BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Ninth Prudence Review of	)	
Costs Subject to the Commission-Approved	)	**File No. EO-2020-0262**
Fuel Adjustment Clause of Evergy Missouri	)	
West, Inc. d/b/a Evergy Missouri West	)	

REPORT AND ORDER

Issue Date: May 4, 2022

Effective Date: June 3, 2022

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Ninth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Evergy Missouri West, Inc. d/b/a Evergy Missouri West	))))	**File No. EO-2020-0262**

PARTIES & APPEARANCES

EVERGY MISSOURI METRO AND EVERGY MISSOURI WEST:

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OFFICE OF THE PUBLIC COUNSEL:

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STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Jeff Keevil, Staff Counsel, and **Travis Pringle**, Staff Counsel, Missouri Public Service Commission, 200 Madison Street, Suite 800, P.O. Box 360, Jefferson City, Missouri 65102.

DEPUTY CHIEF REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

This case involves the Ninth Prudence Review of the Fuel Adjustment Clause (FAC) of Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy West) and the Third Prudence Review of the FAC of Evergy Metro, Inc. d/b/a Evergy Missouri Metro (Evergy Metro)(collectively, “Evergy”). For Evergy West, Staff filed its *Notice of Start of Ninth Prudence Review* in File No. EO-2020-0262 on March 2, 2020, advising that it intended to audit Evergy West’s FAC period June 1, 2018, through November 30, 2019. For Evergy Metro, Staff filed its *Notice of Start of Third Prudence Review* in File No. EO-2020-0263 on March 2, 2020, advising that it intended to audit Evergy Metro’s FAC period July 1, 2018, through December 31, 2019. The Commission gave notice of the filings, acknowledged the parties to the companies’ most recent general rate case were automatically parties in this matter under Commission Rule 20 CSR 4240-20.090(17)(A), and granted intervention to other entities. On August 28, 2020, Staff filed a report in each case setting out the findings of its audits.

According to Staff’s report, it found no imprudence during its Evergy West FAC audit but did find costs associated with the retirement of its Sibley generating station should not have been included and recommended a disallowance of $1,039,649 for the FAC amount. Evergy West agreed to remove these costs and seek recovery through another mechanism.[1]

Staff also found no imprudence with regard to Evergy Metro’s FAC audit for the period at issue. After filing its report, Staff discovered some fuel residual costs included

[1] Ex. 102, Fortson Corrected Direct, p. 3.

during Accumulation Period 8 that led to a recommended disallowance of $15,492. Evergy Metro agreed to the disallowance and it was included in a *Partial Stipulation and Agreement* filed on December 18, 2020. Staff did not review demand response programs as part of its audits. Staff stated that it believed those programs were more appropriately addressed in the Missouri Energy Efficiency Investment Act (MEEIA) prudence reviews.[2]

On September 8, 2020, the Office of the Public Counsel (OPC) and the Sierra Club requested a hearing in File Nos. EO-2020-0262 and EO-2020-0263. The Commission set a procedural schedule including the filing of written testimony, a list of issues to be decided by the Commission and an evidentiary hearing. On September 22, 2020, the Commission consolidated the Evergy Metro and Evergy West cases with File No. EO-2020-0262 being the lead case.

Over the course of hearing preparation, settlement was reached on a number of issues. The *Partial Stipulation and Agreement*, filed on December 18, 2020, and approved on January 20, 2021, concerned (1) the removal of Sibley retirement costs from Evergy West's FAC calculation; (2) Evergy Metro's removal of Montrose fuel residual costs from its FAC calculations; and (3) Evergy Metro's removal of the Missouri retail Montrose costs from its FAC calculations. This agreement covered the disallowances originally recommended by Staff.

A *Unanimous Partial Stipulation and Agreement*[3] was filed on January 15, 2021, and approved on January 27, 2021. This agreement settled issues raised by the Sierra Club concerning Evergy's self-scheduling practices.

[2] *See* File Nos. EO-2020-0227 and EO-2020-0228.

[3] Although the agreement was titled as a "unanimous" agreement, there are parties that did not sign the agreement.

Evergy, Staff, and OPC filed a *Unanimous Partial Stipulation and Agreement*[4] on January 27, 2021, the first day of hearing. This agreement committed Evergy to model plans that do not include the assumed sale of excess capacity in future integrated resource plan (IRP) filings. The agreement was approved by the Commission on February 10, 2021.

A *List of Issues, Order of Witnesses, Order of Opening Statements, Order of Cross-Examination and Joint Stipulation of Facts* was filed on January 19, 2021. Only three issues as set out by the parties remain for Commission decision. The remaining issues are:

1. Was Evergy imprudent in the management of its demand response programs?

2. Was it imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs?

3. If it was imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs, is it more appropriate to address the imprudent implementation of the programs through an ordered FAC adjustment or an ordered demand side investment mechanism (DSIM) adjustment?

A hearing was held on January 27-28, 2021. The parties filed initial briefs on March 1, 2021, and reply briefs on March 15, 2021.

[4] Although the agreement was titled as a "unanimous" agreement, there are parties that did not sign the agreement.

II. General Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Evergy Metro and Evergy West are Missouri certificated electrical corporations as defined by Section 386.020(15), RSMo (Supp. 2021), and are authorized to provide electric service to portions of Missouri.

2. The Commission first authorized an FAC for Aquila, Inc. (Aquila) effective July 5, 2007, in File No. ER-2007-0004. The Commission approved the acquisition of Aquila, by Great Plains Energy, Inc. and subsequently Aquila was renamed KCP&L Greater Missouri Operations Company (GMO). The Commission approved the merger of Great Plains Energy, Inc. with Westar Energy, Inc. in File No. EM-2018-0012 and subsequently, GMO was renamed Evergy Missouri West, Inc., d/b/a Evergy Missouri West.[5] Since its initial approval in 2007, the Commission has approved continuation of the FAC, with modifications, in Evergy West's general rate cases -- File Nos. ER-2009-0090, ER-2010-0356, ER-2012-0175, ER-2016-0156 and ER-2018-0146.

3. This is Staff's ninth prudence review for Evergy West's FAC. The prudence review covers Evergy West's twenty-third, twenty-fourth, and twenty-fifth six-month accumulation periods ranging from June 1, 2018, through November 30, 2019.[6] Staff analyzed items affecting Evergy West's fuel costs, purchased power costs, net emission

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[5] Hereafter, "Evergy West" is used to refer to the current company and its predecessors.

[6] The twenty-third accumulation period started June 1, 2018, and ended November 30, 2018. The twenty-fourth accumulation period started December 1, 2018, and ended May 31, 2019. The twenty-fifth accumulation period started June 1, 2019 and ended November 30, 2019. Ex. 102, Schedule BJF-d3, pp. 4, 5, and 8.

costs, transmission costs, off-system sales revenues, and renewable energy credit revenues.[7]

4. The Commission first authorized an FAC for Evergy Metro, f/k/a Kansas City Power & Light Company[8] in File No. ER-2014-0370. Since then, the Commission has approved continuation of Evergy Metro's FAC, with modifications, in the company's general rate cases -- File Nos. ER-2016-0285 and ER-2018-0145.[9]

5. For each accumulation period, Evergy's Commission-approved FACs allow Evergy to recover from (if the actual net energy costs exceed) or refund to (if the actual net energy costs are less than) its ratepayers 95% of its Missouri actual net energy costs less net base energy cost.[10] Evergy accumulates variable fuel costs, purchased power costs, transmission costs, and net emissions costs minus off-system sales revenues and renewable energy credit revenues during six-month accumulation periods.[11] Each six-month accumulation period is followed by a twelve-month recovery period when 95% of the calculated amount (including the monthly application of interest) is recovered from or returned to ratepayers through an increase or decrease in the fuel adjustment rate during the twelve-month recovery period.[12] Because the fuel adjustment rate rarely, if ever, will exactly match the required offset, Evergy's FACs are designed to true-up the difference between the revenues billed and the revenues authorized (including the monthly application of interest) for collection during recovery periods.[13] Any disallowance

[7] Ex. 102, Schedule BJF-d3, p. 5.
[8] Hereafter, "Evergy Metro" is used to refer to the current company and its predecessor.
[9] Ex. 102, Schedule BJF-d5, p. 4.
[10] Ex. 102, Schedule BJF-d3, pp. 6-7, and Schedule BJF-d5, pp. 6-7. (All terms and formulas are defined in Evergy's FACs at Evergy Missouri West's 4th Revised Sheet No. 127.12, 1st Revised Sheet No. 127.23, and 2nd Revised Sheet no. 127.23, and Evergy Missouri Metro's 1st Revised Sheet No. 50.31, 2nd Revised Sheet No. 50.31 and 3rd Revised Sheet No. 50.31.
[11] Ex. 102, Schedule BJF-d3, pp. 6-7, and Schedule BJF-d5, pp. 6-7.
[12] Ex. 102, Schedule BJF-d3, pp. 6-7, and Schedule BJF-d5, pp. 6-7; and Ex. 203, Mantle Surrebuttal, p. 8.
[13] Ex. 102, Schedule BJF-d3, pp. 6-7, and Schedule BJF-d5, pp. 6-7.

the Commission orders as a result of a prudence review will also include interest at Evergy's short-term interest rate and will be accounted for as an item of cost in a future filing to adjust the fuel adjustment rate.[14]

III. General Conclusions of Law

A. Subsection 386.020(15), RSMo (Supp. 2021) defines "electrical corporation" as including:

> every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, . . . owning, operating, controlling or managing any electric plant . . . .

