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

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| In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for a Financing Order Authorizing the Financing of Extraordinary Storm Costs Through an Issuance of Securitized Utility Tariff Bonds | ) ) ) ) ) ) | Case No. EF-2022-0155 |

## APPLICATION FOR REHEARING

**COMES NOW** the Office of the Public Counsel (the "OPC") and pursuant to RSMo. § 386.500 RSMo., submits this Application for Rehearing concerning the Report and Order issued by the Missouri Public Service Commission (the "Commission") in the above-captioned matter on October 7, 2022 (the "Report and Order"). (Doc. 150).[1] In support of its Application, the OPC respectfully states as follows:

The Report and Order is unlawful, unjust, and unreasonable as to the Commission's inclusion of a provision making its Report and Order effective immediately and not subject to rehearing, and the Commission's decisions regarding the OPC's adjustment to account for Evergy West's imprudent resource planning, the rate used to calculate carrying costs, and the discount rate used when considering recovery through securitization.[2] The OPC will address each ground in turn.

## I. Relevant Background

On March 11, 2022, Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy West") filed its Petition for a Financing Order Authorizing the Issuance of Securitized Utility

[1] References to document numbers represent the document numbers assigned in the Electronic Filing Information System ("EFIS").

[2] On this same day, the OPC files a Motion for Clarification, and, Conditionally, Application for Rehearing to address the Commission's decision regarding the OPC's proposed adjustment to account for the tax benefits that Evergy West received.

Tariff Bonds to Finance Qualified Extraordinary Costs Caused by Winter Storm Uri in February 2021 (the "Petition") and the Direct Testimony of seven witnesses. (Docs. 2-9).

On March 14, 2022, the Commission issued its Order Giving Notice, Setting a Deadline to Intervene, and Directing a Proposed Procedural Schedule. (Doc. 10). The Staff of the Commission ("Staff"); Evergy West; the OPC; Midwest Energy Consumers Group ("MECG"); Velvet Tech Services, LLC ("Velvet Tech"); and Nucor Steel Sedalia, LLC ("Nucor") filed a Joint Proposed Procedural Schedule. (Doc. 28). The Commission later adopted the Joint Proposed Procedural Schedule. (Doc. 29).

On June 30, 2022, witnesses from the OPC and Staff filed Rebuttal Testimony addressing a variety of issues. (Docs. 36-44). On July 22, 2022, witnesses from the OPC, Staff, and Evergy West filed Surrebuttal Testimony. (Docs. 48-64).

On August 1, 2022, the OPC, Staff, and Evergy West filed a Non-Unanimous Stipulation and Agreement, which proposed to settle many issues in this matter and preserved the OPC's right to argue five issues (the "Stipulation and Agreement"). (Doc. 74). MECG, Velvet Tech, and Nucor did not oppose the Stipulation and Agreement. (Stipulation & Agreement 6, Doc. 74; Tr. 13, V. I pdf 14, Doc. 80[3]).

Following the filing of the Stipulation and Agreement, on August 1 through August 4, 2022, the Commission held an evidentiary hearing to hear evidence regarding all issues in this matter. (*See* Docs. 80-83).

[3] The hearing transcript was filed as four documents, Documents 80 through 83. The transcript is continuously paginated between the documents. For ease of reference, the OPC provides a citation to the page of the transcript as well as the volume of the transcript and the pdf page number of that volume.

On August 31, 2022, the OPC, Staff, Evergy West, Velvet Tech, and MECG submitted Initial Post-Hearing Briefs. (Docs. 131-36). On September 12, 2022, Staff, the OPC, Evergy West, and Velvet Tech submitted Reply Post-Hearing Briefs. (Docs. 137-40).

Finally, on October 7, 2022, the Commission issued its Report and Order, which rejected the Stipulation and Agreement and set forth the Commission's decisions regarding the issues in this matter. (Doc. 150).

## II. Legal Standard

"After an order or decision has been made by the commission, the public counsel . . . shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear." RSMo. § 386.500(1). An application for rehearing "shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust, or unreasonable." *Id.* § 386.500(2).

"Lawfulness is determined by whether or not the Commission had the statutory authority to act as it did." *Pub. Serv. Comm'n v. Mo. Gas Energy*, 388 S.W.3d 221, 227 (Mo. Ct. App. 2012) (citations omitted). "Reasonableness depends on whether or not (i) the order is supported by substantial and competent evidence on the whole record, (ii) the decision is arbitrary, capricious or unreasonable, or (iii) the Commission abused its discretion." *Id.* (internal quotation marks and citations omitted).

