Exhibit No.: ________________
Issue(s): Administrative Costs/ Implementation Contractor Expenses/ Business Demand Response
Witness/Type of Exhibit: Payne/Rebuttal
Sponsoring Party: Public Counsel
Case No.: EO-2023-0407 & EO-2023-0408

REBUTTAL TESTIMONY

OF

MANZELL PAYNE

Submitted on Behalf of the Office of the Public Counsel

EVERGY METRO, INC. D/B/A
EVERGY MISSOURI METRO
AND
EVERGY MISSOURI WEST, INC. D/B/A
EVERGY MISSOURI WEST

CASE NO. EO-2023-0407 & EO-2023-0408

** ____ **
Denotes Confidential Information that has been redacted

March 29, 2024

PUBLIC

TABLE OF CONTENTS

REBUTTAL TESTIMONY

OF

MANZELL M PAYNE

EVERGY METRO, INC., D/B/A EVERGY MISSOURI METRO and

EVERGY MISSOURI WEST, INC., D/B/A EVERGY MISSOURI WEST

CASE NOS. EO-2023-0407 and EO-2023-0408

Q. Please state your name, title, and business address.

A. Manzell Payne, Utility Regulatory Auditor, Office of the Public Counsel ("OPC" or "Public Counsel"), P.O. Box 2230, Jefferson City, Missouri 65102.

Q. Are you the same Manzell Payne who filed direct testimony for the Office of the Public Counsel ("OPC") in this case?

A. Yes.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to respond to 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," and collectively with Evergy Missouri Metro, "Evergy" or the "Company") witness, Brian File's direct testimony concerning disallowances for administrative costs, implementation contractor costs, and the Business Demand Response Program ("BDR").

<u>ADMINISTRATIVE COSTS</u>

Q. How does Company witness, Brian File respond to Staff's concern that the Company included administrative costs that were not MEEIA related and therefore should be disallowed?

A. Mr. File's direct testimony centers around the premise that all expenses were prudent and appropriate to MEEIA demand side management programs and should be recoverable through the MEEIA surcharge. He contends that Evergy's sponsorship of the energy efficiency ("EE") related organizations are relevant and therefore should not be disallowed.

He also insists that T-shirts with the generic Evergy logo were necessary for businesses and customers to know that they were talking to Evergy employees.

Q. How do you respond to Mr. File's response regarding administrative costs?

A. I do not agree with Mr. File that paying for a sponsorship while also paying for membership dues is relevant and appropriate. EE-related sponsorships should not be allowed if the Company is already a member and paying dues because it does not benefit customers.

I also do not agree that gift boxes sent to businesses are relevant to MEEIA. The gifts in these boxes are an issue that cannot be overlooked. In addition to a letter describing expected incentives for MEEIA Business Demand Response ("BDR") Program participation, the gift boxes included non-MEEIA specific gifts which provide no benefit to Evergy customers. Letters explaining MEEIA should suffice and any additional gifts to persuade businesses to participate are excessive.

T-shirts bearing a generic Evergy logo may be helpful to identify Evergy employees but that does not make these t-shirts MEEIA related. For instance, these same employees could wear these same t-shirts to other Evergy sponsored events that are not MEEIA related. Therefore, these t-shirts do not provide a MEEIA-specific benefit to Evergy's customers and the cost of them should not be recovered through the MEEIA charge. Evergy can seek to recover the cost of these generic Evergy t-shirts in a future rate case, where all parties can make arguments regarding their recovery.

Finally, all costs that Staff could not verify through Company support and justification should also be disallowed.

Q. Has your recommendation to the Commission regarding administrative costs changed since you filed direct testimony?

A. Yes. Evergy has reclassified certain administrative costs as non-MEEIA, in the amounts of $526.31 for Evergy Missouri Metro and $496.55 for Evergy Missouri West. The Company has agreed with Staff that these amounts should not be included as administrative costs for MEEIA Cycle 3. The contested amounts after the reclassification made by the Company are $70,154.17 plus interest for Evergy Missouri Metro and $3,768.75 plus interest for Evergy Missouri West. I now recommend that the Commission order an ordered adjustment ("OA") in the amount $70,154.17 plus interest for Evergy Missouri Metro and $3,768.75 plus interest for Evergy Missouri West to be applied in the next demand-side programs investment mechanism ("DSIM") filing for both companies.

IMPLEMENTATION CONTRACTOR EXPENSES

Q. How does Company witness Brian File respond to Staff's concern that the Company included implementation contractor expenses that were not MEEIA related and therefore should be disallowed?

A. Mr. File asserts that all implementation contractor expenses were relevant and appropriate for Evergy to deploy MEEIA programs. These expenses include award ceremonies, gifts, t-shirts, and compensation for a trade ally's mistake.

