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

REPLY BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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July 8, 2024

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Glossary of Terms

As used in this brief,

"ANEC" means Actual Net Energy Cost

“EMW” means Evergy Missouri West, Inc. d/b/a Evergy Missouri West

“Evergy” means Evergy, Inc., the parent company of Evergy Metro and Evergy West

"Evergy Metro" means Evergy Metro, Inc. d/b/a as Evergy Metro

"Evergy West" means Evergy Missouri West, Inc. d/b/a Evergy Missouri West

"FAC" means Fuel Adjustment Clause

"IRP” means Integrate Resource Planning as defined by the Commission’s Chapter 22 Electric Utility Resource Planning rules (20 CSR 4240-22)

"OPC" means the Missouri Office of the Public Counsel

"RTO" means Regional Transmission Organization

"SPP" means Southwest Power Pool

"the Commission" means the Missouri Public Service Commission

“the Company” means Evergy Missouri West, Inc. d/b/a Evergy Missouri West

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Introduction

There are many errors, misstatements of fact, and misapplications of law found in Evergy West's initial brief. For the sake of brevity, the OPC will not respond to every one of them and will instead focus on the major problems. However, the OPC's decision not to respond to any one statement found in the Company's brief should not be taken to mean the statement is correct or that the OPC agrees.

Issue One: The Standard of Review

Presumption of Prudence

Beginning on page three and continuing until page six of the Company's brief, Evergy West addresses the standard that the Commission applies when determining the prudence of a utility's decision. *Evergy Initial Brief,* pgs. 3 – 6. This section demonstrates Evergy West does not fully understand this prudence standard and consequently fails to apply it appropriately. The Company *does* cite the law correctly, but Evergy West fails to interpret it in the right manner when it comes to applying the presumption of prudence.

The key to properly applying the presumption of prudence is to understand that it is reversible. *PSC v. Office of Pub. Counsel (In re Atmos Energy Corporation's 2008-2009 Purchased Gas Adjustment & Actual Cost Adjustment)*, 389 S.W.3d 224, 228 (Mo. App. W.D. 2012) (hereinafter *In re Atmos*) ("The presumption does not, however, survive a showing of inefficiency or improvidence."). This means that the only requirement that the OPC has is to create "a serious doubt as to the prudence of

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the expenditure." *Id*. "If that is accomplished, the utility then has the burden of dispelling those doubts and proving the questioned expenditure was in fact prudent." *Id*. Evergy's brief fails to understand this point because it treats the creation of "a serious doubt" as some monumental burden, when, in reality, it is very minimal. This can be seen quite clearly when one considers the Commission's past decisions.

Unsurprisingly, the presumption of prudence becomes an issue before the Commission fairly frequently. There are thus many cases that show how the Commission has approached the standard for creating "a serious doubt." In 2011, the Commission handed down an order in an Evergy West pre-curser case concerning Aquila.[1] The issue in the case concerned the design and implementation of Aquila's hedging program. HC-2010-0235, *Report and Order*, pg. 4 ¶ 4 – pg. 5 ¶9, EFIS Item no. 100. The Commission's found as follows:

> The evidence showed that Aquila hedged the purchase price of far more natural gas than it actually needed to use to produce steam to serve its customers. By doing so, Aquila operated a hedging program that actually increased rather than reduced price volatility. AGP amply demonstrated serious doubt about the prudence of Aquila's operation of the hedging program.

Id. at pg. 19. In this case, the Commission found that the complainant (AGP) overcame the burden of creating a serious doubt just by showing that Aquila had hedged more than it needed and had thus increase rather than reduced price volatility. *Id*. In the present case, by contrast, the OPC showed that Evergy West had

[1] Aquila, Inc. was a precursor of the utility currently doing business under the name Evergy West. Ex. 300C, *Mantle Direct*, pg. 12 lns. 13 – 15.

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hedged too little when it came to securing sufficient generation to meet customer demand, and had thus caused customers to incur additional costs. The OPC has therefore overcome its burden of creating "a serious doubt" under the same principle as AGP in case HC-2010-0235.

The HC-2010-0235 case is hardly the only time the Commission found a serious doubt had been created. In 2018, the Commission heard case EO-2017-0065 which concerned the hedging program utilized by The Empire District Electric Company as part of a Fuel Adjustment Clause prudence review. EO-2017-0065, *Amended Report and Order*, pg. 1, EFIS Item no. 114. As the Commission explained:

> Empire's $10.7 million financial hedging loss during the 18-month prudence review period draws the attention of anyone looking at the prudence of the company's hedging decisions. Public Counsel uses the fact of those losses as its basis to challenge the prudence of Empire's overall hedging program. Public Counsel contends Empire has failed to adjust its hedging program to account for important changes in the natural gas market brought about by what it terms the "shale gas revolution."

Id. at pg. 18. Once again, we have a case brought by the OPC, against an electric company, in an FAC prudence review case, that concerned the subject of hedging. *Id*. These facts make EO-2017-0065 a perfect stand-in for the present case. This is important because in the EO-2017-0065 case the Commission found that "[b]y pointing out the extent of the losses, Public Counsel has met the **<u>minimal</u>** requirement of demonstrating a serious doubt so as to place the burden on Empire to prove that its overall hedging policy is prudent." *Id*. at pg. 19 (emphasis added). As

this case demonstrates, merely pointing to the size of the losses was enough to meet what this Commission itself called the **minimal** standard for overcoming the presumption of prudence. *Id*. If $10.7 million in financial hedging losses are enough, then $299 million in FAC losses must certainly be enough.

This is not the only time the Commission relied on the size of the costs incurred as a basis for determining the presumption of prudence has been overcome. In case GR-2004-0273, the Commission considered the issue as it existed in both that case and in a prior case:

> In the Union Electric case, the Commission found that **the showing of $2 billion in cost overruns associated with the building of the Callaway nuclear plant was sufficient to raise serious doubts about the prudence of Union Electric's expenditures**, thus shifting the burden to Union Electric to show that its expenditures were prudent. In this case, Staff raises serious doubts about the prudence of Laclede's expenditures for the purchase of its swing supplies at FOM pricing. **Staff showed that Laclede could have paid $3,669,898 less for demand charges had it purchased its swing supplies at daily prices instead of FOM prices. Staff successfully raised serious doubts about the prudence of paying these charges**. This could have resulted in an overall savings to the ratepayer of $2,055,864. Therefore, the burden shifted to Laclede to prove that its payment of FOM demand charges was prudent.

GR-2004-0273, *Report and Order*, pg. 15, EFIS Item no. 84. Once again, the Commission demonstrates a very low bar for reversing the presumption of prudence.

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In both cases cited, the Commission found the costs incurred alone were enough to "create a serious doubt."

As the caselaw cited shows, the Commission's presumption of prudence, and more specifically the need to "create a serious doubt" to reverse it, has never been considered a major challenge. The Commission itself has described meeting this requirement as "minimal." EO-2017-0065, *Amended Report and Order*, pg. 18, EFIS Item no. 114. The OPC has provided more than enough to meet this minimal standard as expressed in its initial brief. *OPC Initial Brief,* pgs. 11 – 14. In particular, the OPC can point to the $299,775,720 in losses incurred during this 18-month prudence review period which should be more than enough to "draw[] the attention of anyone looking at the prudence of the company's hedging decisions." EO-2017-0065, *Amended Report and Order*, pg. 18, EFIS Item no. 114. Evergy West's claims that the OPC failed to meet and overcome the burden of creating "a serious doubt" is therefore just patently wrong.

Far more telling than Evergy West's unpersuasive attempt to argue the OPC failed to overcome the presumption of prudence is the Company's choice not to present any evidence to prove its prudence when that presumption is reversed. This is because the Company clearly wants the Commission to read the presumption of prudence in such a manner as to completely reverse the burdens of the parties in this case. This is illegal, as the Missouri Supreme Court has already explained:

> A change in the presumption of prudence **does not change the burden of proof set out in the PSC governing statutes**.

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> The presumption of prudence does not address the burden of proof at all. It sets out *an evidentiary presumption* created by the PSC. That standard provides that the utility's expenditures are presumed to be prudent until adequate contrary evidence is produced, at which point the presumption disappears from the case. *See Deck v. Teasley, 322 S.W.3d 536, 539 (Mo. banc 2010)* (discussing general law of presumptions). This presumption affects who has the burden of proceeding, **but it does not change the burden of proof, which by statute must remain on the utility**. *§ 393.150.2.*
>
> Further, the presumption of prudence is not even a creature of statute or of PSC regulations or rules. It was created by PSC case law. **It cannot be applied inconsistently with the PSC's governing statutes and rules**.