## III. Analysis

The Commission's Report and Order is unlawful, unjust, and unreasonable. First, it is at odds with the Securitization Law, § 393.1700 RSMo., for the Commission to make its Report and Order effective immediately and to state that the Report and Order is not subject to rehearing.

Second, it is unreasonable for the Commission to deny the OPC's adjustment to account for Evergy West's imprudent resource planning for at least four reasons. Third, after finding that Evergy West has been using lower cost short term debt to carry the Storm Uri costs, it is unreasonable for the Commission to order that a higher long term debt rate, 5.06%, be used to calculate carrying costs. Finally, after concluding that a lower discount rate should be used to analyze recovery through securitization, it is unreasonable for the Commission to order the use of the same discount rate to analyze recovery through securitization and the other ratemaking scenarios. The OPC will address each ground below.

### A. The Provision Making the Report and Order Effective Immediately and Not Subject to Rehearing is Unlawful and Unreasonable

In describing the effectiveness of the Report and Order, the Commission states that "[t]his Financing Order is effective upon issuance and is not subject to rehearing by the Commission." (Report & Order 121). This does not comply with § 393.1700 RSMo and is inconsistent with other provisions of the Report and Order. Therefore, this provision of the Report and Order is unlawful and unreasonable. The Commission should consider this Application for Rehearing, grant it on this ground, and amend the Report and Order to correct this inconsistency.

The lawfulness of the Commission's decision "is determined by whether or not the Commission had the statutory authority to act as it did." *Mo. Gas Energy*, 388 S.W.3d at 227. The Securitization Law mandates that "[j]udicial review of a financing order may be had only in accordance with sections 386.500 and 386.510." § 393.1700.2(3)(a)c RSMo. Section 386.500, in turn, describes rehearing before the Commission and states, in pertinent part, that "[a]fter an order or decision has been made by the commission, the public counsel . . . shall have the right to apply for a rehearing in respect to any matter determined therein . . . ." § 386.500.1 RSMo. Section 386.510 requires an application for rehearing before an applicant seeks review in appellate court.

§ 386.510 RSMo. (stating, in part, "[W]ithin thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may file a notice of appeal with the appellate court . . . .").

Because the Securitization Law recognizes that judicial review may only be had in accordance with §§ 386.500 and 386.510 RSMo. and both statutes recognize a right to file an application for rehearing, the Commission's decision to include a provision making the Report and Order effective immediately and not subject to rehearing is unlawful. *See* § 393.1700.2(3)(a)c RSMo.; *Mo Gas Energy*, 388 S.W.3d at 227; (Report & Order 121).

In addition to being unlawful, this provision is inconsistent with other provisions of the Report and Order. For instance, after stating that the Report and Order is effective immediately, the Report and Order later states "[t]his report and order shall become effective on November 6, 2022." (Report & Order 121, 123). Similarly, the Report and Order's cover page lists the "Effective Date" as November 6, 2022. (*Id.* cover). Given the inconsistencies within the Commission's Order, the decision to include a provision making the Report and Order effective immediately and not subject to rehearing is unreasonable as well as unlawful.

Because the provision making the Report and Order effective immediately and not subject to rehearing is unlawful and unreasonable, the Commission should consider this Application for Rehearing, grant it as to this ground, and amend the Report and Order to correct this inconsistency.

### B. The Commission's Decision Regarding the OPC's Adjustment to Account for Evergy West's Imprudent Resource Planning is Unreasonable and Unjust

In rejecting the OPC's proposed adjustment to account for Evergy West's imprudent resource planning (the "Proposed Adjustment for Resource Planning" or the "proposed adjustment"), not only did the Commission mistakenly assert that a logical disconnect exists in the argument underlying the OPC's proposed adjustment and incorrectly aver that the OPC's argument

relies on hindsight, but the Commission also suggests a standard under which the OPC's imprudence argument will never be addressed. Specifically, case law dictates that the Commission cannot impose a disallowance for imprudence prior to a showing of harm, however, in rejecting the Proposed Adjustment for Resource Planning, the Commission has effectively suggested that it will not consider the OPC's proposed adjustment after the harm—the increased Storm Uri costs—occur. Further, even though it appears that the Commission attempted to consider the OPC's Proposed Adjustment for Resource Planning here, it failed to address the actual imprudence on which the OPC bases the proposed adjustment. For all of these reasons, the Commission's Report and Order is unreasonable and unjust.

