
[28] Transcript, pages 141-142. See also: Commission Rule 20 CSR 4240-22.050.

18. Evergy used the levelized cost of a hypothetical Combustion Turbine (CT) to calculate avoided costs because of how it interprets the term "traditional investment" and because the SPP uses the avoided cost of a CT to value capacity.[29]

19. Using Evergy's proposed avoided costs based upon a hypothetical CT, the programs are cost-effective as a whole,[30] but those avoided costs overstate the benefits as calculated using the TRC test.[31]

20. Using Evergy's proposed avoided costs overstates the avoided costs of generation transmission and distribution facilities.[32]

21. Evergy's avoided costs calculations utilize dated information from 2015, which the Companies' 2018 IRP filing relied upon.[33]

22. Evergy did not file a 2019 IRP update, and will not file another IRP update until 2020, because of the variance granted by the Commission on August 7, 2019. The granting of that variance was supported by Staff and OPC.[34]

23. Evergy's capacity exceeds the needs of its customers and the resource adequacy requirements of SPP. Evergy will not need to build a CT to meet capacity needs until 2033, and it will need to build a CT in 2033 regardless of the implementation of its proposed MEEIA Cycle 3.[35]

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[29] Evergy Surrebuttal Report, Exhibit 4, page 11.
[30] Evergy Surrebuttal Report, Exhibit 4, page 30.
[31] Transcript, page 381.
[32] Transcript, page 380.
[33] Marke Rebuttal, Exhibit 200, pages 9.
[34] Joint Motion to Establish Procedural Schedule and Grant Variance From Requirement to File 2019 Integrated Resource Plan Annual Update, filed July 24, 2019, and Order Granting Variance Setting Procedural Schedule And Other Procedural Requirements, issued August 7, 2019.
[35] Staff Rebuttal Report, Exhibit 101, page 17.

24. Using the levelized cost of a hypothetical CT to value avoided costs in this instance is not appropriate because Evergy is not actually avoiding the cost of building a CT.[36]

25. Evergy's demand-side programs do not defer the construction, or hasten the retirement of any specific identifiable supply-side resource.[37]

26. Staff's position on valuing avoided costs has changed from prior MEEIA cycles, to when it evaluated the Evergy's MEEIA Cycle 3 in this case. Staff's new position focuses on avoided costs as related to postponement of new supply-side resources and early retirement of existing supply-side resources.[38]

27. Staff proposes using an avoided cost of zero.[39]

28. OPC supports Staff's position that avoided costs of Evergy's MEEIA Cycle 3 should be valued at zero because no supply-side investment would be deferred.[40]

29. Staff's use of zero for avoided costs is inappropriate because the MEEIA statute does not limit avoided costs to those associated with the deferral of capacity or require deferral of capacity.[41]

30. SPP member costs are a source of potential cost avoidance. SPP member fees could be reduced through average monthly reductions in energy and demand.[42] Staff calculated a dollar amount per year that SPP fees would be affected by Evergy's proposed energy efficiency programs.[43] Staff's values for avoided demand costs exceeds

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[36] Transcript, pages 303-304.
[37] Staff Rebuttal Report, Exhibit 101, page 25.
[38] Transcript, page 272.
[39] Dietrich Rebuttal, Exhibit 100, page 6.
[40] Marke Rebuttal, Exhibit 200, pages 5-10, and Transcript 487-488.
[41] Section 393.1075, RSMo., and Evergy Surrebuttal Report, Exhibit 4, pages 10-11.
[42] Evergy Surrebuttal Report, Exhibit 4, page 22.
[43] Staff Rebuttal Report, Exhibit 101, page 24, and Schedule JRL-1 (The amounts contained in Schedule JRL-1 are highly confidential.)

