BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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	))))))	**File No. EF-2022-0155**

STAFF'S STATEMENT OF POSITION

COMES NOW Staff of the Missouri Public Service Commission (Staff), and submits the following as its Statement of Position for the above captioned case:

1) What amount of qualified extraordinary costs caused by Winter Storm Uri should the Commission authorize EMW to finance using securitized utility tariff bonds?

The Commission should authorize Evergy[1] to finance $303,040,898 using securitized utility tariff bonds.[2] As discussed below, this is the amount of securitized utility tariff costs that are just and reasonable and in the public interest to finance through securitization, and there are quantifiable net present value benefits to securitizing these costs compared to traditional or customary ratemaking.

a. What amount of the costs, if any, that EMW is seeking to securitize would EMW recover through customary ratemaking?

In the absence of securitization, Staff would recommend that Evergy would recover 95% of its extraordinary fuel and purchased power costs associated with

[1] EMW, Evergy, and Evergy Missouri West may be used interchangeably in this document.
[2] Bolin Surrebuttal at page 5, lines 19-21 and page 6, Table 1.

Storm Uri, consistent with its Fuel Adjustment Clause, and as adjusted to offset extraordinary costs by higher than normal customer revenues received by Evergy during Winter Storm Uri and to reflect a disallowance related to the implementation of Schedule SIL. As of June 30, 2022, Staff estimates these costs to be approximately $297,014,325 excluding the up-front financing cost.[3]

b. What is the appropriate method of customary ratemaking absent securitization?

Absent securitization, Evergy can pursue recovery by filing a Fuel Adjustment Clause ("FAC") adjustment in an FAC proceeding or using an Accounting Authority Order ("AAO") to defer and amortize the extraordinary costs over time. Under the AAO approach, Staff would recommend recovery of those extraordinary fuel and purchase power costs, subject to the adjustments identified above, amortized over at least a fifteen-year period due to the magnitude of the costs, with carrying costs at the long-term debt rate.[4]

c. Under Section 393.1700.2(2)(e)[5], what is the "customary method of financing"? What are the costs that would result "from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates"?

This issue is the same as Issue 1b above, and its inclusion here reflects the failure of the parties to agree to the phrasing of the issue. Staff's position for Issue 1c is therefore the same as its position for Issue 1b.

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[3] Bolin Surrebuttal at page 6, Table 1
[4] Bolin Rebuttal at page 7, line 1-11
[5] All statutory citations are to the Revised Statutes of Missouri (2016), as amended

d. What is the appropriate adjustment related to non-fuel operations and maintenance ("NFOM") costs?

Staff would recommend exclusion of NFOM costs as they have been included in Staff's normalized costs included in Staff's cost of service in Evergy Missouri West's current rate case, Case No. ER-2022-0130. Therefore, additional treatment through the securitization request is not required.[6]

e. Should EMW's recovery through securitized bonds include more than 95% of fuel and purchased power costs?

Evergy should not be allowed to collect more than 95% of its extraordinary fuel and purchased power costs associated with Winter Storm Uri. The 95/5 sharing mechanism is required under Evergy's Fuel Adjustment Clause (FAC). In addition, the 95/5 sharing mechanism allows the utility to retain 5% of any over-collected amounts or requires the utility to absorb 5% of any under-collected amounts for each accumulation period.[7] This is an essential element to the Commission finding Evergy's FAC as just and reasonable, as it protects ratepayers by providing Evergy with sufficient incentive to be prudent in its decisions by not allowing all costs to simply be passed through to ratepayers. Adjusting Evergy's application to adjust for the 95/5 sharing mechanism results in a disallowance of approximately $14,771,977.[8]

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[6] Bolin Rebuttal at page 7, line 18-20
[7] Fortson Rebuttal at page 7, line 18-23 and page 8, line 1
[8] Fortson Surrebuttal at page 1, line 15-17

f. Should EMW's recovery through securitized bonds reflect an offset based on certain higher than normal customer revenues received by EMW during Winter Storm Uri?

