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

The Office of the Public Counsel's Initial Brief

Respectfully submitted,

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COMES NOW the Office of the Public Counsel and for its Initial Brief states:

Introduction

Evergy Metro, Inc. d/b/a Evergy Missouri Metro's ("EMM") rates from its last rate case are just and reasonable until the Commission determines that they are not.[1] Because it is seeking a rate increase EMM has the burden of showing that its current rates no longer are just and reasonable.[2] Public Counsel's primary issues in this case are whether, or how, the Commission allows EMM to recover from Missourians through rates its investment, costs, and expenses related to Mullin Creek #2 (Issue 20.B.); what return-on-equity the Commission authorizes (Issue 1.C.); what EMM capital structure the Commission authorizes (Issue 1.A.); what income tax impact the Commission recognizes for losses EMM has incurred when it disposed of assets (Issue 15.A.i.); and what of EMM's investments in distribution and transmission projects since its last rate case the Commission allows EMM to recover from Missourians through rates (Issues 18.B., 19.A.&B., & 20.F.&H.).

Nothing in any of the various stipulations and agreements different parties filed in this case limits the Commission. Not only is the Commission free to independently decide each issue limited only in that its decisions must be supported by the record before the Commission, not arbitrary or capricious, and lawful, that is the role and obligation for which the Legislature authorized it.

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[1] § 393.140(11), RSMo, ("No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances."); *State ex rel. AG Processing v. PSC*, 340 S.W.3d 146 (Mo. App. 2011).

[2] § 393.150.2, RSMo.

The evidentiary hearing record in this case closed on October 13, 2026. This brief is due November 6, 2026. The first unverified evidentiary hearing transcript was not available to the parties until filed in the docket on October 26, 2026, and the last unverified evidentiary hearing transcript was not filed in the docket until October 30, 2026. While Public Counsel has briefed argument on the issues where it has taken a position, Public Counsel may not have included all arguments it raised in its evidence or cited to all of the evidence in the record that supports its arguments. Unless expressly waived in this brief, Public Counsel is not conceding any argument it raised nor abandoning any evidentiary support for an argument.

Argument

1. Cost of Capital

A. What is the appropriate capital structure to use for ratemaking in this proceeding?

Public Counsel's Position: The 45% common equity and 55% long-term debt ratemaking capital structure which Public Counsel witness David Murray determined is consistent with Evergy, Inc.'s more cost efficient targeted and average quarterly capital structure ratios for the period June 30, 2024, through June 30, 2026. Evergy Metro, Inc. is a subsidiary in a holding company structure where Evergy, Inc. is the ultimate parent. Evergy, Inc. issues equity and long-term debt in the capital markets through arms-length transactions with third parties. While Evergy Metro, Inc. does issue its own debt, its capital structure is managed through internal capital flows to achieve a common equity ratio of 52% at a specific point-in-time for ratemaking, which is the true-up date of June 30, 2026. By manipulating Evergy Metro Inc.'s common equity ratio to a suboptimal 52% common equity ratio Evergy is requesting the Commission to have Evergy Metro Inc.'s Missouri customers pay for a higher-cost capital structure than the capital structure which it targets for itself, despite the fact that legislative and regulatory changes in Missouri have shifted business risk from investors to ratepayers. Evergy Metro, Inc.'s Missouri ratepayers deserve credit for this shift in risk by being charged a rate-of-return that is consistent with Evergy, Inc.'s market-based capital structure ratios, ratios which Evergy, Inc. has dynamically managed to take advantage of its reduced business risk that flows to it from its regulated utility subsidiaries.[3]

Public Counsel's Argument: As Public Counsel witness David Murray explains, EMM's parent, Evergy, Inc. ("Evergy"), targets the capital structures of Evergy and its subsidiaries as a

[3] See Ex. 205, Public Counsel witness David Murray direct testimony, Sch. DM-8, p. 2.

consolidated group to optimize the cost of capital funds from the debt and equity markets for the benefit of Evergy's shareholders. Because, as a wholly owned subsidiary of Evergy, EMM does not directly access the equity markets, Evergy and EMM control EMM's capital structure by controlling the capital flows between EMM and Evergy through dividend payments or non-payments. If Evergy does not require EMM and its affiliate subsidiaries to provide sufficient dividends to fund dividends to Evergy's third-party shareholders, Evergy issues holding company debt capital to fund the deficiency. Evergy's capacity to do so is based on EMM's and its affiliate subsidiaries' low-risk regulated utility operations. Evergy and EMM exercise their collective control to maximize Evergy's shareholders' wealth—since equity receives a higher return than debt, and applying this higher return to a higher common equity ratio achieves an even higher return to the lower consolidated common equity ratio in Evergy's consolidated capital structure. Based on his analysis of Evergy consolidated group's targeted and average quarterly capital structure ratios for the period June 30, 2024, through June 30, 2026, and the fact that Evergy's primary assets are regulated utilities, including EMM, a capital structure of 45.00% common equity and 55.00% long-term debt represents a more reasonable capital structure for Evergy's subsidiary EMM than EMM's manipulated actual capital structure of 52.19% common equity and 47.18% long-term debt.[4] It is particularly disturbing that EMM is targeting such an equity rich capital structure when Missouri's more investor-friendly legislative and regulatory environment has allowed Evergy to utilize more debt capacity—lowering its common equity ratio—while still maintaining the same credit rating. The Commission is the only entity that has the authority to ensure EMM's Missouri retail customers are not charged for a more expensive capital structure

[4] Ex. 205, Public Counsel witness David Murray direct testimony; Ex. 207, Public Counsel witness David Murray surrebuttal and true-up direct testimony, Sch. DM-S-2.

than the 45% common equity and 55% long-term debt capital structure ratios Evergy truly considers to be more cost efficient.

That Evergy and EMM are targeting a 52% common equity and 48% long-term debt capital structure for EMM is demonstrated by the common equity ratios of Evergy's subsidiaries EMM and Evergy Missouri West ("EMW") in their Missouri rate cases since 2022. Likewise, Union Electric Company d/b/a Ameren Missouri also has targeted that same capital structure ratio in its rate cases for approximately the past decade. All have done so despite Missouri making legislative and regulatory changes during the past decade which have shifted business risk from investors to ratepayers and despite rating agencies recognizing those business risk reductions when rating the holding companies—Evergy and Ameren—which allows them to issue more debt without lowering their credit ratings.[5]

Moody's Ratings has relaxed its credit metric thresholds for the holding companies, but not the Missouri subsidiaries of the holding companies. This is because Ameren and Evergy are bargaining with Moody's Ratings over credit ratings on behalf of their consolidated holding company groups, not specifically for the individual subsidiaries that have realized the lower business risk.[6] Before the Commission authorized Union Electric Company and Kansas City Power & Light Company (now EMM) to reorganize and become wholly-owned subsidiaries, there was only one possible capital structure to evaluate for making their rates—their capital structure. That meant that if Union Electric Company or Kansas City Power & Light Company increased their leverage during a construction cycle by issuing more debt than equity, that leverage was captured in their authorized RORs. The Commission can correct Evergy and EMM's

[5] Ex. 205, Public Counsel witness David Murray direct testimony, pp. 51-52.
[6] Ex. 205, Public Counsel witness David Murray direct testimony, p. 52.

misallocation of lower costs of capital to shareholders at the expense of EMM's retail customers by at least considering the contradiction between the capital structures of EMM and the Evergy consolidated group. Public Counsel consistently has been addressing this issue for many years. But now the discrepancy between equity-rich subsidiary capital structures and more leveraged (equity poorer) capital structures of consolidated utility groups has captured broader national scrutiny recently in other jurisdictions due to an increased focus on affordability issues.

Troubling to Public Counsel is that Evergy characterizes Public Counsel's position to be extraordinary. Evergy used the same strategy when it attempted to discredit the Kansas Corporation Commission's ("KCC") Staff's recommendation to consider holding company debt when setting rates for Evergy's Kansas subsidiaries. For purposes of Evergy's Capital Structure & Return on Equity Policy Workshop ("Workshop") before the KCC, Evergy reviewed 109 rate cases and claimed that "[i]n none of those cases did we observe any evidence of holding company debt being attributed to subsidiary utilities in the final rate decisions."[7] In that Workshop, Evergy was attempting to discredit the KCC Staff's methodology of specifically allocating holding company debt to Evergy's utility subsidiaries operating in Kansas, Evergy Kansas Central and Evergy Metro d/b/a Evergy Kansas Metro. However, Evergy did not include the fact that many jurisdictions do consider the discrepancy between the capital structures of the holding company consolidated group and that of the regulated utility subsidiary being reviewed when deciding a fair and reasonable ratemaking capital structure for that subsidiary. Based on his experience and past research, Mr. Murray was aware that both the KCC and the Illinois Commerce Commission ("ICC") consider the capital structures of the holding company consolidated group when

[7] Ex. 50, EMM witness Geoffrey Ley rebuttal testimony, pp. 5-6.

determining a fair and reasonable authorized ROR for the subsidiary in question.[8] Additionally, after Mr. Murray reviewed EMM's workpapers from the 109 rate case decisions Mr. Ley testified supported not allocating Evergy's holding company debt to its subsidiaries, Mr. Murray discovered that several other utility commissions also consider the more leveraged parent company and proxy group's capital structures when deciding a fair and reasonable ratemaking capital structure. Those utility commissions are the Arkansas, Indiana, Louisianna, New York, and Oklahoma commissions.[9]

Not until Great Plains Energy ("GPE") and Westar Inc. merged to form Evergy did a fair and reasonable capital structure became a disputed issue in EMM and Evergy Missouri West's Missouri rate cases. GPE (EMM's ultimate parent before the Westar merger) did not leverage its equity investments in its subsidiaries—EMM and EMW. Therefore, GPE's capital structure was similar to that of its subsidiaries. Before the Westar merger use of GPE's consolidated capital structure in Missouri for purposes of setting a ROR for EMM and EMW for ratemaking was not controversial. Under the GPE holding company umbrella, Metro and EMW distributed sufficient dividends to GPE to allow it to fund dividends to third-party shareholders Essentially, GPE was a pass-through company that did not issue long-term holding company debt or hybrid securities, unless it did so on behalf of EMW before it regained its credit standing. This paradigm changed with the creation of Evergy, which now causes its subsidiaries' capital structures to be more financially interconnected. As EMM witness Mr. Ley admitted during Evergy's presentation to the KCC, Evergy issues holding company capital to fund dividends to third party shareholders.[10] While this financial strategy is efficient for the Evergy enterprise, it demonstrates the

[8] Ex. 205, Public Counsel witness David Murray direct testimony, pp. 47-48.
[9] Ex. 207, Public Counsel witness David Murray surrebuttal and true-up direct testimony, pp. 21-22.
[10] Ex. 205, Public Counsel witness David Murray direct testimony, pp. 53 & 58; Ex. 207, Public Counsel witness David Murray surrebuttal and true-up direct testimony, pp. 10-11 & 14 .

interrelationship that causes subsidiary capital structures to not be managed to minimize the cost of their sources of capital funds. As Mr. Murray testified, before Evergy and the change in financial strategy allowed for manipulation of EMM's capital structure that came with Evergy's creation, EMM often requested that its revenue requirement be set at an approximate 50% common equity ratio.[11] Evergy was created near to when Missouri's legislature passed plant-in-service accounting ("PISA") legislation. Although Evergy had only been in existence for a little over two years, Elliott Investment Management L.P. ("Elliott") took a sizeable position in Evergy's outstanding common equity then initiated a change in Evergy's financial and investment strategy.[12] As a result of Elliott's initiative Evergy discontinued using holding company debt to fund its stock buyback program and began using it to support Evergy's ramped up spending in utility infrastructure, with specific emphasis on investing in Missouri due to the additional shareholder value PISA permitted.[13]

Through discovery Mr. Murray found corporate records which specifically confirmed that Evergy's new increases in investment should create even more shareholder wealth if they are supported by higher leverage (higher debt-to-equity) at the holding company level.[14] As Mr. Murray testifies, Evergy's financial strategy to increase shareholder wealth requires optimizing the consolidated group capital structure to achieve a lower cost of capital for the group, but not for the subsidiaries. If Evergy optimized its subsidiaries' capital structures and these lower cost capital structures were reflected in the rates charged to the retail customers of those subsidiaries, then Evergy could not maximize its shareholders' wealth through the increased rate revenues it would

[11] Ex. 205, Public Counsel witness David Murray direct testimony, p. 2 and Ex. 206, Public Counsel witness David Murray rebuttal testimony, p. 36.
[12] Ex. 205, Public Counsel witness David Murray direct testimony, p. 11.
[13] Ex. 205, Public Counsel witness David Murray direct testimony, p. 11; and Ex. 206, Public Counsel witness David Murray rebuttal testimony, p. 34.
[14] Ex. 205, Public Counsel witness David Murray direct testimony, pp. 55-56.

get with rates made based on suboptimal less leveraged capital structures. It is Evergy's conflict of interest of desiring higher common equity ratios at its subsidiaries to support higher revenue requirements at the same time Evergy is attempting to minimize the cost of capital at the consolidated group level which requires the Commission to protect the public by setting EMM's rate-of-return based on capital structure ratios more consistent with Evergy's more cost-efficient consolidated group capital structure.

When deciding a fair and reasonable ratemaking capital structure the Commission should also consider the logic underlying the Commission's affiliate transaction rules. Effectively, by using more leverage in its consolidated group capital structure than at its subsidiaries, Evergy is admitting that it can achieve a lower market cost of capital than what it charges EMM for capital. The Commission's affiliate transaction rules require unregulated affiliates to charge regulated utilities the lower of cost or market value. With how Evergy is managing the capital structures of its consolidated group and its subsidiaries, Evergy is not only charging EMM more than a reasonable market cost of capital, it is also charging EMM for a rate-of-return that is higher than what it would be based on Evergy's consolidated group's cost of equity and embedded cost of debt. This leads to Public Counsel's position about a fair and reasonable return-on-equity to apply to EMM's rate base to be charged to EMM's retail customers in Missouri.

B. What cost of debt should be used for determining rate of return?

Public Counsel's Position: 4.54% based on Evergy Missouri Metro's embedded cost of long-term debt as of June 30, 2026.[15]

[15] David Murray Surrebuttal and True-up Direct, p. 8.

Public Counsel's Argument: Because this is EMM's actual cost of long-term debt based on a weighted average of EMM's long-term debt portfolio as of the end of the true-up period (June 30, 2026), this debt rate is undisputed.

C. What return on common equity should be used for determining rate of return?

Public Counsel's Position: 9.25%, the midpoint of Mr. Murray's recommended authorized ROE range of 9.00% to 9.50%, a range which is based on the following considerations:

- The electric utility industry's cost of equity ("COE") in 2015 was very similar to the current COE when this Commission authorized a 9.50% ROE for Evergy Missouri Metro;
- Mr. Murray's recommended 9.25% ROE fairly balances Every Missouri Metro's shareholder compensation with the ratepayer burdens that Every Missouri Metro's planned significant capital investments will create;
- Every Missouri Metro will create additional shareholder wealth if it earns a ROE above its approximately 8.00% COE; and
- 9.25% is reasonable under the Commission's zone of reasonableness standard of 100 basis points above and below recently authorized ROEs—here 9.70%, for a zone of reasonableness of 8.70% to 10.70%.[16]

Public Counsel's Argument: As Public Counsel stated in its position statement for this issue (see immediately above), the return-on-equity ("ROE") the Commission should allow for designing EMM's rates is 9.25% based on Mr. Murray's analysis showing that a return-on-equity range of 9.0% to 9.5% with a midpoint of 9.25% is reasonable.[17] While the allowed ROE Mr. Murray recommends is less than the ROE of 9.5% the Commission last explicitly allowed for EMM in EMM's 2015 general electric rate case, Mr. Murray provided evidence which shows that, due to EMM's increased scale of investment over the next few years and his estimate that EMM's COE is 8%, EMM will be able to create a disproportionate amount of shareholder wealth.[18]

[16] David Murray Direct, pp. 2 & 6.
[17] Ex. 205, Public Counsel witness David Murray direct testimony, p. 3.
[18] Ex. 205, Public Counsel witness David Murray direct testimony, p. 25.