$0 per kilowatt per year over the 2019-2027 timeframe.[44] Additional savings from demand response reductions would increase SPP member fees savings.[45]

31. Evergy has the ability to create additional revenue by selling its excess capacity through bi-lateral contracts or requests for proposals.[46] The ability to sell excess capacity only increases as Evergy's demand-side programs are substituted for its customers need for its supply-side resources.

32. The substitution of a demand-side program for an existing supply-side resource occurs automatically when a demand-side program is implemented. Every kWh of energy saved offsets a kWh that would have otherwise been generated by a supply-side resource.[47]

33. Demand-side programs that produce capacity savings have an avoided cost greater than zero even if the subject utility is long on capacity. Valuing avoided costs at zero, as Staff suggests, would unreasonably block the implementation of otherwise cost-effective demand-side programs. This would reduce the number of cost-effective programs offered by companies that have excess capacity.[48]

34. MEEIA is not a program for managing generation and providing supply-side power. MEEIA is designed to compensate the utility for promoting energy efficiency as it encourages its customers to save money by using less of the product the utility sells.[49]

35. In 2017, Evergy Missouri West issued a Request for Proposal (RFP) for generating capacity. The company received seven offers to supply capacity, with terms

[44] Evergy Surrebuttal Report, Exhibit 4, page 24.
[45] Evergy Surrebuttal Report, Exhibit 4, page 24.
[46] Staff Rebuttal Report, Exhibit 101, page 26.
[47] Evergy Surrebuttal Report, Exhibit 4, page 11.
[48] Caisley Surrebuttal, Exhibit 5, page 6.
[49] Owen Surrebuttal, Exhibit 452, page 4.

ranging from four to ten years. As an alternative to its CT analysis, Evergy proposes to use the average price of those bids as an alternative market-based equivalent with which to value avoided costs.[50]

36. The Commission's IRP rules permit the use of a market-based equivalent for calculating avoided demand costs.[51]

37. Staff chose not to analyze Evergy's market-based alternative avoided costs.[52]

38. If a market approach using the average of bids for capacity received in regard to an Evergy Missouri West's RFP is used to calculate avoided costs, the Business Smart Thermostat program is the only non-exempt Evergy MEEIA Cycle 3 program that would not be cost-effective.[53]

39. The Home Energy Report program, and the Heating, Cooling, and Weatherization program, which requires an audit from an authorized energy auditor, are general education campaigns in the public interest, and exempt from having to be cost-effective.[54]

Benefit All Customers

40. MEEIA requires that all customers in the class for which MEEIA programs are offered benefit, regardless of whether they participate in the programs.[55]

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[50] Transcript, pages 423-425.
[51] Commission Rule 20 CSR 4240-22.050(5)(A)1.
[52] Transcript, pages 404 and 422.
[53] Transcript, pages 424-425.
[54] MEEIA Cycle 3, Exhibit 1, page 31, and Section 393.1075.4 RSMo.
[55] Transcript, page 307, and Section 393.1075.4 RSMo.

41. Under Evergy's market-based approach calculations, the only program that would not be cost-effective is the business thermostat program.[56] Evergy is willing to make changes to that program so that it is cost-effective.[57]

42. Valuing avoided generation as the means to show benefits to all customers overlooks the purpose of MEEIA, which is to encourage energy efficiency. Utilities should be endeavoring to increase customer participation in energy efficiency programs. While participating customers save money on their bills and experience direct benefits, non-participating customers will benefit from Evergy's MEEIA Cycle 3 because the programs will be cost-effective. Non participating customers benefit from cost-effective programs, because cost-effective programs save more money than they cost. Simply put, all customers benefit, but participating customers benefit more.[58]

43. Customers participating in MEEIA energy efficiency programs will get the benefit of a lower bill because they will have less usage than non-participants.[59]

44. Benefits from a reduction in a customer's bill is not the only benefit to customers. There are also indirect societal benefits, such as improved health and safety, investment in local economies, and local job creation.[60]

45. If all utilities in SPP were to work toward energy efficiency there would be benefits for all customers in the SPP area, including Missouri. There would be a reduction in the number of hours that fossil fuel plants would run, a decrease in the amount of time that higher margin units would run, and fewer emissions.[61]

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[56] Transcript, pages 424-425.
[57] Evergy Missouri Surrebuttal Report, Exhibit 4, page 18
[58] Owen Surrebuttal, Exhibit 452, page 7.
[59] Transcript, page 349.
[60] Staff Rebuttal Report, Exhibit 101, Page 10.
[61] Transcript, pages 328-330.

