

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

The Office of the Public Counsel and	)	
The Midwest Energy Consumers Group,	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EC-2019-0200
	)	
KCP&L Greater Missouri Operations Company	)	
	)	
Respondent	)	

**RESPONSE TO GMO VERIFIED NOTICE OF  
ADVERSE MARKET REACTION**

COMES NOW the Midwest Energy Consumers Group (“MECG”) and for its Response to the KCP&L Greater Missouri Operations Company (“GMO”) Verified Notice of Adverse Market Reaction as well as its Supplemental Notice, respectfully states as follows:

1. On October 9, 2019, the Commission held a public meeting. At that meeting, the Commission deliberated the pending OPC / MECG Petition for an Accounting Authority Order through which OPC / MECG seek a deferral of the cost savings associated with the recent retirement of the Sibley generating units. At that meeting, the Commission clearly indicated its intent to issue an order granting the OPC / MECG request.

2. On October 10, 2019, GMO filed its Notice of Adverse Market Reaction (“Notice”). In that Notice, GMO asserts that the Commission should “delay the issuance of the order” granting the requested Accounting Authority Order and “undertake further proceedings” to consider the impact of the Commission’s decision. In that pleading, GMO has stopped arguing that the retirement of Sibley is not extraordinary. Instead, GMO effectively argues that, while the retirement of Sibley is extraordinary, the Commission should not defer those costs.

After decades of receiving deferral of costs, GMO asserts that the Commission should not defer the savings of an extraordinary event because shareholders had anticipated that, as reflected in its stock price, they would be permitted to keep the entirety of the Sibley savings.

3. GMO's Notice is not only disturbing to customers; it is repugnant to the very reason for the existence of the Commission. "In its broadest aspects, the general purpose of such regulatory legislation is to substitute regulated monopoly for destructive competition. **But the dominant thought and purpose of the policy is the protection of the public while the protection given the utility is merely incidental.**"<sup>1</sup> Under GMO's theory of regulation as expressed in its Notice, however, the Commission is apparently free to protect the public so long as it has no effect on the stock price for the Evergy shareholders. Given GMO's theory, the Commission should review the Evergy stock price when it sets a return on equity to ensure that shareholders approve. The Commission should presumably consult shareholders to ensure that "just and reasonable rates" actually means rates that shareholders believe provide it necessary profits. Furthermore, the "not detrimental to the public interest" standard as used by the Commission in several types of cases should seemingly become "beneficial to utility shareholders."

4. Through this pleading, MECG will show that the Commission should deny the GMO request. **First**, unlike the Commission, which is tasked with considering both the interests of shareholders and customers, the stock market reaction and evaluations of equity analysts only represent the interests of shareholders. As such, any Commission action to placate the interests of shareholders and equity analysts will necessarily result in customers being left to suffer. **Second**, GMO conveniently neglects to inform the Commission that, immediately prior to the small reduction in Evergy's stock price that occurred on October 9, Evergy was trading at a 5-

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<sup>1</sup> *State ex rel. Crown Coach Co. v. Public Service Commission*, 179 S.W.2d 123, (Mo. App. 1944) (emphasis added).