Office of the Pub. Counsel v. Mo. PSC, 409 S.W.3d 371, 379 (Mo. banc 2013). The Commission should therefore dismiss Evergy West's attempts to expand the presumption in a manner that would contradict past Commission decisions and possibly the statutory law itself.

The OPC met the burden of creating "a serious doubt" as to Evergy West's decision not to acquire sufficient, economically-efficient generation to meet its customer's demand. The OPC showed how Evergy West has lost more than $100 million dollars over the last four prudence periods with almost $300 million being lost in this period alone. *OPC Initial Brief,* pgs. 11 – 14. The OPC showed how no other regulated electric utility in this state operates in the same manner as Evergy West and how those other regulated electric utilities have managed to generate revenue as a result. *Id.* Finally, the OPC showed how Evergy's own witnesses all acknowledged that overreliance on the SPP energy market was imprudently risky. *Id*. After meeting its burden to create "a serious doubt" as to Evergy West's decision not to acquire

sufficient, economically-efficient generation to meet its customer's demand, the burden shifted to Evergy to prove that its decision was, indeed, prudent. *In re Atmos,* 389 S.W.3d at 228. The Company offered nothing to show that its decision actually was prudent either in the evidence offered in this case or in its brief. *See, e.g.*, Ex. 302C, *Mantle Surrebuttal*, pg. 38 lns. 19 – 22 (wherein the OPC's witness explains how Evergy's witness admitted in data response that "he did not conduct a full prudence review of Evergy's resource planning process in this case[.]"). The Commission should therefore find the OPC met its burden with regard to establishing a serious doubt as to the Company's imprudence, which then shifted the burden of establishing its prudence back onto Evergy West. The Commission should further find that Evergy West did not even attempt to meet this burden, let alone succeed.

<u>The OPC did Not Rely on Hindsight</u>

On pages six through eight of its brief, Evergy West predictably falls back on one of its oldest arguments by claiming the OPC improperly relied on hindsight when establish the Company's imprudence. *Evergy Initial Brief,* pgs. 6 – 8.[2] This is simply untrue. As explained by the OPC's witness, Ms. Lena Mantle:

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[2] The company also offers some rather odd, unrelated arguments in this section. For example, the Company claims the OPC has "misaligned justifications" because Counsel for the OPC stated that Evergy West's decision was not based on a single point in time, but rather, was a continuing decision and then the OPC's witness, Ms. Lena Mantle, stated on the stand that she did not know what single point in time the OPC would determine Evergy West had been imprudent. *Evergy Initial Brief,* pg. 6. This should be obvious, but these two statements are not misaligned. Both counsel for OPC and its witness said the same thing: the Company's imprudence is not based on a single point in time and hence you cannot determine what certain point in time the imprudence occurred. The Imprudence in this case is <u>continuing</u> and will continue as long as Evergy West does not have sufficient, economically-efficient generation to meet its customer's demand.

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> The Cambridge dictionary defines hindsight as "the ability to understand an event or situation only after it has happened." My analysis was **not** based on my evaluation of Evergy West's resource planning decisions after the decisions were made. It was based on my participation in Evergy West's resource planning filing process at the Commission over the last 30 years. Specifically, my analysis centered on Evergy West's resource planning and FAC filings since 2015.

Ex. 302C, *Mantle Surrebuttal*, pg. 12 ln. 22 – pg. 20 ln. 2 (emphasis added). More specifically, Ms. Mantle provided a comprehensive list of the key facts demonstrating the Company's imprudence in her rebuttal:

> 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.

Evergy West also bizarrely claims that Dr. Marke's statement, that a "homeowner does not need to perfectly predict whether a disaster is likely to strike nor does the disaster need to occur for the decision to acquire insurance to be prudent[,]" is contrary to both the statement offered by the OPC's counsel and the statement made by Ms. Mantle that was just discussed. *Evergy Initial Brief,* pgs. 6 – 7. Again, this is obviously wrong. On its face, there is nothing in this statement that contradicts the prior statements by the OPC's counsel or Ms. Mantle in any way. Moreover, Ms. Mantle expressed the exact same statements as Dr. Marke at length in her testimony. Ex. 300C, *Mantle Direct*, pg. 9 ln. 2 – pg. 11 ln. 15.

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> 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.

Ex. 301C, *Mantle Rebuttal*, pg. 16 lns. 8 – 23 (internal citations omitted). This is what led the OPC's witness to conclude that:

> Based on what Evergy West knew **prior to this prudence period**, it was imprudent for Evergy West to not provide insurance in the form of efficient generation that would hedge the potential volatility of the SPP market with revenues to offset the cost of energy from the SPP market to meet the customers' needs.

Id. at pg. 17 lns. 1 – 4. Tellingly, the Company did not provide any response to these facts in surrebuttal or at the hearing to show that the facts were not known by the Company before the prudence period or that the OPC was relying on some other facts not known until after the prudence period. In fact, the Company cannot point to a single fact that the OPC relied on to show where the OPC relies on hindsight to establish imprudence.

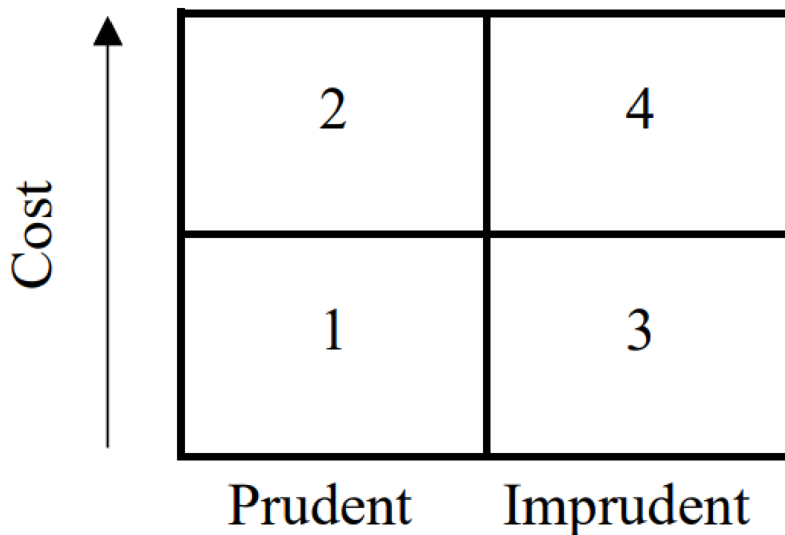
Instead of citing to any facts that the OPC relied on to establish the Company was imprudent, Evergy West's brief argues that the OPC must have engaged in hindsight by just making this statement:

> 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.

Evergy Initial Brief, pg. 7. This appears to be a deliberate misstatement of the OPC's argument. The OPC, through its witnesses, has expressed clearly that Evergy's decision not to acquire a hedge against the potential volatility of the SPP market was imprudent **<u>because</u>** "no one can perfectly predict future energy prices in the SPP market" but that decision did not become costly (*i.e.* harm did not occur) until the prudence period. This merits further discussion.

In her direct testimony, the OPC's witness Ms. Lena Mantle attempted to explain the relationship between imprudence and cost through a visual representation:

Figure 1: Relationship Between Prudence and Costs



Ex. 300C, *Mantle Direct*, pg. 9 ln. 4 – pg. 10 ln. 17. As Ms. Mantle explained:

> Boxes 1 and 2 represent prudent decisions. Box 1 represents a prudent decision that ultimately results in lower costs while Box 2 represents a

> decision that [ultimately] result in higher costs yet still may be considered prudent.
>
> . . .
>
> Box 2 represents the purchase of [] insurance that covers [a negative event occurring] but [the negative event never occurs]. This insurance still costs the [individual] money through its premium payments, but the [individual] did not have to go through the trauma of [the negative event]. Despite that fact, purchasing insurance was still prudent because, even though it ultimately cost the [individual] more money than the policy paid out (given that no claim was ever made), it eliminated the risk that came with [the risk of the negative even occurring].
>
> . . .
>
> Boxes 3 and 4 are imprudent decisions, such as when an imprudent [individual] rolls the dice that a [negative outcome will not result] and decides not to [acquire] insurance. As long as the [negative outcome does not occur], there are no cost implications and he remains in Box 3.
>
> . . .
>
> However [if a negative outcome does occur] and if [the individual] did not have insurance and was [subject to the negative outcome], their imprudence quickly moved them from Box 3 to Box 4 – a costly, imprudent decision.