46. The Heating, Cooling, and Weatherization program is designed to reduce heating and cooling consumption through the use of audits to gather information about energy usage and rebates.[62]

47. The Home Energy Report is an information gathering program that provides the customer with information about their average energy usage, and comparing their usage against similar households.[63]

Pay As You Save Program

48. Pay As You Save (PAYS) is a system that allows utilities to invest in efficiency upgrades on the customer's side of the meter and recover their costs through a tariffed charge on the participant's bill. It is not a consumer loan or individual debt.[64] As a tariffed program, it is tied to the meter.[65] PAYS enables deeper energy efficiency and demand savings by customers who do not have thousands of dollars of disposable income to make energy-related investments, including many residential customers.[66]

49. Under PAYS, the utility collects payments through a tariff to recover its investments from customers at the locations where the upgrades were installed. If any money needs to be borrowed, it is borrowed by the utility. Payment obligations are tied to the location, so whoever is a customer at a location where upgrades are installed makes the payments for only as long as they are a customer there, or until the upgrade costs are recovered.[67]

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[62] Marke Rebuttal, Exhibit 200, page 23.
[63] Marke Rebuttal, exhibit 200, page 22.
[64] Marke Rebuttal, attachment GM-10, PAYS Questions for KCPL MEEIA, Exhibit 200, page 1.
[65] Marke Rebuttal, attachment GM-9, Response to PAYS Feasibility Study, Exhibit 200, page 3.
[66] Marke Rebuttal, exhibit 200, page 45.
[67] Marke Rebuttal, attachment GM-9, Response to PAYS Feasibility Study, Exhibit 200, page 3.

50. In ER-2016-0285, the Commission ordered Evergy Missouri Metro to consider incorporating the Pay As You Save (PAYS) program into its next MEEIA filing.[68]

51. Evergy complied with that order by hiring the Cadmus Group to complete a feasibility study, which was completed on September 28, 2018.[69] The Cadmus Group is a consulting firm based in Waltham, Massachusetts.[70]

52. The Cadmus Group's feasibility study recommended that Evergy consider a PAYS program that targets low-income and multifamily populations.[71]

53. OPC recommends that Evergy offer a PAYS program as part of its MEEIA Cycle 3 program portfolio. While OPC would like to see a full PAYS program, it is agreeable to a one-year pilot program to show that the program is feasible.[72]

54. Renew Missouri also recommends inclusion of a PAYS program in Evergy's MEEIA Cycle 3 as a way to increase customer participation and expand the scope of benefits.[73]

55. The position of Evergy has not changed from the position it expressed in ER-2016-0285. Evergy is not interested in being a financial institution that holds loans or liens on equipment on the customer's side of the meter.[74]

56. PAYS starts with an analysis of the property to determine what energy efficiency measures would pay for themselves.[75] Any upgrade that is a proven technology

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[68] File No. ER-2016-0285, Report and Order, May 3, 2017, page 14.
[69] Marke Rebuttal, attachment GM-9, Response to Pay As You Save Feasibility Study, Exhibit 200.
[70] Owens Rebuttal, Exhibit, page 451.
[71] Marke Rebuttal, attachment GM-9, Response to Pay As You Save Feasibility Study, Exhibit 200.
[72] Marke Rebuttal, Exhibit 200, page 43.
[73] Owen Surrebuttal, Exhibit 452, page 8.
[74] Evergy Surrebuttal Report, Exhibit 4, page 74.
[75] Transcript, page 188

and can provide immediate net savings to the customer after it has been installed will pay for itself.[76]

