

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

In the Matter of the Application of)
Everygy Missouri West, Inc. d/b/a)
Everygy Missouri West for Permission)
and Approval of Certificates of Public)
Convenience and Necessity)
Authorizing it to Construct, Install,)
Own, Operate, Manage, Maintain and)
Control Two Solar Generation)
Facilities)

Case No. EA-2024-0292

**THE OFFICE OF THE PUBLIC COUNSEL’S COMMENT REGARDING THE
STIPULATION AND AGREEMENT**

COMES NOW the Office of the Public Counsel (“OPC” or “Public Counsel”) and for its *Comment Regarding the Stipulation and Agreement*, states as follows:

1. On October 25, 2024, Everygy Missouri West, Inc. d/b/a/ Everygy Missouri West (“EMW” or “Company”) applied for a Certificate of Convenience and Necessity (“CCN”) regarding two (2) solar farms that are approximately 165 megawatts (MWs) of generation, combined.

2. On May 29, 2025, the Company, the Staff (“Staff”) of the Public Service Commission (“Commission”), Renew Missouri (“Renew”), and Midwest Energy Consumers Group (“MECG”) signed the Stipulation and Agreement (“Agreement”) in this case.¹ The Agreement supported the Commission granting EMW the authority

¹ All parties to the Agreement are heretofore referred to as “Signatories.”

to construct, install, own, operate, manage, maintain, and control two (2) solar generation facilities.²

3. Page 9, paragraph 14 of the Agreement states, in relevant part, “The following parties have indicated that they do not object: The Office of the Public Counsel[.]”

4. Paragraph 3 of the Agreement states the following:

The Signatories agree that EMW’s decision to construct, acquire and operate Sunflower Sky by May 15, 2027, for [REDACTED], at approximately 65 megawatts, with the expected ability to utilize either production tax credits (“PTCs”), investment tax credits (“ITCs”), and/or Clean Electricity Low-Income Communities Bonus Credit Amount Program, as contemplated by the 2022 Inflation Reduction Act (“IRA”), and EMW’s decision to construct, acquire, and operate Foxtrot by May 15, 2027 for [REDACTED] at approximately 107 megawatts (100 MW base plus 7 MW of flex-up capacity), with expected ability to utilize either PTCs, ITCs, and/or Clean Electricity Low-Income Communities Bonus Credit Amount Program, are both prudent.³

5. Paragraph 4 of the Agreement states the following:

Nothing in this settlement agreement prevents any party from arguing for disallowances for the Facilities in the general rate proceeding in which EMW requests Facility inclusion in rate base related to managerial decision-making for the Facilities from the date of this agreement.⁴

6. Section 393.170.3, RSMo states, in relevant part:

The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. (emphasis added)

² The solar facilities are titled Foxtrot and Sunflower Sky (together “Facilities”).

³ *Unanimous Stipulation and Agreement*, p. 2 ¶3, Case No. EA-2024-0292, EFIS Item No. 61 (May 29, 2025).

⁴ *Id.* at p. 2 ¶4.

7. 20 CSR 4240-20.045(2)(C) states: “In determining whether to grant a certificate of convenience and necessity, *the commission may*, by its order, make a determination on the prudence of the decision to operate or construct an asset subject to the commission’s subsequent review of costs and applicable timelines.” (emphasis added).

8. 20 CSR 4240-20.045(3)(A) requires CCN applications to include “facts showing that granting the application is necessary or convenient for the public service.”

9. At this time, with the information that the OPC is aware of, the Public Counsel does not object to the Company’s acquisition of these two (2) solar generation facilities. However, the Public Counsel’s decision not to object to the Agreement in no way constitutes any waiver of the OPC’s right to argue against prudence and full recovery of these assets.

10. The OPC reserves the right to challenge the Company’s ability to recover the cost of these generation assets through customer rates, without the limitations in the Agreement. Further, the Public Counsel requests that the Commission wait for Staff to do a full and fair accounting of these assets, with the full context of EMW’s generation management, before determining prudence during EMW’s the rate case where the Company is seeking the Facilities be added to rate base.

Discussion

While reviewing the Agreement, the OPC was struck by the term in ¶3, stating that the Signatories were agreeing that EMW's decision to acquire and operate both of these assets—with the stated tax benefits and at the stated price—was prudent. The Public Counsel reviewed the dockets for CCN cases⁵ to understand how the Commission, historically, has handled prudence determinations in CCN cases, rather than rate cases.