Id. In this case, Evergy West's decision not to acquire sufficient, economically-efficient generation to meet its customer's demand was imprudent, but remained in box 3 until it became costly:

> It is Evergy West's implementation of a resource plan with a low NPVRR that placed the risk of volatile market prices on its customers that is imprudent. The modeled "least cost" NPVRR was based on Evergy West not adding any dispatchable generation resources. This plan has the advantage of low risk to Evergy's shareholders but did not take into account the risk to Evergy West's customers of increased bills due to volatile market prices. Prior to Storm Uri in February 2021, Evergy West's resource plan was in Box 3 – imprudent but not costly because

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> market prices were low and relatively stable. Its decisions were imprudent but those decisions did not result in harm to customers.

Id. at pg. 15 lns. 6 – 15. Once market costs became extreme, however, the imprudence of Evergy West's decision (which had always existed) finally became costly:

> Storm Uri showed the imprudence of Evergy West's resource planning imprudence from Box 3 (an imprudent decision with low cost) into Box 4 (an imprudent decision with extreme cost) when its actual net energy costs [] skyrocketed to **—— ** million when its prior maximum had been $111 million. The inadequacy of its resource plan has continued to remain costly to its customers in the three accumulation periods of this prudence period with actual net energy costs of $154 million, $143 million, and $213 million.

Id. at pg. 15 lns. 16 – 22. So, contrary to what Evergy West states, the OPC is not relying on "market events and data occurring after the audit period" to establish imprudence. It is using those events to prove <u>harm</u>.

The OPC did rely on information not known until the prudence period to calculate the <u>harm</u> Evergy West's imprudence caused, but that is only because the harm could not possibly be calculated until after it has actually occurred. However, establishing imprudence and calculating harm are different things. *See In re Atmos*, 389 S.W.3d 224, 228 (Mo. App. W.D. 2012) ("In order to disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that (1) the utility acted imprudently [and] (2) such imprudence resulted in harm to the utility's ratepayers."). For example, the decision to not buy auto insurance can be said to be imprudent before a crash has occurred. You do not need hindsight to establish that

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not covering the risk of a crash is imprudent. However, you cannot calculate the harm that will come from not purchasing auto insurance until after a crash (or other injury to the car) has actually occurred. And that is where the real problem lies.

In claiming that the OPC improperly relied on hindsight to establish its case, the Company is arguing for a blatantly paradoxical standard that attempts to shield it from any argument of imprudence. To explain, the Company acknowledges (and bases much of its brief) on the fact that one must show harm to justify a disallowance based on a utility's imprudence. *See In re Atmos*, 389 S.W.3d 224, 228 (Mo. App. W.D. 2012). But then the Company claims the OPC is engaging in hindsight because the OPC is relying on data to establish harm that didn't exist until after the imprudent decision was made. This creates a logical paradox:

1. If the OPC argues that failing to acquire insurance was imprudent before harm occurs: the Company argues no harm hence no imprudence; but

2. If the OPC argues that failing to acquire insurance was imprudence after harm occurs: the Company argues that harm couldn't be predicted beforehand and hence the OPC's argument must be hindsight.

The result of the Company's argument, if adopted by the Commission, is that the OPC can never successfully argue imprudence, which would make prudence reviews a public protection in name only.

Given the foregoing, the Commission must reject the Company's argument regarding hindsight or risk creating a legal paradox that unlawfully eliminates the

ability to bring imprudence allegations altogether. Further, the OPC wants to stress the fact that it has been trying desperately for at least six years to avoid having to argue this here and now. Ex. 300C, *Mantle Direct*, pg. 16 lns. 15 – 16. As the OPC's witness explained:

> Q. Why has OPC brought this to the Commission so many times?
>
> A. The Commission's general prudence standard is that the utility's conduct should be judged by asking how, based on information available at that time, a reasonable person would have responded. **We presented our concerns with Evergy West in every avenue possible so that a reasonable person would respond to the information provided in a prudent manner.**

Id. at pg. 16 ln. 16 – pg. 17 ln. 1 (emphasis added). To now find that the OPC is employing hindsight because the disaster this office has been warning about for the past six years finally occurred would be manifestly unjust.

As one final, quick note, on pages seven through eight of its brief Evergy West argues that it must be prudent because it followed its preferred plan developed during the IRP planning process. *Evergy Initial Brief,* pgs. 7 – 8. There are two major problems with this. First, following a preferred plan cannot establish prudence in and of itself under the Commission's rules:

> Consistency with an acknowledged preferred resource plan or acquisition strategy does not create a presumption of prudence and shall not be considered to be dispositive of the issue.

20 CSR 4240-22.080(17). Second, the IRP planning process is not subject to prudence evaluation or review. Ex. 302C, *Mantle Surrebuttal*, pg. 45 lns. 1 – 3; LMM-S-4. Once

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again, these two problems mean Evergy West has created a paradox to prevent itself from ever being found imprudent:

1. The Company submits an IRP that isn't subject to prudence review so no party can challenge its prudence; then

2. The Company then claims that as long as it follows its unchallenged IRP it must be prudent, thus ensuring the Company is never exposed to prudence evaluation.

As with the general discussion of hindsight above, the Commission cannot simply allow the Company to rely on its untested, unreviewed, and unproven IRP to establish the prudence of its actions or else it will unlawfully eliminate the OPC's ability to engage in prudence reviews at all.

Nexus Between Imprudence and Harm

On pages eight through ten of its initial brief, Evergy West presents the argument that the OPC failed to establish a causal connection between the Company's imprudence and the harm it caused ratepayers. *Evergy Initial Brief,* pgs. 8 – 10. This can easily be disproven for two separate reasons.

First, the harm the OPC argues the Company exposed customers to arises because the Company had to purchase far more energy from the SPP market than it sold into the market because the Company lacked a hedge. Evergy West's own witnesses have admitted that the Company lacks the ability to economically dispatch generation and must buy from the market for a significant portion of the time and this is what creates the need for an energy hedge, which is very real for its customers.

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Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 13 lns. 6 – 23 ("[A] large portion of EMW capacity consists of inefficient, high heat rate natural gas turbines which operate very infrequently . . . this results in EMW being a price taker any time the wholesale market is cheaper than the operating costs of its natural gas turbines, **which is a significant portion of the time**. . . [which in turn is why Evergy West has] **the need for an energy hedge** . . . **which is very real for [Evergy West] customers**.") (emphasis added). The OPC's evidence demonstrates this lack of economically efficient generation to serve as a hedge for the SPP energy market is the exact reason the Company incurred costs far in excess of its revenue from buying and selling into the SPP energy market, thus establishing the causal connection Evergy claims the OPC lacks. *See* Ex. 303C, *Marke Surrebuttal*, pg.5 ln. 4. The Company offered not a single shred of evidence to suggest that this is not true at any point in this case prior to filing its brief.

Second, the OPC can and has directly compared Evergy West's conduct to what other firms operating in this State have decided to do by showing that every other regulated electric utility in the state has or is seeking to have enough economically efficient generation to cover their customers' demand. Ex. 302C, *Mantle Surrebuttal*, pg. 5 lns. 10 – 18. Most obviously, and importantly, though, the causal connection between Evergy West's impudence and the harm they have caused customers can be easily seen when comparing Evergy West to Evergy Metro.

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Evergy Metro and Evergy West share the same management. Ex. 301C, *Mantle Rebuttal*, pg. 21 ln. 4. They both operate in the SPP footprint and are both subject to the same economic factors. They are, for all intents and purposes, the same company except for the major fact that Evergy Metro maintains sufficient generation to meet customer demand while Evergy West does not. Ex. 302C, *Mantle Surrebuttal*, pg. 5 lns. 10 – 13. And because of that one and only difference, Every Metro made money every time Evergy West lost money.

**

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Ex. 303C, *Marke Surrebuttal*, pg.5 ln. 4. When two electric utilities are operated in the same place, by the same people, under the same conditions with the only difference between the two being how much economically efficient generation the

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utilities have, yet only one of the utilities manages to make money while the other loses money (consistently over a period of six years), it should be quite obvious that the difference in how much generation each utility can economically dispatch is the cause of that discrepancy.

To summarize the OPC's response to Evergy West's claim regarding the lack of a causal connection, simply consider these two undisputable facts:

1. The Company lost $300 million dollars in this prudence period solely because the Company spent more buying energy off the SPP energy market than it sold into the SPP energy market. Ex. 303C, *Marke Surrebuttal*, pg.5 ln. 4.