year high stock price. Therefore, Evergy's shareholders, unlike the long-suffering ratepayers, have benefitted immensely from the current Missouri regulatory process. **Third**, as of the end of trading on October 15, the Evergy stock price has rebounded and has recovered much of that stock price reduction.<sup>2</sup> **Fourth**, there have been many recent events that may have affected Evergy's stock price. For instance, the Kansas Commission has recently found that actions by Westar to purchase the remaining interest in Jeffrey Energy Center was imprudent and, as a result, disallowed recovery of approximately \$93 million of costs. In addition, a stock price decline may be caused by the fact that Evergy's reported earnings and revenues were below expectations in the second quarter and then Wells Fargo downgrading Evergy because of the "below-average regulatory environment" in Kansas. **Fifth**, from the reports it is apparent that the equity analyst evaluations are not based upon independent consideration of the facts in this case or the potential impact of that decision. Rather, these reports are based entirely on previous Evergy messaging on this matter which emphasized the Staff's alignment with GMO's position. Simply stated, Evergy over-hyped its opinion that it would prevail on this matter. **Sixth**, the change in Evergy's stock price on October 9 was not unique. Over the last year, Evergy has experienced similar reductions in its stock price on several occasions. Such events are a typical occurrence in the stock market and the Commission should be reticent to read too much into any such short-term market reactions. **Seventh**, despite GMO's claim that investors are "question[ing] the fairness of Missouri regulation," the stock performance of each of the Missouri major utilities (trading at 5-year high in stock price) demonstrates that Missouri regulation is responsive to utility shareholders. In addition, recent S&P reports on GMO and Evergy indicate that Missouri provides a constructive regulatory environment.

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<sup>2</sup> In its Supplemental Notice, GMO acknowledges that "Evergy's share price has gained some of the ground it lost."

**A. STOCK MARKET AND EQUITY ANALYSTS ONLY REPRESENT THE INTERESTS OF SHAREHOLDERS AND DO NOT CONSIDER THE INTERESTS OF RATEPAYERS**

5. It is well established that the Commission is designed to balance the interests of both utility shareholders as well as the ratepayers. “The PSC is charged with considering and protecting the interests of the general public as well as the customers and investors of a regulated utility.”<sup>3</sup>

6. In contrast, it is clear that the stock market participants and equity analysts are only interested in representing the interests of shareholders. For this reason, stock market participants and equity analysts have zero regard for the interests of customers. In fact, realizing that shareholder profits come directly from customers, the interests of shareholders and equity analysts are directly opposed to the interests of customers. As such, if the Commission considers the opinions of these market participants, the interests of GMO’s customers will necessarily go unconsidered.

6. If the Commission considers the interests of these equity analysts and stock market participants as a surrogate for the utility, it must also consider other surrogates for the interests of GMO ratepayers. In this regard, the annual survey recently conducted by JD Power is particularly informative. In that recent survey, the overall satisfaction score for KCPL / GMO customers is \*\*\_\_\_\_\_\*\*<sup>4</sup> As the following chart indicates, KCPL / GMO’s customer satisfaction is primarily influenced by the fact that customers perceive KCPL / GMO’s rates as the lowest satisfaction metric.

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<sup>3</sup> *State ex rel. Cass County v. Public Service Commission*, 259 S.W.3d 544, 549 (Mo. App. 2008)

<sup>4</sup> Specifically, as reflected in Attachment 1, the customer satisfaction scores for Midwest Large Utilities included a high score of 764 and a low score of 693. The KCPL / GMO score of \*\*\_\_\_\_\*\* was below the average score of 726.

7. Bottom line, the stock market data and equity analyst reports referenced by GMO are largely irrelevant to the issues in this case.<sup>5</sup> While the Commission is statutorily responsible for considering the interests of the utility and the customers, the stock market data and equity analyst reports only consider the interests of the utility shareholders. Ultimately, if the General Assembly had intended utility regulation to be based entirely on the interest of the shareholders, then it would be much easier to disband the Commission and make ratemaking decisions entirely based upon stock market reaction. Clearly, given the continued existence of the Commission and the fact that ratepayers would not be considered in such a regulatory scheme, the General Assembly sees the fallacy of such an idea. In fact, at this point, apparently all parties except for GMO sees the obvious downfalls in focusing on stock market data.