### 1. No Logical Disconnect Exists in the OPC's Arguments in Support of the Proposed Adjustment for Resource Planning

As a part of its rationale for rejecting the OPC's Proposed Adjustment for Resource Planning, the Commission stated that a "logical disconnect" exists in the OPC's argument. (Report & Order 31). This statement misunderstands the OPC's argument. Looking to the testimony of the OPC's witness, Ms. Lena Mantle, it becomes clear that a relationship exists between the Proposed Adjustment for Resource Planning and the costs Evergy West incurred related to Storm Uri.

In rejecting the OPC's proposed adjustment, the Commission stated that "[t]here is a logical disconnect with Public Counsel's argument." (Report & Order 31). The Commission explained that "Evergy West is not seeking to recover costs prior to Winter Storm Uri, so Public Counsel's argument seems misplaced, and does not seek to disqualify Evergy West's qualified extraordinary costs based upon the time period in which those costs were incurred." (*Id.*).

In making these statements, the Commission misunderstood the argument underlying the Proposed Adjustment for Resource Planning. The OPC asserts that Evergy West incurred higher

costs related to Storm Uri because of its imprudent resource planning. (*See* Ex. 201 "Mantle Rebuttal Testimony" 9, Doc. 112 (explaining the relationship between prudence and costs and Evergy West's Storm Uri costs)). Evergy West incurred these costs during Storm Uri. (*Contra* Report & Order 31 (stating that the OPC "does not seek to disqualify Evergy West's qualified extraordinary costs based upon the time period in which those costs were incurred")). Ms. Mantle, based on her over thirty years of experience examining the resource plans of Missouri's investor-owned electric utilities, explained the relationship between prudence and costs as well as the costs Evergy West incurred related to Storm Uri. (*See id.* 8-9). Referencing a four-block chart, Ms. Mantle explained that prudent decisions can be both inexpensive and costly. (*Id.* 8). Similarly, imprudent decisions can be both inexpensive and costly. (*Id.*). Although Evergy West's resource planning decisions were imprudent prior to Storm Uri, Ms. Mantle explained that "customers did not see an increased cost." (*Id.* 9). However, "Storm Uri moved Evergy West's imprudence from Box 3 (an imprudent decision with low cost) into Box 4 (an imprudent decision with extreme cost)." (*Id.*). Therefore, Storm Uri transformed Evergy West's imprudent resource planning into a costly imprudent decision. (*See id.*).

A clear relationship thus exists between the Proposed Adjustment for Resource Planning and the costs Evergy West incurred during Storm Uri. (*See id.* 8-9). No logical disconnect exists in the OPC's argument supporting the proposed adjustment. Such a contention cannot support the Commission's decision to reject this adjustment and the Commission's reliance on it makes the Report and Order unreasonable and unjust.

### 2. <u>The OPC Did Not Rely on Hindsight in Proposing its Adjustment</u>

As another basis for rejecting the OPC's proposed adjustment, the Commission relied on its finding regarding hindsight from the similar Liberty Storm Uri securitization case, EO-2022-

0040. (Report & Order 32). However, just as in that case, the Proposed Adjustment for Resource Planning proposed here does not rely on hindsight. The OPC has continuously raised its concern regarding Evergy West's resource planning since at least 2017, and Evergy West has failed to address those concerns. Based, in part, on Evergy West's failure to address these concerns, the OPC asserts that Evergy West incurred higher costs related to Storm Uri. This is the very opposite of hindsight.

The OPC described the Commission's prudence standard in its Initial Post-Hearing Brief. (*See* Initial Post-Hearing Br. 15-16, Doc. 134). In originally setting out the prudence standard, the Commission stated that it would not rely on hindsight. *In re Determination of In-Serv. Criteria for the Union Elec. Co.'s Callaway Nuclear Plant & Callaway Rate Base & Related Issues*, 27 Mo. P.S.C. (N.S.) 183, 194; 66 Pub. Util. Rep. 4th 202, 213 (1985) (hereinafter "*Union Elec. Callaway*"). The Commission did not clarify what it considered to be hindsight. *See generally id.* Rather, the Commission stated that it would "assess management decisions at the time they are made and ask the question 'Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?'" *Id.* The Commission clarified that this standard did not constitute a standard of perfection. *Id.* Perfection, the Commission explained "relies on hindsight." *Id.*

As the OPC's expert, Mr. John Robinett, explained in written testimony, the OPC has raised its concerns with Evergy West's resource plans since at least 2017. (Ex. 207 "Robinett Rebuttal Testimony" 3, Doc. 118). For instance, in a memorandum addressing Evergy West's predecessor's annual update to its integrated resource plan, submitted on July 28, 2017, the OPC stated that

> More specifically, the premature forced closure of large amounts of dispatchable base load-serving generation[] in favor of unknown capacity contracts through the [Southwest Power Pool ("SPP")] energy market *raises prudency concerns* moving forward by potentially producing significant stranded costs, *increased risk exposure from market volatility* and future reliability concerns.

