

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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

**EVERGY MISSOURI WEST’S  
INITIAL POST-HEARING BRIEF**

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW” or the “Company”) and, for its Initial Post-Hearing Brief (“Brief”), states as follows:

**INTRODUCTION**

This case involves a prudence audit of costs subject to the Fuel Adjustment Clause (“FAC”) of EMW, which was originally initiated by the Staff of the Commission (“Staff”). However, on March 11, 2024, EMW and Staff filed a Non-Unanimous Stipulation and Agreement (“Stipulation”)<sup>1</sup> that resolved all issues between Staff and the Company (along with the related but separate prudence audit of Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro (“EMM”) in its entirety). On May 2, 2024, the Commission issued its Order Approving Stipulation,<sup>2</sup> leaving only the issues in this case between the Office of the Public Counsel (“OPC” or “Public Counsel”) and EMW for resolution.

For the applicable prudence review period,<sup>3</sup> OPC proposed a significant ordered adjustment that it claims should be applied to the Company’s next Fuel Adjustment Rate (“FAR”)

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<sup>1</sup> *Non-Unanimous Stipulation and Agreement*, EO-2023-0276 & EO-2023-0277 (March 11, 2024).

<sup>2</sup> *Order Approving Stipulation*, EO-2023-0276 & EO-2023-0277 (May 2, 2024).

<sup>3</sup> The FAC audit period is from June 1, 2021 to November 30, 2022.

filing. More specifically, the following enumerated issues remain in this proceeding, although as discussed herein, the Company does not agree with the inclusion and/or wording of any of them:

1. Has OPC applied the Commission-recognized prudence standard in evaluating its proposed disallowance?

6. Was EMW'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?

8. If EMW was imprudent with respect to Issue 6, above, should there be a disallowance?

a. If so, how much should the disallowance be?

b. Should the Commission adopt OPC's proposed ordered adjustment of \$86,376,294, with interest, to be applied in EMW's next FAR filing?

For the reasons stated herein, the Commission should find and conclude, in summary:

1. EMW properly applied the prudence standard, but OPC did not. OPC failed to overcome the Missouri-law prudence presumption, which should end the Commission's analysis and OPC's allegations should be disregarded. Even if the Commission further examines OPC's position, OPC relied on improper hindsight to estimate FAC costs incurred during the prudence review period and in reaching its proposed disallowance. OPC also failed to establish a causal connection between its proposed disallowance and the costs incurred during this FAC prudence review. As a result, OPC has failed to carry its burden of proof as required under the Commission's prudence standard.

6. EMW was prudent in buying from the Southwest Power Pool ("SPP") energy market rather than building other unnamed and unquantified generating assets prior to or during

the audit period. The Company prudently followed its Integrated Resource plan (“IRP”) process, which is the only substantive, competent evidence regarding EMW’s resource planning offered in this proceeding.

8. Moreover, OPC’s disallowance itself is logically disconnected from OPC’s allegations about EMW’s resource planning or the SPP market during the audit period. Instead, it appears to be either based on an unrealistic (and wholly under-developed) hypothetical where EMW and EMM are somehow combined such that their costs are reallocated evenly throughout their customers’ rates, or pure speculation about EMW’s ability to have had an asset portfolio mirroring that of a hypothetical combined company. And, OPC failed to account for the impermissible zero-sum game its hypothetical unavoidably creates whereby EMM’s customers pay for costs benefitting only EMW’s customers.

The Commission should reject OPC’s disallowance as it is unlawful. In addition, the proposed disallowance would significantly negatively impact EMW’s access to capital, and its future ability to build or acquire additional generating assets.<sup>4</sup>

### **ISSUES**<sup>5</sup>

#### ***1. Has OPC applied the Commission-recognized prudence standard in evaluating its proposed disallowance?***

OPC improperly applied the Commission-recognized prudence standard in evaluating EMW’s proposed disallowances, in several ways.

The Commission has frequently reaffirmed the prudence presumption and standard articulated in Associated Natural Gas:

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<sup>4</sup> Tr. 106:7-107:4 (Ives).

<sup>5</sup> The Company does not agree with the wording of some issues or inclusion of all of the issues set out herein. The inclusion of an issue and the Company’s position thereon in the list below does not mean all parties agree with such issue’s characterization, that such issue identified is actually in dispute, and/or that a Commission decision on such issue is proper or necessary in this case.

All charges for gas service must be just and reasonable. [Mo. Rev. Stat. § 393.130.1]. . . . If a utility’s costs satisfy the prudence standard, the utility is entitled to recover those costs from its customers. . . .

A utility’s costs are presumed to be prudently incurred. However, the presumption does not survive “a showing of inefficiency or improvidence.” Where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent. . . .

In the [Union Electric] case, the PSC noted that this test of prudence should not be based upon hindsight, but upon a reasonableness standard:

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.

See State ex rel. Associated Natural Gas v. PSC, 954 S.W.2d 520, 528-529 (Mo. App. W.D. 1997) (internal citations and original alterations omitted).<sup>6</sup>

Accordingly, at the outset, the Commission presumes that the utility’s costs were prudently incurred. See id. This means that utilities are not required to demonstrate in their cases-in-chief during FAC prudence audits that all expenditures were prudent. See, e.g., In re Union Elec. Co., 66 P.U.R.4<sup>th</sup> 202, 212 (Mar. 29, 1985). And, a party challenging the presumption of prudence must create “a serious doubt” with “adequate contrary evidence” as to the prudence of a utility’s expenditure. See id.; see also OPC v. PSC, 409 S.W.3d 371, 379 (Mo. 2013), as modified (Sept. 10, 2013) and Deck v. Teasley, 322 S.W.3d 536, 539 (Mo. 2010) (“A presumption places the burden of producing substantial evidence to rebut the presumed fact on the party against whom the presumption operates.”). Only after a serious doubt has been raised through competent record