B. Section 386.266, RSMo (Supp. 2021) gives the Commission authority to authorize an electrical corporation, such as Evergy Metro and Evergy West, to utilize a periodic rate adjustment mechanism, such as the FAC. Subsection 386.266.1 requires that such mechanisms allow the utility an opportunity to recover "prudently incurred fuel and purchased power costs, including transportation."

C. Evergy Metro's approved FAC Tariff Sheets in effect during the prudence review period are set out in Kansas City Power and Light Company, P.S.C. MO. No. 7[15] as follows below their respective time frames:[16]

July 1, 2018 through December 5, 2018	**December 6, 2018 through December 31, 2019**
Second Revised Sheet No. 50.11	Original Sheet No. 50.21
Second Revised Sheet No. 50.12	Original Sheet No. 50.22
Second Revised Sheet No. 50.13	Original Sheet No. 50.23
Second Revised Sheet No. 50.14	Original Sheet No. 50.24
Second Revised Sheet No. 50.15	Original Sheet No. 50.25

[14] Ex. 102, BJF-d6, pp. 6-7
[15] Tariffs adopted by Evergy Missouri Metro at Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro, P.S.C. MO. No. 7, Original Sheet No. 0.1, effective October 7, 2019.
[16] Ex. 102, Fortson Corrected Direct, Schedule BJF-d5, p. 6.

July 1, 2018 through December 5, 2018	**December 6, 2018 through December 31, 2019**
Second Revised Sheet No. 50.16	Original Sheet No. 50.26
Second Revised Sheet No. 50.17	Original Sheet No. 50.27
Second Revised Sheet No. 50.18	Original Sheet No. 50.28
Second Revised Sheet No. 50.19	Original Sheet No. 50.29
	Original Sheet No. 50.30

D. Evergy West's Commission-approved FAC Tariff Sheets in effect during the prudence review period are as set out in KCP&L Greater Missouri Operations Company, P.S.C. MO. No. 1,[17] as follows below their respective time frames:[18]

June 1, 2018 through December 5, 2018	**December 6, 2018 through November 30, 2019**
3rd Revised Sheet No. 127.1	Original Sheet No. 127.13
3rd Revised Sheet No. 127.2	Original Sheet No. 127.14
3rd Revised Sheet No. 127.3	Original Sheet No. 127.15
3rd Revised Sheet No. 127.4	Original Sheet No. 127.16
7th Revised Sheet No. 127.5	Original Sheet No. 127.17
3rd Revised Sheet No. 127.6	Original Sheet No. 127.18
3rd Revised Sheet No. 127.7	Original Sheet No. 127.19
3rd Revised Sheet No. 127.8	Original Sheet No. 127.20
3rd Revised Sheet No. 127.9	Original Sheet No. 127.21
5th Revised Sheet No. 127.10	Original Sheet No. 127.22
1st Revised Sheet No. 127.11	

E. Evergy's approved FAC tariffs allow the utility to recover 95% of fuel and purchased power costs through the FAC mechanism.[19]

F. To ensure that only "prudently incurred" costs are recovered, Subsection 386.266.5(4), RSMo (Supp. 2021) requires that any authorized periodic rate adjustment mechanism provide for:

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[17] Tariffs adopted by Evergy Missouri West at Evergy Missouri West, Inc. d/b/a Evergy Missouri West, P.S.C. MO. No. 1, 2nd Revised Sheet No. 0.1, effective October 7, 2019.
[18] Ex. 102, Fortson Corrected Direct, Schedule BJF-d5, p. 6.
[19]Tariffs adopted by Evergy Missouri Metro at Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro, P.S.C. MO. No. 7, Second Revised Sheet No. 50.12 and Original Sheet No. 50.22, effective December 6, 2018; And tariffs adopted by Evergy Missouri West at Evergy Missouri West, Inc. d/b/a Evergy Missouri West, P.S.C. MO. No. 1, 3rd Revised Sheet No. 127.2 and Original Sheet No. 127.14, effective December 6, 2018.

> prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate.

G. Commission Rule 20 CSR 4240-20.090(7) also requires that such prudence reviews occur no less frequently than at eighteen-month intervals.

H. Evergy West's and Evergy Metro's tariffs also provide that as part of its FAC, there "shall be prudence reviews of costs" that "shall occur no less frequently than at 18-month intervals,"[20] which is consistent with Commission Rule 20 CSR 4240-20.090(7) and Subsection 386.266.5(4) RSMo.

I. In determining whether a utility's conduct was prudent, the Commission will judge that conduct 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.[21]

J. Subsection 393.150.2, RSMo (2016) states that the utility bears the burden of proving that a requested rate is just and reasonable.

K. Although the utility always bears the burden of proof, the Commission will, in the absence of adequate contrary evidence, presume that a utility's spending is prudent. This presumption of prudence affects who has the burden of proceeding, but does not change the burden of proof.[22]

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[20] Evergy Missouri West Tariff P.S.C. Mo No. 1, Original Sheet No. 127.22; and, Evergy Missouri Metro Tariff P.S.C. Mo No. 1 Original Sheet No. 50.30.

[21] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Com'n*, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997).

[22] *Office of Pub. Counsel v. Mo. Pub. Serv. Com'n*, 409 S.W.3d 371, 379 (Mo. banc 2013).

L. The Missouri Supreme Court further affirmed the Commission's rationale in stating,

> The PSC ordinarily applies a presumption of prudence in determining whether a utility reasonably incurred its expenses. This presumption of prudence will not survive a showing of inefficiency or improvidence that creates serious doubt as to the prudence of an expenditure. If such a showing is made, the presumption drops out and the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.[23]

M. Evergy West and Evergy Metro had Commission-approved tariffs in effect that set out three demand response programs – Residential Programmable Thermostat, Business Programmable Thermostat, and Demand Response Incentive (DRI).[24]

N. The Residential Programmable Thermostat Program found in Sections 23.24 and 15.22, of Evergy Metro and Evergy West's applicable tariffs, respectively, state, in part:

> PURPOSE:
>
> The voluntary Programmable Thermostat Program is intended to help reduce system peak load and thus defer the need for additional capacity. The program accomplishes this by cycling the Participants' air conditioning unit(s) or heat pump(s) temporarily in [an Evergy] coordinated effort to limit overall system peak load.

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[23] *Spire Missouri, Inc. v. Pub. Serv. Com'n*, 618 S.W.3d 225, 232 (Mo. banc 2021) (internal citations and quotation marks omitted).

[24] Exhibit No. 204, Evergy Metro Tariff, P.S.C. Mo. No. 2, Section 22.13 Programmable Thermostat (Frozen), Sheet Nos. 1.93 and 1.94 (both effective January 1, 2016); Section 23.08 Business Programmable Thermostat, Sheet Nos. 2.07 (effective June 3, 2018) and 2.08 (effective April 1, 2016); Section 23.09 Demand Response Incentive, Sheet Nos. 2.09 through 2.14 (all effective June 3, 2018); Section 23.24 Residential Programmable Thermostat, Sheet Nos. 2.32 (effective June 3, 2018) and 2.33 (effective April 1, 2016); Evergy West Tariff, P.S.C. Mo. No. 1, Section 15.08 Business Programmable Thermostat, Sheet Nos. R-84 (effective June 3, 2018) and R-85 (effective June 3, 2018); Section 15.09 Demand Response Incentive, Sheet Nos. R-86 through R-90 (all effective June 3, 2018); and Section 15.22 Residential Programmable Thermostat, Sheet Nos. R-107 (effective June 3, 2018) and R-108 (effective April 1, 2016).

