

**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	)	File No. EO-2026-0129
West for Approval of an Amendment to	)	
Nucor Steel Sedalia, LLC Agreement	)	

**EVERGY MISSOURI WEST’S MOTION TO STRIKE, OR IN THE
ALTERNATIVE, FOR LEAVE TO FILE THE ATTACHED VERIFIED SURREPLY**

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW” or the “Company”), pursuant to 20 CSR 4240-2.080, for its *Motion to Strike, or in the Alternative, for Leave to File the Attached Verified Surreply*, respectfully states as follows:

I. INTRODUCTION

The Reply Brief of the Missouri Office of the Public Counsel (“OPC”), filed July 9, 2026, incorporates evidence that is outside the record of this proceeding. At pages 6–7, the reply brief reproduces an excerpt from a document that did not exist when the record closed — the Southwest Power Pool’s Resource Adequacy Report, East Balancing Authority Area, 2026 Summer Season (the “2026 Report”) — annotated with OPC’s own markings, and offers it to prove specific, contested quantitative facts and inferences. No witness testified to the 2026 Report, and no party had the opportunity to cross-examine anyone concerning its contents. Nor has the Commission taken official notice of it; OPC concedes that a request for such notice is merely forthcoming.¹

EMW therefore moves to strike the excerpt of the 2026 Report reproduced at pages 6–7 of OPC’s reply brief, together with the arguments that depend upon it, including the follow-on uses at pages 8–9, 11–12, and 17. In the alternative, should the Commission be inclined to consider the 2026 Report, EMW requests that any official notice extend to the Report itself — not to OPC’s

¹ See OPC Reply Br., p. 6 n.1.

annotated excerpt or to its characterizations — and that EMW be granted leave to file the verified surreply of EMW witness James (JP) Meitner, attached hereto as **Exhibit A**, which is limited to the 2026 Report and the inferences OPC draws from it.

This motion does not ask the Commission to ignore public information, nor does it challenge any testimony given at hearing. It asks only that evidence enter this case either through the record and subject to examination, or through official notice taken in the sequence and with the safeguards that Section 536.070(6)² requires.

II. PROCEDURAL BACKGROUND

The Commission convened the evidentiary hearing in this matter on May 26, 2026, and the evidentiary record closed at the conclusion of the hearing. SPP issued the 2026 Report on June 15, after the record had closed. Initial post-hearing briefs were filed on June 25, and reply briefs were filed on July 9.

OPC’s reply brief reproduces at pages 6–7 an image excerpted from page 29 of the 2026 Report — a capacity, demand, and requirements table for the combined Evergy Metro and Evergy Missouri West reporting group — to which OPC has added its own annotation.³ From this excerpt, OPC asserts a specific quantitative fact — that “the amount of excess capacity that Evergy Missouri currently possesses has increased . . . to over 300 MW of excess capacity for summer season 2026” — and builds upon that figure throughout the brief.⁴

OPC’s brief acknowledges that the Commission has not taken official notice of the 2026 Report, stating that “the OPC will further formally request the Commission take administrative

² Unless otherwise noted, all statutory citations are to the Revised Statutes of Missouri (2016), as amended.

³ See OPC Reply Br., p. 7 (“As shown with the red box the OPC supplied . . .”).

⁴ See OPC Reply Br., pp. 7–9, 11–12, 17.

notice” of it.⁵ As of the date of this motion, no such request has been filed. Nor has OPC moved to reopen the record to receive additional evidence under 20 CSR 4240-2.110(8).

III. THE EXCERPT IS EVIDENCE WHICH NEVER ENTERED THE RECORD

It is beyond dispute that a brief is a vehicle for argument from the record and not a vehicle for the introduction of evidence. In a contested case, each party has the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, and to rebut the evidence against it.⁶ The Commission’s decision, in turn, must be supported by competent and substantial evidence upon the whole record,⁷ and the officials who render it must decide upon that record.⁸ Material that enters a case through a post-hearing reply brief defeats each of these safeguards: it is never sponsored, never examined, and never rebutted.

