



currently set. This makes the request one for an advisory opinion. *Cope v. Parson*, 570 S.W.3d 579, 586 (Mo. banc 2019) ("An opinion is advisory if there is no justiciable controversy, such as if the question affects the rights of persons who are not parties in the case, the issue is not essential to the determination of the case, or the decision is based on hypothetical facts." Quoting *State ex rel. Heart of Am. Council v. McKenzie*, 484 S.W.3d 320, 324 n.3 (Mo. banc 2016) (emphasis added)). In addition, there is no new contract that has been placed before this Commission to review, so the Commission is being asked to render a decision based on hypothetical facts, which again makes this a request for an advisory opinion. *Id.* ("or the decision is based on hypothetical facts" (emphasis added)). This Commission is not authorized to issue advisory opinions and so cannot make the determination now requested. *State ex rel. Laclede Gas Co. v. PSC*, 392 S.W.3d 24, 38 (Mo. App. W.D. 2012) ("Like other administrative agencies, the Commission is not authorized to issue advisory opinions.").

While it is not addressed in the issue as written, there is a secondary issue that lies hidden beneath the surface in the present matter. That would be Evergy's effort to seek recovery of transmission costs associated with the Crossroads generation facility (for which the firm point-to-point transmission service agreement with Entergy Corp. exists). Because it is not actually presented in the single issue before the Commission, the Commission should not opine on the issue. Out of an abundance of caution, and to forestall any future accusations that may be levied against it, the OPC will note here, however, that any finding that it is prudent for Evergy to renew

its firm point-to-point transmission service agreement with Entergy Corp. does not in any way control on the issue of whether Entergy should be entitled to recover transmission costs associated with the Crossroads generation facility. This Commission has already found that the acquisition of the Crossroads generation facility was prudent but that the inclusion of transmission costs were unjust and unreasonable, and that has already been upheld by Missouri's Courts of Appeal. *State ex rel. KCP&L Greater Mo. Operations Co. v. Mo. PSC*, 408 S.W.3d 153, 163 (Mo. App. W.D. 2013) ("Because the PSC made the decision on the recoverability of transmission costs based on a prudence analysis that considered both the prudence of including the transmission costs and the resulting harm to the ratepayers if such costs were included, the PSC's decision denying recovery was lawful. We also conclude that the PSC's decision to deny KCP&L-GMO recovery of transmission costs was reasonable.").

The unjust and unreasonable nature of including transmission costs associated with the Crossroads generation facility remains as true today as when the Commission first reached that conclusion and may have even grown more unjust and unreasonable due to the numerous actions Entergy has taken to exacerbate the present situation such as retiring the Sibley 3 coal plant more than twenty years before the previously projected end of the unit's life. *Supplemental Direct Testimony of Lena M. Mantle*, pg. 5 lns. 17 – 26; *Supplemental Rebuttal Testimony of Lena M. Mantle*, pg. 10 lns. 1 - 7. Seeking to mitigate the harmful effects of this imprudent behavior by continuing to rely on the now almost fully recovered Crossroads facility

may itself be a prudent decision, but that does not make the cost to transport electricity from Mississippi to Missouri any more prudent or any less unjust and unreasonable. In other words, prudent decisions to mitigate the negative impact of past imprudence does not render the costs arising from that past imprudence any more prudent, just, or reasonable.

Despite both the fact that it is not before the Commission and the fact that the prudence of the transmission contract renewal has no bearing on the issue of transmission cost recovery, Evergy has nonetheless seen fit to threaten the Commission in this proceeding by stating that, absent a finding by the Commission, “Evergy West will not renew the transmission contract resulting in considerable increased cost to customers through either additional capacity contracts, the cost of building additional generation, or paying a penalty to SPP for not meeting its resource adequacy requirements.” *Supplemental Rebuttal Testimony of Lena M. Mantle*, pg. 13 lns. 17 – 20. While this does not negate anything above, the OPC also feels it is incumbent to address this threat.

Should Evergy West make the decision to exacerbate its prior imprudent decision to acquire generation in Mississippi rather than Missouri by then further imprudently walking away from the Crossroads plant (after having almost fully recovered its plant costs from ratepayers), then the Company’s shareholders should pay for any increase in costs that arise as a result. Thus, to the extent that the Commission chooses to address the issue of transmission costs, “[t]he Commission should affirm its decisions that while the Crossroads plant has value, the fact that it