**B. EVERGY IS TRADING NEAR ITS 5 YEAR HIGH STOCK PRICE**

8. In its Notice, GMO attempts to paint a picture of doom and gloom resulting from the Commission's deliberations and its intention to issue an order requiring GMO to defer the savings associated with the recent retirement of Sibley. Noticeably, however, GMO neglects to

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<sup>5</sup> Stock market data is also irrelevant in that, unless the utility is selling equity in the market, it does not reflect a cost to the utility or its ratepayers. Stock market data simply reflects the public perception of the profitability of a company and the price at which individuals are willing to buy / sell their interest in the utility. Ultimately, changes in a utility stock price do not have a direct impact on the utility's costs.

inform the Commission that its shareholders have profited immensely in the recent past. In fact, for the last year, Evergy shareholders have seen a 15.1% increase in stock prices. Specifically, while Evergy's stock price was \$55.54 on October 11, 2018, the Evergy stock price closed at \$63.95 on October 11, 2019. During that same period of time, the Dow Jones Industrial Average only increased 6.08%. In fact, Evergy hit a 5-year high stock price of \$67.81 on September 26, 2019.

9. The rapid escalation in stock price is not unique to Evergy. In fact, each of the major Missouri utilities has recently experienced a 5-year high in its stock performance. Specifically, Ameren experienced its 5-year high in stock price on the very same day (September 26) that Evergy experienced its high stock price. Similarly, American Water Works experienced a 5-year high stock price on September 3, 2019 and Spire on September 30, 2019.

### **C. EVERGY'S STOCK PRICE HAS LARGELY REBOUNDED SINCE OCTOBER 9**

10. Stock trading in the days since GMO's Notice demonstrates the problems with GMO's assertions. Specifically, in its pleading, GMO asserts that its stock price has fallen 2.58% as a result of the Commission's deliberations in this matter. Shareholder perceptions cannot be pinpointed based upon trading for a few hours. Rather, shareholders perceptions must be viewed over a longer period of time. With this in mind, it is informative to look at Evergy's stock price for the entire period since October 9, 2019.

11. Since falling approximately \$2.50 on October 9, Evergy's stock price has since rebounded. Specifically, in just 2 trading days since that time, Evergy's stock price has regained approximately \$1.25. In fact, in a supplemental notice filed on October 15, GMO readily acknowledges that "Evergy's share price has gained some of the ground it lost." Clearly then,

any market perception was short lived and, given the constructive nature of Missouri regulation, investors are looking for opportunities to invest in Missouri utilities.

**D. EVERYGY STOCK PRICE IS AFFECTED BY NUMEROUS EVENTS, NOT SIMPLY THE COMMISSION DELIBERATIONS ON THIS CASE.**

12. While Evergy suffered a small stock price decline on October 9, it is impossible to pinpoint the reason for this decline. Evergy has thousands of investors and there are as many reasons that motivate particular investors to buy or sell stock as there are investors. For instance, given the recent increase in Evergy's stock price, numerous investors may simply be selling their shares in order to lock in the recent stock appreciation and no longer subject it to market volatility. In the final analysis, the Evergy stock price may be affected by numerous events separate and apart from the Commission's deliberations in this case.

13. For instance, Westar, a subsidiary of Evergy, recently announced that it was purchasing the 8% interest in the Jeffrey Energy Center that was owned by Midwest Power. Subsequently, Westar sought to recover certain lease expenses and O&M costs through its Energy Cost Adjustment rider, and to subsequently recover the capital expenditure in base rates. In its September 12, 2019 Order, the Kansas Corporation Commission held that Westar "failed to meet its burden of showing that its new lease and purchase agreement was a prudent decision for its retail customers."<sup>6</sup> As the Kansas Commission indicates, the practical effect of its decision was to disallow approximately \$93 million in Westar retail rates over the next 15 years.<sup>7</sup>

14. Still again, given that stock price is largely a function of utility profits, it is possible that the small decline in Evergy's stock price is a result of its recent release of earnings

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<sup>6</sup> Kansas Corporation Commission Case No. 19-WSEE-355-TAR, *Order on Westar's Application to Recover Certain Costs Through its R.E.C.A. Related to the 8% Portion of Jeffrey Energy Center*, issued September 12, 2019, at page 31.