While Evergy experienced extraordinary costs during Winter Storm Uri, it also experienced higher than normal revenues and received the benefit of these excess revenues. Approximately $8,609,978 in higher than normal revenues should be offset against the securitization costs.[9]

g. Should EMW's recovery through securitized bonds reflect a disallowance based on EMW's resource planning?

Staff does not recommend a disallowance based on Evergy's resource planning.

h. Were the costs incurred by EMW related to Winter Storm Uri as a result of its resource planning process just and reasonable?

(i) If no, should EMW's recovery through securitized bonds reflect a disallowance?

(1) If yes, what amount should the Commission disallow?

See Staff position on immediately preceding issue

i. Should EMW's recovery through securitized bonds reflect a disallowance for income tax deductions for Winter Storm Uri costs?

Staff does not recommend a disallowance for income tax deductions. Evergy customers will receive the benefit of the deferred tax liability created by Winter Storm Uri in future general rates over the life of the securitized bond. To disallow the tax timing difference in the securitization amount would double-count the benefits passed on the customers.

[9] Bolin Surrebuttal at page 6, Table 1

j. **Should Evergy's recovery through securitized bonds reflect a disallowance for the income tax deduction on the carrying costs for Winter Storm Uri costs?**

Staff is not recommending such a disallowance. Staff recommends the Commission use long term debt rate for carrying costs; therefore no income tax deduction is needed.

k. **What are the appropriate carrying costs for Winter Storm Uri?**

Evergy should be allowed to securitize approximately $26,189,699 in accrued carrying costs associated with Winter Storm Uri qualified extraordinary costs. The Commission should use the long-term debt rate because these costs are not capital normally included in the rate base.[10]

l. **What is the appropriate adjustment to the amount of Winter Storm Uri costs to be recovered through securitized bonds, if any, regarding EMW's administration of the Special Incremental Load (SIL) tariff?**

Staff recommends the Commission disallow $1,231,553.95[11] from the securitization amount related to the implementation of Schedule SIL.[12] Evergy improperly implemented the Schedule SIL tariff in conjunction with the non-unanimous Stipulation[13] by failing to determine or estimate the next-day Nucor hourly load which could be compared to actual Nucor load to determine the cost impacts on non-Nucor ratepayers. Absence of consideration for such events could result in disadvantage for non-Nucor ratepayers through additional costs being

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[10] Bolin Rebuttal at page 7, lines 6-8

[11] Before jurisdictional allocation is applied.

[12] Staff's proposed disallowance has been updated to reflect Staff's current position based upon corrected load information from Evergy Missouri West and accounting for experienced 25% load deviations that exceed four hours.

[13] Non-Unanimous Stipulation and Agreement filed on September 19, 2019 in Case No. EO-2019-0244 and approved by the Missouri Public Service Commission on November 13, 2019

included in the SUTC. Evergy acknowledged the potential costs to be incurred as a result of Customer Event Balancing and agreed to identify, isolate, and remove those costs considering non-Nucor ratepayers. It is unreasonable to implement the Schedule SIL tariff in combination with the Stipulation without a transparent method to identify, quantify, and isolate such costs from non-Nucor ratepayers.[14] In addition to the proposed disallowance, Staff recommends that the Commission order EMW to:

1. Establish and maintain consistent communication with Nucor to understand what impacts the expected operations at the plant will have on SPP purchased power expenses in order to facilitate accurate records;
2. Keep records of the finite expected hourly load of Nucor's next day operations in the event an adjustment in accordance with Paragraph 7.d. of the Stipulation is necessary in a future case;
3. Identify additional SPP related costs resulting from unexpected operational events;
4. Quantify the balancing relationship between the hourly and day-ahead ("DA") prices to identify the effect of the unplanned load change to apportion any additional SPP balancing charges; and
5. Incorporate the effect of DA and real-time ("RT") imbalances attributed to differences between actual Nucor operations and expected operations into the tracking of Nucor costs.

