

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

In the Matter of the Petition of Evergy Missouri )  
West, Inc., d/b/a Evergy Missouri West for a )  
Financing Order Authorizing the Financing of ) Case No. EF-2022-0155  
Qualified Extraordinary Storm Costs Through an )  
Issuance of Securitized Utility Tariff Bonds )

**POST-HEARING REPLY BRIEF OF EVERGY MISSOURI WEST**

COMES NOW Evergy Missouri West, Inc. d/b/a Missouri West (“EMW” or “Company”) and pursuant to the Missouri Public Service Commission’s (“Commission”) *Order Establishing Procedural Schedule and Other Procedural Requirements* issued April 27, 2022 (“Order”) submits its *Reply Post-Hearing Brief* (“Brief”). In support thereof, EMW states as follows:

**I. INTRODUCTION**

EMW believes that it has anticipated and adequately addressed most of the arguments raised by Staff, OPC, MECG, and Velvet Tech in its initial brief. However, a few comments, clarifications, and responses are included below.

Perhaps most importantly, all parties to this case support the issuance of securitized bonds for the purpose of financing the costs caused by Winter Storm Uri. The Commission has also recently approved the use of securitized bonds, pursuant to Section 393.1700,<sup>1</sup> for financing the costs of Winter Storm Uri.<sup>2</sup>

EMW and Staff have entered into a Non-Unanimous Stipulation and Agreement which resolves the issues between EMW and Staff and recommends the approval of EMW’s petition

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<sup>1</sup> All statutory citations are to the Missouri Revised Statutes (2016), as amended, unless otherwise noted.

<sup>2</sup> Report and Order, p. 89, In re Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Qualified Extraordinary Costs, No. EO-2022-0040 ( August 18, 2022)(“Empire Order”).

under specified conditions. While OPC and other parties have raised additional issues or offsets to the revenue requirement that is included in the Non-Unanimous Stipulation and Agreement, EMW respectfully requests that the Commission adopt the Non-Unanimous Stipulation and Agreement and resolve all issues in the case accordingly, and reject the offsets recommended by OPC and/or intervenors. This Reply Brief will address the arguments of Staff, OPC, MECG, and Velvet Tech below.

**II. WHAT AMOUNT OF QUALIFIED EXTRAORDINARY COSTS CAUSED BY WINTER STORM URI SHOULD THE COMMISSION AUTHORIZE EMW TO FINANCE USING SECURITIZED UTILITY TARIFF BONDS?**

1. Stipulation

As stated in EMW's Initial Brief, the Stipulation resolved this issue as among the Company, Staff, and OPC, based on all Signatories' agreement that the total amount of Winter Storm Uri costs to be securitized (including carrying costs and upfront financing costs) is \$306,103,442 before the resolution of OPC's issues by the Commission.<sup>3</sup> If the PSC approves the Stipulation, there will be no need for further decision on this issue.

2. EMW Position if Stipulation is Not Approved

If the PSC does not approve the Stipulation, EMW maintains its position that it should be permitted to recover Winter Storm Uri costs totaling \$356,720,636. EMW's witness Mr. Klote explained that the elements of these costs are:<sup>4</sup>

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<sup>3</sup> See Stipulation, ¶ 7 at 3.

<sup>4</sup> See Ex. 12C, Klote Surrebuttal at 13-14. See also Ex. 11C, Klote Direct and Ex. 8, Ives Direct.

Description	Amount
Total Winter Storm Uri Costs - Fuel and Purchase Power - Included in Direct Filing	\$ 296,451,293
Non-Fuel Operation and Maintenance Cost - Direct Filing	274,934
Total Winter Storm Uri Cost - Direct Filing	\$ 296,726,227
Add: February 2022 SPP Resettlement Adjustment	187,626
Remove: Non-Fuel Operation and Maintenance Cost	(274,934)
Total Current Winter Storm Uri Costs	\$ 296,638,919
Retail Allocation	99.620%
Total Current Winter Storm Uri Costs - Retail	\$ 295,511,691
Total Carrying Costs as of January 31, 2023	54,569,187
Upfront Financing Costs	6,639,758
Total Costs To Be Financed By Securitized Utility Tariff Bonds	\$ 356,720,636

As described herein and in EMW's Initial Brief, the Commission should reject any reductions or disallowances to this total amount requested by other parties.

**A. What amount of the costs, if any, that EMW is seeking to securitize would EMW recover through customary ratemaking?**

1. Stipulation

As stated in EMW's Initial Brief, the Stipulation resolved this issue as among the Company, Staff, and OPC, based on all Signatories' agreement that the total amount of Winter Storm Uri costs to be securitized (including carrying costs and upfront financing costs) is \$306,103,442 before the resolution of OPC's issues by the Commission.<sup>5</sup> If the PSC approves the Stipulation, there will be no need for further decision on this issue.

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<sup>5</sup> See Stipulation, ¶ 7 at 3.

2. EMW Position if Stipulation is Not Approved

If the PSC does not approve the Stipulation, and absent recovery through securitization, EMW maintains its position that its Winter Storm Uri costs would customarily be recovered by means of either the Company's fuel adjustment clause ("FAC") and deferral under the plant-in-service accounting ("PISA") statute enacted in 2018<sup>6</sup> or through deferral to a regulatory asset through a traditional accounting authority order ("AAO").<sup>7</sup> Staff and OPC do not dispute this in their initial briefs.<sup>8</sup>

**B. What is the appropriate method of customary ratemaking absent securitization?**

1. Stipulation

As stated in EMW's Initial Brief, the Stipulation resolved this issue as among the Company, Staff, and OPC, based on all Signatories' agreement that the total amount of Winter Storm Uri costs to be securitized (including carrying costs and upfront financing costs) is \$306,103,442<sup>9</sup> before the resolution of OPC's issues by the Commission. If the PSC approves the Stipulation, there will be no need for further decision on this issue.

2. EMW Position if Stipulation is Not Approved

As discussed above and in EMW's Initial Brief, if the PSC does not approve the Stipulation, and absent recovery through securitization, no party disputes that EMW's Winter Storm Uri costs would customarily be recovered by means of either the Company's FAC and deferral under the PISA statute or through deferral to a regulatory asset through a traditional AAO.<sup>10</sup>

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<sup>6</sup> § 393.1400, et seq.

<sup>7</sup> See Ex. 12C, Klote Surrebuttal at 3; Ex. 11C, Klote Direct at 8-9 and 12-14.

<sup>8</sup> See Staff Initial Brief at 3-4; OPC Initial Brief at 6-7.

<sup>9</sup> See Stipulation, ¶ 7 at 3.

<sup>10</sup> See Ex. 12C, Klote Surrebuttal at 3; Ex. 11C, Klote Direct at 8-9 and 12-14. See also Staff Initial Brief at 3-4; OPC Initial Brief at 6-7.

**C. Under Section 393.1700.2(2)(e),<sup>11</sup> what is the “customary method of financing”? What are the costs that would result “from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates”?**

1. Stipulation

As stated in EMW’s Initial Brief, the Stipulation resolved this issue as among the Company, Staff, and OPC, based on all Signatories’ agreement that the total amount of Winter Storm Uri costs to be securitized (including carrying costs and upfront financing costs) is \$306,103,442 before the resolution of OPC’s issues by the Commission<sup>12</sup> If the PSC approves the Stipulation, there will be no need for further decision on this issue.

2. EMW Position if Stipulation is Not Approved

As discussed above and in EMW’s Initial Brief, if the PSC does not approve the Stipulation, and absent recovery through securitization, no party disputes that EMW’s Winter Storm Uri costs would customarily be recovered by means of either the Company’s FAC and deferral under the PISA statute or through deferral to a regulatory asset through a traditional AAO.<sup>13</sup>

**D. What is the appropriate adjustment related to non-fuel operations and maintenance (“NFOM”) costs?**

1. Stipulation

As stated in EMW’s Initial Brief, the Stipulation resolved this issue as among the Company, Staff, and OPC, based on all Signatories’ agreement that the total amount of Winter Storm Uri costs to be securitized (including carrying costs and upfront financing costs) is \$306,103,442 along with the Company’s removal of its NFOM costs in order to seek recovery of

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<sup>11</sup> All statutory citations are to the Revised Statutes of Missouri (2016), as amended.

<sup>12</sup> See Stipulation, ¶ 7 at 3.

<sup>13</sup> See Ex. 12C, Klote Surrebuttal at 3; Ex. 11C, Klote Direct at 8-9 and 12-14. See also Staff Initial Brief at 3-4; OPC Initial Brief at 6-7.

same in its general rate case.<sup>14</sup> If the PSC approves the Stipulation, there will be no need for further decision on this issue.

## 2. EMW Position if Stipulation is Not Approved

If the PSC does not approve the Stipulation, EMW maintains its position that provided Staff's proposal on Winter Storm Uri NFOM costs in the Company's general rate case is adopted, EMW will remove its NFOM costs from the Winter Storm Uri costs requested to be securitized in this case.<sup>15</sup>

### **E. Should EMW's recovery through securitized bonds include more than 95% of fuel and purchased power costs?**

Evergy Missouri West should Recover 100% (not 95%) of its Qualified Extraordinary Costs related to Fuel and Purchased Power Expenses

#### 1. Stipulation

As Evergy stated in its Initial Brief, the Stipulation between the Company, Staff, and OPC resolved this issue based on their agreement that the total amount of Winter Storm Uri costs to be securitized (including carrying costs and upfront financing costs) is \$306,103,442 before the resolution of OPC's issues by the Commission.<sup>16</sup>

The Stipulation further noted that "if the Commission orders any further disallowance of fuel and purchased power costs beyond the \$278,511,691 identified in Table 1," such disallowance "will be reduced by 5% in recognition that this Stipulation resolves the 95/5 issue."<sup>17</sup>

None of the other parties to this case objected to or opposed the Stipulation. Therefore, except for the four issues that OPC preserved to litigate in Section 7, the PSC "may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement."<sup>18</sup>

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<sup>14</sup> See Stipulation, ¶5 at 2 and ¶7 at 3.