(*Id.* Schedule 3 5[4] (footnote omitted and emphasis added)). Similarly, in addressing Evergy West's change in preferred plan in its Amended Suggested Special Contemporary Resource Planning Issues, filed on September 27, 2017, the OPC explained that

> The plan also includes yet-to-be determined contracts for capacity which will not include any provision of energy, increasing GMO's[5] reliance on energy from the SPP [Integrated Market ("IM")]. This reliance on market purchases of energy shifts GMO's responsibility of cost-effectively providing energy to its customers to the SPP IM. This *significantly increases the potential for volatility in cost to GMO's customers*, and with potential retirement of baseload units by other SPP members and creates reliability concerns during times when wind energy is not available.

(*Id.* Schedule 4 2 (emphasis added)). Also, in Direct Testimony submitted on June 19, 2018, as part of GMO's rate case, Mr. Robinett stated that the OPC was concerned with "GMO's plan to rely on the SPP energy market to serve its retail customers." (*Id.* Schedule 6 10-11 (emphasis added)). Mr. Robinett then explained why it is problematic for GMO to "rely so heavily on the SPP market for energy," saying "by depending on the SPP markets for energy, GMO is *subjecting its customers to the fluctuations and risks of those markets*." (*Id.* Schedule 6 11 (emphasis added)). Mr. Robinett further explained that "any changes in GMO's energy costs will flow to GMO's customers through its Fuel Adjustment Clause ('FAC'), increasing, or decreasing, the FAC charges on their bills from what they otherwise would be." (*Id.*).

[4] The prior case filings attached to Mr. Robinett's Rebuttal Testimony in this case include two sets of page numbers. One appears in the bottom margin at the center of the page. The other appears in the bottom margin on the right-hand side of the page and is preceded by "JAR-R-_ Page _." The page number included here corresponds to the page number appearing at the bottom right-hand side of the page.

[5] "GMO" stands for KCP&L Greater Missouri Operations. GMO is Evergy West's predecessor.

These filings clearly show that the OPC has raised its concerns regarding Evergy West's resource planning since at least 2017. These concerns routinely centered on the possibility of increased costs for Evergy West's customers. The increased costs would arise due to Evergy West's increased reliance on the SPP market that resulted from its retirement of baseload generation and failing to bring on new dispatchable resources to replace those retirements. Evergy West, however, did nothing to address these concerns. As explained above and by Ms. Mantle in her written testimony, the OPC asserts that Storm Uri is the event that transformed Evergy West's imprudent resource planning into a costly decision. (*See* Mantle Rebuttal Test. 9). It is the natural extension of the OPC raising these concerns in prior cases to seek an adjustment to the amount of costs that Evergy West may recover through securitized utility tariff bonds in this case, to account for the higher costs that Evergy West incurred related to Storm Uri as a result of its imprudent resource planning. This is not hindsight. This too cannot constitute a basis upon which to reject the OPC's Proposed Adjustment for Resource Planning. The Commission's reliance on this in rejecting the proposed adjustment makes the Report and Order unreasonable and unjust.

### 3. The Commission Has Suggested a Standard Under Which it Will Never Consider the OPC's Proposed Adjustment

In addition to relying on a mistaken understanding of the OPC's argument and incorrectly stating that the OPC relies on hindsight to propose its adjustment, the Commission in rejecting the OPC's proposed adjustment suggested a standard under which it will never consider the OPC's proposed adjustment. Specifically, case law requires that an imprudent decision result in harm before the Commission may consider a disallowance. However, in concluding that the OPC's adjustment is based on a logical disconnect and is supported by hindsight, the Commission has suggested that the OPC cannot seek an adjustment after the harm—the increased costs related to

Storm Uri—occurred. Under such a standard, the Commission will never consider the OPC's proposed adjustment.

In addressing when the Commission may include a disallowance for imprudence, the Missouri Court of Appeals, Western District stated

> Ultimately, the [Commission's] standards for the recoverability of [the Company's] costs arise from the statutory mandate that all charges made by a gas company be just and reasonable. Section 393.130.1.[6] It would be beyond this statutory authority for the [Commission] to make a decision on the recoverability of costs, based upon a prudency analysis of gas purchasing practices, without reference to any detrimental impact of those practices on [the Company's] charges to its customers, such as evidence that the costs which [the Company] is seeking to pass on to its customers are unjustifiably higher than if different purchasing practices had been employed.