57. PAYS does not require credit checks because it is not a loan program.[77] The payback of the costs of the upgrades are tied to the structure that receives the improvement. The funding for each project is capped at a level that is no more than 80% of the savings from the energy efficiency measures being installed. The customer's bill will be less, even though the customer is paying back the costs of the upgrades because the energy efficiency savings are higher than the fixed monthly charge for the upgrades.[78]

58. PAYS is also available to renters with the building owner's consent.[79]

59. PAYS allows customers without the necessary upfront capital to make energy-related investments to take part in energy efficiency projects they could not otherwise afford.[80]

60. Mark Cacye, the general manager for Ouachita Electric Cooperative in Camden Arkansas, testified that the cooperative is averaging 15 percent lower bills for every house participating in the PAYS program.[81]

61. It is appropriate to fund the PAYS program through MEEIA and provide an earnings opportunity for Evergy for successful implementation of the PAYS program.[82]

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[76] Marke Rebuttal, attachment GM-10, PAYS Questions for KCPL MEEIA, Exhibit 200, page 2.
[77] Transcript, page 188
[78] Cayce Rebuttal, Exhibit 450, page 2.
[79] Transcript, page 198.
[80] Marke Rebuttal, Exhibit 200, page 45.
[81] Transcript, page 191.
[82] Transcript, page 502.

Business Demand Response Opt-Out Customers

62. The Business Demand Response program is primarily intended to build potential capacity for use in peak reduction to meet SPP capacity margin requirements.[83] One of the advantages of the business response program is that during peak demand periods the Companies can ask those customers in the Business Demand Response program to curtail or interrupt their load to take pressure off the system. Those customers are paid a financial incentive for allowing this interruption. The main benefit to Evergy is the ability to interrupt load to avoid paying higher SPP prices for electricity during peak demand.[84]

63. Interruptible or curtailable rates are voluntary on behalf of the customer.[85]

64. Evergy's largest interruptible customer is willing to interrupt approximately six megawatts of load.[86]

65. The business demand response program is an interruptible or curtailable program.[87]

II. Conclusions of Law

A. Evergy Missouri Metro is an electrical corporation and a public utility, as those terms are defined by Section 386.020(15) and (43), RSMo. As such, the Commission has jurisdiction over Evergy Missouri Metro pursuant to Sections 386.250(1), RSMo, and 393.140, RSMo.

B. Evergy Missouri West is an electrical corporation and a public utility, as those terms are defined by Section 386.020(15) and (43), RSMo. As such, the

[83] Staff Rebuttal Report, Exhibit 101, page 65.
[84] Transcript, page 219-220.
[85] Transcript, page 496.
[86] Transcript., page 220.
[87] Transcript, page 173.

Commission has jurisdiction over Evergy Missouri West pursuant to Sections 386.250(1), RSMo, and 393.140, RSMo.

C. In making its determination, the Commission may adopt or reject any or all of any witnesses' testimony.[88] Testimony need not be refuted or controverted to be disbelieved by the Commission.[89] The Commission determines what weight to accord to the evidence adduced.[90] "It may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it."[91] The Commission may evaluate the expert testimony presented to it and choose between the various experts.[92]

D. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. Where the evidence conflicts, the Commission determines which evidence is most credible.

E. Commission Rule 20 CSR 4240-20.094(3) requires that the Commission must approve Evergy Missouri Metro's and Evergy Missouri West's MEEIA Cycle 3 plans, approve the plans with modifications acceptable to Evergy Missouri Metro and Evergy Missouri West, or reject the plans.

F. Under Section 393.1075.4 RSMo, the Commission permits electric corporations to implement commission-approved demand-side programs with a goal of achieving all cost-effective demand-side savings.

