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
In the Matter of the Third Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Evergy Metro, Inc., d/b/a Evergy Missouri Metro	))))	File No. EO-2020-0263

APPLICATION FOR REHEARING OF
EVERGY MISSOURI METRO AND EVERGY MISSOURI WEST

Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("Evergy Missouri Metro") and Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy Missouri West") (collectively, "Evergy" or "Company"), pursuant to Section 386.500 RSMo. and 20 CSR 4240-2.160, files its application for reconsideration and/or rehearing of the Report and Order ("Order") issued on May 4, 2022. In support of its application, the Company states as follows:

I. Legal Principles That Govern Applications for Rehearing.

1. All decisions of the Commission must be lawful, with statutory authority to support its actions, as well as reasonable. State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 734-35 (Mo. en banc 2003). An order's reasonableness depends on whether it is supported by substantial and competent evidence on the record as a whole. State ex rel. Alma Tel. Co. v. PSC, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). An order must be neither arbitrary, capricious, nor unreasonable, and the Commission must not abuse its discretion. Id.

2. In a contested case, the Commission is required to make findings of fact and conclusions of law pursuant to Section 536.090. Deaconess Manor v. PSC, 994 S.W.2d 602, 612 (Mo. App. W.D. 1999). For judicial review to have any meaning, it is a minimum requirement

that the evidence, along with the explanation thereof by the Commission, make sense to the reviewing court. State ex rel. Capital Cities Water Co. v. PSC, 850 S.W.2d 903, 914 (Mo. App. W.D. 1993). In order for a Commission decision to be lawful, the Commission must include appropriate findings of fact and conclusions of law that are sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. State ex rel. Noranda Aluminum, Inc. v. PSC, 24 S.W.3d 243, 246 (Mo. App. W.D. 2000); State ex rel. Monsanto Co. v. PSC, 716 S.W.2d 791, 795 (Mo. en banc 1986); State ex rel. A.P. Green Refractories v. PSC, 752 S.W.2d 835, 838 (Mo. App. W.D. 1988); State ex rel. Fischer v. PSC, 645 S.W.2d 39, 42-43 (Mo. App. W.D. 1982), cert. denied, 464 U.S. 819 (1983).

3. In State ex rel. GS Technologies Operating Co. v. PSC, 116 S.W.3d 680, 691-92 (Mo. App. W.D. 2003), the Court of Appeals described the requirements for adequate findings of fact when it stated:

> While the Commission does not need to address all of the evidence presented, the reviewing court must not be "left 'to speculate as to what part of the evidence the court found true or was rejected.'" … In particular, the findings of fact must be sufficiently specific to perform the following functions:
>
> > [F]indings of fact must constitute a factual resolution of the matters in contest before the commission; must advise the parties and the circuit court of the factual basis upon which the commission reached its conclusion and order; must provide a basis for the circuit court to perform its limited function in reviewing administrative agency decisions; [and] must show how the controlling issues have been decided[.]
>
> [St. Louis County v. State Tax Comm'n, 515 S.W.2d 446, 448 (Mo. 1974), citing Iron County v. State Tax Comm'n, 480 S.W.2d 65 (Mo. 1972)].

4. The Commission cannot simply recite facts on which it bases a "conclusory finding," and must rather "fulfill its duty of crafting findings of fact which set out the basic facts from which it reached its ultimate conclusion" in a contested case. Noranda, 24 S.W.3d at 246.

"Findings of fact that are completely conclusory, providing no insights into how controlling issues were resolved are inadequate." Monsanto, 716 S.W.2d at 795.

5. A review of the evidentiary record in this case demonstrates that the Report and Order fails to comply with these principles in certain respects and that rehearing should be granted as to the issues discussed below.

II. Issues on Which Rehearing Should be Granted.

A. The Report and Order is Unlawful, Unsupported by Competent and Substantial Evidence on the Whole Record, Arbitrary, Capricious and Otherwise Unreasonable in that the Commission's Order Finds the Company Was Imprudent For Not Calling All The Curtailment Events Available To It When the Commission Had Previously Ordered the Company to Call Five Curtailment Events During the Summer of 2019.