CURTAILMENT SEASON:

The curtailment Season will extend from June 1 to September 30.

CURTAILMENT LIMITS:
[Evergy] may call a curtailment event any weekday, Monday through Friday, excluding Independence Day and Labor Day, or any day officially designated as such. A curtailment event occurs whenever the thermostat is being controlled by [Evergy] or its assignees. [Evergy] may call a maximum of one curtailment event per day per Participant, lasting no longer than four (4) hours per Participant. [Evergy] is not required to curtail all Participants simultaneously and may stagger curtailment events across participating Participants.

CURTAILMENT OPT OUT PROVISION:

A Participant may opt out of one air conditioning cycling curtailment event each month during the Curtailment Season by notifying [Evergy] at any time prior to or during a curtailment event. Participant may opt out of an ongoing event via their smart phone or the thermostat itself. . . .

NEED FOR CURTAILMENT:

Curtailments may be requested for operational or economic reasons. Operational curtailments may occur when any physical operating parameter(s) approaches a constraint on the generation, transmission or distribution systems or to maintain [Evergy's] capacity margin requirement. Economic reasons may include any occasion when the marginal cost to produce or procure energy or the price to sell the energy in the wholesale market is greater than a customer's retail price.

O. The Business Programmable Thermostat Program found in Sections 23.08 and 15.08 of Evergy Metro and Evergy West's applicable tariffs, respectively, state, in part:

PURPOSE:

The voluntary Business Programmable Thermostat Program is intended to help reduce system peak load and thus defer the need for additional capacity. The program accomplishes this by cycling the Participants' air conditioning unit(s) temporarily in [an Evergy] coordinated effort to limit overall system peak load.

* * *

CURTAILMENT SEASON:

The curtailment Season will extend from June 1 to September 30.

CURTAILMENT LIMITS:

[Evergy] may call a curtailment event any weekday, Monday through Friday, excluding Independence Day and Labor Day, or any day officially designated as such. A curtailment event occurs whenever the thermostat is being controlled by [Evergy] or its assignees. [Evergy] may call a maximum of one curtailment event per day per Participant, lasting no longer than four (4) hours per Participant. [Evergy] is not required to curtail all Participants simultaneously and may stagger curtailment events across participating Participants.

CURTAILMENT OPT OUT PROVISION:

A Participant may opt out of one air conditioning cycling curtailment event each month during the Curtailment Season by notifying [Evergy] at any time prior to or during a curtailment event. Participant may opt out of an ongoing event via their smart phone or by the thermostat itself. . . .

NEED FOR CURTAILMENT:

Curtailments may be requested for operational or economic reasons. Operational curtailments may occur when any physical operating parameter(s) approaches a constraint on the generation, transmission or distribution systems or to maintain [Evergy's] capacity margin requirement. Economic reasons may include any occasion when the marginal cost to produce or procure energy or the price to sell the energy in the wholesale market is greater than a customer's retail price.

P. The Demand Response Incentive Program found in Sections 23.09 and 15.09 of Evergy Metro and Evergy West's applicable tariffs, respectively, state, in part:

PURPOSE:

The voluntary program is designed to reduce customer load during peak periods to help defer future generation capacity additions and provide for improvements in energy supply. The maximum recurring monthly and/or annual bill credit will not cause the Programs' cost to be higher than the benefits realized from the avoided capacity.

* * *

PROGRAM PROVISIONS:

This Program may be executed by either of two methods:

<u>Traditional Demand Response Incentive (DRI)</u>

A participant with load curtailment potential during the Curtailment Season and designated Curtailment hours enrolls directly with [Evergy] or [Evergy]-approved Aggregator. The Participant agrees to curtail load at or below their contracted Firm Power Level during a[n Evergy] Curtailment Event. The Participant or Aggregator receives an event notice from [Evergy] and they may manually execute their facility curtailment plan to fulfill their contract. The Participant receives financial incentives from June through September for Program participation and payments for successful hourly event performance or penalties for non-performance. Participants are notified in advance of scheduled curtailment events and may opt not to participate in an event, but [Evergy] reserves the right to assess financial penalties and or contract termination for non-participation as described in Participant's individual contract.

<u>Automated Demand Side Management (ADSM)</u>

A Participant with load curtailment potential during the Curtailment Season and designated Curtailment hours enrolls directly with [Evergy] or a[n Evergy]-approved Aggregator. [Evergy] then utilizes the Participant's building energy management system to measure, analyze and report near real time curtailable load capacity. This two-way communication system creates a near real-time bridge between the Program and the Participant's curtailable equipment. The Participant or their Aggregator receives the curtailment event notice from [Evergy] then sends the signal to the energy management system to control individual equipment loads to meet necessary kW load reduction. The Participant may override this automated signal before or during an event. Participant receives a financial incentive for participation, but no per event payment. Any limitations on event over-rides or associated penalties are detailed in the Participant's individual contract. The Aggregator delivering the ADSM method will provide specific terms of participation in Participant's Agreement that may vary from the following Program Provisions.

CURTAILMENT SEASON:

. . . curtailment season period of June 1 to September 30. The Curtailment Season directly contracted Customers will exclude Independence Day and Labor Day, or the days celebrated as such. . . .

CURTAILMENT LIMITS:

The Customer contract shall specify the Maximum Number of Curtailment Events for which the Customer agrees to curtail load during each Curtailment Season. For customers contracting directly with [Evergy], the Maximum Number of Curtailment Events shall be at least one (1) but shall not exceed ten (10) separate occurrences per Curtailment Season. Each Curtailment Event shall be no more than eight consecutive hours and no more than one occurrence will be required per day. The Company may call a Curtailment Event no more than three consecutive days per calendar week. The cumulative hours of Curtailment Hours per Customer shall not exceed eighty (80) hours in any Curtailment Season. . . .

* * *

NEED FOR CURTAILMENT:

Curtailments can be requested for operational or economic reasons. Operational curtailments may occur when any physical operating parameters approach becoming a constraint on the generation, transmission, or distribution systems, or to maintain [Evergy's] capacity margin requirement. Economic curtailment may occur when the marginal cost to produce or procure energy, or the opportunity to sell the energy in the wholesale market, is greater than the Customer's retail price.

IV. Findings of Fact – Issue 1

Issue 1: Was Evergy imprudent because it did not utilize its demand response programs to minimize FAC costs?[25]

In addition to the above Findings of Fact, the Commission makes the following findings.

6. Supply-side resources are resources used to generate electricity to meet customer needs.[26] Demand-side resources, on the other hand, usually provide incentives to the customers to reduce or change their electricity demands.[27]

[25] This is a restatement combining the first two issues remaining on the parties' issues list.
[26] Ex. 203, Mantle Surrebuttal, pp. 4-5.
[27] Ex. 203, Mantle Surrebuttal, pp. 4-5.

7. Demand response programs target customers' usage at specific times.[28] Demand response programs have value because they enable the utility to reduce its load at system peak, thus reducing the amount of supply-side resources needed.[29] Demand response programs can also be used to reduce the energy purchased at peak times when market prices tend to be more expensive.[30] Reducing the amount of energy purchased when market prices are more expensive will reduce the energy costs that are recovered through the FAC.[31]

8. Southwest Power Pool (SPP) Schedule 11 fees are charges by the SPP to recover costs associated with the new transmission system investment in the SPP footprint.[32] A portion of the SPP Schedule 11 fees are recovered from customers by Evergy through the FAC.[33] Reducing peak energy purchased may reduce the amount of SPP fees.[34]

9. Evergy has two kinds of demand response programs -- programmable thermostats for both residential and commercial customers, and the Demand Response Incentive (DRI) for commercial customers.[35]

10. Under the programmable thermostat programs, Evergy gave free programmable thermostats to customers in exchange for the ability to reduce the customer's air conditioning load from June through September for up to four consecutive hours.[36] The tariffs effective at the time,[37] allowed Evergy Metro and Evergy West to call

