

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

**EVERGY MISSOURI METRO'S MOTION TO STRIKE PORTIONS OF THE
SURREBUTTAL TESTIMONY OF PUBLIC COUNSEL WITNESSES
DAVID C. SHAPLEY AND PAUL J. ALVAREZ
AND MOTION FOR EXPEDITED TREATMENT**

COMES NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("EMM" or the "Company"), pursuant to Mo. R. Civ. P. 55.27(e) and 20 CSR 4240-2.130(7), moves to strike the portions of the surrebuttal testimony of Office of the Public Counsel ("OPC") witnesses David C. Shapley and Paul J. Alvarez identified in Appendix A, which present for the first time in this case approximately \$87.8 million in transmission cost disallowances that belong to OPC's case-in-chief. In the alternative, EMM requests an order under 20 CSR 4240-2.130(10) granting the Company leave to file testimony responsive to that material. EMM further requests expedited treatment of this motion under 20 CSR 4240-2.080(14). In support of this motion, EMM states as follows:

1. Commission Rule 20 CSR 4240-2.130(7) defines the content of each round of prefiled testimony:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony; . . .

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.¹

2. EMM filed this case on February 6, 2026, and the Commission established the procedural schedule by order issued March 18, 2026. That schedule set Staff and intervenor direct testimony on revenue requirement for June 30, 2026, rebuttal testimony for August 11, 2026, and surrebuttal and true-up direct testimony for September 10, 2026. Discovery closes on September 23, 2026, and the evidentiary hearing begins on October 5, 2026.²

3. OPC filed the direct testimony of Mr. Shapley and Mr. Alvarez on June 30, 2026. Mr. Shapley recommended disallowances totaling \$51.230 million, consisting of \$21.806 million for lateral rebuild projects and \$29.424 million for substation projects, and every project he addressed was a distribution project.³ Mr. Alvarez endorsed those same disallowances and recommended that the Commission require discretionary capital investments to pass a risk-informed benefit-cost analysis.⁴ Neither witness addressed a transmission project, and neither recommended a transmission disallowance of any kind.

4. Mr. Alvarez stated the purpose of his direct testimony as “to present the results of my examination of the reasonableness of EMM’s transmission and distribution infrastructure spending since the Company’s last rate case, and to provide recommendations to the Commission regarding EMM capital spending governance.”⁵ Transmission spending was therefore within the announced scope of OPC’s direct case, and OPC nevertheless asserted and explained no transmission adjustment in that round.

¹ 20 CSR 4240-2.130(7).

² See Order Setting Procedural Schedule and Directing the Filing of Dates for Local Public Hearings, In re: Evergy Metro, Inc. d/b/a Evergy Missouri Metro, No. ER-2026-0143 (Mar. 18, 2026).

³ Shapley Direct at p. 2.

⁴ Alvarez Direct at p. 20, ll. 3–20.

⁵ Alvarez Direct at p. 3, ll. 2–5.

5. Each witness closed his direct testimony by purporting to reserve a right to supplement it later. Mr. Shapley stated that “Mr. Alvarez’s and my review of the Company’s transmission, distribution and other plant capex projects is ongoing” and that he “thus reserve[d] the opportunity to append this testimony as necessary and appropriate.”⁶ Mr. Alvarez used substantially the same language.⁷ Commission Rule 20 CSR 4240-2.130(10) provides that no party “shall be permitted to supplement prefiled prepared direct, rebuttal, or surrebuttal testimony unless ordered by the presiding officer or the commission,”⁸ and OPC has never sought such an order.

6. Neither Mr. Shapley nor Mr. Alvarez filed rebuttal testimony on August 11, 2026.

7. OPC filed the surrebuttal testimony of both witnesses on September 10, 2026. Section I of each surrebuttal is an introduction, and Sections II through V are titled for the EMM rebuttal witnesses to whom they respond, namely Mr. Mulvany, Mr. Alexander, Mr. Rietcheck, and Mr. DeStigter. Section VI of each surrebuttal is not. Mr. Shapley’s Section VI, titled “Transmission Spending Disallowances,” recommends disallowances for four transmission projects totaling \$73.110 million, none of which either witness had previously addressed in this case.⁹

8. Mr. Alvarez’s Section VI is directed to a single large load customer of another Evergy utility. He recommends that the Commission disallow half of the transmission plant cost allocated to EMM for facilities Evergy Kansas Central constructed to serve the new Panasonic plant in Evergy Kansas Central’s service area, on the ground that Evergy Kansas Central collected no contribution in aid of construction from that customer and should have. He further recommends that the Commission eliminate the contribution-in-aid-of-construction transmission cost

⁶ Shapley Direct at p. 25, ll. 7–13.

