



# Independence for All STRATEGIC PLAN 2017-2021

## Values

### How we use resources:

**Responsible** – We practice fiscal responsibility. We carefully plan for and spend our resources in appropriate, cost-effective ways.

**Sustainable** – We manage our resources wisely, using only what we need to meet the current needs of our citizens while also keeping in mind the needs of future generations.

### Services are:

**Quality** – We provide safe, sustainable, and well-maintained public facilities and municipal services to residents and visitors.

**Reliable** – We protect public health and the environment by providing consistent, reliable, and efficient city services.

### Solutions are found through:

**Collaboration** – We get more work done when we work across departments and partner with the community.

**Open communication** – We are clear with our ideas and decisions. We aim to build respect and trust, resolve our differences, and create a positive environment.

### Our attitude is:

**Congenial** – We maintain a positive attitude and atmosphere because we treat everyone with respect and fairness.

**Empathetic** – We are able to step into someone else's shoes, listen, and understand another point of view.

**Engaging** – We actively engage our citizens to ensure that community concerns and aspirations are consistently understood and considered.

**Responsive** – We always respond to citizen concerns in a timely and efficient manner.

**Trustworthy** – Our promises instill trust in our actions and decisions.

### Decision making:

**Accountable** – We accept responsibility for our actions. Our decisions have a real impact on the community and we follow our words with actions.

**Credible** – We employ experienced and qualified staff. We use trusted sources and our decisions are based on balanced and objective information.

**Innovative** – We don't shy away from new ideas. We think of creative ways to work together. Our open thinking helps us accomplish our goals.

**Ethical** – We make equitable, fair and just decisions because that's the right thing to do.

**Transparent** – We are open and honest with our decisions and supporting data.

**Visionary** – We make smart, long-term decisions that consider future needs.

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# INDEPENDENCE

★ MISSOURI ★

A GREAT AMERICAN STORY

## Public Utilities Advisory Board Executive Meeting Agenda

January 18, 2024

2:30 PM, Independence Utilities Center 17221 E. 23rd St. So.

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### I. ROLL CALL

- A. Roll Call

### II. REPORTS

- A. Finance & Administration
  - 1. Questions on Utility Financial Reports - November 2023
- B. Municipal Services - None
- C. IPL -
  - 1. Savings for Switching Streetlights to LED
  - 2. Update on DKMT Studies
- D. Interim Assistant City Manager for Community Affairs -
  - 1. City's Long-Term Facilities Plan
  - 2. Questions Regarding the GEHA Building & Utilities Move
  - 3. Information Only - Jones v. City of Independence Class Action Lawsuit - Information Provided in PUAB's Packet and on the City's Website

### III. BOARD MEMBER COMMENTS

Board Member Comments

### IV. ADJOURNMENT

- A. Next Meeting Date February 15, 2024

# *City of Independence*

## AGENDA ITEM COVER SHEET

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### **Agenda Title:**

Finance & Administration

1. Questions on Utility Financial Reports - November 2023

**Department:** Finance &  
Administration

**Contact Person:** Cindy Gray

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### **REVIEWERS:**

Power and Light Department

Approved

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**Board Action:**

**Board Action:**

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### **ATTACHMENTS:**

- PUAB Utility Financials with CIP - November 2023

**CITY OF INDEPENDENCE, MISSOURI**  
 Budgetary Comparison Schedule  
 Power and Light  
 For the period ended November 30, 2023

	<u>Budgeted Amounts</u>		<u>Actual</u>	<u>Variance</u>	<u>Percent</u>	<u>Percent</u>
	<u>Original</u>	<u>Amended</u>	<u>Amounts</u>	<u>with Amended</u>	<u>Actual</u>	<u>From</u>
			<u>(Budget Basis)</u>	<u>Budget</u>	<u>41.67% of Year</u>	<u>Budget</u>
<b>Operating Revenues:</b>						
Charges for Services	\$ 137,475,870	137,475,870	67,374,439	(70,101,431)	49.01%	7.34%
Penalties	1,000,000	1,000,000	670,320	(329,680)	67.03%	25.36%
Connection Charges	33,000	33,000	3,009	(29,991)	9.12%	-32.55%
Miscellaneous	—	—	25,316	25,316	0.00%	-41.67%
Temporary Service	1,000	1,000	300	(700)	30.00%	-11.67%
Rental Income	294,500	294,500	19,706	(274,794)	6.69%	-34.98%
Transmission Wheeling	7,000,000	7,000,000	2,789,195	(4,210,805)	39.85%	-1.82%
<b>Total Operating Revenues</b>	<u>145,804,370</u>	<u>145,804,370</u>	<u>70,882,285</u>	<u>(74,922,085)</u>	<u>48.61%</u>	<u>6.94%</u>
<b>Operating Expenses:</b>						
Personnel Services	30,327,879	30,327,879	11,968,732	18,359,147	39.46%	-2.21%
Retiree Benefits	1,460,000	1,460,000	543,981	916,019	37.26%	-4.41%
Other Services	28,080,687	28,380,687	14,242,706	14,137,981	50.18%	8.51%
Supplies	62,389,475	62,382,275	28,545,788	33,836,487	45.76%	4.09%
Capital Projects	14,747,000	22,324,581	732,344	21,592,237	3.28%	-38.39%
Capital Operating	1,356,440	1,363,640	294,695	1,068,945	21.61%	-20.06%
Debt Service	8,638,100	8,638,100	1,297,071	7,341,029	15.02%	-26.65%
Other Expenses	100,000	100,000	—	100,000	0.00%	-41.67%
<b>Total Operating Expenses</b>	<u>147,099,581</u>	<u>154,977,162</u>	<u>57,625,317</u>	<u>97,351,845</u>	<u>37.18%</u>	<u>-4.49%</u>
<b>Nonoperating Revenues (Expenses):</b>						
Investment Income	118,000	118,000	1,100,027	982,027	932.23%	890.56%
Interfund Charges for Support Services	2,075,300	2,075,300	891,164	(1,184,136)	42.94%	1.27%
Miscellaneous Revenue (Expense)	15,700	15,700	411,006	395,306	2617.87%	2576.20%
<b>Total Nonoperating Revenue (Expenses)</b>	<u>2,209,000</u>	<u>2,209,000</u>	<u>2,402,197</u>	<u>193,197</u>	<u>108.75%</u>	<u>67.08%</u>
<b>Income (Loss) Before Transfers</b>	913,789	(6,963,792)	15,659,165	22,622,957	-224.87%	-266.54%
Capital Contributions	—	—	—	—	0.00%	-41.67%
Transfers Out – Utility Payments In Lieu of Taxes	(14,601,000)	(14,601,000)	(6,965,981)	(7,635,019)	47.71%	6.04%
Transfers In	—	—	—	—	0.00%	-41.67%
Transfers Out	—	—	—	—	0.00%	-41.67%
<b>Total Transfers</b>	<u>(14,601,000)</u>	<u>(14,601,000)</u>	<u>(6,965,981)</u>	<u>(7,635,019)</u>	<u>47.71%</u>	<u>6.04%</u>
<b>Excess of Revenue and Other Financing Sources Over (Under) Expenditures and Other Financing Uses, Budget Basis</b>	<u>\$ (13,687,211)</u>	<u>(21,564,792)</u>	8,693,184	<u>30,257,976</u>		
Beginning Available Resources			51,797,305			
Prior Period Adjustment			—			
Year-End Investment Market Value Adjustment			—			
Ending Available Resources			<u>60,490,489</u>			
Revenue Risk			5,300,000			
Capital Reserve			3,000,000			
Expense Risk			18,700,000			
Working Capital			25,500,000			
Targeted Reserve Level			<u>52,500,000</u>			
<b>Total Non-Restricted Resources Available</b>			<u>\$ 7,990,489</u>			