Public Counsel witness David Murray performed a COE analysis on a broad proxy group of electric utility companies, which included Evergy Inc., but he gave more weight to certain subsets of that group which include companies which are more concentrated in vertically integrated regulated electric utility operations.[19] Mr. Murray applied two primary methodologies, a discounted cash flow ("DCF") method and the Capital Asset Pricing Model ("CAPM"), commonly used by investors to estimate the COE of and fair values for utility stocks. Mr. Murray applied the multi-stage version of the DCF to his electric utility proxy group because he determined utility industry equity investment analysts use this version. Mr. Murray's DCF analysis explicitly emphasized "equity analysts' consensus estimated dividends and the modeled growth of dividends." "When the DCF method is applied to dividends as the proxy for cash flow, it is more specifically defined as the dividend discount model ("DDM")."[20]

Mr. Murray used equity analysts' discrete annual dividends per share ("DPS") estimates for the first stage of his DDM analysis, then he estimated the transitionary growth rate in DPS for each company during the second stage in order for all companies to achieve a perpetual DPS growth rate in the final stage.[21] This ensures the assumptions of sustainable growth are met, which are a constant dividend payout ratio (DPS/EPS) with dividends, earnings and book value growing at the same rate.[22] Mr. Murray's approach and assumptions are similar to those that equity investment analysts actually use and, thus, **upon what investors actually rely**.[23] As Murray testified, "My analysis has allowed me to test the theory of cost of capital estimation in utility ROR testimony, as it compares to practice."[24] Mr. Murray's study resulted in an estimated COE of

[19] Ex. 205, Public Counsel witness David Murray direct testimony, p. 30.
[20] Ex. 205, Public Counsel witness David Murray direct testimony, p. 32.
[21] Ex. 205, Public Counsel witness David Murray direct testimony, pp. 32-33.
[22] Ex. 205, Public Counsel witness David Murray direct testimony, p. 33.
[23] Ex. 205, Public Counsel witness David Murray direct testimony, p. 29.
[24] Ex. 205, Public Counsel witness David Murray direct testimony, p. 29.

approximately 8.0%. That result approximates Mr. Murray's COE estimated range of 7.6% to 8.4% in 2014/2015 which was when the Commission decided an approximate 9.5% authorized ROE was fair and reasonable to set rates for Missouri's largest electric utilities – EMM and Ameren Missouri.[25] Mr. Murray's COE estimates of about 8.0% and 7.6% to 8.4% are higher than the 7% to 7.5% used by stock analysts to estimate a fair price to pay for Evergy's stock as recently as late 2025/early 2026, which refutes EMM witness Bulkley's testimony that Mr. Murray does not have evidence demonstrating that average authorized ROEs are typically set higher than utilities' COE.[26] Mr. Murray has discovered evidence that over time investors have grown accustomed to allowed ROEs being approximately 225 basis points (2.25%) higher than the utility industry's COE.[27] Perhaps even more troublesome to Ms. Bulkley's claim Mr. Murray's COE estimates are inconsistent with those actually used by investors is the fact that Evergy hired a financial advisor for Evergy's board of directors who advised them on a fair value of Evergy's stock at the end of 2023. The identity of that advisor and the advice it gave related to COE are designated confidential in Ex. 205, Public Counsel witness David Murray direct testimony, p. 27, and so are not disclosed in this brief.

Mr. Murray also applied the CAPM to his electric utility proxy group, which included Evergy Inc.[28] Once again, Mr. Murray used equity risk premiums consistent with those used by investment analysts and some of the most respected individuals in the finance field in his CAPM

[25] Ex. 205, Public Counsel witness David Murray direct testimony, p. 35.
[26] Ex. 205, Public Counsel witness David Murray direct testimony, p. 44.
[27] Ex. 206, Public Counsel witness David Murray rebuttal testimony, pp. 40-41.
[28] Ex. 205, Public Counsel witness David Murray direct testimony, pp. 36-43.

modeling.[29] Consequently, his CAPM COE estimates in the range of 7.75% to 8.5% are consistent with those used by the investment community and Evergy itself.[30]

Staff arrived at COE estimates for EMM of 7.11% to 10.34% using a DCF method and the CAPM.[31] However, Staff recommended a ROE of 9.73% (range of 9.72% to 9.74%) based on Staff's regression analysis of average allowed ROEs against bond yields for the period 2014 to 2025. Dr. Won has recommended essentially the same allowed ROE for electric utilities in Commission rate cases since 2024 when he first implemented his approach of using regression analysis of allowed ROEs against bond yields.[32] Dr. Won no longer relies on his COE estimates to directly influence his opinion as to a fair and reasonable ROE. Despite Dr. Won's COE estimates in this case being approximately 50 basis points lower than his COE estimates in EMW's rate case in 2024, Dr. Won recommends essentially the same ROE.[33] Dr. Won's lack of adjustment to his recommended ROE regardless of changes in the COE violates a fundamental principle in the *Bluefield* decision, which is that "A rate of return may be reasonable at one time, and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally."[34] Dr. Won's regression analysis proves Mr. Murray's observation that the spread between allowed ROEs and the COE increased dramatically over the period from 2010 to 2022. While the COE has increased since 2022, an allowed of 9.25% would still give a margin over the COE, but not as high as the excess returns allowed prior to 2022. Mr. Murray's recommended ROE of 9.25% is still above his estimated 8% COE so he is simply encouraging the

[29] Ex. 205, Public Counsel witness David Murray direct testimony, pp. 42-43.
[30] Ex. 205, Public Counsel witness David Murray direct testimony, pp. 27 & 43.
[31] Ex. 120, Staff witness Seoung Joun Won direct testimony, p. 58, table 4.
[32] Ex. 206, Public Counsel witness David Murray rebuttal testimony, p. 39.
[33] Ex. 206, Public Counsel witness David Murray rebuttal testimony, p. 42.
[34] *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679, 693 (1923).

Commission to allow for lower excess returns than shareholders have received in the past. In fact, as demonstrated by Mr. Murray's analysis of the COE environment in this case compared to 2015 when the Commission authorized its electric utilities ROEs of approximately 9.5%, the excess return would approximate that which was allowed in 2015.

In contrast to both Staff's and Public Counsel's witnesses, EMM's ROR witness, Ann E. Bulkley, estimates a COE range of 10.25% to 11.25%.[35] Because Ms. Bulkley testifies that setting a utility's authorized ROE at parity with the COE is consistent with the *Hope* and *Bluefield* principles, she recommends EMM's authorized ROE be set within the range of her COE estimates, with a specific request of a 10.50% ROE.[36] Ms. Bulkley used three methodologies—a constant-growth DCF, CAPM (a standard version and an "empirical" version), and a risk premium methodology she labeled as a Bond Yield Plus Risk Premium ("BYPRP") methodology – all of which she applied to her electric utility proxy group.[37]

While Ms. Bulkley's COE estimates are already upwardly biased due to her misapplication of the constant-growth DCF method and her higher than rational market risk premium estimates in her CAPM analysis, that Ms. Bulkley did not consider that many of the companies' in her proxy group have much higher long-term projected CAGR in EPS due to expected increased demand and investment related to data centers defies recent utility pledges to not pass higher utility costs from large load customers onto other customer classes.[38] This is likely just one circumstance in which the "devil is in the details" as it relates to these broad and non-binding pledges. While Mr. Murray pointed out in his rebuttal testimony that Ms. Bulkley's higher DCF COE estimates were

[35] Ex. 7, EMM witness Ann E. Bulkley direct testimony, p. 5.
[36] Ex. 7, EMM witness Ann E. Bulkley direct testimony, pp. 6-9.
[37] Ex. 7, EMM witness Ann E. Bulkley direct testimony, pp. 2-3.
[38] Ex. 207, Public Counsel witness David Murray surrebuttal and true-up direct testimony, p. 29.

caused by her assumption that these higher-growth rates could be sustained in perpetuity, instead of responding to this point, she compounded the problem by updating her COE analysis to include Entergy's increased projected long-term CAGR in EPS of 12.73%. Entergy is widely recognized as an electric utility company that is heavily exposed to the opportunities and risks related to data center demand for electricity. Ms. Bulkley's core assumption in her constant-growth DCF analysis is that investors expect a utility company's DPS to grow in perpetuity at the same rate as equity analysts' projected three-to-five year compound annual growth rates ("CAGRs") in earnings per share ("EPS"). While Mr. Murray has never discovered a stock analyst who makes such an assumption when estimating a fair value to pay for a utility stock, Ms. Bulkley's assumption causes irrationally high COE estimates, which she then uses to inform her ROE recommendation. The combination of Ms. Bukley's assumption that DPS can grow in perpetuity at the same rates as a three-to-five year CAGR in EPS AND selecting Entergy as an appropriate proxy company, cause her to estimate Entergy's COE to be in the range of 15.18% to 15.4%.[39]

Further, while Ms. Bulkley's COE estimates already were inflated by her assumptions and use of companies with exposure to data center opportunities/risks, she focuses on a check-list of items she believes cause EMM's COE to be higher than the COE of her proxy group. Perhaps the most troublesome item in her checklist is the impact of nuclear generation and her decision to testify in this case that EMM's authorized ROE should be set higher because of its ownership interest in the Wolf Creek Generating Center, a nuclear generating plant. Ms. Bulkley has prefiled ROR testimony on June 26, 2026, in the Commission's pending Ameren Missouri rate case, Case No. ER-2026-0291. Although Ameren Missouri wholly owns a nuclear generating plant (Callaway), Ms. Bulkley does not argue Ameren Missouri's COE is higher than the COE of her

[39] Ex. 207, Public Counsel witness David Murray surrebuttal and true-up direct testimony, p. 34.

proxy group in that rate case.[40] Additionally, like her failure to discuss the ramifications of data center opportunities and risks on the electric utility companies in her proxy group, she does not mention the fact that five of her fourteen proxy companies have significant exposure to wildfire risk. At least in the view of S&P Global Ratings, the wildfire risk is significant enough for it to formally classify these companies as having higher business risk than that of their peers (S&P assigned them a 'Strong' Business Risk Profile rather than the 'Excellent' Business Risk Profile it assigns to most other regulated utility companies). Tellingly, S&P Global Ratings does not assign electric utility companies a higher business risk profile due to their exposure to nuclear generating facilities.[41]

Ms. Bulkley has been sponsoring ROR testimony in Missouri since approximately 2020. However, despite her experience with Missouri's regulatory practice, in true-up rebuttal testimony she prefiled on September 23, 2026, she claims that both Public Counsel and Staff should have updated their recommended ROEs due to recent increases in long-term bond yields. In Mr. Murray's over twenty-five years of experience parties have always agreed (both formally and informally) that the only components of ROR that are subject to true-up are capital structure and the embedded cost of long-term debt. However, Ms. Bulkley testifies that Mr. Murray updated his COE analysis to consider market data through June 30, 2026. She is incorrect. Mr. Murray only updated his recommended capital structure and his recommended cost of debt.[42] Also, because EMM proposed to include Mullin Creek #2 construction work-in-progress ("CWIP") in rate base through the true-up period, which was not included in the original or updated test year, Mr. Murray performed an analysis to determine a reasonable ROR to apply to CWIP in lieu of continuing

[40] Ex. 206, Public Counsel witness David Murray rebuttal testimony, p. 36.
[41] Ex. 206, Public Counsel witness David Murray rebuttal testimony, p. 38.
[42] Ex. 207, Public Counsel witness David Murray surrebuttal and true-up direct testimony.

AFUDC (allowance for funds used during construction) treatment—a regulatory asset tracker. Regardless, Ms. Bulkley's accusation that Staff and Public Counsel should have updated their ROE recommendations in true-up testimony is opportunistic and incorrect. As Mr. Murray testified, bond yields fluctuated dramatically in the post Covid-19 capital market environment, but utility equity investors looked past these fluctuations in estimating a fair price to pay for utility stocks (*i.e.* utility company's COE).[43] Therefore, unless careful and detailed COE analysis can be performed and scrutinized during earlier rounds of testimony, latching on to changes in bond yields in the late stages of a case should be disregarded.

D. What is the appropriate rate of return to use for ratemaking in this proceeding?

Public Counsel's Position: 6.66%=45%(9.25%)+55%(4.54%)—a 9.25% common equity rate and a 4.54% debt rate applied to a 45% common equity and 55% long-term debt ratio.

Public Counsel's Argument: Rate-of-return is the mathematical result of multiplying the allowed return on equity by the equity percentage of the appropriate capital structure and adding the result of multiplying the debt rate by the debt percentage of the appropriate capital structure as shown in Public Counsel's position.

2. Revenues and Billing Determinants

A. What level of billing units and normalized revenues should be used in calculating rates?

i. What update period adjustment should be used in calculating normalized billing units, revenues, and rates?

ii. What rate switcher and Large Power Service customer annualization adjustment should be used?

iii. What weather normalization adjustment should be applied?

iv. Should the blocking percentage for the actual blocks and the weather normalized blocks be the same?

v. What 365-day adjustment should be used?

vi. What energy efficiency adjustment should be used?

[43] Ex. 205, Public Counsel witness David Murray direct testimony, pp. 14-18.

vii. What growth adjustment should be used, and what counts should be used to calculate normal use per customer and customer growth?

viii. What non-Missouri kilowatt hour ("kWh") adjustment should be used in calculating normalized billing units?

ix. Should the definitions of bill count and customer charge counts be added to EMM's tariff?

x. For normalization of retail revenues and billing determinants, should customer charge count or bill count be utilized?

xi. Should the Company be compelled to provide both bill count and customer charge count in future rate cases.

xii. What is the normalized revenue and kWh for Large Power Service ("LPS") customers?

xiii. What Economic Development Rider discount annualization should be applied?

xiv. What amount of gross up for revenue requirement should be applied to Economic Development Rider discount amount.

3. Other Revenues

A. What is the appropriate level of net revenue to reflect in the cost of service and other models for Large Load Power Service ("LLPS") and other large customers?

Public Counsel's Position: The cost-of-service adjustment for Schedule LLPS revenues should be increased to $117 million per year, substantially more than EMM's proposed $25 million adjustment. Absent Commission action, these excess revenues would flow to the Company's earnings.[44] The Company's risk of under-recovery is further limited by the minimum bill and other contract protections approved in Case No. EO-2025-0154.[45]

Public Counsel's Argument: Missouri uses historical information to predict the future for which it designs new rates.[46] EMM acknowledges that it will receive significant future revenues from its LLPS customers, and to recognize those revenues when designing rates in this case EMM made an adjustment in its direct case to include $20.6 million (EMM witness Ronald A. Klote direct testimony, Sch. RAK-4, p. 1, l. 3), or according to its witness Kevin D. Gunn $25 million,[47] then

[44] Ex. 208, Public Counsel witness Ron Nelson direct testimony, p. 23; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 8 (citing Ex. 22, EMM witness Kevin D. Gunn rebuttal testimony, p. 6).
[45] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 8.
[46] See *Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n*, 509 S.W.3d 757 (Mo. App. 2016).
[47] Ex. 21, EMM witness Kevin D. Gunn direct testimony, p. 10.

at the end of this case $41.4 million (true-up)[48] as a reduction to its revenue requirement used for setting rates. As part of its LLPS Stipulation and Agreement with Google LLC filed October 5, 2026, and to which Public Counsel objected, EMM agreed to include "$60 million in LLPS revenues."[49]

EMM still is understating what revenues it reasonably expects to receive from LLPS customers as they ramp up their demand after this rate case. As Public Counsel witness Ron Nelson explained in his direct testimony, assuming EMM's electric rates do not change before January 1, 2031, and that LLPS customers ramp up their demand as anticipated, EMM should realize revenues from them well in excess of $460 million.[50] At a minimum the Commission should increase EMM's annual revenues used for setting rates by the normalized known and measurable $117 million to adjust for Schedule LLPS revenues.[51] EMM's Schedule LLPS minimum bill and other contract protections which the Commission ordered and approved in Case No. EO-2025-0154 provide it with protection from not realizing the anticipated LLPS revenues.[52] Further, EMM has the option of filing a new rate case at any time.

i. What is the appropriate revenue adjustment for expected future revenues from Schedule LLPS customers in the cost of service model?