2. The Company's own witnesses admitted that this is because it does not have generation that it could economically dispatch in an amount that could meet or exceed what its customer needed during a significant portion of the time. Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 13 lns. 6 – 23

The fact that Evergy West does not have generation that it could economically dispatch in an amount that could meet or exceed what its customers needed a significant portion of the time is exactly what the OPC is arguing made the Company imprudent. The $300 million dollars lost just this prudence period is the basis of the harm the OPC is arguing the Company cost customers. Therefore, there is a direct and obvious causal connection between the Company's imprudence and the harm that imprudence produced.

As one last point the OPC will rebut the completely spurious claim Evergy makes on page ten of its initial brief where it claims the OPC would have complained

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if the Company *had* built more generation as the OPC argues it should. *Evergy Initial Brief,* pg. 10. Again, the OPC is arguing that Evergy West should have done what every other utility in the state is doing. Ex. 302C, *Mantle Surrebuttal*, pg. 5 lns. 10 – 18. Under Evergy's theory, the OPC should be filing complaints regarding every other utility's decision to try and maintain enough generation to meet customer load. This hasn't happened. In this very case, for example, the OPC did not file any position in the Evergy Metro docket because Evergy Metro did exactly what the OPC says Evergy West should have been doing. *Id*. The fact that the OPC has never raised a claim against any of the other regulated electric utilities arguing that those utilities have either bult too much or too little generation shows how wrong Evergy West's claim is. The OPC is hopeful the Commission will not allow spurious claims to distract the Commission from staying focused on factual evidence and recognizing Evergy has not provided any evidence of prudence.

Issue Six: Establishing Evergy West's Imprudence

In contrast to how issue one was approached, The OPC will address the Company's position on issue six generally before moving on to specific points.

General Overview

At a high level, Evergy West wants to argue that, because its IRP told the Company it was cheaper to not buy insurance (*i.e.* acquire much need generation to act as a hedge against the SPP energy market), it was prudent for the Company to not buy that insurance. The OPC has already discussed above why just relying on the

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IRP is not a basis for establishing imprudence. *See supra*, pgs. 17 – 18. More to the point, though, it should be obvious that the IRP would say not buying insurance is the cheapest option because it will always be cheaper not to buy insurance, right up until disaster strikes. That does not make the decision prudent.

"It is Evergy West's implementation of a resource plan with a low NPVRR that placed the risk of volatile market prices on its customers that is imprudent." Ex. 300C, *Mantle Direct*, pg. 15 lns. 6 – 10. This is because "[t]he modeled 'least cost' NPVRR was based on Evergy West not adding any dispatchable generation resources." *Id*. This effectively left Evergy without an energy hedge; just like a homeowner who had no home insurance. *Id*. at pg. 4 lns. 2 – 3. ("Generating resources are Evergy West's hedge or 'insurance' against price 3 volatility in the SPP energy market.") Even Evergy's own witnesses compared having an energy hedge to buying insurance:

> Q: What does it mean to need a hedge?
>
> A: A need for a hedge simply means that you do not have sufficient control or certainty around your future outcomes, based on your specific risk tolerance, and so you want to find some way to improve that control /certainty. As Company Witness Reed describes, insurance is an example of a hedge in that it does come with a cost (insurance premium), but the purpose of it is to give you greater stability and security in your future costs. In general, if you do not end up using your health insurance (e.g., because you did not have any major medical issues), you are better off overall. Would it have been nice to know that you were not going to use the insurance so you could save yourself paying the premium cost? Yes. Would it have been possible for you to know that in advance? No. If something serious had happened, would you have been very glad you had insurance? Yes.

Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 14 lns. 1 – 12. She acknowledges that having that hedge is still the prudent choice even if it is not the cheapest option. *Id*. *see also Id*. at pg. 13 lns. 6 – 23. The Company cannot just ignore this reality and claim total immunity for its imprudent decisions "because its IRP model told it to."

Evergy came up with an IRP by modeling Evergy Metro and Evergy West as a single entity and that IRP said the cheapest method of meeting Evergy West's capacity requirements was to buy capacity from Evergy Metro without building new generation. Ex. 300C, *Mantle Direct*, pg. 15 lns. 5 – 10. The Company's own witnesses acknowledged that these capacity contracts did not provide energy, so the Company had to rely on the market. Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 13 lns. 6 – 23 ("In the same way, some of EMW's market capacity contracts also make it a price taker **because those contracts do not include corresponding energy**.") (emphasis added). The OPC explained in that IRP, and in multiple ones that followed, that this was a bad idea and the Company was leaving itself over-exposed to the SPP market. Ex. 300C, *Mantle Direct*, pg. 16 lns. 14 – 16. The Company's own witness directly agrees with this statement: "a strategy of relying on wholesale capacity and energy does not provide a hedge for [Evergy West] to mitigate its exposure to energy prices." Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 13 lns. 6 – 23. The OPC's concerns went unheeded and Evergy West consequently incurred massive losses during winter storm Uri due to being "uninsured" in the SPP energy market while its sister utility, Evergy Metro, reaped benefits from the energy it was able to generate from its excess capacity. Ex. 300C, *Mantle Direct*, pg. 15 lns. 16 – 22.

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After the massive losses that Evergy West incurred during winter storm Uri, something should have changed internally at Evergy West. But nothing did change. Instead, the Company just continued to rack up losses with each passing FAC prudence period due to its lack of efficient, dispatchable generation. *Id*. Prudence period, after prudence period, after prudence period the Company incurred over a hundred million dollars in losses, but still it did nothing because its IRP said doing nothing was cheapest. Ex. 303C, *Marke Surrebuttal*, pg.5 ln. 4. Then comes this last prudence period and the losses climb to almost $300 million for this period alone. *Id*. And yet the Company sits and shrugs and says: "don't know what to tell you, the IRP said this was the best course of action." *Evergy Initial Brief,* pgs. 12 – 14. This is not reasonable behavior. This is not what would occur in a competitive market. This is imprudence, plain and simple.

<u>The OPC Never Claimed that Evergy West had to "Exactly" Match Load and Generation</u>

At pg. 12 Evergy states "the days of matching a utility's revenue from resource generation to the cost it incurs from the SPP are gone." *Evergy Initial Brief,* pg. 12. This is a bold claim to make given that every other utility in the State (including Evergy Metro) appears to disagree. Ex. 302C, *Mantle Surrebuttal*, pg. 5 lns. 10 – 18. But the Company then goes on to state: "to perfectly match customer load with resource generation is 'unachievable in an integrated market' unless [Evergy West] wants to 'ignore the integrated market and not take advantage of economies of scale.'"

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Evergy Initial Brief, pg. 12. This is a straw-man argument as the OPC never once suggested the Company should either try to get an "exact match" or "ignore the integrated market."

The OPC is not arguing that Evergy West needs to perfectly predict how much generation would be required to meet its customer's demand. As the OPC's witness explained:

> A reading of my white paper Resource Planning of a Vertically Integrated Utility in the RTO World that I attached to my direct testimony as Schedule LMM-D-2 shows the fallacy of these statements. In this whitepaper I state:
>
> > Prudent resource planning treats the RTO as a supplemental resource and does not cede to the RTO the electric utility's responsibility of providing its customers reliable service at a reasonable rate. There are times when a neighboring utility will have excess energy to sell at a lower price but there is risk in counting on electricity being available at a reasonable cost.
>
> Later, in the portion of the whitepaper describing a load serving entity with prudent resource planning, I state:
>
> > While a prudent utility can meet its customers' needs on a stand-alone basis, it sees value in being a part of a market where it can sell its generation when it is not needed by its customers and can take advantage of other utilities' diversity of energy resources and loads.
>
> It is clear from this whitepaper that I do not expect a prudent utility to have economic resources that meet its customer's demand every hour. It is my expectation that a prudent utility would **plan** to be able to meet its customers' demand economically every hour.

Ex. 302C, *Mantle Surrebuttal*, pg. 23 lns. 4 – 24 (emphasis in original). As explained in that quote, the OPC is neither arguing for perfection nor demanding Missouri's

utilities "go it alone." The OPC is instead just arguing that electric utilities try to have enough efficient, dispatchable generation to meet demand, something Evergy West did not even attempt.

The Argument that the Energy Generated is a Product of the SPP's Economic Dispatch Model is Pointlessly Splitting Hairs

The OPC is arguing that Evergy West needs generation that it can dispatch into the market to act as a hedge against SPP market prices. That means the generation needs to be economic to dispatch (or else it cannot serve as a hedge). At page twelve of its brief, Evergy West attempts to argue that it can meet its current energy need but doesn't do so because the wholesale market is "more economic than [Evergy West]'s assets." *Evergy Initial Brief,* pg. 12. What Evergy West means by this is that the Company is relying on "high heat rate natural gas turbines which operate very infrequently." Ex. 306C, Messamore Direct EA-2023-0291, pg. 13 lns. 6 – 23. As such:

> EMW leans on the more economic wholesale market to provide energy when these units aren't dispatched due to being "out of the money". Effectively, this results in EMW being a price taker any time the wholesale market is cheaper than the operating costs of its natural gas turbines, which is a significant portion of the time.