**Power and Light - Open Capital Projects**  
As of November 30, 2023

PROJECT	PROJECT TITLE	ORIGINAL BUDGET	NET BUDGET AMENDMENTS	REVISED BUDGET	ENCUMBRANCES	ACTUALS	AVAILABLE BUDGET
200815	T&D Sys IMPROVEMENTS	\$ 550,000.00	751,671.50	1,301,671.50	605,737.67	-	695,933.83
200828	FIBER OPTIC PROGRAM	200,000.00	70,789.23	270,789.23	213,127.73	10,893.32	46,768.18
201106	69 KV SUBSTATION FACILITIES	-	236,068.65	236,068.65	60,952.61	97,757.50	77,358.54
201405	SUBSTATION SECURITY PROJECT	-	196,405.74	196,405.74	30,088.40	40,869.52	125,447.82
201510	Sys OpS / DISPATCH	-	43,034.77	43,034.77	33,430.50	-	9,604.27
201603	69 KV Trans LINE REBUIL	-	771,535.88	771,535.88	65,408.60	19,282.89	686,844.39
201604	Sys OpS / UPS UPGRAD	-	51,175.00	51,175.00	51,175.00	-	-
201605	Sys OpS WORK AREA	700,000.00	619,842.18	1,319,842.18	-	-	1,319,842.18
201702	Prod FACILITIES IMPROVE	-	172,116.00	172,116.00	-	-	172,116.00
201703	BV GROUND WATER	-	289,356.17	289,356.17	98,252.50	29,318.65	161,785.02
201706	SUBSTATION K SWITCHGEAR &	-	146,637.27	146,637.27	146,316.11	-	321.16
201710	Mo CITY DIVESTITURE	-	350,294.83	350,294.83	315,264.88	35,029.45	0.50
201804	SUBSTATION E SWITCHGEAR REPLACEMENT	-	2,281,361.33	2,281,361.33	229,150.68	80,529.78	1,971,680.87
202101	Substation Fiber Optic Network	217,000.00	832,919.23	1,049,919.23	17,925.00	53,321.00	978,673.23
202102	Traffic Controller Upgrades	-	56,342.00	56,342.00	19,686.00	-	36,656.00
202103	Traffic Camera System Upgrades	-	51,837.00	51,837.00	-	-	51,837.00
202107	Motorola APX Radio Purchase Phase 2	-	67,716.89	67,716.89	-	-	67,716.89
202108	Operations APC UPS Battery Replace	75,000.00	99,700.00	174,700.00	-	-	174,700.00
202109	Substation Modeling	150,000.00	-	150,000.00	-	-	150,000.00
202110	20MVAR Capacitor Bank Sub A	-	190,689.11	190,689.11	-	13,233.83	177,455.28
202111	Transmission Pole Replacement Prog	-	529,680.46	529,680.46	1,815.20	33,858.90	494,006.36
202201	Substation A Transformer T-9 Mtce	-	180,000.00	180,000.00	70,425.00	-	109,575.00
202202	Substation N Transformer T-1 Maint	180,000.00	-	180,000.00	-	-	180,000.00
202205	Desert Storm Switchgear Cabinets	250,000.00	500,000.00	750,000.00	-	249,977.25	500,022.75
202206	T & D Road Improvement Projects	-	410,130.31	410,130.31	32,405.23	204,265.26	173,459.82
202208	Traffic Signal Detection Systems	60,000.00	21,635.00	81,635.00	-	-	81,635.00
202210	IPL Service Center PBX Upgrade to I	15,000.00	85,000.00	100,000.00	-	-	100,000.00
202211	H-S Hot Gas Path Inspection	-	239,397.25	239,397.25	-	-	239,397.25
202304	Controls Software Upgrade	-	364,491.80	364,491.80	79,139.40	271,516.40	13,836.00
202305	PLSC Operations Area HVAC Upgrade	-	100,000.00	100,000.00	-	-	100,000.00
202306	Substation A Blockhouse Roof Repl	-	25,022.00	25,022.00	-	-	25,022.00
202308	Substn & Trans Upgrade &Replacement	-	389,841.71	389,841.71	1,441.58	-	388,400.13
202314	Construction of New Substation S	6,000,000.00	-	6,000,000.00	-	-	6,000,000.00
202315	Construct New Trans System Sub S	1,350,000.00	-	1,350,000.00	-	-	1,350,000.00
202316	Construct 6 New Dist Feeders Sub S	650,000.00	357,460.73	1,007,460.73	33,209.27	34,065.46	940,186.00
202317	H5 Combustion Turbine Repair	-	714,175.19	714,175.19	23,866.42	329,872.00	360,436.77
202401	Purchase Everyg 69kV Line	1,200,000.00	-	1,200,000.00	-	-	1,200,000.00
202403	Sub M Breaker Replacement	150,000.00	-	150,000.00	-	-	150,000.00
202405	Emergency Replacement Trans Poles	250,000.00	-	250,000.00	-	-	250,000.00
202406	Service Center Upgrades	500,000.00	-	500,000.00	-	-	500,000.00
202407	Emergent Maintenance Production	400,000.00	-	400,000.00	-	-	400,000.00
202408	Substation & Trans Upgrade &Replac	400,000.00	-	400,000.00	-	-	400,000.00
202409	T & D Road Improvement Projects	500,000.00	-	500,000.00	-	-	500,000.00
202410	T & D System Improvements	500,000.00	-	500,000.00	-	-	500,000.00
202411	SCADA/EMS Software/Hardware Upgrade	450,000.00	-	450,000.00	187,440.00	147,349.60	115,210.40
		\$ 14,747,000.00	11,196,327.23	25,943,327.23	2,316,257.78	1,651,140.81	21,975,928.64

	Current Year	Prior Year	Total
	Budget	Budget (Enc Roll)	
Budget	\$ 22,324,580.92	3,618,746.31	25,943,327.23
Less Expenditures	266,167.75	1,384,973.06	1,651,140.81
Less Encumbrances	466,175.92	1,850,081.86	2,316,257.78
Total Available	\$ 21,592,237.25	383,691.39	21,975,928.64