<sup>15</sup> See Ex. 12C, Klote Surrebuttal at 5-6. See also Staff Initial Brief at 4 and OPC Initial Brief at 8-9.

<sup>16</sup> See Stipulation, ¶7 at 3.

<sup>17</sup> Id. at 3-4.

<sup>18</sup> See 20 CSR 4240-2.115(2)(C).

If the Commission approves the Stipulation, there will be no need for a decision on this issue.

## 2. Evergy Position if Stipulation not Approved

If the Commission does not approve the Stipulation, Evergy continues to assert that the Company should be permitted to securitize 100% of its fuel and purchased power costs that were incurred as a result of Winter Storm Uri.

The Company has reviewed the Commission's Report & Order in Empire District Electric Company's securitization case and understands that it takes a different view.<sup>19</sup>

Rather than re-argue its position, Evergy wishes only to point out the flaw in the Commission's analysis regarding prudence. Although the Empire Order stated that "prudence is not relevant" to this issue,<sup>20</sup> prudence is an essential element in determining an electric utility's recovery.

There are two types of Securitized Utility Tariff Costs ("SUT Costs") that can be recovered under the Securitization Statute: Energy Transition Costs and Qualified Extraordinary Costs, the latter being at issue here. Both costs contain prudence requirements. In the case of Qualified Extraordinary Costs, they must be "incurred prudently."<sup>21</sup> Because of this, SUT Costs are, by definition, costs that are found to be prudently incurred.

Under sub-part "a" of Section 393.1700.2(3)(c), the Financing Order must contain "the following elements": {i} "[t]he amount" of SUT Costs to be financed through securitized bonds, and {ii} "a finding that recovery of such costs is just and reasonable and in the public interest."

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<sup>19</sup> See Empire Order at 17-21.

<sup>20</sup> Id. at 21.

<sup>21</sup> See § 393.1700.1(13).

Because SUT Costs must be “incurred prudently,” the concept of prudence is relevant to what the Commission must find under Subsection 2(3)(c)a of the Securitization Statute.

Similarly, the Financing Order requires a finding under sub-part “b” of Section 393.1700.2(3)(c) regarding the Securitized Utility Tariff Charge (“SUT Charge”) which has two components: SUT Costs and Financing Costs. Therefore, that portion of the SUT Charge that relates to SUT Costs which are Qualified Extraordinary Costs also includes, by definition, costs that were “incurred prudently.”

When the Commission concludes under Subsection 2(3)(c)b that the SUT Charge is “just and reasonable and in the public interest” because the charge is “expected to provide quantifiable net present value benefits to customers as compared to recovery” of the SUT Costs “that would have been incurred absent the issuance of” the bonds, the PSC makes this finding based on the fact that 100% of the SUT Costs were incurred prudently.

There is nothing in the Securitization Statute that permits the PSC to disallow 5% of the Qualified Extraordinary Costs that are included in the SUT Costs, as well as the SUT Charge, because the Commission’s 95/5 incentive mechanism is embodied in the FAC Rule. Such an adjustment would be particularly improper for the costs incurred during the extreme and anomalous weather conditions of Winter Storm Uri when public safety was paramount and “incentives to improve the efficiency and cost-effectiveness” of normal “fuel and purchased-power procurement activities”<sup>22</sup> were irrelevant.

The PSC may review the customary manner of recovering Qualified Extraordinary Costs under either the FAC Rule, 20 CSR 4240-20.090, or an accounting authority order (“AAO”) in assessing the benefits of securitization. However, there is no authority granted to the Commission

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<sup>22</sup> See § 386.266.1 (authorizing periodic fuel rate adjustments and related incentives).



in Section 393.1700 to use concepts employed in these customary methods or in general rate cases to arbitrarily lower the amount of Qualified Extraordinary Costs to be securitized.

Finally, the Commission’s 2018 decision in a Spire rate case to exclude a portion of rate case expense designed to benefit shareholders is not relevant to this securitization case.<sup>23</sup> In affirming that decision, the Supreme Court observed that “[t]he PSC expressly identified issues (and related expenses) Spire pursued that benefitted only its shareholders and not its ratepayers” in making its disallowances.<sup>24</sup> No party has alleged and there is no evidence that 5% of Evergy’s Qualified Extraordinary Costs was intended to benefit Evergy investors. The Spire rate case is not relevant to this securitization petition and provides no authority for the Commission to apply the 95/5 FAC incentive mechanism in this proceeding.

**F. Should EMW’s recovery through securitized bonds reflect an offset based on certain higher than normal customer revenues received by EMW during Winter Storm Uri?**

1. Stipulation

As stated in EMW’s Initial Brief, the Stipulation resolved this issue as among the Company, Staff, and OPC, based on all Signatories’ agreement that the total amount of Winter Storm Uri costs to be securitized is \$306,103,442.<sup>25</sup> If the PSC approves the Stipulation, there will be no need for further decision on this issue.

2. EMW Position if Stipulation is Not Approved

If the PSC does not approve the Stipulation, EMW maintains its position that any proposed revenue offset is unwarranted. Specifically, Staff and OPC requested an offset of \$8,609,978, arguing that number represents an amount of February 2021 retail revenues that “exceeded” a

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<sup>23</sup> Amended Report & Order at 53, In re Laclede Gas Co., No. GR-2017-0215 (Mar. 7, 2018) (“a number of these litigated issues were unique shareholder-focused ratemaking tools”).

<sup>24</sup> Spire Missouri, Inc. v. PSC, 618 S.W.3d 225, 233-34 (Mo. en banc 2021).

<sup>25</sup> See Stipulation, ¶ 7 at 3.

three-year average baseline.<sup>26</sup> However, and as explained in EMW’s Initial Brief, the Company did not experience excess revenues as a result of Winter Storm Uri. EMW received \$8.6 million in revenue from Winter Storm Uri, which represents just 1.1% of the Company’s normal annual base retail revenues.<sup>27</sup> In contrast, the Company incurred an entire year’s worth of fuel and purchased power in two weeks due to Winter Storm Uri.<sup>28</sup> Indeed, if Staff’s excess revenue adjustment were to be adopted by the Commission, it would mean the Commission was disallowing recovery of EMW’s extraordinary fuel and purchased power costs despite the facts that they have been deemed prudent expenditures by Staff and the Securitization Law makes no provision for the disallowance of prudently incurred costs.<sup>29</sup>

Section 393.1700.1(13)—which defines qualified extraordinary costs, in part, as those costs which have been “incurred prudently”—requires the opposite of Staff’s position: prudently incurred costs should be recovered through securitized bonds if the statutory requirements have been satisfied and the Commission approves the use of securitization financing. The securitization statute makes no mention of excess revenues in the definition or discussion of qualified extraordinary costs. Staff has still provided no explanation or support for its position is to reflect the revenues it asserts to be extraordinary in the qualified extraordinary costs, which constitutes an impermissible deviation from the law. The Commission should reject Staff’s proposed extraordinary revenue adjustment.

The Commission’s order in the Empire securitization case agreed, concluding that the definition of Qualified Extraordinary Costs “does not call for any offset of revenues against those

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<sup>26</sup> See Staff’s Initial Brief at 10-11; OPC’s Initial Brief at 12-13.

<sup>27</sup> Ives Surrebuttal, Ex. 9, p. 5, lines 6-8.

<sup>28</sup> *Id.* at lines 4-5.

<sup>29</sup> *Id.* at 6, lines 9-11.

costs.”<sup>30</sup> That order went on to observe that Staff’s theory to offset revenue would be inconsistent “under traditional ratemaking” and “would not be just and reasonable.”<sup>31</sup>

**G. Should EMW’s recovery through securitized bonds reflect a disallowance based on EMW’s resource planning?**

There should be no Resource Planning Disallowance to the Fuel and Purchased Power Expenses that were Prudently Incurred by Evergy Missouri West as a result of Winter Storm Uri. These Qualified Extraordinary Costs were Just and Reasonable, and they should be recovered through Securitized Bonds authorized by the Commission.

Only Public Counsel alleges that the amount of Qualified Extraordinary Costs incurred by the Company during Winter Storm Uri should be reduced by millions of dollars because of imprudent resource planning. Staff “does not recommend a disallowance based on Evergy’s resource planning in this case.”<sup>32</sup>

For the first time in this proceeding, OPC cited the prudence standard that the Commission adopted over 35 years ago.<sup>33</sup> However, it continues to misconstrue the prohibition of analysis by hindsight under the standard.

In its Empire Order, the Commission adopted “a succinct description of the regulatory prudence standard” from the testimony of John J. Reed who also provided testimony on behalf of EMW in this case.<sup>34</sup> One of the “four principles” that the standard is built on “is the total exclusion of hindsight from a properly constructed prudence review.”<sup>35</sup> Decisions must be judged based on what was known or reasonably knowable when the utility decided what to do. They are not evaluated by “how things turned out.”<sup>36</sup>

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<sup>30</sup> See Empire Order at 22.

<sup>31</sup> Id. at 22-23.

<sup>32</sup> See Staff Initial Brief at 11.

<sup>33</sup> See OPC Initial Brief at 15-16. See In re Union Elec. Co., No. EO-85-17, Mo. PSC LEXIS 54, \*24-27, 27 Mo. P.S.C. (N.S.), 183, 192-93 (1985).

<sup>34</sup> Empire Order at 28-29. See Ex. 18 at 8:24-9:21 (Reed Surrebuttal).

<sup>35</sup> Id. at 9:6-9.

<sup>36</sup> Id.; Empire Order at 29.