OPC did not cite the 2026 Report as legal authority. Rather, it reproduced a data table from the Report, marked the entry it wished the Commission to accept, and offered that entry — 334.07 MW of claimed “excess capacity” for the combined Evergy Metro and Evergy Missouri West reporting group — as proof of a disputed factual proposition: that Nucor’s accredited curtailment can provide no resource-adequacy value to EMW.⁹ A figure offered to prove a company’s capacity position is evidence in every meaningful sense.

And the Commission has declined to receive such evidence when offered after the conclusion of a hearing. In In the Matter of the Application by Aquila, Inc., Case No. EF-2003-0465, Order Denying Staff’s Motion to File Exhibits Late (Dec. 4, 2003), Staff sought — after the evidentiary hearing had concluded — to place before the Commission public documents reflecting

⁵ OPC Reply Br., p. 6 n.1.

⁶ § 536.070(2).

⁷ Mo. Const. art. V, § 18.

⁸ § 536.080.2.

⁹ See OPC Reply Br., pp. 7–8.

developments that post-dated the record. The Commission refused. It agreed with the utility that “to admit [the material] without foundation and without the opportunity for cross-examination might impinge on [the utility’s] due process rights,” and it observed that there was “no need to re-open [the record] every time there is a shift in [the company’s] financial plans.”

Both of Aquila’s points apply with full force here. Like Staff in Aquila, OPC has proffered a post-hearing public document for the truth of its contents without foundation or cross-examination. Admitting this document may therefore “impinge on [EMW’s] due process rights.”¹⁰ And like the proffered evidence in Aquila, SPP’s resource-adequacy assessments are published on a recurring basis. A record that must reopen each time SPP issues a new report would never close.¹¹

Staff in Aquila did one thing OPC did not: it asked permission first. Unlike Staff in Aquila, OPC failed to move for leave before submitting extra-record evidence. Instead, it concedes the point and promises to ask for forgiveness rather than permission.¹² But the balance of equities weighs against clemency. The 2026 Report had been public for ten days when initial post-hearing briefs were filed on June 25, 2026. OPC could have presented the Report in its initial brief and requested official notice then, thus allowing EMW to respond in its reply brief. Instead, it held the material for reply in an attempt to guarantee that the Commission would receive the 334 MW figure un rebutted. OPC sat on public material through the round where it could have been answered and deployed it in the round where it could not. If the Aquila material could not come in by motion, then *a fortiori* OPC’s material cannot come in by a reply brief’s footnote.

¹⁰ See Aquila, EF-2003-0465, slip op. at 2.

¹¹ See id.

¹² See OPC Reply Br., p. 6 n.1.

IV. OFFICIAL NOTICE CANNOT CURE THE DEFECT BECAUSE OPC INVERTED THE STATUTORY SEQUENCE

EMW does not contend that the Commission is powerless to take official notice of SPP's resource-adequacy publications. Resource-adequacy reporting is technical material within the Commission's competence, and Section 536.070(6) permits official notice of such facts. But to protect the procedural due process of the parties, the statute conditions that power on a mandatory sequence of events:

[Agencies] may also take official notice of technical or scientific facts, not judicially cognizable, within their competence, if they notify the parties, either during a hearing or in writing before a hearing, or before findings are made after hearing, of the facts of which they propose to take such notice and give the parties reasonable opportunity to contest such facts or otherwise show that it would not be proper for the agency to take such notice of them¹³

Notice to the parties and a reasonable opportunity to contest, before findings are made, are the statutory prerequisites to notice of technical facts.¹⁴ And by arguing the contents of the 2026 Report in a reply brief to which no party has a responsive filing, while promising the formal request later, OPC has inverted the sequence the statute prescribes.