[14] Luebbert Rebuttal page 4, line 3-17

m. **What is the appropriate discount rate or rates to use to calculate the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking?**

Evergy should evaluate NPV savings, not based on a single data point, but based on a range of discount rates. Staff proposes evaluating NPV savings using a range, including Evergy's long-term debt rate to Evergy's weighted average cost of capital.[15]

2) What are the estimated up-front and ongoing financing costs associated with securitizing qualified extraordinary costs associated with Winter Storm Uri?

Staff currently estimates the up-front financing costs to be approximately $6,026,573, based on Evergy's testimony, updated for staff's adjustments to the size of the securitization.[16] This amount excludes Commission Staff's costs, which will be borne by Every regardless of whether the securitization is ultimately approved, for a consistent comparison between traditional rate making and securitization.

** [redacted] [17] **.

Staff also notes that each upfront and ongoing cost item should be subject to review with the designated representative, including relative to other comparable issuances at the time of structuring, marketing and pricing.[18]

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[15] Davis Rebuttal at page 5, line 3-10
[16] Bolin Surrebuttal at page 6, Table 1
[17] **Bolin Updated Workpaper**
[18] Davis Rebuttal at page 11, line 3-8

a. What is the appropriate return on investment and treatment of earnings in the capital subaccount?

Staff would recommend the Commission allow Evergy to earn a return at Evergy's weighted average cost of capital consistent with the Act.[19] However, the most recently approved weighted average cost of capital of Evergy was in 2014, and therefore, staff recommend using the weighted average cost of capital of 6.77% approved as part of ER-2019-0374 for Empire District Electric Company, as a proxy. Staff also notes that Evergy should not separately be entitled to return on investment earnings of the capital subaccount, as providing both the weighted average cost of capital and investment earnings would provide greater return to Evergy than is permitted by the Act.

b. Is the issuance of multiple series appropriate?

The size of the offering and resulting fixed costs may be materially higher than Evergy has estimated if they issue the securitization through multiple series. As such, the commission should limit the issuance to a single series to avoid multiple series of duplicative fixed costs. To the extent authorization in the financing order of multiple series were required to maximize flexibility, such costs should be evaluated in conjunction with the designated representative's post-financing order, pre-issuance review of upfront and ongoing fees,[20] recognizing the added costs of multiple series of issuances.

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[19] Section 393.1700.2(3)(c)l states "A procedure that shall allow the electrical corporation to earn a return, at the cost of capital authorized from time to time by the commission in the electrical corporation's rate proceedings, on any moneys advanced by the electrical corporation to fund reserves, if any, or capital accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to the securitized utility tariff bonds"

[20] Davis Rebuttal at page 11, line 3-8

3) Would the issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges provide quantifiable net present value benefits to customers as compared to recovery of the securitized utility tariff costs that would be incurred absent the issuance of bonds?

Under most reasonable assumptions, based on interest rate assumptions used at the time of testimony, issuance of bonds and the imposition of charges would provide quantifiable net present value benefits to Evergy's customers, compared to recovery of those same costs that would be incurred absent the issuance of bonds.

Assuming Staff's proposed numbers, the net present value benefit would be approximately $55 million – $67 million, at an illustrative discount rate of the weighted average cost of capital and long-term debt rate, respectively, when compared to FAC utilizing Evergy's analytical framework adjusted for Staff's balance and carrying cost assumptions.[21]

Utilizing similar assumptions, the implied NPV benefit of securitization would be approximately $8 million - $19 million when compared to AAO utilizing Klote's analytical framework adjusted for Staff's balance and carrying cost assumptions.[22]

However, given interest rate movements and volatility, among other factors, a review to confirm actual quantifiable savings exists should be completed as part of the pre-issuance review process closer to pricing and memorialized in the issuance advice letter, based on the final terms and pricing of the bonds.[23]

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[21] Davis Rebuttal at page 6, line 25-26 and page 7, line 1
[22] Davis Rebuttal at page 7, line 2-4
[23] Davis Rebuttal at page 6, line 3-6 and page 12, line 19-23

a. **What 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?**

Similar to the approach addressed in issue 1m, a range of discount rate was used for net present value benefits analysis, ranging from Evergy's long-term debt rate to Evergy's weighted average cost of capital.[24]

b. **What is the appropriate term and coupon rate for securitization of qualified extraordinary costs related to Winter Storm Uri?**

Evergy proposed overall cash flow length of 15 years at weighted average coupon of 3.427%.[25] Staff does not oppose the length of recovery period through securitization. However, Staff notes the proposed weighted average coupon is outdated and the issuer must update such estimates to support its testimony that quantifiable net present value savings will be achieved.