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<sup>6</sup> See, e.g., Report and Order, p. 19, In re: Eighth Prudence Rev. of Costs Subject to the Comm’n-Approved Fuel Adjustment Clause of KCP&L Greater Mo. Operations Co., No. EO-2019-0067 (Nov. 6, 2019); Report and Order, pp. 13-14, In re: Third Prudence Rev. of Costs Subject to the Comm’n-Approved Fuel Adjustment Clause of KCP&L Greater Mo. Operations Co., No. EO-2011-0390 (Sept. 4, 2012); Report and Order, pp. 13-15, In re: PGA Filing for Laclede Gas Co., No. GR-2004-0273 (June 28, 2007).

evidence, does the burden then shift to the public utility to “dispel those doubts” that the questioned expenditure was prudent. See id.

Here, OPC has not supplied “substantial evidence”—that is, “evidence which, if true, has probative force upon the issues, i.e., evidence favoring facts which are such that reasonable men may differ as to whether it establishes them.” See Deck, 322 S.W.3d at 540—rebutting the presumption that EMW’s FAC costs incurred during the audit period were anything but prudent. Instead, OPC offers testimony through its two witnesses Lena Mantle and Geoff Marke, which is not tied to the actual audit period at issue, contains unsupported speculation about SPP market volatility, declares EMW should have acquired more generating assets (over a stretch of many years in advance of the audit period at issue) without identifying what, when, or how much, and rests on an incomplete hypothetical about either an unsupported ability of EMW to have created a similarly constructed and cost-equivalent portfolio to a combined EMW-EMM utility over the last several decades or an over-simplified merger of EMW’s and EMM’s costs. If the leap of logic required to connect OPC’s proposed disallowance to EMW’s FAC costs and decision-making during the audit period suffices to rebut the prudence presumption, then the presumption is rendered illusory. OPC’s evidence plainly was not “sufficient to support a finding contrary to the presumed fact” that EMW’s FAC costs were prudent during the review period, and so the Commission should summarily disregard OPC’s allegations. Id. at 539.

Even if the Commission were to go on to analyze the merits of OPC’s proposed disallowance, the Commission must apply the following two-pronged test: (1) evaluate whether the utility acted imprudently (that is, did not act reasonably at the time under the applicable circumstances); and (2) evaluate whether such imprudence was the cause of the harm (increased costs) to the utility’s customers.

See Associated Natural Gas, 945 S.W.2d at 529. As discussed herein, OPC has also failed to establish this two-pronged test with substantial and competent evidence on the record as a whole.

***a. OPC's Proposed Disallowance is Based on Improper Hindsight.***

OPC has misapplied the first prong of the two-pronged test of the prudence standard by explicitly relying on hindsight to determine what it believes was EMW's imprudence. However, the party claiming imprudence must demonstrate the utility's conduct at issue was not "reasonable at the time, under all circumstances... prospectively rather than in reliance on hindsight." Associated Natural Gas, 945 S.W.2d at 529.

Throughout this proceeding, OPC has tellingly offered misaligned justifications for its arguments based on thinly-veiled hindsight about the performance of the SPP energy market. In its opening statement, OPC's counsel claimed OPC is not challenging EMW's decision at a "single point in time" like going to buy a house or sell a car, but that EMW's unidentified decision not to acquire sufficient generation to meet customer load (from OPC's view) is somehow "ongoing."<sup>7</sup> Yet, OPC witness Ms. Mantle stated during cross-examination that she does "not know" when someone would determine the prudence of buying a certain car: either at the time the car was purchased or today after filling up the gas tank.<sup>8</sup>

Adding to OPC's confusion, OPC witness Dr. Marke's testimony repeatedly attempted to equate his claim about EMW lacking an owned generation "hedge" against the SPP energy market to a homeowner's single decision to purchase insurance.<sup>9</sup> Seemingly contrary to both OPC's counsel and Ms. Mantle, Dr. Marke states that a "homeowner does not need to perfectly predict

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<sup>7</sup> Tr. 22:19-25.

<sup>8</sup> Tr. 145:22-146:7 (Mantle).

<sup>9</sup> Ex. 303, Marke Surrebuttal at 2-3.

whether a disaster is likely to strike the home nor does a disaster even need to occur for the decision to acquire insurance to be prudent...”<sup>10</sup>

EMW agrees that no one can perfectly predict future energy prices in the SPP market, and OPC’s attempts to impugn resource planning decisions made well before the audit period with market events and data occurring after the audit period is, simply, unlawful hindsight.<sup>11</sup> A comparison of current market results to the “current period ‘harm’ from a decision that was made ten-plus years ago is not a factor in assessing prudence on that decision. That’s a hindsight view because you’re looking today at where the market ended up when you couldn’t have known that when you made that decision ten years ago.”<sup>12</sup> Rather, EMW used its Commission-mandated IRP process to determine the most cost-effective course of action during the review period, based on the circumstances and information available at the time, including evaluating the cost to build generating assets compared with the price of energy in the SPP market.<sup>13</sup> For example, the Commission in Nos. EO-2019-0067 and EO-2019-0068 applied the prudence standard and concluded the Company’s costs were prudent.<sup>14</sup>

Therefore, EMW prudently implemented its Preferred Plan, including decisions to add or not add new generating resources, based off of what was known and reasonable, under the circumstances and information readily available, to keep energy costs low for its customers.<sup>15</sup> OPC has shown no imprudence, cannot try to rely on improper hindsight in order to do so, and thus has

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<sup>10</sup> *Id.* at 2.

<sup>11</sup> Tr. 92:16-22 (Ives); Ex. 5, Ives Rebuttal at 15.

