

**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 )

Case No. EF-2022-0155

**MOTION FOR CLARIFICATION, AND CONDITIONALLY, APPLICATION FOR  
REHEARING**

COMES NOW the Office of the Public Counsel (the “OPC”) and submits this Motion for Clarification, or in the Alternative, 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).<sup>1</sup> In support, the OPC respectfully states as follows:

In addressing the OPC’s proposed adjustment to account for the tax benefit that Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy West”) received associated with the costs related to Storm Uri (the “Proposed Adjustment for Taxes”), the Commission included a finding of fact that appears to suggest that Evergy West’s ratepayers will not be responsible for paying the taxes associated with the revenues generated by Evergy West’s collection of the securitized utility tariff charges (“SUTC”). However, the Securitization Law, § 393.1700 RSMo., appears to require Evergy West’s customers to pay these taxes at issue here as financing costs. *See* § 393.1700.1(8)(d) RSMo.

The OPC brings this Motion for Clarification to ensure that it is, in fact, the Commission’s intention to preclude Evergy West from collecting from its ratepayers the amount necessary to pay

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<sup>1</sup> References to document numbers represent the document numbers assigned in the Electronic Filing Information System (“EFIS”).

the taxes associated with the revenues generated by Evergy West's collection of the SUTC. If this is not the Commission's intention, the OPC alternatively requests that the Commission grant rehearing on this issue and amend its Report and Order as addressed below.<sup>2</sup>

### **I. Motion for Clarification**

The OPC begins by setting forth the items that have caused it to bring this Motion for Clarification: (1) the Commission's finding of fact, and (2) the definitions in the Securitization Law.

#### **A. The Commission's Finding of Fact**

When addressing the OPC's Proposed Adjustment for Taxes, the Commission included the following as a finding of fact:

Public Counsel states that when securitization is implemented, taxes will be applied to the line item that ratepayers will see on their monthly bill, the revenues from which are for the securitization bond repayment, and these taxes will be the responsibility of the ratepayer and not the Company.<sup>□</sup> *This is incorrect. If Evergy West's customers were also to be responsible for the taxes, those taxes would be in the securitized amount.*<sup>□</sup>

(Report and Order 34 (footnotes omitted and emphasis added)).

The OPC interprets this finding, specifically the italicized sentence, as the Commission concluding that Evergy West's ratepayers will **not** be responsible for paying the taxes associated with the revenues generated by Evergy West's collection of the SUTC.

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<sup>2</sup> On this same day, the OPC files an Application for Rehearing to address the Commission's decision to include a provision making its Report and Order effective immediately and not subject to rehearing, to reject the OPC's proposed adjustment to account for Evergy West's imprudent resource planning, to calculate carrying charges using 5.06%, and to order that 5.06% be used as the discount rate to analyze recovery through securitization when determining whether net present value benefits exist for customers.

## **B. The Securitization Law**

Looking to four definitions in the Securitization Law, alternatively, it appears that the Securitization Law requires Evergy West’s ratepayers to pay the taxes associated with the revenues generated by Evergy West’s collection of the SUTC.

The Securitization Law defines a securitized utility tariff charge, or SUTC, in pertinent part, as “the amounts authorized by the commission to repay, finance, or refinance securitized utility tariff costs *and financing costs . . .*” § 393.1700.1(16) RSMo. (emphasis added).

The statute defines financing costs to include items such as “[a]ny taxes and license fees or other fees *imposed on the revenues generated from the collection of the securitized utility tariff charge* or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued.” § 393.1700.1(8)(d) RSMo. (emphasis added).<sup>3</sup>

A securitized utility tariff cost is defined as “either energy transition costs<sup>[4]</sup> or qualified extraordinary costs as the case may be.” § 393.1700.1(17) RSMo.

Finally, a qualified extraordinary cost are those “costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power inclusive of carrying charges, during anomalous weather events.” § 393.1700.1(13) RSMo.

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<sup>3</sup> The OPC notes that Evergy West has not addressed this section of the Securitization Law. Rather, in briefing Evergy West pointed only to subsection (e) of the definition of financing costs. (*See* Evergy West Initial Post Hearing Brief 29, Doc. 132; Evergy West Reply Post Hearing Brief 19, Doc. 139). Subsection (e) of the definition of “financing costs,” which references “[a]ny state and local taxes, franchise, gross receipts, and other taxes or similar charges, including commission assessment fees, whether paid, payable, or accrued,” does not apply to the OPC’s argument underlying its Proposed Adjustment for Taxes. § 393.1700.1(8)(e); (*see* OPC Reply Post Hearing Brief 17 n.10).

