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

In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's Request for Authority to Implement A General Rate Increase for Electric Service	))))	**File No. ER-2024-0189** Tariff No. JE-2024-0110

EVERGY MISSOURI WEST'S INITIAL POST-HEARING BRIEF

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

INTRODUCTION

On October 2, 2024, all parties filed a Unanimous Stipulation and Agreement[1] ("Stipulation"), which together resolved every issue in EMW's above-captioned rate case except for one raised by the Office of Public Counsel ("OPC" or "Public Counsel") and enumerated on the parties' pre-hearing List of Issues as 3A. Therefore,, the sole remaining Issue for the Commission's resolution in this case is:

3A. What sharing ratio between EMW and its customers should the Commission order as an incentive mechanism in EMW's FAC?

Both Staff and EMW agree that he Commission should maintain its long-standing policy decision to apply a 95%/5% sharing mechanism in EMW's fuel adjustment clause ("FAC"). If OPC's proposal is adopted, Staff and EMW agree (and OPC makes no effort to rebut) that Missouri would immediately become a ratemaking outlier in the United States, as OPC's sharing ratio is more extreme than any other state. Such outcome would create a severe chilling effect on EMW's

[1] *Unanimous Stipulation and Agreement*, ER-2024-0189 (October 2, 2024); see also *Non-Unanimous Stipulation and Agreement Regarding Pensions and Other Post-Employment Benefits*, ER-2024-0189 (October 2, 2024).

ability to make future investments and access capital, particularly as EMW is entering into a generation build phase that necessarily requires the acquiring and building generating assets.

This type of draconian recommendation has been made before in EMW's and other Missouri-regulated electric utilities' FACs, and the Commission has consistently rejected such positions over the past 17 years. OPC's arguments it claims support its proposed punitive change are also not new: on at least ten other occasions, OPC has criticized the Company's participation in the Southwest Power Pool ("SPP") market, and a lack of so-called sufficient "insurance" generation.[2] Again, the Commission has already ruled on resource planning issues related to a number of EMW's PPAs and its resource portfolio, as well as the prudence of generation resource retirement decisions in the past. Crucially, the Commission has never found the Company to be imprudent, or ordered any disallowance, in connection with any of these repeated OPC arguments. In this rate case, OPC's attempts to shoehorn those same resource adequacy criticisms (despite EMW having historically lower rates than other Missouri utilities) into OPC's contention that EMW should be penalized through a 75%/25% change to its FAC sharing mechanism. However, OPC's argument violates the plain language of Mo. Rev. Stat. § 386.266 (the "FAC Statute") and the associated Commission FAC Rule, 20 CSR 4240-20.090(14). As discussed herein, the FAC Statute's language makes clear that its purpose is not to be punitive to a utility or provide a benefit to a customer, but merely to incentivize a utility to make prudent fuel and purchased power procurement decisions. As we all know, as there has never been a Commission finding of imprudence or a disallowance related to EMW's fuel and purchased power procurement decisions. Hence, OPC's position in this proceeding does not arise from a demonstration of imprudence in EMW's fuel and purchased power procurement decisions. Rather, its borne of a nebulous

---

[2] See, e.g., Ex. 300, Mantle Direct at 16, In re Eleventh Prudence Review of Costs Subject to the Commission-Approved FAC of EMW, No. EO-2023-0277.

accusation that EMW deserves a unique and punitive application of a FAC sharing mechanism. Adopting OPC's ratio would thus be unlawful, as well as unreasonable.

Therefore, for these and the following reasons, the Commission should reject OPC's proposal and instead retain EMW's FAC's 95%/5% customer sharing ratio.

ISSUE[3]

3A. What sharing ratio between EMW and its customers should the Commission order as an incentive mechanism in EMW's FAC?