Staff has revaluated net present value benefits calculation using an illustrative range of 4.5% to 5.0%, reflecting movements in the benchmark treasury rate informing bond pricing. However, the issuer should be required to update such amounts to demonstrate NPV savings, including at the time of pricing.

4) How should the SUTC be allocated?

The Commission order should state the Winter Storm Uri SUTC should be recovered from all applicable customers on the basis of loss-adjusted energy sales.[26] This is most reasonably accomplished via the mechanism contained in the specimen tariff attached to the Rebuttal testimony of Sarah Lange, which allocates the SUTC

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[24] Davis Rebuttal at page 6, line 25-26 and page 7, line 1-4
[25] Lunde Testimony Schedule SL-1
[26] Lange Rebuttal page 1, line 22 – page 2, line 2; page 20, lines 9-13.

(including transaction costs, and other adjustments, as applicable) to each kWh of energy forecasted by Evergy to be sold by Evergy to applicable customers during the applicable period(s), adjusted to a consistent voltage.[27]

Evergy witness Ives testifies that "[the Company's fuel and purchased power costs] are normally recovered through the Fuel Adjustment Charge ("FAC"), a ratemaking mechanism in the Company's tariffs that allows EMW to recover costs through a volumetric charge that appears on customer bills."[28] If recovered through the FAC, the Company's net fuel and purchased power costs would be recovered from customers on the basis of energy consumption, as adjusted for losses.[29]

Under Staff's recommended approach, all customers (except Nucor, which is excluded pursuant to statute)[30] would be billed the same rate in place at a given time as other customers served at the same level of distribution service. The differences in rates between levels of distribution service would be the loss factors, comparable (if not identical) to those in place under the FAC,[31] varying only as the loss factors change over time.[32]

5) What, if any, additions or changes should be made to the Storm Securitized Utility Tariff Rider proposed by EMW?

Significant modification of the proposed Evergy tariff and underlying mechanisms are necessary.[33] Schedule BDL-1, appended to the direct testimony

[27] See Lange Rebuttal schedule SLKL-R2, pages 3-4.
[28] Ives Direct, page 14.
[29] Lange Rebuttal, page 20, lines 6-8.
[30] Lange Rebuttal page 9, line 4 – page 10, line 16.
[31] Lange Rebuttal page 20, lines 14-19.
[32] Lange Rebuttal schedule SLKL-R2, page 5.
[33] See Lange Rebuttal, pages 4-20.

of Mr. Bradley D. Lutz purports to be two draft tariff sheets, comprising the "Securitized Utility Tariff Rider," "Schedule SUR."[34] These sheets fail to include basic information necessary to implement rate filings and calculate true-ups,[35] and cannot be expected to reasonably accommodate implementation of any financing order that may result from this case.[36]

This is most reasonably accomplished by ordering Evergy to coordinate with Staff to collaborate to refine the details of the specimen tariff attached to the Rebuttal testimony of Sarah Lange.[37] In the form provided in Rebuttal testimony, this specimen tariff requires collaboration from Evergy concerning certain aspects such as the intervals utilized internally by Evergy for forecasting sales, and that dates at which actual sales data becomes available.[38] (**Note**: Ms. Lange will correct this schedule on the stand at hearing to modify the definition of "True-up Amount" found on page 3 of the specimen tariff to delete the addition of "Projected Sales," to "Actual Sales. This was carried over in error from an earlier draft.)