<sup>12</sup> Tr. 92:17-22 (Ives); Ex. 8, Ives Surrebuttal at 10; See In Re: Sixth Prudence Rev. of Costs Subject to the Comm’n-Approved Fuel Adjustment Clause of the Empire Dist. Elec. Co., No. EO-2017-0065, 2018 WL 1452749, at \*13 (Feb. 28, 2018) (stating “It is very easy to look back at [market prices] with perfect 20-20 hindsight to say that [an electric utility’s] decision . . . has cost its ratepayers a definite amount of money.”).

<sup>13</sup> Tr. 50:20-25, 67:4-18 (Mantle); Ex. 302, Mantle Surrebuttal at 14-5.

<sup>14</sup> Ex. 3, Reed Direct at 13.

<sup>15</sup> Tr. 91:16-24, 92:16-22 (Ives); Ex. 8, Ives Surrebuttal at 15-16.

failed to carry its burden of proof as to the first prong of the prudence standard. Again, the Commission may thus halt its analysis here, and reject OPC's proposed disallowance.

***b. OPC Failed to Establish a Casual Connection between EMW's "Ongoing" Decision Not to Hedge against the SPP Energy Market and Any "Actual Harm" in this FAC Prudence Review Period.***

In addition to failing to rebut the prudence presumption or prove the first prong of the prudence standard, OPC has also failed to satisfy the second prong of the prudence standard. As discussed above, OPC was required to establish a causal connection, or "nexus," arising out of EMW's decision to purchase power from the SPP energy market (rather than to build generation as a "hedge" sometime before the audit period) and OPC's proposed disallowance of \$86,376,294, with interest.<sup>16</sup>

In its opening statement, OPC's counsel acknowledged that Staff and the Company agree such a determination requires one "to go back and look at . . . what generation would [EMW] have bought, how much would that have cost, all these other variables. And there are a lot of variables there. It's a difficult equation."<sup>17</sup> Indeed, OPC fails to provide any substantive analysis to establish a casual connection between its proposed ordered adjustment and any EMW decision prior to or during the audit period, including: (1) the Company's specific decision claimed to be imprudent; (2) a range of reasonable similar conduct based on what other firms have decided; or (3) the quality of the Company's decision based on the circumstances and information known and reasonable at

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<sup>16</sup> Ex. 302, Mantle Surrebuttal at 4; Wyrick v. Henry, 592 S.W.3d 47, 56 (Mo. App. W.D. 2019) ("nexus" means a "connection between things"); Maritz Holdings, Inc. v. Fed. Ins. Co., 298 S.W.3d 92, 99 (Mo. App. E.D. 2009) ("causally connected . . . arose out of the same nexus of conduct."); Walden v. Smith, 427 S.W.3d 269, 276 (Mo. App. W.D. 2014) (holding "'arising out of' means that a causal connection exists between the employee's duties and the injury."); Associated Natural Gas, 954 S.W.2d at 529 ("The amount of the proposed adjustment must be based on excessive expenditures incurred during the" FAC prudence review); In re Matter of the Third Prudence Rev. of Costs Subject to the Comm'n-Approved Fuel Adjustment Clause of KCP&L Greater Mo. Operations Co., No. EO-2011-0390, 2012 WL 4056581 (Sept. 4, 2012) ("Harm to ratepayers in relation to imprudently incurred costs requires proof of causation, i.e., that the increased costs recovered from the ratepayers were causally related to the alleged imprudent action, and evidence as to the amount those expenditures would have been if the utility acted prudently").

<sup>17</sup> Tr. 26:5-15.

the time the decision was made.<sup>18</sup> It is clear OPC first intended to recommend a disallowance, and then attempted to support it with fuzzy math and unsupported hypotheticals while evading a proper prudence evaluation.

OPC's disallowance is premised on the belief that EMW does not have enough generating assets to meet its customer load, subjecting it to the SPP energy market's price volatility.<sup>19</sup> However, OPC provides no analysis for this hypothesis, but rather manifests unrealistic hypothetical where EMM and EMW are merged.<sup>20</sup> "OPC recommends a disallowance of \$86M for EMW, which primarily reflects OPC's apparent belief that EMW should charge its customers the average of EMM/EMW costs rather than EMW's stand-alone costs."<sup>21</sup> This "has nothing to do with any specific resource decisions that were made in this FAC audit period."<sup>22</sup> It also has no basis in facts, variables, or criteria that would have been (and appropriately were) assessed at the time that supply portfolio decisions were made. OPC relies upon market impacts from the audit period at issue to attempt to redefine the facts, variables, and criteria that were assessed in developing EMW's supply portfolio over the previous decades—clearly a gross misapplication of the prudence standard.

Additionally, OPC has wholly failed to support that "actual harm to customers" occurred at all during the audit period at issue, much less that it is equal to OPC's proposed disallowance.<sup>23</sup>

This particular audit period "was the first time you saw [the] price volatility" of gas prices in the

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<sup>18</sup> Ex. 5, Ives Rebuttal at 15.

<sup>19</sup> Ex. 10, Messamore Surrebuttal at 13.

<sup>20</sup> Tr. 68:19-22 (Messamore).

<sup>21</sup> Ex. 3, Reed Direct at 22-23.

<sup>22</sup> Id.

<sup>23</sup> In re Matter of the Third Prudence Rev. of Costs Subject to the Comm'n-Approved Fuel Adjustment Clause of KCP&L Greater Mo. Operations Co., No. EO-2011-0390, 2012 WL 4056581 (Sept. 4, 2012); In re Laclede Gas Co., No. GR-2004-0273, 2007 WL 3225389 (June 28, 2007) (holding that the Commission determined Laclede's decision was prudent, thus, "the Commission need not determine if customers were harmed or by how much they may have been harmed by Laclede's decision.").