<sup>4</sup> The OPC notes that Evergy West has not sought to securitize any costs as energy transition costs.

Combining these definitions the statute defines a securitized utility tariff charge as “the amount authorized by the commission to repay, finance, or refinance [qualified extraordinary costs] and [*any taxes . . . imposed on the revenues generated from the collection of the securitized utility tariff charge . . .*].” See § 393.1700.1(8)(d), (13), (16), (17) RSMo. (emphasis added). This is accomplished by simply incorporating the applicable definitions of securitized utility tariff costs and financing costs into the definition of securitized utility tariff charge. *See id.*

**C. The Commission’s Finding is at Odds with the Securitization Law**

If the OPC has understood the referenced finding of fact correctly, then the Commission’s finding is at odds with the Securitization Law. Specifically, as the OPC understands the Commission’s finding, Evergy West may not recover from its ratepayers the amount necessary to pay the taxes associated with the revenues generated by Evergy West’s collection of the SUTC. (*See* Report and Order 34). However, the Securitization Law appears to specifically allow Evergy West to recover the amount necessary to pay those taxes from its ratepayers as financing costs. *See* §§ 393.1700.1(8)(d), (13), (16), (17) RSMo.

**D. The Commission Must Clarify Whether Evergy West’s Customers are Responsible for Paying the Taxes Associated with the Revenues Generated by Evergy West’s Collection of the SUTC**

The OPC brings this Motion for Clarification to clarify the Commission’s intent with regard to its finding on page 34, numbered paragraph 64, of the Report and Order. Specifically, the OPC requests that the Commission issue an order specifically stating whether Evergy West may collect from its ratepayers the amount necessary to pay the taxes associated with the revenues generated by Evergy West’s collection of the SUTC.

If Evergy West may not collect those amounts, the OPC requests no relief beyond the clarified order.

However, if the OPC's understanding of the Commission's finding is incorrect and Evergy West may collect the amounts necessary to cover the taxes associated with the revenues generated by Evergy West's collection of the SUTC, then the OPC alternatively requests rehearing on this issue for the reasons set forth below.

## **II. Application for Rehearing**

If the Commission determines that Evergy West's customers are required to pay the taxes associated with the revenues generated by Evergy West's collection of the SUTC, then the OPC requests that the Commission grant it rehearing on this issue. In requiring Evergy West's customers to both pay the taxes at issue and not recognizing the OPC's Proposed Adjustment for Taxes, the Commission's Report and Order is unlawful, unjust, and unreasonable.

### **A. Relevant Factual Background**

The Commission found and Evergy West itself admitted that Evergy West was entitled to a tax deduction when the Storm Uri costs were incurred. (Report & Order 33; Ex. 5 "Hardesty Surrebuttal Testimony" 3, Doc. 89 (stating that "[i]t is also true that [Evergy West] was entitled to a tax deduction when the costs were incurred.")).

In rejecting the OPC's proposed adjustment, the Commission stated that "Evergy West does not have to recognize money received from the [Special Purpose Entity] pursuant to the financing order<sup>5</sup> and the transfer of the deferred tax liability for costs expended due to Winter Storm Uri for income tax purposes." (Report & Order 37). It continued saying that "[h]owever, that does not mean that the revenues collected that typically offset the tax deduction related to fuel

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<sup>5</sup> The OPC does not dispute that in accordance with IRS Revenue Procedure 2005-62, Evergy West "will be treated as not recognizing gross income upon" (1) the "receipt of a financing order," (2) the "receipt of cash or other valuable consideration in exchange for the transfer of that property right to a financing entity that is wholly owned, directly or indirectly, by the utility;" or (3) the "receipt of cash or other valuable consideration in exchange for securitized instruments issued by the financing entity that is wholly owned, directly or indirectly, by the utility." (*See* Ex. 19 "IRS Revenue Procedure 2005-62" § 6, Doc. 103).

and purchased power costs (Winter Storm Uri costs) will not be recognized in future Evergy West rate cases.” (*Id.*). The Commission concludes that “[t]he deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit to Evergy West’s rate base over the life of the securitization bonds corresponding to the income tax periods in which the revenues are recognized.” (*Id.*).