A. OPC's Proposal Would Cause Severe and Manifold Consequences for EMW

Because OPC's proposed FAC split is extreme in the United States, the consequences of the Commission adopting it would be manifold and severe. (See, e.g., Ex. 119, Gunn Rebuttal at 10-11; Ex. 125, Ives Rebuttal at 21-22; Ex. 120, Gunn Surrebuttal at 3-5.) Stated plainly, investors have a choice when it comes to utility investment and will make rational economic decisions relating to that choice. (See id.) OPC's request to change the long-standing FAC sharing mechanism amounts to a request that this Commission declare itself to be baselessly punitive to one of its investor-owned utilities. This would discourage future utility investment, hinder EMW's ability to attract capital, stifle innovation, and increase utility operational challenges—all of which would be based on no identified or identifiable imprudence. (Id.) Ironically, these types of consequences ultimately raise costs for customers, the constituents OPC is commissioned to represent. (Id.) This is because a punitive regulatory environment creates uncertainty rather than transparency and consistency, undermining market confidence—especially here, when the FAC sharing mechanism's statutory purpose is to provide the utility with a sufficient opportunity to earn

[3] The inclusion of this issue and the Company's position thereon in this Brief does not mean all parties agree with such issue's wording or characterization, and/or that a Commission decision on such issue is proper or necessary in this case.

a fair return on equity while incentivizing it to improve cost-effectiveness in fuel and purchased-power procurement activities. (Id.)

Moreover, if the "goal is to incentivize capacity resource additions" (although, as discussed below, that is not permitted under the FAC Statute and FAC Rule), increasing the FAC sharing mechanism would be counterproductive as doing so would necessarily impact EMW's access to and cost of capital,. (Id.) As Chair Hahn noted during the non-evidentiary opening statement proceeding, EMW has new generation building projects on the horizon but has simultaneously experienced diminished credit ratings by S&P and Moody's. (See Oct. 3, 2024 Tr. 65:25-66:24 ("Evergy's credit profile in the downgrade […] highlighted the Kansas decision […] storm Uri securitization appeal … and the regulatory lag and unregulatory environments in which the company operates. And, so, I think whenever we're making these decisions, I want to try and make sure that we keep the broader picture in mind. They're going to be building a couple gas plants; they're going to have capital. If they have to attract capital at a higher cost, that will impact rate payers."); see also Ex. 126, Ives Surrebuttal at 19-24.)

In its downgrade, S&P cited EMW's "higher expenses, including interest and capital spending, and lower cost recovery," as well as the "delay in the securitization of extraordinary costs incurred by [EMW] during the winter weather event in 2021 [Winter Storm Uri]" caused by OPC's unsuccessful appeal of that proceeding. (Id.) S&P reported that EMW's future "credit quality will ultimately depend on timely rate recovery and funding access." (See id. and Schedule DRI-5.) Moody's likewise cited OPC's "lengthy appeals process" as having "significantly delayed" issuance of EMW's securitization bonds, along with "the regulatory lag associated with [EMW's] growing capital expenditures over the next five years because" EMW "lacks the type of timely and automatic investment and operating cost recovery mechanisms seen in other states,

resulting in a financial profile that has been weaker than that of its peers." (See Id.; DRI-6 & DRI-7.) OPC has not rebutted any of these facts with evidence in its prefiled testimony.[4]

Accordingly, the grave consequences of OPC's radical requested FAC split are real, immediate, and not speculative. If adopted by the Commission, they will seriously undermine OPC's purported desire to incent EMW's acquisition of dispatchable generation. Moreover, and equally important to the State of Missouri, as Chair Hahn noted, EMW is not unique in being short on capacity. See, e.g., Tr. 64:15-65:4. Given this well-known fact, a decision to move our jurisdiction to the fringe will necessarily have implications beyond EMW. The "broader picture" alluded to by Chair Hahn implicates not only Evergy's other Missouri jurisdictional components but also Ameren, Liberty, Missouri American Water, and Spire. See Id. The utilities of this state are all swimming in the same swimming pool as viewed by the investment community, and wholesale changes to statutory application justifiably change the view of how hospitable the water in the pool is to its swimmers. Given the emerging urgency to increase capacity and meet demand needs in our region, our collective goal should be to improve perceptions of Missouri to investors, not diminish them.

B. OPC's Proposal Is Contrary To Dozens of Past Commission Decisions

Furthermore, OPC's proposal would directly countermand dozens of Commission decisions over the past two decades. In 2007, the Commission granted the first FAC to EMW's predecessor, Aquila. See Report & Order at 54, In re Tariffs of Aquila, Inc. Increasing Electric Rates, No. ER-2007-0004 (May 17, 2007). In doing so, the Commission rejected proposals for

