Exhibit No.: ________________
Issue(s): NOL Balance in Rate Base/Asset Disposition Tax Deduction/Sales Tax Discount Included in Company Revenues/CWIP Included In the Rate Case
Witness/Type of Exhibit: Riley/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: ER-2026-0143

SURREBUTTAL TESTIMONY

OF

JOHN S. RILEY

Submitted on Behalf of the Office of the Public Counsel

EVERGY METRO, INC. D/B/A EVERGY MISSOURI METRO

CASE NO. ER-2026-0143

September 10, 2026

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EVERGY MISSOURI METRO

CASE NO. ER-2026-0143

Q. What is your name and what is your business address?

A. John S. Riley, PO Box 2230, Jefferson City, Missouri 65102.

Q. Are you the same John S. Riley who prepared and filed direct and rebuttal testimony in this case on behalf of the Office of the Public Counsel?

A. Yes.

Q. What is the purpose of your surrebuttal testimony?

A. I will be responding to Evergy Company witness Ms. Melissa Hardesty's and Staff witness Mr. Mathew Young's rebuttal testimonies concerning their position on including a net operating loss ("NOL") balance in EMM's rate base, and a tax deduction for dispositions and sales tax discounts in Company revenues. As well as adopting a portion of Mr. John Robinett's direct testimony concerning Construction Work In Process ("CWIP") (JSR-S-04) and responding to Mr. Ronald A. Klote's rebuttal testimony CWIP argument.

I. NOL BALANCE IN RATE BASE

Q. What is the issue concerning the Company and Staff's inclusion of a NOL balance in rate base?

A. The Company exhausted its NOL balance with the filing of the 2020 corporate consolidated income tax return.[1] Staff, like Company, claims that EMM's NOL balance that was present at the time of the TCJA tax rate change (December 2017) created an imbalance that required a recalculation of the NOL balance similar to the recalculation performed on the Accumulated Deferred Income Tax ("ADIT") balance that fostered the Excess Deferred Income tax balance ("EADIT"). The two parties contend that the NOL balance should be amortized by Average Rate Assumption Method ("ARAM") which is the same method that is applied to protected EADIT balance. They do not justify amortizing this NOL by ARAM.

Q. Why is Ms. Hardesty claiming that EMM should have a deficient deferred income tax related to NOLs in its rate base?

A. Due to a 2018 Stipulation and Agreement that has never been challenged in a Commission hearing, Staff and Company are inserting a NOL (Deferred tax asset or DTA) in EMM's rate base.

Q. Is this proper ratemaking, tax, or Commission-adopted FERC Uniform Systems of Accounts ("USOA") policy?

A. Not in my opinion. Ms. Hardesty was careful to state, "We currently have a DDIT [(deficient deferred income tax)] included in rate base". This statement is generic and does

[1] This has not been in dispute. (JSR-R-01).

not address if the DDIT is proper or acceptable. Both Staff and Company list the NOL in question as being recorded in account 190. I explain later how identifying this balance as a DTA violates the Commission-adopted FERC USOA and, therefore, violates both statute and Commission rules. I also could find no Private Letter Ruling ("PLR") or IRS directive or code that allows a NOL to be amortized due to an income tax rate change.

Q. Do either Staff or Ms. Hardesty provide any authority for amortizing a NOL on the regulatory books of a regulated utility?

A. No. The parties always refer to this deferral methodology as if it is a given, or some sort of acceptable accounting practice, yet they never cite to any definitive authority that it is allowed.

Q. Why do you believe that it is improper to amortize a NOL as if it were an Excess Accumulated Deferred income tax liability?

A. The general difference between a NOL and EADIT is that EADIT is a financial balance sheet item where a NOL is a tax attribute that is only tracked for income tax purposes.[2] The difference between NOLs and EADIT is that the Deferred tax liabilities of EADIT are calculated using a tax rate and are financed by ratepayer contributions, but NOLs are defined to be the excess of taxable expenses over taxable income for income tax purposes, and which are unaffected by an income tax rate. That's the key difference. One is created by applying an income tax rate to the difference in depreciation rates (EADIT) and the other is created by adding and subtracting expenses and revenues (NOL).