Referencing the reconciliation process provided for in § 393.1700.2(3)(c)k RSMo., the Commission continues saying that “there is no need to disallow an uncertain tax amount now, when more information regarding what, if any, tax benefits Evergy West receives will be available and will be reconciled in a future rate case.” (*Id.* 37-38).

**B. Standard of Review: Application for Rehearing**

“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).

C. **Should the Commission Determine that Evergy West's Customers Must Pay the Taxes Associated with the Revenues Generated by Evergy West's Collection of the SUTC, the Commission's Decision to Reject the OPC's Proposed Adjustment for Taxes is Unlawful, Unjust, and Unreasonable**

Should the Commission determine that Evergy West's ratepayers must pay the amounts necessary to pay the taxes associated with the revenues generated by Evergy West's collection of the SUTC, the Commission's decision to reject the OPC's Proposed Adjustment for Taxes is unlawful, unjust, and unreasonable for at least three reasons. First, the Commission does not address that Evergy West's customers must *both* pay the taxes associated with the revenues generated by Evergy West's collection of the SUTC *and* will pay a higher SUTC due to the Commission's inclusion of the tax benefit that Evergy West received associated with the costs related to Storm Uri in the amount of qualified extraordinary costs that Evergy West may recover. Second, the Commission has failed to acknowledge or provide a justification for the imposition of an additional approximately \$30 million burden on ratepayers that arises from the additional interest that ratepayers must pay due to the Commission's inclusion of the tax benefit that Evergy West received in the amount of qualified extraordinary costs that Evergy West may recover and returning the amount of that tax benefit to ratepayers over the 15-year life of the bonds. Finally, although the Commission references a future reconciliation process, the Commission fails to specify how this future reconciliation process would work, in contravention of the Securitization Law. The OPC will address each ground.

1. **The Commission Did Not Address that Evergy West's Ratepayers Will Both Pay the Taxes at Issue and Higher SUTCs**

Perhaps most importantly, in addressing its decision to reject the OPC's Proposed Adjustment for Taxes, it appears that the Commission implicitly relies on its prior finding that Evergy West's ratepayers will not separately pay the taxes associated with the revenues generated

by Evergy West’s collection of the SUTC. (*See generally* Report & Order 37-38). However, if the Commission concludes that Evergy West’s ratepayers must pay these taxes, the Commission’s decision is unreasonable and unlawful because the Commission failed to address the fact that ratepayers will pay both the taxes and higher SUTCs.

After recognizing that Evergy West “does not have to recognize money received from the [special purpose entity] pursuant to the financing order and the transfer of the deferred tax liability<sup>[6]</sup> . . . for income tax purposes,” the Commission recognized that this “does not mean that the revenues collected that typically offset the tax deduction related to fuel and purchased power costs (Winter Storm Uri costs) will not be recognized in future Evergy West rate cases.”<sup>7</sup> (*Id.* 37).

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<sup>6</sup> In the Report and Order, the Commission appears to suggest that the special purpose entity will transfer the deferred tax liability to Evergy West. (*See* Report & Order 37). However, no evidence exists to suggest that the special purpose entity possesses such a deferred tax liability. (*Contra* Hardesty Surrebuttal Test. 3 (stating that the special purpose entity “will not get a tax deduction for the Winter Storm Uri costs since they were already deducted at Evergy Missouri West.”)). Further, the special purpose entity itself cannot possess a deferred tax liability related to the Storm Uri fuel and purchased power costs because it did not exist at the time of Winter Storm Uri. (*See* Report & Order 79 (stating that “[f]or the purposes of issuing the securitized utility tariff bonds, Evergy West will create a bankruptcy-remote [special purpose entity] . . .”). Therefore, it cannot be that the special purpose entity will transfer a deferred tax liability to Evergy West.

If the Commission meant that Evergy West will transfer the deferred tax liability to the special purpose entity, there does not appear to be any evidence in the record to support such a conclusion.