⁷ Alvarez Direct at p. 21, ll. 22–25.

⁸ 20 CSR 4240-2.130(10).

⁹ Shapley Surrebuttal at p. 27, l. 13 through p. 33, l. 20.

exemption from utility large load tariffs, both in this proceeding and in future rate cases.¹⁰ Neither recommendation appears in his direct testimony, which addressed the governance of distribution capital spending and recommended no adjustment concerning any large load customer and no change to any tariff.¹¹ The second recommendation is a request for affirmative relief, because it asks the Commission to alter a tariff provision, and a request for affirmative relief belongs to a party's case-in-chief rather than to a response to another party's rebuttal. Each witness then endorses the other's new recommendation, and the total disallowance OPC asks the Commission to order has accordingly risen from \$51.230 million in direct testimony to \$130.426 million in surrebuttal.

9. Mr. Shapley describes this material in his own words as an addition to his direct case rather than a response to anything: "In addition, I provide updating testimony regarding the Company's Transmission spending since the last rate case, as related data request responses were still outstanding when I submitted Direct Testimony."¹² But testimony that updates a witness's direct case is direct testimony — however it is captioned — and the Commission's rule permits it to be filed only in the round the rule assigns to it. Mr. Alvarez likewise testifies that "I update my direct testimony regarding the Company's Transmission spending since the last rate case," and that the related responses "were not received in time to update in Rebuttal Testimony either,"¹³ though neither witness filed rebuttal testimony. Mr. Alvarez nonetheless refers five times to Mr. Shapley's "Rebuttal Testimony,"¹⁴ which does not exist, and Mr. Shapley states his transmission disallowances as "\$71.1 million" in his introduction but as \$73.110 million in his summary table

¹⁰ Alvarez Surrebuttal at p. 28, l. 1 through p. 32, l. 17. The disallowance recommendation appears at p. 32, ll. 9–11, and the tariff recommendation at p. 32, ll. 15–17.

¹¹ See Alvarez Direct at p. 20, ll. 3–20.

¹² Shapley Surrebuttal at p. 1, ll. 12–14.

¹³ Alvarez Surrebuttal at p. 1, ll. 13–16.

¹⁴ Alvarez Surrebuttal at p. 2, l. 4; Id. at p. 7, ll. 5–6; Id. at p. 13, ll. 10–11; Id. at p. 18, l. 1; Id. at p. 33, l. 9.

and \$73.1 million in his conclusion.¹⁵ Whatever uncertainty surrounds the round of testimony in which this material should have belonged is of OPC's own making.

10. The Commission has denied relief on precisely these facts. In Kansas City Power & Light Company's 2014 rate case, the Commission found that "[i]n surrebuttal testimony, KCPL requested for the first time" that \$3.5 million of estimated annual expense be added to its revenue requirement.¹⁶ The Commission held: "Since this request was first submitted in surrebuttal testimony, it violates Commission Rule 4 CSR 240-2.130(7)(A), which requires that '[d]irect testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief'. By submitting the request for the first time in surrebuttal, KCPL has prevented other parties from having a sufficient opportunity to conduct discovery or provide testimony on that matter."¹⁷ The Commission denied the request.¹⁸ The same rule and the same reasoning govern OPC's transmission disallowances here. They reach Mr. Alvarez's tariff recommendation more directly still, because a request that the Commission amend a tariff is a request for affirmative relief, and the request the Commission denied in 2015 was likewise a request for affirmative relief first made in surrebuttal.

11. The Commission has likewise held that the definitions in Rule 2.130(7) are mandatory, and that prefiled testimony is classified by what it responds to rather than by the label the filing party places on it. In granting a motion to strike portions of a Public Counsel witness's direct testimony that responded to the company's direct case, the Commission observed that "[s]hall" signifies a mandate and means 'must' in the present tense," and concluded that the

¹⁵ Compare Shapley Surrebuttal at p. 1, ll. 18–19, with Id. at p. 2 and p. 34, l. 4.

¹⁶ Report and Order, p. 58, In re: Kansas City Power & Light Co., No. ER-2014-0370 (Sept. 2, 2015).

¹⁷ Id. at p. 59.

