

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Evergy
Metro, Inc., d/b/a Evergy Missouri Metro for
Permission and Approval of a Certificate of
Convenience and Necessity Authorizing It to
Construct, Install, Own, Operate, Manage,
Maintain, and Control a Natural Gas
Electrical Production Facility

Case No. EA-2026-0154

STATEMENT OF POSITIONS

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Statement of Positions*, states as follows:

1. On August 22, 2026, the Commission issued an *Order Setting Procedural Schedule* in the above styled case that ordered, among other things, a procedural schedule that included a date for the filing of “Position Statements” on October 14, 2026.

2. Pursuant to this order, the OPC files this *Statement of Positions*.

Positions of the OPC

Issue A: Does the evidence establish that the 440 megawatt (“MW”) simple-cycle gas turbine (“SCGT”) generating facility known as Mullin Creek #2, which will be located in Nodaway County, Missouri, (“Mullin Creek #2” or the “Project”) for which Evergy Missouri Metro is seeking a certificate of convenience and necessity (“CCN”) is “necessary or convenient for the public service” under Missouri Revised Statute § 393.170.3?

Position: The evidentiary record establishes that the Mullin Creek #2 project is only necessary or convenient for the public service to the extent that it is necessary for Evergy to be able to provide service to data center customers who either currently do take service,

or intend to take service, under the Large-Load Power Service (“LLPS”) tariff approved by this Commission for Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Metro” or “the Company”).

Issue A.1: What is the need for the Project that satisfies the first Tartan Factor?

Position: The only true need for the Project is to meet capacity obligations created by the addition of the aforementioned data center customers to Evergy Metro’s system. Evergy has stated that it is expecting a nearly 50% growth in peak capacity over the next ten years which it asserts “is driven in significant part by committed large-load customers, including data center customers[.]”¹ The Commission’s Staff and OPC, however, have presented evidence showing that, “[i]f the [data centers] located in [Evergy Metro]’s service territory were removed from Evergy Metro’s forecasted peak demands used in Evergy Metro’s capacity balance tables, [Evergy Metro] would have sufficient capacity without [Mullin Creek #2] for both the summer and winter planning sessions.”² Any other proffered justification for the Project is merely a pretext to hide its one true intent and purpose: to meet capacity obligations created by the addition of the aforementioned data center customers to Evergy Metro’s system.³

¹ EA-2025-0154, *Direct Testimony of Cody VandeVelde*, pg. 6 Ins. 9 – 14.

² EA-2025-0154, *Rebuttal Testimony of Trevor Rucker*, pg. 9 Ins. 20 to pg. 10 ln. 2.

³ See generally EA-2025-0154, *Rebuttal Testimony of Jordan Seaver*, pgs. 3 – 14.

Issue B: If yes to A, should the Commission condition the CCN on the LLPS customers funding the capital cost of the Project before construction begins?

Position: Yes. Doing so will dramatically reduce the overall capital costs borne by Evergy Metro’s Missouri ratepayers for the project.⁴ This is because “every dollar that’s spent under the socialized cost approach that Evergy and Ameren Missouri have taken in various CCN applications costs more than it needs to because the utilities want to use their capital to earn an inflated profit off of their investments.”⁵ Conditioning authorization of the CCN on the LLPS customers funding the capital cost of the Project before construction begins also considerably reduces the extraneous risk that will be otherwise borne by Evergy Metro’s non-LLPS customers because “the stranded asset risk disappears if the AI buildout fails to materialize as planned.”⁶ For these reasons, “Evergy Missouri Metro should not use its own capital when cheaper capital options exist in the hands of the cost causers.”⁷ The Commission should therefore impose a condition on the authorization of the CCN that requires the three identified LLPS customers to provide up-front funding for the capital cost of the Project before Evergy Missouri Metro begins construction.

⁴ EA-2025-0154, *Rebuttal Testimony of Geoff Marke*, pg. 17 Ins. 8 – 12 (“If a hyperscaler fronts the capital instead of a utility, the investment would be cheaper for ratepayers because the utility would not recover the additional premium/profit on top of the expense, as you would see with capital supported from an investor-owned utility.”)

⁵ *Id.* at pg. 18 Ins. 15 – 18.

⁶ *Id.* at pg. 18 ln. 25 – pg. 19 ln. 1.

⁷ *Id.* at pg. 18 Ins. 24 – 25.

Issue C: If yes to A, should the Commission condition the CCN on assigning all costs associated with the Project to the LLPS customers for rate making purposes?