<sup>7</sup> With this statement, the Commission appears to state that the revenues collected that would typically offset the tax deduction related to fuel and purchased power costs (Winter Storm Uri costs) *will* be considered in Evergy West’s future rate cases. (*See* Report & Order 37). This statement fails to comply with the Commission’s own finding of facts in the Report and Order, the evidence presented in this case, and the Securitization Law.

First, in setting forth its finding of facts when addressing the OPC’s Proposed Adjustment for Taxes, the Commission found that “[t]he SUTC will be excluded from Evergy West’s revenues in a general rate case for calculating the cost of service.<sup>[1]</sup>” (Report & Order 35 (footnote omitted)).

Second, assuming that the Commission intended to adopt Staff’s understanding of how the tax benefits will be returned to customers, Staff witness, Ms. Kimberly Bolin, included in her testimony a question that asked whether “Staff will include the additional revenues associated with the bond repayments with the rate revenue to calculate income taxes in a general rate proceeding.” (Ex. 101 “Bolin Surrebuttal Testimony” 3, Doc. 105). As her answer, Ms. Bolin said

*No. Staff will not include the bond repayments in revenues for calculating the cost of service in a general rate proceeding. The securitized utility tariff charges will be excluded from revenues just as Staff excludes Infrastructure System Replacement Surcharge (ISRS) revenue, Water and Sewer Infrastructure Rate Adjustment (WSIRA) revenue, Fuel Adjustment Clause (FAC) revenue and Purchased Gas Adjustment (PGA) revenue from the cost of service.*

(*Id.* 4 (emphasis added)). Therefore, Staff, itself admitted that it will not consider the revenues in Evergy West’s future general rate cases. (*See id.*).



The Commission then stated that the “deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit to Evergy West’s rate base over the life of the securitization bonds corresponding to the income tax periods in which the revenues are recognized.” (*Id.*).

Assuming that the Commission believes that Evergy West’s ratepayers will be responsible for paying the taxes associated with the revenues generated by Evergy West’s collection of the SUTC, the Commission does not address how with this decision Evergy West’s ratepayers will *both* pay those taxes *and* a higher SUTC. The higher SUTC results from the additional interest that ratepayers must pay due to the Commission’s decision to not reduce the amount of qualified extraordinary costs to account for the tax benefit that Evergy West received associated with the costs related to Storm Uri.<sup>8</sup> (*See generally id.*). Failing to address such a burden makes the Commission’s Report and Order unreasonable. *See Mo. Gas Energy*, 388 S.W.3d at 227 (concluding that reasonableness depends on whether or not “the decision is arbitrary, capricious, or unreasonable . . .”). The Commission must amend its Report and Order to either recognize the OPC’s proposed adjustment or, at a minimum, to acknowledge that Evergy West’s ratepayers will pay both the taxes associated with the revenues generated by Evergy West’s collection of the SUTC and a higher SUTC.

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Third, the Securitization Law also forbids the Commission from considering the SUTC as revenues in Evergy West’s future general rate cases. Specifically, the Securitization Law states, “[t]he commission *may not*, in exercising its powers and carrying out its duties regarding any matter within its authority, . . . *consider the securitized utility tariff charges paid under the financing order to be the revenue of the electrical corporation for any purpose . . .*” § 393.1700.3(1) RSMo. (emphasis added). Therefore, the Securitization Law forbids the Commission from considering the revenues generated from Evergy West’s collection of the SUTC in Evergy West’s future general rate cases.

For these reasons, the Commission’s statement that these revenues will be recognized in future Evergy West rate cases is at odds with the Commission’s own findings of fact, the evidence supporting this case, and the Securitization Law.

<sup>8</sup> Importantly, Evergy West itself admits and the Commission also found in the Report and Order that Evergy West received this tax deduction. (Report & Order 33, Hardesty Surrebuttal Test. 3).

2. **The Commission Failed to Address the Additional \$30 Million in Interest Ratepayers Must Pay Because the Commission Did Not Reduce the Amount of Qualified Extraordinary Costs to Account for the Tax Benefit Evergy West Received**

The OPC's witness, Mr. John Riley, identified an additional approximately \$30 million in interest that will result from the Commission's decision to not reduce the amount of qualified extraordinary costs to account for the tax benefit Evergy West received and Evergy West's decision to give the benefit of the tax deduction back to its ratepayers over the 15-year life of the bonds. (*See* Tr. 504-07, V. IV pdf 92-95; Ex. 209 "Mr. Riley's Calculations" 1, Doc. 120). Again, if the Commission concludes that Evergy West's ratepayers are responsible for paying the taxes associated with the revenues generated by Evergy West's collection of the SUTC, the Commission's decision to reject the OPC's Proposed Adjustment for Taxes is unlawful, unjust, and unreasonable for requiring ratepayers to bear this additional burden and providing no justification for its imposition.