Id. This is true, but ultimately meaningless in the face of the OPC's argument. Relying on these economically inefficient gas turbines does not provide a hedge against the SPP market as Evergy's own witness acknowledges: "a strategy of relying on wholesale capacity and energy does not provide a hedge for [Evergy West] to

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mitigate its exposure to energy prices." *Id*. So the fact that Evergy has these "high heat rate natural gas turbines which operate very infrequently" is completely pointless to the issue at hand. Evergy still does not have a hedge, which is why the OPC is arguing the Company is imprudent.

The OPC Did Explain Exactly What Amount of Insurance Would be Necessary

At page thirteen, Evergy claims the OPC failed to produce substantive evidence regarding how much insurance would be needed and then supports this with an out-of-context quote. *Evergy Initial Brief,* pg. 13. There are two problems with this. First, the basic assumption of the OPC's argument is that the amount of efficient dispatchable generation needed is simply the amount expected to meet its customer load requirement on a regular basis. To suggest that is not clear is simply false. Second, even if the Commission did need a highly specific number to cite to (and the Company offers no legal basis for why this would be necessary), the complete quote that Evergy cites to shows the OPC did answer that question:

> Q. So do you have an idea how many megawatts you would recommend them investing in to make a hundred percent?
>
> . . .
>
> A. This shows for 2024, '25, and '26 more or less their capacity balance, what they're going to use to meet the SPP requirements. And if you go down about two-thirds of the way, I know the print's really small, it says, Capacity only purchases. And there's an amount there.
>
> . . .
>
> That would be an amount that -- a minimal amount. And as to what type, based on my experience, I would say a combined cycle plant, something that can be dispatched, something that runs efficiently.

. . .

Q. I'm just trying to get to an understanding of how much you think they need in [. . .] capacity right now to have the insurance necessary to not be subject to the volatility.

A. I would say that at a minimum, at least twice what they are purchasing from [. . .] the capacity contract.

Q. I'm just looking for a ballpark.

A. I would say that's at a minimum.

Tr. Pg. 156 ln. 20 – pg. 160 ln. 9. Admittedly, the transcript at this point becomes somewhat difficult to read because the witness and Commissioner who was questioning her were speaking over one another. When read in its entirety, however, it becomes clear that the witness for the OPC stated that the minimum amount of "insurance" that would be needed was generation with twice the capacity as what Evergy West currently planned to buy through capacity contracts according to its own exhibit. *Id.*

<u>Evergy's Attempt to Claim its Witnesses' Admissions Only Apply to "Future" Problems and not Current and Past Problems is False and Misleading</u>

On pages 14 through 15 of Evergy West's brief, the Company misstates the OPC's position by confusing "capacity" and "energy." *Evergy Initial Brief,* pgs. 14 – 15. These are different terms as explained by the OPC's witness. Ex. 302C, *Mantle Surrebuttal*, pg. 7 lns. 14 – pg. 11 ln. 29. The OPC <u>never</u> claimed the Company agreed

it needs to currently add additional capacity to meet its customer's needs.[3] Rather the OPC was pointing out the Company's witness admitted that its current capacity contracts did not provide any energy and thus did not act as a hedge against the SPP energy market, which is why Evergy currently needs more energy generation to act as that hedge. *See* Ex. 300C, *Mantle Direct*, pg. 3 ln. 16 – pg. 4 ln. 3; Ex. 302C, *Mantle Surrebuttal*, pg. 2 lns. 9 – 23. Evergy West then further goes on to suggest that its witness only admitted to needing additional energy to meet future demand. This is also simply not true.

Do not become confused by the Company's duplicity. Every West witness Kayla Messamore testified numerous times that the Company needed an energy hedge which is based on the lack of generation capacity the Company has **now**:

> EMW has **near**- and long-term needs for physical capacity, **physical energy, and a hedge against the SPP energy market**.

Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 3 lns. 10 – 11 (emphasis added).

> Q. In prior testimony, Staff implies that there is not a need for energy, but rather a need for a hedge against market energy prices. Do you agree with this perspective?
>
> A. No. These two needs are not mutually exclusive **and EMW has a need for both**.

[3] It is true that Evergy West needs to add additional capacity to meet its customer's needs, as expressed by its own witness. Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 3 lns. 10 – 11 ("EMW has near- and long-term needs for physical capacity, physical energy, and a hedge against the SPP energy market."). This was just never a point the OPC made or needed to make because the OPC's argument is about energy, not capacity.

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Id. at pg. 12 lns. 4 – 7 (emphasis added).

> In the same way, some of EMW's market capacity contracts also make it a price taker because those contracts do not include corresponding energy. The capacity contracts that do include an energy option are only set at mutually agreeable market prices at the time of transaction. **That is the need for an energy hedge** which Staff references and **which is very real for EMW customers**.

Id. at pg. 13 lns. 6 – 23 (emphasis added). That is what the OPC has been saying for years. Ex. 300C, *Mantle Direct*, pg. 16 lns. 15 – 16. The Company has been and still is imprudent for not securing the energy hedge that its own witness expressly and repeatedly acknowledge it needs.

Summation of Issue Six

The remainder of the Company's discussion on issue six covers the reliance on the IRP that the OPC addressed earlier. Therefore, this brief will not reiterate those points and instead simply remind the Commission of the three irrefutable facts necessary to resolve this case:

1. Evergy West lost 300 million dollars in this prudence period because of the difference between what it sold into the SPP energy market and what it bought from the SPP energy market. Ex. 303C, *Marke Surrebuttal*, pg.5 ln. 4. The Company has never challenged this fact.

2. Evergy West had to buy more energy from the SPP energy market than it sold into the SPP energy market because it lacked economically efficient generation resources to act as a hedge against the SPP energy market; something Evergy West's own witnesses readily admit to repeatedly. Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 13 lns. 6 – 23. The Company cannot deny this as it is their own witness who stated as much.

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3. The fact that Evergy West has lacked (and still currently lacks) economically efficient generation resources to act as a hedge against the SPP energy market has been true for over a decade and the gap has only gotten worse over time. Ex. 300C, *Mantle Direct*, pg. 11 lns. 24 – pg. 12 ln. 10. Again, the Company has never challenged this fact.

With these three facts, the Commission can determine that the Company was imprudent for failing to maintain sufficient, economically-efficient generation to allow the Company to generate electricity that could be used to act as hedge against the SPP energy market. Instead, the Company opted to rely solely on market purchases to cover this "uninsured" portion of its energy requirement, which accounted for nearly 40% of the Company's total energy need. This sole reliance on the market is what Evergy West's own Darrin Ives described as "akin to playing the Lotto with customer energy supply." Ex. 1, *Ives Direct*, pg. 14 lns. 14 – 16. This was imprudent.

Issue Eight: Calculating the Impact of Evergy West's Imprudence

Causal Connection

Evergy West begins its brief's discussion of the eighth issue by once again claiming incorrectly that the OPC never demonstrated a "causal connection" between the roughly $300 million in losses it suffered and the fact that the Company did not have sufficient generation to cover the cost of buying energy off the SPP energy

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market. *Evergy Initial Brief,* pgs. 15 – 16. The causal connection issue has already been addressed. *See supra*, pgs. 18 – 22. As previously explained:

1. Evergy didn't have enough generation to economically meet its load so it could not cover everything it bought off the SPP energy market with what it sold into the SPP energy market. Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 13 lns. 6 – 23.
2. Because it could not cover what it bought with what is sold, the Company incurred losses of nearly $300 million dollars. Ex. 303C, *Marke Surrebuttal*, pg.5 ln. 4.

That is it. That is the "causal connection" that Evergy continues to claim does not exist. If the Company had enough generation to cover what its customers regularly needed, then there wouldn't have been any losses. This is an absolutely known fact because Evergy Metro <u>did</u> have enough generation to cover what its customers regularly needed and Evergy Metro did not suffer any loses. *Id*. Instead, Evergy Metro actually made money. *Id*.