6. The Order is unlawful and unreasonable when it orders that 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." (Order, p. 42)

7. The Order errs as a matter of law when it found "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." (Order, p. 23)

8. The Order is premised upon an incorrect finding that "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. A reasonable company would have sought to maximize savings for its ratepayers by calling all curtailment events available to it." (Order, p. 28) This finding ignores the fact on February 15, 2019, the predecessor companies

of Evergy Missouri Metro and Evergy Missouri West, Kansas City Power & Light Company ("KCP&L) and KCP&L Greater Missouri Operations Company ("GMO"), entered into a Stipulation and Agreement with Staff, Public Counsel, the Missouri Department of Economic Development—Division of Energy, and Renew Missouri Advocates in File Nos. EO-2019-0132 and EO-2019-0133. This unanimous stipulation recommended that the Commission approve a MEEIA Cycle 2 Extension Plan to allow MEEIA Cycle 2 to continue beyond the scheduled expiration date of March 31, 2019, under certain specified conditions. ("MEEIA 2 Extension Stipulation") One of those conditions was as follows:

> 7. With the following exceptions, the total MEEIA 2 Plan Energy (kWh) and Demand (kW) savings targets will increase 25% (see Exhibit B)
> * * *
> b. For the Programmable Thermostat Program, The Company will call five demand response events per jurisdiction during the summer of 2019 (Jun- Sept). Company will present data to the DSM advisory group following the 2019 season detailing the customer participation rates (e.g. opt-out percentage, participation duration) during each demand response event conducted in 2019. (Emphasis added)

9. In the Commission's *Order Approving Stipulation and Agreement* in that case, the Commission found that the Stipulation met the provisions of the MEEIA statute and approved the Stipulation. It also ordered that "its signatories shall comply with its terms."[1] The effect of this Order was that Evergy as well as Staff, and Public Counsel were ordered to comply with the terms of the Stipulation which clearly stated that the Company should call five demand response events per company during the Summer of 2019.

10. The Commission's finding that the Company should have called "all curtailment events available to it" (Order, p. 26) ignored the Company's obligation to follow a Commission-

[1] Tr. 233; Ex. 15, *Order Approving Stipulation and Agreement*, p. 3, File Nos. EO-2019-0132 and EO-2019-0133. (Feb. 27, 2019) (Official Notice taken at Tr. 229-30).

approved stipulation for Evergy to call five (5) curtailment events in the summer of 2019. Instead, the Order and the adopted disallowances assumed that Evergy could have called the maximum of 15 curtailment events in the summer of 2019, even though the Commission had ordered the Company to comply with the terms of a Stipulation and Agreement which stated that Evergy will call five demand response events per company during the Summer of 2019.

11. The Commission should grant rehearing on its decision that the Company's compliance with the specific requirements of the Commission's Report and Order in EO-2019-0132 and EO-2019-0133 is imprudent – as a matter of law. Specifically, the Commission should rehear the issue in light of its own Finding of Fact on Issue 1 in this case, "The Commission-approved stipulation and agreement in File Nos. EO-2019-0132 and EO-2019-0135 ***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." (Emphasis added) (Order, p. 20) Not only did the Commission order the specific number of events to be called, but also the specific timeframe by which they were to be called, from June through September, 2019.

12. Notwithstanding the provisions of the stipulation which required Evergy to call five demand response events in the summer of 2019, OPC witness Lena Mantle argued in this proceeding that Evergy should have called 15 curtailment events for its Residential Programmable Thermostat program, and 10 curtailment events for the commercial and industrial Demand Response Initiative program.[2] The Commission Order relied heavily upon the testimony of Ms. Mantle.

[2] Ex. 203, Mantle Surrebuttal, p. 14.

13. OPC witness Lena Mantle's made no attempt at hearing to reconcile her proposed disallowance with the language of Paragraph 7(b) of the MEEIA Cycle 2 Extension Stipulation. See Tr. 225-37.

14. At the time that OPC witness Lena Mantle recommended that the Commission find Evergy imprudent for not calling more curtailment events, Ms. Mantle was unaware of the provision in the MEEIA 2 Extension Stipulation that required Evergy to call five demand response events for its residential program.[3] As a result, Ms. Mantle was unaware that her office and the Commission Staff had recommended that the Commission order Evergy to call five demand response events during the Summer of 2019.[4] She was therefore unaware that Evergy had been ordered to comply with the terms of the Stipulation.

15. The MEEIA 2 Extension Stipulation approved by Commission supports the Company's view that the Commission set a specific number of "demand response events per jurisdiction" between June, 2019 through September 2019. The Commission's order in this case seeks to convert the specific number of demand response events into a floor. But the parties to the MEEIA 2 Extension Stipulation never intended five programmable thermostat demand response events to be a minimum number. No evidence was produced by any party that the signatories to the MEEIA 2 Extension Stipulation intended or believed that Paragraph 7(b) created a floor or base number of demand response calls. To interpret Paragraph 7(b) as creating a base or floor number of demand response events is contrary to the plain and ordinary meaning of the words of the MEEIA 2 Extension Stipulation. It is not reasonable to believe that the sophisticated stakeholders involved in the "extensive negotiations" to reach the "interdependent" terms of the

[3] Tr. 225-26, 237.
[4] Id.