**CITY OF INDEPENDENCE, MISSOURI**  
 Budgetary Comparison Schedule  
 Water  
 For the period ended November 30, 2023

	<u>Budgeted Amounts</u>		<u>Actual Amounts (Budget Basis)</u>	<u>Variance with Amended Budget</u>	<u>Percent Actual 41.67% of Year</u>	<u>Percent From Budget</u>
	<u>Original</u>	<u>Amended</u>				
<b>Operating Revenues:</b>						
Charges for Services	\$ 32,610,000	32,610,000	15,195,449	(17,414,551)	46.60%	4.93%
Penalties	200,000	200,000	93,724	(106,276)	46.86%	5.19%
Connection/Disconnection Charges	17,000	17,000	9,804	(7,196)	57.67%	16.00%
Miscellaneous	15,000	15,000	9,333	(5,667)	62.22%	20.55%
Returned Check Charges	26,000	26,000	13,425	(12,575)	51.63%	9.96%
Rental Income	85,000	85,000	56,850	(28,150)	66.88%	25.21%
Meter Repairs	—	—	—	—	0.00%	-41.67%
Merchandising Jobbing	—	—	777	777	0.00%	-41.67%
<b>Total Operating Revenues</b>	<u>32,953,000</u>	<u>32,953,000</u>	<u>15,379,362</u>	<u>(17,573,638)</u>	<u>46.67%</u>	<u>5.00%</u>
<b>Operating expenses:</b>						
Personnel Services	10,123,922	10,123,922	3,651,106	6,472,816	36.06%	-5.61%
Retiree Benefits	364,000	364,000	129,416	234,584	35.55%	-6.12%
Other Services	14,168,493	13,985,493	5,108,678	8,876,815	36.53%	-5.14%
Supplies	3,626,950	3,833,950	2,907,062	926,888	75.82%	34.15%
Capital Projects	8,050,000	20,781,289	363,116	20,418,173	1.75%	-39.92%
Capital Operating	1,037,800	1,013,800	445,228	568,572	43.92%	2.25%
Debt Service	2,540,938	2,540,938	2,052,184	488,754	80.76%	39.09%
Other Expenses	50,000	50,000	—	50,000	0.00%	-41.67%
<b>Total Operating Expenses</b>	<u>39,962,103</u>	<u>52,693,392</u>	<u>14,656,790</u>	<u>38,036,602</u>	<u>27.82%</u>	<u>-13.85%</u>
<b>Nonoperating Revenues (Expenses):</b>						
Investment Income	657,138	657,138	947,357	290,219	144.16%	102.49%
Interfund Charges for Support Services	3,360,000	3,360,000	1,401,988	(1,958,012)	41.73%	0.06%
Miscellaneous Revenue (Expense)	16,700	16,700	34,900	18,200	208.98%	167.31%
<b>Total Nonoperating Revenue (Expenses)</b>	<u>4,033,838</u>	<u>4,033,838</u>	<u>2,384,245</u>	<u>(1,649,593)</u>	<u>59.11%</u>	<u>17.44%</u>
<b>Income (Loss) Before Transfers</b>	<u>(2,975,265)</u>	<u>(15,706,554)</u>	<u>3,106,817</u>	<u>18,813,371</u>	<u>-19.78%</u>	<u>-61.45%</u>
Transfers Out – Utility Payments In Lieu of Taxes	(2,990,770)	(2,990,770)	(1,447,775)	(1,542,995)	48.41%	6.74%
Transfers In	—	—	—	—	0.00%	-41.67%
Transfers Out	—	—	—	—	0.00%	-41.67%
<b>Total Transfers</b>	<u>(2,990,770)</u>	<u>(2,990,770)</u>	<u>(1,447,775)</u>	<u>(1,542,995)</u>	<u>48.41%</u>	<u>6.74%</u>
<b>Excess of Revenue and Other Financing Sources Over (Under) Expenditures and Other Financing Uses, Budget Basis</b>						
	\$ <u>(5,966,035)</u>	<u>(18,697,324)</u>	1,659,042	<u>20,356,366</u>		
Beginning Available Resources			51,219,649			
Year-End Investment Market Value Adjustment			—			
Ending Available Resources			<u>52,878,691</u>			
Revenue Risk			2,000,000			
Capital Reserve			6,100,000			
Expense Risk			700,000			
Working Capital			5,600,000			
Targeted Reserve Level			<u>14,400,000</u>			
<b>Total Non-Restricted Resources Available</b>			\$ <u>38,478,691</u>			

**Water - Open Capital Projects  
As of November 30, 2023**

PROJECT	PROJECT TITLE	ORIGINAL BUDGET	NET BUDGET AMENDMENTS	REVISED BUDGET	ENCUMBRANCES	ACTUALS	AVAILABLE BUDGET
400708	TREATMENT Pit DISCHARGE	\$ 1,000,000.00	273,113.14	1,273,113.14	68,518.14	2,595.00	1,202,000.00
400904	EAST INDEPENDENCE INDUST PARK	-	674,000.00	674,000.00	-	-	674,000.00
401003	FUTURE Prod WELLS	500,000.00	1,462,326.00	1,962,326.00	1,176,492.84	55,415.16	730,418.00
401301	23RD ST MAIN REPLACEMENT	-	311,672.57	311,672.57	2,811.00	-	308,861.57
401402	LAGOON CLEANOUT	500,000.00	(24,500.00)	475,500.00	-	-	475,500.00
401505	Dist Sys IMPROVE	-	244,781.00	244,781.00	-	-	244,781.00
401506	TRUMAN ROAD BOOSTER STATION	-	106,569.52	106,569.52	-	-	106,569.52
401601	FILTER BACKWASH OUTFALL	-	190,325.00	190,325.00	-	-	190,325.00
401602	Pit DISCHARGE OUTFALL	-	459,824.48	459,824.48	-	-	459,824.48
401605	COURTNEY BEND BASIN CATWALK	-	10,020.00	10,020.00	-	-	10,020.00
401608	LIME SILO	-	3,919,760.18	3,919,760.18	3,446,930.72	104,707.81	368,121.65
401703	Maint BUILDING AT CBP	-	200,000.00	200,000.00	-	-	200,000.00
401704	VAN HORN RESERVOIR IMPROVE	-	(49,699.58)	(49,699.58)	-	-	(49,699.58)
401802	6" Main Replacement James Downey Rd	-	250,087.60	250,087.60	-	-	250,087.60
401804	Filter Valve House Roof Improvement	-	97,292.00	97,292.00	-	-	97,292.00
401808	VFD Drive Replacements HSP 2 & 4	-	230,967.00	230,967.00	-	-	230,967.00
401818	30" Steel Transmission Main Assess	-	156,300.00	156,300.00	-	-	156,300.00
401821	Main Replacement-32nd/Hunter/Bird	-	91,000.00	91,000.00	-	-	91,000.00
401822	Main Replacement-24Hwy/Northern/RR	-	240,166.00	240,166.00	-	-	240,166.00
402002	39th Street Reservoir	-	(16,042.60)	(16,042.60)	13,455.30	4,953.00	(34,450.90)
402004	Main Replace Walnut/Leslie/LeesSumm	-	81,218.73	81,218.73	-	-	81,218.73
402007	Courtney Bend Emergency Generator	-	1,150,000.00	1,150,000.00	-	-	1,150,000.00
402008	Wellfield Overhead Electrical Imp	-	1,000,000.00	1,000,000.00	-	-	1,000,000.00
402009	Main Replace Sheley/Claremont/Norw	-	188,790.00	188,790.00	-	-	188,790.00
402010	Main Replace Gudgell/Dodgion/KingsH	-	103,132.50	103,132.50	-	-	103,132.50
402011	Main Replace Salisbury/Peck/Geospac	-	120,100.00	120,100.00	-	-	120,100.00
402012	College Avenue Improvements	-	250,000.00	250,000.00	-	-	250,000.00
402101	Main Replacement Ralston 31st/29th	-	361,105.00	361,105.00	240,949.98	88,246.52	31,908.50
402102	Main Replacement 3rd St & Jennings	-	436,013.00	436,013.00	-	-	436,013.00
402103	Main Replacement Truman Road	-	86,890.00	86,890.00	44,728.00	-	42,162.00
402104	Lime Slaker No 5	-	350,000.00	350,000.00	378,088.80	-	(28,088.80)
402105	Main Replacement Sheley	-	89,229.50	89,229.50	-	-	89,229.50
402106	Main Replacement Sheley & Northern	-	983,910.00	983,910.00	79,663.39	445,108.11	459,138.50
402107	Facility Improvements/Const/Maint	-	1,714,358.50	1,714,358.50	63,224.50	1,134.00	1,650,000.00
402108	Basin Drive Improvements	-	340,523.00	340,523.00	-	-	340,523.00
402201	Roof Improvements	-	(19,500.00)	(19,500.00)	-	-	(19,500.00)
402203	Lime Slaker No 1	-	350,000.00	350,000.00	376,911.20	-	(26,911.20)
402207	CB Electrical Switchgear Improvemen	-	200,000.00	200,000.00	-	-	200,000.00
402301	IT Infrastructure Upgrade	-	9,034.80	9,034.80	-	-	9,034.80
402302	HSPS HVAC Improvements	-	250,000.00	250,000.00	106,520.00	-	143,480.00
402303	Lime Silo Recoating	-	400,000.00	400,000.00	-	-	400,000.00
402401	Fiber Optic Upgrades	500,000.00	-	500,000.00	-	-	500,000.00
402402	Lime Slaker No. 6	350,000.00	-	350,000.00	333,308.00	-	16,692.00
402403	Sludge House Piping Improvements	200,000.00	-	200,000.00	-	-	200,000.00
9749	MAIN REPLACEMENT PROGRAM	5,000,000.00	3,176,870.47	8,176,870.47	784,898.10	277,445.50	7,114,526.87
9952	SECURITY UPGRADES	-	454,706.39	454,706.39	71,103.04	97.69	383,505.66
		\$ 8,050,000.00	20,904,344.20	28,954,344.20	7,187,603.01	979,702.79	20,787,038.40