Mr. Riley, a certified public accountant, stated that returning the tax benefit to ratepayers over time, as opposed to reducing the amount of qualified extraordinary costs to be securitized to reflect this tax deduction, results in ratepayers paying an additional \$30 million in interest. (*See* Tr. 504-07, V. IV pdf 92-95). In its decision rejecting the OPC's Proposed Adjustment for Taxes, the Commission fails to acknowledge or address this \$30 million additional burden. (*See generally* 37-38). Rather, the Commission states only that the "deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit to Evergy West's rate base over the life of the securitization bonds . . ." (*Id.* 37).

The Commission's financing order must include a finding that the recovery of the identified amount of qualified extraordinary costs is "just and reasonable and in the public interest." § 393.1700.2(3)(c)a RSMo. Requiring ratepayers to pay an additional \$30 million in interest to

receive a benefit—a reduction in the amount they must pay to account for the tax deduction Everygy West received—to which they are entitled, without acknowledging the additional burden—the additional approximately \$30 million in interest—imposed on them or providing a justification for the imposition of this burden cannot be “just and reasonable and in the public interest.” *See id.* Therefore, the Commission’s Report and Order is unlawful, unjust, and unreasonable. *See Mo. Gas Energy*, 388 S.W.3d at 227. The Commission must amend its Report and Order to either recognize the OPC’s proposed adjustment or, at a minimum, to acknowledge this burden and provide a justification for its imposition.

**3. The Commission Fails to Specify How the Future Reconciliation Process Would Work in Practice**

The Commission also appears to suggest that the tax benefit may be included in a future rate case through a reconciliation process, however, it fails to specify how such a reconciliation process would be accomplished. The Securitization Law requires that the Commission specify the future ratemaking process. Without this specification, the Commission’s Report and Order is unlawful, unjust, and unreasonable.

The Securitization Law requires that the financing order specify a “future ratemaking” reconciliation process. *See* § 393.1700.2(3)(c)k RSMo. Specifically, that provision of the statute states in full:

A financing order issued by the commission, after a hearing, to an electrical corporation shall include all of the following elements: . . . A statement specifying a future ratemaking process to reconcile any differences between the actual securitized utility tariff costs<sup>[9]</sup> financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the electrical corporation or assignee provided that any such reconciliation shall not affect the amount of securitized

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<sup>9</sup> The OPC notes that securitized utility tariff costs include qualified extraordinary costs. § 393.1700.1(17) RSMo.

utility tariff bonds or the associated securitized utility tariff charges paid by customers.

*Id.*<sup>10</sup>

In rejecting the OPC’s proposed adjustment, the Commission references this reconciliation process and suggests that the tax benefits may be returned to customers in a future rate case by utilizing it. (*See* Report & Order 37-38). Therefore, the Commission concludes “there is no need to disallow an uncertain tax amount now, when more information regarding what, if any, tax benefits Evergy West receives will be available and will be reconciled in a future rate case.” (*Id.*).

However, the Commission has not met the requirements of § 393.1700.2(3)(c)k RSMo. The Securitization Law requires that the Commission “specify[] a future ratemaking process to reconcile any differences . . .” § 393.1700.2(3)(c)k RSMo. Although the Commission included a statement recognizing the existence of this reconciliation process, it failed to address how such a process would work in practice. (*See* Report & Order 37-38). It is clear from the Securitization Law that such a reconciliation process may not reduce “the amount of securitized utility tariff bonds or the associated securitized utility tariff charges paid by customers,” but it is not clear from either the statute or the Commission’s Report & Order how such a reconciliation process would

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<sup>10</sup> In setting forth its Conclusions of Law addressing the OPC’s Proposed Adjustment for Taxes, the Commission includes a paragraph that references this reconciliation process. (Report & Order 37). That paragraph states in full “Section 393.1700.2(3)(c)k, RSMo. requires that this order provide for a reconciliation process that would require Evergy West *to account for any potential tax benefits that may lower its actual securitized utility tariff costs* associated with Winter Storm Uri through a future rate case.” (*Id.* (emphasis added)). Similarly, in setting forth its decision, the Commission states that “the Securitization Law, at Section 393.1700.2(3)(c)k, RSMo., requires that this Financing Order provide for a reconciliation process *to account for any potential tax benefits* in a future rate case.” (*Id.* (emphasis added)).

