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	))))))	Case No. ER-2024-0189

REPLY BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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P

Table of Contents

Table of Contents ... 2

Glossary of Terms ... 3

Introduction ... 4

The Arguments Presented in this Case have no Bearing on the Subject of Prudence 6

Changing the FAC Incentive Mechanism is not a "Punishment" ... 9

Comparison to Other Utilities or States Ignores the Reality that Evergy West is Unique ... 15

Addressing the Company's Vacuous Legal Argument ... 21

Changing the FAC Sharing Ratio will not have "Severe and Manifold Consequences" for Evergy West ... 27

- A 75/25 Sharing Ratio will not Impair Evergy West's Access to Capital ... 27
- Theoretical Claims about the External Perception of the Missouri Regulatory Environment Cannot Stop the Commission from Fulfilling its Duty ... 33

Conclusion ... 35

Glossary of Terms

- "Ameren" means Union Electric Company d/b/a Ameren Missouri
- "Evergy Metro" means Evergy Metro, Inc. d/b/a as Evergy Missouri Metro
- “EMW,” “Evergy West,” and “the Company” all mean Evergy Missouri West, Inc. d/b/a Evergy Missouri West
- “FAC” means Fuel Adjustment Clause
- "Liberty" means The Empire District Electric Company d/b/a Liberty
- “OPC” means the Missouri Office of the Public Counsel
- "RTO" means Regional Transmission Organization
- “SPP” means Southwest Power Pool
- "the Commission" means the Missouri Public Service Commission

Introduction

> What has been will be again,
> what has been done will be done again;
> there is nothing new under the sun.
> – Ecclesiastes 1:2 NIV

When considering the matter of the first FAC request by Evergy West (then doing business as Aquila) in 2007, the former chair of this Commission explained in his concurrence that the Commission's decision to order a 95/5 FAC sharing ratio was partially predicated on the need to protect Every West's access to capital in order to allow them to build additional generation:

> The other proposals considered by the PSC . . . would make it extremely difficult for the company to reinvest in infrastructure and to attract the investment capital necessary to maintain infrastructure and expand generation capacity.

[Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 34 lns. 12 - 16, ER-2024-0189 EFIS Item No. 364]. It is now more than a decade on from when the Commission first ordered the 95/5 sharing ratio in order to protect Evergy West's "access to capital" and the Company still has not closed its generation shortfall. [*Id.* at pg. 16 lns. 2 – 6]. A shortfall, mind you, that existed prior to when Aquila was first acquired by Evergy. [*Id.* at pg. 14 lns. 13 – 17]. In fact, it is very difficult to suggest the Company has even made any real effort toward reducing its energy deficit:

> The only additional infrastructure added by Evergy West since [the 2007] report and order was a 153 MW portion of Iatan 2, which was under construction prior to Evergy West receiving an FAC, the Crossroads Energy Facility that Evergy West's parent company tried to

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> sell but could not find a buyer, and the June 2024 purchase of less than a quarter ownership of the Dogwood plant.

[*Id*. at pg. 35 lns. 12 – 16]. Nor does Evergy West appear to be planning to close that shortfall at any point in the next twenty years. [Ex. 302, Surrebuttal Testimony of Lena M. Mantle, pg. 19 lns. 6 – 9, ER-2024-0189 EFIS Item No. 366]. Yet, despite all these uncontested facts, Evergy West now has the audacity to focus much of its brief on arguing, once again, that any change to the FAC sharing ratio will prohibitively damage its "access to capital" without citing a single, meaningful fact to prove that statement. The irony of this situation is practically palpable.

This reply brief will directly address this spurious "access to capital" claim and demonstrate the multiple errors it entails. Before that, though, this reply brief will address a number of other claims put forward by both Evergy West and the Commission's Staff. This will include the wholly irrelevant arguments that Every West has not been found imprudent, the claims that the OPC is trying to "punish" Evergy West by affording it both a reason and opportunity to make considerably more profit then it does now, a number of inappropriate comparisons to completely unrelated utilities that do not share Evergy West's generation shortfall problem, and a nonsensical legal argument that suggests building generation has no impact on the FAC.

The Arguments Presented in this Case have no Bearing on the Subject of Prudence

Both the Staff of the Commission and the Company argue at various points in their respective briefs that a change to the FAC sharing ratio is unwarranted because the Commission has never found the Company to be imprudent for its resource management. [*see* Staff's Post-Hearing Brief, pg. 6, ER-2024-0189 EFIS Item No. 393; Evergy West's Initial Post-Hearing Brief, pg. 2, ER-2024-0189 EFIS Item No. 438]. This is a pointless diversion meant to distract the Commission. The OPC's argument has never been predicated on a finding of imprudence and the OPC is not seeking a finding of imprudence in this case. In fact, the concept of "prudence" does not even apply to the issue at hand.