	Current Year	Prior Year	Total
	Budget	Budget (Enc Roll)	
Budget	\$ 20,781,289.40	8,173,054.80	28,954,344.20
Less Expenditures	-	979,702.79	979,702.79
Less Encumbrances	363,116.00	6,824,487.01	7,187,603.01
Total Available	\$ 20,418,173.40	368,865.00	20,787,038.40

**CITY OF INDEPENDENCE, MISSOURI**  
 Budgetary Comparison Schedule  
 Sanitary Sewer  
 For the period ended November 30, 2023

	<u>Budgeted Amounts</u>		<u>Actual Amounts (Budget Basis)</u>	<u>Variance with Amended Budget</u>	<u>Percent Actual 41.67% of Year</u>	<u>Percent From Budget</u>
	<u>Original</u>	<u>Amended</u>				
<b>Operating revenues:</b>						
Charges for Services	\$ 35,546,430	35,546,430	15,355,271	(20,191,159)	43.20%	1.53%
Penalties	200,000	200,000	152,384	(47,616)	76.19%	34.52%
<b>Total operating revenues</b>	<u>35,746,430</u>	<u>35,746,430</u>	<u>15,507,655</u>	<u>(20,238,775)</u>	<u>43.38%</u>	<u>1.71%</u>
<b>Operating expenses:</b>						
Personnel Services	6,988,726	6,988,726	2,517,702	4,471,024	36.03%	-5.64%
Retiree Benefits	348,000	348,000	149,694	198,306	43.02%	1.35%
Other Services	15,920,944	15,920,944	5,002,812	10,918,132	31.42%	-10.25%
Supplies	1,478,000	1,485,540	584,104	901,436	39.32%	-2.35%
Capital Projects	6,330,000	17,274,356	559,296	16,715,060	3.24%	-38.43%
Capital Operating	409,600	402,060	283,855	118,205	70.60%	28.93%
Debt Service	6,242,978	6,242,978	4,285,209	1,957,769	68.64%	26.97%
Other Expenses	—	—	—	—	0.00%	-41.67%
<b>Total Operating Expenses</b>	<u>37,718,248</u>	<u>48,662,604</u>	<u>13,382,672</u>	<u>35,279,932</u>	<u>27.50%</u>	<u>-14.17%</u>
<b>Nonoperating Revenues (Expenses):</b>						
Investment Income	326,000	326,000	623,089	297,089	191.13%	149.46%
Miscellaneous Revenue (Expense)	7,900	7,900	7,275	(625)	92.09%	50.42%
<b>Total Nonoperating Revenue (Expenses)</b>	<u>333,900</u>	<u>333,900</u>	<u>630,364</u>	<u>296,464</u>	<u>188.79%</u>	<u>147.12%</u>
<b>Income (Loss) Before Transfers</b>	<u>(1,637,918)</u>	<u>(12,582,274)</u>	<u>2,755,347</u>	<u>15,337,621</u>	<u>-21.90%</u>	<u>-63.57%</u>
Transfers Out – Utility Payments In Lieu of Taxes	(3,596,612)	(3,596,612)	(1,524,718)	(2,071,894)	42.39%	0.72%
Transfers In	10,000	10,000	10,000	—	100.00%	58.33%
Transfers Out	—	(2,130,000)	(293)	(2,129,707)	0.01%	-41.66%
<b>Total Transfers</b>	<u>(3,586,612)</u>	<u>(5,716,612)</u>	<u>(1,515,011)</u>	<u>(4,201,601)</u>	<u>26.50%</u>	<u>-15.17%</u>
<b>Excess of Revenue and Other Financing Sources Over (Under) Expenditures and Other Financing Uses, Budget Basis</b>	<u>\$ (5,224,530)</u>	<u>(18,298,886)</u>	<u>1,240,336</u>	<u>19,539,222</u>		
Beginning Available Resources			33,820,216			
Year-End Investment Market Value Adjustment			—			
Ending Available Resources			<u>35,060,552</u>			
Revenue Risk			1,200,000			
Capital Reserve			4,000,000			
Expense Risk			700,000			
Working Capital			6,800,000			
Targeted Reserve Level			<u>12,700,000</u>			
<b>Total Non-Restricted Resources Available</b>			<u>\$ 22,360,552</u>			