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[88] *State ex rel. Associated Natural Gas Co. v. Public Service Commission,* 706 S.W.2d 870, 880 (Mo. App., W.D. 1985).
[89] *State ex rel. Rice v. Public Service Commission,* 220 S.W.2d 61, 65 (Mo. banc 1949).
[90] *State ex rel. Rice v. Public Service Commission,* 220 S.W.2d 61, 65 (Mo. banc 1949).
[91] *State ex rel. Rice v. Public Service Commission,* 220 S.W.2d 61, 65 (Mo. banc 1949).
[92] *Associated Natural Gas, supra,* 706 S.W.2d at 882.

G. A demand-side program is any program conducted by a utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including but not limited to energy efficiency measures, rate management, demand response, and interruptible or curtailable load.[93]

H. Energy efficiency measures are measures that reduce the amount of electricity required to achieve a given use.[94]

I. Recovery for demand-side programs is not permitted unless the programs are approved by the Commission, result in energy or demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.[95] Evergy's MEEIA programs result in energy and demand savings by substituting energy saved through demand-side programs for energy that otherwise would have been generated by a supply-side resource.

J. The TRC test is a preferred cost-effectiveness test to evaluate demand side programs.[96] The TRC test shows whether a program's savings outweigh its costs. It compares the sum of avoided utility costs and avoided probable environmental compliance costs associated with a program to the sum of all incremental costs of end-use measures that are implemented due to the program.[97] The TRC test, in part, determines whether all customers in a customer class receive benefits from a program. If a program scores one or greater, the program's economic savings outweigh its costs

[93] Section 393.1075.2(3) RSMo.
[94] Section 393.1075.2(4) RSMo.
[95] Section 393.1075.4 RSMo.
[96] Section 393.1075.4 RSMo.
[97] Section 393.1075.2(6) RSMo.

and the program is cost-effective, because money is saved economic benefits flow to all customers regardless of participation

K. Avoided costs or avoided utility costs means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources.[98] Avoided costs are the foundation of whether a MEEIA program is cost-effective under the TRC test. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities.[99] Nowhere does the MEEIA statute say that a supply-side resource must be avoided or deferred.

L. A Missouri regulated electric utility seeking to utilize demand-side programs and demand-side programs investment mechanisms is required to use the IRP and risk analysis used in its most recently adopted preferred resource plan to calculate its avoided costs,[100] unless the Commission grants it a variance from the request for good cause shown.[101]

M. In its IRP and associated risk analysis an electric utility must calculate the three types of savings projected to be avoided by the demand-side programs, avoided demand cost, avoided energy cost, and avoided probable environmental costs.[102]

N. In calculating the avoided demand cost associated with the demand-side programs included in its IRP risk analysis, an electric utility must include the resulting forgone capacity cost of generation, transmission, and distribution facilities, adjusted to

[98] Commission Rule 20 CSR 4240-20.092(1)(C)
[99] Commission Rule 20 CSR 4240-20.092(1)(C)
[100] Commission Rule 20 CSR 4240-20.092(1)(C)
[101] Commission Rule 20 CSR 4240-20.092(2)
[102] Commission Rule 20 CSR 4240-22(5)(A)1.

reflect reliability reserve margins and capacity losses on the transmission and distribution systems, or the corresponding market-based equivalents of those costs.[103]

O. The best method, in this case, to calculate avoided demand costs is set out in the Commission's IRP rules. The Commission's IRP Demand-Side Resource Analysis rule allows for the calculation of avoided demand costs using a market based equivalent.[104]

P. A variance of Commission Rule 20 CSR 4240-20.92(1)(C) is necessary to apply a different method of calculating avoided costs than the combustion turbine used in by Evergy in its most recent IRP filing.

Q. Section 393.1075.4 RSMo says that recovery for demand-side programs will only be allowed if the programs result in energy or demand savings and benefit all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.

