

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

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

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

STAFF RESPONSE TO EVERGY PROCEDURAL SCHEDULE PROPOSAL

COMES NOW Staff of the Missouri Public Service Commission and submits this Response to the proposed procedural schedule submitted herein on July 22, 2020, by Evergy Missouri Metro and Evergy Missouri West (collectively “Evergy”) and in support hereof states as follows:

1. Staff and the Office of the Public Counsel (“OPC”) submitted a proposed procedural schedule and proposed procedural requirements in these cases on July 22, 2020. Evergy also submitted a significantly different proposed procedural schedule and proposed procedural requirements on the same date.

2. Commission Rule 20 CSR 4240.093(11), authorized under § 393.1075.3 and § 393.1075.11, RSMo., provides that “[a] prudence review of the costs subject to the DSIM shall be conducted no less frequently than at twenty-four (24) month intervals.”

3. These cases were initiated *not* by Evergy’s filing of a proposed rate, or tariff, or any other filing by Evergy. Instead, these cases were initiated by Staff’s filing of a

Notice of Start of Second MEEIA Prudence Review of Cycle 2 Energy Efficiency Programs pursuant to Commission Rule 20 CSR 4240.093.

4. While Staff appreciates Evergy's recognition of the simple fact that ultimately any utility company bears the burden of proving its proposed rates and tariffs are just and reasonable, resolution of the current procedural schedule dispute is not that simple.

5. As the court of appeals stated in *State ex rel. Associated Natural Gas Company v. Public Service Commission of the State of Missouri*, 954 S.W.2d 520 (Mo. Ct. App. 1997):

The PSC has defined its prudence standard as follows:

[A] utility's costs are presumed to be prudently incurred....

However, the presumption does not survive "a showing of inefficiency or improvidence."

... [W]here some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the [utility] has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent. (Citations omitted).

Union Electric, 27 Mo. PSC (N.S.) 183, 193 (1985) (quoting *Anaheim, Riverside, Etc. v. Fed. Energy Reg. Com'n*, 669 F.2d 799, 809 (D.C.Cir.1981)). In the same case, the PSC noted that this test of prudence should not be based upon hindsight, but upon a reasonableness standard:

[T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable

people would have performed the tasks that confronted the company.

Union Electric, 27 Mo. P.S.C. at 194 (quoting *Consolidated Edison Company of New York, Inc.* 45 P.U.R. 4th 331 (1982)).

Associated Natural Gas at 528-529.

6. In the *Associated Natural Gas* case at page 530 the court further stated that “It would be beyond this statutory authority [Section 393.130.1, RSMo] for the PSC to make a decision on the recoverability of costs, based upon a prudence analysis . . . without reference to any detrimental impact” on the utility’s customers.

7. In other words, in a prudence analysis such as this, the utility initially receives the benefit of a presumption of prudence, and the burden of production is on Staff (or the party challenging prudence) to come forward with evidence to overcome the presumption, *i.e.*, to raise a serious doubt as to prudence. Evergy’s procedural schedule proposal, under which it has the opportunity for both the first and last word (*i.e.*, only Evergy files direct testimony and only Evergy files surrebuttal testimony) does not appropriately recognize the shifting of burdens under the prudence standard.

8. Unlike Evergy’s one-sided and self-serving procedural schedule proposal, the schedule proposed by Staff and OPC provides an opportunity for *all* parties to file direct, rebuttal, and surrebuttal testimony if they choose to do so. The proposal of Staff and OPC is also consistent with the Commission’s rule governing prefiled testimony, *i.e.*, 20 CSR 4240-2.130, unlike Evergy’s proposal which provides for Cross-rebuttal – a round of testimony which is not even recognized by 20 CSR 4240-2.130 and which is designed solely to allow Evergy (and only Evergy) the opportunity to have the “last word.”

9. Evergy's proposal refers to a fuel adjustment clause prudence review case as support for its proposal; however, what Evergy's proposal does not mention is that the FAC prudence review case it cites was consolidated with an actual FAC rate true-up filing by the company. Unlike an FAC rate filing, these cases were initiated by Staff's filing of a Notice of start of prudence review.

10. Evergy's proposal also does not mention that its proposal is entirely at odds with the schedule proposal of the parties and the partial schedule adopted by the Commission in the recent MEEIA prudence review case, Case No. EO-2019-0376.¹ In that case, the schedule proposed by the parties provided for Staff (not the company) to file direct testimony, the company and OPC to file rebuttal, and all parties to file surrebuttal. The partial schedule adopted by the Commission provided for Staff to file direct and the company and OPC to file rebuttal. The proposal of Staff and OPC in these cases is far more consistent with the EO-2019-0376 schedule than Evergy's proposal, and is in fact more favorable to Evergy than the exact EO-2019-0376 schedule would be.

11. As it is already the beneficiary of the presumption of prudence, Evergy should not also get the "first and last word." Its proposed procedural schedule is simply not appropriate for numerous reasons and should be rejected.

WHEREFORE, Staff respectfully requests the Commission issue an order rejecting the procedural schedule and requirements proposed by Evergy and adopting the procedural schedule and requirements proposed by Staff and OPC.

¹ In the Matter of the Second Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 2 Energy Efficiency Programs of the Union Electric Company d/b/a Ameren Missouri.

Respectfully submitted,

/s/ Jeffrey A. Keevil

Jeffrey A. Keevil

Missouri Bar No. 33825

P. O. Box 360

Jefferson City, MO 65102

(573) 526-4887 (Telephone)

(573) 751-9285 (Fax)

Email: jeff.keevil@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 23rd day of July, 2020.

/s/ Jeffrey A. Keevil