

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

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

COMES NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“EMM”) and replies to the Staff Response to Evergy Missouri Metro’s Motion to Strike filed September 21, 2026 (the “Staff Response”), which opposes EMM’s Motion to Strike Portions of the Direct Testimony of Staff Witness Sarah Lange (the “Motion”), and states as follows:

1. The Staff Response concedes the facts on which the Motion rests. Ms. Lange, according to Staff, “chose to attend to see what, if any, information from the tour would be helpful for the Commission in deciding this case.”¹ Staff describes the visit in part as “accepting an invitation to visit a customer site for the purposes of a tour,”² and it acknowledges that the property owner’s status as a party “makes Rule 58.01 relevant.”³ Staff also agrees that it could have obtained the same information through a data request or a Rule 58.01 inspection, adding only that the availability of those methods does not make the information inadmissible.⁴ And nowhere does Staff dispute that no other party received notice of the tour or that no photographs or recordings of it exist.⁵

¹ Staff Response ¶ 5.

² Id. ¶ 13.

³ Id. ¶ 12.

⁴ Id. ¶ 19.

⁵ See id. ¶¶ 6, 25.

2. Staff recasts the Motion as an effort to “impose restrictions on the Commission’s regulatory authority.”⁶ This sidesteps the narrow question the Motion presents — namely, whether a witness in a contested case may develop her testimony on a party’s premises without notice to the other parties. Staff relies on Section 393.140, which by Staff’s own description grants the Commission supervision “over electrical corporations and their electric plants.”⁷ But the facility Ms. Lange toured is neither an electrical corporation nor an electric plant. Rather, it “belonged to a customer of EMM.”⁸ And by Staff’s own account, the visit occurred “in connection with the regulatory inspection activities of the Commission’s Manufactured Housing Department.”⁹ Whatever authority brought those inspectors onto the property, Staff identifies none that authorized a witness in *this* case to gather evidence under the auspices of *that* matter.

3. Staff’s description of the visit as an accepted invitation brings it within the access Rule 58.01 governs. When one party invites another party’s witness onto its property and the witness uses what she observes and hears there as evidence in the pending case, the arrangement is access to a party’s property of the kind Rule 58.01 conditions on notice to every party.¹⁰ That an inspection by other Commission personnel took place at the same time does not change who received the information or the use to which it was put. Under Staff’s reading, a Staff witness could gather evidence on any party’s premises, without notice to anyone, whenever another Commission department had reason to be there.¹¹ Rule 58.01 would then bind every party to this case except the one with access to the Commission’s own inspections.

⁶ Id. ¶ 6.

⁷ Id. ¶ 10.

⁸ Id. ¶ 6.

⁹ Id. ¶ 5.

¹⁰ See Mo. R. Civ. P. 58.01.

¹¹ See Staff Response ¶ 36.

4. Staff quotes only the first sentence of 20 CSR 4240-2.090(1)¹² and argues that EMM asks the Commission “to create an exclusionary rule that does not appear in the Commission’s own rules.”¹³ But the next sentence of the subsection supplies the rule: “Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure.”¹⁴ Those sanctions include an order prohibiting a party from introducing designated matters in evidence.¹⁵ And because the subsection is disjunctive, abuse of the discovery process supports that relief whether or not a Commission order was violated.¹⁶

5. Staff agrees that the facts or data underlying an expert opinion “must be of a type reasonably relied upon by experts in the field and otherwise reasonably reliable.”¹⁷ It then defers the first of those requirements to the hearing without answering it.¹⁸ Nothing in its Response shows that experts in Ms. Lange’s field rely on unrecorded statements made by a customer’s personnel during an unnoticed tour.

6. Staff does not dispute that the statements Ms. Lange relays are hearsay, and it argues that Section 386.410.1 relieves the Commission of “the rules excluding hearsay.”¹⁹ Not so. While Section 386.410.1 frees the Commission from the “technical rules of evidence,” it does not permit the Commission to rest a decision on hearsay. The Missouri Supreme Court has long drawn that line: “[a]lthough technical rules of evidence are not controlling in administrative hearings,

¹² Id. ¶ 3.

¹³ Id. ¶ 21.

¹⁴ 20 CSR 4240-2.090(1).

¹⁵ See Mo. R. Civ. P. 61.01(d).

¹⁶ See Staff Response ¶ 33.

¹⁷ Id. ¶ 23.

¹⁸ Id. ¶¶ 25, 28.

¹⁹ Id. ¶ 29.

fundamental rules of evidence are applicable.”²⁰ That relaxation permits “leading questions and other informalities” without “abrogat[ing] the fundamental rules of evidence.”²¹ The Commission’s own rules reflect the same principle. Its evidence rule “prescribes the rules of evidence in any hearing before the commission,” supplements Section 536.070, and directs the presiding officer to “rule on the admissibility of all evidence.”²² Staff’s reading of Section 386.410.1 would leave that direction with no rule to apply when a party objects to hearsay. In Marco Sales, the Western District upheld the invalidation of a Commission order approving a surcharge tariff because the order’s linchpin finding rested on a utility witness’s conclusion about how customer equipment operates, which the witness had reached “absent making any ‘independent studies’” and “on the basis of some ‘ads’ he had read and what others had told him.”²³ The court held that “[c]ases are legion that hearsay evidence does not rise to the level of ‘competent and substantial evidence’”²⁴ The Labadie order cited in the Motion applies the same rule, and relies on Marco Sales to do so.

7. Ms. Lange’s opinion about how the property owner’s equipment will operate rests on the same kind of foundation — namely what she was told during the tour. Cross-examination of Ms. Lange can reach only her recollection of what she was told, and the persons who told her cannot be cross-examined by any party, which the Commission has called “[t]he problem with hearsay.”²⁵ And it is not surprising that the Staff Response never mentions Labadie or Marco Sales. Both hold that hearsay cannot supply the competent and substantial evidence a Commission

²⁰ State Bd. of Registration for the Healing Arts v. McDonagh, 123 S.W.3d 146, 154 (Mo. banc 2003) (quoting Mo. Church of Scientology v. State Tax Comm’n, 560 S.W.2d 837, 839 (Mo. banc 1977)).

²¹ Id. (quoting State ex rel. De Weese v. Morris, 221 S.W.2d 206, 209 (Mo. 1949)).

²² 20 CSR 4240-2.130 (purpose), (1), (3).

²³ State ex rel. Marco Sales, Inc. v. Pub. Serv. Comm’n, 685 S.W.2d 216, 220 (Mo. App. W.D. 1984).

²⁴ Id.

²⁵ Order Regarding Objections and Motion to Strike, p. 2, In re: Union Electric Co. d/b/a Ameren Missouri (Labadie Energy Center), No. EA-2012-0281 (Aug. 28, 2013).

decision requires, and Staff offers no ground on which to distinguish either. While Labadie recognizes that an expert may rely on hearsay when a proper foundation is laid, it declined to apply that exception because no foundation had been laid.²⁶ Similarly, Staff has laid none here.

WHEREFORE, Evergy Metro, Inc. d/b/a Evergy Missouri Metro respectfully requests that the Commission grant its Motion to Strike Portions of the Direct Testimony of Staff Witness Sarah Lange and grant such other and further relief as the Commission deems just and reasonable.

Respectfully submitted,

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²⁶ Id. at p. 4.

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 22nd day of September 2026.

/s/ Roger W. Steiner

Roger W. Steiner