By failing to respond to the analysis in EMW’s many Integrated Resource Plans in this case and, in particular, the analysis that justified the retirement of the uneconomic Sibley Generating Station in November 2018, OPC focuses on Winter Storm Uri that occurred over two years later. Even so, Public Counsel does not allege that the costs actually incurred during the storm were imprudent which is what Section 393.1700.1(13) requires. If costs are “incurred prudently” “during anomalous weather events,” they are Qualified Extraordinary Costs and may be securitized.

Public Counsel makes no claim that the Company acted imprudently during Winter Storm Uri and its aftermath. Even though it admits that “[t]here is no way accurately plan for all extreme circumstances”,<sup>37</sup> OPC seeks a disallowance in the “range” of \$134 million to over \$250 million from the fuel and purchased power costs that EMW incurred because of the storm, based on a flawed analysis that is premised on a disregard of the Commission’s prudence standard.<sup>38</sup>

The undisputed facts are that Evergy Missouri West, as a member of SPP, relies on its energy markets to purchase electricity, just as it relies on the generation that it owns and has contracts for the capacity contract with Evergy Metro, Inc. Company witness Mr. Reed explained that Ms. Mantle’s analysis is based on a presumption that EMW’s purchases from SPP energy markets reflect imprudent resource planning, even though they ignore the savings to customers that the IRP analysis shows are occurring.<sup>39</sup> To the contrary, these purchases from the SPP regional energy pool are evidence of their “economic superiority” over meeting Evergy Missouri West’s load requirements with generation that it owns.<sup>40</sup> Indeed, except for the operational and

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<sup>37</sup> Ex. 201 at 10:25 (Mantle Rebuttal).

<sup>38</sup> Id. at 5:19-22; Ex. 202 at 2 (Mantle Surrebuttal). See OPC Initial Brief at 29.

<sup>39</sup> See Ex. 18 at 22-24 (Reed Surrebuttal).

<sup>40</sup> Id. at 23.

economic turmoil wrought by Winter Storm Uri in February 2021, the Company’s resource plans have saved customers money.

Ms. Mantle concedes this point, acknowledging that if OPC’s resource plan had been followed, “Evergy West’s customers would have been paying higher rates.”<sup>41</sup> There was nothing imprudent in the Company’s plan to meet energy needs through surpluses that exist in the SPP market.<sup>42</sup>

To the extent that OPC relies on comments and concerns raised in past IRP cases, they do not raise a “serious doubt” that overcomes the presumption of prudence.<sup>43</sup> Even if they did, EMW has dispelled those doubts and proved that the costs incurred to supply power to customers during Winter Storm Uri were reasonable under the extreme circumstances that existed at that time. Furthermore, the evidence showed that the decision to retire Sibley in November 2018, over two years prior to the storm, was a reasonable business decision based on the information and analytical results existing at that time.

**H. Were the costs incurred by EMW related to Winter Storm Uri as a result of its resource planning process just and reasonable? [If no, should EMW’s recovery through securitized bonds reflect a disallowance? If yes, what amount should the Commission disallow?]**

There should be no Resource Planning Disallowance to the Fuel and Purchased Power Expenses that were Prudently Incurred by Evergy Missouri West as a result of Winter Storm Uri. These Qualified Extraordinary Costs were Just and Reasonable, and they should be recovered through Securitized Bonds authorized by the Commission.

OPC argues that the costs incurred by EMW as a result of Winter Storm Uri might not have been as high as they were if the Company had more capacity available at that time. However, this is pure speculation. It presumes that Sibley 3 had not retired, had been repaired, and was fully

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<sup>41</sup> See Ex. 201 at 6:15-18 (Mantle Rebuttal).

<sup>42</sup> See Ex. 18.

<sup>43</sup> State ex rel. Public Counsel v. PSC, 274 S.W.3d 569, 578, 582 (Mo. App. W.D. 2009); Associated Nat. Gas Co. v. PSC, 954 S.W.2d 520, 528 (Mo. App. W.D. 1997).

operational, or that the Company had procured other base-load generation that would have had adequate fuel supplies and was operational. This argument is based entirely on hindsight which the prudence standard forbids. The facts are that the Company did have sufficient capacity to meet the requirements of SPP in February 2021. It simply wasn't available because of the disruption to the region when only 42% of SPP's nameplate capacity was available during February 15-16; of EMW's unavailable capacity at that time, 90% was caused by natural gas curtailments.<sup>44</sup>

It is also important to remember that during the morning of February 16, 2021, SPP sent Out of Merit Energy Instructions to Iatan Units 1 and 2 that “directed both units to produce less energy than they were capable of generating between the hours of 2 a.m. and 8 a.m. because of constraints on the SPP transmission system.”<sup>45</sup> EMW owns 272 MW of capacity in Iatan Station<sup>46</sup> which was fully operational during Winter Storm Uri. However, these resources were not available at this critical time because SPP directed the station to decrease production because of SPP transmission constraints. The effect of Winter Storm Uri on natural gas pipelines that EMW and other electric utilities rely upon was also significant.<sup>47</sup>

As the Commission concluded in the Empire securitization case, “[o]ther than showing a bad result, Public Counsel has not demonstrated any imprudence” in the Company’s planning process.<sup>48</sup> This showing fails to support the multi-million dollar disallowances proposed by OPC.

Finally, OPC continues to assert the false narrative that Evergy Missouri West “does not meet the SPP’s resource adequacy requirements ....”<sup>49</sup> As Evergy’s Kayla Messamore testified, the Company has always met SPP’s reserve margin requirements.<sup>50</sup> Since the retirement of the

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<sup>44</sup> See Ex. 1 at 18 (Bridson Direct).

<sup>45</sup> Id. at 21 (Bridson Direct) (emphasis added).

<sup>46</sup> Evergy Missouri West owns capacity of 119 MW in Iatan 1 and 153 MW in Iatan 2. See Ex. 1 at 5 (Bridson Direct).

<sup>47</sup> Id. at 21-22 (Bridson Direct).

<sup>48</sup> Empire Order at 33.

<sup>49</sup> See OPC Initial Brief at 18.

<sup>50</sup> See Ex. 17 at 7-8.

Sibley Generating Station in November 2018, EMW has met these requirements through a combination of its own generation resources and contracted capacity.

The Integrated Resource Plans of the Company have been prepared on a stand-alone basis as long as IRPs have been conducted.<sup>51</sup> Ms. Messamore explained the elaborate process that supports EMW's resource planning which Public Counsel continues to ignore.<sup>52</sup> Although OPC's Lena Mantle stated that "there is no way to accurately plan for all extreme circumstances," Public Counsel continues to attack EMW's decision to retire Sibley even though the estimated costs in 2018 to continue its operation through 2021 were \$165 million when Sibley's annual margins from the SPP market were only about \$4 million per year (2015-2017).<sup>53</sup> Prudent utilities do not plan for "events that are unusual or extraordinary" such as Winter Storm Uri.<sup>54</sup> Ms. Messamore agreed, noting that "the IRP does not include [consideration of] extreme scenarios like Winter Storm Uri."<sup>55</sup>

OPC attempts to distinguish the Commission's decision in Empire's securitization case from EMW's circumstances.<sup>56</sup> The order there stated that "Liberty [Empire] planned to have sufficient capacity to meet all requirements established by SPP."<sup>57</sup> Ms. Messamore similarly testified that after the retirement of Sibley in late 2018 that "EMW did have sufficient capacity in 2019 to meet SPP's reserve margin requirements."<sup>58</sup> The Company meets the objective of IRP process "through the evaluation of a variety of Alternative Resource Plans ('ARPs') which include sufficient quantities of demand- and supply-side resources to meet expected customer demands

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<sup>51</sup> Id. at 5:8-9.

<sup>52</sup> Id. 5-6, 10-13.

<sup>53</sup> Id. at 12.

<sup>54</sup> See Tr. at 267 (Reed Surrebuttal).

<sup>55</sup> See Ex. 17 at 12.

<sup>56</sup> OPC Initial Brief at 22, n.11, paragraph 3.

<sup>57</sup> Empire Order at 32-33.

<sup>58</sup> See Ex. 17 at 7:19-20.

and the [SPP] reserve margin requirements.”<sup>59</sup> She confirmed: “Every EMW ARP is designed to meet EMW’s standalone load and reserve margin requirements.”<sup>60</sup>

The removal of any amount of net purchased costs from EMW’s Qualified Extraordinary Costs based on OPC’s arguments would be arbitrary and capricious. Public Counsel has failed to apply the prudence standard used by the Commission and instead relied on hindsight. It has set up its own standard of near perfection which it uses to complain about the Company’s resource planning over the past 15 years. Moreover, OPC never criticizes the prudence of the purchased power costs that the Company incurred *during* Winter Storm Uri, as required by the Securitization Law.

Public Counsel’s request for a disallowance based on Evergy Missouri West’s alleged imprudent resource planning must be denied.

**I. Should EMW’s recovery through securitized bonds reflect a disallowance for income tax deductions for Winter Storm Uri costs?**

As stated in EMW’s Initial Brief, the Stipulation resolved this issue as between the Company and Staff, based on all Signatories’ agreement that the total amount of Winter Storm Uri costs to be securitized (including carrying costs and upfront financing costs) is \$306,103,442.<sup>61</sup> Likewise, in its Initial Brief, “Staff does not recommend a disallowance for income tax deductions,” because “Evergy customers will receive the benefit of the deferred tax liability created by Winter Storm Uri in future general rates over the life of the securitized bond. To disallow the tax timing difference in the securitization amount would double-count the benefits passed on to the customers.”<sup>62</sup>

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<sup>59</sup> *Id.* at 4:19-22.

<sup>60</sup> *Id.* at 7:8-9.

<sup>61</sup> See Stipulation, ¶ 7 at 3.

<sup>62</sup> See Staff Initial Brief at 11.