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[28] Ex. 203, Mantle Surrebuttal, p.5.
[29] Ex. 203, Mantle Surrebuttal, p. 5.
[30] Ex. 203, Mantle Surrebuttal, p. 5.
[31] Ex. 203, Mantle Surrebuttal, pp. 5-6.
[32] Ex. 203, Mantle Surrebuttal, pp. 20-21; and Tr. pp. 254-255.
[33] Ex. 202, Mantle Direct, pp. 20-22.
[34] Ex. 203, Mantle Surrebuttal, pp. 20-22; and Tr. pp. 254-255.
[35] Ex. 203, Mantle Surrebuttal, p. 6.
[36] Ex. 203, Mantle Surrebuttal, p. 6.
[37] Ex. 204, Applicable Demand Response Tariff Sheets.

one programmable thermostat event per day, any Monday through Friday, excluding the July 4th and Labor Day holidays, for residential and business thermostats, during the months of June through September during the prudence review periods of Evergy Metro and Evergy West.[38]

11. Evergy Metro and Evergy West bill customers through a separate line item on customers' bills titled "DSIM Charge" to recover estimated energy efficiency program costs through rates approved by the Commission.[39]

12. Evergy Metro customers were billed DSIM charges totaling $41.6 million and Evergy West customers, $42.2 million from April 1, 2018 through December 31, 2019.[40]

13. The programmable thermostat program was designed for a maximum of 15 events per annual curtailment season (June 1 through September 30).[41] Customers who signed agreements when receiving the thermostats agreed to a maximum of 15 events per season.[42]

14. The purpose of the residential and business programmable thermostat programs is the same. According to Evergy's tariffs these programs are meant "to help reduce system peak load and thus defer the need for additional capacity. The program accomplishes this by cycling the Participants' air conditioning unit(s) or heat pump(s) temporarily in [an Evergy] coordinated effort to limit overall system peak load."[43]

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[38] Tariff Sections 23.24 and 15.22 Residential Programmable Thermostat of Evergy Metro and Evergy West; and Sections 23.08 and 15.08 Business Programmable Thermostat of Evergy Metro and Evergy West

[39] Ex. 104, Luebbert Surrebuttal, Schedules JL-s2, p. 10 and JL-s3 p. 10.

[40] Ex. 104, Luebbert Surrebuttal, Schedules JL-s2, p. 7 and JL-s3, p. 7.

[41] Ex. 4, File Rebuttal, pp. 4-5.

[42] Ex. 8, Schedule BF-s1 (Brian File, Rebuttal Testimony, EO-2020-0227 and EO-2020-0228), p. 12.

[43] Sections 23.24 and 15.22 Residential Programmable Thermostat of Evergy Metro and Evergy West's applicable tariffs and Sections 23.08 and 15.08 Business Programmable Thermostat of Evergy Metro and Evergy West's applicable tariffs.

15. The DRI program is for larger electric customers that have the ability to reduce their usage by at least 25 kilowatts.[44] In exchange for curtailing their power usage, the large customers are given an upfront financial incentive for participating and some of the participants may also receive payment for successful performance. The DRI program also includes a penalty for customers when the curtailment amount contracted by the customer is not achieved. The DRI program is designed for Evergy to call a maximum of ten events of up to eight hours each per annual curtailment season (June 1 through September 30).[45]

16. The purpose of Evergy's DRI program is "to reduce customer load **during peak periods** to help defer future generation capacity additions and provide for improvements in energy supply."[46]

17. Evergy Metro achieved cumulative annual demand savings for its business and residential programmable thermostat and DRI programs of 7,000 kW compared to the planned annual demand savings of 9,138 kW for April 1, 2018 through December 31, 2019. The cumulative annual demand savings achieved by Evergy West were 10,249 kW compared to the planned annual demand savings of 24,901 kW. Both Evergy Metro and Evergy West fell short of their planned megawatt savings for their demand response programs.[47]

18. The tariffs authorizing the demand response programs state that "[c]urtailments may be requested for operational **or economic reasons**."[48]

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[44] Ex. 203, Mantle Surrebuttal, p. 6.
[45] Ex. 203, Mantle Surrebuttal, p. 6; Tariff Sections 23.09 and 15.09 Demand Response Incentive of Evergy Metro and Evergy West.
[46] Sections 23.09 and 15.09 Demand Response Incentive of Evergy Metro and Evergy West's applicable tariffs. Emphasis added.
[47] Ex. 104, Luebbert Surrebuttal, Schedule JL-s2, p. 23 and JL-s3, p. 23.
[48] Ex. 203, Mantle Surrebuttal, p. 7, citing to Evergy tariff sheets. (Emphasis added).

19. In 2018, Evergy called the following programmable thermostat events in both service areas simultaneously:[49]

June 28, 2018 (4:00 p.m. to 6:00 p.m.)

August 6, 2018 (4:00 p.m. to 6:00 p.m.)

20. In 2018, Evergy called a test event and the following DRI program events in both service areas simultaneously:[50]

June 28, 2018 (3:00 p.m. to 6:00 p.m.)

August 6, 2018 (4:00 p.m. to 7:00 p.m.)

21. In 2019, Evergy called the following programmable thermostat events in both service areas simultaneously:[51]

July 18, 2019 (4:00 p.m. to 6:00 p.m.)

July 19, 2019 (4:00 p.m. to 6:00 p.m.)

Aug 6, 2019 (4:00 p.m. to 6:00 p.m.)

Aug 7, 2019 (4:00 p.m. to 6:00 p.m.)

Aug 12, 2019 (4:00 p.m. to 6:00 p.m.)

22. In 2019, Evergy called a test event and the following DRI program events in both service areas simultaneously:[52]

July 18, 2019 (2:00 p.m. to 5:00 p.m.)

Aug 7, 2019 (2:00 p.m. to 4:00 p.m.)

23. Brian File, on behalf of Evergy, testified that customer trust could be harmed and more customers may opt out of the curtailment events if more events were called.[53]

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[49] Tr. Vol. 2, p. 147.
[50] Tr. Vol. 2, p. 147.
[51] Ex. 9, Schedule BF-s2, p. 14; and Exhibit 8, BF-s1, p. 12; and Tr. Vol. 2, pp. 147-148.
[52] Tr. 2, pp. 147-148.
[53] Ex. 4, File Rebuttal, pp. 8-9

However, Evergy's support for this assertion was limited to three data points showing that the total amount of participation (the length of time a customer participated in a curtailment event) was 6% lower in MEEIA Program Year (PY) 2016 when 8 events were called versus PY 2017 and PY 2018 when 3 and 2 events were called respectively.[54]

24. The Commission-approved stipulation and agreement in File Nos. EO-2019-0132 and EO-2019-0133[55] required Evergy Metro and Evergy West to each call, as part of their MEEIA Cycle 2 extension, five programmable thermostat events from June through September 2019.[56]

25. Because of the sharing mechanism in the FAC tariff, Evergy is only able to keep 5% of the benefits achieved when curtailment events are called for economic reasons. The other 95% of any reductions in fuel and purchased power costs are flowed through the FAC clause to customers.[57]

26. Evergy also offers a demand response program, the Market Based Demand Response Program,[58] that gives large customers the opportunity to receive market settlement fees from the SPP.[59] The Market Based Demand Response Program is not a MEEIA program and the customers cannot receive benefits through this program for events called to meet the MEEIA demand response program.[60] This program allows the

[54] Ex. 4, File Rebuttal, p. 9; and Ex. 203, Mantle Surrebuttal.
[55] Ex. 15, *Order Approving Stipulation and Agreement,* Exhibit 1 *Stipulation and Agreement Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA 3 Case*.
[56] Ex. 15, *Order Approving Stipulation and Agreement,* Exhibit 1 *Stipulation and Agreement Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA 3 Case,* paragraph 7.b.; and Ex. 8, File Rebuttal EO-2020-0277 and 0288, Schedule BF-s1, p. 12.
[57] Ex. 203, Mantle Surrebuttal, p. 8.
[58] The tariff sheets implementing this program became effective during this FAC prudence period on December 6, 2018.
[59] Ex. 203, Mantle Surrebuttal, p. 8.
[60] Ex. 203, Mantle Surrebuttal, p. 8.

participating customers to reduce their bills by allowing Evergy to call targeted curtailment events when market prices are high.[61]

27. Due to the design of Evergy's demand response program, most of the costs are up-front, with minimal additional cost for calling more DRI events.[62] Almost any time an additional event is called, energy will be saved and costs reduced regardless of whether or not it ends up being a peak pricing period.[63] Specifically, any time the cost of energy is more than the cost of the demand response event, calling an event would save energy costs.[64]

28. Calling a demand response event when the cost of energy on the SPP market is above the incremental cost of calling the event itself will save ratepayers money.[65]

V. Conclusions of Law – Issue 1

In addition to the above conclusions of law, the Commission makes the following conclusions.