Specific areas in which the Evergy draft schedule is unreasonable or are lacking are outlined below:

a. *Customer Class Schedules: Should a non-zero SUTC rate be applicable to all customers, regardless of whether such customer's current rate schedule*

[34] Lange Rebuttal, page 4, lines 10 – 16.
[35] Lange Rebuttal, page 12, line 10 – page 14, line 43.
[36] Lange Rebuttal, page 4, lines 14 – 16.
[37] See Lange Rebuttal schedule SLKL-R2.
[38] See Lange Rebuttal, page 3, line 8 – page 4, line 8; see also, Lange Rebuttal, page 15 line 22 – Page 17 line 5.

was allocated revenue requirement in the last EMW rate case, unless specifically excluded by statute?

Yes. Evergy requests that customers served on the EV rate schedules, served under the Clean Charge Network, or to be served on the "Special High-Load Factor Market Rate" tariff, Schedule MKT that Evergy was authorized to file in File No. EO-2022-0061 would pay a rate of $0.00 per kWh.[39] This approach is inconsistent with the broad applicability requirements of relevant statutes.[40]

b. *Frequency of filings:*

i) *On what frequency should regular SUTC updates including true-ups be made?*

Biannually.[41]

ii) *What are reasonable filing procedure elements and timelines?*

Reasonable procedures are reproduced below:[42]

Initial Rate Filing: Within 10 days of the issuance of [TRIGGERING ACT] Evergy Missouri West shall file with 30 days' notice a tariff sheet to implement an initial rate using a calculation consistent with that described below, but only for the portion of the year remaining until the next designated Filing Date. Amounts collected under this initial rate filing are subject to Reconciliation and True-up.

On or before the Filing Date, Evergy Missouri West shall prepare and file the information described below under affidavit. On the Filing Date, Evergy Missouri West shall prepare and file a tariff sheet to be sequentially designated, and bearing a heading indicating its applicability to all sales for the billing months of December of the current year to and including November of the next year.

Filing Date: 45 days prior to the start of each Recovery Period.

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[39] Lange Rebuttal, page 9 line 14 – page 10, line 12, analyzing Lutz Direct Figure 1.
[40] Lange Rebuttal, page 10, line 13 – 16.
[41] See Lange Rebuttal schedule SLKL-R2, page 2, "Time Periods."
[42] See Lange Rebuttal schedule SLKL-R2, page 4, "Filing Procedure."

iii) Should emergency true-ups be permitted, and if so, on what terms and under what process?

Yes.[43] A reasonable provision is reproduced below:[44]

Emergency adjustment: An adjustment, subject to true-up, to the recovery period amount made pursuant to a Commission order in EF-2022-0155, authorizing a change in that recovery period's recovery period amount due to circumstances which raise substantial doubt as to the ability to make timely bond payments in the absence of such adjustment.

c. True-up:

i) Should the true-up mechanism be operated on a class-specific or company-wide basis?

For the nature of charges at issue in this case, the class-level reconciliation process is not reasonable, and could produce unreasonable results in its own operation, and potentially contribute to problematic rate switching. As a class experiences growth, the customers within that class will pay lower SUTC charges; however, a large customer changing rate schedules or ceasing service could cause wild fluctuations in customer bills within the subject classes.[45]

The MKT rate class is particularly susceptible to volatility under the Evergy-requested design, as it is expected to consist of very few, very large, customers. Although under the existing Evergy design the class will be allocated no revenue recovery until an initial rate case completed after one or more customers have taken service under the MKT schedule, which could be 4 years from now, upon allocation of revenues to that class, that

[43] Lange Rebuttal, page 3, line 1-2.
[44] See Lange Rebuttal schedule SLKL-R2, page 3, "Components."
[45] Lange Rebuttal, page 15, lines 1 – 6.

revenue responsibility will remain with that class until a future rate case recognizes any change in customer numbers within that class. To the point, if two customers are in that class, and one leaves, that customer will be forced to absorb the revenue responsibility of the departing customer, potentially doubling – or more - the SUTC portion of the remaining customer's bill.[46]

ii) *What is the design of a reasonable true-up mechanism, and what language should be included in the Commission's order regarding such true-up provisions?*