However, OPC reserved for the Commission’s resolution any “adjustment to the proposed securitization amount to account for the tax deduction Evergy Missouri West will receive.”<sup>63</sup> Whether the Stipulation is approved or not, EMW maintains its position on this OPC issue that the proposed securitization amount should not be subject to any tax disallowance. In OPC’s Initial Brief, OPC and its witness Mr. Riley double-down on their proposal of an approximately \$72,000,000 disallowance of Qualified Extraordinary Costs (fuel and purchased power costs) by claiming the Company will receive a “permanent” tax benefit associated with securitizing Winter Storm Uri costs that ratepayers will have to pay for while the Company gets a “windfall.” However, OPC fails to recognize that not only is there no basis in the Securitization Law for its position, but that it is demonstrably inaccurate as a matter of public, written Internal Revenue Service (“IRS”) guidance.

While OPC agrees that EMW was entitled to a tax deduction when the Winter Storm Uri costs were incurred and is not taxed when the Bonds are actually issued, OPC fails to rebut and thus concedes the tax consequences of the special purpose entity (“SPE”) created for the Bond financing.<sup>64</sup> OPC made no effort to dispute that the SPE will not receive a tax deduction because Winter Storm Uri costs have already been deducted by EMW, and the revenue collected from ratepayers by the SPE through the securitized utility tariff charge (“SUTC”) will be taxable.<sup>65</sup> As a result, “[w]hen the Winter Storm Uri expenses were deducted for tax purposes at Evergy Missouri West, a tax timing difference was created,” so EMW recorded deferred taxes that will remain in rate base until collected from ratepayers by the SPE through the SUTC.<sup>66</sup> Then, EMW

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<sup>63</sup> See Stipulation, ¶ 7 at 3.

<sup>64</sup> See Ex. 5, Hardesty Surrebuttal, at 2-5; Tr. VII at 228:8-229:23, 231:10-25, and 234:8-21.

<sup>65</sup> Id.

<sup>66</sup> Id.

will have to pay taxes to the government on this revenue on the Company's consolidated tax return.<sup>67</sup>

No party disputes that the exact tax scenario presented in this securitization proceeding is directly addressed in the IRS's September 12, 2005 Revenue Procedure 2005-62, admitted into evidence at hearing as Exhibit 19. Its purpose, as stated in Section 1, is: "This revenue procedure sets forth the manner in which a public utility company may treat the issuance of a financing order by a State agency authorizing the recovery of certain specified costs incurred by the utility and the securitization of the rights created by that financing order." Accordingly, under Section 6.03: "The non-bypassable charges are gross income to the utility recognized under the utility's usual method of accounting."<sup>68</sup> Therefore, the Company will pay income taxes on the collections by the SPE through the SUTC. OPC fails to recognize in its Initial Brief that its analysis inappropriately skips this ultimate step where the Company must pay taxes on the revenue generated via the SUTC, thereby manufacturing a "permanent tax benefit" where none exists. Staff agrees with EMW.<sup>69</sup>

OPC argues for the first time that if the proposed securitized amount is reduced by the tax savings at EMW, then there will somehow still be sufficient funds to recover all of the Winter Storm Uri costs because of the Securitization Statute's definition of "Financing Costs." First, the Commission should reject this argument for its lack of competent evidentiary support and violations of Commission Rule 20 CSR 4240-2.130(7)(A)-(B), (D).<sup>70</sup>

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<sup>67</sup> Id.

<sup>68</sup> See Ex. 19 at 2.

<sup>69</sup> See Ex. 101, Bolin Surrebuttal, at 4-5; Tr. at 334:5-6 ("I'm in agreement with Ms. Hardesty's views on taxes."), 339:12-340:14.

<sup>70</sup> See, e.g., In re Union Elec. Co., No. ER-2012-0166, 2012 WL 5984836, at \*1 (Nov. 14, 2012) ("The law is certainly clear that the Commission must make its decision based on competent and substantial evidence. The briefs filed by the parties are not evidence and the Commission cannot accept facts presented for the first time in a party's brief as competent and substantial evidence."); In re Empire Dist. Elec. Co. & White River Valley Elec. Coop., No. EO-2009-0428, 2009 WL 2136587, at \*2 (July 8, 2009) ("Merely adopting" a party's legal conclusion or "position on the ultimate legal issues is insufficient and does not satisfy the competent and substantial evidence standard embodied in the Missouri Constitution, Article V, Section 18.").

Second, OPC's argument is incorrect. The "Financing Costs" definition does include a provision on taxes: "Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including commission assessment fees, whether paid, payable or accrued."<sup>71</sup> However, this reference is to taxes associated with the "securitized utility tariff bonds,"<sup>72</sup> not the deferred tax liability or resulting tax-timing difference at issue. If EMW's customers were to be responsible for taxes, they would be "directly built into the securitized amount," but "[t]his is not how Evergy or Staff has calculated the securitized amount. In a rate case the amount of taxes associated with the revenue the company will collect is included in the base rates. There is no separate line item on a customer's bill for federal or state income taxes, which the company will have to pay."<sup>73</sup> Moreover, if the proposed securitized amount is reduced by the tax savings at EMW, then there will not be sufficient funds to recover all of the Winter Storm Uri costs, including the income tax expense at the SPE.<sup>74</sup> This outcome advocated by OPC is not permissible under the Securitization Law, and would only constitute an unlawful penalty to EMW.

Finally, OPC presents another argument for the first time that "to recognize the tax benefit in this manner over time comes at a great cost to ratepayers, approximately \$30 million."<sup>75</sup> However, OPC never presented this argument in any of its pre-filed testimony and violates Commission Rule 20 CSR 4240-2.130(7)(A)-(B), (D).<sup>76</sup> This new argument is also not based on substantial and competent evidence.<sup>77</sup>

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<sup>71</sup> §393.1700.1(8)(e).

<sup>72</sup> See §393.1700.1(8).

<sup>73</sup> See Ex. 101, Bolin Surrebuttal, at 3; see also Tr. at 341:2-24 and 352:16-353:15.

<sup>74</sup> See Ex. 5, Hardesty Surrebuttal, at 2-5; Tr. at 228:8-229:23, 231:10-25, and 234:8-21.

<sup>75</sup> OPC Initial Brief at 33.

<sup>76</sup> In re Union Elec. Co., No. ER-2012-0166, 2012 WL 5984836, at \*1.

<sup>77</sup> In re Joint Application of Empire Dist. Elec. Co. & White River Valley Elec. Coop., No. EO-2009-0428, 2009 WL 2136587 at \*2.

The Commission should reject OPC's request for a tax disallowance, as there is neither statutory support nor competent evidence justifying it. In fact, the record evidence establishes that any disallowance would be contrary to the Securitization Law and operate as an inappropriate penalty to EMW. Even Mr. Riley agreed at hearing that EMW's and Staff's approach to and methodology regarding this tax issue "could be done."<sup>78</sup>

**J. Should Evergy's recovery through securitized bonds reflect a disallowance for the income tax deduction on the carrying costs for Winter Storm Uri costs?**

As stated in EMW's Initial Brief, the Stipulation resolved this issue as between the Company and Staff, based on all Signatories' agreement that the total amount of Winter Storm Uri costs to be securitized (including carrying costs and upfront financing costs) is \$306,103,442.<sup>79</sup> Likewise, in Staff's Initial Brief, "Staff is not recommending such a disallowance."<sup>80</sup>

However, OPC reserved for the Commission's resolution any "adjustment to the proposed securitization amount to account for the tax deduction related to the carrying charges on the Storm Uri costs."<sup>81</sup> Whether the Stipulation is approved or not, EMW maintains its position on this OPC issue that the proposed securitization amount should not be subject to any tax disallowance.

In its Initial Brief OPC continues to argue that combined with its requested fuel and purchased costs disallowance discussed above, any federal and state tax effects of the accrued carrying charges in the total proposed securitized amount should likewise be reduced. In total, OPC persists in proposing a disallowance of \$72,000,000 to \$82,000,000 from EMW's Winter Storm Uri costs. For all of the same reasons detailed above, OPC's arguments should be rejected because they are erroneous, in violation of the Securitization Law, and in violation of the

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<sup>78</sup> Tr. at 504:25-505:16.

<sup>79</sup> See Stipulation, ¶ 7 at 3.

<sup>80</sup> See Staff Initial Brief at 12.

<sup>81</sup> See Stipulation, ¶ 7 at 3.

Commission’s Rules. O As Ms. Bolin testified, OPC’s argument that the carrying and/or interest costs associated with the Winter Storm Uri costs would result in a “tax windfall” to EMW is incorrect.<sup>82</sup> Even Mr. Riley agreed at hearing that EMW’s and Staff’s approach to and methodology regarding this tax issue “could be done.”<sup>83</sup>

The Commission should reject OPC’s request for a tax disallowance, as there is neither statutory support nor competent evidence justifying it. The record evidence establishes any disallowance would be contrary to the Securitization Law and operate as an inappropriate penalty to EMW.

**K. What are the appropriate carrying costs for Winter Storm Uri?**

What are the appropriate Carrying Costs for Winter Storm Uri?

1. Stipulation

The Company and Staff agree that carrying costs calculated for inclusion in the Qualified Extraordinary Costs should be determined by using an average commercial paper rate of 0.20% for the first six months post-February 2021, the month when Winter Storm Uri occurred. Afterward, beginning in September 2021, the Company’s long-term debt rate of 5.06%, as recommended by Staff, should be applied. Staff and EMW agree that the carrying costs included in the Stipulation’s \$306.1 million of Qualified Extraordinary Costs include \$20,951,820 in carrying costs through January 2023.<sup>84</sup>

Public Counsel, MECG, and Velvet Tech preserved the right to advocate for a different rate to determine carrying costs.