SPP energy market increase the fuel costs flowing through the FAC.<sup>24</sup> As explained by Evergy witness Mr. Ives, the high gas prices during this prudence review had not been seen since 2008 or 2009.<sup>25</sup> Today, gas prices have dropped back down to pre-Winter Storm Uri prices.<sup>26</sup> Commissioner Holsman likewise pointed out this discrepancy and OPC's inability to establish a casual connection between alleged insufficient generation and increased gas prices, when he stated: "I'm not sure that [the lack of insurance] is the same thing as making a case that what's led us here" to increased costs during this FAC prudence period.<sup>27</sup>

Even so, if EMW had "hedged" against the SPP energy market by building "sufficient" generation rather than buying off the market when prices were low for years, OPC would likely have opposed EMW's return of and return on in related rate cases.<sup>28</sup> The Commission should reject OPC's recommended disallowance because OPC improperly applies the prudence standard and has not proven any imprudence.

***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?***

For the reasons discussed herein, the Commission should find that EMW prudently implemented its IRP Preferred Plan in not acquiring additional "generation" during the audit period because it was more economically efficient to buy energy from the SPP energy market.<sup>29</sup>

Although the Commission has never adopted OPC's similar arguments in prior proceedings, OPC argues for the eleventh time here that EMW was imprudent for not acquiring or building "sufficient" generation to meet its customer load requirements, the revenues of which

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<sup>24</sup> Id. at 32.

<sup>25</sup> Id. at 94.

<sup>26</sup> Id. at 95.

<sup>27</sup> Id. at 194.

<sup>28</sup> Ex. 303, Marke Surrebuttal at 2.

<sup>29</sup> Tr. 54:6-11 (Messamore), 101:12-15 (Ives).

OPC believes should completely offset the costs from the SPP energy market.<sup>30</sup> In the ten prior cases, listed on page 16 of Ms. Mantle’s Direct testimony, the Commission has never found EMW to be “imprudent in its resource planning,” or issued a disallowance, while often noting that OPC continuously offers “its own previous concerns about Evergy West’s resource planning as its primary evidence of imprudence.”<sup>31</sup> The Commission should not deviate from its prior rulings as supported by Staff’s agreement that EMW was not imprudent by relying on the SPP energy market.

As Staff witness Jordan Hull stated in his Rebuttal testimony, although EMW “has relied on the market at times to meet its customer’s energy needs ... Staff has not alleged this as an imprudent decision in this case ... There are too many variables that determine not only the market price but also how much is purchased from the market by Evergy Missouri West as well as different variables associated with building new generation.”<sup>32</sup> Staff reaffirmed this in its *Amended Position Statement* when it stated: “Staff agrees that Evergy Missouri West has relied on the market at times to meet its customers’ energy needs. However, Staff does not consider this to be imprudent and is unsure of what a reasonable disallowance would be based on the number of variables that would need to be considered when trying to quantify such a number.”<sup>33</sup>

Moreover, OPC’s proposed disallowance is based on contending that “insurance” can only constitute steel-in-the-ground dispatchable generation. However, as EMW witnesses Kayla Messamore and Mr. Ives explained, insurance can include a variety of resources, such as physical assets, financial hedges, and even purchase power agreements (“PPA”).<sup>34</sup> When calculating its

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<sup>30</sup> Ex. 8, Ives Surrebuttal at 16.

<sup>31</sup> *Id.* (citing Amended Report and Order, p. 33, In re App. of EMW for a Financing Order of Extraordinary Storm Costs Through an Issuance of Securitized Utility Tariff Bonds, No. EF-2022-0155, (issued November 17, 2022)); Tr. 152:18-154:-5 (Mantle).

<sup>32</sup> Ex. 200, Hull Rebuttal at 2.

<sup>33</sup> *Staff’s Amended Statement of Positions*, EO-2023-0267 & EO-2023-0277, 1-2 (Mar. 15, 2024).

<sup>34</sup> Tr. 54:6-11, 58:5-11 (Messamore); Tr. 101:14-15 (Ives).

assertion that EMW could only generate 62% of its retail customer load requirements during 2022, a 48% overreliance on the SPP energy market, OPC failed to recognize several factors.

First, the days of matching a utility’s revenue from resource generation to the costs it incurs from the SPP are gone.<sup>35</sup> In reality, the SPP energy market includes 15 states and dispatches the most economically efficient generation on a given day to meet its customer load requirement.<sup>36</sup> This ultimately results in utilities being net sellers, where generation volumes sold into the SPP energy market exceed load volumes purchased, due to a utility having more economically efficient assets (on a marginal cost basis), or vice versa, resulting in net buyers.<sup>37</sup> To perfectly match customer load with resource generation is “unachievable in an integrated market” unless EMW wants to “ignore the integrated market and not take advantage of the economies of scale.”<sup>38</sup>

Second, the energy generated is a product of the SPP’s economic dispatch model.<sup>39</sup> The 62% results from the SPP wholesale energy market being more economic than EMW’s asset, not that its assets cannot cover its customers’ energy requirement.<sup>40</sup> The “SPP’s short-run margin economic optimization model is performing as intended—dispatching other more economic generating assets throughout the [SPP] instead of less economic options.”<sup>41</sup> SPP’s optimization model is similar to EMW’s IRP process in that it selects the most economic generation assets “at the time, under all circumstances,” to augment energy output at the lowest cost to customers.<sup>42</sup>

EMW’s IRP process assesses the most economical resource generation and energy purchasing plans to meet its customers’ needs, across a 20-year period, by analyzing the Company’s

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<sup>35</sup> Ex. 6, Messamore Rebuttal at 8.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id. at 12.