Q. The programmable thermostat programs and the DRI program tariffs specifically provide that "[c]urtailments may be requested for operational or economic reasons."[66]

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[61] Ex. 203, Mantle Surrebuttal, pp. 8-9.
[62] Tr. pp. 187-188; Ex. 203, Mantle Surrebuttal, p. 11.
[63] Tr. pp. 187-188; and 278-279.
[64] Ex. 203, Mantle Surrebuttal, pp. 14-15.
[65] Tr. pp. 278-279; Tr. p. 191; Ex. 203, Mantle Surrebuttal, p. 14-15.
[66] Exhibit 204 Applicable Demand Response Tariff Sheets (Need for Curtailment section of the programmable thermostats and DRI tariffs).

R. The DRI tariff states the purpose of the program is to "reduce customer load during peak periods to help defer future generation capacity additions and provide for improvements in energy supply."[67]

VI. Decision – Issue 1

Evergy had tariffed demand response programs that authorized it to easily call curtailment events. The up-front costs of these programs were being recovered through the DSIM. Yet, Evergy called only two programmable thermostat events and two DRI events in the 2018 curtailment season, and five programmable thermostat events and five DRI events in the 2019 curtailment season. In the summer of 2019, Evergy was compliant with the approved stipulation and agreement setting out that Evergy would call five programmable thermostat events for its MEEIA Cycle 2 extension, but this does not alter Evergy's responsibility to reduce energy costs to its customers when it is prudent to do so.

Further, Evergy knew that calling additional curtailment events outside of its MEEIA program requirements would save customers energy costs because it also had a Market Based Demand Response Program separate from MEEIA that allowed participating customers to reduce their energy costs by allowing Evergy to call targeted curtailment events when market prices were high.[68] This program demonstrates that Evergy was aware it could use events called through its demand response programs but separate from MEEIA to reduce energy costs.[69]

[67] Exhibit 204 Applicable Demand Response Tariff Sheets (Purpose Section of the DRI program tariff); and Ex. 4, File Rebuttal, p. 4.
[68] Ex. 203, Mantle Surrebuttal, p. 8.
[69] Ex. 203, Mantle Surrebuttal, pp. 8-9.

Evergy argues that the operation and implementation of the demand side mechanism is done under the terms of the MEEIA programs and that they implemented the programs in compliance with the MEEIA program design. Thus, Evergy claims its actions, or failure to act, was not imprudent. However, the tariffs authorizing Evergy's demand response programs state that "[c]urtailments may be requested for operational **or economic reasons**."[70] And while the purpose set out in the tariffs for the programmable thermostat programs specifically say that the programs are intended to reduce "system peak load," the DRI program's purpose was different. The DRI program was designed "to reduce customer load during peak **periods**". Thus, the tariffs for the DRI program contemplates more than only a reduction in system peak load.

Regardless of the MEEIA goals, the tariffs provided for curtailment events for economic reasons and for reducing customer load during multiple periods. Additionally, Evergy knew it had other programs that allowed it to use curtailment events to reduce targeted customers' energy costs. Further, the upfront costs of the programs were already paid for through the DSIM and very little additional expense was required to call more events. Therefore, Evergy should have used its demand response programs to reduce energy costs for its customers, regardless of whether the MEEIA goals had been met. By not acting to save money for its customers where it easily could have by calling more programmable thermostat and DRI curtailment events, Evergy acted imprudently.

[70] Ex. 203, Mantle Surrebuttal, p. 7, citing to Evergy tariff sheets. (Emphasis added).

VII. Findings of Fact – Issue 2

Issue 2: Is it more appropriate to address the imprudent implementation of the demand response programs through an ordered FAC adjustment or through the demand side investment mechanism (DSIM) adjustment?

In addition to the above Findings of Fact, the Commission makes the following findings.

29. Evergy has a demand response mechanism that it could have utilized to reduce fuel and purchased power costs.[71]

30. Reduction in fuel and purchased power expenses would have flowed back to customers through the FAC.[72] This is because Evergy recovers 95% of its fuel and purchased power expenses from customers through the FAC's fuel adjustment rate. [73]

31. A DSIM is a recovery mechanism to account for demand-side investments or lost sales due to promoted energy use reduction. The costs of the implementation of the MEEIA programs are recovered through the DSIM.[74]

32. As determined above, Evergy's failure to utilize its programmable thermostat and DRI demand response programs to reduce fuel and purchased power costs was an imprudent decision.

33. Because Evergy participates in the SPP markets, all energy used to serve its retail customers is purchased through the SPP energy market.[75]

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[71] Sections 23.08 and 15.08 Business Programmable Thermostat of Evergy Metro and Evergy West's tariffs, respectively.
[72] Tr. p. 179.
[73] Ex. 102, Schedule BJF-d3, pp. 6-7, and Schedule BJF-d5, pp. 6-7.
[74] Tr. pp. 199-200.
[75] Ex. 203, Mantle Surrebuttal, pp. 5-6 and 27.

34. Energy market purchase prices are generally positively correlated with the load in the SPP market, so that as the demand for energy increases, so do the energy market prices.[76]

35. The fuel costs, short term capacity sales revenues, and the SPP Schedule 11 transmission fees, are energy related costs that flow through the FAC not through the DSIM of the MEEIA programs.[77]

36. There were no short-term capacity sales contracts available to be made during the FAC audit period.[78]

37. Savings from the events actually called in 2018 and 2019 by Evergy have flowed through the FAC.[79]

38. Commission Rule 20 CSR 4240-20.093(11) requires that the Staff conduct prudence reviews of an electric utility's costs for its DSIM no less frequently than every twenty-four months. Staff's reports document its review of the prudence of Evergy Metro's and Evergy West's MEEIA Cycle 2 Program Costs, annual energy and demand savings, throughput disincentive (TD), interest for the Review Period, and the over/under collection from the Commission approved MEEIA Cycle 1 Performance Incentive.[80] This MEEIA prudence review for Evergy Metro's and Evergy West's DSIM program costs in File No. EO-2021-0227 addresses costs that flow through the DSIM.

VIII. Conclusions of Law – Issue 2

In addition to the above Conclusions of Law, the Commission makes the following conclusions.

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[76] Ex. 203, Mantle Surrebuttal, p. 27.
[77] Ex. 203, Mantle Surrebuttal, pp. 5-6.
[78] Ex. 3, Carlson Rebuttal, pp. 16-17.
[79] Tr. 3, p. 252, Ex. 104, Luebbert Surrebuttal Confidential, p. 6.
[80] Ex. 203, Mantle Surrebuttal, pp. 7-, Ex. 102, Fortson Corrected Direct, Schedule BJF-d4, p. 6 and Schedule BJF-d6, p. 6.

S. An FAC is a tariff provision that allows the utility to recover (or refund after true-up) "prudently incurred fuel and purchased power costs, including transportation."[81]

T. The DSIM is authorized in Section 393.1075, RSMo. This section allows the Commission to authorize the recovery of demand-side investments, but is separate from the FAC, which is an interim energy charge or periodic rate adjustment granted by the Commission under the authority in Section 386.266, RSMo.

IX. Decision – Issue 2

The Commission found that Evergy acted imprudently in the management of its demand response programs. The question now is whether it is appropriate to order an FAC adjustment? Or is it more appropriate to order that adjustment in the MEEIA prudence audit case, File No. EO-2021-0227? The Commission concludes that imprudent energy costs that run through the FAC should be adjusted in the FAC, and imprudent MEEIA costs should be adjusted through the DSIM.

Evergy has at its disposal demand response mechanisms, the programmable thermostat and the DRI programs, which could have reduced fuel and purchased power costs. Evergy did not, however, utilize these programs to reduce fuel costs and the Commission has determined this was an imprudent decision.

Evergy argues that the operation and implementation of the programmable thermostat and DRI programs are done under the terms of the MEEIA programs and, thus, should only be evaluated for prudence in relation to how it implemented the programs in compliance with the MEEIA program design. Whether the MEEIA program was implemented prudently, as that program was designed, is a question for the MEEIA case. However, whether Evergy should have used the demand-side management

[81] Section 386.266, RSMo (2016).

programs that it had put in place to reduce customers' energy costs is appropriately addressed in this FAC prudence review.