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<sup>82</sup> See Ex. 101, Bolin Surrebuttal, at 3 See also Tr. at 334:3-21, 339:12-340:14, 341:2-24, and 352:16-353:15.

<sup>83</sup> Tr. at 504:25-505:16.

<sup>84</sup> See Stipulation at 2-3.

## 2. Evergy Position if Stipulation not Approved

If the Commission does not approve the Stipulation, carrying costs should be calculated based on the Company's weighted average cost of capital ("WACC") of 7.358%, plus applicable taxes, which totals 8.90%.<sup>85</sup>

As explained in EMW's Initial Brief, the WACC is appropriate because it is consistent with the recovery that would occur under customary procedures if securitization did not occur. If the Qualified Extraordinary Costs were recovered under the existing FAC/PISA approach,<sup>86</sup> a relatively small amount of the costs of Winter Storm Uri would flow through the FAC, while most of them would be deferred under the PISA compound annual growth rate limitations or "caps" in Sections 393.1655.5 and 393.1400.2(3). Under this latter statute, the regulatory asset created by the deferral "shall include carrying costs at the electrical corporation's weighted average cost of capital, plus applicable federal, state, and local income or excise taxes."<sup>87</sup> Similarly, if the AAO amortization approach were used to finance the recovery of Winter Storm Uri costs as a regulatory asset, and its costs were amortized over a 15-year period, they would also be subject to carrying costs at EMW's WACC plus taxes.<sup>88</sup>

The carrying costs supported by Public Counsel and Staff are too low because they fail to reflect all of EMW's financial sources including equity, considering just one element such as long-term debt or short-term debt. OPC's insistence on using the current low short-term commercial paper rating of A2/P2 for the entire period that the Company has incurred and continues to incur costs since February 2021 until the securitized bonds are issued is unreasonable.

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<sup>85</sup> See Ex. 11 at 10, 14 (Klote Direct).

<sup>86</sup> This refers to the fuel adjustment clause (FAC) process under § 386.266, as modified by the plant-in-service accounting (PISA) provisions beginning at § 393.1400.

<sup>87</sup> See Ex. 11 at 13 (Klote Direct).

<sup>88</sup> Id.

**L. What is the appropriate adjustment to the amount of Winter Storm Uri costs to be recovered through securitized bonds, if any, regarding EMW's administration of the Special Incremental Load (SIL) tariff?**

The Staff's proposed disallowance should be rejected by the Commission as Staff has not shown that non-Nucor customers have paid any additional amounts under the Company's administration of the SIL tariff. Company witness Carlson's surrebuttal testimony established that there were no incremental costs for February 2021 associated with serving Nucor under the SIL tariff.<sup>89</sup>

In fact, during the month of February 2021, it was much more advantageous for the Company to serve Nucor load in the SPP real time market. This is exactly what occurred and the Company estimates that all customers benefitted from the Company's actions. Carlson Surrebuttal, Ex. 2 p. 6, ll. 9-16. As a result, Staff's adjustment does not appropriately account for the cost of serving Nucor. Customers were already held harmless because all Nucor load was served in the SPP real time market in February 2021.

Finally, Staff requests the Commission order EMW to keep certain records, identify costs and other items on p. 15 of its initial brief. The Company has already agreed to these conditions as well as additional conditions in paragraph 5 of the August 30, 2022 Stipulation and Agreement filed in its current rate case (ER-2022-0130). Therefore, there is no reason for the Commission to require these conditions in a securitization docket.

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<sup>89</sup> Carlson Surrebuttal, Ex. 2, p.4; ll.1-4.

**M. What is the appropriate discount rate or rates to use to calculate the net present value (“NPV”) of Winter Storm Uri costs that would be recovered through customary ratemaking?**

What is the appropriate Discount Rate for calculating the NPV of Winter Storm Uri costs to be recovered through Customary Ratemaking?

1. Stipulation

The Company and Staff have agreed in the Stipulation that 8.9% is the appropriate discount rate that should be used to determine the quantifiable NPV of benefits to customers. However, Public Counsel has preserved the right to argue for a different rate.<sup>90</sup>

The 8.9% discount rate was proposed by EMW because it represents the Company’s weighted average cost of capital after taxes which the Commission used to set rates in its last rate case. This rate falls within the range of appropriate discount rates discussed by Staff witness Mark Davis. He estimated rates from the low single digits up to 20%, given the wide range of costs that different customers could incur if securitization was not used, depending on their individual circumstances.<sup>91</sup>

2. Evergy Position if Stipulation not Approved

If the Commission does not approve the Stipulation, Evergy’s position is that 8.9% is the appropriate discount rate.

Staff proposes evaluating NPV benefits “on a range of discount rates, ... including Evergy’s long-term debt rate to Evergy’s weighed average cost of capital.”<sup>92</sup> As Staff witness Mr. Davis testified, such “rates could range from the low single digits to the 20% context in the case of credit card debt.”<sup>93</sup> Evergy’s proposal to use 8.9% falls well within Staff’s range.<sup>94</sup>

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<sup>90</sup> See Stipulation, ¶ 8 at 4.

<sup>91</sup> See Ex. 106 at 4-5 (Davis Rebuttal).

<sup>92</sup> See Staff Initial Brief at 15-16.

<sup>93</sup> See Ex. 106 at 5 (Davis Rebuttal).

<sup>94</sup> See Ex. 11 at 13-14 & Sched. RAK-4 (corrected) (Klote Direct); Ex.12 at Sched. RAK-8 (updated) (Klote Surrebuttal).



Opposing the proposals of both EMW and Staff, OPC's Mr. Murray uses not one, but *two* discount rates. He applies one rate to determine the NPV of the customary methods to recover storm costs (FAC/PISA or AAO). Then, he uses a second, different discount rate to determine the NPV of the securitization method, based on an investment risk assessment of EMW, not the risk to customers.<sup>95</sup> OPC advances this dual assessment theory despite the legal requirement that the comparison must relate to what securitized bonds "... are expected to provide" in quantifiable NPV "benefits to customers as compared to recovery" without securitization.<sup>96</sup>

As the Commission found in Empire's securitization case: "This issue simply asks what discount rate should be plugged into a formula to determine whether securitization would be a benefit" to the utility's customers, and "does not have a direct impact on the amount" to be recovered through securitization.<sup>97</sup> The PSC ordered that one rate should be used to calculate the NPV of the Winter Storm Uri costs that would be recovered through customary ratemaking. *Id.*

Under the facts of this case, given Staff's recommendation, using a discount rate of 8.90% to calculate the NPV of benefits to customers is appropriate.

### **III. WHAT ARE THE ESTIMATED UP-FRONT AND ONGOING FINANCING COSTS ASSOCIATED WITH SECURITIZING QUALIFIED EXTRAORDINARY COSTS ASSOCIATED WITH WINTER STORM URI?**

What are the estimated Up-Front and On-Going Financing Costs associated with securitizing Qualified Extraordinary Costs associated with Winter Storm Uri?

#### **1. Stipulation**

As stated in EMW's Initial Brief, the Stipulation between the Company, Staff and OPC agreed that the amount of up-front financing costs is \$6,639,931 (referred to as "6.6 million"),

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<sup>95</sup> See OPC Initial Brief at 53-56 (supporting different discounts rates for the FAC/AAO analysis and the bondholders' risk).

<sup>96</sup> See § 393.1700.2(3)(c)b [emphasis added].

<sup>97</sup> Empire Order at 37.

based on the total amount of Winter Storm Uri costs to be securitized being \$306,103,442. These costs will be determined at the time of financing.<sup>98</sup> Staff and its designated representatives and advisors have agreed to work collaboratively with EMW to establish and verify the up-front financing costs.<sup>99</sup>

If the PSC approves the Stipulation, there will be no need for a decision on up-front financing costs.

2. Evergy Position if Stipulation not Approved

- (a) Up-Front Financing Costs: The estimated up-front financing costs are \$6.6 million.

No party has specifically disputed Evergy's contentions in its Initial Brief which summarized the evidence presented by Assistant Treasurer Jason Humphrey and Citigroup's Steffen Lunde.

Staff's estimate of these costs is \$6.026 million, based upon unspecified "adjustments to the size of the securitization."<sup>100</sup> Evergy does not believe that an adjustment is warranted.<sup>101</sup>

- (b) On-Going Financial Costs: Evergy's estimate of annual, on-going financial costs is \$560,000.<sup>102</sup> The details regarding the estimate are provided in lines 25-35 to those exhibits. Mr. Humphrey explains their purpose, how they were estimated, how they will be calculated, and how the true-up

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<sup>98</sup> See Stipulation, Table 1 & ¶ 4.

<sup>99</sup> Id. at 4.

<sup>100</sup> See Staff Initial Brief at 16.

<sup>101</sup> Id. at 6.

<sup>102</sup> See Ex. 6 at 11 & Confid. Ex. 1 (Humphrey Direct); Ex. 7, Confid. Ex. 1 (Humphrey Surrebuttal).

mechanism will operate to reconcile actual costs with estimates.<sup>103</sup> No party has objected to these estimates.

Staff currently estimates the annual on-going financial costs to be a somewhat lower amount which it has designated as confidential.<sup>104</sup> Evergy's estimate is based on the detailed estimates provided by Mr. Humphrey and should be accepted by the Commission.

**A. What is the appropriate return on investment and treatment of earnings in the capital subaccount?**

1. Stipulation

As stated in EMW's Initial Brief, the Stipulation resolved this issue as among the Company, Staff, and OPC, based on all Signatories' agreement that the total amount of Winter Storm Uri costs to be securitized (including carrying costs and upfront financing costs) is \$306,103,442.<sup>105</sup> The Stipulation further resolved this issue based on the Signatories' agreement, as detailed in Staff witness Ms. Lange's testimony, to "[a]ccept Staff's recommendation to include tariff provisions regarding use and treatment of accounts and subaccounts in the SUTC tariff sheets," as well as "that the estimated upfront financing costs included in the Qualified Extraordinary Costs will reflect those identified by the Company in its Direct testimony in this case at \$6.6 million and will be finally adjusted through the Issuance Advice Letter ('IAL') process and designated representative(s) review."<sup>106</sup> The Signatories also agreed "to utilize the Company's filed Financing Order with updates and other adjustments necessary to comply with Section 393.1700 and incorporate this Stipulation and the resolution of contested cost recovery

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<sup>103</sup> See Ex. 6 at 11-15 (Humphrey Direct).

