BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for an Accounting Authority Order Allowing the Companies to Record and Preserve Costs Related to COVID-19 Expenses	))))))	File No. EU-2020-0350

Initial Post-Hearing Brief of the Office of the Public Counsel

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I. Introduction

This case comes to the Public Service Commission (Commission) through Evergy Missouri Metro and Evergy Missouri West's (collectively Evergy) joint application for deferral accounting to track costs, savings, and lost revenues associated with the severe acute respiratory syndrome coronavirus 2 (SARS COV-2) (COVID-19). As the name suggests, deferral accounting entails deferring income or expenses into separate accounts for future ratemaking treatment. When a utility requests permission to defer a particular expense or event-related costs, the Commission traditionally refers to it as an application for an accounting authority order (AAO). An AAO is not a guarantee of any particular future treatment, but does authorize the tracking of amounts for future consideration.[1]

Evergy has since modified its position with a non-unanimous stipulation and agreement between the Staff of the Public Service Commission (Staff), Missouri Industrial Energy Consumers (MIEC), Midwest Energy Consumers Group (MECG), Sierra Club, and itself. The non-unanimous stipulation provides for the tracking and deferral of COVID-19 related incremental costs, bad debts from unpaid bills, and savings. The stipulation also includes certain reporting requirements based on party input. Evergy's stipulation rejects the deferral of lost volumetric sales of electricity that hypothetically would have occurred but for the COVID-19 pandemic. Evergy's request as modified is then similar to prior Commission approved COVID-19 related AAO's for Missouri-American Water Company (MAWC) and Spire Missouri with two key differences: 1) deferral duration and 2) customer support.

[1] *State ex rel. Off. of the Pub. Counsel v. Pub. Serv. Comm'n* (Off. of the Pub. Counsel I), 301 S.W.3d 556, 562 (MO. App. W.D. 2009); *State ex rel. Mo. Off. of Pub. Counsel v. Pub. Serv. Comm'n* (Off. of Pub. Counsel II), 858 S.W.2d 806, 813 (Mo. App. W.D. 1993).

Both previous Commission Orders granting COVID-19 related deferral accounting do so only until March 31, 2021, with the possibility of extension thereafter.[2] Evergy proposes to defer enumerated COVID-19 related costs and savings until March 31, 2021, but then be able to defer bad debts until September 30, 2021 when bad debts exceed the amount calculated in rates by at least ten percent.[3] Both of the prior Commission Orders also approved new customer relief programs beyond what the companies may have already offered for those affected by COVID-19. Spire Missouri agreed to implement arrearage-matching program, with $1 million of investor supported monies along with $1 million redirected from other customer-supported programs, to provide eligible customers with up to $400 in bad debt relief.[4] MAWC supplemented its customer bill credit program with $250,000.[5] Evergy's non-unanimous stipulation lacks any new program, and instead refers to pre-existing customer protections, extinguished payment plans from this past summer, while giving the non-committal agreement to "evaluate the advisability of extending its offering of twelve-month payment plants to residential and small business customers beyond December 31, 2020, and March 31, 2021."[6]

The Commission should reject Evergy's requested AAO as modified because Evergy's request does not comply with the Commission's historical approach to AAOs, Evergy has not shown that COVID-19 has had financial impacts to the Company sufficient to warrant deferral

[2] Order Approving Non-Unanimous Stipulation and Agreement, WU-2020-0417 (Oct. 28, 2020); Order Approving Amended Unanimous Stipulation and Agreement, GU-2020-0376 (Oct. 21, 2020).
[3] Ex. 1, Non-Unanimous Stipulation and Agreement, EU-2020-0305 p. 4-5.
[4] Order Approving Amended Unanimous Stipulation and Agreement, GU-2020-0376 (Oct. 21, 2020).
[5] Order Approving Non-Unanimous Stipulation and Agreement, WU-2020-0417 (Oct. 28, 2020).
[6] Ex. 1, Non-Unanimous Stipulation and Agreement, EU-2020-0305 p. 8.

accounting, and Evergy's offered stipulation provides privileges beyond that offered to MAWC and Spire Missouri, while providing less for Evergy's customers.

II. Legal Standard

The burden of proof falls upon the movant attempting to demonstrate the truth of the matter asserted.[7] Evergy initiated this case as a petition under subdivisions (4) and (8) of Section 393.140, RSMo, while also invoking Section 386.250 and 20 CSR 4240-2.060.[8] Subdivision (8) of Section 393.140 specifically enables a party to petition the Commission to "prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited."[9] Accordingly, this Commission may order the accounting of certain items upon a finding of sufficient justification.

The Uniform System of Accounts (USOA) provides utilities with instructions on when it is appropriate to account for events that are otherwise not reflected in existing rates. This Commission has in turn adopted the USOA by Rule.[10] The General Instructions for the USOA explain that an electrical utility's income should reflect profits and losses during the test period of the most recent general rate case, and that those:

> "[I]tems related to the effects of events and transactions which have occurred during the current period and which are of *unusual nature* and *infrequent occurrence* shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in

[7] *Clapper v. Lakin*, 123 S.W.2d 27, 33 (Mo. banc 1938).
[8] All statutory citations are to the 2019 versions provided by the Revisor of Statutes unless otherwise noted.
[9] Mo. Rev. Stat. § 393.140(8).
[10] 20 CSR 4240-20.030.

the foreseeable future. …*To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items...*"[11]

Such recording of extraordinary items is not retroactive ratemaking, and thus the Commission may authorize it outside of a general rate case proceeding.[12]

This Commission has adapted the language of the USOA to create its own "Sibley test" to judge deferral accounting requests.[13] This phrase "Sibley test" comes from the originating case in controversy being whether the costs incurred to retrofit and extend the life of a coal plant in Sibley, MO were extraordinary. At the time, the Commission found those expenses qualified for an AAO.[14]

Like the USOA, the Commission's Sibley test supports AAOs and other deferral accounting requests for events that are extraordinary and nonrecurring as well as material. Missouri Courts most recently affirmed a Commission Order granting a deferral accounting request for a retired power plant, finding that the Commission decision was not arbitrary or capricious when it evaluated the request with "the same standards applied in past cases."[15] Specifically, through the Sibley test, "the Commission lawfully and reasonably applied the standards found in General Instruction 7 of the Uniform System of Accounts" in regards to

