

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) File No. ER-2026-0143
to Implement a General Rate Increase for)
Electric Service)

**EVERGY MISSOURI METRO’S MOTION TO STRIKE PORTIONS OF THE
DIRECT TESTIMONY OF STAFF WITNESS SARAH LANGE**

Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“EMM” or the “Company”) respectfully moves the Missouri Public Service Commission (the “Commission”) to strike the portions of the direct testimony of Staff of the Commission (“Staff”) witness Sarah Lange identified in Appendix A, and in support states:

I. INTRODUCTION

On **[REDACTED]**, Ms. Lange accompanied Commission personnel from Staff’s Manufactured Housing inspection team on a tour of a facility owned and operated by **[REDACTED]**, an intervenor in this case. No party requested entry under the Commission’s discovery rules, and no party received notice that the tour was taking place. Ms. Lange testifies that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ** Ms. Lange’s testimony derives ** [REDACTED]

[REDACTED]

[REDACTED] ** from the equipment

¹ Lange Direct at 7, ll. 2–5.

² See Staff Response to EMM DR No. 488(e) (Aug. 4, 2026).

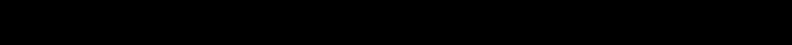
³ Lange Direct at 23, ll. 9–15; 26, ll. 15–17; 27, ll. 1–3.

she observed on that tour and from unrecorded oral statements that were allegedly made to her during the tour about its operation.

The tour-derived testimony should be struck for three independent reasons. First, the testimony was developed by circumventing the entry-upon-land procedures that the Commission's rules incorporate. Second, the opinions that the testimony supports rest on facts and data that do not satisfy Mo. Rev. Stat. Section 490.065.1(3), which sets the qualifications for expert testimony and requires that the facts or data underlying an expert opinion be of a type reasonably relied upon by experts in the field and otherwise reasonably reliable. Finally, the statements that the testimony relies on are hearsay from declarants that no party can cross-examine and, therefore, cannot constitute competent and substantial evidence supporting a Commission decision.

II. FACTUAL BACKGROUND

A. The Unnoticed Tour

Ms. Lange testifies that **











⁴ Lange Direct at 6, ll. 11–13.

⁵ See Staff Response to EMM DR No. 488(a) (Aug. 4, 2026).

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EMM first learned of the tour when Ms. Lange filed her direct testimony in this matter. No Mo. R. Civ. Proc. Rule 58.01 request was served on any party.

B. Ms. Lange's Testimony and the True-Up Plug Adjustment

[illegible]

⁶ See Staff Response to EMM DR No. 488(b)–(e) (Aug. 4, 2026).

⁷ Lange Direct at 10, ll. 4–8, 15–21.

⁸ Id. at 30, ll. 13–16.

⁹ Id. at 31, ll. 5–12.

¹⁰ Id. at 32, ll. 3–10.

¹¹ Id. at 23, ll. 9–12.

¹² See Staff Response to EMM Data Request (“DR”) No. 488(b)–(f) (Aug. 4, 2026).

III. ARGUMENT

A. The Tour Circumvented the Commission's Discovery Rules

Discovery at the Commission “may be obtained by the same means and under the same conditions as in civil actions in the circuit court.”¹³ Entry upon a party’s land for litigation purposes runs exclusively through Rule 58.01(a)(2), which permits a party to serve a request to “[p]ermit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, and photographing, testing, or sampling the property or any designated object or operation thereon.”¹⁴ The request must specify a reasonable time, place, and manner, must be served on all parties not in default, and the responding party may object before any entry occurs.¹⁵ The rule separately reserves “an independent action against a person not a party” for non-party land, confirming that party property is reached only through the noticed request procedure.¹⁶ Those conditions are not formalities. They allocate an objection right to the property owner and notice to every other party, in service of discovery’s purposes, which “include eliminating concealment and surprise.”¹⁷

None of that occurred here. Staff acquired for this litigation exactly what Rule 58.01 exists to regulate — entry, inspection, and observation of a party’s operations — while the owner had no opportunity to object as to its true purpose and no other party knew the inspection was happening. The fact that entry may have been arranged under the authority of Staff’s Manufactured Housing Inspectors does not alter the analysis. Authority to enter premises for one regulatory purpose is not authority to develop contested-case testimony without notice to the parties. The Commission

¹³ 20 CSR 4240-2.090(1).

¹⁴ Mo. R. Civ. P. § 58.01(a)(2).

¹⁵ See Mo. R. Civ. P. 58.01(a), (b).

¹⁶ Mo. R. Civ. P. 58.01(a).

¹⁷ Delacroix v. Doncasters, Inc., 407 S.W.3d 13, 35 (Mo. App. E.D. en banc 2013).

controls practice and procedure in its proceedings,¹⁸ and evidence obtained by bypassing the discovery conditions its rules impose is subject to exclusion.

Ms. Lange had every lawful means of confirming what she saw and heard, and she used none of them. Staff serves data requests in this case as a matter of routine, and a data request directed to the operation of the equipment she observed would have produced a written answer attributable to an identified respondent, subject to the responding party's continuing duty to correct it,¹⁹ and available to every party in the case. Rule 58.01 was equally available, and a request for a second visit arranged for the express purpose of confirming her initial observations would have given the property owner notice, given the other parties the opportunity to attend, and given the record a foundation capable of being tested. Staff pursued neither course, and Staff has stated that

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**²⁰

B. Opinions Resting on the Tour Do Not Satisfy Section 490.065.1

Section 490.065.1 supplies the standard for expert testimony “in all actions or proceedings in which there is no right to a jury trial,”²¹ and requires that the facts or data underlying an expert opinion “must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable.”²² The Missouri Supreme Court applies the section to contested administrative cases.²³

¹⁸ See Mo. Rev. Stat. Section 386.410. See also 20 CSR 4240-2.090(1).

¹⁹ See Mo. R. Civ. Proc. Rule 58.01(c); 20 CSR 4240-2.090(2)(F).

²⁰ See Staff Response to EMM DR No. 488(b)–(d), (f) (Aug. 4, 2026).

²¹ See Mo. Rev. Stat. Section 490.065.1.

²² See Mo. Rev. Stat. Section 490.065.1(3).

²³ See State Bd. of Registration for the Healing Arts v. McDonagh, 123 S.W.3d 146, 149 (Mo. banc 2003).

Ms. Lange's **

rest on unrecorded oral statements made during a single walkthrough, with no notes, no photographs, and no recordings produced. No party can verify what was said or whether the speaker had any basis to say it. Ms. Lange testifies: ***

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Facts of that character are not the type on which economists reasonably rely, and they are not otherwise reasonably reliable. Nor can the observational component be severed from the oral one: Ms. Lange testifies that ***

²⁴ Lange Direct at 23, ll. 9–15; 26, ll. 15–17; 27, ll. 1–3.

²⁵ See Staff Response to EMM DR No. 488(b), (c), (f) (Aug. 4, 2026).

²⁶ Lange Direct at 7, ll. 2–5.

²⁷ Id. at 7, ll. 17–18.

The Commission has struck materials from the record on precisely this ground. In the Labadie CCN case, the Commission excluded documents because “the person who made the statement . . . cannot be cross-examined by the other parties,”³⁰ and held that objected-to hearsay “is not admitted into evidence and is not considered competent and substantial evidence upon which the Commission can base its decision.”³¹ Section 536.070(2) guarantees each party in a contested case the right “to cross-examine opposing witnesses on any matter relevant to the issues.”³² That right cannot reach declarants who were never identified and will never appear.

The employee statements Ms. Lange relays are out-of-court statements offered for their truth — i.e., that the equipment operates as she was told it does. Cross-examining Ms. Lange tests

²⁹ See Staff Response to EMM DR No. 488(b)–(d), (f) (Aug. 4, 2026).

³¹ Id. at 2-3 (citing State ex rel. Marco Sales, Inc. v. PSC, 685 S.W.2d 216 (Mo. App. W.D. 1984)).

³² See Mo. Rev. Stat. Section 536.070(2).

only her memory of the conversation, never the accuracy of what she was told. The declarant is not a witness in this case, will not appear, and cannot be examined by any party. The Commission acknowledged in Labadie that an expert witness may, in some circumstances, base an opinion on hearsay that would be inadmissible on its own.³³ But the law tolerates the loss of cross-examination only because Section 490.065.1(3) supplies a substitute safeguard — namely, the underlying material must be of a type experts in the field reasonably rely upon and must be otherwise reasonably reliable.³⁴ Where that threshold fails, the tradeoff collapses, the hearsay is simply hearsay, and the tour statements qualify as such for the reasons in Part III.B.

The Labadie exception carries a second limit as well. While it permits an expert to rely on qualifying material in forming an opinion, it does not convert that material into substantive evidence of the facts asserted. Even at its fullest, the exception could not transmute what Ms. Lange says she was told during the tour into proof of how the equipment operates.

D. Striking the Tour-Derived Portions of Ms. Lange’s Direct Testimony Is the Proportionate Remedy

A tribunal responding to a discovery abuse may make any order that is “just,” and a just order accomplishes discovery’s purposes, including “eliminating concealment and surprise.”³⁵ Proportionality is measured against the prejudice.³⁶ Here no lesser remedy cures, because nothing Ms. Lange relied upon can be duplicated. The conversations cannot be reconstructed and the observations are equally beyond recovery, because a facility operates under the conditions of a particular day, and a later tour would show the parties how the equipment runs *then*, not how it ran

³³ See Labadie, p. 4 (citing Peterson v. National Carriers, Inc., 972 S.W.2d 349 (Mo. App. W.D. 1998)).

³⁴ Mo. Rev. Stat. Section 490.065.1(3).

³⁵ Delacroix, 407 S.W.3d at 35.

³⁶ Id.

while Ms. Lange watched it. No order can conjure the declarants for cross-examination, and no order can restage the original tour.

EMM does not seek the striking of Staff's pleadings or any case-dispositive sanction, so the contumacy standard governing those remedies has no application.³⁷ EMM seeks the targeted, lesser relief the Commission grants in the ordinary course: removal from the record of the specific passages that trace to the tour,³⁸ identified in Appendix A. In the alternative, EMM requests that the Commission exclude at hearing any opinion of Ms. Lange derived from the tour, including

** [REDACTED]

[REDACTED]

[REDACTED].**³⁹

IV. CONCLUSION

WHEREFORE, Evergy Missouri Metro respectfully requests that the Commission issue an order striking the portions of the direct testimony of Staff witness Sarah Lange identified in Appendix A. In the alternative, EMM requests the Commission exclude any testimony or opinion of Ms. Lange derived from the ** [REDACTED] ** tour of ** [REDACTED] ** facility from the evidentiary hearing and grant such other and further relief as the Commission deems just and reasonable.

³⁷ See, e.g., Karolat v. Karolat, 151 S.W.3d 852, 857-58 (Mo. App. W.D. 2004).

³⁸ See Order Regarding Objections and Motion to Strike, pp. 10-12, In re: Union Electric Co. d/b/a Ameren Missouri (Labadie Energy Center), No. EA-2012-0281 (Aug. 28, 2013).

³⁹ See Lange Direct at 23, ll. 9-15; 26, ll. 15-17; 27, ll. 1-3; Staff Response to EMM DR No. 488(b), (c), (f) (Aug. 4, 2026).

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586

Cole Bailey, MBN 77268

Evergy, Inc.

1200 Main – 17th Floor

Kansas City, Missouri 64105

Phone: (816) 556-2314

Fax: (816) 556-2110

roger.steiner@evergy.com

cole.bailey@evergy.com

Karl Zobrist, MBN 28325

Jacqueline M. Whipple, MBN 65270

D. Michael Robinson, MBN 73482

Chandler Hiatt, MBN 75604

Dentons US LLP

4520 Main Street, Suite 1100

Kansas City, MO 64111

Phone: (816) 460-2400

Fax: (816) 531-7545

jacqueline.whipple@dentons.com

michael.robinson@dentons.com

chandler.hiatt@dentons.com

Attorneys for Evergy Metro, Inc. d/b/a

Evergy Missouri Metro

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, hand delivery, or U.S. Mail, postage prepaid, on all counsel of record on this 14th day of September, 2026.

/s/ Roger W. Steiner

Roger W. Steiner

APPENDIX A

DESIGNATED PORTIONS OF THE DIRECT TESTIMONY OF SARAH LANGE

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