BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Second Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 2 Energy Efficiency Programs of Evergy Metro, Inc. d/b/a Evergy Missouri Metro	)))))	**File No. EO-2020-0227**
In the Matter of the Second Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 2 Energy Efficiency Programs of Evergy Missouri West, Inc. d/b/a Evergy Missouri West	)))))	**File No. EO-2020-0228** (consolidated)

INITIAL BRIEF OF STAFF

Respectfully Submitted,

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INITIAL BRIEF OF STAFF

EVERGY METRO, INC.,
d/b/a EVERGY MISSOURI METRO

and

EVERGY MISSOURI WEST, INC.
d/b/a EVERGY MISSOURI WEST

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INITIAL BRIEF OF STAFF

COMES NOW Staff of the Missouri Public Service Commission and submits the following Initial Brief on the issues pursuant to the schedule previously ordered by the Commission:

INTRODUCTION

This case was originally two cases – File Nos. EO-2020-0227 and EO-2020-0228 – with one case for Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("Evergy Metro") and one case for Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy West") (collectively "Evergy"). The cases were subsequently consolidated into File No. EO-2020-0227 by order of the Commission. Both cases deal with the Second Prudence Review of Cycle 2 Costs Related to the Missouri Energy Efficiency Investment Act for the Electric Operations of either Evergy Metro or Evergy West for the review period of April 1, 2018 through December 31, 2019. These prudence reviews are required no less frequently than every twenty-four (24) months by Commission Rule 20 CSR 4240-20.093(11). Therefore, since prudence reviews are required by rule, Evergy's repeated mantra that its demand response programs were approved by the Commission and are covered in its tariffs and are therefore somehow not subject to prudence disallowance is simply a red herring, because if Evergy's argument were correct, there would be no reason for required prudence reviews. The Commission's approval of Evergy's MEEIA programs in no way alleviates Evergy's obligation to implement those programs prudently.[1]

On June 30, 2020, Staff filed its Reports in both cases, one for Evergy Metro and one for Evergy West. These Reports are attached to the Direct Testimony of Mr. Brad Fortson (Exhibit 101) as Schedules BJF-d4 and BJF-d6.

The standard for evaluating prudence is found in *State ex rel. Associated Natural Gas Co. v. Public Service Com'n*, 954 S.W.2d 520 (Mo. App. W.D., 1997). In that case, the Western District Court of Appeals approvingly quoted the Commission's definition of the Commission prudence standard as follows:

> [A] utility's costs are presumed to be prudently incurred.... However, the presumption does not survive "a showing of inefficiency or improvidence... [W]here some other participant in the proceeding creates a serious doubt as to the prudence of expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.
>
> In the same case, the PSC noted that this test of prudence should not be based upon hindsight, but upon a reasonableness standard: [T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company. (Citations omitted).

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[1] "[J]ust because a program is deemed cost effective through the EM&V process it doesn't demonstrate the Company implemented the program prudently." **Tr. Vol. 2, p. 185, lines 7-9**. "[T]he Company could implement its approved program within the confines of the approved tariffs, the approved budgets, the proposed program structure while still being deemed cost-effective through EM&V and still have implemented the programs in an imprudent manner." **Tr. Vol. 2, p. 185, lines 19-24**.

Id. at 528-29. In that case the Court went on to state that to disallow a utility's recovery of costs from its ratepayers based on imprudence the Commission must determine the detrimental impact of that imprudence on the utility's ratepayers. *Id*. at 529-30. In other words, the prudence standard asks what a *reasonable person* would do under the circumstances.

Issue 1: Are Staff's and OPC's proposed prudence adjustments within the scope of a MEEIA prudence review as defined by 20 CSR 4240-20.093?

