FILED
November 9, 2026
Missouri Public
Service Commission

Exhibit No. 213

OPC – Exhibit 213
Direct Testimony of John S. Riley
Case No. ER-2026-0143

Exhibit No.: _____
Issue(s): NOL Exclusions from Rate Base/
Asset Dispositions in Income Tax Calculations/
Sales Tax Allowances in the Revenue Calculations
Witness/Type of Exhibit: Riley/Direct
Sponsoring Party: Public Counsel
Case No.: ER-2026-0143

DIRECT TESTIMONY

OF

JOHN S. RILEY

Submitted on Behalf of the Office of the Public Counsel

EVERGY METRO, INC. D/B/A EVERGY MISSOURI METRO

CASE NO. ER-2026-0143

June 30, 2026

TABLE OF CONTENTS

Testimony	Page
Asset Sales/Abandonment Deduction in Tax Calculations	7
Sales Tax Discounts should be Included in Revenues	11

DIRECT TESTIMONY

OF

JOHN S. RILEY

EVERGY METRO, INC. d/b/a
EVERGY MISSOURI METRO

CASE NO. ER-2026-0143

Q. What is your name and what is your business address?

A. John S. Riley, PO Box 2230, Jefferson City, Missouri 65102.

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Office of the Public Counsel ("OPC") as a Utility Regulatory Manager.

Q. What is your educational background?

A. I earned a B.S. in Business Administration with a major in Accounting from Missouri State University.

Q. What is your professional work experience?

A. I was employed by the OPC from 1987 to 1990 as a Public Utility Accountant. In this capacity, I participated in rate cases and other regulatory proceedings before the Public Service Commission ("Commission"). From 1994 to 2000 I was employed as an auditor with the Missouri Department of Revenue. I was employed as an Accounting Specialist with the Office of the State Court Administrator until 2013. In 2013, I accepted a position as the Court Administrator for the 19th Judicial Circuit until April 2016 when I joined the OPC. My current position is Utility Regulatory Manager. I have also prepared income tax returns, at a local accounting firm, for individuals and small business from 2014 through 2017.

Q. Are you a Certified Public Accountant ("CPA") licensed in the State of Missouri?

A. Yes. As a CPA, I am required to continue my professional training by attending Missouri State Board of Accountancy qualified educational seminars and classes. The State Board of Accountancy requires that I spend a minimum of 40 hours a year in training that continues and updates my education in the field of accountancy.

Q. Have you previously filed testimony before the Missouri Public Service Commission?

A. Yes, I have. A listing of my case filings and certification is attached as JSR-D-1.

Q. What is the purpose of your direct testimony?

A. I will make recommendations to the Commission to reduce Evergy Missouri Metro's ("Metro" or "EEM" or "Company") proposed rate base for nonexistent excess deferred income tax assets and adjust the calculation of income tax expense to recognize the disposal of utility asset sales that are evident on the Company's annual consolidated federal income tax returns. I will also request that a sales tax remittance allowance be included in the Company's revenue calculations.

Q. What are the nonexistent excess deferred income tax assets you are recommending that the Commission exclude from EMM's rate base?

A. Parties to Kansas City Power & Light Company, the predecessor of Evergy Missouri Metro, general rate case, Case No. ER-2018-0145, created a non-unanimous stipulation and agreement where one of the agreed to terms was the amortization of excess deferred income taxes created by 2017 federal tax legislation known as the Tax Cuts and Job Act ("TCJA"). The specific Stipulation and Agreement provision is quoted below:

12. EXCESS ACCUMULATED DEFERED INCOME TAX ("EDIT")

AMORTIZATIONS: Amortization expense associated with the excess accumulated deferred income taxes will be recorded by the Company using the following periods[3]:

- Protected-ARAM
- Nonprotected-10 yr.
- NOL-ARAM
- Misc.- 10 yr.

The TCJA change in the income tax rate from 35% to 21% created the "Excess" deferred tax ("EDIT") balance. Accumulated deferred taxes were created and funded by ratepayers at an original rate of 35%. When the new, lower tax rate took effect, a gap was created between the old and new rate. Visualize an original taxpayer funded balance of $1000 X 35% = $350. With the reduced income tax rate the appropriate balance is recalculated to $1000 X 21% = $210.[1] Originally, the ratepayer funded $350. If the Commission did not recognize that the balance had been reduced by $140, the ratepayer would be denied recovery due to the income tax rate change. To allow customers recovery of the gap amount ($140 in my example), the orphaned deferred tax gap amount is placed in a regulatory liability account and amortized back to ratepayers over a period of time. The protected EDIT is amortized over ARAM.[2] Unprotected EDIT as well as the Miscellaneous