*State ex rel. Assoc. Nat. Gas Co. v. Pub. Serv. Comm'n*, 954 S.W.2d 520, 530 (Mo. Ct. App. 1997) (hereinafter "*Associated Natural Gas*"). Put another way, "[i]n order to disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that (1) the utility acted imprudently [and] (2) such imprudence resulted in harm to the utility's ratepayers." *Pub. Serv. Comm'n v. Office of Pub. Counsel*, 389 S.W.3d 224, 228 (Mo. Ct. App. 2012) (citation omitted) (hereinafter "*Office of Public Counsel*").

Ms. Mantle testified, and the Commission found as such, that "[p]rior to Winter Storm Uri, customers did not see an increased cost due to the implementation of Evergy West's alleged imprudent resource planning decisions." (Report & Order 29; Mantle Rebuttal Test. 9). Therefore, under the standards enunciated in *Associated Natural Gas* and *Office of Public Counsel*, the Commission could not impose a disallowance to account for Evergy West's imprudent resource planning before Storm Uri because no related harm existed.

[6] Although the Securitization Law sets forth the standard under which the Commission may allow Evergy West to recover its costs related to Storm Uri through securitized utility tariff bonds, it includes a similar standard. Specifically, the Commission must find that the identified amount of qualified extraordinary costs are "just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo.

In this case, the OPC seeks its Proposed Adjustment for Resource Planning because Evergy West imprudently planned its generating resources by retiring baseload generation and failing to replace it with dispatchable resources and, as a result, it incurred greater costs related to Storm Uri. (*See* Mantle Rebuttal Test. 9; Tr. 386, V. III pdf 117). Therefore, harm related to the imprudence has occurred. Notably, this is similar to the argument suggested by the Court of Appeals in *Associated Natural Gas* in that the OPC argues that Evergy West's Storm Uri costs are "unjustifiably higher than if" Evergy West had prudently planned its generating resources. *See Assoc. Nat. Gas*, 954 S.W.2d at 530; (Mantle Rebuttal Test. 9-10). Therefore, under the standards in *Associated Natural Gas* and *Office of Public Counsel*, this appears to be the ideal case to consider the OPC's proposed adjustment. The OPC alleges both that Evergy West imprudently planned its resources and that harm occurred related to that imprudence. *See Assoc. Nat. Gas*, 954 S.W.2d at 530; *Office of Pub. Counsel*, 389 S.W.3d at 228.

However, the Commission rejected the Proposed Adjustment for Resource Planning, stating that it is based on a "logical disconnect" and hindsight. (Report & Order 31-32). It did so, even though, as explained above, neither of these statements are correct. Therefore, under this suggested standard, the Commission also will not consider the OPC's proposed adjustment *after* the harm occurred.

Because case law requires harm before the Commission may disallow costs to account for imprudence and the Commission's rationale in the Report and Order suggests that it will not consider a prudence adjustment after the harm has occurred, the Commission has suggested a standard under which it will never consider the OPC's proposed adjustment. Such a result is unreasonable and unjust.

### 4. The Commission Failed to Address the Imprudence on Which the OPC Based its Proposed Adjustment for Resource Planning

In the final paragraph of the Report and Order addressing the Proposed Adjustment for Resource Planning, the Commission attempts to address the OPC's argument underlying the proposed adjustment. However, in doing so, the Commission has centered its decision on its review of Evergy West's retirement of Sibley Unit 3 ("Sibley"). It fails to address the underlying imprudence argument on which the OPC bases its proposed adjustment—namely, that Evergy West was imprudent in closing its baseload generation plants *and failing to replace them with dispatchable resources*. (*See* Report & Order 31-33). Because the Commission failed to consider the imprudent decisions on which the OPC relies, the Commission's Report and Order is unreasonable for this reason as well.

During the evidentiary hearing, Judge Clark asked Ms. Mantle whether the OPC's Proposed Adjustment for Resource Planning "just result[s] from the retirement of Evergy West['s] coal facilities and with particularity Sibley Units 2 and 3 and the Boiler Unit 1." (Tr. 386, V. III pdf 117).

Ms. Mantle responded "No. The disallowances are based on Evergy's decision to retire and not replace with anything that would generate and provide energy to Evergy West's customers in a like manner, in other words, that was dispatchable, available when the customers need it." (*Id.*). When asked for additional explanation, Ms. Mantle stated that "[i]t wouldn't make any difference if that was a coal unit, a natural gas unit, a combustion turbine unit, a combined cycle unit. It's the decision to retire and the decision not to add any generation that matched and can follow customer load." (*Id.*).