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[2] NOLs are referred to in tax articles and PLRs (private letter rulings) as NOLC (net operating loss carryforward or net operating loss carryback). "C" being "Carryforward" or "Carryback."

Q. So how does this prevent NOLs from being amortized?

A. For starters, an NOL is a tax return item, not a balance sheet item. To apply an NOL to rate base, it must be converted into a deferred tax asset. This is accomplished by multiplying the NOL by the current tax rate. For example, take a company which has $1 million in taxable expenses and $800 thousand in taxable revenues. The result is a $200 thousand loss. To convert this to a deferred tax asset one multiplies the net operating loss(es) by the applicable tax rate, here $200,000 X 21% = $42,000 DTA.

Q. Why do you view it to be improper to amortize the resulting DTA—the $42,000—in your example?

A. The DTA only exists because of a tax attribute. Keep in mind that ADIT is created by the difference between accelerated and straight-line depreciation, multiplied by the tax rate and <u>funded</u> by EMM's ratepayers to create an "interest free loan." An NOL is a tax return item allowed by IRS code to be carried forward to future tax periods, or at times carried backward to prior tax periods. It is nonsensical that a tax item which is allowed to be carried forward indefinitely would be amortized.

One should understand that this DTA doesn't exist without the NOL. The DTA is only a temporary rate base measurement device for an ongoing tax loss. This DTA reverses as the NOL is exhausted. The NOL only exists so long as the company doesn't create enough taxable income to reduce the balance to zero. In my example, as the $200,000 is applied to taxable income, the DTA is also reduced. When the NOL is used up, then the DTA disappears as well. There is no rational reason to amortize this NOL.

Q. How were NOLs treated after the 1986 major overhaul of federal income taxes?

A. NOL balances were not affected by the rate reduction from 46% to 34%, but the tax values of the carried forward NOL balances used were reduced, just as we witnessed in 2018.

There was no remeasurement and amortization of the NOLs at that time either. It is interesting to note that NOLs generated immediately after the 1986 rate change could be carried back two years. This carryback was applied to prior tax returns at the old tax rate of 46% not the new rate of 34%. A bonus in the application of the NOLs.

Q. Do Companies have that same NOL tax rate change carryback benefit today?

A. Companies had that same benefit for a time period after TCJA enactment. Without getting into any details of the legislation, the passage of the CARES Act allowed companies to carryback NOLs for five years. This enabled some companies who generated NOLs during tax periods where the current 21% applied to carryback those NOLs to tax years where the 34% tax rate applied. A definite benefit, but I am unaware of anyone calling for some sort of remeasurement or adjustment to utility rates for this corporate tax benefit.

Q. Why is it your opinion that NOLs should not be listed as an Accumulated deferred income tax asset and recorded in Account 190 of the FERC Uniform System of Accounts the Commission has adopted?

A. The existence, or more accurately nonexistence, of the NOLs in question, isn’t an issue among the parties The NOLs balance was applied to taxable income in 2020 and is extinguished. I’m not sure if the Company is trying to project some credibility to its argument by listing it in Account 190, but it is not a legitimate deferred tax asset and should not be listed as if it were one. Even if the Company truly believed it possessed a bona fide rate base adjustment, it should be listed in account 182.3 – Other regulatory assets. The Company also lists this item as an NOL in its annual report. The Commission should take note of this and instruct the Company to remove it.

Another point that I have made in prior testimony is that recognizing a reduction in ADIT for a fictitious deferred tax asset or regulatory asset is a violation of the IRS Normalization rules. Also, the IRS in private letter ruling PLR 101888-23 attached as Schedule JSR-S-03 points out in its ruling that a failure to remove deferred taxes is a violation of the normalization provisions of § 168(i)(9) and puts the Company in jeopardy of losing its ability to benefit from accelerated depreciation.[3]

Q. Would you summarize your arguments that NOLs are not Deferred Tax Assets?

A. There is no support for treating NOLs as deferred tax assets. Company and Staff just contend, with no justification, that this is proper accounting. No IRS rulings. No GAAP or FASB standard. No FERC position. It's like a schoolyard ball game. The Company and Staff are making up rules as they go along. Further, NOLs are nothing but an income tax device to ameliorate income tax liabilities by means of shifting taxable income among tax periods. When the NOL is gone, the DTA is gone. You can't just suddenly wave an agreement and say, "We don't have to follow the IRS or FERC or proper accounting principles, and we are going to enhance the benefit of the NOL by applying it to taxes and then multiply the benefit by letting it linger in rate base at the expense of the ratepayer for another 30 or 40 years. "

[3] Riley Surrebuttal, Cases No. ER-2022-0129, pages 5-6, Case No. ER-2024-0189, pages 7-8.

