

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

In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri)
West and Evergy Metro, Inc. d/b/a Evergy)
Missouri Metro for Permission and Approval)
of a Certificate of Public Convenience and)
Necessity for Natural Gas Electrical)
Production Facilities)

File No. EA-2025-0075

SIERRA CLUB’S INITIAL POST-HEARING BRIEF

This case culminates in an unfortunate predicament for the Public Service Commission of the State of Missouri (the “Commission”): Evergy Missouri West, Inc. d/b/a Evergy Missouri West and Evergy Metro, Inc. d/b/a Evergy Missouri Metro (together, the “Company” or “Evergy”) has articulated a dire need¹ for capacity and energy while simultaneously providing insufficient evidence that its proposed solution—the three gas-burning generation resources at issue in this case—will solve the problem at a reasonable cost. The Commission is thus left to decide whether to reject the projects because they are inadequately supported—and risk threatened supply shortfalls²—or approve the projects anyway and risk unnecessary ratepayer costs. As Sierra Club Witness Mr. Goggin testified: “If Evergy’s application is approved as submitted, Missouri ratepayers will be on the hook for gas plants that are likely to be unprofitable, operate less than expected, and incur high maintenance costs or even premature failure due to excessive generator starts and cycling.”³

¹ See Evergy’s Opening Statement, Transcript Vol. II, 18:1-14; *see generally* Direct Testimony of Witness VandeVelde, Schedule CV-1; *See also* Cross-Examination of Staff Witness J Luebbert, Transcript Vol. II, 96:16-23.

² *See id.*

³ Exhibit 600, Rebuttal Testimony of Michael Goggin, 8:11-14 [hereinafter “Goggin Rebuttal”].

The record reflects that Evergy has not satisfied three *Tartan* factors: the need, economic feasibility, and public interest project criteria. First, while Evergy articulated a generic “need” for capacity and energy due to load growth, it has not sufficiently addressed the need-centered *Tartan* factor because the proposed plants are slated for sites that are experiencing severe transmission-grid congestion, and Evergy has neither studied that issue sufficiently nor provided a viable solution to it. Simply put, because the proposed generators are located in an area of grid congestion, they may not be able to adequately supply the capacity and energy that Evergy has stated it needs. For example, Evergy's proposed combined cycle plants are so poorly located that they would be uneconomic in a heat wave—like the one that Kansas City is under right now—because locational marginal prices (“LMPs”) near their locations would be negative despite skyrocketing power prices elsewhere. Second, Evergy has not demonstrated that the proposed plants are economically feasible (*i.e.*, cost effective), as the Company failed to evaluate appropriately in its modeling the ability of the plants to earn revenues in the Southwest Power Pool (“SPP”) energy market, given the congested state of the grid at those locations. Indeed, no party other than Evergy has argued that the Company met the economic feasibility *Tartan* factor. Evergy’s failure to consider grid congestion has also precluded the Company from presenting a least-cost suite of generation resources to meet its energy and capacity requirements. Third, the proposed plants are not in the public interest because Evergy failed to satisfy the aforementioned two *Tartan* factors, and because Evergy neglected to demonstrate that building the plants amid severe existing transmission congestion will be a cost-effective use of customers’ money.

Sierra Club respectfully requests that the Commission reject both the *Non-Unanimous Stipulation and Agreement* (the “Stipulation”) filed on May 29, 2025, and the certificates of public

convenience and necessity (“CCN”) in general for failure to meet three *Tartan* factors.⁴ The Commission should reject the proposed Stipulation and CCNs and should not approve any of the proposed generators until Evergy has come forward with modeling using location-specific data to determine how congestion and LMPs affect the economic dispatch of the proposed units. Such a requirement would not only help protect ratepayers in this docket, but also send the message to all future applicants to do a better job vetting their projects. Moreover, if the Commission were to find that the costs of these projects are reasonable—which we think it should not due to lack of evidence—then the Commission should also document in its order that Evergy’s shareholders shall exclusively bear the burden of any costs in excess of those projections. Finally, the Commission should postpone any prudence review until the requisite rate case.

⁴ Specifically, Sierra Club requests that the Commission reject all the remaining issues—II. A, C, and D—outlined in the *Revised List of Issues* filed on May 29, 2025, available at <https://efis.psc.mo.gov/Case/FilingDisplay/621662>.

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I. Evergy Has Not Satisfied the Need, Economic Feasibility, and Public Interest Criteria for These Projects.