Moreover, even notice properly taken would reach only the 2026 Report itself, not OPC's annotated excerpt, and certainly not the inferences OPC draws from it. Official notice of a document's existence and contents is not an adjudication of what the document proves.¹⁵ The inference OPC asks the Commission to draw — that a combined-basis excess-capacity figure means Nucor's accredited curtailment has no value to EMW — is contested on this record, for at least three reasons.

¹³ § 536.070(6) (emphasis added).

¹⁴ See *Ohio Bell Tel. Co. v. Pub. Utils. Comm'n of Ohio*, 301 U.S. 292, 304 (1937) (“[T]he inexorable safeguard of a fair and open hearing must be maintained in its integrity” in regulatory commission proceedings) (Cardozo, J.).

¹⁵ See *Ohio Bell*, 301 U.S. at 301–02 (judicial notice “does not mean that the opponent is prevented from disputing the matter by evidence if he believes it disputable”).

First, the record reflects that “Evergy Missouri West is a load responsible entity,” even though “the resource adequacy process . . . views it as a combined entity” with Evergy Metro.¹⁶ What a combined reporting figure means for the value of curtailment accredited to EMW as a load responsible entity is exactly the kind of question a witness would have been asked if presented with this document.

Second, the record reflects that the value of demand response is comparative, not binary. EMW’s witness testified that MEEIA BDR all-in costs are lower than market capacity alternatives for the 2027–2029 timeframe.¹⁷ A snapshot of one summer’s reported position does not answer a comparative cost question spanning the program term.

Third, the excerpt’s own line items raise questions that cross-examination exists to answer. On its face, the reproduced table nets “Controllable and Dispatchable DR” of 283.29 MW into the demand summary from which the claimed excess is derived and reflects firm capacity sales and deliverable capacity purchases whose treatment no witness has explained. OPC thus offers a figure that itself depends upon demand response to support the proposition that demand response has no value. Cross-examination would have exposed this circularity.

These are the matters the statutory contest opportunity exists to test. That is why Section 536.070(6) sequences the opportunity to contest before findings, and why the material cannot simply be argued into the case through a reply brief.¹⁸

Finally, official notice, even if granted, extends only to the 2026 Report itself. Section 536.070 limits the evidentiary universe in a contested case to oral evidence taken on oath or affirmation, exhibits offered by the parties, and matters of which the agency takes official notice.

¹⁶ Tr. 229:1–7 (Meitner).

¹⁷ Tr. 93:5–9 (Meitner).

¹⁸ See Ohio Bell, 301 U.S. at 302 (pressing judicial notice “retroactively after the case had been submitted, would be to turn the doctrine into a pretext for dispensing with a trial”).

A reply brief is none of these, as it is not sworn, it was never offered, and no one can be cross-examined about it.¹⁹ And even if notice is taken of the 2026 Report itself, OPC's red box and its characterizations of the 2026 Report will remain outside the record. A finding built on OPC's characterizations would have the Commission "reporting its conclusion, but not the underlying proofs,"²⁰ which is exactly what Ohio Bell condemned. Accordingly, if the Commission takes notice of the 2026 Report, the only sworn evidence before it interpreting that Report would be the verified surreply of EMW witness James (JP) Meitner, attached as Exhibit A.

Unlike OPC's excerpt, Exhibit A is submitted in a form Missouri law recognizes as evidence. Section 536.070(12) expressly permits a party to introduce an affidavit in evidence in a contested case, upon service of copies on all other parties, who then have seven days to object to its use on the ground that it is in the form of an affidavit. EMW serves Exhibit A on all parties contemporaneously with this Motion, so that if the Commission grants leave, every procedural step the statute contemplates will already be complete.²¹

V. ALTERNATIVE RELIEF

If the Commission is inclined to consider the 2026 Report notwithstanding the foregoing, EMW respectfully requests that the Commission: (a) take official notice, if at all, only of the 2026 Report itself, and not of OPC's annotated excerpt or its characterizations of the Report; (b) make no findings based on the 2026 Report before affording EMW the opportunity to contest that Section 536.070(6) guarantees; and (c) grant EMW leave to file the verified surreply attached hereto as Exhibit A and served herewith under Section 536.070(12), to be deemed filed as of the

¹⁹ See State v. Williams, 652 S.W.2d 102, 115 (Mo. banc 1983) ("Assertions made by an appellant in the brief but not shown in the record are not evidence.").