[1] Deferred tax is created by the timing difference in a tax depreciation and regulated straight-line depreciation. To cut corners I chose an arbitrary $1000 to illustrate depreciation difference.
[2] Protected EDIT is excess deferred tax created only by accelerated depreciation. Unprotected EDIT is deferred tax created by any method other than accelerated depreciation. ARAM (Average Rate Assumption Method)is an amortization period dictated by the IRS to prevent accelerated flowthrough to ratepayers of the income tax benefits of protected ADIT/EDIT. In short, the timeframe is the expected normal remaining life of the asset—usually 30-40 years.

deferred tax are recovered over a period determined by the Commission. In this instance both are being amortized over 10 years.

Q. What is a NOL and why is the NOL listed in the quote from the Stipulation and Agreement with an ARAM amortization period?

A. NOL is shorthand for net operating loss. The Company inserted that provision into the Stipulation and Agreement and no party contested it.

Q. Did OPC sign this Stipulation & Agreement?

A. No. It did not.

Q. Should the amortization expense associated with the excess accumulated deferred Income taxes include any NOL?

A. No. NOL is created when taxable income is negative for a tax period, and NOLs are used to offset taxable income in other tax periods. The IRS doesn't allow for the set allocation of a deferred tax asset over time, i.e., NOLs are not amortized. The TCJA changed the expiration by which an NOL must be used from 20 years to no time limit.

Q. Would you elaborate on the change in timeframe from 20 years to unlimited?

A. Congress had previously set the period in which a Net Operating Loss must be applied against taxable income to 20 years. That meant that if the NOL wasn't completely applied to taxable income (on a tax return) within 20 years, then the remaining deferred tax assets were extinguished. The TCJA has eliminated that restriction so an NOL can be carried into the future indefinitely to apply against taxable income.

Q. You argued in other Evergy entity rate cases that Evergy no longer has an NOL balance. Does it now?

A. No. Evergy, Inc., Evergy Missouri, Inc.'s ultimate parent applied the last of its regulatory NOL balance to taxable income in its 2020 consolidated group income tax returns. Even if the above quoted section of the Stipulation and Agreement were a proper treating NOLs, there is no NOL balance left to amortize.

Q. Why are protected and unprotected accumulated deferred taxes different than NOLs?

A. Protected and unprotected deferred taxes were funded by the ratepayer through rates. These current and orphaned taxes will be refunded back to the ratepayer over a period of time set by the IRS or a period of time that will prevent a financial hardship to the Company. NOL's are not ratepayer funded. Evergy Missouri Metro, Inc.'s NOL was created by income tax depreciation. Depreciation is a method for spreading the taxable benefits of capital investment over a period of time. If straight-line depreciation was applied instead of tax depreciation, then Evergy Missouri Metro, Inc. likely would not have had any NOLs. Again, ratepayers do not fund NOLs, in contrast to the ratepayer funding of accumulated deferred income tax liability balances.

Q. How did the TCJA change in income tax rates affect the NOL balance?

A. It didn't. Let's review what a net operating loss is. A net operating loss is the excess balance of allowable taxpayer deductions over and above the gross income for any given taxable period. This period would be the taxable period of the annual tax return. So, for example: If XYZ has $1,000 in gross revenues and $1,200 in expenses, then XYZ has a $200 net operating loss. In order to apply this to the financial records (balance sheet) of

the company, you will apply the tax rate to the loss balance. $200 * 35% = $70 (equivalent of negative taxes). XYZ will record a deferred tax asset of $70 on its balance sheet.

Q. What happens to the NOL deferred tax asset when the income tax rate changes?

A. It is recalculated. A $200 NOL multiplied by the new rate of 21% produces a deferred tax asset of $42. So the NOL deferred tax asset of $70 based on a 35% tax rate becomes $42 at the new 21% rate.

Q. So XYZ lost $28 of its NOL deferred tax asset?

A, No, although it appears that way. If you divide the $42 by the new 21% tax rate, the result is still a $200 NOL. XYZ hasn't lost any of the tax benefit of its NOLs. It still has the opportunity to apply the same $200 to future positive net taxable income. Stated differently, while they affect income tax liability, NOLs are applied to taxable income, not to income tax liability.

Q. Are there other reasons why NOL balances should not be amortized like the protected and unprotected excess deferred tax liabilities?