<sup>104</sup> See Staff Initial Brief at 16.

<sup>105</sup> See Stipulation, ¶ 7 at 3.

<sup>106</sup> Id., ¶ 4 at 2 and ¶ 11 at 4-5.

issues.”<sup>107</sup> If the PSC approves the Stipulation, there will be no need for further decision on this issue.

## 2. EMW Position if Stipulation is Not Approved

If the PSC does not approve the Stipulation, EMW maintains its un rebutted position that it is entitled to earn a rate of return on its invested capital equal to the weighted average cost of capital (“WACC”) of the utility.<sup>108</sup> If necessary, such funds (including investment earnings) will be used by the Indenture Trustee to pay the principal of and interest on the Securitization Bonds and the ongoing financing costs payable by the SPE.<sup>109</sup> EMW thus also requests that this return on invested capital be a component of ongoing financing costs, and accordingly, recovered through the SUTC, consistent with Sections 393.1700.1(8)(b) and 393.1700.2(3)(c)l.<sup>110</sup> Company witness Mr. Klote further discusses how this return amount will be adjusted from time to time as a result of changes authorized to the Company’s cost of capital in future rate cases, Company witness Mr. Lunde further discusses the establishment and treatment of the Capital Subaccount in the proposed Financing Order, and Company witness Mr. Lutz further discusses the use and treatment of subaccounts in the proposed tariff provisions.<sup>111</sup>

In the other parties’ initial briefs, OPC takes no position on this issue<sup>112</sup> while “Staff would recommend the Commission allow Evergy to earn a return at Evergy’s weighted average cost of capital consistent with the securitization statute.”<sup>113</sup> However, for the first time in its Initial Brief, Staff recommends a WACC of 6.77% and asserts that “Evergy should not separately be entitled to

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<sup>107</sup> Id., ¶ 9 at 4.

<sup>108</sup> See Ex. 6C, Humphrey Direct, at 12-13.

<sup>109</sup> Id.

<sup>110</sup> Id.

<sup>111</sup> See Ex. 11C, Klote Direct at 22-23. See also Ex. 13, Lunde Direct at 8-12 and 34-35; Ex. 16C, Lutz Surrebuttal at 6.

<sup>112</sup> See OPC Initial Brief at 58.

<sup>113</sup> See Staff Initial Brief at 16.

return on investment earnings of the capital subaccount, as providing both the weighted average cost of capital and investment earnings would provide greater return to Evergy than is permitted by the Securitization Act.” Staff does not support these statements with citations to any competent evidence or law, and so they must be rejected.<sup>114</sup> Staff has also failed to support this new argument with anything other than inadmissible legal conclusions.<sup>115</sup>

As a result, if the Stipulation is not approved, EMW’s position is unopposed and should be adopted by the Commission.

**B. Is the issuance of multiple series appropriate?**

1. Stipulation

As stated in EMW’s Initial Brief, the Stipulation resolved this issue as among the Company, Staff, and OPC, based on all Signatories’ agreement that the total amount of Winter Storm Uri costs to be securitized (including carrying costs and upfront financing costs) is \$306,103,442.<sup>116</sup> The Stipulation further resolved this issue based on the Signatories’ agreement “that the estimated upfront financing costs included in the Qualified Extraordinary Costs will reflect those identified by the Company in its Direct testimony in this case at \$6.6 million and will be finally adjusted through the Issuance Advice Letter (‘IAL’) process and designated representative(s) review.”<sup>117</sup> The Signatories also agreed “to utilize the Company’s filed Financing Order with updates and other adjustments necessary to comply with Statute 393.1700 RSMo. and incorporate this Stipulation and the resolution of contested cost recovery issues.”<sup>118</sup> If the PSC approves the Stipulation, there will be no need for further decision on this issue.

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<sup>114</sup> In re Union Elec. Co., No. ER-2012-0166, 2012 WL 5984836, at \*1.

<sup>115</sup> In re Joint Application of the Empire Dist. Elec. Co. & White River Valley Elec. Coop., No. EO-2009-0428, 2009 WL 2136587 at \*2.

<sup>116</sup> See Stipulation, ¶ 7 at 3.

<sup>117</sup> See id., ¶ 4 at 2.

<sup>118</sup> See id., ¶ 9 at 4.

## 2. EMW Position if Stipulation is Not Approved

If the PSC does not approve the Stipulation, EMW maintains its now-undisputed position that while multiple series are not expected, the Financing Order should permit the issuance of multiple series to address any future market disruptions.<sup>119</sup> As Company witness Mr. Lunde testified, the language in the proposed Financing Order addressing multiple series “exists in pretty much every financing order [he’s] ever done” even though a second series is “very unlikely” to occur.<sup>120</sup> Staff agrees that “[u]ltimately if the underwriters aren’t able to place the full amount of the bonds in a single series, having the flexibility to issue incremental bonds through a subsequent series rather than pull a deal may be advantageous to have the flexibility for.”<sup>121</sup>

In the other parties’ initial briefs, OPC takes no position on this issue<sup>122</sup> while Staff also relies on its witness Mr. Davis’s testimony regarding flexibility in the future financing order.<sup>123</sup>

#### **IV. WOULD THE ISSUANCE OF SECURITIZED UTILITY TARIFF BONDS AND IMPOSITION OF SECURITIZED UTILITY TARIFF CHARGES PROVIDE QUANTIFIABLE NPV BENEFITS TO CUSTOMERS AS COMPARED TO RECOVERY OF THE SECURITIZED UTILITY TARIFF COSTS THAT WOULD BE INCURRED ABSENT THE ISSUANCE OF BONDS?**

Would the issuance of Securitized Utility Tariff Bonds and the imposition of Securitized Utility Tariff Charges provide quantifiable NPV of Benefits to Customers as compared to the recovery of the costs that would be incurred absent the issuance of Bonds?

Both Staff and the Company agree that the evidence shows there are quantifiable NPV benefits to customers compared to how Winter Storm Uri costs would be recovered if the bonds were not issued. Public Counsel takes no position on this issue.<sup>124</sup>

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<sup>119</sup> See Tr. 127:23-128:2 (“we do like to have flexibility, because at the end of the day, everybody is trying to make sure we get the best possible deal for the ratepayers and flexibility could be an element of achieving that objective.”).

<sup>120</sup> Tr. at 130:1-10.

<sup>121</sup> See Tr. at 442:2-15. .

<sup>122</sup> See OPC Initial Brief at 58

<sup>123</sup> See Staff Initial Brief at 17-18.

<sup>124</sup> See OPC Initial Brief at 58.

Staff estimates the NPV benefits of securitization under the FAC method to be in a range from \$55 million to \$67 million.<sup>125</sup> Using similar assumptions, Staff estimates the NPV benefits under the AAO method between \$8 million and \$19 million.<sup>126</sup> Although there are differences between Staff’s estimates and those of Evergy Missouri West, both parties agree that even as interest rates are increasing, the expected benefits to EMW’s customers will be substantial.

As Evergy’s witness Mr. Lunde testified, there “is significant support for the securitization method remaining the most economically beneficial financing method.”<sup>127</sup> Furthermore, after the pricing of the bonds but before closing, EMW is required to submit an Issuance Advice Letter to the Commission for its review. During this process, EMW will certify that the financing of the Qualified Extraordinary Costs and the Financing Costs will provide quantifiable NPV benefits to retail customers greater than would occur under customary methods of financing.<sup>128</sup>

Under all the scenarios presented to the Commission, both in pre-filed testimony and in testimony at the hearing, the evidence shows that the issuance of Securitized Utility Tariff Bonds and the imposition of Securitized Utility Tariff Charges will provide quantifiable NPV benefits to customers compared to the recovery of costs that would be incurred under the FAC/PISA and AAO customary methods without the issuance of the bonds.

## **V. HOW SHOULD THE SUTC BE ALLOCATED?**

EMW, Staff and OPC (“Signatories”) are in agreement that loss adjusted energy sales should be used to allocate the SUTC for Winter Storm Uri costs among the Company’s customers.<sup>129</sup> As Staff witness Lange notes on page 20 of her rebuttal testimony, the Winter Storm

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<sup>125</sup> See Staff Initial Brief at 18.

<sup>126</sup> Id.

<sup>127</sup> See Ex. 14 at 4 & Sched. SL-3 (Lunde Surrebuttal).

<sup>128</sup> See Ex. 14 at 4 (Lunde Surrebuttal); Evergy Proposed Financing Order, Sched. SL-2, Page 42 of 83 (Findings of Fact) & Page 49 of 83 (Ordering Paragraphs) of 83, Ex. 13 (Lunde Direct).

<sup>129</sup> Non-Unanimous Stipulation and Agreement, pp. 5-6 (Aug. 1, 2022); Staff Brief at 21-22; OPC Brief at 59-62; EMW Brief at 43-46.

