BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Eleventh Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Evergy Missouri West, Inc. d/b/a Evergy Missouri West	))))))	Case No. EO-2023-0277

OFFICE OF THE PUBLIC COUNSEL'S AMENDED STATEMENT OF POSITIONS

COMES NOW the Office of the Public Counsel ("OPC") and for its *Amended Statement of Positions*, states as follows:

1. The Commission's *Order Setting Procedural Schedule and Delegation of Authority* issued on October 18, 2023, required parties to (1) file a joint list of issues and (2) file individually "a simple and concise statement summarizing [the party's] position on each disputed issue, including citations to pre-filed testimony supporting its position."

2. The Commission's *Order Setting Procedural Schedule* issued on March 15, 2024, set a new deadline for position statements to be filed on May 10, 2024.

3. The parties filed an *Amended List of Issues, List and Order of Witnesses, Order of Opening Statements, and Order of Cross-Examination* on May 9, 2024.

4. Pursuant to the Commission's October 18th and March 15th orders, the OPC now files this notice summarizing its position on each disputed issue identified in the amended list of issues.

<u>Issue 1: Has the Office of the Public Counsel applied the Commission recognized prudence standard in evaluating their proposed disallowances?</u>

Yes.

<u>Key Points</u>

- There is no universal "Commission recognized" prudence standard; a point which is acknowledged in the primary source material (a 1985 NRRI report) upon which Evergy West relies.
- The OPC's witnesses have met the four principles for prudence review identified by Evergy Witness Mr. John Reed and the one principle Mr. Reed missed.

    1. *Prudence relates to actions and decisions, not costs* – the OPC is challenging the ongoing decision made by the Company to not acquire sufficient generation.
    2. *A rebuttable presumption of prudence* – the presumption of prudence has been overcome given that Evergy West's own witness admitted the Company's practice is "akin to playing the Lotto with customers energy supply" and no other utility relies as heavily on the SPP energy market.
    3. *Total exclusion of hindsight* – the OPC relied solely on what the Company knew as far back as 2017, long before the current prudence period.

4 *Decisions being reviewed need to be compared to a range of reasonable behavior* – the OPC is comparing Evergy West to its sister utility Evergy Metro and other electric utilities in this State.

5 *Imprudence resulted in harm* – Customers paid over $80 million dollars more than they should have (for this prudence period).

<u>Explanations with Citations to Pre-filed Testimony</u>

As a general matter, the OPC challenges the premise of this issue, in that, the OPC disagrees with the notion that the Commission has a single, recognized standard of evaluating a proposed disallowance. This issue, which was proposed by the Company, seeks to hyperinflate the significance of the testimony offered by its witness Mr. John Reed. That testimony attempts to outline a "recognized" standard of evaluating prudence disallowances based on a 1985 NRRI report. *Marke Surrebuttal*, pg. 6 lns. 19 – 23. This standard "is far from well-established" or "generally agreed upon, and is clearly not properly designed for today's regulatory environment." *Id.* at lns. 18 – 19. However, despite the blatant mischaracterization, the OPC can and has easily met Mr. Reed's standard.

Mr. John Reed outlines four principles for his standard. *Reed Direct*, pg. 8 ln. 23 – pg. 9 ln. 1.The first is that prudence relates to actions and decisions, not costs. *Id.* at pg. 9 lns. 2 – 3. In this case, the OPC's position is that Evergy West's decision to not acquire sufficient generation to protect its customers from the risks of the energy market and instead to rely on the energy market to meet a substantial portion of its customers' load requirements was imprudent. *Mantle Direct*, pg. 11 lns. 17 – 23;

Mantle Rebuttal, pg. 1 lns. 20 – 23; *Mantle Surrebuttal*, pg. 2 lns. 9 – 12. Because the OPC is challenging the ongoing decision made by the Company to not acquire sufficient generation, the fist principle is clearly met.

Mr. Reed's second principle is a rebuttable presumption of prudence. *Reed Direct*, pg. 9 lns. 5 – 6. This is easily met by the OPC as the Company has filed testimony before this Commission in other cases effectively agreeing that its overreliance on the market for generation is not a prudent decision. *Mantle Direct*, pg. 18 ln. 1 – pg. 19 ln. 13. In fact, Evergy West witness Mr. Darin Ives described the Company's practice as "akin to playing the Lotto with customers energy supply." *Mantle Rebuttal*, pg. 2 lns. 19 – 20. In addition, in Case No. EA-2023-0291, both Evergy West's witness Reed and Messamore testify about how risky it is for a utility to rely on the market in their justification for adding resources in 2024. *Mantle Direct*, pg. 18 lns. 1 – 30. Another important piece of evidence is the fact that no other utility has made the deliberate decision to rely on the SPP energy market (or any other energy market) in the same manner as Evergy West. *Mantle Rebuttal*, pg. 5 lns. 7 – 18. This includes Evergy West's own sister utility Evergy Metro. *Id*.