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> See Associated Natural Gas, 945 S.W.2d at 529.

all-in costs, fixed and variable costs.<sup>43</sup> An IRP process evaluates the Company’s all-in costs throughout a variety of resource plans, or “combinations of insurance or types of insurance,” and then EMW selects its preferred resource plan based on the lowest net present value of revenue requirement (“NPVRR”).<sup>44</sup> It does not simply assess the net revenues from the SPP versus load costs.<sup>45</sup> The amount of insurance EMW purchases “is dependent on the range of volatility” it expects, “the cost of the insurance, [and] the effectiveness of the insurance in mitigating that risk.”<sup>46</sup> The IRP process also evaluates commodity price fluctuations, inflation, and new environmental regulations, to name a few,<sup>47</sup> and then controls for all of these variables when generating its resource plans. This ensures EMW is not “playing the Lotto,” but rather has a diversified asset portfolio.<sup>48</sup> EMW has sufficient generation to meet its load requirement when complying with its IRP process and the SPP’s resource adequacy requirements, discussed further under Issue 8.<sup>49</sup>

The only factor OPC considered throughout this FAC prudence review regards the volatility of the SPP energy market.<sup>50</sup> However, OPC failed to produce any substantive, competent evidence to establish a causal connection between what it alleges would be “the necessary amount of insurance needed” for EMW not to be subject to the SPP energy market’s volatility and the costs incurred during this prudence review period.<sup>51</sup> When asked by Commissioner Holsman how much “insurance” is needed right now for this volatility not to occur, Ms. Mantle states: “I haven’t done an analysis.”<sup>52</sup>

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<sup>43</sup> As discussed below under Issue 8, OPC only analyzed variable costs.

<sup>44</sup> Tr. 50:20-25, 51:1, 67:4-20 (Messamore); Ex.10, Messamore Surrebuttal at 14-5.

<sup>45</sup> Ex. 6, Messamore Rebuttal at 10.

<sup>46</sup> Tr. 50:22-25 (Messamore).

<sup>47</sup> Ex. 10, Messamore Surrebuttal at 19-20.

<sup>48</sup> Tr. 132:21-133:20 (Ives).

<sup>49</sup> Ex. 6, Messamore Rebuttal at 9.

<sup>50</sup> Tr. 89:18-91:3 (Ives).

<sup>51</sup> Id. at 90:16-24 (Ives), 159:19-160:7 (Mantle).

<sup>52</sup> Id. at 159:19-160:7 (Mantle); Ex. 6, Messamore Rebuttal at 5.

As Evergy's witnesses explained about the decision to buy from the energy market during this review period, EMW's IRP Preferred Plan at the time did not "pop up and say, build a facility," or EMW would have.<sup>53</sup> Additionally, the IRP process did not tell EMW to deploy its fossil fuel fleet, which "was theoretically capable of producing enough energy during the prudence period," because the market energy was more cost-effective.<sup>54</sup> Even though EMW "may have capacity, it may not get called and turned into energy in the market."<sup>55</sup> The IRP Preferred Plan indicated that EMW should buy energy from the market and procure capacity from EMM to meet its customer needs, after analyzing all of the factors set forth above and more.<sup>56</sup> As explained by Darrin Ives, Exhibit 13, under the capacity view, demonstrates EMW was "meeting its load requirements at SPP per peak load plus reserve margin" during this FAC prudence review period.<sup>57</sup> "It may be cheaper for customers to... exercise [EMW's] ability to go to the market for energy."<sup>58</sup> EMW was prudent in its decision, and agrees with Ms. Mantle's statement that "making a claim of imprudence without looking at the information that was known or knowable at the time the decision [is] made is simply unjust, unreasonable, and illogical."<sup>59</sup>

Finally, OPC makes the claim that EMW agrees it needs to currently add additional capacity to meet in customer needs, thus, it had insufficient generation.<sup>60</sup> EMW's current IRP process does show that it needs some additional generation resources in the coming years, such as wind, solar, and construction of a natural gas plant that would take until 2029 if it was started

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<sup>53</sup> Tr. 92:3 (Ives).

<sup>54</sup> Ex. 302, Mantle Surrebuttal at 40 (referencing Data Request 8064 Schedule LMM-S-13).

<sup>55</sup> Ex. 13C; Tr. 130:4-12 (Ives).

<sup>56</sup> Tr. 129:19-130:17 (Ives); Ex. 9, Messamore Surrebuttal at 17.

<sup>57</sup> Ex. 13C; Tr. 129:10-24 (Ives).

<sup>58</sup> Id.

<sup>59</sup> Ex. 302, Mantle Surrebuttal at 25 (quoting Ex. 7, Reed Rebuttal at 7).

<sup>60</sup> Ex. 6, Messamore Rebuttal at 7.

today.<sup>61</sup> Additionally, EMW has begun to insure against the SPP energy market with its acquisition of a 22% percent interest in Dogwood that supplies 143 megawatts (“MW”) of capacity.<sup>62</sup>

However, adding resources for future needs does not equate to having past needs.<sup>63</sup> During this prudence review period, EMW had sufficient capacity to meet its SPP-required planning reserve margin and its customers’ needs in 2021, 2022, and 2023, and OPC has not shown otherwise with competent record evidence.<sup>64</sup>

**8. *If Evergy Missouri West was imprudent with respect to Issue 6, above, should there be a disallowance?***

**a. *If so, how much should the disallowance be?***

**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?***

For the reasons discussed herein, the Commission should not find EMW imprudent under Issue 6, as discussed above. Thus, the Commission should not adopt OPC’s proposed disallowance of \$86,376,294, with interest.

As discussed further in the subsections above and below, OPC failed to meet the prudence presumption or standard. If the Commission were to adopt OPC’s proposed disallowance, it would drastically and unjustly negatively affect EMW’s financial integrity.