Uri costs the Company seeks to recover through securitized bonds consist of fuel and purchased power costs that are typically recovered through the FAC. Rate elements under the FAC are developed based on allocations to the various customers using loss-adjusted energy sales. Thus, the Signatory Parties' proposed allocation of the SUTC is consistent with the allocation under the FAC.<sup>130</sup>

The only parties to disagree with the use of the loss adjusted energy allocator for use in this case were MECG and Velvet Tech, Inc.<sup>131</sup> MECG and Velvet Tech both initially argued in favor of a method of utilizing the class allocations from EMW's last rate case.<sup>132</sup> As an alternative position, Velvet Tech suggested that the Commission could "cap" the impact of the securitization charge on hyperscale projects at \$2 Million.<sup>133</sup>

As EMW explained in its initial brief,<sup>134</sup> the loss adjusted energy sales allocation method is consistent with cost causation principles since the costs associated with Winter Storm Uri that are being securitized are largely fuel and purchased power. Such costs are allocated on an energy basis in class cost of service studies accepted by virtually all parties.<sup>135</sup> Both Ms. Lange and OPC witness Marke also observed that this allocation method avoids problems associated with other allocation methods based upon customer class because it avoids issues related to rate switchers and the loss of large customers from a specific class.<sup>136</sup> Mr. Lutz also agreed that the loss adjusted energy sales allocation method would be advantageous for this reason.<sup>137</sup> For this reason, the

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<sup>130</sup> Ex. 16C, Lutz Surrebuttal, p. 3.

<sup>131</sup> MECG Brief at 1-4; Velvet Tech Brief at 4-12.

<sup>132</sup> MECG Brief at 3-4; Velvet Tech Brief at 3-4.

<sup>133</sup> Velvet Tech Brief at 6.

<sup>134</sup> EMW Brief at 43-46.

<sup>135</sup> Tr. 371-75.

<sup>136</sup> Tr. 377-79; 404-05.

<sup>137</sup> Tr. 224-25.



Commission should adopt this loss adjusted sales allocator in this case and reject the positions advocated by MECG and Velvet Tech for a class allocation method .

As to Velvet Tech’s alternative “cap” suggestion, there is no authority in Section 393.1655 for the Commission to arbitrarily cap the bill of any specific customer. Velvet Tech failed to cite any competent and substantial evidence in this record that would support or otherwise justify this proposal. In any event, such a proposal may violate the prohibition against undue discrimination<sup>138</sup> and the non-bypassability requirement of the Securitization Law mandating that the SUTC be paid by "all existing and future retail customers" except those served under special contract as of August 28, 2021.<sup>139</sup>

In the Empire decision the Commission stated:

Cost allocation to the various customer classes is an important issue for the Midwest Energy Consumers Group, which advocated strongly for the sort of class allocation proposed by Liberty. Their concern is that Staff’s proposal will result in higher rates for industrial customers who use a lot of energy per customer. Nevertheless, the Commission finds that Staff’s proposal to allocate costs on the basis of loss-adjusted energy sales is appropriate, and that allocation methodology will be implemented.<sup>140</sup>

The Commission should decide this issue consistently with its very recent decision in the Empire Securitization case.

**VI. WHAT, IF ANY, ADDITIONS OR CHANGES SHOULD BE MADE TO THE STORM SECURITIZED UTILITY TARIFF RIDER PROPOSED BY EMW?**

Staff confirmed that “the specimen exemplar tariff which was developed by Ms. Lange and Mr. Lutz, and which was late-filed as Exhibit No. 108 per the judge’s request, makes all necessary changes to the tariffs previously proposed by Evergy.”<sup>141</sup> Public Counsel also concurred that the

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<sup>138</sup> § 393.140(5); McBride & Son Builders, Inc. v. Union Elec. Co., 526 S.W.2d 310 (Mo. 1975).

<sup>139</sup> Section 393.1700.2(3)(c)d.

<sup>140</sup> Id. at 89.

<sup>141</sup> Staff Brief at 21.

specimen exemplar tariff developed among the Signatory Parties should be approved by the Commission: “The Stipulation includes eight items on which the Signatories agree, including items pertaining to changes in the securitized utility tariff charge tariff sheets.<sup>142</sup> As a signatory to the Stipulation, the OPC supports the items identified in the Stipulation.

EMW agrees with Staff and Public Counsel on this point. No other party expressed a position on this issue.<sup>143</sup> The Commission should therefore approve the specimen exemplar tariff developed among Staff, OPC and EMW as the appropriate tariff in this case.

**VII. REGARDING ANY DESIGNATED STAFF REPRESENTATIVES WHO MAY BE ADVISED BY A FINANCIAL ADVISOR OR ADVISORS, WHAT PROVISIONS OR PROCEDURES SHOULD THE COMMISSION ORDER TO IMPLEMENT THE REQUIREMENTS OF SECTION 393.1700.2(3)?**

Regarding any Designated Staff Representatives who may be assisted by Financial Advisors, what Provisions should the Commission order to Implement the Requirements of Section 393.1700.2(3)?

Evergy continues to recommend that the Commission closely follow the requirements of Section 393.1700.2(3)h regarding the role of Staff and its financial advisors. It also must adhere to other provisions in the Securitization Law that are reflected in Evergy’s proposed Financing Order regarding the provision of certificates and that avoid conditions which are either inappropriate or unnecessary.

Staff’s recommendations are generally consistent with Subsection 2(3), but contain some suggestions, as discussed below, that go beyond the statute or are not appropriate.<sup>144</sup> Public Counsel endorses the language that it, Evergy and Staff agreed to in the Stipulation and, alternatively, “takes no position on this issue.”<sup>145</sup>

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<sup>142</sup> Id. 5-6.

<sup>143</sup> MECG Brief at 1-4; Velvet Brief at 1-13.

<sup>144</sup> See Staff Initial Brief at 21-27.

<sup>145</sup> See OPC Initial Brief at 63, citing Stipulation, ¶ 7 at 4 (quoting § 393.1700.2(3)(c) regarding the “structuring and pricing” of the bonds).

Staff correctly cites Subsection 2(3)(h): “Neither” the Staff designated representatives “nor one or more financial advisors advising commission staff shall have authority to direct how the electrical corporation places the bonds to market ....”<sup>146</sup> However, Staff appears to recommend that both Evergy and the lead underwriters for the bonds “shall provide a written certificate to the Commission certifying, and setting forth all calculations and assumptions used to support such calculations and certificate, that the issuance of the securitized utility tariff bonds” have met four criteria:

- (i) “Complies with this Financing Order,”
- (ii) “Complies with all other applicable legal requirements (including all requirements of Section 393.1700),”
- (iii) “That the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges are expected to provide quantifiable NPV benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds,” and
- (iv) “That the structuring and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the Financing Order.”<sup>147</sup>

Evergy intends to provide a written certificate concerning all four items. However, the lead underwriters would typically provide only a certificate as to item (iv) which tracks the language of Section 393.1700.2(3)(c).<sup>148</sup> The Financing Order that the Company has submitted

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<sup>146</sup> See Staff Initial Brief at 26.

<sup>147</sup> See Staff Initial Brief at 26-27.

<sup>148</sup> See Tr. at 123-25 (S. Lunde).

closely follows the procedures provided by the Securitization Statute and should be adopted by the Commission.

It is also important for the PSC to indicate in its order that there are limits to potential Staff requests regarding meetings and communications that would be unduly burdensome and lead to delays that would interfere with the placement of the bonds. The Commission recognized this in the Empire securitization case where it found that “a requirement” that a “finance team,” consisting of Staff, its advisors and outside counsel, “be allowed to attend and participate in all meetings and other communications is problematic,” specifically noting “communications with ratings agencies” as an example.<sup>149</sup> The PSC stated: “Fundamentally, a requirement that the Finance Team be allowed to participate in every communication would be unwieldy and could lead to delays that would hamper the bond placement process.”<sup>150</sup>

Evergy appreciates the Commission’s perspective and encourages it to include such language in its financing order in this case. While the Company is committed to a process that will be collaborative and interactive, the goal should be for Evergy to secure a final structure of securitized utility tariff bonds with pricing and other terms that result in the lowest charges to customers consistent with current market conditions.

**VIII. WHAT OTHER CONDITIONS, IF ANY, ARE APPROPRIATE AND NOT INCONSISTENT WITH SECTION 393.1700 THAT SHOULD BE INCLUDED IN THE FINANCING ORDER?**

As explained in EMW’s initial brief, the Commission should approve and adopt the revised Financing Order proposed by EMW which is attached to EMW’s initial Brief as Attachment No.

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<sup>149</sup> Empire Order at 83.

<sup>150</sup> Id.

Staff proposed its own financing order. The provisions of that financing order are addressed in Section VII above. As explained herein, EMW believes the Staff's proposed financing order is not consistent with Section 393.1700 in all respects, and EMW's proposed is the more appropriate financing order to be issued by the Commission.

Staff raises four specific points in reference to the financing order:

First, Staff suggests that the Commission should ensure the financing order provides some level of specificity in the level of involvement Staff is empowered to have. EMW agrees with this position, and requests that the Commission adopt EMW's financing order which accomplishes this goal.

Second, Staff argues that "The Commission should order delivery of a certification from both the underwriters and from Evergy certifying that the proposed securitization meets the statutory requirement that the securitized utility tariff bonds as structured comply with the requirement that securitization provide quantifiable NPV benefits to ratepayers, and that the bonds are structured, marketed, and priced to provide the lowest securitized utility tariff charges consistent with market conditions at the time the bonds are priced."<sup>151</sup> EMW discusses this recommendation in Section VII above.

Third, Staff requests that the Commission clarify the right of its designated Staff representatives and financial advisors to be represented by legal counsel.<sup>152</sup> EMW has no objection to this request.

Finally, Staff requests that "the Commission must also clarify every element of the issuance process should target achieving the lowest SUTC consistent with market conditions for which the

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<sup>151</sup> Staff Brief at 27.

<sup>152</sup> Id.

roles and inputs of the designated Staff representatives should be determined and specified in the financing order.”<sup>153</sup> EMW has no objection to this request.