A. The Legal Standard Centers Around the *Tartan* Factors

Although Missouri statutes do not lay out specific criteria for the Commission to apply when deciding whether to issue CCNs, the Legislature has instructed the Commission to approve a CCN when a project “is necessary or convenient for the public service.” RSMo § 393.170.3. When deciding whether a project is necessary or convenient, the Commission traditionally applies the five *Tartan* factors, three of which Sierra Club contests—(1) there must be a need for the proposal, (2) the proposal must be economically feasible, and (3) the proposal must promote the public interest. *Application of Ameren Missouri for Approval of Pilot Solar Program*, Report and Order, Case No. EA-2016-0208, 2016 WL 7441690, at *10 (Mo. P.S.C. 2016); *Missouri Landowners All. v. Pub. Serv. Comm’n*, 593 S.W.3d 632, 638 (Mo. App. E.D. 2019). Missouri courts have clarified that the term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the project would be “an improvement justifying its cost.” *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm’n*, 848 S.W.2d 593, 597–8 (Mo. App. W.D. 1993). In addition, the determination of whether a project is necessary or convenient cannot focus solely on a present need but must take the future into account as part of a comprehensive evaluation. *Office of Pub. Counsel v. Mo. Pub. Serv. Comm’n*, 515 S.W.3d 754, 760 (Mo. App. W.D. 2016) (“[I]n matters of public convenience and necessity there must be consideration of the future.” (citing *Ringo v. Pub. Serv. Comm’n*, 234 Mo. App. 549, 132 S.W.2d 1080, 1082 (1939); *State ex rel. Gulf Transport Co. v. Pub. Serv. Comm’n*, 658 S.W.2d 448, 458 (Mo. App. W.D. 1983))).

B. Evergy Has Not Presented Evidence Sufficient to Justify “Need” Under the *Tartan* Factors.

Under this legal framework, the Commission cannot reasonably find that the *Tartan* factor of need is satisfied. Evergy argues that Sierra Club “fails to address” SPP’s assertion that more

dispatchable generation is needed.⁵ This is an odd argument, as it is not Sierra Club's role to address that assertion. Indeed, Sierra Club concedes that Evergy articulated a generic "need" for capacity and energy due to load growth. Instead, Sierra Club argues that, if Evergy intends to meet this challenge, then it has not proven that the proposed plants are a reasonable solution, as Evergy neglects the transmission congestion that will preclude the power plants from solving this problem.

Mr. Goggin testified that transmission congestion will greatly inhibit the economic value and profitable operation of all three proposed plants, which is a problem compounded by the proposed generators' limited flexible dispatch capabilities.⁶ Specifically, the two proposed combined cycle units in particular are designed for near-continuous operation, but the proposed locations will force them to either routinely operate at a loss or excessively cycle, with frequent starts and shutdowns.⁷ Evergy Witness Olson responds by stating that Evergy hired Power Engineers, Inc. to generate a "comprehensive Conventional Generation Siting Study," and noting Staff's testimony asserting that Evergy conducted its due diligence.⁸ This is not about whether Evergy used the words "transmission" or "congestion," and the fact that Evergy hired Power Engineers to commission a study is uncontested and unremarkable; indeed, Mr. Goggin details this study via his rebuttal testimony.⁹ The key point is that congestion and LMPs were not considered for siting purposes.¹⁰ Evergy concedes—as it must—that these factors were not among the siting

⁵ Evergy's Opening Statement, Transcript Vol. II, 18:1-14.

⁶ Goggin Rebuttal at 6:4-14.

⁷ *Id.* at 29:4-11.

⁸ Compare Exhibit 15, Surrebuttal Testimony of J. Kyle Olson, 6:14-20 [hereinafter Olson Surrebuttal], with Transcript Vol. II at 73-75 (Staff Witness Luebbert's describes the lack of requisite information).

⁹ See generally Goggin Rebuttal at 12:3–22:10 (discussing the lack of evaluation of transmission congestion and LMPs at the proposed gas generator sites).

¹⁰ *Id.* at 12:3 –13:16.

criteria, but dismisses this as Sierra Club cherry picking information from a lengthy report.¹¹ Yet, this is not mere nitpicking; even the Southwest Power Pool (“SPP”) Market Monitoring Unit has documented the congestion and low LMPs in the areas where Evergy sited its proposed plants.¹² Severe congestion is a known issue, and ultimately Evergy has not shown and cannot show on this record that the Company can surmount the significant transmission-related hurdles in its path. Instead, Evergy deflects, argues that such concerns are speculative,¹³ and suggests that such issues can be addressed in the future via transmission upgrades.¹⁴ There is major lingering uncertainty about network upgrade costs, which will not likely be resolved until 2026, as Witness Olson acknowledges.¹⁵ Moreover, these network upgrades are the minimum required to interconnect a new generator and are not intended to enable a plant to deliver its output outside of the narrow time slices SPP studies in the interconnection process. In particular, SPP assumes that wind output is well below average during these snapshots,¹⁶ so the network upgrades do not significantly alleviate the negative prices that occur 15-25% of the time at Evergy’s proposed gas plant sites¹⁷ when wind generation constrained by congestion sets the LMP. If the network upgrades did attempt to address that severe and persistent congestion, their cost would be prohibitive. Further, SPP’s planned regional transmission projects do not help alleviate congestion between the

¹¹ See Olson Surrebuttal at 6:14–7:5.