Although Ms. Mantle provided this explanation, the Commission in its Report and Order stated only that "Evergy West provided sufficient evidence to determine that its resource planning,

including its decision to retire Sibley, was reasonable at the time those decisions were made." (Report & Order 32). It continued saying that "Evergy West presented evidence that it considered multiple scenarios when deciding whether to retire its Sibley Generator, and from the results of that analysis determined that it was economically beneficial to ratepayers to do so."[7] (*Id.*). Based on these two sentences, the Commission determined that it would "not reduce the qualified extraordinary cost amount based upon Evergy West's resource planning." (*Id.* 32-33).

In these sentences, the Commission addresses only Evergy West's decision to retire Sibley. (*See id.*). It is not apparent from these sentences whether the Commission considered the imprudence on which the OPC bases its Proposed Adjustment for Resource Planning, specifically that Evergy West retired baseload generation and failed to replace it with dispatchable resources. (Tr. 386, V. III pdf 117). Although Sibley may play a role in the argument underlying the OPC's Proposed Adjustment for Resource Planning, as Ms. Mantle explained during the evidentiary hearing, the proposed adjustment does not result solely from the retirement of Evergy West's coal facilities. (*See id.*). Rather, this adjustment asks the Commission to consider Evergy West's decisions to retire baseload generation resources and to not replace them with dispatchable resources. (*See id.*). As the OPC explained in both its Initial Post-Hearing Brief and its Reply

[7] The OPC is concerned about the impact these statements may have on other cases currently pending before the Commission, namely Evergy West's current general rate case, ER-2022-0130.

With these sentences it appears that the Commission has concluded that it was prudent for Evergy West to retire Sibley at the time that it did so. (*See* Report & Order 32). However, the List of Issues in this case did not include an issue that questioned whether it was prudent to retire Sibley at the time that Evergy West did so. (*See* List of Issues, Doc. 66). Although some evidence addressing Sibley exists in the record in this case, it is important to recognize the limited record upon which the Commission has made this statement. For instance, Ms. Mantle mentions Sibley only once in written testimony and it appears that Staff has never addressed Sibley in written testimony. (*See* Mantle Rebuttal Test. 3 (stating that "[s]ince the retirement of its Sibley 3 coal plant in November 2018, Evergy West has needed generation to meet the needs of its customers and the resource adequacy requirements of the" SPP); *see generally* Docs.104-10 (Staff pre-filed testimony)).

It is more appropriate for the Commission to make a determination about the prudence of a utility's decision to prematurely retire a large generating facility in a case in which a full record exists to support any conclusion on this question, as opposed to a case in which this issue is at most tangential to a requested adjustment.

Post-Hearing Brief, Evergy West imprudently planned its resources. (*See* OPC Initial Post-Hearing Brief 14-29; OPC Reply Post-Hearing Brief 6-12).

The Report and Order is also unreasonable because the Commission rejected the OPC's Proposed Adjustment for Resource Planning without addressing the imprudence underlying the OPC's argument itself.

### 5. Conclusion: The Commission's Decision to Reject the OPC's Proposed Adjustment for Resource Planning is Unreasonable

In rejecting the OPC's Proposed Adjustment for Resource Planning, the Commission relies on three principal contentions: (1) the argument underlying the OPC's adjustment is based on a "logical disconnect;" (2) the OPC relies on hindsight in requesting this adjustment; and (3) Evergy West was prudent in deciding to retire Sibley. (*See* Report & Order 31-33). However, as explained above, no logical disconnect exists in the OPC's argument. Rather, a clear relationship exists between Evergy West's imprudent resource planning and the increased costs it incurred related to Storm Uri. (*See* Mantle Rebuttal Test. 8-9). Similarly, the OPC has not relied on hindsight in requesting this adjustment. (*Contra* Report & Order 32). Rather, the OPC has raised concerns with Evergy West's resource planning since at least 2017. (*See generally* Robinett Rebuttal Test.; Mantle Rebuttal Test. 9). Now that the harm has occurred—the increased Storm Uri costs—this case stands as the natural next step to the OPC raising its concerns in prior cases. Further, as explained above, the Commission has suggested a standard under which it will never consider the OPC's proposed argument. Finally, even though the Commission has attempted to consider the argument underlying the OPC's proposed adjustment, it failed to consider the imprudence upon which the OPC bases its Proposed Adjustment for Resource Planning. For all of these reasons, the Commission's decision to reject the Proposed Adjustment for Resource Planning is unreasonable.