**a. *OPC Failed to Establish a Causal Connection under the Prudence Standard between Any Actual Harm Caused to Ratepayers and Its Disallowance.***

As discussed above, OPC claims that EMW’s imprudence of failing to have sufficient steel in the ground led to increased costs during this FAC prudence review period from the price volatility of the SPP energy market .<sup>65</sup> But when asked by Commissioner Holsman what

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<sup>61</sup> Tr. 89:7-17, 95:18-23 (Ives).

<sup>62</sup> Id. at 108:7-15 (Ives).

<sup>63</sup> Ex. 6, Messamore Rebuttal at 8.

<sup>64</sup> Id. at 7; Ex. 13C; Tr. 129:10-24 (Ives).

<sup>65</sup> Tr. 32:2-8.

percentage of the disallowance is evidenced by the gas price volatility during this prudence review, OPC's counsel responded: "I guess I would say all of it."<sup>66</sup> Even Staff is "unsure of what a reasonable disallowance would be based on the number of variables needed to quantify any associated amount."<sup>67</sup> Staff witness Jordan Hull explained in his rebuttal testimony that EMW was not imprudent for relying on the SPP energy market because there are too many variables that determine SPP energy market gas prices compared to how much energy EMW purchased and the "variables associated with building new generation."<sup>68</sup>

Additionally, OPC provided no substantive, competent evidence on the volatility of the SPP energy market or its relationship to the "complex optimization of many forecasted variables including future market price, the impact of demand-side resources, and customer load requirements."<sup>69</sup> Commissioner Holsman alludes to this during Dr. Marke's evidentiary hearing testimony when stating: "I'm still trying to ... hear evidence that ... what has occurred in this FAC period has actually caused – that volatility has caused harm to the ratepayers."<sup>70</sup>

In contrast, EMW's IRP process is the only substantive, competent evidence about the Company's analysis of these numerous and complex variables, to determine the Company's Preferred Plan with the lowest NPVRR.<sup>71</sup> It is the only substantive, competent evidence put forth in this proceeding regarding EMW's resource planning or EMW's decisions during the audit review period.

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<sup>66</sup> Id. at 34:10-18).

<sup>67</sup> Id. at 9:20-24.

<sup>68</sup> Ex. 200, Hull Rebuttal at 2.

<sup>69</sup> Tr. 152:5-15 (Mantle); Id. (citing Mantle Direct at 5).

<sup>70</sup> Tr. 194:15-24 (Commissioner Holsman).

<sup>71</sup> Ex. 10, Messamore Surrebuttal at 19.

***b. OPC’s Disallowance Is Based on Either an Unrealistic and Incomplete Hypothetical of Combining EMW and EMM or Unsupported Speculation About EMW’s Ability to Ever Have An Asset Portfolio Like That Hypothetical Combined Company.***

EMW and EMM are two separate legal entities and have always been recognized by the Commission as such. The companies do operate jointly to create efficiencies when capable, such as cross-entity employees, because of their common parent company, Evergy, Inc. (“Evergy”). However, the Companies are vastly different.<sup>72</sup>

OPC’s proposed disallowance manifests entirely from its misunderstanding of why EMM and EMW participate to a certain extent in a joint IRP process. Joint planning has been performed since the Aquila acquisition in 2008, as mandated by 4 CSR 240- 22.010. However, each year EMW, EMM, and Evergy Kansas Central (“EKC”) have filed separate IRPs, and each year EMW has selected its Preferred Plan on an individual stand-alone basis.<sup>73</sup> Additionally, OPC witness Ms. Mantle does not provide any specific analysis from EMW’s most recent IRP filing, EO-2023-0213, to support her claim that resource planning was done jointly—because none exists.<sup>74</sup> The combined IRP analysis is only performed for informational purposes to detect inconsistencies or overlay between the utilities’ preferred plans over the next 20 years.<sup>75</sup> For example, the only joint plans evaluated in the EO-2023-0213 IRP filing were to exemplify the economics of different retirement dates of Evergy’s coal units for each utility, since many are jointly owned.<sup>76</sup> However, these tests were then performed again on an individual basis “to ensure results were consistent prior to any retirement changes in the Preferred Plan of any of the individual utilities.”<sup>77</sup>

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<sup>72</sup> Tr. 80:19-81:18 (Ives).

<sup>73</sup> Ex. 6, Messamore Rebuttal at 13-4; Id. at 84.

<sup>74</sup> Ex. 6, Messamore Rebuttal at 13.

<sup>75</sup> Tr. 55:20-56:6 (Messamore), 99:3-25 (Ives).

<sup>76</sup> Ex. 6, Messamore Rebuttal at 13.

<sup>77</sup> Id.

Additionally, OPC completely ignores the complexity of reconciling assets and reallocation of costs between EMW and EMM, and how that affects ratepayers across jurisdictions. In Nos. ER-2018-0145 and ER-2018-0146, Evergy agreed to perform a study investigating the consolidation of EMM and EMW.<sup>78</sup> On October 30, 2020, Evergy filed its Consolidation Study that concluded EMW and EMM would have to be consolidated over several rate cases on a phased-in approach.<sup>79</sup> The phased-in approach would include “rate comparison across jurisdictions, analysis and comparison of rate structures, and customers/classes, and the review of methodologies for calculating bill components. Steps after this would include rate cleanup/elimination and simplification, as well as, the calculation of bill compares to fully understand the customer impact of rate consolidation to minimize customer disruption, as well as, migration analysis.”<sup>80</sup> Consolidation would take approximately 10 years.<sup>81</sup>

As Darrin Ives explained at hearing, phasing in the rate comparison across jurisdictions would require simultaneous rate cases in Missouri and Kansas, because EMM’s customer service area spans across state lines.<sup>82</sup> Simultaneous cases would lessen the impact to shareholders by not leaving money stranded, while ensuring each jurisdiction does not order different answers to issues, such as debt.<sup>83</sup> EMM would have to unwind its secured debt since its assets serve Kansas and Missouri customers, which “could result in new debt at currently higher interest costs” and “make-whole payments.”<sup>84</sup>

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<sup>78</sup> Ex. 5, Ives Rebuttal at 6; See *Order Approving Stipulations and Agreements*, Nos. ER-2018-0145 and ER-2018-0146 (issued October 31, 2018 with attached Non-Unanimous Partial Stipulation and Agreement, p. 9, para. 16 (filed September 18, 2018)).