[11] 18 CFR Part 101 (1993) (emphasis added).
[12] *State ex rel. Mo Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 335-36 (Mo. App. W.D. 2006).
[13] *Report and Order on Remand*, WO-2002-273 (Nov. 10, 2004).
[14] *Id.*; *State ex rel. Mo. Off. of Pub. Counsel II*, 858 S.W.2d at 808-09.
[15] *Off. of Pub. Counsel v. Evergy Mo. West, Inc.*, 2020 MO. App. LEXIS 946, 13 (Mo. App. W.D. 2020) ("Despite the unusual nature of the request, the Commission determined that the AAO request was governed by the same standards applied in past cases. The Commission concluded that the retirement of the Sibley plant was an extraordinary event which justified the creation of an AAO to capture Evergy's cost savings for consideration in a future rate case.").

evaluating a generating plant retirement's extraordinariness and materiality.[16] Accordingly, to employ an objectively defensible methodology, the Commission should again employ the Sibley test to analyze the specific circumstances of Evergy's requested AAO for COVID-19 related costs and savings.

III. Issues Presented

The following issues correspond to the List of Issues filed on September 9, 2020. However, since then Evergy filed a non-unanimous stipulation and agreement on October 8, 2020. OPC and National Housing Trust (NHT) later objected timely on October 15, 2020. Per Commission Rule 20 CSR 4240-2.115(2), the non-unanimous stipulation and agreement is now the joint position of the signatories. The parties are therefore presenting the Commission with a different issue than those the parties presented to the Commission this September; whether to approve the non-unanimous stipulation or not. Nonetheless, OPC will address the issues as parties presented them in the September List of Issues, given that those issues highlight why the Commission should reject the non-unanimous stipulation and agreement as offered.[17]

1a. Is the coronavirus disease ("COVID-19") pandemic an extraordinary event within the scope of the Uniform System of Accounts as it has been historically interpreted and applied by the Commission or as subsequently modified by Missouri courts?

No, COVID-19 is not an "extraordinary event" when judging its impacts upon Evergy with the USOA as historically interpreted and applied by the Commission and Missouri courts. The USOA Instruction 7 frames extraordinariness as being "abnormal and significantly different from the ordinary and typical activities *of the company*, and which would not reasonably be expected to recur in the foreseeable future."[18] "To be considered extraordinary" under this standard, the item

[16] *Id.* at 19.
[17] *See* 20 CSR 4240-2.115(2)(D) ("All issues shall remain for determination after hearing").
[18] 18 CFR Part 101 (emphasis added).

to be deferred should represent at least 5 percent of the subject utilities income.[19] The USOA Instruction's focus on activities of the company in question and income reflect a case-by-case analysis that considers extraordinariness from the particular circumstances of the company rather than the industry.[20]

Evergy's AAO application does not include extraordinary items per the USOA. Evergy's application relies upon categorical assertions about COVID-19's impact on the region and Evergy's customers. This is a macro-analysis contrary to the micro-scale review prescribed by the Commission's Sibley test and Instruction 7. Evergy's Application relies on Missouri's Governor issuing several health orders, and news reports about COVID-19 hampering the U.S. auto industry as well as Missouri's unemployment rate to justify the requested deferral accounting treatment.[21] Evergy witness Darrin Ives similarly concludes that COVID-19 is an extraordinary event for AAO purposes because it is a natural disaster and impetus for State emergency orders.[22] Ives also notes COVID-19 has had material impacts on Kansas City-area schools, retailers, casinos, and sports teams, but does not state that it has been material for Evergy.[23] Without speaking to the pandemic's impacts to the region, Evergy's arguments are miscast because they are not applying Instruction 7 of the USOA. Rather than focusing on how COVID-19 represents an extraordinary event for Evergy and its finances, Evergy is hoping the Commission will take a broader look at COVID-19's impacts taken together. The Commission should instead employ the case-by-case scrutiny of the Sibley test.

[19] *Id.*
[20] *Off. of Pub. Counsel*, 2020 MO. App. LEXIS 946, 13.
[21] Application, EU-2020-0350 p. 4-5.
[22] Ex. 7, Direct Testimony of Darrin Ives, EU-2020-0350 p. 6-7.
[23] *Id.* at 7-8.

A review of the Commission's historical approach to AAO requests reveals a case-by-case analysis of the matter to be deferred, rather than an analysis that looks at an event's impact on multiple entities. The Commission's progenitor case in 1991 for the Sibley test involved applying the USOA Instruction 7 to the particular life extension and coal conversion upgrades occurring at the Sibley energy station despite other utilities nationwide also incurring the same costs in response to the federal Clean Air Act.[24] Over a decade later, the Commission faced with the prospect of diverging from its traditional use of "extraordinary, unusual, unique and nonrecurring" language from the USOA.[25] Staff recommended a four-factor part test instead. The Commission declined Staff's offer, and continued to review the requested AAO by considering the particular expenses incurred by Missouri American Water.[26]

Similarly, when the Commission previously approved deferral accounting in 2013 for lost revenues due to a Southeastern Missouri ice storm, it did not do so on the basis that ice storms are natural disasters and therefore extraordinary.[27] Rather, the Commission used Instruction 7 to focus on the particular ice storm and the particular impacts it had on Ameren Missouri as opposed to Southeast Missouri at large. The Commission ultimately approve the AAO because Ameren Missouri demonstrated both extraordinariness and materiality.[28]

As an example of the Commission's use of Instruction 7 of the USOA reaching a different result, consider Evergy's (formerly Kansas City Power & Light) 2015 request for an AAO to capture increasing transmission costs, property taxes, and cybersecurity expenses.[29] Those costs

[24] *See Report and Order*, EO-91-358 p. 4 (Dec. 20, 1991).
[25] *Report and Order*, WO-2002-273 p. 22-24 (Dec. 10, 2002).
[26] *Id.*
[27] *Report and Order*, EU-2012-0027 p. 3 -4 (Dec. 26, 2013).
[28] *Id*.
[29] *Kan. City Power & Light Co.'s Request v. Pub. Serv. Comm'n*, 509 S.W.3d 757, 769 (Mo. App. W.D. 2016).