MEEIA 2 Extension Stipulation – believed or intended that the five demand response events required under the Paragraph 7(b) of the MEEIA 2 Extension Stipulation was a floor. It was not.

16. The Order nevertheless adopted Ms. Mantle's calculations of the proposed disallowance which assumed that the Company should have called the maximum number of curtailments permitted by its tariffs, ignoring the Commission's previous Order to comply with the Stipulation's requirement to call five demand curtailment events during the Summer of 2019.

17. The proposed findings of fact and conclusions of law are unlawful in that it finds the Company acted imprudently specifically for its undisputed compliance with a Commission order. The Commission's Order also lacks sufficient findings of fact for such an errant interpretation in that it does not find that the MEEIA 2 Extension Stipulation is ambiguous as to the number demand response events to be called. The Company believes that no such ambiguity exists and that the plain and ordinary meaning of the words contained in Paragraph 7(b) of the MEEIA 2 Extension should be recognized.

B. The Report and Order is Unlawful, Unsupported by Competent and Substantial Evidence on the Whole Record, Arbitrary, Capricious and Otherwise Unreasonable in that the Company Followed its Commission-Approved Tariffs and Focused Upon Reducing the Peak Demand Rather than Energy Savings.

18. The Company followed the parameters of the demand response programs established in its tariffs, and complied with the terms of the Commission's *Order Approving Stipulation and Agreement* in File Nos. EO-2019-0132 and EO-2019-0133 (Feb. 27, 2019). Evergy's demand response programs approved in its tariffs were designed to maximize reduction of the annual system peak demand because that is where the greatest value is derived.

19. The Commission found that: "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 curtailments event, Evergy acted imprudently."

20. The Order also states at page 22:

> 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. 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. (footnotes omitted)

21. Evergy believes this statement in the Order was meant to suggest that Evergy knew there was money saving opportunities for customers in the market from its experience in the Market Based Demand Response ("MBDR") Program. However, this conclusion fails to consider that: 1) MBDR Program is a tariff that allows customers an additional opportunity beyond Evergy's MEEIA demand response programs to reduce their electric costs through the customer's elective participation to participate in the wholesale Southwest Power Pool ("SPP") market; however, a customer's participation is done with Evergy as the conduit to the SPP market; 2) MBDR is structured such that Evergy receives compensation for any lost retail revenue for participation and has complete visibility to the wholesale market activity that the customer elects to engage so that any grid impact is minimized or dual participation is prevented; 3) Evergy does not determine when a customer's MBDR load is invoked; rather the customer determines whether or not it wishes to participate on any specific day and the customer sets the parameters to which they will participate, then SPP determines load reduction calls to the customer based on SPP market needs and 4) no customers have elected to participate in the MBDR program since the tariff was approved in 2018. See Evergy Missouri Metro Tariff, P.S.C.Mo. No. 7, Fifth Revised Sheet No. 26, Availability Section,

22. The Commission's decision lacks sufficient (any) findings of fact to support the legal analysis of "considering that the company had to solve its problem prospectively rather than in reliance on hindsight." *State ex rel. Associated Natural Gas Company*, 954 S.W.2d at 529. The Commission provides the following conclusory statement, "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." (Order, P. 41). The Commission does not provide what specific facts or information that Evergy supposedly had or should have had which rendered its decisions imprudent. This finding is not based upon competent and substantial evidence and is arbitrary and capricious.

C. The Report and Order is Unlawful, Unsupported by Competent and Substantial Evidence on the Whole Record, Arbitrary, Capricious and Otherwise Unreasonable in that the Order Adopted the Disallowances Proposed by Public Counsel Which Were Based Upon Flawed Analysis, Inadequate Supporting Data And Incorrect Assumptions.

23. The Order relies heavily upon the analysis of OPC witness Lena Mantle. (Order p. 33, 40) However, her analysis was flawed, based upon inadequate supporting data, and based upon incorrect assumptions. OPC argued that Evergy's tariff allows for the Company to call demand response events for economic reasons and does not cap the number of events to be called. (OPC Initial Brief P. 22-23). OPC witness Mantle failed to consider that Evergy was bound by the terms of the Stipulation and Agreement entered into between the parties in the MEEIA Cycle 2 proceeding for the curtailment season of 2019 and approved by the Commission. This Stipulation and Agreement required five demand response events to be called by Evergy for its Residential Programmable Thermostat program in the 2019 curtailment season. Evergy abided by the terms of this agreement. The Order discounts this requirement to comply with the Commission Order, and finds that the Company should have ignored the Order and called additional curtailment events

which would have caused a conflict with the Commission's order to comply with the terms of the stipulation.

24. By its failure to consider load-shifting resulting from demand response events and the impact of that load-shifting to energy prices, the Commission's Order lacks competent and substantial evidence. The Commission's Order, -makes no finding of fact that recognizes load-shifting from demand response events, although load-shift was and is an undisputed and undeniable reality of demand response events. The Commission's Order simply adopts the analysis of Ms. Mantle's that makes the same error. Ms. Mantle's analysis and proposed disallowance were flawed since witness Mantle did not account for the fact that if load is shifted to a less expensive time of the day, there are still day ahead locational marginal prices ("DA LMP") to be paid for the shifted load. In other words, contrary to Ms. Mantle's assumptions in developing her disallowances, there are still costs to be considered and netted for the shifted load. Nor did she account for net revenue decrease to the company based on Demand Response events if load was ultimately reduced and not shifted. (Tr. 129-30) Tariff sheet 2.12 says that an economic curtailment may occur when the marginal cost to procure energy, or the opportunity to sell the energy in the wholesale market is greater than the customer's retail price. As a result, the disallowances adopted by the Commission in reliance upon Ms. Mantle's analysis are not based on competent and substantial evidence are thus arbitrary and capricious in nature.

25. Throughout the hearing, Ms. Mantle's disallowances were changing and she expressed her belief that she would have preferred to have proposed something else if given more time and data. (Tr. 251-252). In her direct testimony, she proposed a disallowance for energy sales of $43,310 for EMM, and $85,590 for EMW (Ex. 202, Mantle Direct, p. 5). However, in her surrebuttal testimony, she increased her energy sales imprudence adjustments to $160,174 for EMM and $169,360 for EMW. (Ex. 203, Mantle Surrebuttal, p. 2) Since her modified

disallowance was introduced for the first time in her surrebuttal testimony, Evergy had no opportunity to respond with testimony. This procedure is a violation of fundamental fairness and deprives the Company of due process of law. Due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. Tonkin v. Jackson County Merit System Commission, 599 S.W.2d 25, 32–33[7] (Mo.App.1980) and Jones v. State Department of Public Health and Welfare, 354 S.W.2d 37, 39–40[2] (Mo.App.1962); State ex rel. Fischer v. Public Service Com'n of Missouri, 645 S.W.2d 39, 43 (Mo.App. W.D. 1982)

26. When asked by Judge Dippell the reasons for the increased disallowance in her surrebuttal testimony, she indicated that she "just took the numbers out of his [John Carlson's] testimony." (Tr. 260-62) Mr. Carlson specifically disagreed with Ms. Mantle' energy sales calculations in his rebuttal testimony, but did not offer any alternative energy sales numbers. (Ex. 2C, Carlson Rebuttal, p. 20) To suggest that Ms. Mantle pulled her increased disallowance out of the testimony of Mr. Carlson appears to be incorrect. Mr. Carlson did not have anything in his rebuttal that pointed to an increased disallowance. Instead, he argued that the process of retroactively picking high LMPs was not based in reality. Mr. Carlson showed an example of how randomly picking hours isn't feasible, but his testimony didn't have anything that would support Ms. Mantle's increased disallowance. (Id.) It is unclear what numbers Ms. Mantle "just took from his testimony." Yet, the Commission relied upon Ms. Mantle calculations without other supporting data in the record. The Order is therefore not based upon competent and substantial evidence on the whole record, and the findings of fact and conclusions of law are inadequate to allow a reviewing court to understand the basis for the disallowance.

27. OPC used historical DA LMP data that was not available to the Company at the time it was implementing this demand response program to draw the conclusion that Evergy could have achieved more energy-saving for its customers by utilizing demand response events to

arbitrage DA LMP prices. The Order's disallowances contradict the well-established legal standard by which a utility company's decisions must be judged "prospectively rather than in reliance on hindsight." Associated Natural Gas, 954 S.W.2d at 529.

WHEREFORE, Evergy Missouri Metro and Evergy Missouri West request that the Commission grant reconsideration and/or rehearing of its Report and Order, as more fully described herein.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Evergy, Inc.
1200 Main Street
Kansas City, Missouri 64105
Phone: (816) 556-2314
roger.steiner@evergy.com

James M. Fischer MBN 27543
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101
Telephone: 573-636-6758
Facsimile: 573-636-0383
jfischerpc@aol.com

Joshua Harden MBN 57941
Collins & Jones, P.C.
1010 W. Foxwood Dr.
Raymore, MO 64083
Telephone: 816-318-9966
Facsimile: 888-376-8024
Email: jharden@collinsjones.com

Attorneys for Evergy Missouri Metro and Evergy Missouri West

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, this 2nd day of June 2022, to all parties of record.

/s/ Roger W. Steiner
Roger W. Steiner