---

[4] As the Commission is aware, the October 3, 2024 hearing was not an evidentiary hearing or oral argument, as the parties made opening statements on the sole remaining issue in lieu thereof, and then later-submitted their prefiled testimony into this case's record. E.g., Tr. 4:10-5:8. "Missouri courts have long held that what is said in opening statement is not evidence." In re Osage Water Comp. vs. Ozark Shores Water Comp., Inc. et. al., Case No. WC-97-152, 1999 Mo. PSC LEXIS 179, *at 2 (Mo. P.S.C. Feb. 9, 1999) (citing State v. Payne, 958 S.W.2d 561, 565 (Mo. App. E.D. 1997)); State v. McFadden, 369 S.W.3d 727 (Mo. May 29, 2012) ("An opening statement is not evidence.").

the FAC's sharing mechanism to feature a 50%/50% split. Id. The Commission instead adopted the 95%/5% split, which it has continued for the next 17 years. The Commission specifically found: "Aquila will be protected from extreme fluctuations in fuel and purchased power cost, yet retain a significant incentive to take all reasonable actions to keep its fuel and purchased power costs as low as possible, and still have an opportunity to earn a fair return on its investment." Id. The Commission properly only considered Aquila's fuel and purchased power costs—not its generating capacity—when approving the 95%/5% ratio.

In addition, the Commission's rulings since 2007 regarding the FACs of Evergy, Ameren, and Liberty have all consistently maintained the 95%/5% sharing split. In a dozen or so of those rulings, the Commission has rejected proposals for these utilities' FACs to have sharing splits of 50%/50%, 70%/30%, 85%/15%, or even 90%/10%.

As to Evergy cases, in 2013, the Commission rejected Staff's proposed 85%/15% modification to an FAC of the Company's predecessor, KCP&L Greater Missouri Operations Company ("GMO"). See Report & Order at 61–62, In re KCP&L Co.'s Request to Implement a General Rate Increase for Electric Service, No. ER-2012-0175 (Jan. 9, 2013). In that case, Staff argued that the 95%/5% split was an insufficient incentive for GMO to seek the best fuel and purchased-power prices, offering evidence "related to GMO's satisfaction with the current split, its transactions with KCPL, and its use of short-term purchase contracts." Id. at 62. However, because there was "no incident of imprudent purchasing," the Commission rejected Staff's challenge and suggested change to GMO's 95%/5% split. Id.

OPC raised a similar challenge several years later, arguing that an FAC of KCP&L should be modified to 90%/10%. See Report & Order at 28-29, In re KCP&L Co.'s Request to Implement Rate Increase, No. ER-2016-0285 (May 3, 2017). In support, OPC argued that its proposed

90%/10% mechanism would promote increased transparency, simplify prudence reviews, and provide KCP&L with a greater incentive for cost management. See generally Ex. 305, Mantle Direct at 3, In re KCP&L Co.'s Request to Implement Rate Increase, No. ER-2016-0285 (Feb. 21, 2017). The Commission disagreed, and found that "allowing KCP&L to keep its 95%/5% sharing mechanism is appropriate" and that it would provide KCP&L with a sufficient opportunity to earn a fair return on equity. See Report & Order at 28-29, No. ER-2016-0285.

OPC made similar arguments—none successful—regarding the FACs of other Missouri-regulated electric utilities. In 2008, OPC attempted to block Empire from implementing its first FAC by asserting that Empire was protected against fuel cost volatility through other mechanisms, such as hedging arrangements and long-term contracts. See Report & Order at 39, In re Empire District Electric Co.'s Tariffs to Increase Rates, No. ER-2008-0093 (July 30, 2008). In the alternative, OPC argued, the incentive mechanism for any FAC should feature a 60%/40% split. Id. at 43. The Commission rejected OPC's rationale as "flawed and unpersuasive," finding its proposed 60%/40% split as "effectively prohibit[ing] Empire from earning its allowed return on equity." Id. at 39, 46. In 2009, OPC took a similar position on an FAC proposed by AmerenUE, suggesting a 50%/50% split. See Ex. 404, Kind Rebuttal at 6, In re AmerenUE's Tariffs to Increase its Annual Revenues, No. ER-2008-0318 (Jan. 27, 2009) (asserting said split "would recognize (1) the lower dependence of [Ameren]UE on volatile purchased power and volatile fuels like natural gas relative to other Missouri utilities and (2) the extent to which [Ameren]UE has been able to hedge the prices of the coal and nuclear fuel that is used in its baseload units"). The Commission found that OPC's proposed ratio was "inappropriate because it would largely negate the effect of the fuel adjustment clause." Report & Order at 72, In re AmerenUE's Tariffs to Increase its Annual Revenues, No. ER-2008-0318 (Jan. 27, 2009).