are naturally usual and reoccurring contrary to the USOA's guidance, and the Commission denied Evergy's request. On appeal, the Missouri Court of Appeals noted the Commission's historical reliance on Instruction 7, and described Evergy's counter-proposal to use USOA's Definition 31 for regulatory assets and liabilities as "exceedingly perplexing."[30]

In the Missouri Court's most recent evaluation of a Commission AAO, the Appeals Court again made it clear that extraordinariness is "evaluated by looking at the event in relation to 'the ordinary and typical activities *of the company*,' not in comparison to the activities of the industry as a whole."[31] The Court upheld the Commission's approval of an AAO precisely because the Commission analyzed the impacts of retiring a coal plant relative to Evergy rather than relative to the utility industry at large. This means that, although the economic and human toll of COVID-19 may be considered extraordinary in a global or colloquial sense, "extraordinary" for the purposes of the USOA requires a narrow view of COVID-19's impacts on Evergy.

A specific review of COVID-19's impacts on Evergy reveals that the pandemic is not "extraordinary" per the USOA. OPC witness Robert Schallenberg's review of Evergy's filing and available information did not find evidence that COVID-19 has significantly affected the ordinary and normal activities of Evergy when compared to other economic downturns.[32] Bad debts are an ordinary business occurrence for a utility, and deferring late payment fees from customers does not require Evergy to incur an additional cost.[33] Schallenberg also notes that many of the cost

[30] *Id.* at 770.
[31] *Off. of Pub. Counsel*, 2020 MO. App. LEXIS 946, 24 (quoting 18 C.F.R. Part 101, General Instruction 7).
[32] Ex. 200, Rebuttal Testimony of Robert Schallenberg, EU-2020-0350 p. 7.
[33] *Id.* at 9.

categories Evergy wishes to defer have not been specified into concrete numbers, making any impact speculative with certainty only possible maybe months after an AAO is ordered.[34]

The economic impacts of COVID-19 not being extraordinary is not surprising given that "Evergy's rates were set in the last rate case to compensate the Companies for the potential risk of an economic downturn."[35] If the Commission had instead used ratemaking to insulate Evergy for economic downturns, there would have been a reduction to its return on equity and risk premium.[36] Furthermore, due to the Federal Reserve's efforts in response to COVID-19, Evergy has been able to issue bonds at "extraordinarily" cheaper prices than before.[37] This treatment significantly undermines the need for an AAO to consider losses and hypothetical lost electric sales in Evergy's next rate case.

Consider also that the non-unanimous stipulation Evergy supports even remarks that Evergy has not altered its benefits and compensation for its personnel and upper management. Whereas other businesses have had to cut back financially as the economy retracts, Evergy has not. Evergy actually describes it altering its executive compensation as an "unlikely event" even as it also argues that COVID-19 is extraordinary.[38] Only a financially insulated industry could predict that it is unlikely to cut back even as things grow worse for others.

While other entities like the Kansas City Royals, Ford Motor Company, and Macy's, all used as examples by Evergy, need to significantly modify their business practices, Evergy does not appear to be facing any particular material impact.[39] Evergy is in fact on the upper end of the

[34] *Id.* at 20.
[35] Ex. 201, Rebuttal Testimony of David Murray, EU-2020-0350 p. 2.
[36] *Id.* at 3.
[37] *Id.* at 4.
[38] Ex. 1, Non-Unanimous Stipulation and Agreement, EU-2020-0350 p. 3.
[39] Ex. 7, Direct Testimony of Darrin Ives, EU-2020-0350 p. 6-8.

"K-shaped recovery" that OPC witness Dave Murray spoke of at the evidentiary hearing.[40] Murray d that the economic gains since COVID-19 have not been universal but split in a K-shaped manner whereby "the wealthier would experience a rebound quicker than the lower income."[41] Evergy's requested AAO and stipulation and agreement do not help resolve this economic disparity, but instead exacerbate it.[42]

1b. Is the resulting economic impact from the COVID-19 pandemic material within the scope of the Uniform System of Accounts?

No, or at the very least Evergy refuses to assert that the COVID-19 pandemic has had a material impact on its finances.

For an item to be material, it "should be more than approximately 5 percent of income, computed before extraordinary items."[43] Calculations performed by OPC witness Robert Schallenberg find that Evergy has received a considerable return on year-end equity such that the five percent of income threshold would be "$15.4 million on an after tax basis and $20.19 million on the pretax basis."[44] Based on his review, Schallenberg concludes that Evergy's requested AAO does not meet the five percent materiality threshold. Evergy witness Ives confirmed as much when he told the Commission that the Company's calculations for COVID-19's financial impact from March through September, 2020 on Evergy Missouri West and Evergy Missouri Metro, net of

[40] *See* Tr. vol. III, EU-2020-0350 p. 283-84.
[41] *Id.*
[42] *Id.*
[43] 18 C.F.R. Part 101; *see also* Ex. 200, Rebuttal Testimony of Robert Schallenberg, EU-2020-0350 p. 4.
[44] Ex. 200, Rebuttal Testimony of Robert Schallenberg, EU-2020-0350 p. 4.

savings, is "between $1.4 and 1.5 million" and "about $2 million," respectively.[45] Ives continued to say that as of September, "there's not much impact in bad debts at this stage of the process."[46]

Evergy does not dispute that its requested deferral items are not material, but instead argues that it need not prove materiality.[47] To date, Evergy continues to maintain that it must continually evaluate COVID-19's financial impacts on the Company, and does not know whether COVID-19 has been significant enough to alter capital investment plans.[48] This is a bizarre position to take because one would think that a supposedly "extraordinary event" like COVID-19 would substantiate sufficient financial impact to reach at least five percent of Evergy's income. If an item is less than five percent, then there is less of a policy justification to depart from general ratemaking principles with a deferral. Instead, Evergy witness Ives claims in surrebuttal that "there is no relationship or linkage in the USOA between General Instruction 7 and the establishment of regulatory assets or liabilities (deferrals)."[49] From that position, Evergy contends that anything can qualify for an AAO, regardless of the amount incurred.[50]