R. Programs targeted to low-income customers or general education campaigns do not need to meet a cost-effectiveness test, so long as the commission determines that the program or campaign is in the public interest.[105]

S. The Home Energy Report program is a general education campaign and is in the public interest.

T. The Heating, Cooling, and Weatherization program is a program of audits and rebates. Those audits make it a general education campaign, and it is in the public interest.

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[103] Commission Rule 20 CSR 4240-22 (5)(A)1.
[104] Commission Rule 20 CSR 4240-22(5)(A)1.
[105] Section 393.1075.4 RSMo.

U. The MEEIA statute does not indicate the level of benefits non-participants are to receive.

V. Participation in MEEIA is voluntary and no company is required to offer demand-side programs under MEEIA. As stated above the Commission can approve the applications with modifications so long as those modifications are acceptable to Evergy.[106]

W. Demand response measures are measures that decrease peak demand or shift demand to off-peak periods.[107]

X. Section 393.1075.10 RSMo states that customers opting not to participate in funding MEEIA programs shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs.

Y. The Company has testified that the program is in fact a curtailable or interruptible program. This section of the MEEIA statute applies to the tariff or schedule. The Commission rejected Evergy's MEEIA Cycle 3 tariffs when it approved a stipulation and agreement between the parties extending MEEIA Cycle 2. Thus, there are no schedules or tariffs for the Commission to examine.

[106] Commission Rule 20 CSR 4240-20.094(4)(H)
[107] Section 393.1075.2(2) RSMo.

Variances

Evergy has requested variances be granted from five Commission rules:

1. Variances related to the incentive to be implemented and based on prospective analysis rather than achieved performance verified by EM&V, and the proposed utilization of a Technical Resource Manual for purposes of calculating Throughput Disincentive: 20.092(1)(HH);20.092(1)(M); 20.092(1)(R); 20.093(2)(I) 20.093(2)(I)3; 20.092(1)(N)

2. Variances related to allowing adjustments to Demand-Side Investment Mechanism (DSIM) rates for the Throughput Disincentive DSIM utility incentive revenue requirement as well as the DSIM cost recovery: 20.093(4); 20.093(4)(C)

3. Variances related to "revenue requirement" where the Throughput Disincentive is excluded from the cost recovery revenue requirement: 20.092(1)(Q); 20.092(1)(UU); 20.092(1)(P); 20.092(1)(R); 20.093(2)(J); 20.092(1)(F)

4. Variances related to allowing flexibility in setting the incentives and changing measures within a program: 14.030.

5. Variances related to the methodology for calculating avoided costs, 20.092(1)(C).

All of the Intervening Parties support granting Evergy's MEEIA Cycle 3 applications and associated variances. Staff opposes only the granting of a variance of Commission Rule 20 CSR 4240-20.092(1)(C), which defines avoided costs. Evergy requests the variance of the avoided cost definition because it say that the Companies have interpreted the rule to mean that the methodology for calculating avoided costs would be consistent with the most recently filed IRP at the time of the MEEIA application filing.

III. Decision and Discussion

The Commission will consolidate Evergy Missouri Metro's and Evergy Missouri West's applications, because the SPP treats Evergy Missouri Metro and Evergy Missouri West as a single load serving entity, and the parties who addressed that question in post-

hearing briefs all encouraged the Commission to take the applications together. Furthermore, consolidation will ultimately make it easier for customers who might otherwise be confused if MEEIA programs were only available for one company.

The combustion turbine mechanism for calculating avoided costs is not appropriate in this case because the data relied on is from 2015. A market based equivalent using capacity bids from late 2017 yields more current data to calculate avoided costs. Using a market based equivalency for avoided costs, Evergy calculates that all but one of its MEEIA Cycle 3 programs is cost-effective, and Evergy is willing to modify that program so it becomes cost-effective. Once that is done, the projected costs will be outweighed by the savings benefits and all customers will monetarily benefit from the programs within the class the programs are offered. Customers who participate in energy efficiency programs will receive most of the benefits of those programs. However, all customers will receive some benefit.