When the subject of "prudence" is discussed before the Missouri Public Service Commission, it is almost always in the context of the PSC's "prudence standard." This prudence standard is what the Commission uses when determining whether the rates a utility may charge for service meet the statutory requirements of section 393.130.1. [*State ex rel. KCP&L Greater Mo. Operations Co. v. Mo. PSC*, 408 S.W.3d 153, 163 (Mo. W.D. 2013)]. However, the issue now before this Commission concerns the proper FAC incentive mechanism to be applied prospectively under section 386.266.1. It is not a retrospective question of disallowing costs for recovery under 393.130.1. Moreover, nothing in section 386.266.1 references section 393.130.1 and the incentive mechanism language does not refer to the concept of prudence at all. [RSMo. § 386.266.1 ("The commission may, in accordance with existing law, include in such

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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.")]. Thus, prudence has no legal part to play in the Commission's analysis.

The foregoing discussion is more than perfunctory legal examination; it goes to the real heart of the issue now before the Commission, which is that this is an <u>incentive</u> being discussed. Arguing that the Commission must have found an electric utility imprudent before it can change the utility's FAC incentive mechanism makes no sense and would result in a logical paradox. This is because the Commission finding a utility imprudent is almost always accompanied by a corresponding disallowance of costs to rectify the impact of the utility's imprudence (and thereby make customers whole). This threat of a potential disallowance is generally understood to be all the necessary incentive for a utility to behave "prudently." That is why it is obscenely obvious that, if Evergy West *had* previously been found imprudent for failing to maintain sufficient generation to meet its customer's needs, and the Commission ordered a disallowance to rectify this fact, then the Company and Staff would unquestionably have relied on the corresponding disallowance to argue the Company had "already been punished enough" and therefore no change to the FAC incentive mechanism was necessary. However, this means the FAC incentive mechanism can never be changed because the utility will have to be found imprudent *before* it can be changed but the opportunity for the Commission to address the FAC

incentive will not arise until *after* that imprudence has already been cured. This is clearly not what the legislature intended.

The legislature added language to section 386.266.1 that envisioned the creation of incentive mechanisms that went <u>beyond</u> mere prudence and worked toward ensuring that electric utilities were being both efficient and cost-effective with their resource management. This Commission recognized that fact in 2007 when it first awarded Evergy West (then Aquila) an FAC:

> The Commission also finds <u>after-the-fact prudence reviews alone are insufficient to assure Aquila will continue to take reasonable steps to keep its fuel and purchased power costs down</u>, and the easiest way to ensure a utility retains the incentive to keep fuel and purchased power costs down is to not allow a 100% pass through of those costs.

[Ex. 300P, Direct Testimony of Lena M. Mantle, LMM-D-7 Page 55, ER-2024-0189 EFIS Item No. 364 (emphasis added)]. The Company and, unfortunately, the Commission's Staff have failed to pay attention to what this Commission said in that ruling. They instead see the FAC incentive mechanism only as a "punishment," *i.e.* a cudgel that they claim the OPC seeks to wield against Evergy West. But this is simply not true, which brings up the next topic for discussion.

Changing the FAC Incentive Mechanism is not a "Punishment"

The claim that the OPC is seeking to "punish" Evergy West through a change in the FAC incentive mechanism is implied by the brief of the Commission Staff and stated explicitly in the Company's brief. [*see* Staff's Post-Hearing Brief, pg. 6, ER-2024-0189 EFIS Item No. 393; Evergy West's Initial Post-Hearing Brief, pg. 2 - 3, ER-2024-0189 EFIS Item No. 438 (claiming the OPC's recommendation is "borne of a nebulous accusation that EMW deserves a unique and punitive application of a FAC sharing mechanism.")]. This inaccurate concept is closely tied to the preceding discussion. In other words, the Company and Staff are attempting to argue that the Commission cannot change the FAC incentive mechanism because that would be punishing the Company despite having never found the Company imprudent. Given this, everything from the proceeding discussion should be considered here as well. However, this section of the brief will go one step future to explain the underlying flaws with claiming the proposed change in the FAC incentive mechanism is a "punishment."

As already stated, the reason the Company and Staff's brief argue that the FAC cannot be changed absent a finding of imprudence is clearly based on the assumption that changing the FAC sharing mechanism is some type of "punishment" for the Company.[1] What neither brief directly addresses, however, is why both Staff and Evergy West are assuming that a 75/25 sharing mechanism will punish the

[1] There is simply no other reason why imprudence would be raised at all given the legal analysis from the proceeding section.

Company. This is both very interesting and very telling about how these parties to this case view Evergy West's FAC and thus merits closer examination. Especially since a 75/25 FAC sharing ratio is <u>on its face</u> in no way detrimental to Evergy West.