It is possible that what Evergy West is really trying to say is that there is no guarantee building economically-efficient generation would have resulted in its ratepayers paying less during the specific prudence period in question because the cost to build and maintain such generation may have been greater than the losses it incurred buying off the market. Even if one assumes this is what the Company is trying to argue, it is absurd for several reasons. First, the generation cost would not have been recovered over just the prudence period. It would have been recovered over many years. Therefore, it is necessary to compare the cost of the plant over the cost of <u>**all**</u> the losses it could have forestalled. Given that those loses now total over a

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billion dollars, this would be a heavy lift indeed. Ex. 303C, *Marke Surrebuttal*, pg.5 lns. 8 – 10.

Second, even if it were true that building or otherwise acquiring sufficient, economically-efficient generation to cover its customer needs did end up costing more than it would have to just buy the energy off the SPP market under some scenarios, this would not have made the decision prudent. Again, this was already discussed with regard to the sixth issue. *See supra*, pgs. 24 – 25. Every West was imprudent for implementing "a resource plan with a low NPVRR that placed the risk of volatile market prices on its customers" because it required the Company not to add "any dispatchable generation resources." Ex. 300C, *Mantle Direct*, pg. 15 lns. 6 – 15. "This plan has the advantage of low risk to Evergy's shareholders but did not take into account the risk to Evergy West's customers of increased bills due to volatile market prices." *Id*. It was therefore imprudent and would have remained imprudent even if the cost of energy was never driven up. *Id*.

Third, and most importantly, the OPC already presented evidence to show that Evergy West could have acquired sufficient, economically-efficient generation to cover its customer needs. That was done by comparing what it would have cost Evergy West customers if Evergy West and Evergy Metro had been combined as the Company modeled. Ex. 300C, *Mantle Direct*, pg. 19 ln. 14 – pg. 22 ln. 2. This brings the issue full circle.

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Not only has the OPC shown that Evergy's need to rely on the SPP energy market has caused the Company to incur massive losses, but the OPC also presented evidence to show that if the Company had been combined with Evergy Metro, the final costs that would have fallen on Evergy West's customers would have been $86 million dollars less. Ex. 300C, *Mantle Direct*, pg. 22 ln. 2. This then brings us to the next portion of Evergy West's brief.

<u>The Method of the OPC's Calculation</u>

Before jumping to the real issue, the OPC needs to address a blatant falsehood the Company presents on page seventeen of its brief. The Company attempts to argue that the historical modeling of Evergy Metro and Evergy West has not relied heavily on treating the two companies on a combined or joint basis. *Evergy Initial Brief,* pg. 17. This is completely false. As explained by the OPC's witness:

> In Evergy West's 2015 and 2018 triennial resource plan filings and 2016 annual resource plan update it states "[Evergy West] considers it prudent resource planning to develop and analyze Alternative Resource Plans that are based upon [Evergy Metro] and [Evergy West] combining resources." Similar language was included in Evergy Metro's 2015 and 2018 triennial resource plan filings.
>
> . . .
>
> Evergy West, in its 2017 annual resource plan update stated "[g]iven the results of the joint plans, no changes to the [Evergy West] or [Evergy Metro] Preferred Plans were warranted."

Ex. 302C, *Mantle Surrebuttal*, pg. 34 lns. 7 – 14. For more significant proof of the Company's false assertions, however, it is best to go directly to the source.

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The IRP annual update filed by Evergy West in case EO-2023-0213, and referenced by the Company a number of times in its brief, states the following:

> **Missouri West has historically been short energy and capacity, fulfilling its load obligations through market purchases from SPP** and bilateral capacity contracts (net energy position since 2015 shown in Figure 4). The 2023 IRP Annual Update plan transitions Missouri West to greater self-sufficiency over time. In the 2021 Triennial IRP, stand-alone plans for Missouri West selected early combustion turbine (CT) builds to meet capacity needs, **however, joint planning postponed the need for natural-gas capacity as affiliates had enough excess capacity that ensured there would be market capacity available for Missouri West**. Similar assumptions were used in the 2022 IRP. **Joint planning demonstrated that thermal additions could be postponed and Missouri West's Preferred Plan included heavy reliance on future capacity deals to meet reserve margin requirements.**

EO-2023-0213, *2023 IRP Annual Update (Public and Confidential)*, 2023 west annual update_conf 6-15-2023.pdf, pgs. 6 – 7, EFIS Item no. 9 (emphasis added). Not only does this quote from Evergy' Wests own filing contradict the statements made in the Company's brief, it also shows a stark admission of the fact that Evergy West purposely postponed deployment of thermal generation units solely because it was in a joint planning scenario with Evergy Metro. It is admissions like this that led the OPC to use the calculations it did.

The next portion of Evergy West's brief can be dismissed fairly quickly. On pages eighteen through nineteen of its brief, Evergy West argues that it could be difficult and time consuming for Evergy West and Evergy Metro to be merged into a single utility. *Evergy Initial Brief,* pgs. 18 – 19. Specifically, the Company claims

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consolidation would take ten years.[4] *Id.* at pg. 18. The OPC's response to this is quite simple: Evergy has had at least sixteen years to solve the problem.

"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." Ex. 300C, *Mantle Direct*, pg. 11 lns. 26 – 27. That means the problem the OPC has identified has existed for <u>at least</u> sixteen years. Moreover, the Company <u>knew</u> that it had an energy shortfall problem and had been planning to fix it. "In the last resource plan that it filed prior to being acquired by GPE, Aquila's preferred resource plan was to add **____**" *Id.* at pg. 12 lns. 17 – 20. "These resources were in addition to its 153 MW of a portion of the Iatan 2 coal plant that was under construction at that time." *Id.* at lns. 20 – 21. If Evergy West had executed on that plan, the last plan before it began combined resource planning with Evergy Metro, the Company would not be in this mess.

"Aquila's 2007 resource plan [] showed that it needed to add 775 MW of capacity before 2027." *Id.* at pg. 14 lns. 5 – 6. After it was acquired by Evergy West, however, the Company made a deliberate decision to scrap that plan and to instead just enter into capacity contracts with its sister utility Evergy Metro which either

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[4] This unsupported and highly questionable assertion was offered for the first time at hearing without any specificity as to the assumptions or other bases for such a claimed lengthy timeframe. The record on this claim is insufficient to support Mr. Ive's extremely vague assertion. The OPC will address the potential for merger of Evergy West and Evergy Metro as part of Evergy West's ongoing general rate case ER-2024-0189 and show how this figure is nothing but a fabrication.

included either energy at the market cost or no energy at all. Ex. 306C, *Messamore Direct EA-2023-0291*, pg. 3 lns. 10 – 11. In addition, Evergy West made the decision to retire "the only coal plant of which it had control." Ex. 300C, *Mantle Direct*, pg. 14 lns. 6 – 9. This was a coal plant that "Aquila's resource plan showed . . . running throughout the entire [20 year] planning horizon." *Id.* at lns. 8 – 9; pg.13 lns. 1 – 3. Each and every one of these decisions was a deliberate choice on the part of the Company. It chose not to merge Evergy West and Evergy Metro when Aquila was first acquired. It chose to scrap the preferred IRP plan that Aquila had developed to meet its energy shortfall and instead to just gamble on purchasing energy. It chose to shut down a coal plant that could have operated many more years despite knowing that it was already short on energy. The fact that the Company now claims consolidation would take ten years if started <u>today</u> does not excuse the imprudent behavior of the last sixteen years.

<u>Evergy West's Improper Math</u>

At page nineteen of its brief, Evergy West falsely claims that combining Evergy West and Evergy Metro would result in an "impact" to Evergy Metro customers of over $500 million. *Evergy Initial Brief,* pg. 19. This baseless statement relies upon unsupported math that simply does not compute. To begin with, it is necessary to note that the numbers included in Evergy West's brief are not comparable. The ANEC values the Company uses, for example, are based on the eighteen-month prudence period while the revenue requirement numbers (what Evergy West refers to as "fixed

costs") are a yearly (or twelve month) number. Ex. 300C, *Mantle Direct*, LMM-D-5.[5] In addition, the ANEC numbers being cited are taken from the re-allocation of ANEC costs that the OPC's witness performed to determine how those costs would be allocated if the two utilities had been combined. Ex. 300C, *Mantle Direct*, LMM-D-5.[6] However, the fixed costs used by Evergy's brief are not the combined revenue requirement reallocated, but rather, the actual individual utility's revenue requirement.[7] These numbers are all over the place and combining them in the way Evergy West's brief has done is mixing apples and oranges and calling the result a coconut. But even if you disregard all the bad inputs, the Company's math is still incredibly wrong.