Frankly, it is not clear why this is even an issue at this point. The Commission has already found, in its *Order Denying Motion to Limit Scope* issued August 19, 2020, that "Staff has raised allegations of imprudence by Evergy that are relevant to the Commission's determination of whether Evergy has operated its MEEIA programs in a prudent manner." The disallowances recommended by Staff are the result of Evergy's decision-making associated with the implementation of its MEEIA Cycle 2 programs.[2] As Mr. Luebbert testified,

> The MEEIA program costs including incentives, program administration, and employee salaries **are recovered through the respective company's Demand Side Programs Investment Mechanism ("DSIM").** Furthermore, Evergy is incentivized to implement the programs through the approved Earnings Opportunity ("EO") which is **also funded through the DSIM.** Evergy's decision makers failed to maximize the benefits of the approved demand response programs even after acknowledging several of those potential benefits prior to the 2019 program year as more fully explained below. Ratepayers paid for the demand response programs and the associated EO through the DSIM with the expectation that the Evergy decision makers would implement the programs in a manner that would maximize the benefits realized through those programs. **The programs were funded through the DSIM** despite the decisions not to target potential ratepayer benefits during the implementation of the programs. Ratepayers should not be required to fully fund programs, much less pay

[2] Ex. 105, p. 2, lines 5-6.

> Evergy shareholders a substantial earnings opportunity, for programs that underperform and fail to maximize ratepayer benefits due to Evergy's managerial decision making.[3] (Emphasis added)

Staff's proposed disallowances are within the proper scope of a MEEIA prudence review.

Issue 2: Did Evergy act imprudently in its implementation of the Residential Programmable Thermostat program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Would a reasonable person give away smart thermostats, free of charge, to customers who did not even participate in the program? Would a reasonable person decide to slow the rate of installations by restricting participation in the program to the most expensive method of installation (direct installation)? Clearly the answer to each of the foregoing questions is "No," yet that is exactly what Evergy did – i.e., gave away free smart thermostats to customers who did not even participate in the program (in addition, thermostats that are not activated are contrary to the purpose of the program[4]), and restricted participation in the program to direct installations.[5] Under the Commission's reasonable person standard, Evergy acted imprudently in implementing the program.

The decision to only allow direct installations cost Evergy Metro ratepayers $179,600 ($100 per installation) and giving away free thermostats to customers who did not participate in the program cost Every Metro ratepayers $108,080.[6] The decision to only allow direct installations cost Evergy West ratepayers $461,200 ($100 per installation) and giving away free thermostats to

[3] *Id.* at lines 7-20.
[4] Ex. 101, Schedule BJF-d4, p. 28; Schedule BJF-d6, p. 28.
[5] Ex. 101, Schedule BJF-d4, pp. 27-28; Schedule BJF-d6, pp. 27-28.
[6] Ex. 101, Schedule BJF-d4, p. 28.

customers who did not participate in the program cost Every West ratepayers $116,665.[7] This results in total disallowances for the Residential Programmable Thermostat program of $287,680 for Evergy Metro and $577,865 for Evergy West, and the Commission should so order.

Issue 3: Did Evergy act imprudently in its implementation of its Demand Response Incentive Program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Yes, Evergy acted imprudently in the implementation of its Demand Response Incentive Program. For example, Evergy West's implementation of the Demand Response Incentive Program ("DRI") focused on maximizing the megawatts ("MW") *enrolled* and *did not properly motivate participating customers to follow through with the contracted load reductions* despite a minimal number of events being called during the Review Period.[8] The Demand Response Incentive Program contracts should have been designed to properly incentivize participants that perform well during called events and not provide, or minimize, incentives to those participants that do not perform during called events.[9] Evergy West provided DRI enrollees a large lump sum credit for enrolling based on the number of MWs enrolled; Evergy West did offer additional credits for those customers that participated in called events and penalties for those customers that did not participate, but the additional credits and reduced credits were minimal and did not properly incentivize customers to actively participate in the event in a meaningful manner. The result was a DRI program that was unnecessarily costly, rewarded customers that did not participate, and harmed customers that did not sign up but had to

[7] Ex. 101, Schedule BJF-d6, p. 28.
[8] Ex. 101, Schedule BJF-d6, p. 28, lines 23-26.
[9] Ex. 101, Schedule BJF-d6, p. 29, lines 1-4.

pay the DSIM charge.[10] Evergy West's DRI contracts did not incentivize performance of participants and did not benefit any other customers in the respective rate classes.[11] Evergy Metro's DRI program suffered from exactly the same failings as Evergy West's program.[12] Accordingly, Staff recommends that the Commission disallow a total of $111,363 (consisting of $13,147 for 2018 and $98,216 for 2019) for Evergy Metro[13] and a total of $990,137 (consisting of $643,484 for 2018 and $346,653 for 2019) for Evergy West.[14]