As the OPC pointed out in its initial brief, the FAC sharing ratio is <u>symmetrical</u> by design. [Ex. 302, Surrebuttal Testimony of Lena M. Mantle, pg. 5 lns. 17 – 18, ER-2024-0189 EFIS Item No. 178]. That means the Company stands to <u>increase its earnings</u> if its actual net energy costs are below the base values included in rates. [*Id*. at pg. 5 lns. 18 – 23]. Moreover, the OPC's proposed change to the FAC sharing ratio dramatically raises the amount of additional revenue the Company can earn in this manner, as clearly seen in both the graph and table provided by the OPC's witness in this case. [*Id*. at pg. 7 lns. 2 – 6]. These both show that Evergy West stands to increase its earnings between 2 and 20 percent of its FAC costs if the sharing ratio is increased from 95/5 to 75/25, depending on how large a difference exists between the Company's actual net energy costs and the base net energy costs in each accumulation period. [*Id*.]. It is also necessary to note that, in the converse, the Company's loss of revenue only climbs between 2 and 6 percent of its FAC costs when actual net energy costs are above the base rate. [*Id*.]. No party disputed the OPC's math on this point. Instead, the Staff of the Commission decided to include <u>the exact same information</u> in its initial brief as a response to the inquiries made by a Commissioner during the oral arguments. [Staff's Post-Hearing Brief, pgs. 8 – 10, ER-2024-0189 EFIS Item No. 393].

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Given that the math *clearly* shows Evergy West has an opportunity to make even more money under a 75/25 sharing ratio then the current 95/5 ratio, why has Staff and the Company either so clearly implied or outright stated that changing the ratio is "punishing" the Company? The reason, quite simply, is that both are just assuming the Company's FAC actual costs will be higher than the base costs. But why are they making *that* assumption? Neither brief even attempts to address this. The closest that either gets is the table and graph Staff included that show the actual net energy costs and base energy costs for each of Evergy West's thirty-four prudence review periods. [Staff's Post-Hearing Brief, pgs. 3 – 6, ER-2024-0189 EFIS Item No. 393]. This information, as Staff correctly points out, shows that Evergy West "has over-recovered only six times since receiving authorization for its FAC, and under-recovered 28 times." [*Id.* at pg. 6]. Yet this still leaves unanswered the burning question: why are the actual energy costs so often above the base costs?

The simple answer to this quandary is that "Evergy West is using the FAC to manipulate the increase to customer permanent rates believing that it will recover almost all the fuel costs that it underestimated from its customers through its FAC." [Ex. 301P, Rebuttal Testimony of Lena M. Mantle, pg. 18 lns. 5 – 7, ER-2024-0189 EFIS Item No. 365]. As the OPC's witness explained:

> By ignoring the increases in FAC costs in its requested revenue requirement increase, Evergy West's request for an increase is less than it would be if all costs, FAC and non-FAC costs, were reasonably normalized. However, because Evergy West has an FAC it can be assured that it will be able to bill its customers for those increased costs through its FAC. Evergy West is thus okay with absorbing 5% of the difference between actual costs and the FAC costs it is recommending

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> because that will artificially lower its total revenue requirement increase in this case, thus making its request seem much more reasonable that it actually is while being assured that it will be able to bill 95% of the increases to the FAC costs.

[*Id*. at lns. 12 – 20]. This is the unstated secret that underlies the Company and Commission Staff's position on this issue. The argument that the FAC sharing ratio shouldn't be changed to 75/25 is premised on the assumption that changing to 75/25 would unduly "punish" Evergy West. The claim that a change in the ratio to 75/25 would unduly "punish" Evergy West is itself premised on the unspoken assumption that the Company's actual net energy costs are more likely to be higher than the base costs. The idea that the Company's actual net energy costs are more likely to be higher than the base costs is itself premised on the unacknowledged truth that Evergy West is manipulating its FAC base costs downwards during the rate case to artificially lower its overall rate increase requests. So where does that put the OPC?

The OPC would understand if, after considering the above, the reader took the position that the OPC *is* seeking to change the FAC sharing ratio in order to increase Evergy West's costs, but the reality is that this is simply not true. The OPC's position in this case is the same as it has been in the past cases where it raised its concerns with Evergy West's overreliance on the SPP energy market to meet customer energy needs. <u>We seek to induce a change</u>. The OPC is trying to get Evergy West to stop relying so heavily on the SPP energy market and instead acquire additional energy (through either addition of Company owned generation or the execution of bilateral generation contracts with a firm energy price) that can be dispatched back into the

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market to offset purchased-power costs. Moreover, the OPC is advocating to change the FAC sharing ratio as a means of accomplishing this goal because the efficient and cost-effective management of purchased-power costs is precisely what the statute enabling the FAC intended the incentive mechanism to do. [RSMo. § 386.266.1 ("The commission may . . . include . . . features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel <u>and purchased-power procurement activities</u>.")].

If Evergy West were to right now acquire additional generation (or execute bilateral generation contracts) it could increase the off-system sales revenue it generates by selling energy into the SPP energy market. [Ex. 300P, Direct Testimony of Lena M. Mantle, LMM-D-4 pg. 4, ER-2024-0189 EFIS Item No. 364 ("Revenue from the sale of energy to the RTO is considered off-system sales revenue which is also included in the FAC in Missouri offsetting fuel and purchased power costs.")]. This would result in a decrease in the actual net energy costs incurred by the Company. [*Id.*]. As a result, Evergy West could potentially lower its actual net energy costs below the base costs which have been included in rates for this case. If that were to occur, Evergy West would make more money under the OPC's proposal than the current 95/5 sharing ratio. The OPC has recognized this potential and is actually banking on the offer to the Company to increase its earnings to encourage Evergy West to take action to lower its current generation shortfall. We recognize that this may potentially increase costs to customers but believe that the energy security that comes with the Company maintaining sufficient generation outweighs those potential

costs. That is why the OPC maintains the proposed 75/25 ratio is not a punishment. It is an incentive; an opportunity for Evergy West to increase its earnings in a manner that does right by its customers.