The fuel and purchased power costs, and the SPP Schedule 11 transmission fees, are energy related costs that flow through the FAC, not through the DSIM. The MEEIA prudence review addresses the implementation and resource fees of the MEEIA, not the energy costs that are appropriately run through the FAC. Thus, keeping the fuel costs and associated fees in the FAC and keeping the MEEIA implementation and program costs in the DSIM is appropriate.

The Commission finds that resolution of allegations of imprudence regarding SPP fee reduction, energy costs, and bi-lateral capacity sales are properly addressed under the FAC prudence review, File No. EO-2020-0262. The Commission finds that these three allegations of imprudence all implicate increases and decreases in Evergy's fuel and purchased-power costs, which are authorized under Section 386.266, RSMo. Accordingly, after a full review of the facts and the law, the Commission finds these allegations of imprudence are best addressed in this case, File No. EO-2020-0262.

The disputed issues about Evergy's capacity sales contracts with regard to the FAC and the use of capacity sales in modeling the IRP were settled by the stipulation and agreement approved by the Commission on February 10, 2021. Additionally, there were no short-term capacity sales contracts available. Therefore, even though capacity sales affect the energy costs run through the FAC, the Commission has approved the agreement of the parties with regard to modeling in the IRP and need not discuss that issue further. Further, as there were no capacity sales available, Evergy was not imprudent for failing to enter into those contracts.

X. Findings of Fact – Issue 3

Issue 3[82] – What is the amount of the imprudent FAC disallowance?

In addition to the above Findings of Fact, the Commission makes the following findings.

39. Evergy should have known that calling a demand response event when the cost of energy on the SPP market is above the incremental cost of the event itself will save ratepayers money.[83] A reasonable company would have sought to maximize savings for its ratepayers by calling all curtailment events available to it.[84]

40. Evergy knew that the curtailment period ran from June 1 through September 30 of each year.[85]

41. Evergy knew that it could call 15 programmable thermostat program events lasting up to four hours and ten DRI curtailment events lasting up to eight hours over each four-month curtailment season.[86]

42. Evergy knew that the applicable tariffs stated the purpose of the thermostat program was to reduce overall system peak load, while the purpose of the DRI program was to reduce customer load during peak periods.[87] Evergy also knew that the applicable tariffs stated that curtailment events could be called for economic reasons as well as operational reasons.[88]

43. The Commission's approval of the stipulation and agreement for the extension of MEEIA Cycle 2 set a requirement for Evergy to call five events in 2019 to be

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[82] This issue is not specifically set out in the issues lists of the parties, but the Commission finds it necessary to decide.
[83] Tr. pp. 278-279; Tr. p. 191; Exhibit 203, Mantle Surrebuttal, p. 14.
[84] Exhibit 204, Applicable Demand Response Tariff Sheets, pp. 2, 4, 12, 14, 17, and 21.
[85] Exhibit 204, Applicable Demand Response Tariff Sheets, pp. 2, 4, 12, 14, 17, and 21.
[86] Tr. pp. 105. 115-116, and 138.
[87] Ex. 204, Applicable Demand Response Tariff Sheets.
[88] Ex. 204, Applicable Demand Response Tariff Sheets.

in compliance with MEEIA demand response requirements. No tariff changes were implemented to reduce the maximum program events.[89]

44. Typically energy load is shifted from the period the event is called to a different period of time that is differently priced.[90]

45. Evergy had the expertise to make reasonable predictions about the best times each month to call curtailment events, given its available information including, historical pricing data showing what the highest prices were during the same period in previous years, past and current weather events and forecasts, market pricing trends, and other information that it uses to call curtailment events.[91] By using the available data to set reasonable thresholds for calling an event, and adjusting those thresholds according to current weather forecasts, the utility would then only have to look at the SPP day-ahead market to see when prices rise above the threshold as Evergy does when predicting system load peaks.[92]

46. Part of Evergy's review process to call events included review of hourly forecasts, Day Ahead market prices, real time market prices, SPP load forecasts, SPP load and pricing trends, weather forecasts, and SPP congestion and generation issues.[93]

47. The DRI program allows Evergy to call ten curtailment events that can last for as long as eight hours each for a total of 80 hours of possible curtailment annually for 2018 and 2019.[94]

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[89] Ex. 15, *Order Approving Stipulation and Agreement,* Exhibit 1 *Stipulation and Agreement Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA 3 Case.*
[90] Tr. 2, pp. 129-130.
[91] Tr. pp. 120 and 279-280; and Ex. 13, File Nos. EO-2020-0227 and EO-2020-0228, Staff Data Request 42.
[92] Tr. p. 90.
[93] Ex. 104, Luebbert Surrebuttal, Schedule JL-s5, p. 6.
[94] Ex. 204, Applicable Demand Response Tariff Sheets.

48. The residential and business thermostat programs allow Evergy to call 15 curtailment events that can last for as long as four hours each for an annual total of 60 hours of possible curtailment annually for 2018 and 2019.[95]

49. It is unlikely that anyone could predict each and every day and hour to call curtailment events that would completely maximize customer energy savings. However, that does not preclude creating some, if not the maximum, customer savings for every curtailment event called.[96]

50. Customer savings do not depend on calling an event on the highest cost day or hour. Customer energy cost savings occur by calling a curtailment event when market prices are above the cost of the demand response programs.[97]

51. A reasonable company would know that if the market price of energy was above the cost of the demand response program, a majority of which have zero costs, it could save energy costs for its customers by calling a curtailment event.[98]

52. The incremental cost of calling additional events under the DRI and the residential and business thermostat programs is small in comparison to the overall cost of the programs. Due to the incentive structure of the MEEIA programs, the costs of administering the DSIM programs are already included in the rates Evergy collects from customers. Thus, additional events could have been called with minimal incremental program costs.[99]

53. A company acting prudently would try to maximize the energy savings benefits from its demand response programs.[100]

[95] Tr. 3, pp. 281-282.
[96] Tr. 3, pp. 277-278.
[97] Tr. p. 276.
[98] Tr. p. 275.
[99] Tr. 2, pp. 191-192; and Ex. 104, Luebbert Surrebuttal, pp. 4-5.
[100] Tr. p. 286.

54. The day ahead locational marginal price (DA LMP) is used for planning purposes, while the real time locational marginal price (RT LMP) is the actual price paid for energy. Evergy bids its load in the SPP Market on a day-ahead basis. The RT LMP can be influenced by a number of factors creating extreme differences from the DA LMP for the same hour. Evergy's decisions, including whether to call a curtailment event or not, effect whether there is a total benefit or cost in the SPP settlement of each hour.[101]

55. Evergy provided an example of the Evergy West energy price variance between DA LMP and RT LMP for the hours ending 3:00 p.m. through 5:00 p.m., August 6, 2019. The 3:00 p.m. DA LMP was $58.41/MWh and the RT LMP was $1,125.22/MWh; the 4:00 p.m. DA LMP was $72.99/MWh and the RT LMP was $118.07/MWh; and the 5:00 p.m. DA LMP was $65.44/MWh and the RT LMP was $25.34/MWh. If Evergy West had called an event resulting in reduction of 45.93 MW for the hours ending 3:00 p.m. through 5:00 p.m. on August 6, 2019, according to Evergy's example, the savings would have been over $69,000 for that single event. A shift in load from the hour ending 3:00 p.m. to 4:00 p.m. would have resulted in a savings of $1,007.15/MWh ($1,125.22-$118.07) or from 4:00 p.m. to 5:00 p.m. would have resulted in a savings of $92.73/MWh ($118.07-$25.34).[102]

56. The five highest monthly SPP DA LMPs for Evergy Metro and Evergy West transmission nodes for the prudence review period are as set out in Exhibit 13.

57. The day ahead prices will likely not exactly match actual prices, but if the market is functioning, it is highly likely that the day ahead prices will be close to the actual prices.[103]

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[101] Ex. 2, Carlson Rebuttal Confidential, pp. 19-20.
[102] Ex. 2, Carlson Rebuttal, p. 19.
[103] Tr. p. 286.