Evergy's position on materiality even contradicts its own witnesses' prior statements. Evergy witness Ives notes in direct testimony that "in evaluating requests for an AAO, the Commission has historically considered the criteria of USOA General Instruction 7."[51] Such criteria includes the prescriptive five percent threshold, and yet Ives later says the opposite in surrebuttal. Similarly, whereas Evergy witnesses Ron Klote and Ives employed Instruction 7 when

[45] Tr. vol. II, EU-2020-0350 p. 176.
[46] *Id.* at 177.
[47] Ex. 9, Surrebuttal Testimony of Darrin Ives, EU-2020-350 p. 9.
[48] Ex. 205, OPC Data Request 2017, EU-2020-0350.
[49] *Id.*
[50] *See id.* at 13.
[51] Ex. 7, Direct Testimony of Darrin Ives, EU-2020-0350 p. 4.

debating the application of an AAO to Evergy's Sibley plant in 2019,[52] Ives now states that the Commission should instead use Definition 31 of the USOA to evaluate AAO requests.[53] This is the same argument that the Missouri Appeals Court described as "exceedingly perplexing."[54]

If Evergy's AAO request warrants the tracking of extraordinary costs for future consideration in a rate case, it should be able to demonstrate that its request involves at least five percent of its income. Rather than arguing that though, and disputing OPC's calculations, Evergy wants this Commission to ignore materiality using an already-discredited approach to deferral accounting. There is little basis to depart from the Commission's historical Sibley test for AAOs when the applicant cannot demonstrate materiality. There is even less basis to grant deferral accounting for bad debts beyond that of other Missouri utilities, while providing less customer protections in response to COVID-19.[55]

2. Should the Commission approve the Application for an accounting authority order ("AAO") permitting Evergy to accumulate and defer to a regulatory asset for consideration of recovery in future rate case proceedings before the Missouri Public Service Commission ("Commission") extraordinary costs and financial impacts incurred as a result of the COVID-19 pandemic?

No. Evergy fails to demonstrate that the COVID-19 pandemic and resulting economic fallout qualify for deferral accounting treatment under Instruction 7 of the USOA. For the reasons stated above, Evergy's application does not relate to extraordinary costs, and Evergy does not demonstrate that its requested deferrals are even enough to reach five percent of the Company's income. "The [Commission] has followed the guidance in 18 C.F.R. Part 101, General Instruction

[52] Tr., vol. II, EU-2020-0355 p. 139 & 148.
[53] Ex. 9, Surrebuttal Testimony of Darrin Ives, EU-2020-350 p. 10.
[54] *Kan. City Power & Light Co.'s Request*, 509 S.W.3d at 770.
[55] *Compare* Ex. 1, Non-Unanimous Stipulation and Agreement, EU-2020-0350 *with* Order Approving Amended Unanimous Stipulation and Agreement, GU-2020-0376 (Oct. 21, 2020) *and* Order Approving Non-Unanimous Stipulation and Agreement, WU-2020-0417 (Oct. 28, 2020).

7, that costs should not be deferred to another accounting period except for 'extraordinary items.'"[56] When the Missouri's Court of Appeals most recently analyzed this Commission's granting of an AAO, it upheld the Commission's decision because "the Commission lawfully and reasonably applied the standards found in General Instruction 7 of the Uniform System of Accounts."[57] Of those standards, the Commission analyzed whether the costs at issue were extraordinary and material.[58] This analysis invokes a framework to demonstrate reasonable deliberations, and is consistent with Commission practice.

The Commission said in WU-2017-0296 that:

> The Commission has considered the materiality of costs compared to net income to determine whether the costs are extraordinary. The standard the Commission has used in past AAO cases was the costs must be at least five percent of net income to be considered material.
> …
> Applying the facts to the pertinent law, the Commission finds that MAWC qualifies for the AAO it seeks. The costs for the LSLR are *material, unusual and infrequent and, therefore, extraordinary*. Thus, those costs meet the traditional standard the Commission has applied in deciding AAO cases.[59]

Note the separate use of "material" from "unusual and infrequent." This differentiation demonstrates that materiality has a unique meaning from unusual or infrequent when evaluating extraordinariness. The Commission emphasized this distinction when evaluating an AAO for ice storm damage, noting, "Ameren has shown that its loss of $35,561,503, which constitutes 8.5% of its net income, is *extraordinary and material*."[60] Again, "material" relates to but is separate from "extraordinary." It was not enough to remark that the ice storm in question was uniquely damaging,

[56] *Kan. City Power & Light Co.'s Request*, 509 S.W.3d at 770.
[57] *Off. of Pub. Counsel*, 2020 MO. App. LEXIS 946, 19.
[58] *Id.* at 18-19 (quoting 18 C.F.R. Part 101, General Instruction 7).
[59] Report and Order, WU-2017-0296 p. 7-9 (Nov. 30, 2017) (emphasis added).
[60] *Report and Order*, EU-2012-0027 p. 4 (Dec. 26, 2013) (emphasis added).

but the Commission also considered the extent of financial damage to conclude that deferral accounting was warranted.

The Commission's Report and Order on Remand in WO-2002-0273 likewise states,

> Staff's proposed first factor is materiality. This requirement is drawn from the language of the USOA for electrical utilities, language that does not appear in the USOA for water utilities. The Commission originally stated in the *Sibley* decision, and has restated since, that ***materiality is a factor for consideration***, but it is not determinative. In other words, while the magnitude of the item proposed for deferral must be considered, that factor alone does not drive the decision.
> …
> The Commission has said, ***in the* Sibley *decision itself and in later decisions, that materiality must be considered***. Materiality necessarily embraces the financial magnitude of the item proposed for deferral.[61]

Therefore, the Commission should review whether the cost items Evergy wishes to defer under AAO are both material and extraordinary.