Position: Yes. “This Commission repeatedly has stated in its decisions that cost causation is a touchstone of rate design.”⁸ Because “the large load customers are the cause of the need for the Mullin Creek #2 plant,” the Commission should condition the authorization of the CCN being sought in this case on “the costs of the project, including the requested Construction Work In Progress costs in the Evergy Missouri Metro rate case (Case No. ER-2026-0143), [being] allocated entirely to the large load customers causing said costs[.]”⁹ To do otherwise would not only violate the principle of cost causation, it would also contradict the direct guidance of multiple government entities including Missouri’s own Governor Mike Kehoe who issued an executive order specifically directing regulators “to ensure that the construction and operation of data centers and other large power users do not result in higher energy rates for residential and small business Missourians, in accordance with the principle that large users should cover their **full cost** of electricity **and infrastructure service** and, when appropriate, contribute to the further development of sustainable, dispatchable power generation.”¹⁰

⁸ EA-2025-0154, *Rebuttal Testimony of Jordan Seaver*, pg. 15 Ins. 10 – 11.

⁹ *Id.* at Ins. 4 – 9.

¹⁰ Exec. Order No. 26-02, (Mo. Gov. Kehoe), Vol 51 Mo. Reg. 293 (Jan 13, 2026) (emphasis added).

Issue D: Should the Commission determine under 20 CSR 4240-20.045(2)(C), as provided in paragraph 3 of the Agreement, that Evergy Missouri Metro’s decision to construct, acquire, own, operate, and seek a CCN for the Project in regards to the generation type (fuel type) is prudent?

Position: Absent the conditions outlined above in regards to issues B and C, no it should not. There is a tremendous amount of risk associated with the data center customers which are driving the need for the Project.¹¹ To highlight just how risky, please consider this single fact: According to a well-respected consulting firm, the “current and reasonably projected revenue streams only cover between \$1.2 to \$1.8 trillion of the \$6 trillion CAPEX projected investment levels, leaving an immense \$4.2 trillion revenue gap that must be filled by unknown and/or unproven technologies like robotics, autonomous vehicles, and advanced drug discovery.”¹² “This \$6 trillion revenue target is essentially a sustainment or break-even metric for the projected infrastructure rather than a high-return ROI scenario.”¹³ This is the risk factor behind the load for which the Project is being built, despite not all of that load even having fully materialized yet.¹⁴ To address these risks, the OPC has put forward its recommendations that would insulate customers from the possibility of these data center customers ceasing to operate in Missouri and the Mullin Creek #2 project becoming a stranded asset. Those recommendations are what have now been already discussed regarding issues B and C. Therefore, absent the condition’s outlined above, “decisional prudence should not be granted because the large load customers are not online yet, they pose a risk to all customers in the event that their load drops off or they

¹¹ See generally EA-2025-0154, *Rebuttal Testimony of Geoff Marke*, pgs. 4 – 16.

¹² EA-2025-0154, *Surrebuttal Testimony of Geoff Marke*, pg. 9 Ins. 9 – 14.

¹³ *Id.* (emphasis added).

¹⁴ EA-2025-0154, *Rebuttal Testimony of Jordan Seaver*, pg. 16 Ins. 17 – 20.

cannot cover costs anymore, and their needs for immediate and large amounts of new generation should not cause existing Evergy Missouri Metro customers' bills to be increased.”¹⁵

Issue E: What is the amount of construction work in progress that may be included in rate base under Missouri Revised Statute § 393.135.2?

Position: Missouri Revised Statute § 393.135.2 states, in part, that “[t]he commission shall determine, in a proceeding under section 393.170, the amount of construction work in progress that may be included in rate base.” It further states that the amount shall be limited by “[t]he estimated cost of the project[.]” Given these statutory provisions, the Commission should determine that the total amount of construction work in progress that may be included in rate base over the life of the Project should not exceed “[t]he current capital cost estimate for the Mullin Creek #2 project[.]” which Evergy Metro has calculated to be

_____.¹⁶

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission rule in the OPC’s favor on all issues addressed herein.

¹⁵ *Id.* at pg. 17 Ins. 17 – 21.

¹⁶ EA-2026-0154, *Direct Testimony of J Kyle Olson*, pg. 20 Ins. 12 – 13.

Respectfully submitted,

/s/ Nathan Williams

Nathan Williams
Chief Deputy Public Counsel
Missouri Bar No. 35512

Office of the Public Counsel
Post Office Box 2230
Jefferson City, MO 65102
(573) 526-4975 (Voice)
(573) 751-5562 (FAX)
Nathan.Williams@opc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this fourteenth day of October, 2026.

/s/ Nathan Williams