Mr. Reed's third principle "is the total exclusion of hindsight from a properly constructed prudence review." *Reed Direct*, pg. 9 lns. 8 – 9. Again, the OPC can easily meet this standard:

> This is what Evergy West knew at the time the decision was made to not add generation and rely in the SPP energy market:
>
> 1. Evergy West knew it did not have the generation that was needed to meet its customers' load requirements long before this FAC prudence period. OPC, in numerous filings, stated its concerns.

2. Evergy West knew that it was relying on the SPP market for energy because it asked for and received the inclusion of the cost of market energy in its FAC.

3. Evergy West knew that markets could be volatile. In January 2018, Jessica Tucker, Senior Manager at Evergy West, provided testimony regarding Evergy West's strategies for mitigating fuel market price volatility. In that same testimony, Ms. Tucker provides testimony that there was significant volatility in the natural gas market.

4. Evergy West knew that there is a SPP market energy price correlation with natural gas prices. Evergy West knows that electric market prices are tied to natural gas markets.

Mantle Rebuttal, pg. 16 lns. 8 – 23 (please see testimony for citations to evidence showing that Evergy West knew each enumerated item at the time the decision was made). The OPC has been consistent in warning Evergy about its lack of generation and the risks to which it was exposing customers in cases stretching back to 2017. *Mantle Direct*, pg. 16 lns. 12 – 16. No reasonable person could even possibly suggest that the OPC has engaged in hindsight review in this case.

Mr. Reed's fourth and final principle "is that decisions being reviewed need to be compared to a range of reasonable behavior; prudence does not require perfection, nor does prudence require achieving the lowest possible cost." *Reed Direct*, pg. 9 lns. 14 – 16. As with all the others, the OPC can easily meet this principle. The OPC determined the disallowance it recommends in this case by examining the resource planning documents that Evergy has previously filed with the Commission. *Mantle Direct*, pg. 19 lns. 17 – 18. In "each of these filings Evergy reached the conclusion that the combined resource plans of Evergy West and Evergy Metro were the preferred resource plan for Evergy West." *Id.* at lns. 19 – 21. Therefore, the OPC "used the FAC and plant in service costs of both Evergy West and Evergy Metro to determine the amount Evergy West's customers would have paid if the two utilities were combined." *Id*. at lns. 21 – 23. The OPC's recommendation thus demonstrates that it compared the Company's actions against a range of reasonable behavior as it utilized the Company's **own** recommendation as the most reasonable proxy. The OPC is neither requesting perfection nor requiring Evergy West to achieve the lowest possible cost as Mr. Reed warns against; instead, the OPC is simply asking Evergy West to **truly** operate in a manner consistent with how it models Evergy West in its resource planning.[1]

While easily addressing all four of the principles put forward by Mr. Reed, the OPC has also gone the additional step of addressing the one prudence principle that Mr. Reed overlooked. That last principle is actual harm to customers. As explained by OPC witness Ms. Mantle, "[t]he Commission will not make a finding of imprudence without harm." *Mantle Rebuttal*, pg. 17 ln. 17. This requirement actually creates a significant hurdle for agencies like the Commission's Staff or the OPC because "[h]arm is not realized immediately when a decision is made." *Id*. at lns. 17 – 18. In fact, "[w]ith some decisions, such as resource planning decisions, it takes years for harm to materialize." *Id*. at lns. 22 – 23. However, in this particular case, the harm of Evergy West's long-standing decision not to acquire sufficient generation to meet its load requirements has finally resulted in harm to customers. *Id*. at lns. 23 – 24.

[1] The OPC emphasizes the term "truly" because Evergy's "resource planning process was, and still is, conducted as if Evergy West and Evergy Metro were a single utility" when, in fact, this is not the case. *Mantle Direct*, pg. 14 lns. 13 – 14.

Specifically, Evergy West's customers have had to pay $86,376,294 more than they otherwise would have had to if Evergy West made prudent decisions. *Mantle Direct*, pg. 21 ln4 – pg. 22 ln. 3.

The OPC's experts analyzed Evergy West's resource planning using all the principles for prudence evaluation that Mr. Reed outlined in his testimony and the one principle he failed to include. *Mantle Rebuttal*, pg. 15 lns. 14 – 16. The answer to the first issue now posed to this Commission is therefore nothing but a clear and unquestionable affirmative.

Issue 6: Was Evergy Missouri West's continuing decision to not acquire sufficient generation to protect its customers from the risks of the energy market and instead to rely on the energy market to meet a substantial portion of its customers' load requirements imprudent?