<u>Issue 4: Did Evergy act imprudently by not calling more demand response events for the purpose of reducing Southwest Power Pool (SPP) fees? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?</u>

Yes, Evergy acted imprudently by not attempting to minimize costs and maximize benefits to ratepayers through the implementation of the demand response programs despite the ability to do so with minimal incremental program costs. The Commission should order a disallowance of $397,002.28 for Evergy Metro and $666,008.23 for Evergy West related to SPP expenses that Evergy chose not to attempt to avoid by targeting demand response events and attempting to call events to reduce the monthly peak load.[15]

Even prior to the 2019 program year, Evergy acknowledged that ** [redacted]. **[16] However, even with this incentive, Evergy

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[10] Ex. 101, Schedule BJF-d6, p. 29, lines 9-16.
[11] Ex. 101, Schedule BJF-d6, p. 29, lines 24-25.
[12] Ex. 101, Schedule BJF-d4, pp. 28-30.
[13] Ex. 101, Schedule BJF-d4, p. 30, line 14.
[14] Ex. 101, Schedule BJF-d6, p. 30, line 10.
[15] Ex. 105, p. 13, line 21 through p. 14, line 3.
[16] *Id.* at p. 3, lines 1-11.

decision makers chose not to attempt to avoid Southwest Power Pool ("SPP") expenses by targeting demand response events and attempting to call events to reduce the monthly peak load.[17]

Evergy could have limited the amount of expense owed to SPP by minimizing its monthly coincident peak, or at least attempting to do so. However, Evergy did not attempt to minimize its monthly peak through the use of demand response, as evidenced by minimal event calling.[18] Evergy's own witness *admitted* that if Evergy had called more events it would have increased the likelihood of hitting the monthly peak and subsequently saved more on SPP fees.[19] Due to its failure to call events, Evergy missed several opportunities to capitalize on SPP markets as a way to benefit customers in exchange for the considerable expense imposed due to the demand response programs.[20] Furthermore, as the Commission stated in its findings of facts in the Amended Report and Order from Case No. EO-2019-0132, "SPP member costs are a source of potential cost avoidance. SPP member fees could be reduced through average monthly reductions in

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[17] Ex. 104, p. 3, lines 10-12.

[18] Ex. 101, Schedule BJF-d4, p. 30 and Schedule BJF-d6, p. 30.

[19] "Q. Sure. And so if Evergy called more demand response events – let's just limit to summer then. Do you think you'd be more likely to hit the monthly peak then?
A. Yes. That's a fair statement.
Q. And if you are more likely to hit the system peak, are you more likely to save on SPP fees as well?
A. Let me make sure I understand that question. Are you saying if we called more events and potentially hit the system peak, we would save more on SPP fees?
Q. Correct.
A. I believe that is – that is correct. We could save more than we already are on SPP fees, yes. By the very nature of programs, if we call an event, we're saving SPP fees." **Tr. Vol 1, p. 58 line 18 through p. 59 line 9**.

"Q. Mr. Carlson, my question is, wouldn't it stand to reason that the more events Evergy calls, the more likely to hit the system peak for that month and save on SPP fees?
A. If we called more events on a monthly basis, then that would increase our likelihood of hitting a system peak and should reduce SPP fees more, yes." **Tr. Vol. 1, p. 74 line 22 through p. 75 line 4**.

[20] Ex. 101, Schedule BJF-d4, p. 31 and Schedule BJF-d6, p. 31.

energy and demand."[21] Finally, minimization of SPP fees is consistent with the stated purpose of Evergy's Demand Response Incentive program[22] to "provide for improvements in energy supply."

The Commission should order adjustments of $397,002.28 for Evergy Metro and $666,008.23 for Evergy West.[23]

Issue 5: Did Evergy act imprudently by not calling more demand response events for the purpose of reducing the costs associated with day-ahead locational marginal prices? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Yes, Evergy acted imprudently. Evergy chose not to target demand response events in an attempt to reduce load during some of the highest Day Ahead Locational Marginal Pricing ("DA LMPs") despite minimal, if any, incremental costs; therefore, Staff recommends that the Commission disallow $54,227 for Evergy Metro and $86,303 Evergy West.[24]

As with the SPP fees, even Evergy has acknowledged ** [redacted]. **[25]