<sup>79</sup> Ex. 5, Ives Rebuttal at 6; See Notice of Filing Consolidation Study, Exhibit A, Nos. ER-2018-0145 and ER-2018-0146 (filed on October 30, 2020).

<sup>80</sup> Id.; Ex. 5, Ives Rebuttal at 6-7.

<sup>81</sup> Tr. 88:21 (Ives).

<sup>82</sup> Id. at 87:22-88:11 (Ives).

<sup>83</sup> Id. at 88:12-17 (Ives).

<sup>84</sup> Id. at 86:19-87:3 (Ives).

In addition to simultaneous rate cases, EMM and EMW would have to ensure their customers would not have to pay or benefit from costs the other jurisdiction has incurred.<sup>85</sup> OPC's proposed disallowance blindly assumes that EMW's and EMM's generation fleets and costs are equal (or could have ever been equal).<sup>86</sup> Although both companies have approximately 350,000 customers, their customer demographics and generation assets are completely different. EMW's customers are more rural, less density per mile, and have ultimately had less energy supply historically than EMM.<sup>87</sup> Overall, EMM customers have consistently paid higher rates than EMW because it has more generation supply, thus having higher relative rate base investment levels.<sup>88</sup>

Since EMM has more generation supply and higher average retail rates, the disallowance would severely impact EMM customers when examining the Companies' all-in retail rates.<sup>89</sup> OPC's own Schedule LMM-D-5 demonstrates that EMW's and EMM's combined total all-in costs, fixed and variable costs, would significantly impact EMM customers by \$532,213,330 million.<sup>90</sup> This is determined by finding the difference between the Companies of the sum of the hypothetical combined and allocated Actual Net Energy Costs ("ANEC") (variable costs) and its generation revenue requirement (fixed costs). The total ANEC is \$594,512,384 million and \$336,623,706 for EMM and EMW, respectively, and the Companies' fixed costs of \$425,932,185 and \$151,607,524, respectively.<sup>91</sup>

OPC fails to provide any analysis other than an incomplete hypothetical for its proposed disallowance, and thus has failed to carry its burden of proof with competent record evidence. The

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<sup>85</sup> Id. at 81:13-21 (Ives).

<sup>86</sup> Ex. 6, Messamore Rebuttal at 15.

<sup>87</sup> Tr. 83:2-11 (Ives).

<sup>88</sup> Id.

<sup>89</sup> Ex. 6, Messamore Rebuttal at 15.

<sup>90</sup> Ex. 300C, Mantle Direct Schedule LMM-D-5.

<sup>91</sup> Id.; Ex. 6, Messamore Rebuttal at 15.

same is true for any speculation by OPC about EMW’s asset portfolio as compared to EMM’s, about which OPC offered no evidence whatsoever.

***c. OPC’s Disallowance Would Drastically Affect EMW’s Access to Capital.***

A \$86,376,294, with interest, disallowance would cause a flight or outcry from investors at \$0.30 per share, as they would have to reconsider their investment under Missouri’s newly restricted regulatory construct.<sup>92</sup> Currently, EMW’s “capital expenditure program is significant for its relatively small size, totaling approximately \$5.9 billion, or \$580 million annually on average, through 2028.”<sup>93</sup> Of the four electric utilities in Missouri, only EMW has increased its load growth since 2010,<sup>94</sup> and there is a good environment for economic development in Missouri right now.<sup>95</sup>

However, as Chair Hahn points out, a \$86 million disallowance would make access to capital harder as it would not send the right signal to investors that the Commission wants more steel in the ground in Missouri.<sup>96</sup> An \$86 million disallowance would further negatively impact the Company’s credit ratings.<sup>97</sup> S&P Global Ratings affirmed EMW’s ‘A-2’ short-term and commercial paper ratings in 2023, but lowered its issuer credit rating from ‘A-’ to ‘BBB+’ due to

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<sup>92</sup> Tr. 106:7-25 (Ives).

<sup>93</sup> Jillian Cardona, *Rating Action: Moody’s Ratings affirms ratings of Evergy Missouri West, revises outlook to negative, Moody’s Rating* (May 3, 2024) [https://www.moody’s.com/research/Moodys-Ratings-affirms-ratings-of-Evergy-Missouri-West-revises-outlook-Rating-Action--PR\\_489689](https://www.moody’s.com/research/Moodys-Ratings-affirms-ratings-of-Evergy-Missouri-West-revises-outlook-Rating-Action--PR_489689); 20 CSR 4240-2.130(1); Mo. Rev. Stat. § 536.070(6) (A regulatory law judge and the Commission “shall take official notice of all matters of which the courts take judicial notice”). The article may be received by the Commission through “administrative or judicial notice” given the extensive discussion with Chair Hahn regarding access to capital during hearing, because the article is publicly available and provides “technical facts” to a key component of obtaining capital, credit scores. Mo. Rev. Stat. § 536.070(6) (the Commission “may also take official notice of technical or scientific facts, not judicially cognizable, within their competence”); *Grimes v. Eddy*, 28 S.W. 756, 759 (1894) (“If a fact alleged to exist, and upon which the rights of parties depend, is within common experience and knowledge, it is one of which the courts will take judicial notice.”); *Matter of Union Elec. Co. of St. Louis*, 1975 WL 31631 (Mo.P.S.C. 1975) (concluding that the Commission was permitted to take official notice of credit score ratings from other testimony since the transcript did not contain evidence of the Company’s financial stability, such as “need for improved cash flow, reduced external financing, or improved interest coverage.”). Additionally, the Commission “can take ‘official notice’ of its own rules.” *Prokopf v. Whaley*, 592 S.W.2d 819, 823 (Mo. 1980). 20 CSR 4240-2.130 does not prohibit the Commission from taking official notice of an online article and none of its subsections supplant 536.070(6) as stated under 20 CSR 4240-2.130(1).