When viewed under this lens, it is clear that the Commission should deny Evergy's requested AAO precisely because it refuses to follow the Commission's standard for AAOs. Evergy does not argue that its requested deferral items exceed five percent of its income, but instead argues that it does not have to show that.[62] Evergy instead makes the debunked argument in surrebuttal that the Commission should analyze its application under Definition 31 of the USOA rather than Instruction 7.[63] Following Definition 31 not only contravenes past Commission practice and judicial guidance, but also effectively nullifies any objective framework for evaluating the need for an AAO.

An AAO for bad debts, deferred late payments, and carrying costs is detrimental to the public interest because it shields Evergy's financial books from COVID-19's impacts while not

[61] Report and Order on Remand, WO-2002-0273 p. 34-35 (Nov. 10, 2004).
[62] Ex. 9, Surrebuttal Testimony of Darrin Ives, EU-2020-350 p. 9
[63] *Id.* at 10.

demonstrating the extraordinary impact to justify that protection. Evergy's lack of evidence of materiality or extraordinariness should additionally concern the Commission given Evergy's customers are experiencing the effects of the pandemic as well. Whereas other Commission ordered deferral accounting for COVID-19 has included new customer protections, Evergy's offered non-unanimous stipulation points back to prior payment plans and pre-existing disconnection protections.[64] The Commission approved deferral accounting for Spire Missouri's COVID-19 related impacts includes an arrearage-matching program, with the Company putting up investor-backed funds to encourage customers to pay down bad debts for everyone's benefit.[65] Likewise, the Commission approved MAWC's requested COVID-19 deferral accounting when it included a bill credit program to provide direct help to customers struggling to pay bills.[66] Evergy has no similar new response to COVID-19 for customers, but does track bad debts longer than the accounting afforded to Spire Missouri or MAWC.

Failure to show extraordinariness and materiality is enough to deny Evergy's requested AAO. Evergy's lack of new support for customers during the pandemic in its offered stipulation compounds the detriment to the public interest.

3. If the Commission determines that an AAO or other deferral accounting mechanism should be ordered in connection with the COVID-19 pandemic, what items should be deferred?

a. Uncollectible expense in excess of amounts included in rates in the most recent general rate cases of Evergy Missouri Metro and Evergy Missouri West, respectively?
b. Costs incurred in connection with the one- and four-month Pandemic payment plan incentives that the Commission permitted the Company to implement in Case No. EO-2020-0383 (including credits awarded as incentives and costs related to customer communications)?

[64] Ex. 1, Non-Unanimous Stipulation and Agreement, p. 8.
[65] Order Approving Amended Unanimous Stipulation and Agreement, GU-2020-0376 (Oct. 21, 2020).
[66] Order Approving Non-Unanimous Stipulation and Agreement, WU-2020-0417 (Oct. 28, 2020).

c. Waived late payment fees / reconnection fees to the extent that they fall short of the amount included in rates?
d. Information technology-related costs incurred to enable employees to work from home, including hardware, licensing fees and connectivity costs?
e. Costs incurred to protect employees unable to work from home, including cleaning supplies, personal protective equipment, temperature testing, employee sequestration preparation (and employee sequestration if that becomes necessary)?
f. Lost revenues associated with the reduction of electric usage during the Pandemic? As an alternative, should the Commission order the deferral of pandemic-related lost fixed cost recovery due to the pandemic?
g. Other incremental costs or other unfavorable financial impacts resulting from the Pandemic not presently identified?
h. What pandemic-related savings should be booked as a regulatory liability or included as an offset to the regulatory asset related to the pandemic- financial impacts?
i. Should carrying costs be excluded during the deferral period and be considered for inclusion in rates in Evergy's next general rate case?

If the Commission applies Instruction 7 of the USOA, and finds that an AAO is justified, the Commission should only authorize the deferrals of items (a) through (e), and (h), listed above. However, the Commission should reject the inclusion of bad debts occurring beyond March 31, 2021, as Evergy's stipulation and agreement contemplates. Evergy seeks to defer COVID-19 related bad debts outright until March 31, 2021, and then continue to defer bad debts until September 31, 2021, should they exceed the bad debts already accounted for in rates.[67] However, the "should" in this instance is not as conditional as it may appear. Evergy presents this recording of bad debts as a provision that could credit customers just as often as it helps Evergy, but NHT witness Roger Colton explained that the economic impact of COVID-19 on customers will more likely get worse rather than better next year.[68] When Colton's analysis is compounded with the K-shaped recovery concerns of Murray and OPC witness Geoff Marke's observations of Evergy's bad debts, it becomes clear that we should expect bad debts to grow in 2021 as more customers

[67] Ex. 1, Non-Unanimous Stipulation and Agreement, EU-2020-0305 p. 5.
[68] Tr. vol. III, EU-2020-0350 p. 336.

fail to meet bill payments.[69] Evergy's extended tracking of bad debts will uniformly benefit Evergy. This is not a gamble but a sure bet for Evergy.

Evergy desires the benefit of the stipulation's "gambling provision" while not committing further customer support to prevent bad debts, and despite other state commissions not granting such security for their utilities. Evergy supports its AAO request with Commission orders from Arkansas, Michigan, and South Dakota, and yet none of those orders contain a bad debt tracking provision like what Evergy proposes.[70] A departure from other state commission practice is not warranted when Evergy will not even testify that COVID-19 has had a material impact on its finances. This Commission should therefore, at a minimum, not grant Evergy an AAO for bad debts beyond March 31, 2021.

Lost revenues due to reduced electric sales in item (f) are not appropriate for an AAO, and Evergy has already relinquished this request through its stipulation and agreement. Similarly, the Commission should consider Evergy to have abandoned its prior request to defer unfavorable financial impacts "not presently identified" in item (g) now that it has agreed to a stipulation with limited categories of deferrable costs and savings. The Commission should also reject item (i) because Evergy has likewise foregone its previous request to defer carrying costs as its presented stipulation now excludes carrying costs from defined COVID-19 related costs, and reserves consideration of carrying costs for Evergy's next rate case.[71]

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[69] *See* Tr. vol. III, EU-2020-0350 p. 283-84; *see also* Ex. 202, Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 14-18.
[70] *See* Tr. vol. II, EU-2020-0350 p. 165-19; *see also* Ex. 206, Order, Ark. Pub. Serv. Comm'n, 20-012-A; Ex. 207, Order, Mi. Pub. Serv. Comm'n, U-20757; Ex. 208, Order, S.D. Pub. Serv. Comm'n.
[71] Ex. 1, Non-Unanimous Stipulation and Agreement, EU-2020-0305 p. 1-3.