¹² Goggin Rebuttal at 11:10–12:2.

¹³ See Exhibit 14, Surrebuttal Testimony of Jason Humphrey, 7:7–8:4.

¹⁴ See *id.* at 12:12–23.

¹⁵ Exhibit 6, Direct Testimony of Katy Onnen, 8-10.

¹⁶ See SPP, Generator Interconnection Manual (DISIS Manual), Table 3, p. 4-15, (Jan. 2024) available at <https://www.spp.org/media/2053/disis-study-manual.pdf>; SPP, Integrated Transmission Planning Manual, p. 9, (Nov. 11, 2024) available at <https://www.spp.org/documents/72685/itp%20manual%20version%202.17.pdf>.

¹⁷ Goggin Rebuttal at 11:3–7.

proposed gas plant sites and load centers, and may in fact exacerbate that congestion by delivering more renewable generation from western SPP to the gas plant sites.¹⁸ In sum, Evergy's best *defense* of the economics of the proposed generators is that the unknown transmission projects of unidentified (and likely substantial) cost *may* alleviate grid congestion in a way that allows their economic operation in the future, though this is unlikely for the foregoing reasons. Such speculation on key criteria is insufficient for Evergy to meet its burden of proof in this proceeding.

It is well-known among the parties and industry observers that load growth is the conundrum of our day. However, it does not matter how much load materializes in Evergy's territory, since these proposed plants are located poorly and will not be able to serve that load cost effectively. Evergy hopes for a technological fix, but hope is not a strategy—we need evidence, and even Evergy agrees that it is missing from the record.

C. Evergy Has Not Met the Economic Feasibility *Tartan* Factor.

Evergy has not demonstrated that the proposed plants are economically feasible (*i.e.*, an improvement in service that is justified by the cost), as the Company failed to evaluate appropriately in its modeling the ability of the plants to earn revenues in the SPP energy market, given the congested state of the grid at those locations. Evergy's failure to consider grid congestion precluded the Company from presenting a least-cost suite of generation resources to meet its energy and capacity requirements.

Evergy asserts that the projects will produce low-cost energy from Kansas and Missouri,¹⁹ but the record reflects that no one knows whether this is true. Indeed, no party other than Evergy has argued that the Company meets the economic feasibility *Tartan* factor. Evergy points to its

¹⁸ *Id.* at 43:9–14.

¹⁹ Evergy Application at p. 17, para. 37.

integrated resource plan (“IRP”) as evidence of support for the projects,²⁰ but subsequently admits that the IRP does not account for how congestion affects SPP market prices and thus economic feasibility at the proposed locations because “new-build resources are modeled at an aggregated pricing node of generation resources.”²¹ During Commissioner questioning at the evidentiary hearing, Staff Witness Luebbert described how and why location-specific data matter for congestion, and that Evergy’s application and IRP are devoid of the requisite information, which is why Staff ultimately could not find that the economic feasibility *Tartan* factor was satisfied.²² Mr. Goggin testified that the proposed generators’ dispatch in the market would be uneconomic during most hours due to congestion causing low LMPs at their locations,²³ and Evergy has not disputed this assertion with evidence—only the suggestion that future network upgrades will resolve the issues. As discussed above, there is no evidence that future network upgrades will resolve the issues, and the costs of those network upgrades to Evergy ratepayers is unknown and will continue to be unknown for some time.

D. Staff’s Attempt to Minimize the Economic Feasibility Analysis Should be Rejected.

Ironically, Staff signed the Stipulation even though it does not agree that the economic feasibility *Tartan* factor is satisfied. Staff argues that “additional capacity is effectively a necessity because the lack of a service is such an inconvenience.”²⁴ But, logically, this is only half of the requisite analysis. While there may be a need for additional capacity and energy, it does not

²⁰ See Exhibit 16, Surrebuttal Testimony of Cody VandeVelde, 10:10–13:20.

²¹ *Id.* at 12:12-13.

²² Transcript Vol. II at 73:3–75:9.

²³ Goggin Rebuttal at 22:11–27:6.