<sup>94</sup> Tr. 185:17-19 (Marke).

<sup>95</sup> *Id.* at 126:16-17 (Ives).

<sup>96</sup> *Id.* at 106:7-25 (Ives); 196:17-197:1 (Chair Hahn).

<sup>97</sup> *Id.* at 196:17-197:1 (Chair Hahn).

the delay in EMW's securitization of extraordinary costs incurred from Winter Storm Uri.<sup>98</sup> Approving the disallowance would likewise significantly affect EMW's issuer credit rating, since OPC's appeal of the securitization case caused a notch decrease.<sup>99</sup> As Mr. Ives states in his Direct Testimony, "lower credit ratings and increased risk" have led to "higher market cost of debt for EMW's customers."<sup>100</sup>

A decrease in capital investment would hinder EMW's ability to build or acquire generating assets, especially in an already constrained market. In the current market, there are not many companies selling natural gas plants, Dogwood being an exception.<sup>101</sup> To put the opportunity cost lost from the disallowance into perspective, with \$86 million dollars, EMW would be able to acquire one-and-a-half Dogwood facilities (because the 22% of Dogwood that EMW acquired cost approximately \$62 million).<sup>102</sup> Because future capacity needs do not relate to this prudence review, Ms. Mantle inappropriately points out that in 2024, 2025, and 2026, EMW will need 275, 260, and 240 MW respectively, preferably from a combined cycle plant.<sup>103</sup> Commissioner Holsman relatedly stated: "So ... an additional Dogwood would get us close."<sup>104</sup>

However, due to the lack of assets for sale, EMW will be forced to build. As stated above, EMW's current IRP process shows that the Company needs to construct a natural gas plant by 2029, and that is if the construction starts today.<sup>105</sup> The timeframe to build is already constrained

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<sup>98</sup> Shiny A. Rony, *Evergy Inc. And subsidiaries downgraded by one notch on weakening financials; outlook revised to stable, S&P Global Rating* (Nov. 29, 2023) <https://disclosure.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/3095976>; 20 CSR 4240-2.130(1); Mo. Rev. Stat. § 536.070(6).

<sup>99</sup> OPC's references to EMW's roughly \$300 million costs incurred from Winter Storm Uri in No. EF-2022-0155 during this FAC prudence review, as a scare tactic about potential future increases in customer rates, violates Mo. Rev. Stat. § 393.1700 because the Commission cannot consider securitization costs in deciding the Company's overall rates..

<sup>100</sup> Ex. 1, Ives Direct at 13.

<sup>101</sup> Tr. at 108:7-15 (Ives).

<sup>102</sup> Id.

<sup>103</sup> Tr. 158:5-21 (Mantle).

<sup>104</sup> Tr. 158:22-23 (Commissioner Holsman).

<sup>105</sup> Tr. 89:7-17, 95:18-23 (Ives).

by supply chain restrictions, commodity fluctuations, material supply shortages, transmission constrictions, and as OPC witness Marke points out, a long line in the SPP interconnection queue.<sup>106</sup> A significant decrease in capital investment would either devastate EMW financially or cause an increase in customer rates.

The disallowance would also make it more difficult for EMW to meet the SPP reserve margin, which is expected to increase to 17% by 2026.<sup>107</sup> Additionally, the SPP is currently evaluating the addition of a winter reserve margin and lowering the overall accredited capacity of renewables, such as wind and solar, as well as dispatchable fossil resources.<sup>108</sup> Lowering the accredited capacity would require EMW to spend more capital to build or acquire more “insurance.”

With the increase in the SPP reserve margin and EMW’s suspected load increase because of Meta’s data center, there is a lot of pressure to build.<sup>109</sup> If EMW cannot build or buy assets like Dogwood because of a decrease in capital investment, the Company will be forced to buy energy from the SPP energy market. The Commission must not approve OPC’s disallowance.

### **CONCLUSION**

For the foregoing reasons, the Commission should reject OPC’s proposed disallowance of \$86,376,294 with interest, because OPC has not met the prudence presumption or standard, nor proven any imprudence by EMW. If the disallowance was permitted, it would significantly hinder EMW’s access to capital. EMW respectfully requests all such further relief as the Commission deems just and proper.

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<sup>106</sup> Id. at 76:25-77:7 (Ives), 79:17-80:13 (Ives), 188:5-15 (Marke).

<sup>107</sup> Id. at 95:18-96:10 (Ives).

<sup>108</sup> Tr. 96:11-97:6 (Ives).

<sup>109</sup> Id. at 97:7-17 (Ives), 126:22-127:10 (Ives).

Respectfully submitted,

*/s/ Roger W. Steiner*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was served upon counsel for all parties on this 24<sup>th</sup> day of June 2024, by EFIS filing and notification, and/or e-mail.

*/s/ Roger W. Steiner*

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Roger W. Steiner