The CCN cases with the Company, or related companies,⁶ did not have stipulation-and-agreements with the provision that the Signatories agreed the company's ownership and acquisition was prudent. Rather, references to prudence in these agreements fell into the following camps:

- 1) The stipulation and agreement specifically stated that the Commission should not find that Signatories to that agreement have approved or acquiesced in any question of prudence;⁷

⁵ The OPC reviewed cases that electric utilities filed after January 1, 2000, in the Commission's electronic filing system ("EFIS") under the "Application for Certificate" designation. The cases also concerned generational assets, rather than transmission or distribution lines, and all had a stipulation and agreement, report and order, or both.

⁶ "Related Companies" here refers to the utilities organized under the umbrella of "Evergy Missouri" or its predecessors (e.g., KCP&L, GMO, or Aquila, Inc.).

⁷ *Stipulation and Agreement*, p. 10 ¶27, Case No. EA-2009-0118, EFIS Item No. 14 (Jan. 9, 2009); *Non-Unanimous Stipulation and Agreement*, ps. 12 & 13 ¶30, Case No. EA-2013-0098, EFIS Item No. 112 (Aug. 7, 2013)(attachment to the Report & Order).

- 2) The stipulation and agreement explained how “prudently incurred costs” would be apportioned between EMW and Evergy Missouri Metro, Inc., joint owners of the assets, during the utilities’ next rate cases;⁸ or
- 3) The stipulation and agreement noted EMW’s request for a prudence determination from the Commission, while specifying that “[t]his request for a determination of decisional prudence by EMW does not imply or suggest that Staff and/or OPC agree with or acquiesce to this request.”⁹

When expanding the review of CCN stipulation-and-agreements to those involving other electric utilities in Missouri, most references to prudence fell into one of the categories listed. However, two (2) dockets with Ameren Missouri contained stipulation-and-agreements that stated, “The Signatories agree that they shall not challenge the prudence of the decision to acquire the facility . . . Nothing in this Stipulation limits the ability of any Signatory or other party from challenging the prudence of the design, construction costs, interconnection costs, and all other project related costs, including costs impacted by project duration.” The OPC signed one (1) agreement while responding to the other without signing or opposing it.¹⁰

⁸ *Stipulation and Agreement*, p. 5 ¶12, Case No. EA-2022-0043, EFIS Item No. 25 (May 4, 2022).

⁹ *Unanimous Stipulation and Agreement*, p. 2 ¶2, Case No. EA-2023-0291, EFIS Item No. 32 (Feb. 26, 2024); *Non-Unanimous Stipulation and Agreement* at p. 2 ¶2, Case No. EA-2025-0075, EFIS Item No. 65 (May 29, 2025).

¹⁰ *Third Stipulation and Agreement*, ps. 3 & 4 ¶12, Case No. EA-2018-0202, EFIS Item No. 101 (Oct. 24, 2018)(Part of the *Order Approving Third Stipulation and Agreement* fiing); *Third Stipulation and Agreement*, p. 5 ¶9, Case No. EA-2019-0021,

Finally, while the Commission recently found EMW's acquisition of a natural gas-fired generation plant prudent,¹¹ the context is different. This asset is shrouded in uncertainty around renewable generation benefits, supplies cost, and market volatility. Therefore, the Commission's best response here is the same one it made to KCP&L's request in Case No. EA-2015-0256, "The Commission will not make that rate making decision in this case."¹²

A. *The Form of Paragraph 3*

The OPC's first issue around the prudence provision in the Agreement is its structure. Specifically, paragraph 3 states, contrary to the evidence Staff presented in its report ("Report") that accompanied the filing of *Staff's Recommendation*, that the Signatories agree that this CCN is prudent. The clear intent of this provision is to bind any Signatory to the Agreement to this prudence determination and bypass any imprudence determination that the Commission, itself, may have. This prudency decision is unnecessary to grant EMW the CCNs for these facilities. State statute only requires evidence that the CCN be necessary or convenient for the public service. The OPC does agree that granting EMW the CCN does fulfill this statutory requirement. However, any determination of prudence in constructing, acquiring, and operating the Facilities could be made more effectively in the context of the Company's entire generation profile during a rate case.

¹¹ *Order Approving Stipulation and Agreement and Granting Certificate of Convenience and Necessity*, ps. 3 § 4, Case No. EA-2023-0291, EFIS Item No. 22 (Mar. 21, 2024).

¹² *Report and Order*, p. 1 ¶5, Case No. EA-2015-0256, EFIS Item No. 84 (Mar. 2, 2016).