²⁰ See Ohio Bell, 301 U.S. at 300.

²¹ If no timely objection is made, "[a]ny evidence received without objection which has probative value shall be considered by the agency along with the other evidence in the case." § 536.070(8).

date of any order taking such notice. This alternative relief would cure the prejudice at minimal cost by preserving the Commission's access to whatever the 2026 Report properly shows, while restoring to EMW the opportunity to be heard that OPC's reply brief attempted to circumvent.

VI. CONCLUSION

The evidentiary record in this case closed at the conclusion of the hearing, and the case has been fully briefed on that record. OPC's reply brief rests its lead argument on a document no witness sponsored, no party examined, and no order has noticed. The Commission declined to permit exactly this in Aquila, and even there the proponent at least asked permission first. What OPC proposes instead is judicial notice as "a pretext for dispensing with a trial" on the issue.²²

WHEREFORE, EMW respectfully requests that the Commission strike the excerpt of the 2026 Report reproduced at pages 6–7 of OPC's reply brief and the arguments dependent upon it at pages 8–9, 11–12, and 17; in the alternative, grant the relief described in Section V above, including leave to file the verified surreply attached as Exhibit A; and grant such other and further relief as is just and reasonable under the circumstances.

²² Ohio Bell, 301 U.S. at 302.

Respectfully submitted,

/s/ Roger W. Steiner

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Attorneys for Evergy Missouri West

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document, together with Exhibit A thereto, was served upon counsel for all parties on this 13th day of July 2026, by EFIS filing and notification, and/or e-mail.

/s/ Roger W. Steiner

Roger W. Steiner

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) File No. EO-2026-0129
West for Approval of an Amendment to)
Nucor Steel Sedalia, LLC Agreement)

**VERIFIED SURREPLY OF EVERGY MISSOURI WEST REGARDING
THE SPP 2026 SUMMER RESOURCE ADEQUACY REPORT**

Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW”, “Evergy Missouri West”, or the “Company”) submits this Verified Surreply (“Verified Surreply”) as Exhibit A to its *Motion to Strike, or in the Alternative, for Leave to File the Attached Verified Surreply (“Motion”)*. This Verified Surreply is served on all parties in accordance with the procedure prescribed by Section 536.070(12), RSMo.

This Verified Surreply is to be considered only if the Missouri Public Service Commission (“Commission”) takes official notice of the Southwest Power Pool’s (“SPP”) *Resource Adequacy Report, East Balancing Authority Area, 2026 Summer Season* (the “2026 Report”), and it is limited to the 2026 Report and the inferences the Office of the Public Counsel (“OPC”) draws from it. The factual statements below are verified by EMW witness James (JP) Meitner, who testified at the May 26, 2026, evidentiary hearing.

VERIFIED STATEMENT OF JAMES (JP) MEITNER

1. My name is James (JP) Meitner. I am Director, Market Operations at EMW. I testified on behalf of EMW at the evidentiary hearing in this matter, including regarding SPP’s resource-adequacy processes and the economics of EMW’s demand-response programs. I am familiar with the 2026 Report and with the manner in which SPP compiles and presents the data it contains.

2. The 2026 Report presents capacity, demand, and requirements data for a combined reporting group consisting of Evergy Metro (“EM”) and Evergy Missouri West. SPP views the two utilities as a combined entity for purposes of its resource-adequacy process, even though Evergy Missouri West is itself a load responsible entity. The Report’s figures therefore describe the combined group and do not state a separate resource-adequacy position for EMW alone.