Staff's recommended true-up mechanism design subtracts Actual Sales in voltage-adjusted kWh for a given period from the sales in voltage-adjusted forecasted for that period when the rate for that period was established. The resulting difference in kWh is multiplied by the rate in effect for the prior time period.[47] This dollar value is then incorporated into the next Accumulation Period for recovery in the subsequent rate. [48]

In its Order, the Commission should reproduce this language to comply with the requirement that the Commission include in its order "A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the securitized utility tariff charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of securitized utility tariff bonds and

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[46] Lange Rebuttal, page 15, lines 12-21.
[47] See Lange Rebuttal schedule SLKL-R2, page 3, "Components."
[48] See Lange Rebuttal schedule SLKL-R2, page 2-3, "Securitized Utility Tariff Recovery Mechanism."

financing costs and other required amounts and charges payable under the securitized utility tariff bonds," pursuant to Section 393.1700.2.(3)(c)e..

Staff's recommended energy-based recovery design fully renders class-level reconciliation unnecessary.[49] This approach eliminates SUTC charge volatility associated with rate-switching, and not only mitigates SUTC charge volatility associated with customers leaving the system and mitigates SUTC charge volatility associated with customer growth, but actually allows those changes to offset, which will smooth the potential variation in SUTC charges in place over time.[50]

d. *Tariff provisions: What is the appropriate treatment and tariff language regarding each item listed below:*

i) Treatment in instances of merger, change of supplier, and territorial expansions

Reasonable tariff language would provide as follows:

The Rate described here-in is applicable to each kWh provided to existing or future retail customers in Missouri receiving electrical service under commission-approved rate schedules from Evergy Missouri West, its successors, or assignees, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in Missouri.

In the event that the certificated territory defined within this tariff book becomes combined through merger or acquisition or other corporate action with territory defined within another regulated utility's tariff book, this charge shall be applicable only to the territory defined within this tariff book immediately prior to such combination. In the event the territory defined within this tariff book is modified by territorial agreement, granting of new Certificate of Convenience and Necessity, or modification of the existing Certificate of Convenience and Necessity, this charge will become applicable to any new customers or premises acquired. This charge will

[49] Lange Rebuttal, page 15, line 2-7.
[50] Lange Rebuttal, page 15 line 12 – 11.

> continue to be applicable to any customers or premises (new or existing) currently served by Evergy Missouri West, but subsequently served by some other electric service provider as a result of a territorial agreement or modification of a territorial agreement, whether the other electric service provider is regulated by this Commission or exempted from regulation by this Commission by any current or future law. In such instance applicable kWh shall be included in all applicable calculations contained herein. [51]

ii) Treatment of net metering and customer-generator customers

Reasonable tariff language would provide as follows:

For customers subject to billing under the Net-metering Easy Connection Act (Act), if the electricity supplied by Evergy Missouri West exceeds the electricity generated by the customer-generator during a billing period, the customer-generator shall be billed the Rate applicable to each kWh as netted pursuant to the terms of the Act and this tariff. If the electricity generated by the customer-generator exceeds the electricity generated by the customer-generator during a billing period, the customer shall not be issued a credit based on the Rate applicable to each kWh as netted pursuant to the terms of the Act and this tariff, nor shall the Rate be considered to be part of the avoided fuel cost of Evergy Missouri West for purposes of the Act. For customers who are authorized to back-flow energy under some other provision of law, or for any portion of back-flowed energy that exceeds that authorized under the terms of applicable net-metering provisions, the Rate shall be applicable to each kWh provided by the utility, without any offset. [52]

iii) Treatment of partial payments

While the investment community is anticipated to reward payment certainty with overall lower costs, access to electricity is also a concern, as well as compliance with other applicable statutes such as the Cold Weather Rule. Ease of administration including certainty of estimates and replacement with actual data on a timely basis are also priorities. Staff's recommended tariff seeks to strike a reasonable balance between these objectives, particularly in the design of the Revenue Adjustment provision to complement the partial payment provision. With