Each of OPC's successive disputes to Ameren's 95%/5% split failed for similar reasons. See, e.g., Report & Order at 85–86, In re Ameren Missouri's Tariff to Increase its Annual Revenues, No. ER-2011-0028 (July 13, 2011) (rejecting OPC's proposed 85%/15% split because it would cause ratepayers to suffer excessive costs due to investor concerns and because it would impose a "significant financial burden" on Ameren); Report & Order at 78–80, In re Ameren Missouri's Tariff to Increase its Annual Revenues, No. ER-2012-0166 (Dec. 12, 2012) (also rejecting OPC's arguments for an 85%/15% split based on volatility of off-system sales, realigned incentives, and alleged misuse of the FAC process); Report & Order at 108–09, In re Ameren Missouri's Tariff to Increase Revenues, No. ER-2014-0258 (Apr. 29, 2015) (finding that the current 95%/5% split was sufficient incentive for Ameren to minimize its costs and maximize its off-system sales, and observing that most other utilities with FACs have no sharing mechanism).

Most recently, the Commission found three months ago in its Report & Order in EMW's Eleventh Prudence Review of costs subject to its FAC that the 95%/5% sharing "mechanism is a substantial incentive for EMW to make prudent resource planning decisions, as well as decisions related to the purchase of fuel and purchase power." See No. EO-2023-0277, Report & Order at 6, Findings of Fact ¶ 7 (August 7, 2024). This is despite OPC having advanced the same underlying arguments in that proceeding (and now again, in this one) that it has made in 10 prior cases, challenging EMW's resource planning, alleging that EMW has not acquired so-called adequate generation, criticizing EMW for having spent more on non-firm short-term energy than it received in revenues, or incorrectly claiming that EMW has somehow manipulated the use of its FAC in rebasing.

As demonstrated above, this Commission has previously rejected OPC's repeated arguments, whether about EMW's resource adequacy or planning and/or a more punitive FAC

sharing split than 95%/5%, in dozens of past cases. The Commission has also never found EMW to be imprudent, or ordered a disallowance, associated with EMW's resource planning or alleged failure to acquire adequate generation. Accordingly, the Commission should remain consistent, and reject OPC's latest attempt to re-litigate and contravene settled regulatory rulings.

C. OPC's Proposal Is Extreme and Unprecedented in the United States

1. Most states do not feature any FAC sharing mechanism.

It is well established in the record that Staff, EMW, and OPC are in agreement that the vast majority of states do not feature sharing mechanisms *at all*, much less, the extreme split requested by OPC. Only *eight out of 52* U.S. jurisdictions even utilize a FAC sharing mechanism and *none* include a ratio as large as OPC's proposed 75%/25%.[5] (Ex. 261, Mastrogiannis Surrebuttal at 3.) Importantly, three of Missouri's neighboring states, Kansas, Arkansas, and Oklahoma, are jurisdictions that permit 100% recovery of utilities' fuel and purchased-power costs through those states' respective adjustment clauses or riders. (See Ex. 238, Mastrogiannis Rebuttal at 10-11; Ex. 120, Gunn Surrebuttal at 3).

Given this, Staff witness Brooke Mastrogiannis, as well as EMW's witnesses Kevin Gunn and Darrin Ives, testified that the 75%/25% sharing split proposed by OPC witness Lena Mantle would be a more extreme mechanism than the vast majority of the United States. (See Ex. 238, Mastrogiannis Rebuttal at 6-12; Ex. 261, Mastrogiannis Surrebuttal at 3-5; Ex. 125, Ives Rebuttal at 19-23; Ex. 126, Ives Surrebuttal at 9-10; Ex. 119, Gunn Rebuttal at 3-13; Ex. 120, Gunn Surrebuttal at 2-5.) And, OPC neither disputes that the vast majority of states do not apply a