Comparison to Other Utilities or States Ignores the Reality that Evergy West is Unique

Both the brief of the Commission's Staff and the Company's brief attempt to argue that the OPC's proposed 75/25 sharing ratio is unwarranted because the Commission has not ordered such a sharing ratio in past cases for other utilities and no similar ratio exists in other states. [*see* Staff's Post-Hearing Brief, pgs. 6 - 8, ER-2024-0189 EFIS Item No. 393; Evergy West's Initial Post-Hearing Brief, pgs. 5 - 11, ER-2024-0189 EFIS Item No. 438]. However, neither of the briefs make even the slightest effort to explain how or why these other Missouri utilities, or the decisions of Commissions in other states, should mean that this Commission, sitting here in Missouri, should just ignore the very specific problem associated with Evergy Missouri West. That is what this whole issue boils down to, recognizing that Evergy West is different. It is not operated the same way as any other electric utility in the state and there is nothing anywhere in the record to suggest it is operated in the same manner as any utility in the other states that have an FAC.

To drive home the point that Evergy West is different, please consider the table provided in Ms. Lena Mantle's surrebuttal testimony that compared Liberty, Every West, Every Metro, and Ameren Missouri's last four FAC prudence periods:

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Table 3
Market Margins of Missouri Investor-Owned Utilities

Prudence Period[20]	Liberty	Evergy West	Evergy Metro	Ameren Missouri
1	$14,781,374	($130,412,043)	$81,993,279	$67,610,336
2	13,351,380	(177,300,895)	114,862,977	47,426,181
3	(9,306,791)	(140,111,690)	98,534,153	172,182,584
4	20,424,065	(299,775,720)	169,852,295	236,488,572
Total	$39,250,029	($747,600,348)	$465,242,704	$523,707,673

[Ex. 302, Surrebuttal Testimony of Lena M. Mantle, pg. 19 lns. 2 – 3, ER-2024-0189 EFIS Item No. 366]. As explained by Ms. Mantle:

> It is easy to see from this table how outside the “norm” Evergy West is from the other utilities. Evergy Metro and Ameren Missouri supply more energy into the market than they purchase. Liberty does not rely on the market for energy but takes advantage of the market when it is needed. In total, over its last four prudence periods, Liberty has generated more revenues from the market than costs.

[*Id*. at pg. 13 ln. 11 – pg. 14 ln. 2]. The fact that neither Staff nor the Company sought to address the obvious nature of this problem when comparing the proposed FAC sharing ratio in this case to the other Missouri utilities demonstrates how shallow the entire argument is. It is also especially concerning to see the Commission's Staff make no effort to consider the implications of Evergy West's extremely unique position among Missouri's utilities given the amount of time and effort the Commission has put into addressing the issue of generation resource adequacy in this State.

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There are two and only two cases referenced by either Staff or the Company concerning the FAC sharing ratio of Evergy West specifically. The first of those is actually the 2007 case where Evergy West first received its FAC and it should be no surprise that neither Staff nor the Company decided to address the fact the Commission expressly stated that awarding the FAC at all was a "bold step" and that the Commission would be carefully reviewing the FAC to ensure that it was not being used to cause problems:

> Aquila should be very mindful that the majority of this commission took a bold step in awarding Aquila a fuel adjustment mechanism. This commission and the General Assembly will be watching. If Aquila fails to adopt a proper hedging strategy, fails to follow its hedging strategy or abuses the discretion given to it by this commission in any other way, this commissioner will not hesitate to modify or reject Aquila's FAC application in a future proceeding.

[Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 35 lns. 2 – 8, ER-2024-0189 EFIS Item No. 98 (emphasis added)]. The only other Evergy West specific case was ER-2012-0175, and there are several interesting points to that case that go unaddressed by Staff and the Company.

The first thing to note about ER-2012-0175 is that it is more than a decade old. [Report and Order, pg. 1, ER-2012-0175 EFIS Item no. 644 (showing an effective date for the *Report and Order* of January 9, 2013)]. Whatever decisions the Commission may have made more than ten years ago should not be considered the definitive answer to all matters of the FAC. As the OPC has already cited, this Commission itself acknowledged the necessity of reexamining the FAC periodically to ensure it

was performing adequately. [Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 35 lns. 2 – 8, ER-2024-0189 EFIS Item No. 98]. Second, it should be noted that the requested FAC sharing ratio in ER-2012-0175, which was 85/15, was not argued by the OPC. It was argued by the Commission's own Staff. [Report and Order, pg. 62, ER-2012-0175 EFIS Item no. 644]. Curiously, Staff offers nothing to explain the change in its own evaluation and behavior in the intervening decade between that case and this one. Coupled with Staff's total failure to consider the impact of the difference between Evergy West and the other Missouri utilities, it begins to beg the question of whether Staff considered the merits of this issue at all in this case. Regardless, the largest issue at hand is the <u>reason</u> that Staff was seeking to change the FAC in ER-2012-0175 as compared to the OPC's rationale in this case.