However, Evergy did not call any events due to Day Ahead (DA) market pricing opportunities despite DA market prices exceeding $100/MWh several times during the Review Period.[26] Evergy even admitted that during this Review Period it did not even consider bidding its contracted demand response capacity into the market.[27]

[21] Page 12, paragraph 30, of the Commission's Amended Report and Order in Case No. EO-2019-0132.
[22] Evergy Missouri West 1st Revised Sheet No. R-86; Evergy Missouri Metro 1st Revised Sheet No. 2.09.
[23] Ex. 105, p. 13, line 21 through p. 14, line 3.
[24] Ex. 104, p. 3, lines 14-17.
[25] Ex. 105, p. 5.
[26] Ex. 101, Schedule BJF-d4, pp. 30-31 and Schedule BJF-d6, p. 30.
[27] Ex. 101, Schedule BJF-d4, p. 31 and Schedule BJF-d6, pp. 30-31.

Staff's analysis of the benefits that Evergy could have targeted, but failed to attempt to achieve, included the highest DA LMP prices, as those were the types of hours that a reasonable person would review and analyze as part of the attempt to leverage ** [redacted]." **[28] Staff limited the number of event days that would have been called in a given season recognizing that Evergy would not be able to correctly predict all of the days with relatively high LMPs.[29]

The Commission should order adjustments of $54,227 for Evergy Metro and $86,303 for Evergy West.[30]

<u>Issue 6: Did Evergy Missouri Metro act imprudently by not entering into more bi-lateral capacity contracts? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?</u>

In Case No. EO-2019-0132, the Commission stated, "Evergy has the ability to create additional revenue by selling its excess capacity through bi-lateral contracts;"[31] however, Evergy Metro did not enter into any bi-lateral contracts with non-affiliates during the Review Period, despite being very long on capacity.[32] In Case No. EO-2019-0132, Evergy portrayed to the Commission that the demand reductions for MEEIA Cycle 3 could be valued at ** [redacted] **, yet in this case Mr. Carlson states that "Staff is under the mistaken impression that a ready market exists for unused capacity;" Evergy justified the Cycle 3 programs by implying that each MW reduced as a result of the program will produce a substantial amount of benefits to ratepayers and now states that "having excess capacity does not create a cause and

[28] *Id.*
[29] *Id.* at 5-6.
[30] Ex. 104, p. 3, lines 16-17.
[31] Page 13, paragraph 31, of the Commission's Amended Report and Order in Case No. EO-2019-0132.
[32] Ex. 101, Schedule BJF-d4, p. 32, lines 6-9.

effect relationship. Just because we have excess capacity doesn't mean we can always sell it."[33]

In this case, Evergy has denied the ability to enter into contracts at a price of ** [redacted]. ** However, in Case No. EO-2019-0132, Evergy indicated that the Commission could consider a "market-based approach to valuing capacity" which averaged several supply offers that were provided in response to a request for proposal and amounted to ** [redacted]. ** Either Evergy acted imprudently by not entering into more bilateral capacity contracts, or Evergy grossly misrepresented the potential benefits of demand reductions that will result from its MEEIA programs.[34]

Evergy should be held to the accuracy of its prior representations to the Commission. The Commission should order an adjustment of $1,161,474 for Evergy Missouri Metro.

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[33] Ex. 105, p. 16, lines 13-19.
[34] Ex. 105, pp. 15-17.

<u>Issue 7: Did Evergy act imprudently by virtue of its MEEIA programs' incentive to non-incentive costs ratios?</u>

OPC witness Dr. Marke has recommended a disallowance based on Evergy's MEEIA programs' incentive to non-incentive cost ratios. Staff acknowledges this is a valid concern and will continue to closely monitor this issue going forward. However, Staff does not agree that the recommended disallowance is warranted for the review period. Dr. Marke's recommended disallowance is simply premised on arbitrarily reducing non-incentive costs to achieve a "50/50 split" of incentive and non-incentive costs. Staff is of the opinion that this is a policy issue that deserves a more robust discussion, prospectively, outside of a prudence review, to more appropriately determine how to address it.[35]

WHEREFORE, Staff prays that the Commission issue its order finding in favor of Staff on each of the issues set forth herein and making such further orders as the Commission deems just and reasonable.

Respectfully submitted,

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[35] Ex. 103, p. 3.

<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 for parties of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 4th day of June, 2021.

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