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
REPLY POST-HEARING BRIEF

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

INTRODUCTION

The Office of Public Counsel ("OPC") has been crystal clear in its goal to convince this Commission to penalize EMW via an improper application of Mo. Rev. Stat. § 386.266 (the "FAC Statute") in this case: "Nothing short of changing the FAC sharing ratio, and thereby forcing Evergy [West] to shoulder a greater share of the risk that comes with not having sufficient generation, will get the Company to correct its behavior." OPC Initial Brief at 25. However, as EMW's Initial Brief details, the FAC Statute was neither enacted as a punitive measure against Missouri utilities nor designed to create a ratepayer discount. Rather, the FAC Statute's plain language merely incentivizes a utility to make prudent decisions in its fuel and purchased power procurement activities. In fact, the Missouri Court of Appeals specifically found 11 years ago that "the legislature has clearly and unambiguously expressed its intent that such [fuel adjustment] 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) (emphasis added).

Directly contrary to the black-and-white wording of the FAC Statute and precedential Missouri case law applying it, OPC recycles its same arguments from at least 10 prior cases about EMW's resource adequacy and Southwest Power Pool ("SPP") market participation.[1] OPC stubbornly ignores that the Commission has time and time again rejected such arguments while never finding any imprudence or ordering a disallowance related to EMW's resource planning. Notably, OPC has not even raised (much less disputed) the prudence of EMW's fuel and purchased power procurement activities in this rate case, even though those are the only activities within the scope of the FAC Statute and associated Commission FAC Rule, 20 CSR 4240-20.090(14). Accordingly, the Commission must again reject OPC's meritless arguments, repackaged this time as a suggested statutory violation.

Staff and EMW agree that the Commission should maintain the current 95%/5% sharing ratio in the Company's FAC. EMW also agrees with Staff that if the Commission instead adopts OPC's unlawful position, Missouri would immediately become a ratemaking outlier in the United States. Further, OPC's extreme 75%/25% sharing ratio would create a severe chilling effect on EMW's ability to make future investments and access capital, particularly as EMW is entering into a phase of acquiring and building generating assets. Although OPC's Initial Brief declares that "[t]his Commission needs to send a clear message to" EMW, "a message that it is time to put steel in the ground," OPC's proposed medicine is antithetical to the condition it purports to cure. See OPC's Initial Brief at 32.

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.

[1] See 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.

ISSUE[2]

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

A. OPC's Extreme Proposal Would Cause Severe Consequences In Missouri

Despite receiving multiple bench questions during its October 3, 2024 opening statement about investor perceptions and utilities' access to capital,[3] OPC's Initial Brief avoids that issue entirely. OPC also ignores EMW's testimony that a 75%/25% FAC split would discourage future utility investment, hinder EMW's ability to attract capital, stifle innovation, and increase utility operational challenges. See, e.g., Ex. 119, Gunn Rebuttal at 10-11; Ex. 125, Ives Rebuttal at 21-22; Ex. 120, Gunn Surrebuttal at 3-5. Neither in testimony nor briefing did OPC make any effort to rebut EMW's evidence that "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 Winter Storm Uri caused by OPC's unsuccessful appeal, S&P and Moody's has downgraded EMW's credit rating. Id. See Ex. 126, Ives Surrebuttal at 19-24 and DRI-5, DRI-6, DRI-7. S&P reported that EMW's future "credit quality will ultimately depend on timely rate recovery and funding access." Id., Schedules DRI-5, DRI-6, and DRI-7. Likewise, Moody's cited "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." Id.; DRI-6 & DRI-7.

[2] 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.
[3] See, e.g., Oct. 3, 2024 Tr. 65:25-66:24.