Further and importantly, by rejecting the OPC's Proposed Adjustment for Resource Planning, the Commission has implicitly decided that a single parent company can operate two utilities in diametrically different ways and both ways are prudent (i.e. Evergy Metro has additional generation and profited from Storm Uri, but Evergy West lacks sufficient generation and incurred hundreds of millions of dollars in losses).[8] (*See* Ex. 8 "Ives Direct Testimony" 20, Doc. 92 (stating that Evergy West incurred nearly $295.6 million in costs related to Storm Uri); Mantle Rebuttal Test. 12 (stating that Evergy Metro "actually generated enough revenues during Storm Uri to cover its load costs, the fuel costs of its generation, and an extra $58.2 million in revenue.")). The Commission did not address this implicit finding in the Report and Order. (*See* Report & Order 31-33).

As explained in the OPC's post hearing briefs, Evergy West imprudently planned its generating resources by retiring baseload generation and failing to replace it with dispatchable resources. (*See* OPC Initial Post-Hearing Brief 14-29; OPC Reply Post-Hearing Brief 6-12). For all of the reasons addressed above, the Commission should grant this Application for Rehearing on this ground and amend its Report and Order to include an adjustment to account for Evergy West's imprudent resource planning. Ms. Mantle provides a range of disallowances for the Commission's consideration in her Rebuttal Testimony. (*See* Mantle Rebuttal Test. 5-6).

### C. <u>The Commission's Decision Regarding the Rate Used to Calculate Carrying Costs Has Unreasonably and Unlawfully Allowed Evergy West to Profit from Storm Uri</u>

In finding that Evergy West is using short term debt to carry the Storm Uri costs, but ordering that a higher long term debt rate be used to calculate the carrying costs to be included as

[8] Importantly, no party to this proceeding has argued that Evergy Metro was imprudent for having sufficient generating resources.

qualified extraordinary costs, the Commission has allowed Evergy West to profit from Storm Uri at the expense of its ratepayers. Such a result is unreasonable and unlawful.

Whether the Commission's decision is reasonable depends, in part, on whether the decision is unreasonable and whether the Commission abused its discretion. *See Mo. Gas Energy*, 388 S.W.3d at 227. The lawfulness of the Commission's decision looks to whether the Commission had the statutory authority to act as it did. *Id.*

Although § 393.1700 RSMo. allows an electrical corporation to include carrying costs as a part of the qualified extraordinary costs it may recover through securitized utility tariff bonds, the statute does not define how carrying costs must be calculated. *See generally* § 393.1700 RSMo.

In discussing the appropriate rate to use to calculate carrying costs in this matter, the Commission included as a finding of fact that "Evergy West has been carrying Winter Storm Uri costs using short[]term debt." (Report & Order 38 (footnote omitted)). However, the Commission ordered that a higher long term debt rate, 5.06%, be used to calculate the carrying costs to include in the amount of qualified extraordinary costs. (*Id.* 41). In doing so, the Commission has allowed Evergy West to profit from Storm Uri.[9]

[9] The OPC notes that in ordering the use of 5.06% as the long term debt rate to calculate the amount of carrying costs to include in the qualified extraordinary costs that Evergy West may recover, the Commission has allowed Evergy West to further increase its profits from Storm Uri.

As the Commission found in the Report and Order, 5.06% is the long term debt rate from Evergy West's 2018 rate case, ER-2018-0146. (Report & Order 39). The OPC explained in its Initial Post-Hearing Brief that at least three problems exist with this rate. (*See* OPC Initial Post-Hearing Brief 44-45). First, 5.06% is based, in part, on debt issued in the 1990s, which "is not reflective of current required returns on debt." (*Id.* 44 (quoting Ex. 204 "Murray Surrebuttal Testimony" 2, Doc. 115)). Also, an embedded cost of debt, such as the 5.06% ordered here, includes costs other than the coupon/interest payments on the debts, which leads to a higher cost of debt. (*Id.* 44 (citing Murray Surrebuttal Test. 2-3)). Finally, a majority of the debt upon which the 5.06% is based has since matured. (*Id.* 45 (citing Murray 2-3)).

Further, as the Commission found in the Report and Order, Evergy West itself estimated its embedded cost of long term debt at 3.787% in its *current* general rate case, ER-2022-0130. (Report & Order 39).

Therefore, not only is the Commission allowing Evergy West to profit from Storm Uri by finding that Evergy West has been carrying the costs related to Storm Uri using short term debt but ordering that a higher long term debt rate be used to calculate carrying costs, the Commission is allowing Evergy West to profit even more by ordering the use of a historical higher long term debt rate.