Evergy West is arguing that the "impact" on Evergy Metro if the Company is combined can be calculated as "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)." *Evergy Initial Brief,* pg. 19. Consider what the Company is arguing here. Evergy West is saying that the "impact" on Evergy Metro can be calculated as such:

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[5] Please note that the numbers cited are taken from the "Combined Co ANEC" values at K26 and L26 of the "Variable Costs" tab and are the sum of values K7 through K24 and L7 through L24 respectively. Ex. 300C, *Mantle Direct*, LMM-D-5. This reflects the ANEC incurred from June 2021 through November 2022, a period of eighteen months. *Id.*

[6] Again, please note that the numbers cited are taken from the "Combined Co ANEC" values at K26 and L26 of the "Variable Costs" tab. Ex. 300C, *Mantle Direct*, LMM-D-5.

[7] These are taken from cells B16 and F16 of the "Fixed Costs" tab for Evergy West and Evergy Metro, respectively. Ex. 300C, *Mantle Direct*, LMM-D-5.

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> ((What Evergy Metro would pay in ANEC if combined) – (What Evergy West would pay in ANEC if combined))
>
> plus
>
> ((What Evergy Metro pays in fixed costs currently) – (What Evergy West pays in fixed costs currently))

Starting with just the first half of this equation, why would the "impact" on Evergy Metro for combining the two utilities be equal to the difference between what they each would pay if combined? Simple answer: it would not.

To put that in perspective, imagine you go to dine with a friend and the bill comes and shows your meal was $35 and your friend's meal was $25, for a total of $60. If you decide to pay the bill together (split down the middle) you would <u>not</u> say the "impact" on you for that decision was $10. That would imply that you paid $45 (the $35 cost of your original meal plus the difference between the two). No, the true "impact" of your decision would be to divide the total by the number of diners and then subtract your individual meal amount. In other words, the "impact" of your decision to pay as one unit (split down the middle) was a <u>reduction</u> of $5 (($60/2) - $35). Evergy's math does not even come close to this.

Applying the dinner example to the case at hand, the correct method to determine the "impact" combining Evergy Metro and Evergy West would have on Evergy Metro customers would require adding the fixed and variable costs incurred by both companies and then dividing by the total number of customers (adjusting as necessary to account for different customer classes) then subtracting the current per

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customer cost of Evergy Metro to see what impact would result. The record is not developed anywhere near the level necessary to properly perform this math and the OPC will not attempt it here for that reason. However, the Commission should absolutely not accept the clearly erroneous math relied upon in Evergy West's brief, which neither uses the correct formula nor the correct values as inputs into that formula.

Access to Capital

On pages twenty through twenty-two of its brief, the Company puts forward it fabricated claim that issuing a disallowance would "drastically" affect EMW's access to capital. *Evergy Initial Brief,* pgs. 20 – 22. There is a litany of issues with this argument. First, as a perfunctory matter, the Company cites to a number of articles that are not in the evidentiary record. Evergy argues that it is permitted to do this in an extended footnote which claims these documents are subject to "administrative notice." *Id*. at pg. 20 n. 93. The Company is very wrong.

The Commission can clearly take administrative notice of all matters for which the courts of Missouri can take judicial notice. RSMo. § 536.070(6). However, there are significant limits on what facts can be judicially noticed:

> In applying the doctrine of judicial notice, either as a rule of evidence or as an instrument of judicial reasoning, we are subject to well recognized limits, the most basic condition of which is the notoriety of the fact to be noticed. **It must be part of the common knowledge of every person of ordinary understanding and intelligence**; only then does it become proper to assume the existence of that fact without proof. It follows, therefore, that **judicial notice must be exercised**

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cautiously, and **if there is doubt as to the notoriety of such fact, judicial recognition of it must be declined**.

Thompson v. Brown & Williamson Tobacco Corp., 207 S.W.3d 76, 104 (Mo. App. W.D. 2006) (emphasis added). In this case, the proposed "fact" the Company would ask the Commission to notice is the private findings of a credit rating agency. *Evergy Initial Brief,* pg. 20 n. 93. Findings that cannot even be publicly accessed because they require a subscription to the rating agency.[8] The private determinations of a rating agency hidden behind a subscription service is about as far from being "part of the common knowledge of every person of ordinary understanding and intelligence" as one could hope to get and very clearly does not qualify for judicial notice.

The Company's footnote also notes that section 536.070(6) also allows administrative agencies to "take official notice of technical or scientific facts, not judicially cognizable, within their competence[.]" *Evergy Initial Brief,* pg. 20 n. 93. The Company conveniently neglects to add the remainder of that provision however:

> [Agencies] may also take official notice of technical or scientific facts, not judicially cognizable, within their competence, **if they notify the parties, either during a hearing or in writing before a hearing, or before findings are made after hearing, of the facts of which they propose to take such notice and give the parties reasonable opportunity to contest such facts or otherwise show that it would not be proper for the agency to take such notice of them**

[8] Accessing the URL included in Evergy's brief takes one to a websites landing page that demands a user sign in with their Moody's password before continuing. The OPC was never able to even access the documents cited in the Company's brief to verify if the quote provided is accurate or complete.

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RSMo. § 536.070(6) (emphasis added). It should be pretty clear that this last part of the provision shuts down the Company's argument as absolutely none of the requirements for the Commission to take judicial notice have been met. In fact, it draws heightened attention to the complete lack of procedural effort by Evergy West to properly request administrative notice. The Company could have done so during the hearing, or even possibly after the close of hearing but prior to briefing, but none of that occurred. As such, the Commission should pay little heed to the sources cited by Evergy West. This is doubly true when one considers that the Company is not only citing inadmissible evidence, but is also misleading the Commission regarding its contents.

At one point, the Company argues that S&P lowered Evergy West's issuer credit ratings in 2023 due to delay in securitization of extraordinary costs associated with winter storm Uri. *Evergy Initial Brief,* pgs. 20 – 21. However, if one actually reads the S&P Global Rating report that the Company cites to, it tells a very different story:

> We lowered the issuer credit ratings on Evergy and its subsidiaries by one notch. The downgrade reflects weaker financials and an expectation of ongoing weaker financial measures through 2026. **The recent rate case outcomes for the two Kansas utilities were settled below our base case, driving the weaker-than-expected financial metrics**. The settlement resulted in a net increase of $74 million for Evergy Kansas Central and a $32.9 million reduction in rates for Evergy Metro, compared to the initial request of a net increase of $204 million and $14 million, respectively. The rate outcomes are the first rate outcomes for the Kansas utilities since the merger between Great Plains Energy Inc. and Westar Energy Inc. in 2018. **The Kansas utilities represent approximately 60% of the total rate base of Evergy Inc.**

Shiny A Rony, *Evergy Inc. And Subsidiaries Downgraded By One Notch On Weakening Financials; Outlook Revised To Stable*, S&P GLOBAL (Nov. 29, 2023) (hereinafter "S&P Global Report") (emphasis added).[9] Contrary to how it is portrayed by Evergy West, the downgrade it received is driven almost entirely by Evergy's Kansas rate case; the Missouri securitization issue received only a passing mention.

Besides misleading statements about why the Company was downgraded, there are quite a few other statements in the *S&P Global Report* that the Company would want the Commission to ignore. For example, S&P assesses Evergy West's parent Company (Evergy, Inc.) to have an excellent business risk profile. *S&P Global Report* ("We continue to assess Evergy's business risk profile as excellent."). The Analysts also continue to expect Evergy to make significant capital expenditures – "approximately $2.0 billion-$2.5 billion annually" – "as the utilities continue to execute on their energy transition plans by closing coal-fired generation and replacing it with new generations including renewables." *Id*. However, it is important to note that these same analysts "expect most of the capital spending to be funded with debt." *Id*. This is significant because the OPC's proposed disallowance is a one-time event and hence will have little to no impact on the Company's projected recurring cash flows, which is credit rating agencies' primary focus when determining a utility's credit worthiness.

[9] URL: https://disclosure.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/3095976

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As the S&P Global report makes clear numerous times, the key to Evergy maintaining a consistent credit rating and avoiding a potential downgrade is protecting its FFO to debt ratio:

> The stable outlook on Evergy and its subsidiaries including Evergy Missouri West, Evergy Kansas Central, and Evergy Kansas South reflects our expectation that financial measures, **specifically FFO to debt**, will remain consistently above our downgrade threshold, albeit with a minimal financial cushion. Our base-case forecast assumes FFO to debt of 14%-15% through 2025.

S&P Global Report (emphasis added). FFO stands for "Funds from Operations" and when offset against total debt it creates "'a leverage ratio that a credit rating agency or an investor can use to evaluate a company's financial risk." Will Kenton, *Funds From Operations (FFO) to Total Debt Ratio: Meaning, Formula*, Investopedia (Dec. 30, 2020).[10]

> The ratio is a metric comparing earnings from net operating income plus depreciation, amortization, deferred income taxes, and other noncash items to long-term debt plus current maturities, commercial paper, and other short-term loans. Costs of current capital projects are not included in total debt for this ratio.