<u>II. ASSET DISPOSITION TAX DEDUCTION</u>

Q. Ms. Hardesty testifies, "If the tax losses [due to the disposition of assets] were included as a deduction in current income tax expense without an offset to the impact on deferred income tax, then the losses would be double counted in computing tax expense over time."[4] Do you agree with her that deferred taxes are affected by asset retirements?[5]

A. Yes, they are, but deferred taxes aren't affected by whether the Company has a loss deduction on its tax return, so her insistence that there be an offset to deferred taxes ***expense*** within the cost of service is incorrect. The ADIT related to the tax loss is a ***balance sheet item*** and the IRS directs that it be deducted with the removal of the asset from rate base[6] However, Mr. Young contends in his testimony, "When an asset is retired, EMM does not remove an amount of ADIT from its books due to the mechanics of depreciating accounts instead of assets." In fact, the opposite is true, and EMM increases its ADIT by the amount of the tax loss.[7]

Q. How does the Company accomplish increasing ADIT by the tax loss?

A. I reviewed Ms. Hardesty's surrebuttal testimony from the Evergy West rate case in 2024.[8] She inserted an example of a mass asset retirement scenario. (Schedule JSR-S-02) The scenario indicates that book value actually increases due to the retirement. If this is

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[4] Case No. ER-2026-0143, Hardesty Rebuttal Testimony, page 9, lines 6-8.
[5] This terminology is interchangeable. Retirement, disposition, abandonment, removal, etc. Any characterization of a utility's asset no longer used in service.
[6] Treasury Sections 1.167(a)-8(a), 1.168(i)-8(b)(2) and 1.167(I)-1(h)(2) provide that the accumulated ADIT balance must be adjusted to reflect dispositions. Also, in several Private Letter Rulings the IRS states "the removal of public utility property from the rate base necessitated the removal of the associated ADIT under the Consistency Rule of § 168(i)(9)(B)."
[7] Young rebuttal, page 7, lines 20-22.
[8] Case No. ER-2024-0189, Hardesty Surrebuttal.

accurate, it stands to reason that ADIT would also increase; however, the ADIT increase would not offset the increase in rate base, so the rate payer is still at a disadvantage. It seems to me that the only way to compensate the ratepayer for the overall increase in rate base is to allow the flowthrough of the tax loss to the ratepayers.

Q. What is your response to Ms. Hardesty's testimony that you ignored the "simplified method" of income tax calculation used by Company and Staff?

A. I did not ignore the method. I just know that Company and Staff are ignoring ratepayers when retirements aren't considered in the tax calculation. The methodology is still simple. As I explained in my direct testimony, this recognition is one additional line in Staff's calculation of taxable income.

Q. Ms. Hardesty mentions offsetting deferred income tax expense throughout her rebuttal testimony. Did the Company adjust ADIT for the tax deduction it received from asset retirements?

A. Ms. Hardesty's mass asset accounting example does not appear to be affected by the income tax deduction. She stated in her Evergy West testimony that the Company adjusted the ADIT balance to include the tax loss. I can find no proof of this adjustment. The Company explanation for denying the tax loss deduction to the ratepayer is nonsensical. I contend that the ADIT associated with retired assets is supposed to be removed from rate base.[9] The Company and Mr. Young contend that not only is the original ADIT not removed, but an additional amount ADIT is included to compensate for the income tax deduction. But Ms. Hardesty's mass asset accounting example indicates that book value,

[9] Schedule JSR-S-03, PLR 101888-23, Page 12 and also the Ruling: The failure to eliminate the deferred taxes, including ADIT and the deferred tax reserves on the regulated books of Subsidiary C and Subsidiary D as of the date of the Condemnation, attributable to public utility property condemned in a transaction governed by § 1033 would violate the normalization provisions of § 168(i)(9).

and subsequently rate base, are increased by the asset value combined with the accumulated depreciation. The book balance in her example was adjusted upward regardless of the tax deduction that the Company enjoyed.

Q. What is your response to Company witness Hardesty's assertion that you are "only including the current tax benefits on the timing difference and ignoring the deferred income tax impact?"[10]

A. If the Commission does not recognize this tax deduction, then the timing difference is permanent.

Q. Do you know of any company that recognizes asset retirements in its income tax calculations?

A. Yes. Apparently, Missouri-American Water ("MAWC") has performed these calculations for at least the last two rate cases. Company witness Ms. Linda Schlessman pointed out in testimony from Case No. WR-2024-0320 that the Company adjusted current income taxes for these deductions. "The Company did include within the current tax expense calculation a tax deduction for property, plant, and equipment retirements in the amount of $7,049,382."[11]

Q. Would you summarize your position on including deductions for retired assets in the ratemaking income tax calculations?

A. Ms. Hardesty infers some deferred tax adjustment is needed to balance this equation. Her past testimonies do not fully explain her reasoning. My position is simple. The Company

[10] Hardesty Rebuttal, page 10, lines 15-16.
[11] WR-2024-0320, Schlessman, Rebuttal/Surrebuttal/Sur-Surrebuttal Testimony page 4, lines 8-9.

enjoys an income tax deduction for the early disposition of ratepayer-funded utility assets. It also gets to keep the interest free loan that was funded by its ratepayers. This is a simple and concise argument. The Commission should flow through the income tax deduction for assets funded by the ratepayers.

III. SALES TAX DISCOUNT INCLUDED IN COMPANY REVENUES

Q. What was EMM's response when you requested that the 2% sales tax discount for timely remitting sales taxes be included in the Company's revenue calculations?

A. The Company stated that the revenues in question are recorded in account 456101 in its true-up and that my proposal was not needed. The revenues were not in the original filing in account 456101and Staff did not include them in its rebuttal accounting schedules. I was not provided with any true-up workpapers, so I maintain that my original adjustment of $541,331 is needed.

IV. CWIP INCLUDED IN THIS RATE CASE

Q. Mr. John Robinett filed direct testimony concerning the definition and timing of CWIP for this rate case. Are you adopting his testimony?

A. I am adopting the parts of his direct testimony that specifically address the question of CWIP in this rate case. The pages are 6 through 9.

Q. Company witness Mr. Klote contends that the turbine prepays are Construction Work In Progress ("CWIP") and therefore are allowed into rate base. How do you respond?

A. These prepayments are not encompassed by the definition of CWIP. These payments are premature of the construction timeframe set out for Mullin Creek #2 and should not be allowed in rate base at this time.

Q. Could you explain how the timing of these prepayments precludes them from CWIP consideration?

A. The point of contention is that prepayments may display intent, but they do not show actual construction. For example, I am booking a flight to Mexico for January 12, 2027. In order to get the best price for my airfare, I pay for that nonstop flight on September 1, 2026. I intend to be on a beach, in Mexico, on January 12, but can I say I'm on vacation September 1 because I paid for my ticket to get me to Mexico? Of course not. The same scenario for the turbine prepayments. The Company has locked in a price and a contract date for delivery. No one is claiming this is imprudent. It is a necessary requirement to ensure this project is completed in the timeframe that EMM has presented in its CCN filing. But is it the commencement of construction? Of course not. It is not a part of construction work-in-progress.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro's Request for Authority to Implement a General Rate Increase for Electric Service	))))	Case No. ER-2026-0143

AFFIDAVIT OF JOHN S. RILEY

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

John S. Riley, of lawful age and being first duly sworn, deposes and states:

1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

John S. Riley
Utility Regulatory Supervisor

Subscribed and sworn to me this 10th day of September 2026.

TIFFANY HILDEBRAND
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES AUGUST 8, 2027
COLE COUNTY
COMMISSION #15637121

My Commission expires August 8, 2027.

Tiffany Hildebrand
Notary Public