OPC's lack of testimony or other evidence on this point amounts to its concession that the consequences of the Commission adopting OPC's unprecedented proposal would be real, non-speculative, and severe. Ironically, it is also undisputed that these consequences would ultimately raise costs for customers, the constituents OPC represents. Id. See Tr. 65:25-66:24 (Chair Hahn: "If they have to attract capital at a higher cost, that will impact rate payers.").[4]

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. Although in its Initial Brief, OPC references the Commission's recent Power MO Resource Adequacy Summit, OPC's incorrectly myopic conclusion was "the energy supply in the SPP energy market is going down with demand is going up. This is a big problem for Evergy West." See OPC Initial Brief at 19-20. Given the well-known fact that the decrease in the SPP energy market supply will impact utilities in the entire state, a decision to move Missouri to the outmost fringe of ratemaking policy will necessarily have implications beyond EMW. Indeed, 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. Id.

The serious financial impacts described above are very likely the reason 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%. See 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

[4] Interestingly, OPC even quotes former Commissioner Chair Jeff Davis during Aquila's first FAC proceeding as having "stated his reason for rejecting the higher, 50/50 sharing ratio [] because it 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." See OPC Initial Brief at 30.

states' respective adjustment clauses or riders. See Ex. 238, Mastrogiannis Rebuttal at 10-11; Ex. 120, Gunn Surrebuttal at 3.

Staff witness Brooke Mastrogiannis and EMW's witnesses Kevin Gunn and Darrin Ives each 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 concedes that no 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").

Consequently, by its own admission, OPC's extreme position would make Missouri an outlier. It would gravely harm EMW and other Missouri utilities, and it should be rejected.

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

As detailed in EMW's opening brief, OPC's proposal would directly countermand dozens of Commission decisions over the past two decades. 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%.

Most recently, a few months ago in its Report & Order in EMW's Eleventh Prudence Review of costs subject to its FAC, the Commission found 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, and incorrectly claiming that EMW has somehow manipulated the use of its FAC in rebasing.

Having not addressed this issue in its evidence or argument, OPC has conceded it. The Commission should remain consistent, and reject OPC's latest attempt to re-litigate and contravene settled regulatory rulings.

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

OPC's effort to create a mechanism purportedly "incentivizing" EMW based on its capacity or generation 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. In its opening brief, OPC acknowledges that the FAC Statute represents an express and narrow exception to the general prohibition on "single-issue ratemaking" in Missouri. See OPC Initial Brief at 7. But, OPC then impermissibly glosses over the FAC Statute's plain language, arguing without citing to any legal authority that "the 95/5 sharing mechanism has not incentivized Evergy West to efficiently and cost-effectively manage the energy needs of its customers." See id. at 11.

This is not what the FAC Statute says. Section 386.266.1 "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." Furthermore, it only permits the Commission "in accordance with existing law" 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." Nothing in this unambiguous language permits the Commission to design an incentive to address 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.

Crucially, "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 467, 481 (Mo. Ct. App. W.D. 2013). "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.

It is self-evident that "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." Id. at 490. As the United States Supreme Court recently noted, "[e]xtraordinary grants of regulatory authority are rarely accomplished through 'modest words,' 'vague terms,' or 'subtle devices.' ... Nor does Congress typically use oblique or elliptical language to empower an agency to make a 'radical or fundamental change' to a statutory scheme." West Virginia v. Env't Prot. Agency, 597 U.S. 697, 723 (2022) (internal quotation omitted) (rejecting EPA's claim to have "discovered in a long-extant statute an unheralded power" permitting it to restructure the American energy market). The Commission plainly has no authority under the FAC Statute to adopt OPC's extreme position in this case.

Moreover, nearly two decades of analogous FAC-related decisions made by this and prior Commissions, and by reviewing Missouri courts, doubly 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. Per the plain and unambiguous language of the FAC Statute, each case instead focused on fuel and purchased-power procurement activities. The Commission has never found imprudence based 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.

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. OPC's position further violates the FAC Statute and FAC Rule, and OPC has not proven any imprudence by EMW. EMW respectfully requests all such further relief as the Commission deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served upon counsel for all parties on this 15th day of November 2024 by either e-mail or U.S. Mail, postage prepaid.

/s/ Roger W. Steiner

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