[51] See Lange Rebuttal schedule SLKL-R2, page 1, "Applicability and Non-Bypassability of Charge."
[52] See Lange Rebuttal schedule SLKL-R2, page 1, "Applicability and Non-Bypassability of Charge."

regards to the Cold Weather Rule, payments are prorated among charge categories in proportion to their percentage of the overall bill. Otherwise, all amounts collected go first to the Securitized Utility Tariff Charge. Under the interaction of these provisions, full repayment of the SUTC will not be a barrier to service for a customer who has been disconnected or is in threat of disconnection, but the Revenue Adjustment provision will ensure a steady cash flow pursuant to the SUTC charge.[53]

Reasonable tariff language would provide as follows:

> If any customer does not pay the full amount it has been billed, the charge associated with this rate will have the first priority. In the event a customer under a Payment Agreement under the Cold Weather Rule, 20 CSR 440-13.055 makes late or incomplete payments, payments received will be prorated among charge categories in proportion to their percentage of the overall bill.[54]

6) Regarding any designated Staff representatives who may be advised by a financial advisor or advisors, what provisions or procedures should the Commission order to implement the requirements of Section 393.1700.2(3)?

The Act requires compliance with a number of factors to be achieved, including demonstrating quantifiable net present value savings and demonstrating the securitization is expected to achieve compliance with the lowest cost, consistent with market conditions at the time.[55]

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[53] Lange Rebuttal, page 18, lines 5 – 18.
[54] See Lange Rebuttal schedule SLKL-R2, page 2, "Partial Payments."
[55] Section 393.1700.2(3)(c)c requires the Commission's financing order to find that the proposed structure and pricing of the securitized utility tariff bonds "are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order." Section 393.1700.2(3)(c)b requires the financing order to find that the issuance of bonds is "expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds."

Under Evergy's proposal, ratepayers are not directly protected, even though ratepayers would be irrevocably responsible for all charges associated with securitization. Evergy and other parties involved may not otherwise have a natural incentive to protect the interests of ratepayers. A Staff representative, under the advisement of dedicated financial advisors and legal counsels, can ensure ratepayer interests are protected and the lowest cost standard is achieved, as has been utilized as a best practice in other ratepayer backed bond issuances.

The Commission should not take the lowest cost standard lightly and should designate one or more Staff representatives to provide input to and collaborate with Evergy in all facets of the process undertaken by Evergy to place bonds to market.[56] The Commission should further authorize a financial advisor contracted with the Commission to advise the designated Staff representatives. As discussed in Issue 7 below, the Commission should make clear that the designate Staff representative and financial advisor shall have the right to legal counsel in all proceedings.

The financing order should provide that the designated Staff representatives and financial advisors, advised by legal counsel, have sufficient time and access to information to be effectively involved and collaborate in the pre-issuance review process and not simply wait until weeks prior to issuance to review near final terms.[57] Such a delayed review, rather than real-time review, could add to process delays if any changes are needed to structuring, marketing or pricing, something Evergy is seeking to avoid.[58] The financing order should direct that designated Staff representative(s) and financial

[56] Davis Rebuttal at page 10, line 17-19
[57] Davis Rebuttal at page 11, line 3-8
[58] Lunde Testimony Schedule SL-2 at page 24, paragraph 26

advisor(s), advised by legal counsel, must be provided the ability to be involved in all facets of the bond structuring, marketing, and pricing processes. Designate Staff representatives, with dedicated financial advisors and legal counsel, can advise the Commission whether the issuance is consistent with the financing order as, also required by Section 393.1700.2(3)(h), by reviewing all aspects of the structuring, marketing and pricing to comply with the lowest cost standard and reviewing the proposed upfront and ongoing financing costs; the structure, form, and implementation of true-ups and other credit protections; and structural elements.