**IX. SHOULD THE COMMISSION GRANT A WAIVER UNDER SECTION 10(A)(1) OF THE AFFILIATE TRANSACTIONS RULE BETWEEN EMW AND THE SPECIAL PURPOSE ENTITY?**

1. Stipulation

As stated in EMW’s Initial Brief, the Stipulation resolved this issue as among the Company, Staff, and OPC, based on all Signatories’ agreement that the Commission should grant a variance of the asymmetrical pricing provisions of the Affiliate Transactions Rule (20 CSR 42-40-20.015) “for transactions between Evergy Missouri West and the special purpose entity as well as any additional affiliate transaction rule variance deemed appropriate by the Commission.”<sup>154</sup> If the PSC approves the Stipulation, there will be no need for further decision on this issue.

2. EMW Position if Stipulation is Not Approved

If the PSC does not approve the Stipulation, EMW maintains its now-undisputed position that the SPE is not an affiliate of the Company. As confirmed by EMW’s witness Mr. Ives:<sup>155</sup>

the SPE’s activities will be restricted to the limited purpose of acquiring the Securitized Property, issuing the Securitization Bonds, collecting the Securitized Utility Tariff Charges, and paying principal and interest on the Securitization Bonds to the bondholders. The SPE will be overseen by an independent manager to ensure that it only takes actions consistent with its obligations as the holder of the equity interest in the Securitized Property.

Thus, no provision of the Affiliate Transactions Rule applies to this case.

However, if the Commission disagrees, EMW requests that the Commission grant a waiver in this case under Section 10(A)(1) of the Rule and 20 CSR 4240-2.015 for good cause, with which Staff agrees. Because the services that the SPE will provide consist of typical corporate support

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<sup>153</sup> Id. at 28.

<sup>154</sup> See Stipulation, ¶ 10 at 4.

<sup>155</sup> See Ex. 8, Ives Direct, at 18; Ex. 9, Ives Surrebuttal at 23-24.

primarily in the form of treasury functions, there is simply no reasonable basis to require application of the asymmetric pricing rules under the Affiliate Transactions Rule to transactions between EMW and the SPE.<sup>156</sup> Applying the asymmetric pricing rules would only increase the administrative burden, and associated cost, attendant to creation of the SPE.<sup>157</sup> The Company thus respectfully requests such waiver or variance for good cause. OPC takes no position on this issue,<sup>158</sup> while Staff agrees that “this should not be an issue.”<sup>159</sup>

## **X. RESPONSE TO STAFF FINANCING ORDER**

The Staff’s proposed Financing Order (the “Staff’s Proposed Financing Order”) is problematic in a number of respects and therefore should not be adopted by the Commission. Following is a brief summary of the issues and problems with the Staff’s Proposed Financing Order.

In Finding of Fact paragraphs 7-11 on pages 3-4 of Staff’s Proposed Financing Order, Staff sets forth four adjustments it originally recommended to reduce the total amount of costs to be securitized. After making these recommended adjustments, however, Staff entered into the Non-Uniform Stipulation and Agreement with the Company through which Staff advocated, subject to certain conditions, that the Commission authorize the Company to recover a higher amount of costs through securitized utility tariff bonds. The Commission is, of course, free to determine the total amount of costs to be securitized as it deems justified by the competent and substantial record evidence, but the Company points out here that Finding of Fact paragraphs 7-11 of the Staff’s Proposed Financing Order do not fully or accurately reflect the Staff’s position on the total amount of costs to be securitized as Evergy Missouri West understands it.

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<sup>156</sup> Id. See Tr. at 292:7-19 (Ives); 342:17-23, 343:5-15 (Bolin).

<sup>157</sup> Id.

<sup>158</sup> See OPC Initial Brief at 63-64.

<sup>159</sup> See Staff Initial Brief at 28-29.

In Finding of Fact paragraph 28 on page 7 of the Staff's Proposed Financing Order, the Staff proposes an administration fee not to exceed \$50,000 per year plus third-party costs identified on Appendix C of the Staff's Proposed Financing Order. Without explanation, the Staff's proposal reduces the amount of the administration fee proposed by Evergy Missouri West by \$25,000. As part of the bankruptcy analysis, it is important that Evergy be appropriately compensated for any work that it undertakes on behalf of the SPE. This issue was not identified as disputed, was not litigated, and no competent and substantial record exists to support how the Staff determined that \$50,000 was an appropriate level for the fee. Therefore, the Commission should approve an administration fee not to exceed \$75,000.

In Finding of Fact paragraph 29 on page 8 of the Staff's Proposed Financing Order, the Staff proposes that the Issuance Advice Letter demonstrate the ultimate amounts of quantifiable net present value savings from the issuance of the securitized utility tariff bonds. Evergy Missouri West does not object to this requirement, but it asserts that the Financing Order ultimately adopted by the Commission should clearly state that the Issuance Advice Letter must demonstrate the quantifiable present value savings from the issuance of the securitized utility tariff bonds as compared to the application of the customary method of financing.

In Finding of Fact paragraph 61 on page 20 of the Staff's Proposed Financing Order, the Staff proposes that the Commission either approve the true-up or inform Evergy Missouri West of any mathematical or clerical error. The true-up is the most important credit enhancement for the securitized utility tariff bonds. Any delay in implementing the true-up could result in insufficient collection of charges which would ultimately be problematic for maintaining the highest credit rating. As a result, Evergy Missouri West proposes that, consistent with the Issuance Advice Letter process outlined in the Staff's Proposed Financing Order, each true-up adjustment filing will be



deemed approved by operation of law unless, within thirty days after receiving a true-up adjustment filing, the Commission informs Evergy Missouri West of mathematical or clerical errors in its calculations.

Evergy Missouri West would point out that Staff's request to review the "underwriter and any other member of the syndicate group size, selection process, participants, allocations and economics" in Finding of Fact paragraph 64 on page 21 of the Staff's Proposed Financing Order is unclear. While the designated representatives will be able to provide input and collaborate in the underwriter selection process, it is unclear who Staff is referring to by referencing "any other member of the syndicate group size." This unclear verbiage should not be included in the Financing Order adopted by the Commission.

In Finding of Fact paragraph 65 of pages 21 and 22 of the Staff's Proposed Financing Order, the Staff requests the designated representative and its financial and other advisors to participate in all calls, e-mails and other communications. As the Commission noted in the Empire Order at 83, a requirement to participate in every communication would be unwieldy and could lead to delays that would hamper the bond [issuance] process. Evergy Missouri West, therefore, proposes that designated representative and its financial and other advisors participate in all non-privileged calls, e-mails, and other communications relating to the structuring, pricing and issuance of the securitized utility tariff bonds, or be subsequently informed of the substance of those communications.<sup>160</sup>

In Finding of Fact paragraph 66 on page 22 of the Staff's Proposed Financing Order, Staff includes language that delivery of the proposed certificates be of condition precedent to "all associated Commission Staff approvals." As the Commission noted in the Empire Order at page

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<sup>160</sup> See Empire Order at 84-85.

82, the Staff, its designated representative, financial or other advisors do not have authority to approve the issuance of the securitized utility tariff bonds. Therefore, any suggestion that Staff has approval rights are not consistent with the requirements of the Securitization Statute or Commission precedent and should not be adopted in the Commission's financing order for this case.

In addition, Evergy Missouri West seeks a clarification of Finding of Fact paragraph 66 on page 22 and Order Paragraph 7 on page 34 of the Staff's Proposed Financing Order to specify that Evergy Missouri West will provide a certification that the issuance of securitized utility tariff bonds (i) complies with this Financing Order, (ii) complies with all other applicable legal requirements (including all requirements of Section 393.1700), (iii) that the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, and (iv) that the structuring and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order. However, any certification(s) from the lead underwriter(s) will only address that the structuring and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time of the securitized utility tariff bonds are priced and the terms of the financing order.

Underwriters do not provide legal advice, and therefore are not in a position to address items (i) and (ii). With respect to item (iii), Evergy Missouri West is the appropriate party to

address quantifiable benefits as compared to recovery absent the issuance of securitized utility tariff bonds because it relies on internal Evergy Missouri West data.

Finally, in Ordering Paragraph 39 on page 44 of Staff's Proposed Financing Order, Staff recommends including the following language: "This Financing Order is effective upon issuance and is not subject to rehearing by the Commission ...." It is not clear to Evergy Missouri West why Staff has included this language, but the Company is certain that it is wrong and must not be included in the financing order adopted by the Commission for a number of reasons. First, the Section 393.1700.2(3)(a)c of the Securitization Law provides that "[J]udicial review of a financing order may be had only in accordance with sections 386.500 and 386.510." As the Commission is well aware, Sections 386.500 and 386.510 require, as a condition precedent to maintaining judicial review of a Commission order that Missouri courts have deemed jurisdictional, that the party seeking judicial review must have filed an application for rehearing and the Commission must have denied it. The language proposed by Staff in Ordering paragraph 39 would preclude judicial review of the financing order. Moreover, this Staff language leaves open the question of when a Commission order in this proceeding may be subject to judicial review. As a practical matter, no financial institution will move forward with an issuance of securitized utility tariff bonds – and the bond rating agencies would certainly not award such bonds the highest possible credit rating – if the underlying financing order continues to be subject to appeal. In light of these overwhelming legal and practical issues, the Commission must not include Ordering paragraph 39 on page 44 of Staff's Proposed Financing Order. Instead, the Commission must follow the course it laid out in the financing order recently issued to Empire by making the financing order issued in this case effective at least ten days after its issuance.

## **XI. CONCLUSION**

Having fully addressed the issues in this proceeding, the Company respectfully requests that the Commission approve its Petition for a Financing Order.

Respectfully submitted,

*/s/ Roger W. Steiner*

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been emailed or mailed, postage prepaid, to all counsel of record as reflected on the service list maintained by the Commission in its electric filing information system on this 12<sup>th</sup> day of September 2022.

*/s/ Roger W. Steiner*

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Attorney for Evergy Missouri West