¹⁸ Id.

disputed testimony was rebuttal.¹⁹ The Commission further explained that the sequence the rule establishes “gives any witness the last word on their own evidence,” and that a party who files a round out of sequence deprives the opposing party of that protection.²⁰

12. The prejudice to EMM is the prejudice the Commission identified in 2015, and it is more acute here. EMM bears the burden of proving that its proposed rates are just and reasonable,²¹ and OPC’s transmission disallowances arrived in the last round of prefiled testimony, thirteen days before the close of discovery and twenty-five days before the hearing. No round of testimony remains in which the Company may answer them, no party has had an opportunity to conduct discovery on them, and OPC has secured the final written word on an \$87.8 million element of its own case-in-chief. Every party to a contested case has the statutory right “to rebut the evidence against him or her,”²² and OPC’s timing leaves the Company no means of exercising that right here without an order of the Commission. Had OPC presented this material in direct testimony, as the rule requires, EMM would have answered it in rebuttal and OPC could have replied in surrebuttal, which is the sequence the rule prescribes.

13. The timing OPC invokes is of OPC’s own making. OPC served Data Request 5000 on April 21, 2026, requesting a schedule of every transmission project and program placed in service between June 30, 2021, and June 30, 2025, in excess of \$250,000, together with in-service dates, capital amounts, project descriptions, investment categories, and the approved capital spending authorization for each. The Company’s response was due twenty calendar days later

¹⁹ Order Granting Motion to Strike, p. 2, In re: KCP&L Greater Missouri Operations Co., No. ER-2016-0156 (July 26, 2016).

²⁰ Id. at p. 3.

²¹ Mo. Rev. Stat. § 393.150.2.

²² Mo. Rev. Stat. § 536.070(2).

under the schedule then in effect,²³ seven weeks before OPC’s direct testimony was filed, and Mr. Alvarez cited that response in his direct testimony.²⁴ OPC subsequently characterized the same response as identifying “approximately 25 different transmission projects placed into service from June 30, 2021 through June 30, 2025 costing \$320 million.”²⁵ OPC nevertheless served no project-specific transmission data request until July 27, 2026, four weeks after its direct testimony was filed and eleven business days before rebuttal testimony was due, when it served Data Requests 5031 through 5054, a set comprising more than 120 discrete specifications.²⁶ The response period the procedural schedule prescribes for data requests served after July 14, 2026 is ten business days,²⁷ so that OPC selected a service date under which a fully timely response would have reached it one day before its own rebuttal testimony was due. On July 29, 2026, two business days after service and within the period the schedule allows for such notice, the Company advised OPC that it would complete Data Requests 5031, 5032, and 5049 on schedule, that it could not meet the deadline for the remainder, and that it was requesting until August 20, 2026, to respond to them.²⁸ OPC neither responded to that notice nor objected to it. The Company served its responses to Data Requests 5031 and 5032 on August 6, 2026, within the period the schedule allowed, and its responses to the remaining requests, including Data Request 5049, on August 20, 2026.²⁹

14. OPC had, moreover, the procedural means to address any deficiency it perceived in the Company’s responses, including the informal resolution procedures and the discovery

²³ Order Setting Procedural Schedule, supra note 2, ¶ 3(I)(iv); see also Shapley Direct at p. 25, ll. 9–11 (identifying a transmission data request “submitted to EMM on April 21”); Attachment 3, Verification of Cole Bailey (“Bailey Verification”) ¶ 3 & Ex. A.

²⁴ Alvarez Direct at p. 10 n.18.

²⁵ See Bailey Verification ¶ 4 & Ex. B (OPC Data Request 5031).

²⁶ Bailey Verification ¶ 4.

²⁷ Order Setting Procedural Schedule, supra note 2, ¶ 3(I)(iv).

²⁸ See Order Setting Procedural Schedule, supra note 2, ¶ 3(I)(iv); Bailey Verification ¶ 5 & Ex. C (E-mail from Cole Bailey, Evergy, to counsel for the Office of the Public Counsel (July 29, 2026)).

²⁹ Bailey Verification ¶¶ 6–7; see also Shapley Surrebuttal at p. 27 n.32; Alvarez Surrebuttal at p. 1 n.1.

conference the Commission's rules provide,³⁰ as well as a motion for leave to supplement direct testimony under Rule 2.130(10). OPC pursued none of them. The Commission directed that any party with a discovery disagreement or concern file a brief statement describing it not less than three business days before each scheduled discovery conference, and the schedule set such a conference for September 1, 2026, which followed both the Company's notice and its responses. OPC filed no statement identifying any concern with the Company's transmission responses.³¹ A party that declines the remedies the rules supply may not manufacture its own remedy in the final round of testimony.