[5] These minority eight states do not have a comparable FAC statute as in Missouri: Wisconsin (which utilizes a 2% deadband), Hawai`i (which utilizes a 98%/2% Energy Cost Recovery Clause), Idaho (which utilizes a 95%/5% Power Cost Adjustment), Montana (which uses a 90%/10% Fuel and Purchased Power Cost Tracking Adjustment Rate for Montana-Dakota Utilities Co.), Colorado (which uses a 90%/10% Incentive Sharing for Black Hills Colorado Electric, LLC), Oregon (which utilizes a deadband for certain costs levels and 90%/10% for others), Washington (which utilizes a Power Cost Adjustment Mechanism and deadband for Pacific Power), and Wyoming, discussed *infra*.

sharing mechanism to FAC nor argues that any other state features a 75%/25% split. E.g., Oct. 3, 2024 Tr. 47:12-48:15 (Q: "[I]s there any other state or utility – state commission or utility that has been subjected to a 75/25 split, to your knowledge, anywhere in the US?" A: "I do not believe to my knowledge").

2. Wyoming's FAC sharing mechanism is not comparable to Missouri's.

OPC's recommendation to increase EMW's current 95%/5% sharing mechanism to 75%/25% is unsupported even by the most extreme sharing percentage found in the United States: Wyoming's 80%/20% split.[6] The Wyoming Commission has provided no clear rationale for this ratio, and has itself "noted that comparisons between and among states may be difficult, and consistency itself may prove elusive."[7]

In 2011, the Wyoming Commission adopted Rocky Mountain Power's application to implement an ECAM, and ultimately decided to eliminate RMP's "deadband as it resulted in an absolute denial of recovery for a portion of the company's power costs" and authorize a 70%/30% sharing band.[8] The Wyoming Commission's only stated justification was that the 70%/30% sharing band was "approximately halfway between the existing" Power Cost Adjustment Mechanism, a tiered sharing split depending on the amount of actual net purchase costs above or below the forecasted value, which included a deadband and "RMP's initial proposal" of a 95%/5% sharing band.[9] Ten years later, the Wyoming Commission decreased RMP's sharing band to 80%/20% in a similarly conclusory fashion. The Wyoming Commission simply stated: "The Company presented persuasive evidence that it is taking steps to reduce forecasting and other [Net

[6] (Ex. 119, Gunn Rebuttal at 11 (citing Ex. 300, Mantle Direct at 37)); Tr. 48:2-12.
[7] Memorandum Opinion, Findings and Order at ¶ 84, In re Application of RMP to Implement ECAM, Docket No. 20000-368-EA-10 (Record No. 12477) (Wyo. P.S.C. Feb. 4, 2011) (stating that RMP operates in several states including Idaho, Oregon, and Utah, which all have different sharing band percentages).
[8] Id. at ¶ 74, 83.
[9] Id. at ¶ 83.

Purchase Costs]-related risks," which "was sufficient to support a modest adjustment from a 70/30 sharing band to an 80/20 sharing band."[10] RMP's 80%/20% sharing band itself is an outlier when compared to other utilities in Wyoming. Cheyenne Light, Fuel & Power Co. is subject to a 85%/15% sharing band for its steam production costs and a 95%/5% split for "all other eligible costs," the "latter making up a vast majority of its power costs."[11]

Staff and the Company agree: there is no discernable similarity between Missouri and Wyoming that supports applying its policy approach to utilities in this state. No party in this case has even attempted to draw such a connection – including OPC. Staff and EMW are aligned in their recommendation that the Commission keep its sharing mechanism at 95%/5%. As detailed above, a Commission decision moving away from its current position would be an outlier that harms not just EMW, but other Missouri utilities as well.

D. OPC's Proposal Violates the FAC Statute and the Commission's FAC Rule

In addition to the above, OPC's proposal is unlawful in Missouri. OPC's effort to create a mechanism purportedly "incentivizing" EMW based on its capacity procurement activities, as opposed to its "fuel and purchased-power procurement activities," violates the FAC Statute's (and associated FAC Rule's) plain language and purpose. As the Commission knows, fuel adjustment clauses are a common ratemaking tool to address frequently volatile expenses such as fuel and purchased power. (See, e.g., Ex. 119, Gunn Rebuttal at 5). FACs exist to "true up" actual total energy expenses to those accounted for in base rates. Id. Accordingly, the Missouri General Assembly enacted the FAC Statute in 2006. See, e.g., State ex rel. Union Elec. Co. v. PSC, 399

---

[10] In re Application of RMP to Increase Rates & Revise ECAM, No. 20000-578-ER-20, 2021 WL 3056175, *at 37 (Wyo. P.S.C. July 15, 2021). There is also no evidence as to whether Wyoming's 80%/20% sharing band increases or decreases RMP's "expense to generate new power in Wyoming because of this incentive." Tr. at 60-1:61-2.