58. Evergy's response to Staff Data Request 42 (Exhibit 13) includes hour ending (HE) designations and the DA LMP for both the Evergy Metro and Evergy West load nodes.[104]

59. Staff workpapers rely on the Evaluation Management and Verification (EM&V) Program Year 2018 Databook reduction in megawatts associated with each demand response program (residential and business programmable thermostats and DRI) event called by Evergy Metro and Evergy West.[105]

60. The EM&V process avoided capacity cost value is provided by Evergy as a given and the benefits customers receive are deemed and perceived. Thus, the realized benefits are never actually quantified so there is no way to know what the realized benefits actually are. Both Staff and OPC rely on this data in formulating their MEEIA and FAC adjustments.[106]

61. Using its conservative method, OPC calculated that Evergy's customers paid $313,056 (95 percent of the total $329,534 energy sales adjustment) more for energy than it should have during the prudence review period.[107] OPC's calculated imprudent energy costs totaled $160,174 for Evergy Metro and $169,360 for Evergy West. OPC calculated increased SPP Schedule 11 fees of $161,123 for Evergy Metro and $270,175 for Evergy West based on Evergy's testimony to correct the year results.[108]

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[104] Ex. 13.
[105] Ex. 104, Luebbert Surrebuttal Confidential, Schedule JL-s4, pp. 78-79.
[106] Tr. 2, pp. 196-197; Ex. 104, Luebbert Surrebuttal Confidential, Schedule JL-s4, pp. 78-79; and Ex. 202, Mantle Direct, p. 21.
[107] Ex. 203, Mantle Surrebuttal, p. 12.
[108] Ex. 202, Mantle Direct, p. 4-6 and 21; and Ex. 203 Mantle Surrebuttal, p. 2.

62. OPC witness, Mantle has over 35 years of utility regulatory experience. She retired from the Missouri Public Service Commission as Manager of its Energy Unit before being employed by OPC and is a registered Professional Engineer in the state of Missouri.[109]

63. Evergy did not quantify an adjustment for energy costs because of the difficulty in estimating the amount. Many assumptions and variables affect the calculation. Evergy focused on reducing the system annual peak and did not attempt to calculate energy cost savings.[110]

64. SPP Schedule 11 fees are allocated among SPP transmission customers based on load ratio share, the ratio of an entity's average of their 12 monthly peaks to the average of SPP's twelve monthly peaks expressed as a percentage. Evergy's load ratio share percentage from the previous year is applied to the current year Schedule 11 fees.[111]

65. Only a percentage of SPP Schedule 11 fees are included in the Actual Net Energy Costs (ANEC) since Evergy's FACs contain only a percentage of the Schedule 11 fees as a transmission costs.[112]

66. It is difficult to predict Evergy monthly peaks for June and September because of the changing seasons. The typical Evergy Metro and Evergy West system peaks are in July or August.[113]

67. In calculating its energy sales imprudence adjustments, OPC used the only data that was available.[114]

[109] Ex. 202, Mantle Direct, pp. 1-2, and Schedule LMM-D-1.
[110] Tr. 2, p. 131.
[111] Ex. 3, Carlson Rebuttal, p. 21
[112] Ex. 202, Mantle Direct, p. 5.
[113] Tr. 2, p.87.
[114] Ex. 203, Mantle Surrebuttal, p. 2.

68. The imprudence amount calculated by OPC utilized the hourly market prices from Exhibit No. 13 multiplied by the amount of demand response megawatts available in those 20 hours.[115]

69. OPC relied on Evergy's response to Staff Data Request 42 (Exhibit 13) and Staff workpapers in the MEEIA cases (File Nos. EO-2021-0227 and EO-2021-0228) to calculate its energy sales and SPP Schedule 11 prudence adjustments. The discovery response included the five highest SPP day-ahead market priced hours at Evergy Metro and Evergy West SPP transmission nodes for the summer of 2018 and 2019 (June through September). OPC multiplied each of those hourly prices by the reduction in megawatts that would result from calling a demand response program event.[116]

70. OPC calculated its proposed energy cost disallowances using the five hours with the highest DA LMPs of each of the four program months. Those 20 hours would only represent a third of thermostat program possible event hours and only 25 percent of DRI possible event hours that Evergy could have called. OPC based its calculation of the energy cost disallowance on the five highest DA LMP hours of each month because that was the data available.[117]

71. OPC's imprudence adjustments were not based on calling the full amount of events allowed under the demand response programs.[118] OPC calculated its energy savings imprudence adjustments for 2018 and 2019 based on fewer than the maximum events and at fewer than the maximum hours allowed per event.[119]

[115] Ex. 203, Mantle Surrebuttal, p. 18.
[116] Tr. 3, p. 273; and Ex. 202, Mantle Direct, p. 21.
[117] Ex. 203, Mantle Surrebuttal, p. 12.
[118] Tr. 3, p. 276.
[119] Tr. 3, p. 282.

72. Comparison of the hours of the curtailment events Evergy called to the five most expensive DA LMP hours of each month (the 20 hours each year used by OPC to calculate its proposed adjustment) indicates that the curtailment event called on July 18, 2019, from 4:00 p.m. to 6:00 p.m. included two of the highest DA LMP five hours in July of 2019.[120]

73. The same information Evergy utilized to predict peak load before calling an event for operational reasons is the information Evergy would need to review to predict when to call a curtailment event for economic reasons.[121]

74. Staff proposed disallowances for imprudence based on energy costs in the MEEIA cases. These disallowances were based on the reduction in megawatts resulting from a called event multiplied by the DA LMP for each hour where the DA LMP was above the average price of the highest 20 hours for 2018 and 2019.[122]

75. The Staff's impact analysis of the failure to call additional events utilized historical data to measure missed opportunities that a reasonable person would have attempted to achieve.[123]

76. Staff supported OPC's estimates for the amount of customer harm.[124]

77. OPC's proposed prudence adjustments to be included on line 10 of the Evergy FAC tariff sheets represent adjustments to the total costs that would have been included in the calculation of ANEC shown on line 1 of the Evergy FAC tariff sheets.[125] The appropriate jurisdictional allocation factors, the 95 percent FAC sharing mechanism,

[120] Ex. 8, Schedule BF-s1, p. 12; Ex. 13; Ex. 104, Luebbert Surrebuttal confidential, p. 11; and Tr. 3, p. 253.
[121] Tr. 3, pp. 279-280.
[122] Ex. 104, Luebbert Surrebuttal Confidential, Schedule JL-s4, pp. 78-79.
[123] Ex. 104, Luebbert Surrebuttal Confidential, p. 5.
[124] Ex. 104, Luebbert Surrebuttal Confidential, p. 15.
[125] Ex. 202, Mantle Direct, pp. 4-5.

and the transmission percentage to any SPP Schedule 11 costs are all included in the FAC calculation before line 10 and would therefore need to be applied to OPC's SPP Schedule 11 prudence adjustment so that only what the customers paid through Evergy's FACs is returned.[126]

78. OPC's FAC imprudence adjustment recommendations do not include interest that would be determined at the time the rate change is implemented.[127] Interest will need to be applied from the time that the costs were incurred through the month that the adjustment will begin to be returned back to customers as required by Section 386.266.5, RSMo.[128]

79. The decision by Evergy whether or not to call a curtailment event was based on information Evergy had at the time and that it was analyzing for making operational decisions as well as economic decisions.[129]

XI. Conclusions of Law – Issue 3

In addition to the above Conclusions of Law, the Commission makes the following conclusions.

U. The Commission's prudence standard, affirmed by the appellate court in *Associated Natural Gas,*[130] is:

> A utility's costs are presumed to be prudently incurred. However, the presumption does not survive "a showing of inefficiency or improvidence[131]." Where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the

[126] Ex. 200, Mantle Direct Highly Confidential, pp. 4-5.
[127] Ex. 202, Mantle Direct, pp. 5-6.
[128] Ex. 200, Mantle Direct Highly Confidential, p. 5.
[129] Ex. 104, Luebbert Surrebuttal Confidential, p. 5; and Tr. 3, p. 279.
[130] *State ex rel. Associated Natural Gas Co. v. Public Service*, 954 S.W.2d 520 (WD 1997).
[131] Improvidence is the state of being improvident. Improvident is defined as not provident, or not foreseeing and providing for the future. Online Merriam Webster Dictionary www.merriam-webster.com/dictionary/improvident.

> applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.
>
> The 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.[132]

V. Section 386.266.5(2) and (4), RSMo, states that the Commission may approve rate schedules for interim energy charges or periodic rate adjustment mechanisms provided "that the adjustment mechanism set forth in the schedules . . . [i]ncludes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds; . . . [and] includes provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate."