As the Commission's *Report and Order* lays out, the Staff's entire rationale for seeking to change the FAC in case ER-2012-0175 was simply that it thought "the current split does not give [Evergy West] enough incentive to seek the best prices." [Report and Order, pg. 62, ER-2012-0175 EFIS Item no. 644]. The only evidence Staff offered in support of that claim was "related to GMO's satisfaction with the current split, its transactions with KCPL, and its use of short-term purchase contracts." [*Id*.]. Nothing in Staff's argument had anything to do with Evergy West's generation shortfall or its overreliance on the SPP energy market, which are the key issues now before the Commission in this case. And again, this highlights the core problem with the Staff and Company's argument.

This Commission has never been presented with the argument the OPC has now offered in the context of a request to change an FAC sharing ratio. No other utility in the state has the same energy market exposure as Evergy West. Ex. 302, Surrebuttal Testimony of Lena M. Mantle, pg. 19 lns. 2 – 3, ER-2024-0189 EFIS Item No. 366]. The only other time Evergy West's FAC sharing ratio was ever challenged was by the Commission's own Staff and had nothing to do with what the OPC is arguing in this case. [Report and Order, pg. 62, ER-2012-0175 EFIS Item no. 644]. But these facts are inconvenient to address, so neither the Company nor the Commission's Staff have chosen to address them. This does not mean, however, that the Commission itself should similarly just ignore the facts. Instead, the Commission needs to recognize the undisputed reality of the situation now before it: Evergy West is different.

In relation to the arguments made by both Staff and the Company regarding other states, the same issue applies. No party to this case has even attempted to show that there are other utilities in these other states that operate in the same manner as Evergy West. Blindly ignoring this important point is not the correct path. Missouri specific problems need Missouri specific solutions and Evergy West specific problems deserve Evergy West specific solutions. Simply throwing out the idea that no other Commission has developed the same solution when no other Commission is facing the same problem is pointlessly reductive and ignores the actual reality of what Missouri is facing. This is an opportunity for the Missouri Public Service Commission

to address its problems head on and become a leader, instead of just allowing other States to dictate our energy policy.

Overall, the Commission has two clear options. It can do as its Staff and the Company ask by burying its head in the sand and ignoring the very real and very specific problem of Evergy West's generation shortfall, or it can embrace reality and recognize that Evergy West is different and needs to be treated differently as a result. Neither the fact that the Commission may have declined FAC sharing ratio changes for other utilities in the past nor the fact that other states that do not have a utility facing the same problems as Evergy West have not chosen to find the same solution should be the determining factor on this issue. The Commission must instead view this issue through the lens of determining what is right for Evergy West and its customers standing alone.

<u>**Addressing the Company's Vacuous Legal Argument**</u>

Evergy West's brief presents an argument that the OPC's position in this case "Violates the FAC Statute and the Commission's FAC Rule." [Evergy West's Initial Post-Hearing Brief, pgs. 11 – 15, ER-2024-0189 EFIS Item No. 438]. This is simply wrong. The Company's argument misrepresents the issue and ignores basic facts about the FAC and electric utility operations in general in the name of reaching an egregiously inaccurate conclusion.

Much of what the Company wrote in its brief beginning at page eleven is simply legal preamble that merits little response. The true heart of the argument comes in the last two lines of page thirteen:

> 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.

[Evergy West's Initial Post-Hearing Brief, pg. 13, ER-2024-0189 EFIS Item No. 438]. These two sentences effectively summarize the entirety of the Company's claim. The problem lies in the second sentence which contains two major faults: (1) this issue has nothing to do with capacity, and (2) managing power procurement (which includes acquiring generation) <u>is</u> part of managing purchased-power procurement activities under the FAC. Let us consider each of these problems in turn.

The OPC has gone to great lengths in both testimony and briefing to explain that energy and capacity are different concepts. As explained in the OPC's initial

brief, energy and capacity are separately defined by the Commission's rules. [*see* 20 CSR 4240-22.020(4),(19)]. The OPC's witness further provided a lengthy explanation of how these two separate concepts differ. [*see* Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 5 lns. 7 – 23, ER-2024-0189 EFIS Item No. 98]. Again, as stated in the OPC's initial brief, the OPC acknowledges that Evergy West can meet the SPP capacity requirements, but the Company's own data shows that it cannot meet its customers energy requirements on a regular basis through the cost-effective dispatch of its own generating units. [*Id.* at pg. 16 lns. 2 – 6]. That is why the OPC is asking the Commission to incentivize the Company to procure more energy, not more capacity. Evergy West's insinuation that this issue concerns capacity or capacity procurement at any level is therefore just wrong.