²⁴ Transcript Vol. II at 20:15-17.

necessarily follow that the proposed solution addresses the identified need. If the proposed solution does not appropriately meet Evergy's need for capacity and energy, what is the point of building the projects? Here, Evergy has not proven that these transmission-constrained power plants will serve the load needed cost-effectively. Staff argues that the obligation to serve "trumps all of the other conditions."²⁵ Respectfully, this is not a reasonable way to think about resource planning. Just because Evergy is desperate for new generation does not mean it can ignore valid concerns in selection of a solution. At best, Staff's reasoning subsumes the economic feasibility criteria underneath the need criteria; at worst, Staff's reasoning reads the economic feasibility criteria out of the *Tartan* factors altogether. Neither result is appropriate.

E. The Public Interest Will Not Be Served Granting the Proposed CCNs.

The proposed plants are not in the public interest because Evergy failed to satisfy the need and economic feasibility *Tartan* factors, and because Evergy neglected to demonstrate that building the plants amid severe existing transmission congestion will be a cost-effective use of customers' money. Moreover, Mr. Goggin points out that the McNew plant was originally predicated upon the addition of an incremental large load customer and, when that speculative load did not materialize, Evergy decided to move forward with McNew anyway.²⁶ This decision, by itself, exposes customers to unnecessary risk and compels the Commission to reject that particular CCN.

Further, Evergy's failure to appropriately study whether the proposed generators can be profitably dispatched in the SPP energy market calls into question whether the Company has selected the appropriate suite of supply side generators to meet its needs. In selecting the proposed

²⁵ *Id.* at 46:16–47:4 (cleaned up).

²⁶ Goggin Rebuttal at 40:6–42:14.

generators, Evergy did not use high-resolution production cost modeling to analyze chronological dispatch patterns at the proposed locations and assess how those patterns compare to the design basis for the generators.²⁷ Before approving any of the proposed gas plants, the Commission should require Evergy to complete a congestion analysis, assessing the economics of the proposed gas plants relative to alternative resources such as batteries based on historical and projected patterns of congestion and locational marginal prices in the SPP market. Such an analysis would show the value of flexible batteries relative to gas generators, particularly relative to the inflexible gas combined-cycle generators. Further, batteries would be far more suitable for each of the three proposed sites due to their ability to charge during frequent and extended periods of low and negative prices, as well as their ability to flexibly respond to volatile prices that cause frequent starts and cycling of the gas generators. With appropriate consideration of congestion in its analysis, Evergy likely would select a different suite of resources, including batteries and potentially solar, wind, capacity purchases, and demand side management to cost effectively meet its needs.

II. The Commission Should Postpone Any Prudence Review Until the Requisite Rate Case.

Missouri law provides the Commission with discretion to make a finding of prudence in a CCN proceeding or to not address the issue.²⁸ Nothing compels the Commission to determine prudence in this case, and the record suggests that doing so would be unwise.

²⁷ *Id.* at 25:15-19.

²⁸ 20 CSR 4240-20.045(2)(C) (“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).

Decisional prudence effectively means that the Commission would bless Evergy's decision-making up to a certain point based on everything known up to that point.²⁹ Here, we know that three *Tartan* factors are contested, and we know that Evergy sited these power plants in among the worst locations possible in these United States from a congestion and power price perspective.³⁰ Evergy knew this when it filed the Application, the other parties learned this during the pendency of this case, and the public learned this during the evidentiary hearing. There is no need to wait for an intervening event to make a go / no-go decision, as we already have sufficient information to make that call. In other words, the record evidence tells us that forging forward with these three power plants is not a prudent decision that a reasonable actor would make.

Further, the projects' economics are a point of contention. Indeed, Staff stated unequivocally that "the economic analyses provided by Evergy Missouri West are flawed and deciding to move forward with the projects based upon the results of such analysis introduces unnecessary risk for ratepayers."³¹ Evergy contends that resolving decisional prudence at this stage is acceptable because the Stipulation includes reporting requirements.³² But, as Staff contends, those reporting requirements are asymmetrical, and the parties would likely have more time and resources to evaluate costs during a full prudence review.³³ The Commission should reject decisional prudence because that keeps the risk where it belongs—on Evergy and its shareholders—rather than the Company's captive ratepayers.

²⁹ See Transcript Vol. II at 61.

³⁰ Goggin Rebuttal at 7:20–8:4.

³¹ Transcript Vol. II at 20:17-21.

³² See *id.* at 63:17–64:21.

³³ See *id.* at 94:19–96:11.

* * *

In sum, Sierra Club respectfully requests that the Commission reject the Stipulation and the CCNs.

Respectfully submitted,

Date: June 24, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Sierra Club's Initial Post-Hearing Brief was electronically filed on this date via the Commission's electronic filing system.

Notice of this filing will be served upon all parties of record who have registered through this electronic filing system.

Date: June 24, 2025

/s/ Sarah Rubenstein
Sarah Rubenstein