This regulation states “the commission may, by its order, make a determination on [] prudence.”¹³ The OPC does not believe that it is appropriate for the Agreement to bind Signatories to a finding that the CCN is prudent.

B. The Function of Paragraph 4

The Public Counsel is also deeply cognizant of the limitations that the parties have put in place in ¶4. The OPC appreciates the freedom that provision grants by stating, “Nothing in this settlement agreement prevents any party from arguing for disallowances for the Facilities in the general rate proceeding in which EMW requests Facility inclusion in rate base[.]” However, that freedom is severely limited by “related to managerial decision-making for the Facilities from the date of this agreement.”¹⁴ Further, it is unclear when the Company’s choices regarding these Facilities would stop being considered “managerial decision-making.”

Provisions 3 and 4, taken together, would severely limit Staff’s ability to present a full and comprehensive audit of the Facilities in the context of EMW’s generation profile. If, at the time of the rate case, when parties generally contemplate asset prudence and disallowances, Staff finds that Company acted imprudently prior to the Agreement, there would be nothing Staff could do to contest that prudence. Information asymmetry between public utilities and regulators is a well-known issue. The Company has all of the information regarding asset acquisition that regulators

¹³ 20 CSR 4240-20.045(2)(C)(*stating the commission MAY make a determination on the prudence of the decision to operate or construct an asset*)(emphasis added)

¹⁴ *Unanimous Stipulation and Agreement*, p. 2 ¶3, Case No. EA-2024-0292, EFIS Item No. 61 (May 29, 2025).

are seeking. Finding EMW's construction, acquisition, and operation of the Facilities prudent prior to a rate case, where Staff would be afforded more time and context, unduly limits Staff's ability to do its job effectively.

The strict limit on any Signatory's ability to argue for facility disallowances to be particularly disconcerting given the amorphous nature of the term "managerial decision making." Without any agreed-upon definition of this term, the Company could argue that any generation decision that it made, prior to signing the Agreement, is off limits to Signatories. The subjective nature of this phrase stands in stark contrast to the specific and strict limitation on the Signatories to assess and argue against the Company's prudence. Therefore, the OPC believes that the function of these two (2) provisions have a high chance of causing problems in the future.

C. Facts

Public Counsel acknowledges that Staff signed the Agreement, which contains provision stating EMW's construction, acquisition, and operation of the Facilities is prudent. However, the report that Staff produced along with its recommendation both say that the Facilities, as presented in Company's Application, is not economically feasible.¹⁵ Further, that same report points to EMW's flawed analyses, and the amount of uncertainty around the federal legislation and the energy markets to say "the lack of additional justification for moving forward with the projects should speak volumes to the Commission on EMW's approach to project economics and underscores

¹⁵ *Staff Recommendation*, p. 3 lns 3 & 4, Case No. EA-2024-0292, EFIS Item No. 26 (Apr. 4, 2025)(Attached Report).

Staff's recommendations that a finding of decisional prudence is not justified, not reasonable in this case."¹⁶

The final nail in the coffin regarding decisional prudence is OPC Witness Dr. Geoff Marke. Dr. Marke points to the supply and demand concerns that are sweeping across America, uncertainty around weather, questions around the reliability of the Inflation Reduction Act's ("IRA's") tax benefits, and the likelihood of higher fuel costs will all be issues that these Facilities face. As he points out "Evergy West picked the worst time to decide to finally commit to building its own generation[.]"¹⁷

The OPC believes that the Company needs to construct, acquire, and operate these Facilities. However, EMW has persistent problems with resource planning and the lack of certainty around so many aspects of this Application. Moreover, the OPC struggles with the phrasing that the Signatories chose around prudence and their ability to effectively argue for any of the disallowances they believe is due. For these reasons, the OPC does not believe that it would be appropriate to sign on to the Agreement. Finally, the Public Counsel requests that the Commission wait to determine the prudence of EMW's construction, acquisition, and operation of the Facilities until the Company comes in for a rate case, where the Commission may view all of the factors related to prudence.

¹⁶ Id. at p. 61 lns. 2 to 5.

¹⁷ *Rebuttal Testimony of Geoff Marke*, p. 5 lns 5 & 6, Case No. EA-2024-0292, EFIS Item No. 35 (May 7, 2025).

WHEREFORE, the OPC respectfully submits this comment and request for Commission consideration.

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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 June 5th, 2025.

/s/ Anna Martin