If the Commission approves an AAO, the savings to be recorded, and referred to in item (h) above, should include the following: benefits of using short-term debt at lower interest rates, reduced allocation of costs from shared services or parent organization costs, reduced operations and maintenance expense, reduced travel and office expense, reduced expenses from supplying utility services to Evergy-owned facilities, reduced tax liability, savings from deferring capital projects that do not affect reliability or safety, any federal or state assistance Evergy receives due to COVID-19, reduced labor expense, and reduced incentive pay or employee bonuses.[72] Most of these savings are included in Evergy's stipulation, and are consistent with the savings that the Commission ordered MAWC and Spire Missouri to track in their respective AAOs.

4. Should the Commission adopt a sunset provision in connection with the AAO and, if so, how should it be structured? Should any sunset provision include the opportunity for the AAO to be extended?

OPC supports a March 31, 2021, deferral termination date, with the opportunity for extension, as already approved in the Commission's Orders approving MAWC and Spire Missouri's COVID-19 related deferrals. A termination date is necessary due to current uncertainties with COVID-19, and to prevent the shifting of costs into an AAO that are not germane.[73]

5. If the Commission adopts an AAO for some or all of the costs and revenues associated with the COVID-19, should the Commission order periodic reporting of information associated with the deferral? If so, what information should be reported and how often?

[72] Ex. 202, Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 11.
[73] *Id.* at 10.

If the Commission authorizes an AAO, OPC recommends initial and periodic reporting to ensure transparency and accurate recording. OPC believes that the offered stipulation and agreement substantially accomplishes those goals on this point.

Within two weeks of Commission approval and on a quarterly basis until the Commission designated termination date, Evergy should be required to file separate quarterly reports in this docket and submitted within 15 days of the end of each quarter. Those reports should include:

- A detailed identification of monthly weather normalized revenue by customer class, during the pandemic;
- A detailed identification of revenue changes by customer class, both increases and decreases, during the COVID-19 pandemic;
- The impact COVID-19 has had on Evergy's capital expenditure program during the previous quarter;
- Any issuances of short-term and long-term debt during the previous quarter and the all-in costs at which that financing was issued;
- The embedded cost of short-term debt for that quarter;
- Updated and most recent credit metrics calculated by Evergy or provided to the Company by nationally recognized credit rating agencies;
- Any correspondence with nationally recognized credit rating agencies and equity analysts during the previous quarter;
- Copies of credit rating agencies and equity analysts' reports published during the previous quarter;
- A list of reductions and their cost savings (to date) made to capital, operational and discretionary expenses as articulated above in this testimony to minimize cost impacts to ratepayers; and
- A list of COVID-19 related expenses and their respective amount that the Company incurred to ensure safe and reliable service.
- The number of customers, by customer class, voluntarily disconnected by month;
- The number of customers, by customer class, involuntarily disconnected by month;
- Number of utility reconnections, reported by month;
- Number of customers on a utility payment plan, by payment plan type (including budget billing), by month;
- Total $ amount of arrearages by customer class;
- The number of accounts in arrearage by customer class in increments of $100 (e.g., less than $100, $101 to $200, etc…) by month;
- The range of arrearage amounts by customer class (i.e., current high and low dollar amount) and the mean average;
- The percentage of involuntary disconnections by customer class by four-digit zip code area along with the supporting numbers (i.e., number of accounts relative to number of accounts involuntarily disconnected) by month;

- A quantification of total past-due customer arrearages and number of customers experiencing arrearages, that are thirty, sixty, and ninety days or more late in payment, reported by month;

OPC bases this recommendation and specific reported items on this Commission's previously ordered reporting for MAWC and Spire Missouri's deferrals, and what the Kansas Corporate Commission ordered when it granted Evergy's Kansas affiliate a COVID-19 related AAO.[74]

6. Should the Commission adopt the recommendations of NHT related to extension of the moratorium on nonpayment service disconnections, arrearage management programs, long-term payment deferment plans, expansion of the Economic Relief Program, income-eligible energy efficiency plans, suspend credit reporting, suspend disconnection and reconnection fees, or other customer programs?

OPC previously recommended that the Commission should not adopt NHT's recommended moratorium.[75] However, OPC now believes a moratorium on service disconnections is an option that the Commission should fully consider in light of the COVID-19 pandemic.

The Commission should adopt an arrearage management payment program as recommended by NHT and OPC, and agreed to by Spire Missouri with its COVID-19 deferrals.[76] A dollar-for-dollar matching with contributions from both customers and Evergy would do real good for Missourians struggling during the COVID-19 pandemic, while decreasing overall arrearages for Evergy's benefit. Such an arrangement is also similar to the matching program the Commission approved in EM-2016-0213.

The Commission should not adopt NHT's recommendation to expand Evergy's Economic Relief Pilot Program.[77] NHT's recommendations do not have sufficient detail, and the Program

[74] Ex. 202, Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 11-12, 19-20; *see also* Order Approving Application for Accounting Authority Order, Kan. Corp. Comm'n, 20-EKME-454-ACT
[75] Ex. 203, Surrebuttal Testimony of Geoff Marke, EU-2020-0350 p. 2.
[76] *Id.* at 5; Order Approving Amended Unanimous Stipulation and Agreement, GU-2020-0376 (Oct. 21, 2020).
[77] Ex. 203, Surrebuttal Testimony of Geoff Marke, EU-2020-0350 p. 6-7.

lacks the administrative support necessary to meet NHT's suggestions. OPC would support an expansion that Evergy finances solely with shareholders backed dollars.