Public Counsel's Position: The Commission should increase EMM's Schedule LLPS revenue adjustment from $25 million to $117 million per year. This reflects the LLPS customer's projected calendar-year 2030 revenue, the last year that rates set in this case are likely to remain in effect, and is a known and measurable change that better matches revenues to the costs included in the revenue requirement.[53] If the Commission prefers not to make a pro forma adjustment of this size, it should adopt the annual true-up mechanism described

[48] Ex. 43, EMM witness Ronald A. Klote, surrebuttal and true-up direct testimony, Sch. RAK-9, p. 1, l.3 (increase of $41,422,255).
[49] Docket Item 317, P.4, ¶ 13.
[50] Ex. 208, Public Counsel witness Ron Nelson direct testimony, p. 24.
[51] Ex. 208, Public Counsel witness Ron Nelson direct testimony, pp. 23-24.
[52] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 8.
[53] Ex. 208, Public Counsel witness Ron Nelson direct testimony, p. 3; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 2, 9.

under Issue 37.[54]

Public Counsel's Argument: Public Counsel presented its argument for this subpart of sub issue 3.A. immediately above in its argument under sub issue 3.A.

B. What level of forfeited discount, commonly referred to as late payment revenue, should be included in the cost of service?

C. Should late payment fee revenue be increased by a proportionate amount of the revenue requirement increase authorized by the Commission in this case, commonly referred to as a "late payment fee factor-up"?

~~D. What amount of sales tax discount should be included in EMM's revenues?~~

~~**Public Counsel's Position:** $541,331.~~ Public Counsel withdrew this issue.

4. Wholesale Transmission Revenue Credit

A. Should the Commission accept EMM's revenue reduction to adjust utility transmission revenues in its cost of service to reflect Commission-authorized versus Federal Energy Regulatory Commission ("FERC") authorized returns on equity?

5. Fuel and Purchased Power

A. What should be adopted as the variable fuel and purchased power cost for this case?

B. What fuel prices should be included in the cost of service?

C. What normalized market prices should be used to determine the revenue requirement in this case?

D. What level of Transmission Congestion Rights ("TCR") revenue, not TCR margin, should be included in the cost of service?

6. Transmission Expense

E. Should the requirement for the Transource adjustment be discontinued?

7. Payroll, Benefits, and Incentive Compensation

F. What is the appropriate ratio of Operations and Maintenance ("O&M") expense to be used in calculating payroll, benefits, and payroll tax expense?

G. What level, if any, of long-term stock-based incentive compensation should be included in the cost of service?

H. What level of capitalized short-term incentive compensation based on earnings should be removed from plant in service?

[54] Ex. 208, Public Counsel witness Ron Nelson direct testimony, p. 26; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 10.

I. What level of severance payments should be included in the cost of service?

J. What level of pension and other post-employment benefit ("OPEB") expense should be included in the cost of service?

K. What level of supplemental executive retirement plan ("SERP") expense should be included in the cost of service?

8. Maintenance and Operating Expense

L. What level of meter replacement O&M costs should be included in the cost of service?

M. What level of outside services expense should be included in the cost of service?

N. What level of affiliate transaction expenses should be included in the cost of service?

9. Amortizations and Expired Amortization Tracker

A. What level of Demand Side Management pre-MEEIA opt-out amortization should be included in the cost of service?

B. What level of prospective tracking amortization should be included in the cost of service?

10. Advertising, Dues, and Donations

A. What level of Edison Electric Institute ("EEI") dues should be included in the cost of service?

Public Counsel's Position: Costs related to this endeavor should be borne entirely by EMM as they are not needed to provide safe, adequate and affordable service.

Public Counsel's Updated Position: Public Counsel did not oppose EMM and Staff's *Partial Stipulation and Agreement* they filed on October 2, 2026. Only MECG opposed it as to depreciation rate life estimates. If the Commission accepts and orders the terms of that *Partial Stipulation and Agreement* to resolve the revenue requirement impact of a number of issues identified in that agreement, including EEI dues, then this issue is resolved.

11. Customer Accounts Expense

A. Should bad debt expense be increased by a proportionate amount of the revenue requirement increase authorized by the Commission in this case, commonly referred to as a "bad debt factor-up"?

12. Regulatory Assessments, Rate Case Expense, and Local Taxes

A. What level of rate case expense, if any, should be allowed in the revenue requirement?

Public Counsel's Position: One-half of the average of EMM's rate case expenses in Case Nos. ER-2018-0145 and ER-2022-0129. The same as what Staff proposes.[55]

Public Counsel's Updated Position: Public Counsel did not oppose EMM and Staff's *Partial Stipulation and Agreement* they filed on October 2, 2026. Only MECG opposed it as to

[55] Ex. 212, Public Counsel witness Manzell Payne surrebuttal testimony, pp. 7-9.

depreciation rate life estimates. If the Commission accepts and orders the terms of that *Partial Stipulation and Agreement* to resolve the revenue requirement impact of a number of issues identified in that agreement, including rate case expense, then this issue is resolved.

13. Common Use Billings

A. Should the Uplight software be billed to Evergy's Kansas regulated entities?

B. What Uplight costs, including plant, reserve, amortization expense, and common use billings, should be included in the revenue requirement, and how should those costs be allocated and recovered?

14. Property Tax

A. What is the appropriate level of Missouri property tax to be included in rates?

B. What base level of property taxes should the Commission approve for tracking purposes?

C. What level of property tax tracker rate base amount and amortization should be included in the cost of service?

15. Income Taxes

A. How much income tax expense should be included in rates?

i. Should income tax expense be reduced by a normalized disposition loss deduction?

Public Counsel's Position: Yes.[56] Once a taxpayer disposes of an asset any normalization violation that before disposition could have occurred with that asset ends; therefore, the disposition loss deduction should be recognized for the tax year of the disposition regardless of any accelerated depreciation the taxpayer may have taken for prior tax periods.

Public Counsel's Updated Position: The source of the loss deductions are utility assets that EMM's retail customers funded. Those customers should be allowed to benefit from these deductions just as EMM does in the Evergy consolidated group (of which EMM is a member) income tax returns.

Public Counsel's Argument: Public Counsel witness John Riley is a certified public accountant with nearly forty years of accounting experience.[57] He explains on pages 7-10 of his direct and surrebuttal testimonies that when a utility disposes of an asset it should take a disposition loss deduction for the tax period in which the disposition occurs. He proposes averaging seven historical years of EMM's disposition loss deductions, calculating the annual tax impact associated

[56] Ex. 213, Public Counsel witness John S. Riley direct testimony, pp. 7-10; Ex. 216, Public Counsel witness John S. Riley surrebuttal testimony, pp. 7-10.
[57] Ex. 213, Public Counsel witness John S. Riley direct testimony, pp. 1-2.

with those deductions, and then allocating that result between EMM's Kansas and Missouri operations. He calculates the result to be $4.1 million before income tax gross-up to be applied as a reduction to EMM's annual income tax expense used for designing rates in this case.[58] As the IRS explains in the private letter ruling Mr. Riley included with his surrebuttal testimony as schedule JSR-S-03, depreciation ends upon disposition of a mass asset (26 CFR §168(i)-8(h)(1)); disposition is when an asset is permanently withdrawn from use or to produce income for essentially any reason (26 CFR §168(i)-8(b)(2) and 26 CFR §168(i)-8(c)(2)); and by operation of 26 USC § 168(i)(9)(B), when property is removed from rate base the deferred income taxes associated with it must be removed from the accumulated deferred income taxes balance. Mr. Riley points out that the Commission has established in a prior case that early asset retirements should reduce income tax expense when making rates.[59]

ii. What amount of research and development tax credits should be included in income tax expense?

iii. What amount of ongoing nuclear production tax credit benefits realized should be included in income tax expense?

B. Should the Commission approve a tracker for Inflation Reduction Act tax benefits?

i. If a tax tracker should be approved, should the differences between actual tax benefits and tax benefits included in income tax expense be subject to carrying costs, and if so, what is the appropriate carrying cost to accrue?

C. What amount of net operating loss deferred tax assets should be included in rate base?

Public Counsel's Position: None. A net operating loss is the excess of taxable expenses over taxable income for income tax purposes—an income tax item, and is independent of an income tax rate; a net operating loss is not a deferred tax liability—balance sheet item—calculated by applying a tax rate that ratepayers finance through utility rates.[60] EMM does not currently have a net operating loss.

[58] Ex. 213, Public Counsel witness John S. Riley direct testimony, p. 9.
[59] Ex. 213, Public Counsel witness John S. Riley direct testimony, p. 10.
[60] Ex. 213, Public Counsel witness John S. Riley direct testimony, pp. ; Ex. 216, Public Counsel witness John S. Riley surrebuttal testimony, pp. 2-6.

Public Counsel's Argument: As stated in Public Counsel's argument to subpart A.i. of these income taxes issues, Public Counsel witness John Riley is a certified public accountant with nearly forty years of accounting experience.[61] He explains that the issue here is the result of a nonunanimous settlement agreement in Commission Case No. ER-2018-0145 to address the income tax ramifications of the 2017 Tax Cuts and Jobs Act ("TCJA") on ratemaking. Public Counsel neither joined nor opposed that agreement.[62] The specific part of that agreement that is the source of this issue as quoted on the third page of Mr. Riley's direct testimony follows:

> **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:
> - Protected-ARAM
> - Nonprotected-10 yr.
> - NOL-ARAM
> - Misc.- 10 yr.

As Mr. Riley explains, "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%."[63] By their non-unanimous agreement Staff and EMM (then Kansas City Power & Light Company) were addressing how to flow that "excess" balance back to retail customers over time. As Mr. Riley explains, while EMM had a NOL when it and Staff reached their agreement, it does not now, and has not had one since 2020, although the TCJA changed the law so that NOLs can be carried-forward indefinitely until exhausted by being applied against taxable income. Accumulated deferred tax balances track the differences between how depreciation and certain other deductions are treated for purposes of paying income taxes and for

[61] Ex. 213, Public Counsel witness John S. Riley direct testimony direct, pp. 1-2.
[62] Ex. 213, Public Counsel witness John S. Riley direct testimony, pp. 2-4.
[63] Ex. 213, Public Counsel witness John S. Riley direct testimony, p. 3.

purposes of making rates. Unlike deferred income tax balances, which ratepayers fund through utility rates, NOLs are unfunded income tax benefits from one tax period that companies can realize when they have taxable income against which they can apply their NOLs as an offset to reduce their income tax liabilities in a different tax period.[64]

Consistent with the impact on NOLs of the 1986 major overhaul of federal income taxes, due to the TCJA NOL balances remain unchanged, but the tax value associated with them reduced. As Mr. Riley testified:

> **Q. How were NOLs treated after the 1986 major overhaul of federal income taxes?**
>
> A. NOL balances were not affected by the rate reduction from 46% to 34%, but the tax values of the carried forward NOL balances used were reduced, just as we witnessed in 2018. There was no remeasurement and amortization of the NOLs at that time either. It is interesting to note that NOLs generated immediately after the 1986 rate change could be carried back two years. This carryback was applied to prior tax returns at the old tax rate of 46% not the new rate of 34%. A bonus in the application of the NOLs.[65]

Because EMM accrued the depreciation benefits in the tax periods where it had losses for income tax purposes, the fact that it did not realize the tax benefits of the NOLs those losses created until applied to different tax periods is irrelevant. Further, if they were relevant EMM realized the benefits of its TCJA NOL balance by its 2020 taxable year and it has not had a NOL balance since then; therefore, EMM should not now receive an amortized amount of its net NOL balance as of the date federal income tax rates changed due to the TCJA. Stated differently, if EMM should have gotten a ratemaking benefit on EMM's net NOL balance due to the TCJA federal income tax rate change, that benefit should not have extended beyond the point in time where EMM fully

[64] Ex. 213, Public Counsel witness John S. Riley direct testimony, pp. 3- 7; Ex. 216, Public Counsel witness John S. Riley surrebuttal testimony, pp. 2-6.
[65] Ex. 216, Public Counsel witness John S. Riley surrebuttal testimony, pp. 4-5.

realized all the federal income tax impacts of that NOL balance—2020. As Mr. Riley characterizes it, "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."[66]

D. Should an Accounting Authority Order ("AAO") be issued to defer the sale of tax benefits after the true-up date but prior to the effective date of rates?

16. Income-Eligible Programs

A. What level of Critical Medical Needs and Rehousing Programs expense should be included in the revenue requirement?

Public Counsel's Position: $1 million for the Critical Medical Needs Program with 50/50 sharing of total program funding of $2 million.[67] Continue current funding level for Rehousing Program.[68]

Public Counsel's Updated Position: While Public Counsel opposed settlement of one issue in EMM, Staff and Renew Missouri's *Nonunanimous Programs Stipulation and Agreement* they filed on October 7, 2026, Public Counsel does not oppose the resolution of this issue in that agreement: Critical Medical Needs Program annual funding of $600,000 shared 50/50 by ratepayers and shareholders; and continue current funding level for Rehousing Program shared 50/50 by ratepayers and shareholders.

B. What level of economic relief pilot program ("ERPP") expense should be included in the revenue requirement?

Public Counsel's Position: Continue current funding level for economic relief program.[69]

Public Counsel's Updated Position: While Public Counsel opposed settlement of one issue in EMM, Staff and Renew Missouri's *Nonunanimous Programs Stipulation and Agreement* they filed on October 7, 2026, Public Counsel does not oppose the resolution of this issue in that agreement: Economic Relief Program annual funding of $1,410,000 shared 50/50 by ratepayers and shareholders, plus add $150,000 for dropping the Third Party Energy Burden tool development request.

C. Should the pilot designation be removed from EMM's ERPP tariff?

Public Counsel's Position: Yes.

Public Counsel's Updated Position: While Public Counsel opposed settlement of one issue in

[66] Ex. 213, Public Counsel witness John S. Riley direct testimony, p. 7.
[67] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 55; Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 14.
[68] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 55; Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 14.
[69] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 55; Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 14.

EMM, Staff and Renew Missouri's *Nonunanimous Programs Stipulation and Agreement* they filed on October 7, 2026, Public Counsel does not oppose the resolution of this issue in that agreement which is consistent with Public Counsel's original stated position: The word "Pilot" will be removed from the program name.

D. Should EMM be required to provide a summary of the Rehousing Program administration, reporting, and evaluation by email to Staff and the Office of the Public Counsel at the conclusion of each year of the Program as described in its currently approved tariff?

Public Counsel's Position: Yes.

Public Counsel's Updated Position: While Public Counsel opposed settlement of one issue in EMM, Staff and Renew Missouri's *Nonunanimous Programs Stipulation and Agreement* they filed on October 7, 2026, Public Counsel does not oppose the resolution of this issue in that agreement which is consistent with Public Counsel's original stated position: A summary of Rehousing Program administration, reporting and evaluation will be provided via EFIS (non-case filing, subtype – Low Income Bill Payment Programs Report) at the conclusion of each year of the Program.

E. Should the Commission approve the creation of a low-income rate or assistance program that waives EMM's customer charge for qualifying customers in this case, or should such a program continue to be developed in the Affordability Workshop?

Public Counsel's Position: The program should be created along the following parameters:[70]

- **Budget:** $6M annually
- **Definition of Federal Poverty Level:** 150% Federal Poverty Level ("FPL"), 60% State Median Income ("SMI"), or the accepted threshold metric utilized by the Missouri Department of Social Services Low-Income Home Energy Assistance Program ("LIHEAP").
- **Restrictions:** None.
- **How a customer can renew the waiver:** By providing proof of income to be administered by the Missouri Department of Social Services or and/or its applicable Community Action Agency.
- **Implementation Costs:** Minimal with a possibility of a one-time infusion of costs to enable universal enrollment with existing Missouri Benefits Programs.
- **How long before renewal:** One-year

Public Counsel's Argument:

i. If such a program is approved, should late fees be waived for qualifying customers?

Public Counsel's Position: Yes.[71]

[70] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 55; Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 15.
[71] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 55; Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 15.

Public Counsel's Argument: In 2025 § 393.1680, RSMo, became law. That statute authorizes the Commission to "approve a special alternative residential customer rate or bill discount from a utility company, as defined in section 393.550, based in part on household utility burden. The rate or bill discount approved shall incorporate a commission-authorized rate or bill discount from the appropriate base residential rate." On October 1, 2025, the Commission initiated a working group (Docket No. OW-2026-0085) for collecting information and exploring how it might implement that statutory authority. Public Counsel witness Dr. Geoff Marke, Ph.D., offers that this is an opportune time to initiate such a program at EMM. Household utility affordability is of concern across the country. In this case the Commission can address cost recovery for funding the program. He supports a maximum annual program funding of $6 million to be borne equally by EMM's shareholders and its retail customers. This modest proposal would flow virtually all of the funding of that program directly to utility bill assistance, not overhead. Approving this program now would provide some household utility affordability relief while the Commission explores others, as well as how to improve this proposal.[72]

ii. If such program is approved, how should the waived revenues be recovered?