The financing order should also specify that Staff representatives and financial advisors, advised by legal counsel, must be involved in the selection of underwriters and other deal participants. Involvement in the selection process can maximize perspective and insights, and obtain the best views of all relevant underwriters to inform the strategy and approach to the issuance process. Involvement in the selection process will help Staff representatives and financial advisors, advised by legal counsel, advise the Commission whether the process described and the certificates given in certifications provided by Evergy and by underwriters meet the statutory objectives of the securitization statute. The Staff representatives and financial advisors, advised by legal counsel, can advise the Commission on the reasonableness of any assumptions made in any certification by underwriters and by Evergy. Given the underwriting team that will be involved in the structuring of this transaction may be different from the corporate bond underwriters Evergy typically interacts with, this involvement will be useful.[59]

[59] Davis Rebuttal at page 10, line 20-26 and page 11, line 1-2

An effective pre-issuance review process should ensure that all possibilities are explored to achieve the lowest cost issuance, including, but not limited to, adapting the marketing timeline and go-to-market strategy to conditions at the tie, while ensuring ratepayer interest are protected. In traditional ratemaking, the Commission reviews costs on an ongoing basis. Unlike traditional costs, the proposed utility securitization is an irrevocable charge that cannot be refinanced without incurring significant additional financing costs. This may be problematic absent oversight as competing interests of utilities and underwriters may not be completely aligned with the rate payer. For example, pricing higher may also allow the deal to complete the issuance more quickly, allowing the utility to get the underlying liability off-balance sheet more quickly and underwriters, who do not have a fiduciary duty to the ratepayer or the utility, to move to the next deal, as well to address a security mispricing.[60]

7) What other conditions, if any, are appropriate and not inconsistent with Section 393.1700 that should be included in the financing order?

Principally, the Commission should ensure the financing order provides some level of specificity in the level of involvement Staff is empowered to have. Proposing Staff involvement absent more specific prescriptions may result in the issuance advice letter being the only tool by which this responsibility may be exercised, and the rejection thereof would be catastrophic for the deal.

The Commission should order delivery of a certification from both the underwriters and from Evergy certifying that the proposed securitization meets the statutory requirement that the securitized utility tariff bonds as structured comply with the

[60] Davis Rebuttal at page 11, line 19-25 and page 12, line 1-7

requirement that securitization provide quantifiable net present value benefits to ratepayers, and that the bonds are structured, marketed, and priced to provide the lowest securitized utility tariff charges consistent with market conditions at the time the bonds are priced.

Not only is this consistent with the underlying purpose of the statute,[61] this requirement provides any designated Staff representatives and financial advisor the ability to assist the Commission in ensuring the underwriter's process described and certification given meet those statutory objectives.

The Commission must clarify the right of its designated Staff representatives and financial advisors to be represented by legal counsel. Other participants will be represented by legal counsel; to ensure a level playing field, Staff representatives and financial advisors must be represented by legal counsel, too. Nothing in 393.1700 prohibits designated Staff representatives and financial advisors from representation by legal counsel.

Finally, the Commission must also clarify every element of the issuance process should target achieving the lowest SUTC consistent with market conditions for which the roles and inputs of the designated Staff representatives should be determined and specified in the financing order

[61] Section 393.1700.2(3)(c)c requires the Commission's financing order to find that the proposed structure and pricing of the securitized utility tariff bonds "are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order." Section 393.1700.2(3)(c)b requires the financing order to find that the issuance of bonds is "expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds."

8) Should the Commission grant a waiver under Section 10(A)(1) of the Affiliate Transactions Rule between EMW and the special purpose entity?

Staff will not oppose Evergy's proposal with waiver of the section of the affiliate transaction rules pertaining to asymmetrical pricing of the financial advantage standard requirement. However, Staff reserves the right for further analysis examining all costs associated with transactions between Evergy and the Special Purpose Entity for prudency in future general rate cases.[62]

Respectfully submitted,

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<u>CERTIFICATE OF SERVICE</u>

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 26th day of July, 2022.

<u>/s/ Jeffrey A. Keevil</u>

[62] Bolin Surrebuttal at page 2, line 3-7