**Sanitary Sewer - Open Capital Projects  
As of November 30, 2023**

PROJECT	PROJECT TITLE	ORIGINAL BUDGET	NET BUDGET AMENDMENTS	REVISED BUDGET	ENCUMBRANCES	ACTUALS	AVAILABLE BUDGET
301201	BURR OAK EAST	\$ -	1,035,327.15	1,035,327.15	-	-	1,035,327.15
301202	CRACKERNECK-VAN HOOK SEWER	-	529,163.59	529,163.59	-	-	529,163.59
301603	RCTP FACILITIES ROOF, CEILING	-	170,925.00	170,925.00	-	-	170,925.00
301701	SCADA UPGRADE	-	84,886.62	84,886.62	-	7,378.84	77,507.78
301706	TREATMENT FACILITY IMPROVEMENT	-	309,368.20	309,368.20	4,682.20	152,745.79	151,940.21
301804	ROCK CREEK EFFLUENT STRUCTURE	-	321,449.93	321,449.93	-	-	321,449.93
301806	Neighborhood Improvements 2018-19	-	-	-	-	-	-
302002	Arlington Improvements	-	100,000.00	100,000.00	-	-	100,000.00
302004	Neighborhood Projects 2019-20	150,000.00	1,890,934.34	2,040,934.34	18,207.62	-	2,022,726.72
302005	Biosolids Handling	-	991,019.78	991,019.78	-	-	991,019.78
302006	Raw Pumps & Screening	-	579,279.41	579,279.41	-	-	579,279.41
302007	Electrical Substation Rehab	-	158,690.00	158,690.00	29,351.00	-	129,339.00
302008	RCTP Fence	-	36,015.56	36,015.56	-	-	36,015.56
302101	Sanitation Sewer Evaluation Survey	-	106,982.83	106,982.83	-	-	106,982.83
302102	Raymond Harkless Mills San Imp	-	200,000.00	200,000.00	-	-	200,000.00
302103	Pump Station Imp & Maintenance	150,000.00	568,240.98	718,240.98	-	-	718,240.98
302104	Polymer System Relocation	-	100,000.00	100,000.00	-	-	100,000.00
302105	Piping Rehabilitation	-	585,933.69	585,933.69	14,332.50	-	571,601.19
302201	Upper Adair Interceptor	-	800,000.00	800,000.00	184,264.50	176,019.79	439,715.71
302202	Crackerneck Creek Slope Rehab	-	2,270,141.29	2,270,141.29	259,863.27	40,884.30	1,969,393.72
302203	Sanitary Sewer Main Reloc from Stre	300,000.00	400,000.00	700,000.00	-	-	700,000.00
302204	RCTP - Septic Pumper	-	300,000.00	300,000.00	-	-	300,000.00
302205	Clarifier Rehabilitation	1,800,000.00	1,235,952.56	3,035,952.56	18,646.70	27,637.24	2,989,668.62
302206	Railing Safety RCPS & SCPS	-	14,083.09	14,083.09	-	-	14,083.09
302301	Sludge Thickening Process Improve	200,000.00	400,000.00	600,000.00	-	-	600,000.00
302401	Cost of Service Study	100,000.00	-	100,000.00	-	-	100,000.00
302402	Grit Removal Improvements-RCPS	750,000.00	-	750,000.00	-	-	750,000.00
302403	Pressure Cleaning Truck	250,000.00	-	250,000.00	-	-	250,000.00
9757	TRENCHLESS TECHNOLOGY	500,000.00	620,433.66	1,120,433.66	196,773.45	162,980.05	760,680.16
		\$ 4,200,000.00	13,808,827.68	18,008,827.68	726,121.24	567,646.01	16,715,060.43

	Current Year Budget	Prior Year Budget (Enc Roll)	Total
Budget	\$ 17,274,356.23	734,471.45	18,008,827.68
Less Expenditures	186,393.00	381,253.01	567,646.01
Less Encumbrances	372,902.80	353,218.44	726,121.24
Total Available	\$ 16,715,060.43	-	16,715,060.43

# *City of Independence*

## AGENDA ITEM COVER SHEET

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### **Agenda Title:**

Interim Assistant City Manager for Community Affairs -

1. City's Long-Term Facilities Plan
2. Questions Regarding the GEHA Building & Utilities Move
3. Information Only - Jones v. City of Independence Class Action Lawsuit - Information Provided in PUAB's Packet and on the City's Website

**Department:** City Manager's Office **Contact Person:** Lisa Reynolds

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### **REVIEWERS:**

Power and Light Department

Approved

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**Board Action:**

**Board Action:**

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### **ATTACHMENTS:**

- ▣ E-mail Update on Jones v. City of Independence Class Action Lawsuit
- ▣ Jones v. City of Independence et al WD85716 Order filed 12-26-23

## Khristina Irvine

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**To:** Jeremy Cover (law)  
**Cc:** Zachary Walker; Adam Norris; James Nail; Lisa Reynolds; Lindsey Gallman;  
chuck.hatfield@stinson.com; JCover  
**Subject:** RE: Update on Jones v. City of Independence class action lawsuit

All,

The Missouri Court of Appeals recently issued their decision in the Independence Power & Light class action lawsuit. The court said that Plaintiffs had no evidence of overcharging and did not properly appeal the Charter violation claims, effectively ending the case. Please find attached the court's decision as well as a link to the press release issued by the City. Please contact lead counsel Chuck Hatfield (copied on this e-mail) with any questions.

<https://www.independencemo.gov/news/case-against-city-independence-independence-power-light-ends-no-evidence-ipl-overcharged-customers-or-violated-charter>

Regards,  
Jeremy Cover

**BCC:** *Eileen Weir*  
*Andrew Boatright*  
*Penny Speake, Healy Law Offices*  
*Michael Hargens, Husch Blackwell*



**Jeremiah V. Cover**  
City Counselor

O – 816-325-7078

[jcover@indepmo.org](mailto:jcover@indepmo.org)

111 E. Maple Avenue

Independence, MO 64050



**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**BARRY JONES, et al.,** )  
 )  
 **Appellants-Respondents,** ) **WD85716**  
 ) **(Consolidated with WD85734**  
 ) **and WD85743)**  
**v.** )  
 ) **ORDER FILED:**  
 ) **December 26, 2023**  
**CITY OF INDEPENDENCE, et al.,** )  
 )  
 **Respondents-Appellants.** )

**Appeal from the Circuit Court of Jackson County, Missouri  
The Honorable Kenneth R. Garrett, III, Judge**

**Before Division Two: Janet Sutton, Presiding Judge, and  
Alok Ahuja and Mark D. Pfeiffer, Judges**

**Order**

**Per Curiam:**

Appellants Barry Jones, Independence Sportscycle, and Nativity of Blessed Virgin Mary Catholic Church appeal on behalf of three certified classes from the Circuit Court of Jackson County, Missouri's August 25, 2022 grant of summary judgment against Appellants and in favor of Respondents City of Independence, Independence Power and Light, Andrew Boatright, Constellation Software, Inc., N. Harris Computer Corporation,

Advanced Utility Systems, Mayor Eileen Weir, City Council of Independence, and the City of Independence Public Utilities Advisory Board. We affirm.<sup>1</sup> However, because there is no precedential value in publishing our opinion, we have instead provided the parties an unpublished memorandum of law in accordance with Rule 84.16(b).

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<sup>1</sup> The Respondents also filed cross-appeals. Given our ruling today, those cross-appeals are denied as moot. Likewise, Respondents requested that we dismiss the Appellants' appeal due to alleged briefing deficiencies and we deny that request.



## IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

BARRY JONES, et al., )  
)  
Appellants-Respondents, ) WD85716  
) (Consolidated with WD85734  
) and WD85743)  
v. )  
) ORDER FILED:  
) December 26, 2023  
CITY OF INDEPENDENCE, et al., )  
)  
Respondents-Appellants. )

### Memorandum of Reasons for Order Affirming Judgment Pursuant to Rule 84.16(b)

This memorandum is for the information of the parties and sets forth the reasons for the order affirming the judgment.

**PLEASE NOTE: THIS UNPUBLISHED MEMORANDUM DOES NOT CONSTITUTE A FORMAL OPINION OF THE COURT. IT HAS NO PRECEDENTIAL VALUE AND SHOULD NOT BE CITED IN UNRELATED CASES. SEE RULE 84.16(b). A COPY OF THIS MEMORANDUM MUST BE ATTACHED TO ANY MOTION FOR REHEARING OR TO TRANSFER THE CASE TO THE MISSOURI SUPREME COURT.**

Appellants Barry Jones, Independence Sportscycle, and Nativity of Blessed Virgin Mary Catholic Church appeal on behalf of three certified classes from the Circuit Court of Jackson County, Missouri's ("trial court") August 25, 2022 grant of summary

judgment against Appellants and in favor of Respondents City of Independence, Independence Power and Light, Andrew Boatright, Constellation Software, Inc., N. Harris Computer Corporation, Advanced Utility Systems, Mayor Eileen Weir, City Council of Independence, and the City of Independence Public Utilities Advisory Board. We affirm.