F. Should EMM be required to file quarterly Rehousing Program reports in EFIS in addition to the existing year-end report?

Public Counsel's Position: Yes.

Public Counsel's Updated Position: While Public Counsel opposed settlement of one issue in EMM, Staff and Renew Missouri's *Nonunanimous Programs Stipulation and Agreement* they filed on October 7, 2026, Public Counsel does not oppose the resolution of this issue in that agreement: A summary of Rehousing Program administration, reporting and evaluation will be provided via EFIS (non-case filing, subtype – Low Income Bill Payment Programs Report) at the conclusion of each year of the Program.

G. What changes, if any, should be made to the ERPP tariff to permit broader enrollment or to allow unused program funding to be transferred to other income-eligible programs?

Public Counsel's Position: It should be changed to put more emphasis on enrolling

[72] Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, pp. 14-16.

elderly and single-parent households and to allow unused program funds to be transferred to other income-eligible programs.[73]

Public Counsel's Updated Position: While Public Counsel opposed settlement of one issue in EMM, Staff and Renew Missouri's *Nonunanimous Programs Stipulation and Agreement* they filed on October 7, 2026, Public Counsel does not oppose the resolution of this issue in that agreement: Accept tariff revisions as outlined in the tariff sheets attached to the settlement agreement which create more flexibility in program administration, and funding authorized for each program will remain dedicated to that program and will not be transferred among programs.

H. What level of Low-Income Weatherization Program expense, if any, should be included in the revenue requirement?

Public Counsel's Position: $1 million for the Low-Income Weatherization Program with 50/50 sharing of total program funding of $2 million.[74]

Public Counsel's Updated Position: While Public Counsel opposed settlement of one issue in EMM, Staff and Renew Missouri's *Nonunanimous Programs Stipulation and Agreement* they filed on October 7, 2026, Public Counsel does not oppose the resolution of this issue in that agreement: Annual funding will increase to $750,000, shared 50/50 between ratepayers and shareholders.

17. Depreciation

A. Which depreciation rates should be used?

B. Should terminal net salvage be included in depreciation rates?

C. What general plant amortization reserve deficiency adjustment should be made?

D. Should rates reflect the ongoing amortization of a cost of removal asset?

E. Should EMM recover future retirement costs in current rates?

18. Plant in Service Accounting

A. What projects should be reflected as eligible for plant in service accounting ("PISA")?

B. What amount of PISA deferral should be reflected in rate base?

Public Counsel's Position: To the extent that the $21.8 million for EMM's lateral rebuild project, the $20.8 million for EMM's substation projects, and $73.1 million for EMM's transmission projects are included in the PISA deferral, the PISA deferral should be reduced to remove them before the PISA deferral balance is reflected in rate base.

[73] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 55; Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 14.
[74] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 55; Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 14.

Public Counsel's Argument: Because Public Counsel's argument and witnesses for this issue 18.B., and for issues 19.A., 19.B.; and 20.F. are so intertwined, rather than repeating them they are all presented here under issue 18.B.

EMM made distribution investments through the following projects:

- Lateral Improvement Program,
- Wood Pole Life Extension and Replacement Program,
- Proactive Cable Replacement/Rehabilitation Program,
- Manhole Vault Top Replacement Program, Network Rehabilitation Program,
- High Outage Count Customers Program (Worst Performing Circuit Program),
- Customers Experiencing Multiple Interruptions ("CEMI") Improvement Program,
- Feeder Improvement Program, and
- Automation Strategy, including installation of communicating fault current indicators and communicating reclosers.[75]

Based on the growth rate of EMM's transmission, distribution, general, and intangible plant investment during 2012-2018 EMM would have invested an additional $1.2 billion from 2019 to 2025; however, instead, EMM invested over twice that amount—$2.7 billion.[76] According to EMM witness Andy Alexander, by the end of 2026 EMM will have invested approximately $748 million in its distribution system since the beginning of 2022.[77] An apparent driver for this investment expansion is the influence of Evergy shareholder Elliott Management Corporation who caused the creation of a committee which developed a plan for Evergy "grid reliability investment" of $4.93 billion over 2020-2024. This was an increase of $1.3 billion over Evergy's prior plan for that timeframe. These progressively increasing Evergy grid investments continue a trend going back at least to shortly after the creation of Evergy in 2018.[78] Because the evidence adduced in

[75] Ex. 68, EMM witness Ryan Mulvany direct testimony, pp. 14-16; Ex. 21, EMM witness Kevin D. Gunn direct testimony, p. 19.
[76] Ex. 121, Staff witness Matthew R. Young direct testimony, pp. 37-38.
[77] Ex. 1, EMM witness Andy Alexander rebuttal testimony, pp. 12-13.
[78] Ex. 200, Public Counsel witness Paul Alvarez direct testimony, pp. 16-17.

this case does not show that $115.7 million[79] of EMM's investment in its lateral rebuild, substation and transmission projects was required or cost-effective, EMM's customers should not be responsible for $115.7 million of that $2.7 billion. EMM is seeking to increase its electric rates; therefore, EMM has the burden of proving it should recover for its transmission and distribution investments through those rates. § 393.150(2), RSMo.[80]

Public Counsel's witness Dave Shapley is a professional engineer with over 35 years of experience who worked as a distribution engineer for a for-profit electric utility for four years before he started working for a non-profit electric cooperative in 1993 where he still is employed.[81] Public Counsel's witness Paul Alvarez, who has degrees in finance and marketing, a decade of experience with demand-side programs at a for-profit electric utility (Excel Energy), two years of experience leading teams who completed the first two independent evaluations of benefits delivered by smart grid investment programs at Xcel Energy Colorado and Duke Energy Ohio, has extensive experience with cost-benefit analyses and distribution utility regulation, planning,

[79] $21.8 million for EMM's lateral rebuild project (Ex. 220, Public Counsel witness Dave Shapley direct testimony, p. 17; Ex. 221, Public Counsel witness Dave Shapley surrebuttal testimony, p. 14.), $12.2 million for EMM's substation projects (Ex. 221, Public Counsel witness Dave Shapley surrebuttal testimony, pp. 18-25, 34. (Mr. Shapley revised his direct amount of $20.8 million to $12.2 million in light of Ex. 78, EMM witness Andrew Rietcheck rebuttal testimony), and $73.1 million for EMM's transmission projects (Ex. 221, Public Counsel witness Dave Shapley surrebuttal testimony, p. 28).

[80] It appears by its reluctance to divulge information that EMM believes that Public Counsel has the burden of proof. Public Counsel points out that when Public Counsel pursued discovery from EMM to evaluate EMM's lateral rebuild, substation and transmission projects investments, EMM did not provide all of the information Public Counsel needed for that evaluation. (Ex. 200, Public Counsel witness Paul Alvarez direct testimony, p. 21; Ex. 201, Public Counsel witness Paul Alvarez surrebuttal testimony, p. 33; Ex. 220, Public Counsel witness Dave Shapley direct testimony, p. 25; Ex. 221, Public Counsel witness Dave Shapley surrebuttal testimony, pp. 34-35). The extreme to which EMM took this approach is illustrated by its witness Andrew Rietcheck's sur-surrebuttal testimony where he criticizes Public Counsel witness Dave Shapley for not considering information EMM supplied in its response to Public Counsel data request 5069. (Ex. 89, EMM witness Andrew Rietcheck sur-surrebuttal testimony, pp. 4-6). EMM transmitted its response to Public Counsel data request 5069 to Public Counsel by a link embedded in a 3:04 PM September 10, 2026, email. As the Commission ordered, Public Counsel prefiled Ex. 221, Mr. Shapley's surrebuttal testimony on September 10, 2026, at 4:43 PM. (Case No. ER-2026-014, Docket Item No. 252, Date Filed: 9/10/2026, 4:43 PM). The conclusion that Mr. Shapley was unaware of the information in EMM's response to Public Counsel data request 5069 is patent.

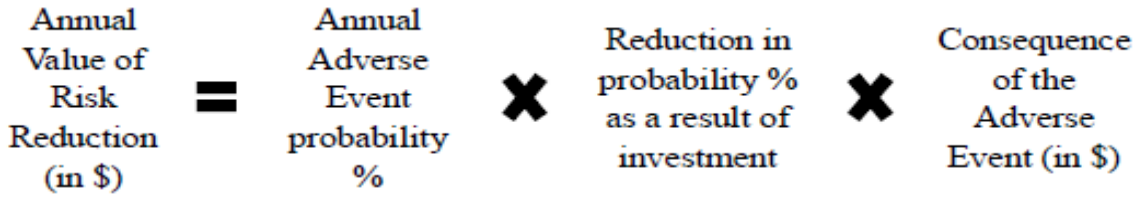
[81] Ex. 220, Public Counsel witness Dave Shapley direct testimony, p. 1.

investment, and performance measurement.[82] Both are consultants from The Wired Group who Public Counsel retained for their expertise for evaluating utility infrastructure investments. Messrs. Shapley and Alvarez reviewed EMM's distribution and transmission investments for whether, at the time EMM made them, they were needed to restore or maintain safe, adequate and reliable electric service in the near-term (*e.g.*, testing showed imminent component failure), or whether, from a retail customer perspective, on a risk informed objective cost-benefit economic basis, the benefits of replacing or repairing components exceeded the costs of doing so. Public Counsel witness Alvarez characterizes investments driven by need to be investments that are required for safe and reliable service, and investments driven by net economic benefit to be discretionary investments.[83]

For discretionary projects, Messrs. Alvarez and Shapley used a risk-informed benefit-cost analysis.[84] As Public Counsel witness Paul Alvarez explains for investments in projects to reduce electric service interruptions:

> A risk-informed benefit estimate involves an assessment of the existing risk of a service interruption (or other adverse event, like a safety incident), meaning, before any action (like a capital project) is taken. This is known as the probability of an adverse event, and for service interruptions, can be gleaned from utilities' outage management systems. Next, the reduction in the probability of a service interruption likely to result from the capital project being considered is estimated. Ideally, this estimate is based on improvements measured from similar projects in the past. Finally, the consequences of a service interruption in the proposed capital project's location (customer counts, residential commercial customer mix, interruption duration, etc.) is estimated in dollars. Most commonly, the US Department of Energy's online "Interruption Cost Estimator" tool is used for this. Then, these three estimates are simply multiplied to calculate the annual value of the risk reduction offered by a project in dollars, as shown in the equation below:

[82] Ex. 200, Public Counsel witness Paul Alvarez direct testimony, pp. 1-2.
[83] Ex. 200, Public Counsel witness Paul Alvarez direct testimony, pp. 7-9.
[84] Ex. 200, Public Counsel witness Paul Alvarez direct testimony, pp. 11-12.



> This risk reduction value over the expected lifetime of an investment (20, 40 years, etc.) is the risk-informed "benefit" that should be compared to project costs to customers for significantly-sized discretionary capital spending decisions. The equation can also be used to estimate the dollar-denominated benefits of other types of risk reductions, such as the value of a safety improvement.[85]

The Department of Energy's Interruption Cost Estimate Tool includes Missouri specific data for estimating both the costs of interruptions and the values of reliability improvements for Missourians: ICE Calculator | Interruption Cost Estimate Tool.[86] Working with Mr. Alvarez, when Mr. Shapley reviewed EMM's data supporting its Lateral Improvement Program rebuilds,[87] he concluded that none were needed to address immediate reliability concerns and, based upon his risk informed benefit-cost analysis, that none were cost-effective from a customer perspective.[88]

EMM relies on Burns & McDonnell's proprietary AssetLens product offered by its 1898 & Co. division[89] to prioritize its Lateral Improvement Program projects;[90] however, while EMM says that it performed cost-benefit analyses for those projects, it did not retain those analyses.[91] The Wired Group has experience in four other state regulatory proceedings where utilities relied

[85] Ex. 200, Public Counsel witness Paul Alvarez direct testimony, pp. 11
[86] See Ex. 200, Public Counsel witness Paul Alvarez direct testimony, pp. 11-12, fn. 20; Ex. 201, Public Counsel witness Paul Alvarez surrebuttal testimony, p.11.
[87] A lateral is a relatively short section of smaller conductor on a circuit that "taps into" a larger conductor and are typically used to serve typically serve a load of, or equivalent to, 30-50 or so residential customers. Ex. 220, Public Counsel witness Dave Shapley direct testimony, p. 14.
[88] Ex. 220, Public Counsel witness Dave Shapley direct testimony, pp. 14-17; Ex. 221, Public Counsel witness Dave Shapley surrebuttal testimony, pp. 14-17.
[89] Ex. 12, EMM witness Jason D. De Stigter rebuttal testimony, p. 1.
[90] Ex. 1, EMM witness Andy Alexander rebuttal testimony, p. 15.
[91] Ex. 200, Public Counsel witness Paul Alvarez direct testimony, pp. 13-14.

on AssetLens, which gives Mr. Alvarez a unique perspective on AssetLens.[92] Notably, in three of those four proceedings the amounts allowed for grid investments were reduced significantly.[93] Mr. Alvarez's impression of EMM's project review process and AssetLens is that they are subjective, not objective.[94] Except perhaps to EMM, what is known about AssetLens is what Burns & McDonnell has revealed publicly.[95] Further, there is no evidence that anyone has analyzed whether, or to what extent, a project AssetLens prioritizes for completion results in customers realizing reliability benefits that exceed their costs due to a project.[96] Staff has not seen how AssetLens works,[97] nor has Public Counsel, except as a "black box." Further, despite his experience with AssetLens, to Mr. Alvarez's knowledge, the accuracy of AssetLens has never been verified by comparison to actual results.[98]

Public Counsel witness Dave Shapley applied DOE's ICE tool[99] to obtain the economic value of the reduced outage duration to measure against the costs of lateral rebuilds.[100] That tool has Missouri customer specific outage avoidance benefit information. It appears from the resume of EMM witness Jason D. De Stigter,[101] a Burns & McDonnell employee, and from the Illustrative AssetLens Analytics Methodology he attached as Schedule DDD-2 to his rebuttal testimony,[102] that the Department of Energy's (DOE) Interruption Cost Estimate (ICE) Tool may be available in some way in AssetLens to monetize decreased customer outages, but there is no explanation or

[92] Ex. 201, Public Counsel witness Paul Alvarez surrebuttal testimony, p. 27; Ex. 12, EMM witness Jason D. De Stigter rebuttal testimony, p. 1 (1898 & Co. is a division of Burns & McDonnell).
[93] Ex. 201, Public Counsel witness Paul Alvarez surrebuttal testimony, p. 27.
[94] Ex. 200, Public Counsel witness Paul Alvarez, direct testimony, pp. 12-15.
[95] See Ex. 12, EMM witness Jason D. De Stigter rebuttal testimony
[96] Ex. 201, Public Counsel witness Paul Alvarez surrebuttal testimony, p. 9.
[97] Staff witness Malachi Bowman,Tr. 9:75-76.
[98] Ex. 200, Public Counsel witness Paul Alvarez direct testimony, p. 15.
[99] ICE Calculator | Interruption Cost Estimate Tool
[100] See Ex. 200, Public Counsel witness Paul Alvarez direct testimony, pp. 11-12; Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, p. 12.
[101] Ex. 12, EMM witness Jason D. De Stigter rebuttal testimony, Sch. DDD-1, p. 8.
[102] Ex. 12, EMM witness Jason D. De Stigter rebuttal testimony, Sch. DDD-2, pp. 3, 8.

examples in that resume of how it would monetize them. Further, Mr. Alvarez, who participated in the case for which Mr. De Stigter created Schedule DDD-2, testifies that Schedule DDD-2 reflects custom work Burns & McDonnell performed specifically for DTE and that it is not available to EMM.[103]

In response to EMM witness Andy Alexander's constructive input on Mr. Shapley's initial Lateral Improvement Program cost-benefit analysis, he improved his analysis to include the change in reliability on the rebuilt laterals instead of the change in the reliability of circuits where the laterals were rebuilt and he included a comparison of circuits with rebuilt laterals to a control group of circuits without rebuilt laterals.[104] These analysis improvements did not change his initial conclusion that EMM's Lateral Improvement Program rebuilds were not cost-effective.[105] When Public Counsel witness Dave Shapley applied DOE's ICE tool to obtain the customer benefit of reduced outage duration to measure against the costs of lateral rebuilds in response to EMM witness Andy Andrew's rebuttal testimony that EMM's System Average Interruption Duration Index scores dropped by about 30 minutes (from 153.06 minutes on average pre-rebuild to 122.60 minutes on average post-rebuild) after EMM completed the lateral rebuilds he concluded that the benefits still did not outweigh the costs.[106]