Id. However, it is very important to understand that "[s]ince debt-financed assets generally have useful lives **greater than a year**, the FFO to total debt measure is **not** meant to gauge whether a company's **annual** FFO covers debt fully, i.e. a ratio of 1, but rather, whether it has the capacity to service debt **within a prudent**

[10] URL: https://www.investopedia.com/terms/f/funds-operations-ffo-total-debt-ratio.asp#:~:text=Funds%20from%20operations%20(FFO)%20to%20total%20debt%20is%20a%20leverage,using%20net%20operating%20income%20alone.

<u>timeframe</u>." *Id.* (emphasis added). A one-time disallowance as proposed by the OPC *could* possibly have a serious impact on the Company's cashflow for one year (in that it would literally lower the amount of cash the Company had for that one year), but it would not have an impact on the <u>recurring</u> FFO to debt ratio. As such, it would not impact the Company's credit rating with agencies like S&P.

Bringing the issue back around to the beginning, the Company's S&P global ratings were downgraded because the Company failed to protect its FFO to debt ratio. *S&P Global Report* ("Additionally, in 2022, the company's funds from operations (FFO) to debt stood at 15%, which was below our downgrade threshold."). This reduction in FFO to debt occurred in large part because the Company did not achieve what it sought to achieve in Kansas. *Id*. This impacted the FFO to debt ratio because Kansas was setting <u>annual</u> rates, thus impacting the Company's <u>recurring</u> FFO (Funds from operation, *i.e.* cashflow). The one-time disallowance proposed by the OPC in this case would <u>not</u> have the same impact precisely because it would be a one-time event. Therefore, there would not be any significant impact in the Company's credit ratings and hence no detriment to Evergy West's capital expenditures, which S&P acknowledges are going to be primarily funded through debt. Moreover, all of this could have been explained at the hearing if the Company had chosen to make this an issue before briefing.

Given how much importance Evergy West's brief pays on this subject, it seems extremely odd that the Company did not address it at any point until the hearing.

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This is because the assertion simply is not true (for the reasons cited above) and hence was not important to the Company until the issue was introduced at hearing by the Commission itself. That is why the Company has been forced to cite myriad items outside the evidentiary record in an attempt to prove the impact a disallowance would have on raising capital at reasonable costs. That is why the evidentiary record is so bare that Evergy West has resorted to citing questions posed by the Commission as statements of absolute fact in its brief. *Evergy Initial Brief,* pgs. 20 n. 96, 97. And that is also why the Company falls back on its old threat by claiming that it will not fix its lack of generation problem if the Commission orders any disallowance in this case.

At the close of its brief, Evergy West states quite plainly that the Company will increase reliance on the SPP energy market if the Commission orders the OPC's proposed disallowance. *Evergy Initial Brief,* pg. 22. Evergy West postures that this is due to the completely fabricated idea that the disallowance would impact its access to capital, which is already addressed above. However, the Company's statement echoes the same threats that its witness (Mr. Darrin Ives) made in written testimony long before access to capital was ever introduced:

> Mr. Ives then goes on to make the following "threat" should the OPC and Staff continue to protect customers by providing the Commission accurate information regarding Evergy West's resource acquisitions:
>
> > The positions advocated by Staff and OPC are pushing the Company toward simply purchasing market energy and paying penalties to SPP when market capacity is not available rather than to execute on our prudent [integrated resourced plan].

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Mr. Ives uses nearly identical wording later in his testimony when he states:

> The positions being put forth by Staff and OPC are pushing the Company to simply purchase market energy and pay penalties to SPP when wholesale market capacity is not available.

Mr. Ives did not just limit his threat to what Evergy West would do if Staff and OPC continue doing our jobs, but also included the Commission when he threatened:

> If sustained and supported by the Commission, the Company would have to strongly consider the choice of relying entirely on market purchases of capacity and energy and paying penalties to SPP when market capacity is not available.

Ex. 301C, *Mantle Rebuttal*, pg. 3 lns. 3 – 20. In making this threat, the Company is essentially doubling down to argue that <u>any</u> finding of imprudence will just make the Company behave even more imprudently. *Id* at pg. 3 ln. 21 – pg. 4 ln. 16. This is concerning for several reasons, but the biggest among them is the fact that Evergy is attempting to use the terrible situation it <u>voluntarily created</u> as a total shield against any reprisal for making the bad decisions that led to that situation. If accepted by the Commission this argument would represent the complete abdication of the prudence standard.

In many respects, there is refreshing candor to Evergy West's willingness to abandon the pretense of the rest of its brief and assert its "true" argument in the last three pages. The curtain has been yanked back and the naked truth revealed. Evergy West's argument at the end boils down to simply this: if the Company is found imprudent for not having built much needed generation for the last decade, then the

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Company won't build moving forward. In making this claim, Evergy West harkens back to the banks who claimed to be "too big to fail" during the 2008 financial crisis.[11] But this does not represent the purpose of this Commission. The goal of the overall regulatory framework is to set rates that are "in all respects just and reasonable." RSMo. § 393.130.1. That cannot be done if a utility is allowed to argue that it should be allowed to charge "unjust" and "unreasonable" rates simply because it needs to build. For this and all the other reasons addressed above, the Commission must reject Evergy West's claim that imposing the OPC's proposed disallowance would, in any way, impact the Company's access to capital.

Conclusion

It is tempting to believe the Company is planning to change course when it comes to its generation resource adequacy. Its brief and its witnesses surely pay lip-service toward the unmistakable need Evergy West has to build additional generation. The OPC has also thoroughly shown how the Company's witnesses are happy to argue adamantly about how much Evergy West needs an energy hedge (when it is convenient for them). But this is the Missouri Public Service Commission,

[11] ""Too big to fail" describes a business or business sector so ingrained in a financial system or economy that its failure would be disastrous. The government will consider bailing out a corporate entity or a market sector, such as Wall Street banks or U.S. carmakers, to prevent economic disaster." Julie Young, Too Big to Fail: Definition, History, and Reforms, INVESTOPEDIA (Nov. 13, 2023) https://www.investopedia.com/terms/t/too-big-to-fail.asp. In this case, Evergy West is effectively arguing that its responsibility to provide electric services is so important that it must be protected from the negative ramifications of its own failures or else risk larger economic disaster. As this brief has already discussed, however, the disallowance proposed by the OPC will not impact the Company's recuring FFO to debt ratio and hence will not prohibit Evergy West's ability to acquire the capital it needs to build. In short, Evergy West needs no protection to forestall economic disaster.

and it should take more than words to matter. Evergy West should have to show the Commission. And on that front, the record tells a different story.

As the OPC witness Dr. Marke explained, the sanity check to determine whether Evergy West truly intends to build should be looking at the SPP interconnection que. Tr. Pg. 188 lns. 6 – 8. As of the time of hearing, Evergy West's interconnection que still does not have a natural gas plant. *Id.* at lns. 16 – 18. This means that Evergy West's lack of sufficient, economically-efficient generation will remain a problem for the foreseeable future. That is why the OPC has taken the position if currently has. As the OPC stated in its "call for action" that opened its initial brief, this case is about more than just returning to customers some small part of the massive losses Evergy West has incurred (and passed on through its FAC) due to its imprudent decision. This is also very much about getting the Company to change moving forward. Evergy West has been short generation for over a decade. The Commission should not think that is going to change absent some form of encouragement. That is why the OPC is asking the Commission to take action, to show Evergy West and all the other regulated electric utilities, the importance of building and maintaining sufficient, economically-efficient generation.

Ultimately, the Company has presented no evidence to satisfy its burden of proving to the Commission that its reliance on the market and its $1 billion impact to date was in any way based on prudent decisions. This is why Evergy resorts to threats as a response. They do so because they have seemingly deemed the

Commission to be subject to influence by threats and unsupported factual claims. The OPC urges the Commission to remain vigilant in its duty to protect the Missouri public, and to further send a message to the Company that the Commission recognizes fact over fiction, that the Commission recognizes imprudent decisions, and that the Commission is not susceptible to threats made by the companies the Commission regulates.

In order to make its customers whole for the unnecessary losses they were forced to bear due to its imprudent resource management, and to further encourage Evergy Metro to begin seeking its much need energy hedge in earnest, the OPC respectfully request the Commission rule in the OPC's favor and order the disallowance proposed by its expert witness.

Respectfully submitted,

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