

# Exhibit No. 318

**Exhibit No.:** \_\_\_\_\_  
**Issue(s):** NOL Reduction in Rate Base  
**Witness/Type of Exhibit:** Riley/True-Up Rebuttal  
**Sponsoring Party:** Public Counsel  
**Case No.:** ER-2022-0129 and ER-2022-0130

**TRUE-UP REBUTTAL TESTIMONY**

**OF**

**JOHN S. RILEY**

Submitted on Behalf of the Office of the Public Counsel

**EVERGY METRO, INC. D/B/A  
EVERGY MISSOURI METRO  
AND  
EVERGY MISSOURI WEST, INC. D/B/A  
EVERGY MISSOURI WEST**

CASE NOS. ER-2022-0129 AND ER-2022-0130

August 25, 2022

**TRUE- UP REBUTTAL TESTIMONY**  
**OF**  
**JOHN S. RILEY**  
**EVERGY METRO, INC D/B/A EVERGY MISSOURI METRO**  
**EVERGY MISSOURI WEST, INC, D/B/A EVERGY MISSOURI WEST**  
**CASE NOs. ER-2022-0129 & ER-2022-0130**

1 **Q. What is your name and what is your business address.**

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

3 **Q. Are you the same John S. Riley that submitted direct, rebuttal and surrebuttal testimony**  
4 **in this case?**

5 A. Yes.

6 **Q. What is purpose of your true-up rebuttal testimony?**

7 A. Both Evergy Metro and Evergy West (together “the Company”) have included an  
8 amortization of net operating losses in its true-up calculations. I argue that a net operating  
9 loss (“NOL”) is not amortizable and, since the Company has exhausted its NOL balance, no  
10 NOL should be included as an offset to rate base in these cases.

11 **NOL REDUCTION IN RATE BASE**

12 **Q. Has Evergy Metro and West made any adjustments to the amount of NOL included in**  
13 **rate base?**

14 A. Evergy Metro made a jurisdictional allocation of its NOL and has now included \$39,041,419  
15 in rate base. Evergy West did the same and included \$46,375,645 in rate base. As I explained  
16 in my surrebuttal testimony, the Company is amortizing the NOLs using the Average Rate  
17 Assumption Method (“ARAM”). However, an NOL is not an amortizable  
18 asset.

1 **Q. What is your basis for claiming that an NOL is not an amortizable asset?**

2 A. There are actually three facts I rely on. The first is that under IRS regulations, a NOL  
3 carryforward created prior to 2018 could be carried forward for 20 years and then expires.<sup>1</sup>  
4 Conventional wisdom would dictate that a financial resource, with a specified expiration date,  
5 would not be amortized. Why slowly kill off a tax benefit without being used? Since the Tax  
6 Cuts and Jobs Act, the 20 year time limit has been lifted so an NOL can effectively wait as  
7 long as necessary for the taxpayer to either increase income or decrease deductions sufficient  
8 to generate taxable income that the NOL can be used to reduce. Secondly, I could find no  
9 record of the IRS stating that an NOL could be amortized. Specifically, I didn't find any  
10 mention of an NOL amortization in 26 U.S. Code § 172 – Net operating loss deduction.  
11 Finally, I am quite confident that the Company has exhausted its balance of NOL with the  
12 completion of the 2021 income tax return.<sup>2</sup> Since Evergy's current NOL balances have been  
13 effectively reduced to zero, the object of the wrongful amortization no longer exists. There is  
14 no reasonable accounting justification for the amortization of nonexistent NOLs as an offset  
15 to rate base.

16 **Q. The Company has included NOL balances in the rate base of both rate cases. Should**  
17 **the Commission allow these balances?**

18 A. No. Regardless of the 2018 stipulation and agreement, an NOL is not a rate case generated  
19 item and the stipulation and agreement should not have the authority to artificially insert an  
20 NOL balance into a rate case. An NOL only exists in rate base because the Company claimed  
21 a taxable loss on its income tax return. It is therefore a tax return generated item. This isn't  
22 the same as goodwill or some other intangible rate base. "An NOL is a tax return adjustment and  
23 not a regulatory item"<sup>3</sup>. This is an income tax return created balance and that balance doesn't

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<sup>1</sup> Prior to the Tax Cut and Jobs Act (TCJA), there was a 20 year limit, however, that restriction has been lifted.

<sup>2</sup> Evergy has not provided a completed or estimated 2021 tax return but analyzing the Corporation's 2021 10K reveals that the Corporation increased net income by 41% over 2020.

<sup>3</sup> WO-2019-0184, Report & Order, page 6, paragraph 14

1           exist anymore because it has been completely used up in the past four tax returns. The NOLs  
2           have no accounting or ratemaking authority to be amortized, much less be amortized after its  
3           expiration.

4           **Q.     What effect does including the NOL balances have on rate base?**

5           A.     The Company is allowed a rate of return on a non-existent asset. In the case of Metro it would  
6           approximate \$39,041,419 multiplied by the pre-tax ROR of 7.807% to equal \$3,047,964 in  
7           revenue requirement and a nearly \$9.75 million annual amortization.<sup>4</sup> With West  
8           at \$46,375,645 multiplied by 7.882% to equal \$3,655,328 plus \$11.6 million in  
9           amortization that is unnecessarily included in revenue requirement.

10          **Q.     Does this conclude your true-up rebuttal testimony?**

11          A.     Yes.

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<sup>4</sup> There is a proposed four year amortization of the NOL with the Excess Deferred Tax balance

**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 ) Case No. ER-2022-0129  
Implement a General Rate Increase for Electric )  
Service )


In the Matter of Evergy Missouri West, Inc. d/b/a )  
Evergy Missouri West's Request for Authority to ) Case No. ER-2022-0130  
Implement a General Rate Increase for Electric )  
Service )

**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:

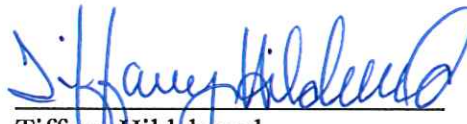
1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my true-up rebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
John S. Riley  
Utility Regulatory Supervisor

Subscribed and sworn to me this 25<sup>h</sup> day of August 2022.



TIFFANY HILDEBRAND  
My Commission Expires  
August 8, 2023  
Cole County  
Commission #15637121

  
\_\_\_\_\_  
Tiffany Hildebrand  
Notary Public

My Commission expires August 8, 2023.