When Mr. Shapley reviewed EMM's substation investments, he similarly concluded that several were neither needed for immediate reliability concerns nor were cost-effective from a customer perspective. Schedule PJA-2 to Mr. Alvarez's direct testimony exemplifies the type of EMM information they reviewed, not only for substations, but also for lateral rebuilds and

[103] Ex. 201, Public Counsel witness Paul Alvarez surrebuttal testimony, pp. 26-27.
[104] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, p. 12.
[105] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, pp. 12-14.
[106] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, pp. 12-14.

transmission investments. Further, Mr. Alvarez explains that when asked for them in discovery, EMM did not provide any approved substation capital investment authorizations and disclosed that it had not performed benefit-cost analyses for them.[107] Further, as Mr. Alvarez discusses in his surrebuttal testimony, the likelihood that a transformer that is 50.5 years old will fail before it is 51.5 years old is 1.64% and that the transmission grid is designed to N-1 redundancy, the likelihood that a transmission transformer failure will cause an outage is extremely low. In Mr. Alvarez's example for a 50.5-year-old transmission transformer, assuming a generous 5% probability of no backup, the odds of a transmission transformer failure causing an outage is 8.2 in 10,000.[108]

In response to new information EMM witness Mr. Rietcheck provided in his rebuttal testimony about certain substation investments, Mr. Shapley agreed that EMM had established that those investments were needed or cost-effective. The first is EMM's investment in two spare 161kV-to-13kV transformers. EMM's average annual risk of transformer failure is 1.64%; therefore, when you multiply its 113 transformers by 1.64% the result is 1.85 transformers. Also, with EMM's ongoing projects, it is highly likely that one or both transformers may be reused in one or more of those projects.[109] The second is a circuit breaker replacement project where Mr. Rietcheck explained EMM's plans to inventory the 19-year old circuit breakers being replaced; that the switchgear is fifty years old overall, not the inventoried 23 and 31 years which are the ages of significant retrofits; and that there are other condition issues—rusty enclosures, water intrusion, and internal insulation failures.[110] This is the type of information which EMM should be

[107] Ex. 200, Public Counsel witness Paul Alvarez, direct testimony, p. 16.
[108] Ex. 201, Public Counsel witness Paul Alvarez surrebuttal testimony, p. 29.
[109] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, pp. 18-19.
[110] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, pp. 24-25.

presenting to the Commission to support the amounts it is requesting the Commission allow it to recover for its grid investments.

When Mr. Shapley reviewed EMM's transmission investments, as he had with substation projects, he concluded that several were neither needed for immediate reliability concerns nor were cost-effective from a customer perspective. He concluded that three power transformers at the Wolf Creek nuclear generating station were prematurely replaced, two large lengths of transmission line were prematurely replaced, and that EMM had not supported partial rebuild of a transmission substation.[111] His rationale for his conclusion for one of the two transmission line lengths follows: "In one line rebuild project, of 119 poles replaced, the average pole age was just 30 years (1993), and only two failed their objective tests and inspections. There is just no way the unit-cost efficiencies associated with replacing 119 poles at once outweighs the cost of replacing 117 poles prematurely."[112]

There were deteriorating test results on one of four transformers at Wolf Creek. Rather than replacing only that transformer, four were replaced with the stated support for replacing the other three being "aging, reliability, and operational concerns." In a response to Public Counsel discovery EMM gave the following rationale for replacing all four transformers at once:

> A piecemeal replacement strategy would have required multiple future outages, repeated engineering and construction mobilizations, increased costs, and additional operational risk. Given the limited availability of refueling outage windows and the rigorous planning requirements associated with work at a nuclear facility, a comprehensive replacement strategy represented the most cost-effective and operationally prudent solution.

[111] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, p. 28.
[112] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, p. 26.

Wolf Creek has refueling outages every 18 months. The four transformers were replaced during a Wolf Creek refueling outage in 2022 and there is no reason that each of the other transformers could not have been replaced during future refueling outages when condition testing informing a risk-informed benefit-cost analysis showed that replacement was cost-effective.[113] In his sur-surrebuttal testimony EMM witness Andrew Rietcheck provides what is best described as a high level information dump about this four transformers project.[114] His implication that Mr. Shapley was aware of any of that information from EMM data request responses is unfounded. While Public Counsel received EMM's response to OPC DR 5033 on August 20, 2026, it was not until September 10, 2026, when EMM transmitted its response to Public Counsel data request 5069 to Public Counsel by a link embedded in a 3:04 PM September 10, 2026, email. As the Commission ordered, Public Counsel prefiled Mr. Shapley's surrebuttal testimony on September 10, 2026, at 4:43 PM. (Case No. ER-2026-014, Docket Item No. 252, Date Filed: 9/10/2026, 4:43 PM). The conclusion that Mr. Shapley was unaware of the information in EMM's response to Public Counsel data request 5069 when he prepared his surrebuttal testimony is patent.

At no time has EMM presented a comparison of the costs of replacing the four transformers in 2022[115] against the present value of the costs of replacing each when it is projected to need to be replaced. In his sur-surrebuttal testimony Mr. Rietcheck repeatedly testifies that EMM considered ageing, age-related degradation, maintainability, and operational issues of the transformers when deciding to replace them all at once.[116] What he does not do is quantify the benefits of replacing and reconfiguring all four transformers at once rather than deferring transformer replacements until objective testing shows they warrant replacement and

[113] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, pp. 28-31.
[114] Ex. 89, EMM witness Andrew Rietcheck sur-surrebuttal testimony, pp. 3-12.
[115] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, table, p.28.
[116] Ex. 89, EMM witness Andrew Rietcheck sur-surrebuttal testimony, pp. 3-12.

reconfiguring them later on risk informed objective cost-benefit economic basis to demonstrate that replacing them in 2022 was more cost-effective. If fact, he does no quantitative analysis to show that the new considerations (factors) to which he points justify EMM replacing all four transformers in 2022. His testimony is not persuasive that the benefits of EMM replacing all four Wolf Creek transformers in 2022 rather than only the transformer which had degraded to the point where it needed to be replaced.

Mr. Shapley disagrees with EMM that it should have rebuilt two different transmission line lengths—Leeds-Winchester and Brunswick-Carrollton—based on "asset health" concerns. The oldest pole in operation on EMM's grid is 98 years old. The average age of the 119 poles replaced during the Leeds-Winchester line rebuild was 30 years and only two had failed inspections. Further, before the rebuild, the book value of the assets rebuilt was nearly 20% of their original cost. The average age of the 254 poles replaced during the Brunswick-Carrollton line rebuild was 30 years and only eight had failed inspections.[117]

In his sur-surrebuttal testimony EMM witness Mr. Rietcheck criticizes Mr. Shapley for

> not perform[ing] a project-specific comparison of the [transmission line] rebuilds against a defined piecemeal alternative. Instead, he relies principally on his characterization of pole age, the number of structures identified for attention through particular inspections, and remaining net book value. That approach does not quantify the cost, outage requirements, safety exposure, construction risk, reliability consequences, or lifecycle implications of repeatedly replacing individual structures and repairing conductor while leaving the remainder of each aging line in service.[118]

Apparently, he believes, correctly, that analysis should have been done. There is no evidence EMM performed it.

[117] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, pp. 31-32.
[118] Ex. 89, EMM witness Andrew Rietcheck sur-surrebuttal testimony, p. 12.

As to the Leeds-Winchester transmission line rebuild he testifies that the average age of the 119 poles was 45 years, four failed inspections to be replaced within 18 months, 33 were replaced during the rebuild, and that the book value of the rebuilt assets was less than one percent of their original cost ($77.56/$169,000 X 20%) and he cites to an EMM August 20, 2026, data request response to OPC DR 5038 as supporting this conflicting information.[119] Mr. Shapley relied on information in EMM's August 20, 2026, response to OPC DR 5039.[120] Neither of these data request responses are in the evidentiary record. EMM witness Mr. Rietcheck testifies to EMM's qualitative subjective rationale for EMM replacing this line as follows:

> The line was rebuilt because of its overall age and condition. It was primarily a 1950s-vintage line that had reached the end of its useful service life. The line also includes critical crossings over interstate highways and several major throughways, portions of which were more than 65 years old.[121]

EMM has not provided the support required for the Commission to require EMM's retail customers to pay in electric rates for EMM's Leeds-Winchester transmission line rebuild investment.

Regarding the Brunswick-Carrollton transmission line rebuild Mr. Rietcheck testifies in sur-surrebuttal that the oldest pole on EMM's transmission system is "approximately 81 years old, not 98 years old."[122] Mr. Shapley testified in surrebuttal that "EMM reports that the age of the oldest pole in operation on its system is 98 years," citing to EMM's response to OPC DR 2017 (e).[123] The difference here may simply be that EMM has older poles on its distribution system

[119] Ex. 89, EMM witness Andrew Rietcheck sur-surrebuttal testimony, p. 13.
[120] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, p. 32, fn. 40.
[121] Ex. 89, EMM witness Andrew Rietcheck sur-surrebuttal testimony, p. 13.
[122] Ex. 89, EMM witness Andrew Rietcheck sur-surrebuttal testimony, p. 14.
[123] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, p. 32.

than it has on its transmission system. EMM would have started to build out what is now its distribution system before building its current transmission system.

Mr. Rietcheck also testifies that the majority of the poles on the Brunswick-Carrollton transmission line before the rebuild were 1951 vintage and placed in service in 1953—making them 75 years old (2026-1951). Mr. Rietcheck points to a 2018 intrusive inspection where EMM found that 20 "structures that had deteriorated below their minimum design strength and were tagged as rejected" as another factor beyond EMM's determination that eight poles need to be replaced within 18 months support for rebuilding this length of transmission line.[124]

Being tagged as rejected based on an intrusive inspection must not be as significant as determining that a pole must be replaced within 18 months since Mr. Rietcheck did not testify as to what actions EMM took to remedy the poles tagged "rejected." EMM provided no information as to how many, if any, of the 20 structures tagged as rejected were replaced before it rebuilt the Brunswick-Carrollton transmission line in 2022. Further, it did not provide any timeline for when it projected that it would replace those 20 structures if it did not rebuild the Brunswick-Carrollton transmission line. At best, EMM's evidence that eight poles needed to be replaced within eighteen months and an additional dozen sometime afterward does not demonstrate that EMM's retail customers should pay for all of EMM's 2022 investment in rebuilding the Brunswick-Carrollton transmission line.

Because EMM did not perform any cost-benefit analysis for its modification of its Claycomo transmission substation from a straight to ring bus breaker configuration and the benefits of performing that reconfiguration on an existing substation do not exceed the investment required,

[124] Ex. 89, EMM witness Andrew Rietcheck sur-surrebuttal testimony, pp. 14-16.

Public Counsel's witness Dave Shapley determined that EMM's retail customers should not be responsible for EMM's 2022 investment in reconfiguring its Claycomo ring bus. Further, the book value of the assets EMM replaced was 58% of its original cost, meaning it should have continued to be reliable for many years or decades.[125] In his testimony Mr. Rietcheck attempts to distract from Mr. Shapley's point by essentially testifying that EMM's Claycomo substation project was to upgrade the substation to match the attributes of a new substation, including a ring bus breaker configuration.[126] Public Counsel has not taken issue with those upgrades, only EMM's decision to modify the bus breaker configuration from a straight bus to a ring bus. EMM has not shown that its retail customers should pay for that reconfiguration.

C. What amount of PISA amortization should be included in expense?

D. Should EMM's plant-in-service reporting requirements be modified from those in the Stipulation and Agreement approved in Commission Case No. ER-2022-0129, and if so, what modifications should be made?

19. Distribution Investment

A. What level of distribution capital investment should be reflected in rate base?

Public Counsel's Position: For the reasons to which Public Counsel witnesses Paul Alvarez and Dave Shapley testify, the following amounts should not be included in rate base: $21.8 million for EMM's lateral rebuild project and $20.8 million for EMM's substation projects, a total of $42.6 million.

Public Counsel's Argument: See Public Counsel's argument under issue 18.B., where Public Counsel also presents its argument for this issue 19.A., as well as issues 19.B., and 20.F.

B. Is EMM's asset prioritization methodology a reasonable basis for the investment reflected in this case?

Public Counsel's Position: No. As Public Counsel witnesses Paul Alvarez and Dave Shapley testify, EMM is prioritizing distribution and transmission system plant replacement regardless of the results of objective tests and formal inspections to evaluate the likelihood of service failures. EMM is not comparing the projected improved service benefit from replacement with the cost of replacement, it is not comparing the projected improved service

[125] Ex. 221, Public Counsel witness Dave Shapley, surrebuttal testimony, pp. 32-33.
[126] Ex. 89, EMM witness Andrew Rietcheck sur-surrebuttal testimony, pp. 16-18.

benefit of refurbishment with the cost of refurbishment, and it is not comparing the results of those comparisons before choosing replacement.

Public Counsel's Argument: See Public Counsel's argument under issue 18.B., where Public Counsel also presents its argument for this issue 19.B., as well as issues 19.A., and 20.F.

C. Is EMM in compliance with the Commission's vegetation management rule, and if not, what should the Commission order?

D. Should EMM be required to compare the benefit of increased vegetation management against additional investment in its lateral improvement program?

20. Rate Base Components

A. What level of EEI prepayments should be included in rate base?

Public Counsel's Position: None. Also, see Public Counsel's consistent position in its position stated to Issue **10.**A. What level of Edison Electric Institute ("EEI") dues should be included in the cost of service?

Public Counsel's Updated Position: Public Counsel did not oppose EMM and Staff's *Partial Stipulation and Agreement* they filed on October 2, 2026. Only MECG opposed it as to depreciation rate life estimates. If the Commission accepts and orders the terms of that *Partial Stipulation and Agreement* to resolve the revenue requirement impact of a number of issues identified in that agreement, including EEI dues, then this issue is resolved.

B. What amount of construction work in progress is appropriate to reflect in rate base?

Public Counsel's Position: None. The Commission has not determined in a §393.170, RSMo., proceeding the amount of construction work-in-progress that may be included in rate base. Further, as Public Counsel witness John Riley states, the combustion turbine prepayments that EMM is seeking to include as construction work-in-progress are pre-construction payments, not payments made for construction work-in-progress.[127] Additionally, unless the Commission holds data centers to their pledge and follows cost causation principles for to whom to allocate the costs of Mullin Creek #2, it should not include any construction work-in-progress in rate base.[128]

Public Counsel's Argument: Section 393.135, RSMo, governs this issue. That statute, in pertinent part, follows:

> 1. Except as provided in subsection 2 of this section, any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based

[127] Ex. 216, Public Counsel witness John S. Riley surrebuttal testimony, p. 11 and Sch. JSR-04 (Adopting Public Counsel witness John A. Robinett direct, pp. 6-9).
[128] Ex. 202, Public Counsel witness Geoff Marke direct testimony, pp. 34-42.

> on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.
>
> 2. (1) An electrical corporation may be permitted, subject to the limitations in this subsection, to include construction work in progress for any new natural gas-generating unit in rate base. The inclusion of construction work in progress allowed under this subsection shall be in lieu of any otherwise applicable allowance for funds used during construction that would have accrued from and after the effective date of new base rates that reflect inclusion of the construction work in progress in rate base. The commission shall determine, in a proceeding under section 393.170, the amount of construction work in progress that may be included in rate base. The amount shall be limited by:
>
> (a) The estimated cost of such project; and
>
> (b) Project expenditures made within the estimated construction period for such project.
>
> Base rate recoveries arising from inclusion of construction work in progress in rate base are subject to refund, with interest on the refunded amount at the same rate as the rate of interest for delinquent taxes determined by the director of revenue in accordance with section 32.065, if, and to the extent the commission determines, in a subsequent complaint or general rate proceeding, that construction costs giving rise to the construction work in progress included in rate base were imprudently incurred or if the project for which construction costs have been included in the rate base is not placed in service within a reasonable amount of time, as determined by the commission. Rate base used to determine return deferred under subdivision (2) of subsection 3 of section 393.1400 shall include an offset for rate base that has been used to determine return included in base rates as a result of construction work in progress inclusion in rate base under this subsection. The offset shall apply from and after the in-service date of the asset that has been used to determine return included in base rates as a result of construction work in progress inclusion in rate base under this subsection.