[11] In re Application of Cheyenne Light, Fuel & Power Co. to Decrease Power Cost Adjustment, No. 17232, 2023 WL 5925857, *at 7 (Wyo. P.S.C. Sept. 6, 2023) (holding that Cheyenne Light, Fuel & Power's "actual transmission costs" were subject to a "95/5" sharing band); RMP Witness Frank Graves Direct at n.21, In re Application of RMP to Increase Rates & Revise ECAM, No. 20000-578-ER-20, 2021 WL 3056175 (July 15, 2021)).

S.W.3d 467, 481 (Mo. Ct. App. W.D. 2013) (describing history of FACs and the FAC Statute in Missouri).

As is relevant here, the FAC Statute provides that "any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation." Mo. Rev. Stat. § 386.266.1. Additionally, the FAC Statute allows the Commission, "in accordance with existing law," to "include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities." Id. The Commission's associated Rule underscores that such incentive mechanisms "shall be structured to align the interests of the electric utility's customers and shareholders." 20 CSR 4240-20.090(14)(B).

Since the Commission "is purely a creature of statute, its powers are limited to those conferred by statute either expressly, or by clear implication as necessary to carry out the powers specifically granted." Union Elec. Co. v. PSC, 591 S.W.3d 478, 484 (Mo. Ct. App. W.D. 2019). And, "the interpretation of a statute . . . is [a] matter of law." E.g., In re Laclede Gas Co., 417 S.W.3d 815, 819 (Mo. Ct. App. W.D. 2014). Missouri law's "primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue." Union Elec. Co., 591 S.W.3d at 485 (quotation omitted). "In order to discern the intent of the General Assembly, the Court looks to statutory definitions or, if none are provided, the text's 'plain and ordinary meaning,' which may be derived from a dictionary." Id. (quotation omitted). Missouri courts (and the Commission) presume "that the legislature intended for each word and phrase of a statute to have effect and that the legislature did not include idle verbiage or superfluous

language." In re Laclede Gas, 417 S.W.3d at 820 (quotation omitted). Further, "[t]he legislature is presumed not to intend an unreasonable or absurd result but a logical one." State ex rel. Ozark Border Elec. Co-op. v. PSC, 924 S.W.2d 597, 600 (Mo. Ct. App. W.D. 1996). If the legislative intent is thus clear and obvious from a statute's plain language, then the Commission is "bound by that intent." In re Laclede Gas, 417 S.W.3d at 820.

"Applied here, the PSC's power to approve or interpret a fuel adjustment clause is necessarily constrained by the authority described in section 386.266.1 and by the regulations promulgated pursuant to the authority of section 386.266.9." State ex rel. Union Elec. Co., 399 S.W.3d at 481. "If a fuel adjustment clause as approved or subsequently interpreted exceeds the authority extended by section 386.266 or by the promulgated regulations, then it is unlawful[.]" Id. The only "authorized purpose for fuel adjustment clauses is drawn from section 386.266.1," which is "repeated in the regulations promulgated by the PSC pursuant to section 386.266.9." Id.

As quoted above, the FAC Statute only "authoriz[es] an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in [a utility's] prudently incurred fuel and purchased-power costs"—i.e., the aptly named Fuel Adjustment Clause. In conjunction with authorizing an FAC, the FAC Statute only permits the Commission to "include . . . features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities," "in accordance with existing law." Mo. Rev. Stat. § 386.266.1. Fatal to OPC's argument, nothing in this unambiguous language permits the Commission to design an incentive to improve any activity other than fuel and purchased-power procurement activities. It is clear that a utility's efforts to procure capacity, or to build/acquire power plants, are neither "fuel" nor "purchased-power" procurement activities.