At no point has the OPC argued that the Commission should modify the FAC sharing ratio to incentivize Evergy West's capacity procurement and it cannot be stressed enough how distinctly separate the OPC's argument is from the question of capacity procurement. [*see* Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 4 ln. 1 – pg. 7 ln. 13, ER-2024-0189 EFIS Item No. 364]. The OPC is unsure if the Company is simply willfully ignorant of these facts or deliberately attempting to mislead the Commission, but, in either case, every scrap of Evergy West's brief that covers the topic of the statutory interpretation of "capacity" should be ignored out of hand as that concept has nothing to do with what is now before the Commission.[2] Instead, the

[2] This includes the entire first paragraph of page fourteen of the Company's brief. [Evergy West's Initial Post-Hearing Brief, pg. 14, ER-2024-0189 EFIS Item No. 438].

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OPC's position is <u>and has always been</u> quite simply this: Evergy West does not have <u>energy</u> to sell into the SPP energy market that can offset all the <u>energy</u> it buys off the market and this should change. That brings us to the second point.

Managing energy procurement (which includes managing generation) is very obviously part of an electric utility's "purchased-power procurement activities." This can be understood at the easiest level as thus:

The more energy ("power") a utility can produce itself, the less it needs to buy from others

This statement is admittedly slightly oversimplified for electric utilities that belong to an RTO with an energy market (like SPP) due to the nature of how that energy market works (as will be discussed shortly). However, it does exemplify the flaw in the Company's logic. Evergy West wants this Commission to think that incentivizing the efficiency and cost-effectiveness of an electric utility's procurement of purchased power does not involve questions of <u>how much</u> power is being procured <u>from where</u>, which is simply nonsense. On the contrary, the cost-effectiveness and efficiency of a Company's purchased-power procurement actives will be entirely dependent on how much of its own power it can generate because that will dictate if and when it purchases power at all, or, in the case of the SPP energy market, the net costs incurred to purchase that energy. To understand that latter point, one needs to remember how the SPP energy market works.

The OPC already provided an overview of how the SPP energy market operates in its initial brief. [Public Counsel's Initial Post-Hearing Brief, pgs. 11 – 13, ER-2024-0189 EFIS Item No. 437]. Thus, for purposes of this discussion, this brief will only highlight the key points:

1. Evergy West buys all the energy it needs to serve customers off the SPP energy market.
2. Evergy West sells all the energy it generates into the SPP energy market.
3. The amount of energy being bought off the SPP energy market is independent of the amount being sold into the SPP energy market at any one given time.
4. Both the cost of the energy bought off the SPP energy market and the revenues generated by selling energy into the SPP energy market are considered "off-system sales" and are included in the calculation of the FAC.
5. The cost to customers that flows through the FAC is therefore equal to the Company's fuel costs plus the cost of energy bought off the SPP energy market less the revenues from energy sold into the SPP energy market.

[Ex. 300P, Direct Testimony of Lena M. Mantle, LMM-D-4 pg. 4, ER-2024-0189 EFIS Item No. 364]. The critically important point to all of this is just the fact that the cost of the energy bought off the market is offset by the revenues generated by the sale of energy into the market. Thus, the management of an electric utility's "purchased-power procurement activities" includes both managing the energy ("power") being bought off the market and the energy ("power") being sold into the market. And that is precisely what the OPC is asking the Commission to incentivize a more efficient and cost-effective management of.

As has already been stated, the basis of the OPC's concern is that Evergy West does not have energy to sell into the SPP energy market that can offset all the energy

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it buys off the market, which is a problem because this exposes customers to higher levels of risk due to fluctuations in energy prices on the energy market. Stated another way, it would be more efficient and cost-effective for Evergy West to procure enough energy (or "power") to sell into the market to match (or "cover") what it buys off the market. Further, the OPC is arguing that the Company's current lack of energy available to sell into the market results in part from the current FAC sharing ratio which does not incentivize the Company to properly manage its power purchases because the 95/5 split does not place enough risk on the Company for them to care about price fluctuations in the SPP energy market.[3] Therefore, the OPC is asking the Commission to modify the FAC sharing ratio it has previously ordered as an incentive mechanism in Evergy West's FAC to better incentivize the efficient and cost-effective management of the Company's purchased-power procurement activities, specifically by ensuring purchase power revenues exist to offset purchase power costs. This is consistent with the plain reading of the statutory language of section 386.266.1.

To recap, Evergy West's legal argument is simply wrong for two main reasons. First, the Company is claiming the OPC is asking the Commission to incentivize capacity procurement, which is just flat out false. The OPC's argument has nothing to do with capacity, as has been explained multiple times in multiple filings. Second, the Company is ignoring the basic reality that managing the amount of power a utility can produce and sell into an energy market is a necessary part of managing

[3] This is because the Company's risk is simply 5% of what was above the purchased power costs included in base rates.

the utility's overall "purchased-power procurement activities." The more energy a utility can sell into the market, the more it can offset what is bought off the market and the lower the risk exposure to price fluctuations in the market. Reducing that risk is critically important to an efficient and cost-effective management of purchased-power procurement activities.