As an exception to the prohibition on recovery through rates of "construction in progress" before utility property is "fully operational and used for service" created by voter initiative November 2, 1976, the allowance for recovery through rates of "construction work in progress for any new natural gas-generating unit in rate base" it is to be strictly construed, *i.e.*, narrowly interpreted. Librach v. Cooper, 778 S.W.2d 351 (Mo. Ct. App. 1989) (exceptions to remedial acts are narrowly construed); State ex rel. St. Louis v. Pub. Serv. Com., 331 Mo. 1098, 56 S.W.2d 398 (1932) (Public

Service Commission Act is highly remedial). This means that unless or until EMM has determined in a § 393.170, RSMo, proceeding the amount of construction work-in-progress to include in EMM's rate base for a qualifying natural gas generating plant, EMM may not recover through its rates any amount for construction work-in-progress in this case. As this Commission is aware it has a § 393.170, RSMo, proceeding pending before it for Mullin Creek No. 2, a qualifying natural gas plant (Case No. EA-2026-0154), but the Commission has not ordered in that proceeding an amount of construction work-in-progress for Mullin Creek No. 2 that may be included in EMM's rate base.

Further, as Public Counsel witness John Riley explains at page eleven of his surrebuttal testimony and in schedule JSR-04 (pp. 60 of John A. Robinett's direct testimony he adopted), the costs that EMM is seeking to include as construction work-in-progress are combustion turbine reservation fees—preconstruction cost incurred in anticipation of future construction—not costs incurred during construction. His analogy that booking and prepaying a flight for a vacation in Mexico does not mean he is on vacation before taking that flight is compelling.

C. How much of EMM's current rate base has been retired, and should a rate of return be applied to this amount?

D. What treatment should apply to the pension asset in rate base?

E. If construction work in progress is included in rate base, what rate of return should be applied to it?

Public Counsel's Position: A rate of return of 5.08%, which David Murray designed to achieve a net present value of zero when comparing estimated ratepayer costs from allowing construction work-in-progress in rate base in lieu of continued allowance for funds used during construction (AFUDC) treatment.[129]

Public Counsel's Argument: If the Commission lawfully includes an amount of construction work-in-progress in rate base then it should not make the return on that amount more costly to

[129] Ex. 207, Public Counsel witness David Murray surrebuttal testimony, pp. 2-8.

EMM's retail customers on a present value basis than if, instead, EMM were permitted an allowance for funds used during construction. Doing so would give EMM the advantage of getting money from its retail customers for its construction costs earlier than if it were to get them later through future rates that included an allowance for funds used during construction. Based on reasonable assumptions Public Counsel witness David Murray calculated that rate of return on construction work-in-progress ("CWIP") in rate base to be 5.08%.[130]

With regard to ROR, the most consequential aspect of Mr. Murray's true-up direct testimony is his recommendation to apply a lower ROR to CWIP, if the Commission allows CWIP to be included in EMM's rate base. EMM witness Kevin D. Gunn testified in direct, "The inclusion of CWIP in rate base lowers rates over the long term by reducing the rate increases when the assets go into service."[131] While including CWIP in rate base will cause a lower rate base for plant when it is placed into service because less AFUDC will be included in the total plant balance, EMM's retail customers are no different from the company – they would rather save a dollar today than in the future, unless compensation for the delay matches or exceeds foregoing that immediate savings. However, under EMM's and Staff's proposals of applying a long-term ROR to potential CWIP in rate base, retail customers not only will start paying for plant before it is "fully operational and used for service," but they also will be charged a higher ROR as compared to the FERC USOA defined methodology for accruing AFUDC rates. While it is true that AFUDC is compounded semi-annually, if the rate compounded is less than the traditional ROR, this results in higher costs to ratepayers when CWIP is included in rate base. Additionally, the financing charges resulting from AFUDC are charged to ratepayers in the future, which is worth less in present value terms.

[130] Ex. 207, Public Counsel witness David Murray surrebuttal testimony, pp. 2-8.
[131] Ex. 21, EMM witness Kevin D. Gunn direct testimony, p. 23.

Consistent with the guidelines outlined in Missouri's securitization law, Mr. Murray adjusted the ROR that would have to be charged on CWIP to ensure EMM's retail customers would be at least indifferent between using CWIP or AFUDC on a net present value ("NPV") basis. Mr. Murray found that rate to be 5.08% on a pre-tax basis (i.e. no gross up for income taxes). However, if the Commission were to decide that EMM's retail customers do not need to achieve lower costs/savings on a NPV basis, then Mr. Murray recommends that the Commission apply a ROR to CWIP based on the logic underlying the FERC USOA formula, which is that short-term debt should receive a majority of the weight in determining a fair and reasonable financing charge for CWIP. The weight of the capital ratios Mr. Murray recommends is consistent with EMM's AFUDC rates applied to Iatan 2 and estimated for Mullin Creek #1.[132]

F. What amount of transmission investment since EMM's last rate case should be included in rate base?

Public Counsel's Position: For the reasons to which Public Counsel witnesses Paul Alvarez and Dave Shapley testify the following amounts should not be included in rate base: $73.1 million + $14.7 million = $87.8 million for EMM's transmission projects.

Public Counsel's Argument: See Public Counsel's argument under issue 18.B., where Public Counsel also presents its argument for this issue 20.F, as well as issues 19.A. and 19.B.

G. What level of coal inventory should be included in rate base?

H. Should rate base be reduced to remove Evergy Kansas Central's investment in transmission to serve Panasonic allocated to EMM?

Public Counsel's Position: For the reasons to which Public Counsel witness Paul Alvarez testifies $14.7 million should be removed from rate base.

Public Counsel's Updated Position: Public Counsel no longer is pursuing removing $14.7 million from EMM's rate base due to Evergy Kansas Central's investment in transmission to serve Panasonic's new plant.

[132] Ex. 207, Public Counsel witness David Murray surrebuttal and true-up direct testimony, p. 2.

Public Counsel's Argument: Public Counsel is not pursuing the allocation of Evergy Kansas Central's investment in the transmission grid to supply Panasonic's new plant demands for electricity which Mr. Alavarez raises in his surrebuttal testimony[133] because, as EMM witness Buck Reuter points out in his sur-surrebuttal testimony, with the only common tie between Evergy Kansas Central and EMM being that they are affiliates, EMM is responsible for the transmission-related costs which Evergy Kansas Central incurred to serve Panasonic's new plant through Southwest Power Pool charges through FERC-approved tariffs.[134] While, because of federal preemption, this case is not a venue where the Commission is free to address Mr. Alvarez's point that Panasonic should be bearing all of the costs that it caused Evergy Kansas Central to incur to serve its new plant, if EMM is being charged for any of those costs, then this Commission should exert its influence at the Southwest Power Pool to remedy that unfair result.

21. Jurisdictional Allocations

A. What jurisdictional demand and energy allocation factors should be used?

B. How should the allocations be determined for the various elements of the cost of service?

Public Counsel's Position: Production and transmission costs should be allocated using the Probability-Of-Dispatch ("POD") method rather than EMM's Average and Excess 4-CP method, and distribution plant in FERC Accounts 364–368 should be classified as 100 percent demand-related under the Basic Customer method rather than the Minimum System Method.[135] EMM's allocators also assign no production or transmission costs to Schedule LLPS because no LLPS load was in the test year; including even the projected load of the one known LLPS customer would shift significant cost responsibility away from smaller classes.[136]

Public Counsel's Argument: Because of the increasing importance of when electricity is used by different customer classes and due to changing electricity supply-side resources—for example,

[133] Ex. 201, Public Counsel witness Paul Alvarez surrebuttal testimony, pp. 30-32.
[134] Ex. 87, EMM witness Buck Reuter sur-surrebuttal testimony.
[135] Ex. 208, Public Counsel witness Ron Nelson direct testimony, pp. 4, 36; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 13–14.
[136] Ex. 208, Public Counsel witness Ron Nelson direct testimony, pp. 21-23.

wind, solar, and storage, sophisticated time-based methods to allocate generation and transmission costs better reflect user cost causation than average-and-excess, and contribution-to-peak, based methods. With the ability of time-of-use meters to capture usage changes down to at least 15-minute increments, and the availability of the data and computing power to run sophisticated allocation methods, it now is practical to employ time-based methods to allocate the costs of generation and transmission rather than the simpler average-and-excess, and contribution-to-peak, based methods this Commission has endorsed in the past.[137]

The time-based probability-of-dispatch method Public Counsel witness Mr. Ron Nelson recommends is a time-based method which "evaluates the costs that each hour of load from each customer class places on the utility's production portfolio."[138] "[I]t looks at generation and usage across all hours of the year and considers the amount of generation capacity that is available – not just installed – and how a customer class uses energy in relation to real system dispatch characteristics."[139] To do that a utility's annual load curve is calculated based on historical hourly usage and then the costs of each of the resources in the utility's electricity production portfolio which supply the electricity used to meet each hourly load are matched to the energy used by each customer class during that hour. The annual revenue requirement impact of each production portfolio resource is allocated to each hour in the year by dividing that resource's contribution to the electricity supplied to meet that hour's load by that resource's contribution to the electricity supplied to meet all of the annual load. The hourly results are then allocated to each of the classes in that hour by multiplying the result by that class's load during that hour divided by the total of the classes' loads during that hour.[140] In this case the resulting generation and transmission

[137] Ex. 208, Public Counsel witness Ron Nelson direct testimony, pp. 39-40.
[138] Ex. 208, Public Counsel witness Ron Nelson direct testimony, p. 36.
[139] Ex. 208, Public Counsel witness Ron Nelson direct testimony, p. 37.
[140] Ex. 208, Public Counsel witness Ron Nelson direct testimony, pp. 37-40.

(supply-side) allocators are in the following table from page 17 of Public Counsel witness Ron Nelson's surrebuttal testimony:[141]

Table 1. Updated POD Results Comparison

	EMM Proposed A&E Allocators	MO Proposed POD Allocators	Difference
Residential	46.3%	34.5%	-11.8%
SGS	8.3%	8.1%	-0.2%
MGS	13.5%	13.6%	0.1%
LGS	18.6%	23.9%	5.3%
LPS	12.9%	19.3%	6.4%
Lighting	0.3%	0.6%	0.2%
CCN	0.1%	0.0%	0.0%
LLPS	0.0%	0.0%	0.0%
Total	**100.0%**	**100.0%**	

As early as the 1980s, and likely much earlier, economists have recognized the importance of time-variant cost-causation and NARUC recognized the value of probability-of-dispatch method by including it in its 1992 Electric Cost Allocation Manual.[142] Further, adoption of time-variant cost-causation methods is gaining traction as shown by their use by Mid-American in Illinois, Iowa, and South Dakota, and Public Service Company of Colorado in Colorado.[143]

C. Should a portion of plant, reserve, and depreciation expense of the Greenwood solar facility be allocated to EMM?

22. Fuel Adjustment Clause — Structure and Base Factor

A. Should the Commission authorize EMM to continue its FAC?

Public Counsel's Position: No, as Angela Schaben testifies EMM is anticipating LLPS revenues not captured in this case and it is not subject to enough fuel-cost volatility risk to be denied a sufficient opportunity to earn a fair return on equity.[144]

Public Counsel's Updated Position: Public Counsel did not oppose EMM and Staff's *Partial Stipulation and Agreement* they filed on October 2, 2026. Only MECG opposed it as to

[141] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 17.
[142] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 18.
[143] Ex. 208, Public Counsel witness Ron Nelson direct testimony, p. 40.
[144] Ex. 219, Public Counsel witness Angela Schaben surrebuttal testimony, pp. 1-2, 14-20.

depreciation rate life estimates. If the Commission accepts and orders the terms of that *Partial Stipulation and Agreement* which would resolve the FAC issues identified in that agreement, then this issue is resolved.

B. Should the general construct of EMM's FAC be changed?

Public Counsel's Position: No, any FAC should continue to track margins to a base, not 100% flow-through.

Public Counsel's Updated Position: Public Counsel did not oppose EMM and Staff's *Partial Stipulation and Agreement* they filed on October 2, 2026. Only MECG opposed it as to depreciation rate life estimates. If the Commission accepts and orders the terms of that *Partial Stipulation and Agreement* which would resolve the FAC issues identified in that agreement, then this issue is resolved.

C. What value should the FAC base factor be set at the conclusion of this case?

Public Counsel's Position: Staff's second option, where LLPS customer impacts are excluded from the FAC and FAC base factor calculation. If the Commission were to include LLPS customer impacts to flow through a FAC, then the Commission should include separate base factors for the LLPS customers and EMM's other customers.

Public Counsel's Argument: Staff made two FAC proposals regarding LLPS customer impacts—Option 1 would include LLPS customers in EMM's FAC, and Option 2 would exclude them.[145] If LLPS customer fuel and power purchase costs are included in EMM's FAC, then, unless other customers are protected through LLPS tariff contract terms, the costs used to set EMM's FAC base in this case will not reflect significant LLPS fuel and power purchase costs, but after LLPS customers ramp up their demand, the actual fuel and power purchase costs in the future will. Effectively, unless LLPS customers are treated separately in EMM's FAC, EMM's other customers will subsidize the LLPs customers through the FAC charges they pay. For example, if EMM had no LLPS customers, then started buying thirty percent more energy from SPP just to meet LLPS customer load, then all customers would be paying for 95% (assuming the sharing mechanism is 95/5) of the cost of that 30% increase which was caused solely by LLPS customers—28.5% (0.95×30%) of the increase. If one assumes LLPS customers increased EMM's

[145] Ex. 142, Staff witness Brooke Mastrogiannis rebuttal testimony, p. 9.

total energy needs by ten percent of the total energy, then EMM's non-LLPS customers would subsidize its LLPS customers to the tune of 25.65% (28.5%-(0.10×28.5%)) of the increase in energy cost.[146]

Governor Mike Kehoe, Evergy, and Google all have signed President Trump's "Ratepayer Protection Pledge," and § 393.130.7, RSMo, in pertinent part, states: "The schedules should reasonably ensure [the] rates [of customers who are reasonably projected to have above an annual peak demand of one hundred megawatts or more] will reflect the customers' representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers," and " The commission may order electrical corporations to submit similar tariffs to reasonably ensure that the rates of customers who are reasonably projected to have annual peak demands below the above-referenced levels will reflect the customers' representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers."

The best choice is to exclude LLPS customers from EMM's fuel clause and let EMM and LLPS customers work out how EMM recovers from its LLPS customers the fuel and purchase power costs EMM incurs to serve its LLPS customers through EMM's LLPS tariff contracts or elsewhere.

[146] See Ex. 217, Public Counsel witness Angela Schaben direct testimony, p. 16.

If LLPS customer fuel and power purchase impacts are included in EMM's FAC, then the base factors should be Staff's non-LLPS customers base factor of $0.02030 per kWh[147] and Staff's LLPS only base factor of $0.030965 per kWh.[148]

D. What sharing ratio between EMM and its customers should the Commission order as an incentive mechanism in EMM's FAC?

Public Counsel's Position: It should remain at the current level of 95/5.[149]

Public Counsel's Updated Position: Public Counsel did not oppose EMM and Staff's *Partial Stipulation and Agreement* they filed on October 2, 2026. Only MECG opposed it as to depreciation rate life estimates. If the Commission accepts and orders the terms of that *Partial Stipulation and Agreement* which would resolve the FAC issues identified in that agreement, then this issue is resolved and the sharing ratio in EMM's FAC will remain at 95/5.

23. Fuel Adjustment Clause — Included Costs

A. What SPP transmission costs should be included in the FAC?

Public Counsel's Position: the SPP transmission costs from Staff's fuel model.

Public Counsel's Argument: The only SPP transmission costs that should be included in EMM's FAC are those directly related to fuel and power purchases. As Public Counsel witness Angela Schaben testified when testifying about whether capacity contract costs should flow through a FAC, this Commission correctly has recognized that only variable fuel and purchased power costs are to flow through a FAC.[150]

B. What SPP charge types should be included in the FAC?

Public Counsel's Position: Fuel and power purchase-related SPP charge types should be included, and administrative SPP charge types should be excluded.

Public Counsel's Updated Position: Public Counsel did not oppose EMM and Staff's *Partial Stipulation and Agreement* they filed on October 2, 2026. Only MECG opposed it as to depreciation rate life estimates. If the Commission accepts and orders the terms of that *Partial Stipulation and Agreement* which would resolve the FAC issues identified in that agreement, then this issue is resolved and subaccount 555070-purchased power SPP admin fees and associated SPP charge types will be excluded.