Before identifying the relevant factual background and procedural history of this appeal, we first revisit longstanding precedent about appellate briefing requirements relating to summary judgment review and, particularly, the briefing requirements related to the statement of facts on appeal.

Summary judgment is based on facts established pursuant to a movant's statement of uncontroverted material facts under Rule 74.04(c)(1), and the non-movant's responses under Rule 74.04(c)(2). The movant's statement of uncontroverted material facts must state with particularity each material fact as to which the movant claims there is no genuine issue, with specific references to supporting pleadings, discovery, exhibits or affidavits. Rule 74.04(c)(1). The non-movant's response must either admit or deny, with specific references to discovery, exhibits, or affidavits demonstrating specific facts showing there is a genuine issue, each of the movant's statements of fact. Rule 74.04(c)(2). If the non-movant does not properly deny a statement of fact, that fact is deemed admitted. If the non-movant files a statement of additional material facts, the process repeats itself, but with the non-movant stating material facts, supported in the same manner, to which the movant must respond. Rule 74.04(c)(2)-(3).

Our review of summary judgment is limited to the undisputed material facts established in the process set forth in Rule 74.04(c); *we do not review the entire trial court record*. We look exclusively to the step-by-step procedure mandated by Rule 74.04 to determine whether there is a genuine issue of material fact.

On appeal, the import of this process is reflected in our briefing requirements. Pursuant to Rule 84.04(c), the appellant's brief must contain a fair and concise statement of the facts relevant to the questions presented

for determination without argument. *A statement of facts that fails to identify the material facts established by a motion for summary judgment, or properly denied by the opposing party's response, violates Rule 84.04(c).*

. . . Appellant [bears] the initial duty to recite, fairly and concisely, the relevant facts. [Appellant's] failure to do so is sufficient to merit dismissal.

*Bracely-Mosley v. Hunter Eng'g Co.*, 662 S.W.3d 806, 810-11 (Mo. App. E.D. 2023)

(numerous internal citations and quotations omitted) (emphasis added).

*Appellant's brief fails to set forth the material facts established by Rule 74.04(c)(1) and (2). Appellant's statement of facts does not identify (1) the material facts established by Respondents' motions for summary judgment and Appellant's responses to the motions for summary judgment, or (2) the material facts pleaded in Respondents' motions for summary judgment . . . .*

“Instead of setting forth an account of the facts that correspond to the factual statements in the consecutively numbered paragraphs of Respondent's [] motion for summary judgment, the statement of facts in Appellant[']s brief is simply a recitation of the procedural history, which has been found insufficient for purposes of appellate review.” *Wichita Falls [Prod. Credit Ass'n v. Dismang]*, 78 S.W.3d [812,] 815-16 [(Mo. App. S.D. 2002)]; see also *Washington v. Blackburn*, 286 S.W.3d 818, 820 (Mo. App. E.D. 2009) (“Failure to include, in the statement of facts, the facts upon which an appellant's claim of error is based fails to preserve the contention for appellate review . . . [and] constitutes grounds for dismissal of an appeal.”).

. . . .

Because summary judgment may be affirmed if sustainable on any basis, to review whether it was error to grant summary judgment requires us to review the material facts, disputed or uncontroverted, established by the process set forth in Rule 74.04. See *Pemiscot County Port Auth. v. Rail Switching Services, Inc.*, 523 S.W.3d 530, 534 (Mo. App. S.D. 2017) (“To focus only on *disputed* facts presents an incomplete picture. We must determine whether *uncontroverted* facts established via Rule 74.04(c) paragraphs and responses demonstrate [Respondents'] right to judgment *regardless of other facts or factual disputes.*” (emphasis in original)).



Appellant's failure to properly present the relevant uncontroverted material facts in his statement of facts is fatal to his appeal because we cannot sift through a voluminous record, separating fact from conclusion, admissions from disputes, the material from immaterial, in an attempt to determine the basis for the motion without impermissibly acting as advocates.

*Fleddermann v. Casino One Corp.*, 579 S.W.3d 244, 248-49 (Mo. App. E.D. 2019) (numerous internal citations and quotations omitted) (emphasis added); *see also Murphy v. Steiner*, 658 S.W.3d 588 (Mo. App. W.D. 2022) (where statement of facts does not address the facts pertinent to the trial court's summary judgment ruling, the appeal was dismissed).

In the present appeal, although appellants have provided this Court with over one-hundred pages of appellate briefing, the statement of facts merely recites the procedural history of the case and fails to recite the summary judgment record as required by Rule 84.04(c) and the related precedent quoted above.

Instead, in the argument portion of the briefing of appellants, numerous conclusions are recited with string citations to the record on appeal that fail to advise this Court if the citations are to the summary judgment record or something broader than the summary judgment record. Further, to locate the facts, appellants have placed the burden on this Court of sifting through voluminous records to find facts relevant to the present summary judgment ruling. But, "we have no duty to search the transcript or record to discover the facts which substantiate a point on appeal. That is the duty of the parties, not the function of an appellate court." *Franklin v. Ventura*, 32 S.W.3d 801, 803-04 (Mo. App. W.D. 2000) (internal quotation marks omitted); *see also Green v. Shiverdecker*, 514

S.W.3d 41, 44 (Mo. App. W.D. 2017) (noting impropriety of appellant providing bulk citations to the record or otherwise providing general citations to an affidavit or deposition without providing the precise contradictory statements placing the material fact in dispute).

Appellants, though they have raised seven points on appeal, have no separate point on appeal alleging error of the trial court by failing to permit additional time to conduct additional discovery (after the case had been pending for three years) pursuant to Rule 74.04(f). Nevertheless in the argument portion of their briefing, appellants criticize the trial court for ruling on the summary judgment motion without first requiring additional discovery responses by the respondents. This, of course, we will not do. *Gamber v. Mo. Dep't of Health & Senior Servs.*, 225 S.W.3d 470, 477 (Mo. App. W.D. 2007) (“Issues not encompassed by the point relied on . . . are not preserved for review.”) (internal quotation omitted); *Tribus, LLC v. Greater Metro, Inc.*, 589 S.W.3d 679, 701 n.9 (Mo. App. E.D. 2019) (citing Rule 84.04(e)) (“[A]n appellant shall limit argument to those errors included in its points relied on.”); *Davis v. Wieland*, 557 S.W.3d 340, 352 n.10 (Mo. App. W.D. 2018) (“Claims of error raised in the argument portion of a brief that are not raised in the point relied on are not preserved for our review.”) (internal quotation marks omitted); *C.S. v. Mo. Dep't of Soc. Servs.*, 491 S.W.3d 636, 656 (Mo. App. W.D. 2016) (same); *Heuer v. Ulmer*, 273 S.W.2d 169, 170 (Mo. 1954) (An issue adversely ruled on in the trial court but not presented on appeal must be regarded as abandoned).