These statements appear to suggest that the reconciliation process is limited to accounting for potential tax benefits. However, as can be seen from the language of the statute set forth above, it is clear that the reconciliation process is broader. *See* § 393.1700.2(3)(c)k RSMo. The reconciliation process can account for “*any differences* between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the electrical corporation or assignee . . .” *Id.*

Though the OPC asserts that the Commission should reduce the amount of qualified extraordinary costs—which are included as securitized utility tariff costs—to account for the tax benefits that Evergy West received associated with its costs related to Storm Uri, this reconciliation process may be used to account for other differences in the amount of qualified extraordinary costs as well. *See* § 393.1700.1(17) RSMo. (defining securitized utility tariff costs to include qualified extraordinary costs).

work in a future general rate case. *See* § 393.1700.2(3)(c)k RSMo. This is true especially in light of the limitations on the Commission’s ability to consider the securitized utility tariff bonds in a future rate case identified in the Securitization Law. *See, e.g.*, §§ 393.1700.3(1); 393.1700.3(6) RSMo.

Because the Commission has failed to specify how the reconciliation process would work in a future rate case, in contravention of the Securitization Law, the Commission’s reliance on this reconciliation process is unlawful, unjust, and unreasonable. *See Mo. Gas Energy*, 388 S.W.3d at 227. The Commission must amend its Report and Order to either recognize the OPC’s proposed adjustment, or, at a minimum, specify how the reconciliation process will work in a future general rate case. *See* § 393.1700.2(3)(c)k RSMo.

**D. Conclusion: Should the Commission Determine that Evergy West’s Ratepayers Must Pay the Taxes Associated with the Revenues Generated by Evergy West’s Collection of the SUTC, the Commission’s Report & Order is Unlawful, Unreasonable, and Unjust**

In ruling on the OPC’s Motion for Clarification, if the Commission determines that Evergy West’s ratepayers must pay the taxes associated with the revenues generated by Evergy West’s collection of the SUTC, the Report and Order is unlawful, unreasonable, and unjust for at least three reasons. First, the Commission failed to address that Evergy West’s ratepayers will pay *both* the taxes associated with the revenues generated by Evergy West’s collection of the SUTC *and* a higher SUTC, due to the Commission’s decision to reject the OPC’s Proposed Adjustment for Taxes. Second, the Commission failed to acknowledge or justify its imposition of an additional \$30 million burden on Evergy West’s ratepayers that results from the additional interest due because the Commission did not reduce the amount of qualified extraordinary costs to account for the tax deduction Evergy West received. Finally, the Commission failed to specify how the reconciliation process will work in a future general rate case, in contravention of the Securitization

Law. Therefore, the Commission must grant this Application for Rehearing and amend its Report and Order to either recognize the OPC's Proposed Adjustment for Taxes or to remedy the deficiencies addressed herein.

### **III. Conclusion**

For the reasons stated above, the OPC requests that the Commission clarify whether it intends for Evergy West's ratepayers to pay the taxes associated with the revenues generated by Evergy West's collection of the SUTC. Should the Commission determine that the ratepayers will not pay these taxes, the OPC seeks no further relief. However, should the Commission determine that ratepayers will pay these taxes, then the Commission's Report and Order is unlawful, unjust, and unreasonable for the reasons addressed above. Therefore, the Commission must grant this Application for Rehearing and amend its Report and Order to either recognize the OPC's Proposed Adjustment for Taxes or to remedy the deficiencies addressed herein.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission provide the clarification requested in the Motion for Clarification, and, if in providing the clarification, the Commission concludes that Evergy West's ratepayers must pay the taxes associated with the revenues generated by Evergy West's collection of the SUTC, then grant the Application for Rehearing and amend the Report and Order.

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