<sup>7</sup> *Id.* at page 27.

for the second quarter. As that earnings report indicates, Evergy missed analyst expectations for earnings and revenues.<sup>8</sup> Certainly, this could also impact the Evergy share price.

15. Finally, Wells Fargo recently announced a downgrade of Evergy stock for reasons completely independent of Missouri utilities or regulation.<sup>9</sup> As Wells Fargo indicates,

We remain cognizant that EVRG's largest jurisdiction is KS, which has deteriorated over the last few years, in our view. EVRG's KS utilities are allowed a below-average 9.3% ROE and the company's electric rates have drawn increased scrutiny, leading to the passage of Senate Bill 69 earlier this year. SB 69 calls for a two-part rate study due 1/8/2020 and 7/1/2020. While we expect the results to be benign (EVRG is already addressing rate concerns via the merger), we do not consider the KS regulatory environment to be ripe for new investment programs in the near-to intermediate-term.

Furthermore, Wells Fargo stated, “[w]e think a modest discount on 2021E is warranted as we consider KS, which represents 57% of consolidated rate base, to be a below-average regulatory environment.” Given this assessment of Evergy, especially the regulatory environment in Kansas, it is not surprising that Evergy may experience some fluctuation in its stock price.

16. Bottom line, there are many factors that may affect a company's stock price. In fact, the reasons for a stockholder buying or selling stock are numerous. It is disingenuous for GMO to suggest that the Commission deliberations are solely to blame for a reduction in stock price especially given: (1) the recent Kansas Corporation Commission decision disallowing \$93 million of imprudently incurred costs; (2) Evergy missing analyst expectations in the second quarter for earnings and revenues; and (3) the Wells Fargo report downgrading Evergy stock simply as a result of the “below-average regulatory environment in Kansas”.

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<sup>8</sup> <https://finance.yahoo.com/news/evergy-inc-evrg-lags-q2-220510687.html>

<sup>9</sup> <https://finance.yahoo.com/news/wells-fargo-downgrades-evergy-recent-182053934.html>



**E. EQUITY ANALYST REPORTS SIMPLY REFLECT EVERGY'S OPINION GIVEN THE ALIGNMENT OF THE COMMISSION STAFF**

17. In addition to providing misleading stock price data, GMO also provided some equity analyst reports in its Notice. It is apparent from those reports, however, that the opinions are not reflective of equity analysts that had conducted an independent analysis of the testimony and facts in this case. Rather, the equity analyst comments simply reflect surprise that the Commission demonstrated its independence and rejected the position of a Staff that had once again agreed with GMO's position.

- "We did not believe the MPSC would approve an AAO given that Staff was in agreement with EVRG's position."
- "Wednesday's news that the Missouri Public Service Commission PSC indicated in a nonbinding vote that it is leaning 3-2 toward ruling against EVRG came as a surprise given commission staff reply briefs suggesting alignment with EVRG's position."
- "We ascribe this optimism to recently filed staff briefs which found that the interveners in the complaint – the Missouri Office of Public Counsel and the Missouri Energy Consumers Group – had not met the requisite burden of proof to show that the retirement of Sibley was an extraordinary event."

18. Clearly, given that the equity analysts reports simply reflect surprise, given the Staff's alignment of GMO's position, and not an independent analysis of the facts in this case, the Commission should not place a great deal of credence in those reports.

**F. STOCK PRICE FLUCTUATIONS ARE A REGULAR OCCURRENCE FOR EVERGY**

19. In its Notice, GMO gives the impression that the slight decrease in Evergy's stock price that occurred on October 9 is a unique occurrence that resulted solely from the Commission's deliberations in this case. Stock market data indicates that, on its way to setting a 52 week high stock price on September 26, 2019, Evergy experienced several days in which stock price declined prior to immediately rebounding.