The Commission should not adopt NHT's recommendation to expand low-income weatherization dollars to address COVID-19 impacts.[78] Weatherization and energy efficiency savings do not address the larger financial issues for customers who cannot pay their overall utility bill, but increasing financing of those programs does increase customer support of those programs. NHT's recommendation may be understandably altruistic, but it ignores that saving a few dollars on a utility bill will not prevent a disconnection. Furthermore, given current economic conditions, it is unlikely that the current weatherization agencies will spend down currently allotted federal and utility funds. However, OPC would support an increase to weatherization and low-income energy efficiency programs supported solely by Evergy shareholders.

The Commission should adopt NHT and OPC's recommended suspension of full-credit reporting.[79] Ceasing credit reporting of unpaid utility bills will protect consumers' economic mobility following the COVID-19 pandemic. This recommendation, coupled with an arrearage payment plan, would have a minimal impact on Evergy's financial integrity.

7. Should the Commission adopt any of the customer-specific recommendations of OPC including: 1) waiving disconnection and reconnection fees; 2) ceasing full credit reporting; 3) waiving late payment fees and deposits; 4) expanding payment plans to 12 months or greater; and 5) establishing an arrearage matching program, dollar-for-dollar on bad debt for eligible customers.

Yes, the Commission should adopt the customer protections recommended by OPC if the Commission authorizes an AAO.[80] Provided that OPC's main offer to the Commission is to reject

[78] *Id.* at 8.
[79] *Id.*
[80] Ex. 202, Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 19-20.

the AAO in Evergy's stipulation, the OPC believes that the Commission should still consider the customer protection options before it. These recommendations will substantiate real relief for customers struggling with the current economic climate, and represent a true balance of utility and consumer interests. If Evergy receives an AAO as requested for COVID-19, its earnings will appear largely insulated from market realities and will gain the opportunity to seek actual ratemaking relief in its next case. Meanwhile, Evergy's residential and corporate customers do not have the luxury of deferrals. However, coupling an AAO with consumer protections establishes some sharing of the impacts of COVID-19.

Waiving disconnection and reconnection fees is proper given that Evergy has agreed to do so in its presented stipulation.[81] The Commission should thereby consider Evergy to have abandoned its prior position to maintain disconnection and reconnection fees. Furthermore, such waiver is reasonable given that Evergy has deployed advanced metering infrastructure (AMI) that should eliminate the Company's expenses to connect and reconnect meters.[82] Retaining disconnection and reconnection fees also does not encourage customers to pay down arrearages, and only further punishes customers who cannot pay during a pandemic.

Similarly, the Commission should order Evergy to cease full-credit reporting, and to waive late payment fees and deposits. Evergy's stipulation provides that Evergy will cease full-credit reporting and waive late payment fees for the duration of an approved AAO, so any prior position Evergy may have had is irrelevant.[83] Doing full-credit reporting and imposing late payment fees do not encourage the down payment of arrearages. Instead, those actions will likely only make dire situations worse for customers.

[81] Ex. 1, Non-Unanimous Stipulation and Agreement, EU-2020-0350 p. 9.
[82] Ex. 202, Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 19-20.
[83] Ex. 1, Non-Unanimous Stipulation and Agreement, EU-2020-0350 p. 9.

Of the listed options, extending payment plans and arrearage matching programs present the best options to minimize bad debts as COVID-19 continues, and the Commission should order them. Expanding payment plans or a new arrearage matching program means that both Evergy and its customers are incentivized into managing bad debt before and as it occurs, rather than collecting missed bill payments on the back end. A Commission order now to establish an arrearage matching program in conjunction with an AAO is also not unprecedented in that the Commission did just that with Spire Missouri this year.[84] This Commission also ordered a similar matching program to assist customers when Liberty Utilities acquired The Empire District Electric Company in EM-2016-0213.[85]

IV. Commission Raised Issues

1. Whether the Commission May and Should Attach Conditions to any Approved Deferral Accounting

At the conclusion of the evidentiary hearing, the Commission asked parties to brief on the issue of whether the Commission may issue conditions through its orders. OPC answers that the Commission can indeed issue conditions through its orders so long as it does not exceed its authority to encroach on a utility's business decisions. In this case, the Commission can issue an AAO predicated on the creation of a customer support program, similar to what the Commission ordered for Spire Missouri and MAWC. Such conditions would only obligate Evergy to the extent it chooses to exercise the authority granted by the AAO, and would allow Evergy to be free from any conditions should Evergy choose not to make any deferrals.

[84] Order Approving Amended Unanimous Stipulation and Agreement, GU-2020-0376 (Oct. 21, 2020).
[85] Ex. 202, Rebuttal Testimony of Geoff Marke, EU-2020-0350 p. 21.

Whether the Commission may commit any act is ultimately predicated by statute. Missouri's Courts describe the Commission as a "creature of statute," meaning that statute creates, empowers, and establishes the Commission's limitations.[86] The Commission must then follow statutory text "as reflected in the plain language of the statute at issue."[87] Provided the Commission does not abuse its discretion or acts arbitrarily, Missouri's Courts afford the Commission's actions significant deference.[88] However, despite the Commission's generally broad discretion, its regulatory line ends where its actions would invade the province of the utility's "business decisions."[89] An example of a purely business decision would be the retention of any particular employee, firm, or a particular expense when there is no evidence of imprudence.[90] Conditioning an AAO on the creation of a customer support program does not invade this "business decision" territory.

The Commission's power to issue AAOs is rooted in Section 393.140, RSMo. Specifically, the Commission has the power "in its discretion, to prescribe uniform methods of keeping accounts."[91] The statute notes that the Commission's authority to issue an AAO is discretionary, and Missouri Courts echo that the "the Commission has substantial discretion in determining

[86] *State ex rel. Util. Consumers Coun., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo. 1979).
[87] *Ivie v. Smith*, 439 S.W.3d 189, 202 (Mo. banc 2014) (quoting *Parktown Imports, Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009).
[88] *State ex rel. Praxair, Inc. v. Pub. Serv. Comm'n*, 344 S.W.3d 178, 184 (Mo. banc 2011).
[89] *Mo. ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n*, 262 U.S. 276, 288-89 (U.S. 1923); s*ee also Report and Order*, ET-2018-0132 p. 34 (Feb. 6, 2019) ("The Commission will not specify precise locations for the charging stations placement as this is a business decision that needs to be made by the Company").
[90] *Southwestern Bell Tel. Co.*, 262 U.S. at 288-89.
[91] Mo. Rev. Stat. § 393.140(4).

whether an AAO is appropriate in a particular case."[92] Missouri statute is otherwise silent on any limitations the Commission has on imposing or granting deferral accounting.