Q. Do you agree with Mr. File?

A. No, I do not agree that all implementation contractor expenses were relevant and appropriate for MEEIA Cycle 3. Evergy's customers received no MEEIA specific benefit from the Company having award ceremonies, giving gifts, having generic Evergy logo t-shirts, and compensating a customer for a trade ally's mistake. These items have no bearing on Evergy's ability to offer MEEIA demand-side management ("DSM") programs. Compensating a customer for a trade ally's mistake should not fall on Evergy's customers. Additionally, all costs that cannot be verified through Company support and justification should be disallowed.

Q. Has your recommendation to the Commission regarding implementation contractors changed since you filed direct testimony?

A. No. I still recommend that the Commission order an OA in the amount of $6,549.15 plus interest for Evergy Missouri Metro and $13,121.19 plus interest for Evergy Missouri West to be applied in the next DSIM filing for both companies.

BUSINESS DEMAND RESPONSE

Q. What should the Commission disallow related to Evergy Missouri West's Business Demand Response Program to account for Evergy Missouri West's tariff violation?

A. $1,137,780 plus $5,871.18 in interest is the disallowance amount for BDR. This amount is different from the $1,176,264.18 stated in my direct testimony due to the initial number including Nucor Maryville.

P

Q. Why has your recommended MEEIA BDR disallowance amount changed since your direct testimony?

A. As the Company has stated in response to Staff Data Request No. 0035 and its direct testimony, Nucor Maryville is separate from Nucor Sedalia and each entity takes service under different tariff sheets. The tariff sheets that govern service to Nucor Maryville do not prohibit Nucor Maryville from participating in MEEIA BDR programs.[1] Because Nucor Maryville is not prohibited from participating in the MEEIA BDR Program, the amount I recommend the Commission disallow has changed to remove the incentives paid to Nucor-Maryville. Nucor Sedalia is the only Nucor location taking service under the Special Rate for Incremental Load Service ("SIL") tariff.

Q. Mr. File suggests that all customers were not harmed by Nucor Sedalia participating in the MEEIA BDR Program while also taking service under the SIL tariff sheet. Do you agree?

A. No. Mr. File fails to recognize that there are more factors at play when the Company violated its SIL tariff.

Initially, the prudence standard employed by Staff does not say that there needs to be a monetary value for customers to be harmed.[2] Here, though there are other harms that hold a monetary value such as, but not limited to, increased earnings opportunity and unlawful incentives paid to Nucor Sedalia due to Evergy Missouri West's tariff violations.

Q. Can you provide background as to the beginning of Evergy's MEEIA Cycle 3 and the SIL tariff?

A. Yes. Evergy applied for MEEIA Cycle 3 in November of 2018. In doing so, it set a target for its Business Demand Response Program at a certain level. This target could not have included Nucor Sedalia participating in the BDR Program because it did not exist at the time. The Report and Order regarding Evergy's MEEIA Cycle 3 was filed in December of 2019.

Also in 2019, Evergy Missouri West became aware of Nucor Sedalia[3]. Then on **______ ___ **[4], Evergy Missouri West entered the SIL tariff agreement with Nucor Sedalia.

---

1 EO-2023-0407 and EO-2023-0408, Brian File, Page 8, Lines 18-22.

2 Page 5 of the "Second Prudence Review of Cycle 3 Costs" Staff Report – File No. EO-2023- 0408

3 See EO-2019-0244, Application. Attached as MMP-R-2 Confidential.

4 Contract Signed date from Response to Staff Data Request No. 34 titled "DR0034_CONF_2022 Nucor Sedalia Fully Executed Participation Agreement", attached as Schedule MMP-R-1.

Q. Can you explain how Evergy Missouri West's Earnings Opportunity ("EO") is relevant for this review?

A. Yes. The Earnings Opportunity is the incentive that is approved by the Commission in a utility's filing for demand-side programs. It is based on actual performance of the utility, which is verified through EM&V in comparison to planned targets the utility expected to meet.

Evergy Missouri West set their BDR Program target and it was approved by the Commission.[5] The initial target could not have included Nucor Sedalia's participation. If it had, the target should have been set higher.

Q. What does Nucor Sedalia's inclusion in the MEEIA BDR Program mean for the earnings opportunity that Evergy Missouri received?

A. Since the MEEIA BDR Program was approved by the Commission with targets that were set by the Company without consideration of Nucor Sedalia's participation, the target was set lower than it should have been. This also meant that Evergy Missouri West was hitting their target for the BDR Program easier and receiving its earnings opportunity. A large portion of the savings from Evergy Missouri West's BDR Program came from Nucor Sedalia's participation.[6] OPC is awaiting responses to Data Requests and will have a better picture for Nucor Sedalia's portion of the BDR target. I will update this accordingly in surrebuttal.

Q. Can you explain further the unlawfulness of Nucor Sedalia's participation in the MEEIA BDR Program?

A. Yes. The Company unlawfully paid Nucor Sedalia incentives for participating in the MEEIA BDR Program. The unlawfulness comes from the language in the SIL tariff that states that Nucor Sedalia cannot participate in MEEIA programs or any other demand response programs while it takes service under the SIL tariff, without prior approval from the Commission. Evergy Missouri West's SIL tariff sheet states:

> Service under this tariff may not be combined with service under an Economic Development Rider, an Economic Redevelopment Rider, the Renewable Energy Rider, Community Solar program, service as a Special Contract, or be eligible for participation in programs offered pursuant to the Missouri Energy Efficiency Investment Act (MEEIA), or for participation in programs related

[5] Page 27 of the "Second Prudence Review of Cycle 3 Costs" Staff Report – File No. EO-2023- 0408.
[6] EO-2023-0407 and EO-2023-0408, Brian File, Page 12, Line 3-5.

P

> to demand response or off-peak discounts, unless otherwise ordered by the Commission when approving a contract for service under this tariff.[7]

Q. Did Evergy provide any historical background for the prohibition that exists in the SIL tariff sheets?

A. Yes, Company witness Bradley Lutz provides context for the language related to demand response in the SIL tariff. In doing so, he points out that the SIL tariff is for establishing incremental pricing for customers meeting special criteria. This ensures that revenues received from these customers cover the costs to serve them.

In relation to the demand response programs, the BDR Program has the potential to impact peak demand and customers' load. When a company participates in the BDR Program, it can affect the incremental costs of serving new load.[8]

Q. Why is it important that the SIL tariff included language that prevents Nucor Sedalia from both taking service under the SIL tariff and participating in the MEEIA BDR Program?

A. Mr. Lutz provides an explanation for this in his direct testimony. He states:

> The special rate provides for long term pricing up to ten years. Further, the rate schedule is designed to recover no less than the incremental costs of serving the new load. Since the rates are set near incremental cost based on estimated customer loads, material changes in the customer consumption, such as demand response program participation, could undermine the rate design and expose the Company to under recovery of cost.[9]

Mr. Lutz recognizes that there is risk to under recovery of costs if Nucor Sedalia were to both take service under the SIL tariff and participate in the MEEIA BDR Program at the same time. Specifically, there is potential to destabilize the rate design the Commission approved. The violation of the SIL tariff exposes customers and Nucor Sedalia to risk if Nucor Sedalia cannot cover their incremental costs. The language in tariff Sheet No. 157 that those who take service under the SIL tariff cannot participate in both the SIL tariff and MEEIA programs and demand response programs without Commission approval is there to minimize risk.

[7] MO PSC No. 1, Original Sheet No. 157, Special Rate for Incremental Load Service, Schedule SIL. Attached as MMP-R-3.
[8] EO-2023-0407 and EO-2023-0408, Bradley Lutz, Page 4.
[9] EO-2023-0407 and EO-2023-0408, Bradley Lutz, Page 4, Line 12.

P

Q. Does Evergy Missouri West acknowledge that it violated its tariff agreement?

A. Not exactly. Company witness Mr. File acknowledges in direct testimony, that the SIL tariff included a provision restricting Nucor Sedalia from participating in MEEIA and/or demand response programs without Commission approval.[10] He later points out that Evergy Missouri West has recognized the conflict and points to the Company's response to Staff Data Request No. 31, which appears to recognize the violation of the tariff.[11] The response by the Company for Staff Data Request No. 31 is as follows:

> Nucor has been taking service under the Special Rate for Incremental Load Service (SIL) tariff in 2019 and also participated in MEEIA Business Demand Response (BDR) starting in 2020. After review of both the SIL tariff and the BDR Program tariff, it appears the customer is eligible for both individually but not both tariffs at the same time per the language cited in the data request. The customer has been removed from the MEEIA BDR program effective in September 2023. [12]

Q. **Mr. File argues there should be no disallowance because there was no harm to customers and cites the prudence standard from Staff's Report that was used in this case. How would you respond to Mr. File?**

A. While Mr. File argues that customers were not harmed, his argument does not mean the Company acted prudently. Evergy had information available to them in 2019 that Nucor Sedalia was not allowed to participate in the MEEIA BDR Program while taking service under the SIL tariff sheet. The knowledge of this should have led the Company to not allow Nucor Sedalia to participate in the MEEIA BDR Program.

Q. Evergy Missouri West seems to want to overlook that they violated their tariff simply due to the Company's view that no customers were harmed during the period of the violation. Do you agree with this treatment of the tariff violation?