A. NOLs are not created by additional ratepayer funding that has to be returned. If you recall, ADIT is provided by ratepayer funding. It was calculated at a specific tax rate and ratepayers paid it in Evergy Missouri Metro, Inc.'s rates. Companies like to state that ADIT is a loan from the IRS, but it is actually funded by the ratepayers. When the "loan" is no longer in force, as in the case of excess deferred tax, then the excess portion is amortized and flowed back to ratepayers through the utility's rates. No one "funds" NOLs. NOLs occur when taxable income is negative. That normally happens due to accelerated

tax depreciation which creates a larger income tax depreciation expense during the earlier years of the life of an asset. No ratepayer cash is involved.

Q. Would you summarize the characteristics of an NOL and explain how those characteristics show why it is improper to amortize NOLs?

A. A net operating loss is not driven by a tax rate even though a tax rate is used to convert it for the balance sheet. Expenses exceeding gross revenues create NOLs. It doesn't matter if the income tax rate is 20% or 50%, the NOL is what it is. NOLs do not have expiration dates, and they do not shrink over time, although the overall NOL balance changes as NOLs accrue and as they are used to offset taxable income. Also, the IRS does not have language that allows the deferred NOL tax asset to be amortized. Finally, Evergy Missouri Metro, Inc.'s overall NOL balance is zero as it has been fully used to offset against taxable income, so including a fictitious Evergy Missouri Metro, Inc. NOL balance in rate base would be a double use of the asset.

ASSET SALES/ABANDONMENT DEDUCTION IN TAX CALCULATIONS

Q. Did you review Evergy sourced information for the income tax deduction impacts of assets Evergy Missouri Metro, Inc. that no longer are "used and useful"?

A. Yes. I focused on utility assets that were formally included in rate base for the purpose of calculating the Company's revenue requirement. These assets were either sold, traded in or scrapped completely, but all were disposed of as a loss on the Company's consolidated income tax return.

Q. How did you identify these assets?

A. The parent company lists all disposed assets on the income tax Form 4797 "Sale of Business Property." To narrow this asset list specifically to the Evergy Missouri Metro, Inc. subsidiary, I looked to Form 8886. This form further separates generation, distribution and transmission asset retirements listed on Form 4797 by the individual companies (subsidiaries). Form 8886 for 2024 separated retired generation and distribution assets for Evergy Metro, Inc., Evergy Missouri West, Inc. and Evergy Kansas Central, Inc.(Confidential Schedule JSR-D-02)

Q. Should these disposed assets offset Evergy Missouri Metro, Inc.'s income used to develop the revenue requirement used for setting Evergy Missouri Metro, Inc.'s rates in this case?

A. Yes.

Q. Why?

A. First off, Evergy is applying these losses to its taxable income on its annual consolidated income tax return and reducing its income tax liability every year. Why should ratepayers be denied these tax benefits? Second, these were utility assets that at one time were in rate base. Ratepayers have provided funding and a rate of return on these assets for years, but even more importantly, ratepayers have funded the deferred taxes (ADIT) associated with these assets.

Q. Why is the ADIT associated with these assets important?

A. Because when the asset is retired prematurely, that is, retired before its tax life is exhausted, the associated ADIT is lost. The "loan" is deleted from rate base[3] and the Company uses the remaining value of the asset as a write-off on its taxes. The Commission needs to recognize this and allow the deduction to offset Staff's calculation of net income and income tax liability.

Q. How do you propose to recognize this ADIT recovery?

A. I'm proposing that the retirements be annualized, and a levelized amount be included in the revenue requirement as an ongoing deduction.

Q. How would you calculate this levelized amount?

A. I have reviewed seven years of tax returns and tabulated the listed disposals specific to Missouri Metro or its predecessor Kansas City Power & Light and determined that Missouri Metro has disposed of a total of $233,776,815 in assets based on Form 8886. At a tax rate of 21%, that's a $49,093,131 reduction in Evergy Missouri Metro, Inc.'s tax liability. The average disposal balance for the seven years is $33,396,688. Applying an estimated 52% allocation factor would provide an average deduction to Staff's taxable income of $17,366,277. This figure, prior to gross-up, reduces income tax expenses by $4.1 million.

[3] The IRS dictates that when an asset is retired the accompanied ADIT should be removed from the financial records as well.

Q. Has the Commission applied this reasoning before?

A. Yes. In Ameren's Securitization case, Case No. EF-2024-0021, the Commission determined that the tax deduction for the early retirement of Rush Island should be recognized. I quote from the Amended Report & Order:

> **"This calculation of NPV of ADIT and excess ADIT does not include the Rush Island loss on its early retirement based on its accelerated depreciation net book value (approximately $108 million) to be recognized by Ameren Missouri in its 2024 tax returns.**
>
> **The reduction of income taxes resulting from that tax deduction is approximately $25.6 million and shall be applied against income taxes beginning in the first year that income taxes are included as ongoing financing costs in the Securitized Utility Tariff Charge until the reduction in income taxes resulting from the loss on the retirement of Rush Island has been fully applied."[4]**

Q. Would you summarize your position on the income tax expense ramifications of the final disposition of rate base assets?

A. Rate base assets that have been disposed of and used by the Company to lower its tax liability should be recognized by a reduction to the income tax expense included in the revenue requirement used for setting general rates. These tax benefits should flow through to ratepayers on an annualized basis.

[4] Case No. EF-2024-0021, Amended Report and Order Financing Order V2, Page 78, lines 1-8

SALES TAX DISCOUNTS SHOULD BE INCLUDED IN REVENUES

Q. What do you mean when you use the term "sales tax discount"?

A. The Missouri Department of Revenue ("The Department") compels all companies, that sell sales tax eligible goods and services, within the State of Missouri, to charge and collect the proper sales tax for these transactions. The Department requires the submission of these collected sales tax to the State monthly. In order to induce these companies to pay these collected sales tax amounts in a timely manner, the Department allows vendors to retain 2% of the total amount collected if, in fact, the taxes are submitted to the State prior to when they are due.[5]

Q. Does Evergy Missouri Metro collect and remit sales taxes to the State of Missouri in a timely manner?

A. Yes. Every sales tax return that I reviewed was remitted each month, on time, and the Company retained a 2% timely pay allowance with each return.

Q. Briefly, what is your opinion as to how this sales tax discount should be treated for ratemaking purposes?

A. I requested copies of the monthly Missouri Form 53-1 sales tax returns from the Company and included them as Confidential JSR-D-03. I also included the Company's taxes paid workpaper that lists the sales tax payments in column C & D. Since the Company has

[5] Due to the large amount of sales tax Evergy collects each month, the Department requires the Company to remit quarter-monthly payments. It is my understanding that some company's collections are so sporadic that only quarterly or annual submissions are required. My discussion focuses on Evergy's monthly sales tax returns.

marked the actual sales tax return as Confidential, we can work through a fictitious return to demonstrate the revenue stream. Company collects $2,000,000 in sales tax from its ratepayers. 2% is subtracted from this total - $40,000. Because EMM collects such a large amount of sales tax each month, the Department of Revenue requires the Company to send in a $885,400 quarter monthly payment regardless of the total amount of tax collected. In this example there is $2,000,000 collected, 2% is a $40,000 deduction with $885,400 paid during the month. In this scenario, the Company remits a tax amount of $1,074,600 with the tax return. So out of the $2,000,000 collected, $885400+ $1,074,600 =$1,960,000 remitted. The $40,000, 2% timely pay allowance, is kept by the Company. Those timely payment allowances, the "sales tax discounts" should be included in the revenues applied against cost-of-service to arrive at a utility's revenue requirement.

Q. Is Evergy Missouri Metro, Inc. recording the 2% sales tax discount as revenues applied against its cost-of-service?

A. I did not find any revenue adjustments in Evergy Missouri Metro, Inc.'s workpapers that labeled sales tax discounts as a revenue source to apply against its determination of its cost-of-service.

Q. What amount for sales tax discounts are you proposing to include in the Company's revenues applied against its cost-of-service used for setting rates in this case?

A. I applied the last 12 months of remitted sales tax returns, which was May of 2026 back through June of 2025. A total of $27,066,536.77 was collected, $26,525,206.03 was remitted and a Evergy Missouri Metro, Inc. retained a sales tax discount total of $541,330.74. The $541,331 should be included in the revenues applied against Evergy Missouri Metro, Inc.'s cost-of-service used for setting rates in this case.

Q. Do you have any further testimony at this time?

A. No.

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 a General Rate Increase for Electric Service	))))	Case No. ER-2026-0143

AFFIDAVIT OF JOHN S. RILEY

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

John S. Riley, of lawful age and being first duly sworn, deposes and states:

1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my direct testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

John S. Riley
Utility Regulatory Supervisor

Subscribed and sworn to me this 29th day of June 2026.

TIFFANY HILDEBRAND
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES AUGUST 8, 2027
COLE COUNTY
COMMISSION #15637121

Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2027.