Rather, "the legislature has clearly and unambiguously expressed its intent that such clauses are meant to address a single issue—the fluctuation in the variable cost of fuel and purchased power." State ex rel. Union Elec. Co. v. PSC, 399 S.W.3d 467, 490 (Mo. Ct. App. W.D. 2013). In fact, the only time the word "capacity" is used in the FAC Statute is in relatively new subsection 15 (passed in 2022), which merely requires a public utility to include operating and maintenance expenses for its capacity within the income statement of its quarterly surveillance reports. Mo. Rev. Stat. § 386.266.15(4)(b). While such reports are wholly irrelevant to the sole remaining issue in this case, the FAC Statute's reference to "capacity" in subsection 15 clearly demonstrates that if the General Assembly had intended to address capacity procurement activities in subsection 1, it would have done so. See, e.g., State ex rel. Jackson Cnty. v. PSC, 532 S.W.2d 20, 27 (Mo. 1975) (citing the canon of "expressio unius est exclusio alterius" (the expression of one thing is the exclusion of the other) to hold that a statute which was silent as to the Commission's authority on a particular issue did not grant the Commission such authority by implication).

Moreover, as detailed above, nearly two decades of analogous FAC-related decisions made by this and prior Commissions, and by reviewing Missouri courts, expose the impropriety of OPC's position. None of those cases discussed building/acquiring capacity or generating assets in the context of approving an FAC or designing an FAC sharing mechanism. To the contrary, per the plain and unambiguous language of the FAC Statute, each case instead focused on fuel and purchased-power procurement activities.[12] The Commission has never found imprudence based

[12] See, e.g., Report & Order at 28, In re KCP&L Co.'s Request to Implement General Rate Increase, No. ER-2016-0285 (May 3, 2017); Report & Order at 102–03, In re Ameren Missouri's Tariff to Increase its Revenues, No. ER-2014-0258 (Apr. 29, 2015); Report & Order at 61–62, In re KCP&L Co.'s Request to Implement General Rate Increase, No. ER-2012-0174/0175 (Jan. 9, 2013); Report & Order at 75, 81, In re Ameren Missouri's Tariff to Increase its Annual Revenues, No. ER-2012-0166 (Dec. 12, 2012); Report & Order at 76, In re Ameren Missouri's Tariff to Increase its Annual Revenues, No. ER-2011-0028 (July 13, 2011); Report & Order at 62–64, In re AmerenUE's Tariffs to Increase its Annual Revenues, No. ER-2008-0318 (Jan. 27, 2009); Report & Order at 38–40, In re Empire District

on EMW's resource planning or capacity, and although this is a rate case proceeding wherein decisional prudence can be addressed, OPC is "not asking the Commission to make a decision of imprudence in this case[.]" Tr. at 45:1-9. Instead, OPC is attempting to create the same outcome through an unsupported modification of EMW's FAC sharing mechanism—which the Commission should reject as a violation of the FAC Statute and improper re-litigation of the Commission's past decisions already rejecting OPC's arguments.

For these reasons, OPC's arguments are unlawful, and thus must be rejected in their entirety, including OPC's suggested 75%/25% sharing ratio alteration to EMW's FAC.

CONCLUSION

For the foregoing reasons, the Commission should reject OPC's proposed 75/25% FAC sharing mechanism. If this extreme proposal is adopted, the Commission's decision would make Missouri a ratemaking outlier in the United States and significantly jeopardize EMW's access to capital and its planned investments in generation. OPC's proposal directly contravenes the Commission's prior decisions rejecting OPC's and other parties' similar proposals and OPC's position violates the FAC Statute and FAC Rule, OPC has not proven any imprudence by EMW. EMW respectfully requests all such further relief as the Commission deems just and proper.

Electric Co.'s Tariffs to Increase Rates, No. ER-2008-0093 (July 30, 2008); Report & Order at 35–36, In re Tariffs of Aquila, Inc. Increasing Electric Rates, No. ER-2007-0004 (May 17, 2007).

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Phone: (816) 556-2314
E-mail: roger.steiner@evergy.com
Evergy, Inc.
1200 Main – 16th Floor
Kansas City, Missouri 64105

Karl Zobrist, MBN 28325
Jacqueline M. Whipple, MBN 65270
Chandler Hiatt, MBN 75604
Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Phone: (816) 460-2400
Fax: (816) 531-7545
Karl.Zobrist@dentons.com
Jacqueline.Whipple@dentons.com
Chandler.Hiatt@dentons.com

James M. Fischer, MBN 27543
Fischer & Dority, P.C.
2081 Honeysuckle Lane
Jefferson City, Missouri 65109
Phone: (573) 353-8647
jfischerpc@aol.com

Attorneys for Evergy Missouri West

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served upon counsel for all parties on this 1st day of November 2024 by either e-mail or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner

Roger W. Steiner