15. If the Commission declines to strike the designated testimony, EMM requests in the alternative an order under 20 CSR 4240-2.130(10) granting the Company leave to file the surrebuttal testimony of Company witnesses Andrew Rietcheck and Buck Reuter, which respond to Section VI of each OPC surrebuttal and are attached to this motion as Attachments 1 and 2, in public and confidential versions, and providing that no party shall file further testimony in response to it. That alternative is the relief the Commission granted in the 2016 proceeding described above, where it granted the motion and permitted the company to address the disputed testimony in its next round of testimony. To the extent the Commission instead concludes that any portion of the OPC testimony constitutes true-up direct testimony, the true-up rebuttal testimony of Company witness Darrin Ives responds to it without conceding that characterization, and EMM requests an order confirming that testimony is properly before the Commission.

³⁰ See 20 CSR 4240-2.090(2)(H), (8); Order Setting Procedures for Discovery Conferences, pp. 1–2, In re: Evergy Metro, Inc. d/b/a Evergy Missouri Metro, No. ER-2026-0143 (Mar. 19, 2026).

³¹ Order Setting Procedures for Discovery Conferences, supra note 30, ¶ 2; Bailey Verification ¶ 8. Compare Order Canceling Discovery Conference, In re: Evergy Metro, Inc. d/b/a Evergy Missouri Metro, No. ER-2026-0143 (June 8, 2026) (canceling a scheduled conference because no party had identified a discovery concern).

16. EMM requests expedited treatment of this motion under 20 CSR 4240-2.080(14) and asks that the Commission rule on it on or before October 2, 2026, so that the scope of the record is settled before the evidentiary hearing begins on October 5, 2026.³² A ruling by that date will allow every party to prepare for the hearing knowing whether the designated testimony remains in the record and whether the Company's attached sur-surrebuttal testimony will be received, and it will avoid interrupting the hearing to resolve a dispute over the scope of the evidence. Expedited treatment will have no negative effect on EMM's customers or the general public, because it requires no change to the hearing dates or to the January 6, 2027, operation-of-law date.

17. OPC filed the designated testimony on September 10, 2026, and EMM filed this motion as soon as it reasonably could thereafter. The intervening period was required to review the material OPC presented for the first time in that filing, to confirm the discovery chronology described above, and to prepare the responsive testimony tendered with this motion.³³

WHEREFORE, Evergy Metro, Inc. d/b/a Evergy Missouri Metro respectfully requests that the Commission grant expedited treatment of this motion and, on or before October 2, 2026, issue an order striking the portions of the surrebuttal testimony of Office of the Public Counsel witnesses David C. Shapley and Paul J. Alvarez identified in Appendix A to this motion; in the alternative, granting the Company leave under 20 CSR 4240-2.130(10) to file the sur-surrebuttal testimony of Andrew Rietcheck and Buck Reuter attached as Attachments 1 and 2, and providing that no party shall file further testimony in response to it; to the extent the Commission concludes that any portion of the OPC testimony at issue constitutes true-up direct testimony, confirming that

³² Order Setting Procedural Schedule, supra note 2.

³³ Bailey Verification ¶ 9.

the Company's true-up rebuttal testimony responding to it is properly before the Commission; and granting such other and further relief as the Commission deems just and reasonable.

Respectfully submitted,

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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 23rd day of September 2026.

/s/ Roger W. Steiner

Roger W. Steiner

APPENDIX A

DESIGNATED PORTIONS OF THE SURREBUTTAL TESTIMONY OF DAVID C. SHAPLEY AND PAUL J. ALVAREZ

Testimony	Designation	Content
Shapley Surrebuttal	P. 27, l. 13 through p. 33, l. 20	Section VI, “Transmission Spending Disallowances,” in its entirety, including the recommended disallowances for the Wolf Creek, Leeds-Winchester, Brunswick-Carrollton, and Claycomo projects.
Shapley Surrebuttal	P. 1, ll. 12–14	Statement of purpose introducing the transmission material.
Shapley Surrebuttal	P. 2, summary of recommendations	Summary of recommendations, to the extent it states a disallowance amount that includes the transmission disallowances.
Shapley Surrebuttal	P. 34, ll. 6–9	Endorsement of the disallowance recommended in Alvarez Surrebuttal Section VI concerning facilities serving the new Panasonic plant.
Alvarez Surrebuttal	P. 28, l. 1 through p. 32, l. 17	Section VI in its entirety, comprising the recommended disallowance of half of the transmission plant cost allocated to EMM for facilities serving the new Panasonic plant (p. 32, ll. 9–11) and the recommendation that the Commission eliminate the contribution-in-aid-of-construction transmission cost exemption from utility large load tariffs (p. 32, ll. 15–17), each of which may be stricken independently of the other.
Alvarez Surrebuttal	P. 33, ll. 9–11	Endorsement of the disallowances recommended by Shapley, to the extent the endorsed amount includes the transmission disallowances.