<b>Date</b>	<b>Stock Open</b>	<b>Stock Close</b>	<b>Difference</b>
October 9, 2019	\$65.19	\$63.80	\$1.39
September 5, 2019	\$65.85	\$64.78	\$1.07
June 26, 2019	\$61.09	\$59.65	\$1.44
May 9, 2019	\$58.14	\$56.94	\$1.20
March 1, 2019	\$56.05	\$55.03	\$1.02
February 22, 2019	\$57.01	\$55.49	\$1.52
December 24, 2018	\$58.45	\$55.91	\$2.54
December 17, 2018	\$60.73	\$58.35	\$2.38

20. As the stock data indicates, Evergy’s stock price routinely experiences fluctuations. In the past year, however, any stock price decline has been immediately followed by a rebound that led to a 52 week high in Evergy’s stock price. It would be inequitable for the Commission to modify its decision in this case based upon a small decline in Evergy’s stock price when Evergy’s shareholders are obviously earning a significant return on their investment.

**G. THE FAIRNESS OF MISSOURI REGULATION**

21. In its Notice, GMO suggests that the Commission’s deliberations in this matter send a signal to the “investment community” regarding the “fairness of Missouri regulation.” This is a common refrain from Missouri utilities whenever it appears that the Commission is taking a position which they believe favors ratepayers over shareholders. That said, however, it is apparent, from the same stock performance that GMO now relies upon, that Missouri regulation is favorable to utility shareholders and that those shareholders are benefitting immensely from that regulation.

22. For instance, over the past 5 years, each of the major Missouri utilities has seen stock performance that has greatly outperformed the Dow Jones Utility Average.

<b>Utility</b>	<b>October 15, 2014</b>	<b>October 15, 2019</b>	<b>5 Year Appreciation</b>
American Water Works	\$49.09	\$120.90	146.3%
Ameren	\$40.10	\$75.74	88.9%
Great Plains Energy / Eversource	\$35.78	\$63.94	78.7%
Laclede / Spire	\$47.56	\$83.85	76.3%
Dow Jones Utility Average	\$558.64	\$858.16	53.6%

Source: Yahoo Finance

Given the performance of each of the major Missouri utilities over the past 5 years, it is difficult to place any credence in GMO’s suggestion that investors are “question[ing] the fairness of Missouri regulation.”

23. The supportive nature of Missouri regulation is not only reflected in the stock price for the major Missouri utilities, it is also reflected in the analyst reports of several debt analysts. For instance, in its latest report on GMO, S&P lists as a “key strength” the fact that “[u]tility operations benefit from a generally constructive regulatory framework in Missouri.” Such a statement is consistent with those provided by S&P on Eversource as a whole. “In addition to a balanced regulatory framework, the company benefits from generally constructive regulation in each state [Missouri and Kansas].”

## **H. CONCLUSION**

24. In its deliberations, the Commission demonstrated that it is not simply interested in furthering the interests of utility shareholders. Rather, through its stated intention to grant a deferral of the Sibley cost savings, the Commission revealed its intention to fulfill its statutory obligation and to balance the interests of shareholders (who have recently experienced a 5 year high in stock price), with the interests of ratepayers (who have seen a simultaneous escalation in electric rates). Certainly, a Commission decision issued consistent with its deliberations is not viewed favorably by equity analysts or shareholders who anticipated being permitted to retain

the entirety of the Sibley savings. That should not be surprising to anyone. That said, however, a Commission retreat from that position, simply because of a one day stock performance would send the signal that the Commission is only interested in addressing the concerns of shareholders. In this regard, captive ratepayers that have suffered a rapid increase in rates over the past decade will be left to question the objectivity of the very state agency designed to protect them from the utility monopoly.

Respectfully submitted,

          /s/ David Woodsmall            
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ATTORNEY FOR THE MIDWEST  
ENERGY CONSUMERS GROUP

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

          /s/ David Woodsmall            
David L. Woodsmall

Dated: October 16, 2019

# ATTACHMENT 1

(CONFIDENTIAL IN ITS ENTIRETY)