Simply put, we would be well within our discretion to dismiss this appeal for the numerous appellate briefing deficiencies; instead, we have elected to exercise our

discretion to decipher as best as possible the relevant and material facts dispositive of the trial court’s summary judgment ruling, *ex gratia*.<sup>2</sup> *Bracely-Mosley*, 662 S.W.3d at 811; *Courtright v. O’Reilly Auto.*, 604 S.W.3d 694, 706 n.12 (Mo. App. W.D. 2020) (“[This Court] ha[s] the discretion to review non-compliant briefs *ex gratia*.”) (internal quotation marks omitted); *Hampton v. Llewellyn*, 663 S.W.3d 899, 902 n.2 (Mo. App. W.D. 2023) (same); *Hink v. Helfrich*, 545 S.W.3d 335, 338 (Mo. banc 2018) (“This Court prefers to dispose of cases on the merits if it can discern the argument being made.”).

### **Relevant Factual Background and Procedural History**

The City of Independence (“City”) is the fourth largest city in Missouri and operates under a municipal charter (“Charter”). L.F., D. 297 at 12, ¶¶ 32-33. The Charter authorizes City to create an electric utility department to operate the electric utility on behalf of City. L.F., D. 297 at 13, ¶ 37. Independence Power and Light (“IPL”) was created for that purpose. L.F., D. 297 at 13, ¶ 37.

The Charter also provides that “the municipally owned and operated electric system . . . shall not be used directly or indirectly as a general revenue producing agency for the city, but may pay to [City] an amount in lieu of such taxes as are normally placed upon private business enterprises.” L.F., D. 154 at 14. Consequently, City enacted an ordinance providing that “[e]very person, firm or corporation now or hereafter engaged in the business of supplying . . . electric service . . . shall pay to the City a license or occupation tax in a sum equal to nine and 08/100 (9.08%) percent of the gross receipts

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<sup>2</sup> Given our ruling today, we deny as moot Respondents’ request that we dismiss the appeal.

derived from such business within the City.” L.F., D. 156 at 2. Each month, 9.08% of IPL’s gross receipts are transferred from an account held by IPL to a general fund account held by City as a payment in lieu of taxes (“PILOT”). L.F., D. 155 at 2, ¶ 5.

In its role as utility department for City, IPL provides electricity to over 58,000 customers. L.F., D., 297 at 14, ¶ 41. In 2015, City contracted with N. Harris Corporation to replace City’s old utility billing system with a new utility billing system. L.F., D. 297 at 15, ¶ 53. After going live with the new billing system in May 2018, some customers began complaining that they were overcharged for electricity. L.F., D. 297 at 16, ¶ 62.

On December 3, 2018, a putative class action lawsuit was filed in the trial court by residential, corporate, and non-profit ratepayers who reside or conduct business within City<sup>3</sup> (collectively “Plaintiffs,” “Appellants,” or “the class”) seeking redress for alleged overcharging of their electricity use. *See generally* L.F., D. 2. The lawsuit named as Defendants: City, IPL, City Council of Independence (“City Council”), the City of Independence Public Utilities Advisory Board (“PUAB”), and City of Independence officials Andrew Boatright and Eileen Weir (collectively “City Defendants”). L.F., D. 2 at 2-3, ¶¶ 3-5. In addition to the City Defendants, the lawsuit also named as defendants

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<sup>3</sup> Though the class action was putative when filed, three classes were certified on January 18, 2022. L.F., D. 136. Each named Plaintiff represents a class of ratepayer subject to the alleged overcharging. Plaintiff Barry Jones represents “all residential customers of IPL who were customers on or after January 1, 2011”; Independence Sportscycle (“Sportscycle”) represents “all commercial customers of IPL who were customers on or after January 1, 2011”; and Nativity of Blessed Virgin Mary Catholic Church (“Nativity”) represents “all commercial non-profit customers who were customers on or after May 14, 2018.” L.F., D. 136 at 79; L.F., D. 105 at 9-10.

Constellation Software Inc., and N. Harris Computer Corporation (collectively “N. Harris Defendants”).<sup>4</sup> L.F., D. 2 at 3-4, ¶¶ 6-8.

After three years of discovery, the trial court granted Plaintiffs permission to file a Second Amended Petition (“Operative Petition”). L.F., D. 297. The Operative Petition, filed June 18, 2021, contained a total of sixteen counts which condensed down to two separate theories of liability. *See generally* L.F., D. 297. First, Counts I-VII and XVI (collectively “Overcharge Claims”),<sup>5</sup> rested on a theory that Plaintiffs were charged for more electricity than they actually consumed after City implemented the new billing software in May of 2018. Second, Counts VIII-XV (collectively “Charter Claims”),<sup>6</sup> rested on a theory that City collected excessive PILOTs from IPL and maintained an

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<sup>4</sup> The lawsuit also named Advanced Utility Systems as a defendant, but Plaintiffs voluntarily dismissed that defendant before filing this appeal. L.F., D. 292.

<sup>5</sup> Counts I-VII of the Overcharge Claims were asserted against all named defendants and consisted of the following causes of action: Count I (Violation of Missouri Merchandizing Practices Act (“MMPA”)); Count II (Conversion); Count III (Unjust Enrichment); Count IV (Fraudulent Misrepresentation); Count V (Negligent Misrepresentation); Count VI (Breach of Contract); and Count VII (Negligence Per Se). The final Overcharge Claim, Count XVI (Substantial Assistance and Encouragement in the Commission of a Tort) was only asserted against the N. Harris Defendants and City. *See generally* L.F., D. 297.

<sup>6</sup> The Charter Claims consist of the following causes of action: Count VIII (Unjust Enrichment) (asserted against City and IPL); Count IX (Breach of Contract) (asserted against City and IPL); Count X (Fraud) (asserted against City and IPL); Count XI (Breach of Fiduciary Duty) (asserted against City, City Council, PUAB, and Weir); Count XII (Negligence) (asserted against City, IPL, PUAB, and Weir); Count XIII (Civil Conspiracy) (asserted against City, IPL, and PUAB); Count XIV (Negligence Per Se) (asserted against City, IPL, PUAB, Weir, and all predecessors); and Count XV (Substantial Assistance and Encouragement in the Commission of a Tort) (asserted against City, City Council, PUAB, Weir, and all predecessors). *See generally* L.F., D. 297.

excessive cash surplus in violation of the Charter. *See generally* L.F., D. 297. The Charter Claims were not asserted against the N. Harris Defendants.

Once the Operative Petition was filed, many of the City Defendants filed motions to dismiss the Operative Petition, and Plaintiffs moved to certify the class. L.F., D. 88, 90, 92, 94, 96, 105. On January 18, 2022, the trial court issued an order addressing the pending motions to dismiss and the motion for class certification. L.F., D. 136. In that order, the trial court denied Boatright’s motion to dismiss entirely, denied dismissal to City Council on all but two claims—Counts XI (Breach of Fiduciary Duty (“Fiduciary Duty”)) and Count XIII (Civil Conspiracy), and denied dismissal to City, IPL, Weir and PUAB on all claims except Fiduciary Duty. *See generally* L.F., D. 136. Effectively, the January 18, 2022 order dismissed the Fiduciary Duty and Civil Conspiracy counts in their entirety but allowed Plaintiffs’ remaining counts to proceed. The January 18, 2022 order also granted Plaintiffs’ motion for class certification over opposition.<sup>7</sup> L.F., D. 136 at 79-80.