Changing the FAC Sharing Ratio will not have "Severe and Manifold Consequences" for Evergy West

As stated in the introduction, a large section of Evergy West's brief is dedicated to the idea that a change in the FAC sharing ratio will have "severe and manifold consequences" for Evergy West with particular focus paid to the Company's access to capital. [Evergy West's Initial Post-Hearing Brief, pgs. 3 – 9, ER-2024-0189 EFIS Item No. 438]. This hyperbolic claim is entirely without support and riddled with misleading falsehoods which will be outlined here.

A 75/25 Sharing Ratio will not Impair Evergy West's Access to Capital

Evergy's brief makes the claim that a 75/25 sharing ratio would "[n]ecessarily impact EMW's access to and cost of capital" but there is simply no evidence to support this claim. [Evergy West's Initial Post-Hearing Brief, pg. 4, ER-2024-0189 EFIS Item No. 438]. Instead, the Company spends considerable time misrepresenting information from various credit analysists in an attempt to paint the OPC's appeal of the Commission's decision in the Evergy West securitization case as the base cause for a past credit downgrade the Company suffered. At the outset, the OPC notes that it's extremely difficult to see what, if any, connection the claim that regulatory delays related to securitization being responsible for a credit downgrade has to do with a change in the FAC sharing ratio at all. More importantly, though, this insinuated relationship is simply false.

If one takes the time to actually read the S&P global report on the downgrade it issued to Evergy West's parent company Evergy, Inc., one would find that the main

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culprit of that downgrade was the Company's poor performance in its Kansas rate case:

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[Ex. 126, Surrebuttal of Darrin R. Ives, Schedule DRI-4 pg. 2, ER-2024-0189 EFIS Item No. 296]. S&P further identified problems with the Company's operational management as a driver of the downgrade:

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[*Id.*]. It is absolutely true that the delay in securitization of winter storm Uri costs is mentioned in the report, but it is only given a single line that just states that this has added "continued pressure" to the Company's consolidated financial measures. [*Id.*]. This is nowhere near the emphasis that S&P placed on the outcome of the Kansas

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rate case. [*Id.*]. Further, the actual impact of the downgrade did <u>not</u> serve to place Evergy West at a disadvantage compared to its peers as Evergy West claims.

The December 14, 2023, report on Evergy Missouri West produced by S&P global, which was included in the pre-filed testimony of the Company's witness, presents the following table that shows the comparison between Evergy West and what S&P considers to be the Company's peers:

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[Ex. 126, Surrebuttal of Darrin R. Ives, Schedule DRI-5 pg. 3, ER-2024-0189 EFIS Item No. 296]. As one can easily see, ** ________________________________

________________________________ ** It not hard to see why this is. The same S&P report has the following "Ratings Score Snapshot" for Evergy West:

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[*Id.* DRI-5 pg. 1]. The excerpts from these reports show that the current state of affairs is hardly the dire situation that Evergy West's brief would have the Commission believe. The reality is that Evergy West is doing quite well financially and has been given a stable outlook by both S&P and Moody's according to the information contained in its own exhibits. [*Id.* DRI-5 pg. 1, DRI-6 pg. 1]. What the Company <u>has</u> failed to mention though, is how its own, long-standing decision not to acquire additional generation has been part of the reason it is not getting an even higher credit rating.

The December 14, 2023, S&P report specifically identified as one of the key risks facing Evergy West was its ** ** [*Id.* DRI-5 pg. 1]. The report went on to state the following:

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[*Id*. DRI-5 pg. 2]. If that sounds familiar it is because it is the exact same argument the OPC is making in this case. This point cannot be emphasized enough. S&P Global, one of the most important rating agencies in the world, has identified Evergy West's overreliance on the SPP energy marketplace as a problem in the exact same way as the OPC has for this case. Moreover, it is clearly sated by S&P that this is what is contributing to Evergy West's lowered credit rating. [*Id*.].

As explained in the introduction, when this Commission first ordered a 95/5 sharing ratio it did so with the belief that a larger ratio would impar Evergy West's access to capital and thus leave them unable to build the generation they so desperately needed. [Ex. 300P, Direct Testimony of Lena M. Mantle, pg. 34 lns. 12 - 16, ER-2024-0189 EFIS Item No. 364]. And yet, despite the generosity extended to it by this Commission, Evergy West decided not to build the generation it so desperately needed anyway. [*Id*. at pg. 35 lns. 12 – 16]. Now, more than a decade later, the situation stands at the exact same position it stood in 2007. In fact, it has actually gotten worse. In 2007 Evergy West could at least cover 74% of the energy its customers need. [*Id*. at lns. 15 – 17]. That number is now down to 50%. [*Id*. at pg. 16 lns. 2 – 6]. And the Company's own projections show the issue will not be resolved in the next twenty years. [Ex. 302, Surrebuttal Testimony of Lena M. Mantle, pg. 19 lns. 6 – 9, ER-2024-0189 EFIS Item No. 366]. Yet Evergy West still insists that if the

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Commission were to take <u>any</u> action now to incentivize or encourage it to do better by solving this generation shortfall, the Company will not build generation as a result. It will be interesting to see just how long this generational dormancy can last if the Commission falls for this same tired argument twice.