Yes.

Key Points

- Utilities in an RTO, like Evergy West, sell all the energy they generate into the RTO's energy market to offset the cost of the energy that they purchase from the energy market to meet load.
- This means that owning and operating generating resources is Evergy West's "hedge" or "insurance" against price volatility in the SPP energy market.

- Evergy West cannot cover all of the energy it buys to meet load with the energy it sells into the market and instead has to rely on the market to cover approximately 40% of its load, effectively meaning this amount is "uninsured."
- Evergy's decision to knowingly not providing insurance for almost 40% of its customer's energy requirements was and remains an imprudent decision.
- Evergy West witness Mr. Darin Ives even described the Company's practice of depending on the SPP for energy as "akin to playing the Lotto with customers energy supply." *Ives Direct*, pg. 14 ln. 16.

<u>Explanations with Citations to Pre-filed Testimony</u>

In order to understand the correct answer to this issue, it is first necessary to understand how electric utilities that are part of a regional transmission organization ("RTO") operate. In Evergy West's case, the RTO in question is the Southwest Power Pool. As explained by the OPC's witness Ms. Mantle:

> With the advent of the Southwest Power Pool ("SPP") energy market, Evergy West, along with all other load-serving entities, are required to pay the SPP for every megawatt-hour ("MWh") of energy its customers require. In exchange, the SPP pays Evergy West for every MWh of energy that its resources generate. Both the cost Evergy West incurs for the energy purchased from the SPP energy market and the revenues generated by the energy Evergy West sells into the SPP energy market are ultimately recovered/returned to customers through its FAC.

Mantle Direct, pg. 3 lns. 6 – 12. Because of this system, "if Evergy West has sufficient cost-effective resources to meet all of its customers' energy needs during the time periods required, the revenues from the generation of energy should effectively match, and thereby negate, the cost Evergy West paid to SPP for the energy its customers use." *Id*. at lns. 16 – 19. "In this sense, the generation of energy can be said to have 'covered' the cost of the energy that Evergy West purchased." *Id*. at lns. 19 – 21.

For a prudently operated utility (that belongs to an RTO), the system just described means the utility must "engage in resource planning to determine the right amount and type of resources necessary to balance the risk of adding or retiring resources and the risk of a volatile market." *Id*. at pg. 3 ln. 21 – pg. 4 ln. 2. Owning generating resources and being able to sell the energy those resources produce into the energy market therefore acts as a "hedge or 'insurance' against price volatility in the SPP energy market." *Id*. at pg. 4 lns. 2 – 3.

> If no insurance is chosen, *i.e.* the utility choses to not acquire resources to offset the market costs, then the utility is betting on the market being less expensive than building generation resources to hedge the market prices. But it is just that – a bet on future market prices that may or may not be better than acquiring insurance, *i.e.* generation it controls. With an FAC, the decision to rely on an energy market places very little risk on the utility and a great deal of risk on the customers who are billed the market prices.

Id. at pg. 4 ln. 22 – pg. 5 ln. 5. In this case, "Evergy West is imprudent because it decided that it did not need insurance to fend off potential high costs of energy." *Id*. at pg. 11 lns. 17 – 18. As a result, Evergy West did not have "enough generation resources to meet the load requirements of its customers during this prudence period[,]" which resulted in the Company not being able to offset the excessive costs it paid SPP for the energy it needed to meet its customer's load. *Id*. at lns. 19 – 21. "Further, this is a problem that has persisted for more than a decade and is also an issue that the OPC has continuously warned about for at least the last six years." *Id.*

Having explained "why" the problem exists, the next step is to understand just how big the problem is. "Evergy West has not had the resources to meet the load requirements of its customers since before it was acquired by Great Plains Energy ("GPE") in 2008." *Id.* at pg. 11 lns. 26 – 27. At that time, "Evergy West estimated that its generation resources could only generate 74% of the energy its customers' need, *i.e.* it was depending on the market to cover at least 26% of its customers' load requirements. *Id.* at pg. 12 lns. 1 – 4. That number has since grown to the point where Evergy West now estimates it can only generate 62% of the energy it needs. *Id.* at lns. 4 – 5. In other words, Evergy West is reliant on the SPP energy market for nearly 40% of its customer's energy needs. "Knowingly not providing insurance for almost 40% of its customer's energy requirements was imprudent and continues to be imprudent." *Mantle Rebuttal*, pg. 10 lns. 16 – 18.

The final point to consider regarding this issue is how much Evergy's witnesses agree with the OPC's position. For example, "Evergy Witness Darin Ives is clear in his direct testimony that leaving customers exposed to energy market prices is an imprudent practice." *Id.* at pg. 2 lns. 19 – 20. Mr. Ives directly states:

> Market purchases can play an important role in a prudent resource mix, **but on their own are not a plan but rather are akin to playing Lotto with customers energy supply**.