The Commission will approve Evergy's MEEIA Cycle 3 subject to certain conditions. The Commission determines that a market-based approach is the most appropriate way to calculate avoided costs for this MEEIA application and that a market-based approach best values demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, the Commission will direct the parties to use the average of bids Evergy Missouri West received for capacity in 2017 for purposes of calculating avoided costs.

The Commission determines that Evergy's MEEIA Cycle 3 programs are beneficial to all customers in the customer class in which the programs are proposed.

Evergy has stated that it has no interest in having a PAYS program as part of its MEEIA Cycle 3 portfolio. However, the Commission finds that the PAYS program offers unique opportunities to broaden participation in MEEIA programs to customers who might not otherwise engage in energy efficiency programs. The PAYS pilot program appropriately belongs in MEEIA Cycle 3 because the Commission wants to give Evergy an appropriate earnings opportunity for offering the program, as proposed by Dr. Marke in rebuttal testimony. Evergy may not find offering a PAYS program to be an acceptable condition for approval of the Companies' MEEIA Cycle 3 applications, and Evergy may exercise its prerogative and not offer a MEEIA Cycle 3 portfolio if it does not find this addition acceptable.

The Commission determines that if Evergy implements a MEEIA Cycle 3, it shall offer a PAYS pilot program as described in the rebuttal testimony of Dr. Marke, with the exception that, the budget for the pilot program shall be reduced to no less than $10 million, and no more than $15 million. Evergy Missouri Metro and Evergy Missouri West may administer the pilot program themselves or may employ a third-party operator with experience to operate the Pay As You Save program. The program should be appropriately scaled down to accommodate the reduced budget, as the purpose of the one-year pilot program is to determine the feasibility and desirability of the PAYS program.

Testimony supports the Business Demand Response program as being interruptible or curtailable. The Commission determines from the description of the program that it is an interruptible or curtailable program and that opt-out customers shall be allowed to participate in the Business Demand Response program. If Evergy files

tariffs to implement the approved revised MEEIA Cycle 3, those tariffs will appropriately represent the Commission's determination that the programs are interruptible or curtailable within the meaning of the statute.

The Commission will grant the four unopposed variance requests, because the variances are necessary to successfully implement Evergy's MEEIA Cycle 3, and gain at-will participation. The Commission will grant the fifth variance even though the Commission is not approving Evergy's avoided costs. The Commission is approving the Companies MEEIA Cycle 3 applications with a market-based approach to calculating avoided costs. As modified, the variance is still needed. For this reason the Commission is granting a variance of Commission Rule 20 CSR 4240-20.092(1)(C).

The Commission will make this order effective in 30 days. This is a new order and consequentially all applications for rehearing of the December 11, 2019, Report and Order are now moot. Anyone seeking rehearing of this Amended Report and Order must file a new application for rehearing before the effective date of this order.

THE COMMISSION ORDERS THAT:

1. The MEEIA Cycle 3 Plans, as put forth by Evergy Missouri Metro and Evergy Missouri West, and modified by the Commission, are approved for a period of three years from the effective date of this order. Avoided costs shall be calculated using the average cost of the seven bids to supply capacity which Evergy Missouri West received in response to a 2017 Request for proposal as described in testimony.

2. If Evergy Missouri Metro and Evergy Missouri West offer a MEEIA Cycle 3 plan, the companies shall modify their respective MEEIA Cycle 3 portfolios to include a one-year Pay As You Save pilot program. The Companies, after consulting with the

parties, shall file a one-year Pay As You Save pilot program at least 60 days before such pilot program go into effect. The Pay As You Save pilot program shall include the following:

a. The budget for the pilot program shall be no less than 10 million dollars, and no more than 15 million dollars.
b. Evergy Missouri Metro and Evergy Missouri West may administer the pilot program themselves or may employ a third party operator with experience to operate the pilot program.
c. The pilot program shall identify a goal for the number of participants living in neighborhoods designated by the parties as predominately low or moderate-income customers or renters in multifamily housing with five or more units where the renter is responsible for paying their energy bills. The pilot program shall allow owners of multifamily units in participating buildings to use the program to install upgrades in common areas.
d. The pilot program shall have an appropriate earnings opportunity component for the Companies to be agreed upon by the parties.
e. The pilot program shall include customer protections by capping administrative costs (including total advertising costs as allocated to the total number of projects) for each individual customer project to a percentage of the total loan costs. Energy audit costs are a separate project Component and will not be included with administrative costs.
f. Participants in the Pay As You Save program shall be responsible for the capital provided for the energy efficiency measures minus any rebate.

g. Pay As You Save costs recovered through MEEIA from all ratepayers shall include: the rebate amount, administrative costs, the throughput disincentive, and an earnings opportunity (as agreed upon by the parties).

h. Any savings (kWh or kW) determined through the evaluation of the Pay As You Save program shall not be double counted with savings from other MEEIA programs at that same customer's premise.

i. Evergy Missouri Metro and Evergy Missouri West will notify the Commission of the pilot program's expected starting date, as selected by the Companies.

j. Evergy Missouri Metro and Evergy Missouri West shall submit progress reports both six months and one year after the Pay As You Save pilot program begins. The reports shall provide information based on benchmarks established by the parties to help identify the long-term feasibility and desirability of a Pay As You Save program, including participation rates.

3. Opt-out customers shall be allowed to participate in Evergy Missouri Metro's and Evergy Missouri West's business response program. The Companies are not required to publish compensation in their tariffs.

4. Evergy Missouri Metro and Evergy Missouri West are granted variances from the following Commission rules for the purpose of facilitating their MEEIA Cycle 3 Plans:

- 20 CSR 4240-20.092(1)(HH)
- 20 CSR 4240-20.092(1)(M)
- 20 CSR 4240-20.092(1)(R)
- 20 CSR 4240-20.093(2)(I)3

- 20 CSR 4240-20.092(1)(N)
- 20 CSR 4240-20.093(4)(C)
- 20 CSR 4240-20. 20.092(1)(Q)
- 20 CSR 4240-20.092(1)(UU)
- 20 CSR 4240-20.092(1)(P)
- 20 CSR 4240-20.092(1)(R)
- 20 CSR 4240-20.093(2)(J)
- 20 CSR 4240-20.092(1)(F)
- 20 CSR 4240-14.030
- 20 CSR 4240-20.092(1)(C)

5. This Report and Order shall become effective on April 10, 2020.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by internet and phone audio conference on the 28th day of May, 2020.

In the Matter of Evergy Missouri Metro and Evergy Missouri West's Notice of Intent to File Applications for Authority to Establish a Demand-Side Programs Investment Mechanism	)))))	**File No. EO-2019-0132**

ORDER DENYING APPLICATION FOR REHEARING

Issue Date: May 28, 2020 Effective Date: May 28, 2020

On March 11, 2020, the Missouri Public Service Commission issued an Amended Report and Order effective April 10, 2020, regarding approval of Evergy Missouri Metro and Evergy Missouri West's application for certain demand-side programs, a technical resource manual, variances from Commission rules, and a demand-side investment mechanism as contemplated by the Missouri Energy Efficiency Investment Act. On April 8, 2020, the Office of the Public Counsel filed an application for rehearing of the Amended Report and Order.

Section 386.500.1, RSMo 2016, states that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." In the judgment of the Commission, the Office of the Public Counsel's application for rehearing does not demonstrate sufficient reason to rehear the matter. The Commission will deny the application for rehearing.

THE COMMISSION ORDERS THAT:

1. The Office of the Public Counsel's April 8, 2020, application for rehearing is denied.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Clark, Senior Regulatory Law Judge