Evergy West needs to build generation. The Company's existing generation shortfall has led to its overreliance on the SPP energy market. This has exposed its customers to unnecessary risk due to power price volatility. S&P has itself identified this exact problem with the Company. [Ex. 126, Surrebuttal of Darrin R. Ives, Schedule DRI-5 pg. 1, ER-2024-0189 EFIS Item No. 296]. However, the Company has made it extremely clear it will not build that generation absent a strong incentive to do so. Changing the FAC will be that incentive. The Commission must therefore look past the Company's distracting claim that this will impair its ability to access capital. The Company's credit profile is both stable and strong. [*Id*. DRI-5 pg. 1, DRI-6 pg. 1]. The symmetrical nature of the FAC does not mean that the Company will necessarily suffer a loss because of the change. [Ex. 302, Surrebuttal Testimony of Lena M. Mantle, pg. 5 lns. 17 – 23, ER-2024-0189 EFIS Item No. 178]. There is simply no reason to panic at the thought of holding Evergy West to task and ensuring its FAC is managed in an efficient and cost-effective manner. Especially because this is, at its core, one of the most important things this Commission can do.

Theoretical Claims about the External Perception of the Missouri Regulatory Environment Cannot Stop the Commission from Fulfilling its Duty

Even if the Commission disregards what has been said before; even if the Commission does believe that some outside analysts may look on a change to the FAC sharing mechanism disfavorably; the Commission still needs to take some action to encourage Evergy West to reduce – and hopefully eliminate – its generation shortfall. The Commission cannot simply allow itself to be ruled by fear of what analysts in New York will think of its every decision. Doing so will ultimately result in the Commission forgoing its duty altogether.

Any time the Commission reprimands a utility for an impudent act, it may ultimately have a negative impact on the financial health underlying the utilities credit ratings. Any time the Commission decides to discontinue a program that was generating profit for the utility because it was no longer achieving its desired results, it may ultimately have a negative impact on the financial health underlying the utility's credit ratings. Any time the Commission orders any form of customer protection that shields ratepayers from the overreach that comes with utilities being state sponsored monopolies, it may ultimately have a negative impact on the financial health underlying the utility's credit ratings. Yet these things still must be done. The Commission cannot simply be a body aimed at improving or protecting the credit rating of the utilities it regulates or else it will cease to be a regulatory body in its entirety.

To that end, the OPC asks the Commission to have the courage to take the action necessary to correct over a decade of regulatory inaction. Changing Evergy West's FAC, even temporarily, will incentivize the Company to efficiently and cost-effectively manage its purchased-power procurement activities by increasing the amount of energy it sells into the market and thereby reducing the risk exposure it has to the SPP energy market. It is possible that some analysts somewhere will see this as a negative in the short term. But the end result should be a better, healthier utility that has shed the weight that analysts like S&P have already identified is holding it back. This is what needs to be done to protect Missourians moving forward.

Conclusion

> In any moment of decision, the best thing you can do is the right thing, the next best thing is the wrong thing, and the worst thing you can do is nothing.
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> – Theodore Roosevelt

Evergy West has a generation shortfall problem. It has had this problem since before it was acquired in 2007 and the problem has only gotten worse over time. Even credit rating agencies like S&P have identified the existence of this problem and the impact it has on the Company. Yet, despite these facts, Evergy West has done effectively nothing to fix this problem for well over a decade. More importantly, though, the Commission has chosen to do nothing to fix this problem either.

The OPC has tried every possible way that it can to get something to change. The Office has raised this issue repeatedly in every avenue that it could in order to prod the Company to do something before inaction resulted in a dire situation for customers. Then Storm Uri and the volatility of the energy market afterwards demonstrated the consequences of the risk that Every West put on its customers. Yet still the OPC worked to give the Commission multiple opportunities to take some action, any action, to address the problem. This Commission, however, has remained steadfast in its commitment to do absolutely nothing to address this problem for more than a decade. And after a decade of doing nothing, nothing has changed. Yet the OPC shall persist.

It does not matter how many times the Commission decides to ignore this issue, the OPC will continue to raise it wherever and whenever it can because it is a problem, and it needs to be fixed. So, once more, the OPC asks this Commission to act. It is irrelevant whether the Commission chooses the 75/25 sharing ratio that the OPC has requested or any other potential combination. The only thing that truly matters is change. Any change at this point will be sufficient to send a message to Evergy West in order to tell the Company that it needs to fix the generation shortfall problem.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission rule in the OPC's favor on the issues presented herein and grant any such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

By: /s/ John Clizer

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CERTIFICATE OF SERVICE

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

/s/ John Clizer

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