[147] Ex. 156, Staff witness Brooke Mastrogiannis surrebuttal/true-up direct, p. 19.
[148] Ex. 219, Public Counsel witness Angela Schaben surrebuttal testimony, pp. 10-11.
[149] Ex. 219, Public Counsel witness Angela Schaben surrebuttal testimony, pp. 2, 12-20.
[150] Ex. 217, Public Counsel witness Angela Schaben direct testimony, pp. 14-15.

C. What FAC subaccounts should be included in the FAC?

Public Counsel's Position: Fuel and power purchase-related SPP charge types should be included, but administrative SPP charge types and capacity costs should be excluded.

Public Counsel's Argument: As Public Counsel witness Angela Schaben testified when testifying about whether capacity contract costs should flow through a FAC, this Commission previously recognized that only variable fuel and purchased power costs should flow through a FAC.[151]

D. Should EMM include long-term capacity purchases and sales for recovery in its FAC?

Public Counsel's Position: No. As the Commission previously has recognized, by statute, only fuel and power purchase costs should flow through a FAC.

Public Counsel's Argument: As Public Counsel witness Angela Schaben testified when testifying about whether capacity contract costs should flow through a FAC, this Commission previously recognized that only variable fuel and purchased power costs should flow through a FAC.[152] The costs associated with long-term capacity contracts are demand charges to reserve capacity and are more like plant investment costs. EMM's FAC was not designed as a pass-through for the recovery of plant investment type costs between rate cases. These types of known and measurable costs are already included in the revenue requirement.[153] Further, it appears that EMM's motivation for seeking to flow capacity contract costs through its FAC is in anticipation of incurring them for serving new LLPS customer load.[154] As discussed in Public Counsel's argument for issue 22.C. to do so would also cause EMM's non-LLPS customers to subsidize its LLPS customers. Missouri Statute does not authorize the recovery of long-term capacity through a FAC. "Subject to the requirements of this section, any electrical corporation may make an

[151] Ex. 217, Public Counsel witness Angela Schaben direct testimony, pp. 14-15.
[152] Ex. 217, Public Counsel witness Angela Schaben direct testimony, pp. 14-15.
[153] Ex. 219, Public Counsel witness Angela Schaben surrebuttal testimony, p.7.
[154] Ex. 217, Public Counsel witness Angela Schaben direct testimony, pp. 12-15.

application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities." § 386.266.1, RSMo.

24. Fuel Adjustment Clause — Tariff Language

A. Should EMM include a new definition in the FAC tariff sheets for retail revenue and accounts 440 through 444?

B. Should the definition of fuel residuals under FERC subaccount 501400 in the FAC tariff sheets be changed?

C. Should the extraordinary costs language proposed by Staff be reflected in EMM's FAC tariff?

Public Counsel's Position: Public Counsel does not oppose including them.

Public Counsel's Updated Position: Public Counsel did not oppose EMM and Staff's *Partial Stipulation and Agreement* they filed on October 2, 2026. Only MECG opposed it as to depreciation rate life estimates. If the Commission accepts and orders the terms of that *Partial Stipulation and Agreement* which would resolve the FAC issues identified in that agreement, then this issue is resolved by adding language to EMM's FAC tariff sheets to address recovery of extraordinary costs.

D. Should EMM change the Emissions definition Factor R to Emissions and Environmental credit accounts, subaccounts 411.8, 411.9, 411.12 and 411.13?

E. Should language be added to the FAC tariff sheets to address fuel hedging?

25. Fuel Adjustment Clause — Large Load Power Service

A. Should changes be made to the FAC to address LLPS customers?

Public Counsel's Position: If LLPS customers are excluded from the FAC, then no changes are needed. If they are not excluded, then the Commission should order a separate base factor for them.

Public Counsel's Argument: See Public Counsel's argument under issue 22.C. which addresses this point when arguing for what FAC base factor(s) the Commission should order. As stated there if the Commission changes EMM's FAC to exclude LLPS customer fuel and power purchase

impacts from EMM's fuel clause then EMM's FAC need not otherwise be revised to address LLPS customers; however, if LLPS customer fuel and power purchase impacts are included in EMM's FAC, then the Commission should order two separate and distinct base factors—Staff's non-LLPS customers base factor of $0.02030 per kWh[155] and Staff's LLPS only base factor of $0.030965 per kWh.[156]

B. What, if any, new FAC reporting requirements should the Commission order?

Public Counsel's Position: Public Counsel does not oppose additional reporting requirements.

Public Counsel's Argument: If Staff or others wish for EMM to report more information related to EMM's FAC, Public Counsel does not oppose the Commission ordering EMM to do that reporting. Public Counsel only asks that it be notified of and have access to any additional reporting.

C. Should EMM have a separate FAC base factor for LLPS customers?

Public Counsel's Position: If LLPS customers are not excluded from EMM's FAC, then EMM's FAC should have a separate base factor for LLPS customers.

Public Counsel's Argument: Public Counsel addressed this point in its argument to issue 22.C.

26. Rules and Regulations Tariff

A. Should the Commission approve EMM's proposed tariff changes regarding its Rules and Regulations inclusive of modifications identified in the error log?

27. Estimated Billing and Interval Data

A. What updates, if any, to EMM's tariffs should occur to address energy interval estimation?

B. What interval estimation threshold is appropriate for designation of an estimated bill and how should intervals be estimated?

C. What records should be retained for missing or estimated interval data?

[155] Ex. 156, Staff witness Brooke Mastrogiannis surrebuttal/true-up direct, p. 19.
[156] Ex. 219, Public Counsel witness Angela Schaben surrebuttal testimony, pp. 10-11.

D. What reporting requirements should be implemented for missing or estimated interval data?

E. Should EMM's estimation procedure defined in the EMM tariff, include thresholds for automated and manual reviews of estimations?

28. Residential Rate Design

A. What should the residential customer charge be set at in this case?

Public Counsel's Position: The residential customer charge should remain at $12.00 per month, and EMM's proposed increase to $13.82 should be rejected. Any additional residential revenue requirement should be recovered through volumetric charges, which is revenue-neutral to EMM.[157] Raising the fixed charge would undermine the goals of the Missouri Energy Efficiency Investment Act. The American Council for an Energy-Efficient Economy's Rate Design Matters study modeled 14 efficiency measures across 20 rate scenarios and found that even a moderate fixed-charge increase lowers the volumetric rate, which measurably lengthens payback periods for efficiency investments and increases consumption; that effect operates continuously, not only above some threshold.[158] A higher fixed charge also falls hardest on low-usage customers; in Missouri, households earning below $60,000 use on average about 19 percent less electricity than higher-income households.[159] EMM's claimed cost-based charge of $18.33 is inflated because the Minimum System Method classifies a higher proportion of distribution costs as customer-related than more realistic cost-causation methods, and EMM's own $13.82 proposal is not grounded in its COSS, confirming that policy considerations are driving the result.[160] The Commission has previously declined to raise a residential customer charge so that customers retain control over their bills, and the same reasoning applies here.[161]

Public Counsel's Argument: Public Counsel's arguments on this issue are presented in its above restated position statement for this issue.

B. Should EMM be required to inform customers on specified Time-of-Use rate schedules of billing issues and remove customers from such specified rate schedules if EMM has estimated their monthly billing?

29. Non-Residential Rate Design

A. Should the rates of the non-residential non-lighting customers be restructured in

[157] Ex. 208, Public Counsel witness Ron Nelson direct testimony, pp. 46, 52–53; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 31.
[158] Ex. 208, Public Counsel witness Ron Nelson direct testimony, p. 48; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 28-29.
[159] Ex. 208, Public Counsel witness Ron Nelson direct testimony, p. 49; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 30.
[160] Ex. 208, Public Counsel witness Ron Nelson direct testimony, pp. 47, 49-51; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 27–28.
[161] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 29–30 (citing Case No. ER-2014-0258, Report and Order at 76–77).

this case?

i. What are the appropriate periods for each time-related element?

ii. Should the Large General Service ("LGS") and Medium General Service ("MGS") classes be subject to reactive demand charges?

iii. What are the appropriate charges for each rate element for each class?

iv. Should EMM be ordered to promptly conduct a billing determinants and customer impact study?

v. What customer education is appropriate?

vi. What date should restructured rates take effect?

B. Should the non-residential non-lighting opt-in time based rates proposed by EMM be implemented?

C. How should standby service rates be modified to include a minimum demand alternative or modified as appropriate?

30. Other Rate Schedules

A. How should all other applicable rates in this case be increased, including lighting, Large Load Power Service, Electric Vehicle Charging, and Time Related Pricing, if applicable?

i. Should the TRP (Time Related Pricing) rate schedule be eliminated?

ii. Should Schedule LLPS rates be increased in this proceeding, and if so, by how much?

B. Should obsolete residential rate schedules and the Underutilized Infrastructure Rider be removed from the EMM tariff book?

31. Large Load Power Service Tariff and Reporting

A. What tariff changes or clarifications, if any, should be made to the Large Load Power Service tariff?

Public Counsel's Positions:

- Should the Commission raise the LLPS minimum bill requirement from 80% to 90%?
  - Yes. This is necessary to ensure that legacy customers are held harmless from the increased risk associated with the LLPS customers.
- Should the Commission raise the LLPS contract-term length from twelve-year to twenty-years?
  - Yes. This is necessary to ensure that legacy customers are held harmless from the increased risk associated with the LLPS customers.
- Should the Commission lower the LLPS applicability from loads greater than 75 MW to loads greater than 25 MW?
  - Yes. This is necessary to ensure that legacy customers are held harmless from the increased risk associated with the LLPS customers. This number

is also consistent with the threshold set by MISO for categorizing computational load (i.e., a data center).

- Should the Commission approve a Community Benefits Rider option for LLPS customers?
    - Yes. This voluntary feature enables greater benefits from existing customers and serves as a tangible offset to increased negative externalities associated with the proliferation of artificial intelligence and data center operations.

Public Counsel's Argument: As Public Counsel stated in its argument to issue 22.C., Governor Mike Kehoe, Evergy, and Google all have signed President Trump's "Ratepayer Protection Pledge," and § 393.130.7, RSMo, in pertinent part, states: "The schedules should reasonably ensure [the] rates [of customers who are reasonably projected to have above an annual peak demand of one hundred megawatts or more] will reflect the customers' representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers," and " The commission may order electrical corporations to submit similar tariffs to reasonably ensure that the rates of customers who are reasonably projected to have annual peak demands below the above-referenced levels will reflect the customers' representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers." EMM's Commission-approved tariff sheets to implement § 393.130.7, RSMo, are inadequate in several respects for protecting EMM's non-LLPS customers from the impacts of adding high demand customers' loads to its system.

To protect non-LLPS customers, the minimum demand charge for LLPS customers should be changed from 80% to 90% consistent with what the Oregon Public Utility Commission did for such customers in May of 2026.[162] To protect non-LLPS customers, the LLPS contract-term

[162] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 33; Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 29.

should be increased from 12 years to twenty years. This is consistent with what the Kentucky Public Service Commission approved in Kentucky Power's large load tariff.[163] Further, most new build generation has a deprecation schedule of thirty years or more which would leave remaining customers exposed to the unrecovered undepreciated cost of that generation if the LLPS customers for which that generation is built depart before that generation is fully depreciated.[164]

To protect non-LLPS customers, the LLPS applicability threshold should be lowered from loads greater than 75 MW to loads greater than 25 MW.[165] Doing so would be consistent with the MISO's ("Midcontinent Independent System Operator") recently adopted "interconnection reliability requirements" framework. That framework classifies a large load as any single site with a demand above 50 MW, and a computational load as a large load with at least 25 MW dedicated specifically to IT equipment like servers and networking hardware. A single data center with 25 MW or more of computational load is considered a large load customer and subject to different reliability standards within MISO's framework.[166] EMM's new LLPS customers are data centers.

Additionally, the Commission should include an option for LLPS customers to voluntarily choose to provide community benefits in exchange for a reduction in their minimum demand charge from 90% to 80%. Those community benefits would require a significant financial contribution to the local service area in at least one of three potential areas: job creation, demand-side management contributions for low-income domiciles, or reduced urban heat impacts.[167] A

[163] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 33.
[164] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 33.
[165] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 33.
[166] Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 24.
[167] Ex. 202, Public Counsel witness Geoff Marke direct testimony, p. 33.

two percent surcharge on their monthly bill directed to those community benefits would be appropriate.[168]

B. What reporting requirements are appropriate concerning new large loads and load growth?

Public Counsel's Position: The Commission should require pre-and post-construction studies and benchmarking requirements from independent 3rd party researchers over the following three areas: Power Usage Effectiveness ("PUE"), Water Usage Effectiveness ("WUE") and Total Harmonic Distortion of LLPS customer's impact on the distribution grid. Such reporting enables sound long-term planning, institutional trust through transparency, and provides meaningful opportunities to share information and enhance operational efficiencies as a shared public good.

Public Counsel's Argument: Power usage effectiveness measures the energy efficiency of LLPS customer electricity usage providing information useful for improving that efficiency over time. Water Usage Effectiveness measures the efficiency of water usage at a facility. Total Harmonic Distortion is the impact hyper loads such has LLPS customers can have on the quality of electricity on the grid by creating energy levels of alternating current at harmonics (multiples) of the targeted in North America 60 cycles per second, for example 120, 180 or 240 cycles per second, for which the grid and devices, for example a refrigerator, using it are not designed to withstand. The Commission should order that all three be studied based on the planned build of new LLPS load, and again after the load is built to anticipate, mitigate, and prepare for the new load impacts on them and to see their actual impacts to inform how they may be mitigated going forward. Because power usage studies most benefit the load using the power, the LLPS customer adding the load should pay for those studies. Because water usage and harmonic distortion impacts are strongest near the load and weaken with distance, the LLPS customer adding the load should be responsible

[168] Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 30.

for paying for these studies. Further, because power usage, water usage and harmonics affect members of the public, the results of these studies should be made public.[169]

Presently neither EMM nor any of its present large load customers perform any of these studies.[170] Performing them is consistent with existing state policy to protect other non-LLPS customers from the impacts of LLPS customers.[171]

32. Revenue Apportionment and Implementation

A. How should revenue responsibility, including any net revenues from LLPS customers and any reduction to revenues from any income-eligible customer discounts, be apportioned among the customer classes, if at all?

Public Counsel's Position: Revenue apportionment should be based on a class cost-of-service study that correctly reflects cost causation, using POD for production and transmission and the Basic Customer method for distribution.

Public Counsel's Argument: For all the reasons Public Counsel gave in its argument to issue 21.B., the Commission should use the POD (probability-of-dispatch) method to allocate generation and transmission costs to EMM's customer classes. To the extent that the Commission includes construction work-in-progress investment in Mullin Creek No. 2 in EMM's rate base, the Commission should assign the revenue requirement impacts of that investment directly to EMM's LLPS customer class.[172]

For distribution system investment, the Commission should adopt the Basic Customer method for allocating distribution costs to the customer classes. That method identifies only customer-specific costs to be customer-related, and identifies the rest of the distribution system costs to be energy- or demand-related. By doing so the Basic Customer method recognizes that

[169] Ex. 202, Public Counsel witness Geoff Marke direct testimony, pp. 22-33.
[170] Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, p. 26.
[171] Ex. 204, Public Counsel witness Geoff Marke surrebuttal testimony, pp. 28-29.
[172] Ex. 202, Public Counsel witness Geoff Marke direct testimony, pp. 34-42.

the distribution system is built for meeting customer demand, and that distribution system investment only varies insignificantly with customer counts. Classifying distribution costs as energy- or demand-related, as opposed to customer-related, better conforms to cost causation and fairness than the Minimum System Method EMM used.[173] As Public Counsel witness Mr. Ron Nelson testified, "[T]he NARUC Electric Utility Cost Allocation Manual states customer costs are those that are 'directly related to the number of customers served.' A cost meets that test only if it varies with the number of customers connected to the system, not with the level of demand those customers place on it." His example that when an individual customer ceases service, EMM does not remove a pole, conductor, or transformer demonstrates that the sizing and installation of poles, conductors, and transformers is driven by the level of the demand the line is to serve, not by the customer count on it.[174] It also makes sense that EMM would size poles, conductors, and transformers to serve an entire subdivision when it installs them, although it may be many years before that subdivision is fully built out to reach its maximum customer count.

i. What is the appropriate classification of customer-classified distribution system cost of service for any class cost of service study relied upon in this case?