3. The 334.07 MW “Excess Capacity” entry that OPC highlighted is the arithmetic difference between the combined group’s Total Capacity (6,257.81 MW) and its Resource Adequacy Requirement (5,923.75 MW) as reported for a single season: summer 2026. The submission underlying the Report was made to SPP in advance of the season. Consistent with Attachment AA of the SPP Open Access Transmission Tariff (“OATT”), by February 1st of each year, each Market Participant and participating Generator Owner shall ensure the most recent information is provided to the Transmission Provider (“TP”) using a Workbook for the Summer Season. No later than March 15th of each year, the TP will review the information in the Workbook for the Summer Season to determine whether each Load-Responsible Entity (“LRE”) meets the Summer Season Resource Adequacy Requirement. The Transmission Provider will notify the Market Participant and the LRE if the LRE has not met the Summer Season Resource Adequacy Requirement. By May 15th of each year, an LRE or Generator Owner shall update its Workbook for the Summer Season to reflect purchases and sales that occurred after February 1st. By May 15th of each year, an LRE must demonstrate it has cured any deficiency in compliance with the Summer Season Resource Adequacy Requirement.

4. The claimed excess already assumes the performance of existing demand-response programs. The Report’s demand summary derives Net Peak Demand by netting 283.29 MW of “Controllable and Dispatchable DR” against forecasted peak demand. In other words, the 334.07

MW figure OPC offers as proof that demand response has no value is itself calculated by counting demand response.

5. The Report also reflects 321.70 MW of Firm Capacity Sales, which increases the amount of other capacity that must be listed in the Summer Season Resource Adequacy Workbook, and 14.75 MW of Deliverable Capacity Purchases, which decreases the amount of other capacity that must be listed in the Summer Season Resource Adequacy Workbook.

6. A combined-basis excess does not make capacity free to EMW. Where EMW relies on capacity attributable to the combined position, EMW's customers bear a cost for that reliance. After Evergy ensures that it has met the SPP requirements outlined in Attachment AA of the SPP OATT, Evergy must evaluate the net capacity position of both EM and EMW to ensure neither party is net short. In the case that one party is short in a standalone calculation, a transaction for capacity must occur between the two entities to ensure that each customer base is compensated/compensating for the procured capacity. The economic question the Commission faces is therefore comparative: the price of market capacity against the cost of the Nucor demand-response program. That is consistent with my hearing testimony that MEEIA BDR all-in costs are lower than the assumed market capacity alternatives for the 2027 through 2029 timeframe. Tr. 93:5–9.

7. The 2026 Report speaks to the summer 2026 season only. It does not state, project, or imply the combined group's (or EMW's) resource-adequacy position for summer 2027, the first season in which Nucor's participation in the MEEIA BDR program could affect EMW's resource-adequacy submission.

8. For these reasons, the 2026 Report does not support the proposition that Nucor's accredited curtailment would provide no resource-adequacy value to EMW. The Report describes

a combined group's single-season position, calculated with demand response already counted. However, it does not answer the comparative, forward-looking question presented in this case.

CONCLUSION

If the Commission takes official notice of the 2026 Report, EMW respectfully requests that the Commission weigh the Report together with the verified statements above, which constitute the only sworn evidence before the Commission interpreting the Report.

Respectfully submitted,

/s/ Roger W. Steiner

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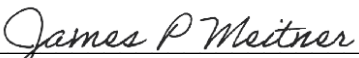
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VERIFICATION

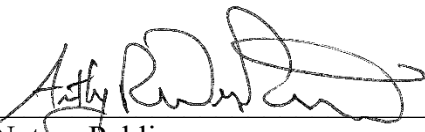
STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

James (JP) Meitner, being first duly sworn upon his oath, states that he is Director, Market Operations at EMW; that he has read the foregoing Verified Surreply; and that the factual statements contained in paragraphs 1 through 8 thereof are true and correct to the best of his knowledge, information, and belief.



James (JP) Meitner

Subscribed and sworn to before me this 13th day of July 2026.



Notary Public

My commission expires: April 26, 2029