A. As I previously pointed out, customers have been harmed by Evergy Missouri West allowing Nucor Sedalia to participate in the MEEIA BDR Program through Evergy's increased earnings opportunity and the violation of its tariff. Mr. File's suggestion that the avoided costs outweigh the incentive costs and, therefore, no harm to customers exists is a way to excuse

---

[10] EO-2023-0407 and EO-2023-0408, Brian File, Page 8, Line 7.
[11] EO-2023-0407 and EO-2023-0408, Brian File, Page 9, Line 7.
[12] Evergy Missouri West Response to Staff Data Request No. 0031, attached as Schedule MMP-D-3 to my Direct Testimony.

P

Evergy Missouri West's violation of its SIL tariff sheet. If the Commission were to allow Evergy to violate its tariff simply because in the Company's view in this instance it did not harm customers, that will necessarily have future impacts on the enforceability of tariffs. As Mr. File points out, BDR programs have a risk of undermining the rate design established by the SIL tariff. The Commission should hold Evergy Missouri West accountable to make sure that this is not an ongoing practice.

Along with the violation, the increased earnings opportunity is harmful to customers. The exact monetary value related to the earnings opportunity harm is unknown at this time, but will be specified in my Surrebuttal Testimony.

Q. What other information have you relied on in your evaluation of Evergy Missouri West's SIL tariff violation?

A. I have reviewed § 386.570 RSMo., Missouri's Violation of Orders statute and § 386.600 RSMo., Missouri's Actions to Recover Penalties and Forfeitures statute.

Q. What is your understanding of the effect of Missouri's Violation of Orders statute?

A. Though I am no lawyer, my understanding of § 386.570 RSMo., Missouri's Violation of Orders statute, is that it means that any corporation, person, or public utility that violates the constitution of Missouri, any laws, or any ruling by the Commission, is subject to a penalty of no less than one hundred dollars and no more than two thousand dollars for each offense. Each offense, if continued, is deemed to be a separate offense for every day the corporation, person or utility is in violation.[13]

Q. In following the above statute, what should be the penalty to account for Evergy Missouri West's violation of its tariff?

A. To reach this result, one must look to the number of days that Evergy Missouri West violated its tariff. Evergy began violating its tariff on ** __________ **[14] and stopped on, at best, September 1, 2023[15]. The equates to, at least, 1,187 days in which it was in violation. Using

[13] Section 386.570, RSMo.
[14] Curtailment start date from Data Response 34 titled "DR0034_CONF_2022 Nucor Sedalia Fully Executed Participation Agreement".
[15] Data Request No. 31 response, "The customer has been removed from the MEEIA BDR program effective in September 2023."

the highest amount provided for in the statute, the top end of any penalty under § 386.570 RSMo. should be $2,374,000.[16]

Q. Who does the penalty get paid to in this instance?

A. Again, though I am no lawyer, my understanding of § 386.600 RSMo. is that all moneys recovered as a penalty are to be paid to the public school fund of the state.[17]

Q. Are you suggesting that the Commission impose the $2,374,000 penalty on top of the disallowance that you are recommending?

A. No. I am simply suggesting that the $2,374,000 be a guide for the Commission when evaluating a disallowance amount for Evergy Missouri West's next DSIM for violating its tariff and allowing Nucor Sedalia to receive incentives.

Q. Can you summarize you position?

A. Yes. Evergy Missouri West should be held accountable for violating their SIL tariff sheet. The Commission should order an OA in the amount of $1,137,780 plus $5,871.18 in interest for Evergy Missouri West's next DSIM filing to account for the unlawful incentives Nucor Sedalia received from its participation in the BDR Program. Once outstanding data requests are received, I will have additional recommendations for a disallowance related to the earnings opportunity awarded to Evergy Missouri West due to Nucor Sedalia's participation. Both, the § 386.570 RSMo., Missouri's Violation of Orders statute and § 386.600 RSMo., Missouri's Actions to Recover Penalties and Forfeitures statute can be used as a guide for the Commission when determining any disallowance for Evergy Missouri West's next DSIM filing.

Q. Does this conclude your direct testimony?

A. Yes, it does.

---

[16] $2,000 multiplied by 1,187 days equals $2,374,000.
[17] Section 386.600, RSMo.

P

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Second Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 3 Energy Efficiency Programs of Evergy Metro, Inc. d/b/a Evergy Missouri Metro	)	Case No. EO-2023-0407
In the Matter of the Second Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 3 Energy Efficiency Programs of Evergy Missouri West, Inc. d/b/a Evergy Missouri West	)	Case No. EO-2023-0408

<u>AFFIDAVIT OF MANZELL PAYNE</u>

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Manzell Payne, of lawful age and being first duly sworn, deposes and states:

1. My name is Manzell Payne. I am a Utility Regulatory Auditor for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Manzell Payne
Utility Regulatory Auditor

Subscribed and sworn to me this 27th day of March 2024.

TIFFANY HILDEBRAND
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES AUGUST 8, 2027
COLE COUNTY
COMMISSION #15637121

My Commission expires August 8, 2027.

Tiffany Hildebrand
Notary Public