Public Counsel's Position: The Commission should adopt the Basic Customer method, which classifies only customer-specific costs as customer-related and treats FERC Accounts 364–369 as 100 percent demand-related, not EMM's Minimum System Method.[175] The Minimum System Method rests on a hypothetical zero-demand system that would never be built, and it conflicts with the NARUC definition of customer costs as those "directly related to the number of customers served." EMM does not dispute that it does not remove a pole, conductor, or transformer when a customer disconnects, which shows these facilities are sized to demand rather than customer count.[176] The size of the distribution system correlates only weakly with the number of customers it serves, and adding customers without adding peak demand requires no new poles or conductors. Reclassifying these accounts reduces the

[173] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 10–15
[174] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 11.
[175] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 13–14.
[176] Ex. 208, Public Counsel witness Ron Nelson direct testimony, pp. 50–51; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 11–12.

residential revenue requirement by approximately $17.3 million, or 4.3 percent.[177]

Public Counsel's Argument: Public Counsel's argument on this issue is in its position statement and in its argument to issue 32.A.

ii. What is the appropriate allocation of production-related cost of service for any class cost of service study relied upon in this case?

Public Counsel's Position: EMM should allocate production costs and transmission costs using the POD method.[178] POD assigns each generating unit's annual revenue requirement to the hours in which it operates, then allocates each hour's cost to classes by their share of load in that hour. POD is an established method: it is included in the 1992 NARUC Electric Utility Cost Allocation Manual, satisfying § 393.1620 RSMo, and it has become practical with EMM's completed AMI deployment.[179] Using reconciled load data, Mr. Nelson's updated POD results allocate 34.5 percent of production costs to the residential class, compared to 46.3 percent under EMM's A&E 4-CP method, with correspondingly higher allocations to the LGS and LPS classes; the Hourly Costing Method produces similar results.[180] Concerns about impacts on large customers should be handled through gradualism in rate design rather than by retaining an allocator that does not reflect cost causation.[181]

Public Counsel's Argument: As stated above in its initial response to subpart A. of issue 32, for all the reasons Public Counsel gave in its argument to issue 21.B., the Commission should use the POD (probability-of-dispatch) method to allocate generation and transmission costs to EMM's customer classes. To the extent that the Commission includes construction work-in-progress investment in Mullin Creek No. 2 in EMM's rate base, the Commission should assign the revenue requirement impacts of that investment directly to EMM's LLPS customer class.[182]

B. How should customer affordability, including for low- and moderate-income households, be reflected in the rates ordered in this case?

Public Counsel's Position: By supporting OPC's position to create a customer charge waiver program as well as ensuring that capital and fuel costs caused by data centers are

[177] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 15–16.
[178] Ex. 208, Public Counsel witness Ron Nelson direct testimony, pp. 4, 42; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 26.
[179] Ex. 208, Public Counsel witness Ron Nelson direct testimony, p. 39; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp, 18–19.
[180] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 16–18, 24–25.
[181] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 25–26.
[182] Ex. 202, Public Counsel witness Geoff Marke direct testimony, pp. 34-42.

borne by data centers.

Public Counsel's Argument: As Public Counsel explained in its argument for issue 16.E., creating a modest program that waives EMM's residential customer charge for income-qualifying customers would make their electricity usage more affordable.

As Public Counsel pointed out in its argument for FAC base factor issue 22.C., Governor Mike Kehoe, Evergy, and Google all have signed President Trump's "Ratepayer Protection Pledge," and § 393.130.7, RSMo, in pertinent part, states: "The schedules should reasonably ensure [the] rates [of customers who are reasonably projected to have above an annual peak demand of one hundred megawatts or more] will reflect the customers' representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers," and " The commission may order electrical corporations to submit similar tariffs to reasonably ensure that the rates of customers who are reasonably projected to have annual peak demands below the above-referenced levels will reflect the customers' representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers." By assuring that the rates of non-LLPS customers, including residential customers, are not burdened with any costs caused by LLPS customers—capital, construction work-in-progress, fuel, operations & maintenance, etc.—consistent with Missouri State policy and with federal policy will make electricity more affordable to all non-LLPS customers, including low- and moderate-income household customers.

Further, as it has recognized before, the Commission should not increase the residential customer charge because doing so reduces customers' control over their bills, which also impacts affordability—customers would have less discretion as to what they afford.[183]

C. Should EMM's surrebuttal proposal to implement the rate increase by bill cycle in this case be permitted?

D. How should revenue responsibility for construction work in progress be assigned or allocated among the customer classes?

Public Counsel's Position: It should be assigned entirely to the LLPS customer class. Public Counsel recommends that these costs be collected on the front-end to minimize investor and legacy ratepayer stranded asset risk.

Public Counsel's Argument: To the extent that the Commission includes construction work-in-progress investment in Mullin Creek No. 2 in EMM's rate base, the Commission should assign the revenue requirement impacts of that investment directly to EMM's LLPS customer class.[184] It should do so because the cost causers of Mullin Creek No. 2 are future LLPS customer load and both state and federal policy are that such cost causers should bear those costs they cause.[185] Public Counsel witness Geoff Marke quotes where those state and federal policies may be found in his direct testimony as follows (Footnotes in quote omitted.):[186]

> § 393.130(7), RSMo states:
>
> Each electrical corporation providing electric service to more than two hundred fifty thousand customers shall develop and submit to the commission schedules to include in the electrical corporation's service tariff applicable to customers who are reasonably projected to have above an annual peak demand of one hundred megawatts or more. **The schedules should reasonably ensure such customers' rates will reflect the customers' representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers.** Each electrical corporation providing electric service to two hundred fifty thousand or

[183] Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, pp. 29–30 (citing Case No. ER-2014-0258, Report and Order at 76–77).
[184] Ex. 202, Public Counsel witness Geoff Marke direct testimony, pp. 34-42.
[185] Ex. 202, Public Counsel witness Geoff Marke direct testimony, pp. 36-40.
[186] Ex. 202, Public Counsel witness Geoff Marke direct testimony, pp. 36-39.

fewer customers as of January 1, 2025, shall develop and submit to the commission such schedules applicable to customers who are reasonably projected to have above an annual peak demand of fifty megawatts or more. The commission may order electrical corporations to submit similar tariffs to reasonably ensure that the rates of customers who are reasonably projected to have annual peak demands below the above-referenced levels will reflect the customers' representative share of the costs incurred to serve the customers and prevent other customer classes' rates from reflecting any unjust or unreasonable costs arising from service to such customers. (emphasis added)

* * * *

President Donald Trump:

In March 2026, the White House secured a formal Ratepayer Protection Pledge signed by executives from major tech companies, including Amazon, Google, Meta, Microsoft, OpenAI, Oracle, and xAI. The ratepayer pledge includes the following proclamation:

[A]s data centers expand their footprint and electricity demand associated with AI increases, **American households must be protected against increasing energy costs. The hyperscalers and AI companies that increase electricity demand must pay for the full cost of the energy and infrastructure needed to build and operate data centers, and must not pass this cost on to the American people**. Instead, the data center boom should be leveraged to address affordability and benefit all American households and businesses.

Today, pursuant to the Ratepayer Protection Pledge, leading United States hyperscalers and AI companies guarantee that data centers' energy needs will not increase household electricity costs for American citizens. Instead, **these companies will build, bring, or buy the new generation resources and electricity needed to satisfy their energy demands, and pay for all new power delivery infrastructure upgrades to service their data centers.** They will voluntarily negotiate new, separate rate structures with their utilities and relevant State governments, and pay those rates, and for their infrastructure, whether they use the electricity or not. They will also invest in local communities and coordinate with grid operators to contribute to a more reliable grid. These measures will ensure that Americans are protected from higher energy prices, benefit from grid upgrades and increased grid resilience, and benefit from this technological boom while the United States continues its global leadership in innovation and advanced technology. (emphasis added)

Missouri Governor Mike Kehoe:

The Governor's official webpage includes the following language around data centers in Missouri:

Missourians elected Governor Kehoe to both protect our state's resources and promote Missouri as a premier destination for transformational investment. Data centers strengthen Missouri's economy, create high-paying jobs, and position our state for long-term growth.

Governor Kehoe and his team continue to work with state partners and private industry to ensure that the energy affordability and water availability concerns that accompany these announcements are addressed before moving forward with them.

Additionally, **Missouri already has important consumer protection laws that prevent any companies from passing the costs onto the communities of these new centers through Senate Bill 4, which Governor Kehoe signed into law in 2025**.

Investments like these will create ripple effects across our economy and help secure opportunities for future generations of Missourians.64 (emphasis added)

Executive Order 26-02 also includes the following language:

Ratepayer Protection: The Director shall coordinate the review of current state regulations and utility practices 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.**

33. Critical Peak Rate

A. Should the Critical Peak Rate recommended by Staff be implemented?

   i. If not implemented, are other accommodations needed to address high market cost events and establish offsetting revenues to be applied through the FAC?

B. Should EMM have a separate line on its fuel adjustment rate tariff to account for critical peak pricing?

34. Storm Reserve

A. Should a storm reserve be established in this case?

Public Counsel's Position: No.

Public Counsel's Updated Position: Public Counsel did not oppose EMM and Staff's *Partial Stipulation and Agreement* they filed on October 2, 2026. Only MECG opposed it as to depreciation rate life estimates. If the Commission accepts and orders the terms of that *Partial Stipulation and Agreement* to resolve the revenue requirement impact of a number of issues identified in that agreement, including whether the Commission authorizes the creation of a storm reserve, then this issue is resolved and EMM will not create a storm reserve.

B. If approved, how much should be included in the cost of service?

35. Injuries and Damages

A. Should an injuries and damages reserve be established in this case?

B. If approved, how much should be included in the cost of service?

36. Critical Infrastructure Protection and Cyber Security

A. What level of critical infrastructure protection ("CIP") and cyber security expense should be included in the revenue requirement?

Public Counsel's Position: The historically-based levels Staff determined.

Public Counsel's Argument: EMM's CIP and cyber security costs are consistent historically year-to-year and Staff's cost level of $4,491,948 found on page 11 of Ex. 140, Staff witness Karen Lyons rebuttal testimony is appropriate.[187]

B. Should EMM implement a tracker for CIP and cyber security costs?

Public Counsel's Position: No, they are not volatile.

Public Counsel's Argument: Trackers should only be implemented in the rare circumstances where the cost to be tracked is material, beyond the utility's control and changes significantly over time. Neither EMM's CIP nor cyber-security costs qualify.[188] As Public Counsel witness Angela Schaben testified, "The cyber security space has been quickly evolving since at least 2012 when critical infrastructure threats increased 68% from the previous year. Evergy, Inc. ("Evergy") has been complying with applicable North American Energy Reliability Corporation ("NERC") Critical Infrastructure Protection ("CIP") Security Standards since around 2005. While NERC CIP Security Standards have been evolving since 2005 in response to a quickly evolving and dynamic cyber security space, Evergy's cyber security budget and its cyber security identified spending has remained relatively stable, mildly variable, not volatile."[189]

37. Revenue Sharing

A. Should the Commission implement a mechanism to review or share earnings attributable to Schedule LLPS customers, and if so, how should it be designed?

Public Counsel's Position: Only if the Commission does not adopt Public Counsel's primary recommendation to increase the LLPS revenue adjustment. The Commission should then establish a mechanism modeled on the Earnings Review Surveillance approved for Ameren Missouri in Case No. ET-2025-0184, under which EMM would calculate Schedule

[187] Ex. 219, Public Counsel witness Angela Schaben surrebuttal testimony, p. 31; Ex. 140, Staff witness Karen Lyons rebuttal testimony, pp. 10-11.
[188] Ex. 217, Public Counsel witness Angela Schaben direct testimony, pp. 2-9.
[189] Ex. 219, Public Counsel witness Angela Schaben surrebuttal testimony, p. 23.

LLPS revenues annually and refund any amount above the $25 million included in this case to the other rate classes in the following year, outside the rate case cycle.[190] If the Commission prefers the earnings sharing mechanism proposed by Google, it should be scoped to Schedule LLPS revenues rather than company-wide ROE, benefits should flow only to other rate classes in the following year with no refund to LLPS customers, and the deadband should be reduced from 25 to 10 basis points.[191]

Public Counsel's Argument: Public Counsel's argument on this issue is presented in its position statement.

38. Energy Burden Analysis

A. Should the Commission order a 3rd party energy burden analysis for EMM that does not exceed $150K in costs?

Public Counsel's Position: Yes. Such a study is appropriate given near-term economic insecurity faced by many of Evergy Metro's existing customers. See also Marke Rebuttal Testimony p. 2 that cites 172% increase in residential disconnections for non-payment in quarter 2 of 2026 compared to quarter 2 of 2025.

Public Counsel's Updated Position: While Public Counsel opposed settlement of one issue in EMM, Staff and Renew Missouri's *Nonunanimous Programs Stipulation and Agreement* they filed on October 7, 2026, Public Counsel does not oppose the resolution of this issue in that agreement: dropping the Third Party Energy Burden tool development request for $150,000 of additional funding for Economic Relief Program to increase the annual $1,410,000 funding shared 50/50 by ratepayers and shareholders.

39. Green Button Connect

A. Should the Commission order EMM to implement Green Button Connect ("GBC") in this rate case?

Public Counsel's Position: No. The benefits do not outweigh the costs.

Public Counsel's Updated Position: While Public Counsel opposed settlement of one issue in EMM, Staff and Renew Missouri's *Nonunanimous Programs Stipulation and Agreement* they filed on October 7, 2026, Public Counsel does not oppose the resolution of this issue in that agreement: The Company shall implement Green Button Connect My Data ("GBC") no later than December 31, 2028. The Company's GBC solution will a. comply with all Green Button standards.; b. be available to all customer classes; c. implement customer authorization that shall be convenient and secure following Green Button Connect best practices; and d. include annual certification by the Green Button Alliance. EMM may defer the set-up, implementation, and licensing costs for consideration in its next general rate case.

B. If the Commission orders EMM to implement GBC, should the Commission order

[190] Ex. 208, Public Counsel witness Ron Nelson direct testimony, pp. 26-27; Ex. 209, Public Counsel witness Ron Nelson surrebuttal testimony, p. 10.
[191] Public Counsel witness Ron Nelson surrebuttal testimony, pp. 5, 9-10.

the tariff proposed by Renew Missouri related to GBC?

C. If the Commission orders EMM to implement GBC, should the Commission adopt Renew Missouri's revenue requirement recommendation?

D. If the Commission orders EMM to implement GBC, should Renew Missouri's recommended revenue requirement for studying a regional data hub be ordered by the Commission?

40. Customer Battery Programs

A. Should the Commission order the adoption of Renew Missouri's proposed battery programs?

Public Counsel's Position: No. The benefits do not outweigh the costs.

Public Counsel's Updated Position: While Public Counsel opposed settlement of one issue in EMM, Staff and Renew Missouri's *Nonunanimous Programs Stipulation and Agreement* they filed on October 7, 2026, Public Counsel does not oppose the resolution of this issue in that agreement: No pilots to be implemented, and the signatories to that agreement are to convene a stakeholder meeting on or before the fourth quarter of 2027 to discuss the potential development of a battery storage program. EMM is to produce information on the following items prior to the stakeholder meeting, for discussion:

i. Results of customer engagement surveys (all classes) on interest in participation in a battery partnership program;
ii. A list of worst performing circuits;
iii. A list of circuits/areas Evergy has internally noted as prone to outages, including weather related outages;
iv. A list of circuits/areas that have experienced transformer overloading or failure A list of circuits/areas experiencing growth or planned development; and
v. A list of circuits/areas that will require grid hardening or expanded transmission infrastructure investment but are not currently scheduled for improvements.

41. Income-Eligible Solar Program

A. Should the Commission order the adoption of Renew Missouri's proposed evaluation and expansion of the Income-Eligible solar program?

42. MEEIA Margin Rates

A. What methodology should be used to calculate the net marginal rate for each rate class?

CONCLUSION

Public Counsel requests that the Commission adopt Public Counsel's positions on the issues, and Staff's where Public Counsel has not taken a position, for the reasons set forth above and in the evidence, and adjust Evergy Missouri Metro's rates accordingly.

Respectfully,

/s/ Nathan Williams

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6th day of November 2026.

/s/ Nathan Williams