The nature of discretion is such that the Commission may grant or withhold AAOs depending on particular conditions. For example, when the Commission granted an AAO to MAWC for security upgrades incurred after terrorist attacks on September 11, 2011, the Commission noted that MAWC desired a twenty-year amortization period, but ultimately imposed a ten-year amortization after deliberating in its self-entitled section "What Conditions Should the Commission Impose on the AAO?"[93] The Commission should also be emboldened by conditions issued in other states in conjunction with deferral accounting. The Indiana Utility Regulatory Commission ordered utilities to create six-month payment plans, as well as suspend late fees, convenience fees, deposits, and reconnection fees, in the same order that authorized COVID-19 related deferral accounting.[94] The Arkansas Commission likewise issued a disconnection moratorium, while also authorizing deferral accounting.[95] The Michigan Commission conditioned COVID-19 deferral accounting on certain reporting procedures, and requires utilities to present further financial reporting by November 2, 2020, should they have wished to seek "recovery of COVID-19 related expenses beyond uncollectible expense."[96] The South Dakota Commission required utilities to account for all COVID-19 related savings "in instances where a Petitioner intends to include COVID-related cost increases in addition to incremental bad debt in its regulatory asset" and ordered quarterly reporting on customer disconnections when it ordered its

[92] *Off. of Pub. Counsel*, 2020 MO. App. LEXIS 946, 18-19.
[93] *Report and Order*, WO-2002-273 p. 30-32 (Dec. 10, 2002).
[94] Ex. 202, Rebuttal Testimony of Geoff Marke, EU-2020-0350 GM-R-2 p. 5 & 9.
[95] Ex. 206, Order, Ark. Pub. Serv. Comm'n, 20-012-A p. 2-3.
[96] Ex. 207, Order, Mi. Pub. Serv. Comm'n, U-20757 p. 56.

COVID-19 AAOs.[97] No matter the differences in statutory schemes amongst these states, the repeated instances of state commissions conditioning deferral accounting orders on certain conduct testifies to this Commission's power to institute conditions now in conjunction with Evergy's requested AAO.

Outside the AAO context, when Ameren Missouri proposed a tariffed electric vehicle program, the Commission considered additional conditions requested of other parties, and imposed some of them on the Company including attending working group sessions and data reporting.[98] For an Evergy specific example, just last year the Commission granted Evergy's requested Missouri Energy Efficiency and Investment Act (MEEIA) application, but on the condition that the Company also implement a particular program as part of the MEEIA portfolio.[99] Although a party's choice to not challenge a particular order may not be dispositive, it is worth noting that despite the Commission ordering Evergy to implement a program that it objected to, Evergy did not appeal that MEEIA order. This supports the conclusion that the Commission acted within its discretion to impose a condition on Evergy's MEEIA programs, and consequentially the Commission can continue to impose conditions on other matters within its discretion.

OPC reminds the Commission though, that should the Commission wish to err on the side of caution and not issue an order with conditions that Evergy may challenge, the Commission is free to deny an AAO request under its discretion. In that denial the Commission can opine on why it finds a particular application lacking, and what parties could provide later to receive approval.

2. Parties' Position on Paragraphs 16, 17, and 18 of the Non-Unanimous Stipulation and Agreement

[97] Ex. 208, Order, S.D. Pub. Serv. Comm'n, GE20-002.
[98] *Report and Order,* ET-2018-0132 p. 31-35 (Feb. 6, 2019).
[99] Tr. vol. III, EU-2020-0305, p. 328-29.

At the conclusion of the evidentiary hearing, the Commission, through the hearing officer, requested that all parties present their position on paragraphs 16, 17, and 18 of the non-unanimous stipulation and agreement. The Commission appeared to be particularly concerned with whether those paragraphs were crucial for Evergy's AAO. As counsel for OPC stated at the evidentiary hearing, OPC does not read paragraphs 16 or 17 to have substantive effect upon Evergy or its customers.[100] Evergy's agreement to consider future payment plans for customers in paragraph 16 is simply a promise to think about customer programs. There are no set dates or measurements to meet. Paragraph 17 recites Evergy's past efforts, giving the impression that it has done enough for its customers during the COVID-19 pandemic. OPC does not object to this language, and actually appreciates Evergy's recounted efforts, but does object to the absence of new proposals for customers to offset the shareholder-protecting relief of the requested AAO. OPC especially takes issue with the lack of new customer protections as Evergy offers an AAO that gives it more accounting protections than what Spire Missouri or MAWC received in their COVID-19 AAOs.

As for paragraph 18, OPC supports Evergy's waiver of late payment fees, full credit external reporting, and reconnection fees, but ultimately objects to the stipulation for reasons previously stated. Evergy should not enjoy extra protections in paragraph 8 for bad debts until September 31, 2021, while offering no new customer protections to address bad debts proactively.

V. Conclusion

The Commission should deny Evergy's requested COVID-19 related AAO for the reasons stated above. Evergy's application, even as modified by its presented stipulation and agreement, fails to meet the traditional test for deferral accounting. Evergy fails to demonstrate why COVID-19 is an extraordinary event for Evergy, and if COVID-19 has had a financially material impact

[100] Tr. vol III, EU-2020-0305 p. 355-56.

upon Evergy's books. Without these elements, the Commission should refrain from granting Evergy's requested relief. The Commission should be especially resistant to authorize the tracking of bad debts until September 2021, when other Missouri utilities did not receive similar protections despite offering customer bill relief beyond pre-existing measures. If the Commission were to authorize an AAO under Instruction 7 of the USOA, the Commission should issue one conditioned on the reporting, arrearage management program, and customer-specific programs described herein.

WHEREFORE, the OPC offers its initial post-hearing brief.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 4th Day of December, 2020, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall