

**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	)	<u>File No. ER-2026-0143</u>
a General Rate Increase for Electric Service	)	

STAFF RESPONSE TO EVERGY MISSOURI METRO'S MOTION TO STRIKE

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission"), by and through counsel, and for its *Response to Evergy Missouri Metro's Motion to Strike* respectfully states as follows:

1. On September 14, 2026, Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("EMM") filed its *Motion to Strike Portions of the Direct Testimony of Staff Witness Sarah Lange* ("Motion"). EMM characterizes the inspection of property owned by *** [REDACTED] *** as an unnoticed tour¹ conducted for purposes of litigation and contends that Staff was required to obtain access through Missouri Rule of Civil Procedure 58.01 ("Rule 58.01"). EMM further contends that information Ms. Lange obtained during the tour is unreliable, constitutes hearsay, and cannot support her opinions.

2. Simply put, EMM's Motion and the requested relief to strike or exclude Ms. Lange's direct testimony should be denied.

3. The Commission's discovery rule, 20 CSR 4240-2.090(1), provides that discovery "may be obtained by the same means and under the same conditions as in civil actions in the circuit court." The rule governs discovery in Commission proceedings.

4. While Rule 58.01 provides a mechanism by which a party may obtain entry upon another party's property for purposes of discovery, it does not eliminate, displace,

¹ Motion, pg. 1, EFIS Item No. 260.

or condition the Commission's independent statutory and regulatory authority to investigate matters within the Commission's jurisdiction.

5. The tour was conducted in connection with the regulatory inspection activities of the Commission's Manufactured Housing Department. *** [REDACTED]

[REDACTED] ***.² Ms. Lange chose to attend to see what, if any, information from the tour would be helpful for the Commission in deciding this case. The fact that Ms. Lange considered information obtained from the site visit while preparing direct testimony does not transform the tour into a Rule 58.01 discovery request.

6. Equally important is that the property toured did not belong to EMM; the property belonged to a customer of EMM. EMM therefore seeks to impose restrictions on the Commission's regulatory authority by, in essence, requiring EMM to be provided notice prior to any Commission visit of a customer's property, and a chance to contest the Commission from visiting its customers.

7. Even assuming that the Commission determines that some aspects of Staff's conduct implicate Rule 58.01, EMM has not demonstrated a basis for the extraordinary relief requested of striking Ms. Lange's testimony. Any legitimate concerns regarding foundation, reliability, hearsay, or the weight to be afforded Ms. Lange's testimony can be addressed through discovery, cross-examination, rebuttal evidence, and, where appropriate, specific objections to particular evidence. As noted on pg. 1, footnote 2 of the Motion, EMM exercised its rights to discovery regarding the visit, and Staff responded in full on August 4, 2026.³

² See Attachment A, *** [REDACTED] ***.

³ See Attachment B, Staff Response to EMM DR 488.

Rebuttal testimony was ultimately filed on August 11, 2026, and EMM filed testimony responsive to that of Ms. Lange.⁴ In addition, the discovery cut-off in this case is not until September 23, 2026. EMM still has ample opportunity to request further discovery if it so wishes.

I. Rule 58.01 Does Not Displace the Commission's Independent Regulatory Authority

8. EMM's primary argument is that Staff "circumvented" Rule 58.01 by obtaining access to a party's property without first serving a request for entry.⁵ This argument assumes that the Commission's inspection must be characterized as discovery; that assumption is incorrect.

9. Rule 58.01(a) states that "[a]ny party may serve on any other party" a request to permit entry upon designated land or other property for specified inspection purposes. The rule establishes a discovery avenue available to litigants; it does not state that governmental regulators may exercise no independent authority concerning property relevant to matters within the regulator's jurisdiction. Further, Rule 58.01(a) is not a requirement; it is an optional process under the rule for litigants to take advantage of when there is a discovery dispute. Any lack of notice prescribed under Rule 58.01(a) is not by itself a violation.

10. The Commission possesses broad statutory authority to investigate and supervise the operations of electrical corporations and matters within its jurisdiction. Section 393.140, RSMo., grants the Commission general supervision over electrical corporations and their electric plants and gives the Commission authority to conduct

⁴ See the Rebuttal Testimony of Bradley D. Lutz, beginning at page 32; Case No. ER-2026-0143, EFIS Item No. 190.

⁵ Motion, pg. 2.

examinations and investigations and to obtain information necessary to carry out its regulatory responsibilities.

11. Nothing within Commission Rule 20 CSR 4240-2.090 repeals, limits, or conditions those statutory powers of the Commission; it simply provides procedures for discovery. It does not purport to define the full scope of the Commission's statutory investigative authority, and the Commission should not interpret its discovery rules to impose such an extreme condition absent clear language requiring it.

II. The Fact That the Property Owner is a Party Does Not Require Exclusion of Ms. Lange's Testimony

12. Staff recognizes that the property owner being a party makes Rule 58.01 relevant to EMM's argument. But that fact alone does not resolve the issue in EMM's favor.

13. The question is not whether a party could have used Rule 58.01 to seek entry upon the party; the question is instead whether Rule 58.01 prohibits the Commission and its Staff, acting pursuant to its statutory authority, from conducting an authorized regulatory inspection because the property owner is also a party to a contested case, or accepting an invitation to visit a customer site for the purposes of a tour. EMM identifies no such prohibition in its Motion.

14. The distinction between party discovery and the situation at hand here is important because the inspection and site visit were not undertaken by EMM, Staff, or another party pursuant to a discovery request. The inspection was undertaken as part of the Commission's regulatory responsibilities, and *** [REDACTED]

[REDACTED] ***.⁶ The subsequent use of information obtained during that

⁶ See Attachment B.

tour in Ms. Lange's testimony does not retroactively convert the inspection and site visit into a Rule 58.01 matter. Nor does Rule 58.01 contain a provision stating that information obtained through an independent regulatory investigation or site visit becomes inadmissible merely because a party later uses that information in a contested case.

15. At most, EMM has identified a dispute regarding how Staff obtained the information in Ms. Lange's direct testimony. That does not establish that the resulting testimony is inadmissible.

III. EMM Has Not Shown How it was Prejudiced by the Testimony

16. Despite EMM not owning the property at the center of this dispute, EMM nevertheless requests the Commission impose the most severe evidentiary consequence available based upon an alleged violation of procedural protection that does not affect EMM.

17. EMM has not demonstrated why such a severe consequence is necessary to protect its interests in this case, nor has EMM established that it lacked an opportunity to investigate the circumstances of the inspection and the information Ms. Lange relied upon for her testimony. As stated earlier, EMM requested discovery regarding the visit, and Staff responded in full.

18. Whatever surprise may have existed at the time Ms. Lange's direct testimony was filed on June 14, 2026, EMM has since been provided an opportunity to investigate the circumstances and the information Ms. Lange relied upon for her testimony. The absence of any demonstrated prejudice weighs strongly against the extraordinary relief EMM is seeking.

IV. EMM's Argument Does Not Establish Ms. Lange's Testimony is Inadmissible

19. EMM argues that Staff could have obtained the information at the center of the Motion through a data request or Rule 58.01 inspection.⁷ While true, the availability of another method for obtaining information does not establish that information obtained through an independent regulatory action is inadmissible.

20. Discovery rules govern procedures by which parties may obtain information from one another. The rules do not exclude information obtained by the Commission in the course of its regulatory duties. EMM fails to identify any Commission order directing Staff to use a particular discovery mechanism before obtaining information concerning a customer of a utility.

21. The Commission should decline EMM's request to create an exclusionary rule that does not appear in the Commission's own rules or governing statutes.

V. Section 490.065, RSMo. Does Not Require Striking Ms. Lange's Testimony

22. EMM argues that Ms. Lange's opinions are based upon facts and data that fail to satisfy § 490.065.1(3), RSMo.⁸

23. Section 490.065.1(3), RSMo., provides that, in proceedings covered by subsection 1, the facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing and must be of a type reasonably relied upon by experts in the field and otherwise reasonably reliable.

⁷ Motion, pg. 5.

⁸ *Id.*, pg. 5-7.

24. The statute does not categorically prohibit an expert from relying upon information obtained orally, information observed personally, or information obtained during an inspection.

25. The relevant questions are (1) whether the information is of a type reasonably relied upon by experts, and (2) whether the information is otherwise reasonably reliable. These questions are not resolved by simply labeling the information an unrecorded oral statement or by highlighting that Ms. Lange did not take photographs or record every observation made during the inspection. The absence of photographs and/or recordings does not establish that a witness' personal observation is inherently unreliable. Further, *** [REDACTED] ***.

26. If this matter goes to hearing, Ms. Lange will be available to testify to what she personally observed. She may also explain how she considered the information learned from the site visit in her testimony. The weight and reliability of the information she relied upon can be tested through cross-examination during the evidentiary hearing. During the evidentiary hearing, EMM is free to question Ms. Lange concerning the duration and circumstances of the site visit, what she observed, what she was told, who provided information, whether she independently verified the information, and how she incorporated that information into her analysis. This is the appropriate path for EMM to take, not the extraordinary relief of striking Ms. Lange's testimony.

VI. The Commission is Not Bound by the Technical Rules of Evidence

27. EMM also argues that statements made to Ms. Lange by employees or representatives of *** [REDACTED] *** during the tour are hearsay.⁹

28. Section 490.065, RSMo. recognizes that experts may rely upon facts or data made known to them or personally observed by them when the applicable statutory requirements are satisfied. Whether a particular statement was reasonably relied upon, whether it was reliable, and whether Ms. Lange's resulting opinion is sufficiently supported are fact-specific questions best determined by the Commission following an evidentiary hearing.

29. Further, § 386.410.1, RSMo., is very clear in stating that "in all investigations, inquiries or hearings the commission or commissioner shall not be bound by the technical rules of evidence." This includes the rules excluding hearsay.

30. The Commission has held in response to past motions to strike that Staff receiving information from utility customers is an important part of its regulatory functions.¹⁰ In addition, once the customer information has been provided to the utility, the utility may respond in testimony however it wishes.¹¹

31. In short, the Commission should disregard EMM's argument to strike based on the information being inadmissible hearsay, because the Commission is not bound by the technical rules of evidence excluding hearsay, and EMM has been provided and taken the opportunity to respond to the information in its rebuttal testimony.

⁹ Motion, pg. 7-8.

¹⁰ Case No. EO-2023-0136, Order Regarding Motion to Strike, pg. 2, EFIS Item No. 89.

¹¹ *Id.*

VII. EMM Has Not Established a Basis for the Requested Relief

32. Even if the Commission were to conclude that Staff should have proceeded under Rule 58.01 before moving forward with the inspection, EMM has not established that striking Ms. Lange's direct testimony is an appropriate remedy.

33. EMM's requested remedy is not directed at discovery, but substantive testimony. However, EMM has not established that Staff violated a Commission order. EMM has not established that it was denied discovery concerning the inspection. EMM has not established that it lacks an opportunity to cross-examine Ms. Lange on her observations. And EMM has not established that it cannot present evidence from other witnesses concerning the factual matters addressed in Ms. Lange's testimony.

34. Under these circumstances, striking Ms. Lange's testimony is disproportionate to any procedural concern identified by EMM. EMM is free to cross-examine Ms. Lange at the evidentiary hearing and present any evidence that may refute Ms. Lange's observations from the inspection.

VIII. Conclusion

35. EMM's Motion rests upon an overbroad characterization of Rule 58.01 and an equally overbroad view of the appropriate remedy.

36. Rule 58.01 provides a procedure through which a party may obtain entry upon another party's property for discovery purposes. It does not establish that Commission Staff must use that procedure whenever Staff participates in a regulatory inspection or site visit that later produces information relevant to a contested case.

37. Under § 393.140, RSMo., the Commission possesses independent statutory authority to investigate matters within its jurisdiction, and Staff's participation in

Commission regulatory activities does not cease to be regulatory merely because information obtained during those activities may later be relevant to a pending rate case.

38. Per § 386.410, RSMo., the Commission is not bound by the technical rules of evidence, including the exclusion of hearsay. In fact, Staff receiving information from utility customers is an important part of the Commission's regulatory functions.

39. EMM has therefore failed to establish a basis for striking or excluding the challenged portions of Ms. Lange's testimony.

WHEREFORE, Staff respectfully requests that the Commission deny EMM's *Motion to Strike Portions of the Direct Testimony of Sarah L.K. Lange* in its entirety and grant any such other and further relief as the Commission deems just and reasonable.

Respectfully submitted,

/s/ Tracy D. Johnson

Tracy D. Johnson

Deputy Counsel

Missouri Bar No. 65991

Travis J. Pringle

Chief Deputy Counsel

Missouri Bar No. 71128

Attorneys for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Mo 65102-0360
(573) 526-5343 (Telephone)
(573) 526-1500 (Facsimile)
(Email) tracy.johnson@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 21st day of September 2026.

/s/ Tracy D. Johnson

ATTACHMENT A

AND

ATTACHMENT B

HAVE BEEN DEEMED

HIGHLY CONFIDENTIAL

IN THEIR ENTIRETY