W. Evergy is only entitled to recover its "reasonable and prudent costs of delivering cost-effective demand-side programs."[133]

X. It would be inconsistent with the statutory authority provided by Section 393.130.1 for the Commission to make a decision on the recoverability of costs based upon a prudency analysis without reference to the detrimental impact of those practices to the ratepayers.[134]

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[132] *Associated Natural Gas* at 528-529, internal editing and citations omitted.
[133] Section 393.1075, RSMo.
[134] *Associated Natural Gas* at 530.

Y. Evergy's approved FAC tariffs allow the utility to recover 95% of fuel and purchased power costs through the FAC mechanism.[135]

XII. Decision – Issue 3

The parties did not include the calculation of the disallowance amounts as a separate issue on their issues list. However, after determining that an imprudent action or omission has occurred, the Commission must next decide whether there was harm caused to the customers by that imprudent decision and, if so, the amount of that harm must be determined.

Evergy should have known that calling a demand response event when the cost of energy on the SPP market is above the incremental cost of the event itself will save ratepayers money.[136] According to OPC, based on this fact alone, Evergy should have sought to maximize savings for its ratepayers by calling all curtailment events available to it. The company also knew that the curtailment period ran from June 1 through September 30.[137] And, the company knew that it could call 15 residential programmable thermostat program events over the curtailment season.[138] OPC goes on to extrapolate from these facts that in order to call all 15 events over the four-month period, the company would reasonably plan to call four events in each of June, July, and August, and three events in September.

After finding that Evergy was imprudent by not calling more events, the next step is to determine when the events should have been called. A reasonable company would

[135]Tariffs adopted by Evergy Missouri Metro at Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro, P.S.C. MO. No. 7, Second Revised Sheet No. 50.12 and Original Sheet No. 50.22, effective December 6, 2018; And tariffs adopted by Evergy Missouri West at Evergy Missouri West, Inc. d/b/a Evergy Missouri West, P.S.C. MO. No. 1, 3rd Revised Sheet No. 127.2 and Original Sheet No. 127.14, effective December 6, 2018.
[136] Tr. pp. 278-279; Tr. p. 191; Exhibit 203, Mantle Surrebuttal, p. 14.
[137] Exhibit 204, pp. 2, 4, 12, 14, 17, and 21.
[138] Tr. pp. 105. 115-116, and 138.

have tried to call events during the peak demand periods of each month or when the SPP day ahead prices were higher or at least when prices were higher than the incremental costs. As Ms. Mantle testified, even though the company would not be expected to call curtailment events on every one of the peaks for each month, or at the hours of the anticipated highest energy costs, it should have still been able to make some reasonable predictions given its available information including, historical pricing data showing what the highest prices were during the same period in previous years, weather forecasts, and market pricing trends.[139] Armed with this information, as OPC suggests, a reasonable company could have set threshold values for when to call an event based on when the demand peaks typically fall in the month and when energy prices were anticipated to be higher. By using the available data to set reasonable thresholds for calling an event, the utility would then only have to look at the projected prices in its modeling or the SPP day-ahead market prices to see when prices rise above the threshold as Evergy already does when predicting load peaks.[140] Only the company has access to the information necessary to do the modeling that Evergy would have done to make these decisions. However, OPC presented the next best alternative, a conservative approach, to determine the amount of the disallowance.

OPC suggests that, assuming Evergy would have done a good job of setting and adjusting its thresholds for calling events, it could have reasonably been expected to call events during the periods of each month that corresponded to the times with the highest prices for energy. OPC recognized that it would not be reasonable to expect Evergy to hit each of the 15 to 20 most expensive hours in each month (assuming events would be

[139] Tr. pp. 120 and 279-280; and Exhibit 13.
[140] Tr. 2, p. 90.

called for all of the eligible DSIM program hours over the four months), therefore it adopted the conservative position that Evergy would have called events for at least some of the highest hours in each month. Therefore, because OPC had limited data available to it, OPC's calculation of the imprudent amount is limited to the five highest cost hours of each month as set out in the DA LMP.

When asked during hearing, Evergy did not provide alternative energy cost adjustments or discrete challenges to OPC's energy cost adjustments. The fact that there is no right amount for the energy cost adjustments because of the many assumptions that must be made does not eliminate the ability, or the need, for adjustments to be made. The Commission, in part, is relying on the knowledge and expertise of OPC's witness, Ms. Mantle, and her explanation of how the energy cost adjustments were calculated. Using this conservative method, OPC calculated that Evergy's customers paid $313,056 more for energy than it should have during the prudence review period.[141] Staff supports OPC's estimates for the amount of customer harm. The Commission also agrees that given the limited data available, and the near impossibility of determining an exact actual cost savings, the method that was presented to the Commission by OPC is the appropriate method for determining the energy cost imprudence disallowance.

The explanation for OPC's SPP Schedule 11 adjustments were less detailed, although relying in part on the same data as the energy cost adjustments (Exhibit 13 and Staff workpapers). The Commission found that a nexus would exist between the SPP determination of Evergy load ratio share percentages applied to SPP Schedule 11 fees and the successful calling of events to reduce peak demand during June through September, the months that the demand response programs are in effect. However, little

[141] Ex. 203, Mantle Surrebuttal, p. 12.

if any narrative was provided to support Staff's SPP Schedule 11 workpaper that OPC relied on. The Commission was not able to determine how or if the proposed SPP Schedule 11 adjustments considered the difficulty in predicting June and September peaks and calling events to effectively impact Evergy's load ratio share in those months. The Commission cannot determine the reasonableness of the adjustments based on the evidence provided.

Evergy argues that its purpose in having the demand response programs was to reduce overall system peak and not to reduce monthly peaks.[142] Evergy points to the tariff language for the programmable thermostat programs that state the purpose of the residential programmable thermostat program is "to help reduce system peak load and thus defer the need for additional capacity."[143] However, the DRI program tariff contains different language under its purpose statement.[144] For the DRI program, the purpose says it is intended "to help reduce customer load during peak **periods** to help defer future generation capacity additions and provide for improvements in energy supply."[145] This language contemplates reducing multiple monthly peaks and not just the system peak.

Evergy also argues that Staff and OPC are merely using hindsight to determine their recommended disallowances. In determining whether the decisions to not call more events were prudent, the Commission did not use hindsight. Rather, the Commission looked at the information that Evergy had or should have had at the time it made the decision. However, to determine if harm was done, and what the amount of the

[142] Tr. pp. 129-136.
[143] Exhibit 204, Sheet 2.32 Purpose, Sheet R-84 Purpose, Sheet R-86 Purpose, and Sheet R-107 Purpose.
[144] Exhibit 204, Sheet 2.09 Purpose and Sheet R-86 Purpose.
[145] Exhibit 204, Sheet 2.09 Purpose and Sheet R-86 Purpose. (Emphasis added.)

disallowance should be, the Commission must look back to the facts and data from the time the decisions were made.

The Commission notes that two of the 2019 highest DA LMP hours coincided with an event that Evergy called and these hours are included in OPC's disallowance calculation. It is reasonable to still include these amounts because the total adjustment represents a very conservative calculation for only 20 hours per year of the 60 to 80 hours that could have been called at little to no additional cost.[146] And, as OPC has pointed out, if Evergy had called all the events available, it would have likely saved customers energy costs with every curtailment event even if the event was not called on a monthly peak. Thus, by using this conservative approach and limiting the disallowance adjustment to only the 20 hours for which data is available, the Commission finds this is a reasonable adjustment.

The Commission finds that due to Evergy's imprudent decision not to utilize its demand response programs to save energy costs for its customers, those customers paid $313,057 more for energy than they should have during the FAC prudence review period. The Commission will order Evergy to refund this amount to its customers with interest as required by Section 386.266.5(4), RSMo, during its next FAC adjustment.

THE COMMISSION ORDERS THAT:

1. Evergy Metro shall refund the imprudence adjustment amount of $152,165 and Evergy West shall refund the amount of $160,892 plus interest as required by Section 386.266.5(4), RSMo, during their next FAC adjustments.

[146] Tr. 3, p. 253.

2. This report and order shall become effective on June 3, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Dippell, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 4th day of May, 2022.

Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

May 4, 2022

File/Case No. EO-2020-0262

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

Morris L Woodruff

Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.