In rejecting the OPC's proposal to use a short term debt rate, compounded monthly, the Commission simply stated that it "is inappropriate as the term to which the short[]term debt rate, compounded monthly, . . . is a period greater than 364 days and closer to two years." (*Id.* 41). The Commission did not address that although Evergy West carried the costs related to Storm Uri for longer than 364 days, Evergy West carried those costs using short term debt. (*See id.*). Although the OPC does not dispute that "for accounting purposes, an obligation longer than 364 days is considered long[]term," as the OPC's witness, Mr. David Murray, explained, "from a practical perspective," this does not "trigger[ Evergy West's] cost of long[]term debt as the appropriate carrying cost rate." (Murray Surrebuttal Test. 2). This is so because such a reasoning ignores how Evergy West has actually carried the debt. (*See id.*). Under these facts, such a reasoning also incentives electrical corporations to delay in bringing their requests to securitize costs. Namely, as long as the electrical corporation carries the debt for longer than 364 days, how it has actually carried the debt since incurring it will not affect the Commission's analysis.

Allowing Evergy West to profit from Storm Uri at the expense of its ratepayers is neither reasonable nor lawful. The Securitization Law requires that the Commission include a finding that the specified amount of qualified extraordinary costs, which includes carrying charges, "is just and reasonable and in the public interest." §§ 393.1700.2(3)(c)a; 393.1700.1(13) RSMo. Permitting Evergy West to collect a profit simply because it carried the debt for longer than 364 days, without reconciling this accounting standard to how Evergy West has actually been carrying the debt, cannot be just and reasonable and in the public interest. Therefore, this aspect of the Commission's Report and Order is unreasonable and unlawful. The Commission must grant this Application for Rehearing on this ground and amend its Report and Order to order that a short term debt rate—which mirrors how Evergy West has been carrying the debt, (Report & Order 38)—be used to

calculate the amount of carrying costs that Evergy West may recover as qualified extraordinary costs.

### D. The Commission's Decision Regarding the Discount Rate Used to Analyze Recovery Through Securitization is Unreasonable

The Commission must also grant rehearing as to the issue of the proper discount rate to determine whether quantifiable net present value benefits exist when analyzing recovery through securitization. Here, an inconsistency in the Report and Order as to this issue makes the Commission's decision unreasonable.

Issue 3A asked "[w]hat is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri through securitization?" (Report & Order 55). In answering that question, the Commission made a finding of fact that "[t]he certainty of payments under securitization necessitates a lower discount rate than under other ratemaking scenarios." (*Id.*). The Commission also found that "[a] principle of discounting future cash flows is to use a discount rate consistent with the risk of those cash flows." (*Id.*). However, the Commission ordered that 5.06 % is the appropriate discount rate to use when analyzing recovery through securitization. (*Id.* 56). This matches the ordered discount rate to use when analyzing recovery through the fuel adjustment clause or an accounting authority order. (*See id.* 46-48). Therefore, a clear conflict exists between the Commission's finding of facts on Issue 3A and the Commission's decision. (*Compare id.* 55 (finding that recovery through securitization "necessitates a lower discount rate than under other ratemaking scenarios"), *with id.* 46-48, 55 (ordering 5.06% be used as the discount rate to analyze recovery through securitization, which is the same as the discount rate ordered to be used to analyze recovery through customary ratemaking)).

This conflict makes the Commission's decision unreasonable. The Commission must grant this Application for Rehearing on this issue and amend the Report and Order to order that the forecasted rate of the securitized utility tariff bonds be used as the discount rate to analyze recovery through securitization. (*See* Ex. 203 "Murray Rebuttal Testimony" 13, 15, Doc. 114; Murray Surrebuttal Test. 8).

## IV. Conclusion

The Commission's decision to include a provision making the Report and Order effective immediately and not subject to rehearing, to deny the OPC's adjustment to account for Evergy West's imprudent resource planning, to utilize a higher long term debt rate to calculate carrying costs, and to use the long term debt rate as the discount rate to analyze recovery through securitization are unreasonable and, in some instances, unlawful.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission consider this Application for Rehearing, grant it, and amend its Report and Order by (1) removing the provision making the Report and Order effective immediately and not subject to rehearing, (2) including an adjustment to the amount of qualified extraordinary costs that Evergy West may recover to account for Evergy West's imprudent resource planning, (3) ordering that a short term debt rate be used to calculate the carrying costs that Evergy West may recover as qualified extraordinary costs, and (4) ordering that the forecasted rate of the securitized utility tariff bonds be used as the discount rate to analyze recovery through securitization.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 4th day of November 2022.

*/s/ Lindsay VanGerpen*