Ives Direct, pg. 14 lns. 14 – 16. Nor is Mr. Ives the only Evergy witness to provide testimony that supports the OPC's position. *Mantle Rebuttal*, pg. 6 lns. 7 – 10. Given the degree to which Evergy's witnesses are willing to admit that the Company's overreliance on the SPP energy market is imprudent, there should be no reason for this Commission to conclude that the answer to the sixth issue, as posed, is anything other than a definite yes.

<u>Issue 8: If Evergy Missouri Metro and Evergy Missouri West were imprudent with respect to Issue 6, above, should there be a disallowance?</u>

Yes. If the Commission determines imprudence, then it should disallow costs to correct for the imprudence.

<u>Issue 8(A): If so, how much should the disallowance be?</u>

$86,376,294, with interest. *Mantle Direct*, pg. 19 ln. 14 – pg. 20 ln. 16.

<u>Issue 8(D): Should the Commission adopt OPC's proposed ordered adjustment of $86,376,294, with interest, to be applied in Evergy Missouri West's next FAR filing?</u>

Yes.

<u>Key Points</u>

- Evergy West's internal resource planning documents show that the Company itself reached the conclusion that operating Evegy West and Evergy Metro as a combined entity was the preferred plan.

- The identifiable change in Evergy West's Actual Net Energy Costs ("ANEC"), had it operated as a combined entity with Evergy Metro, was $174 million.
- However, the OPC recognized that operating as a combined entity would have resulted in Evergy West customers seeing increased capital costs, so the OPC used the actual capital amounts from Evergy West and Evergy Metro's last rate cases to calculate what Evergy West customers would have paid had the two companies been combined.
- This reduced the amount of the imprudence adjustment from $174 million to just a little more than $86 million, which is the amount Evergy West's FAC would have been reduced by if the company had acted prudently.

<u>Explanations with Citations to Pre-filed Testimony</u>

Evergy West is only half of its parent company's overall operations in Missouri. The other half is Evergy Metro. This fact is important to determining the proper impudence adjustment amount because of how Evergy as a whole approaches its resource planning.

To determine a method to estimate the amount that Evergy West's customers overpaid, the OPC's expert witnesses looked to the resource planning documents filed by Evergy West with the Commission. *Mantle Direct*, pg. 19 lns. 17 – 18. "[I]n each of these filings Evergy reached the conclusion that the combined resource plans of Evergy West and Evergy Metro were the preferred resource plan for Evergy West." *Id*. at lns. 19 – 21. The OPC's expert therefore "used the FAC and plant in service costs of both Evergy West and Evergy Metro to determine the amount Evergy West's customers would have paid if the two utilities were combined." *Id.* at lns. 21 – 23.

The first step of the OPC's analysis was to determine what "the actual net energy costs ("ANEC") would have been for both Evergy West and Evergy Metro had the two utilities been combined using the combined ANEC and the load requirements of the two utilities." *Id.* at pg. 20 lns. 1 – 3. Based on the OPC's analysis, "had the two utilities been combined, the ANEC of Evergy West would have been $337 million or $174 million less than actually was incurred." *Id.* at lns. 9 – 11. "This is Evergy West's 'Prudent ANEC.'" *Id.* at ln. 11. However, that is not the full extent of the calculations that needed to be done.

"Prudent management of Evergy West's resources would have also resulted in its customers being billed increased capital costs." *Id.* at pg. 21 lns. 6 – 7. To determine an appropriate amount of offset amount, the OPC's expert witness used the fixed costs of the generation plant that were included in Staff's true-up workpapers of the revenue requirements of Every West and Evergy Metro in Case Nos. ER-2018-0145 and ER-2018-0146. *Id.* at lns. 7 – 10. Using this information, the OPC's expert calculated that Evergy West's annual revenue requirement would have been $52 million higher at $204 million had the two utilities been combined. *Id.* at lns. 11 – 13. In other words, "[f]or the eighteen month prudence period Evergy West customers would have paid $306 million or $78 million higher than what was actually included" in base rates had it been combined with Evergy Metro.

In order to make sure the OPC's calculations were both fair and accurate, the

OPC reduced the $174 million difference between the prudent and imprudent ANEC for Evergy West by the $78 million increase in capital costs that would have been borne by Evergy West customers had the Company acted prudently. This results in the OPC's final imprudence adjustment of $86,376,294. This is the amount that the Commission should order be returned to Evergy West's customers through the Company's FAC to account for the impudent resource planning made by the Company.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Amended Statement of Positions* and rule in the OPC's favor on all issues addressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this tenth day of May, 2024.

/s/ John Clizer