Following the trial court’s grant of class certification, the City Defendants submitted a Motion for Summary Judgment and Suggestions in Support (“City Defendants’ MSJ”) on all fourteen remaining counts asserted against them.<sup>8</sup> L.F., D. 137. The N. Harris Defendants also filed a Motion for Summary Judgment and

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<sup>7</sup> For details on composition of the certified classes, we refer the reader back to note 3 *supra*.

<sup>8</sup> Counts I-VII, IX-X, XII, XIV-XVI.

Suggestions in Support (“N. Harris Defendants’ MSJ”) on the eight counts asserted against them. L.F., D. 162.

On June 18, 2022, the trial court issued a Decree/Order granting the City Defendants summary judgment on the remaining counts. L.F., D. 261. Of the arguments raised in the City Defendants’ MSJ, the trial court found sovereign immunity dispositive and granted the City Defendants’ MSJ exclusively on that ground. L.F., D. 261 at 3-6. As for the N. Harris Defendants’ MSJ, the trial court granted summary judgment on four counts and denied summary judgment on four counts. L.F., D. 261 at 6-17.<sup>9</sup>

Plaintiffs subsequently moved for reconsideration of the trial court’s grant of summary judgment for the City Defendants while the N. Harris Defendants moved for reconsideration of the claims not decided in their favor. L.F., D. 263, 264. On August 25, 2022, the trial court issued an Amended Decree/Order taking up the City Defendants’ MSJ, the N. Harris Defendants’ MSJ, and the motions for reconsideration. L.F., D. 271. The Amended Decree/Order granted summary judgment for the City Defendants and the N. Harris Defendants on all counts *without any reasoning* beyond “being fully advised in the laws and premises of each Motion.” L.F., D. 271 at 1. Appellants now appeal the Amended Decree/Order. L.F., D. 281 at 7-8.<sup>10</sup> Additional necessary facts are discussed in our analysis *infra*.

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<sup>9</sup> The trial court order granted the N. Harris Defendants summary judgment on Counts II, V, VII, and XVI and denied summary judgment on Counts I, III, IV, and VI.

<sup>10</sup> The City Defendants and the N. Harris Defendants also filed a contingent cross-appeal—asserting the initial class certification was in error—in the event we do not affirm the Amended Decree/Order. L.F., D. 238.

## **Points on Appeal**

Appellants assert seven points on appeal. In Point I, Appellants contend the trial court erred in granting summary judgment to the City Defendants on the Overcharge Claims based on sovereign immunity. In Point II, Appellants contend the trial court erred in granting summary judgment to the City Defendants on the Charter Claims based on sovereign immunity. In Points III and IV, Appellants contend the trial court erred in granting summary judgment to the City Defendants and the N. Harris Defendants because Respondents failed to show a lack of proof by Appellants relating to the Overcharge Claims. In Point V, Appellants contend the trial court erred in granting summary judgment to the N. Harris Defendants because when the Missouri Merchandizing Practices Act (“MMPA”) is broadly construed, Appellants have proved a redressable harm. In Point VI, Appellants contend the trial court erred in granting the N. Harris Defendants summary judgment in violation of Rule 74.04 because the N. Harris Defendants resubmitted previously denied motions to dismiss and there was no legal support for granting summary judgment on Appellants’ claims that the City Defendants and the N. Harris Defendants were “acting in concert.” In Point VII, Appellants contend the trial court erred in granting the N. Harris Defendants summary judgment on Constellation’s assertion of non-liability because Constellation cannot establish uncontroverted facts refuting liability as a parent corporation in that Appellants were not



allowed to depose the N. Harris Defendants on the issue of whether the N. Harris Defendants were shell corporations for Constellation.<sup>11</sup>

### Standard of Review

In *Green v. Fotoohigham*, 606 S.W.3d 113, 115 (Mo. banc 2020), the Missouri Supreme Court outlined the standard of review for summary judgment:

The trial court makes its decision to grant summary judgment based on the pleadings, record submitted, and the law; therefore, this Court need not defer to the trial court's determination and reviews the grant of summary judgment *de novo*. In reviewing the decision to grant summary judgment, this Court applies the same criteria as the trial court in determining whether summary judgment was proper. Summary judgment is only proper if the moving party establishes that there is no genuine issue as to the material facts and that the movant is entitled to judgment as a matter of law. The facts contained in affidavits or otherwise in support of a party's motion are accepted as true unless contradicted by the non-moving party's response to the summary judgment motion. Only genuine disputes as to material facts preclude summary judgment. A material fact in the context of summary judgment is one from which the right to judgment flows.

“The record below is reviewed in the light most favorable to the party against whom summary judgment was entered, and that party is entitled to the benefit of all reasonable inferences from the record.” *Id.* at 115-16 (quoting *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 452-53 (Mo. banc 2011)). “In addition, the non-movant must support denials with specific references to discovery, exhibits, or affidavits demonstrating a genuine factual issue for trial.” *Id.* (internal quotation marks omitted) (quoting Rule 74.04(c)(2), (4)). Facts not properly supported under Rule 74.04(c)(2) or (c)(4) are deemed admitted.” *Id.* at 116 (internal quotation marks omitted) (quoting *Cent.*

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<sup>11</sup> See Note 10 *supra* for the cross-appeals filed by the Respondents which are moot, given our ruling today.

*Trust & Inv. Co. v. Signalpoint Asset Mgmt., LLC*, 422 S.W.3d 312, 320 (Mo. banc 2014)). “[A] summary judgment, like any trial court judgment, can be affirmed on appeal by any appropriate theory supported by the record.” *Rowland v. Quevreaux, Trustee of Keith A. Quevreaux Revocable Tr. u/t/a Dated July 23, 2012*, 621 S.W.3d 665, 668 (Mo. App. W.D. 2021) (internal quotation marks omitted) (quoting *Mo. Bankers Ass’n, Inc. v. St. Louis Cnty.*, 448 S.W.3d 267, 270-71 (Mo. banc 2014)).

### **Points I, III-VII – Overcharge Claims**

In Point I, Appellants assert the trial court erred in granting summary judgment for the City Defendants on the Overcharge Claims because the City Defendants failed to establish a right to judgment on sovereign immunity grounds.

In its June 18, 2022 Decree/Order (“original decree”) granting the City Defendants’ MSJ, the trial court declared that the City Defendants were shielded from suit by the doctrine of sovereign immunity (“the Doctrine”). L.F., D. 261 at 4-17. In reaching this conclusion, the trial court stated, “Plaintiff does not evidently dispute that the City is a municipality, or that City defendants are otherwise municipal corporations . . . . City is a municipality performing duties within the scope of its role as an agent of the state and within its legislative powers.” L.F., D. 261 at 5. Essentially, the trial court determined City and its agents were providing a governmental function by operating the IPL utility for the benefit of the sovereign. Appellants argue relevant case law required a determination that the operation of the utility was proprietary rather than governmental with respect to the Overcharge Claims.

We agree, at least with respect to Appellants' Overcharge Claims, our precedent is contrary to the trial court's original decree.<sup>12</sup> *That is not the judgment from which Appellants appeal, however.* Appellants appeal from the trial court's Amended Decree/Order ("final decree") issued August 25, 2022. This is an important distinction because the final decree does not offer any reason why the trial court granted summary judgment to the City Defendants beyond being "fully advised in the laws and premises" of the underlying motions.<sup>13</sup> The City Defendants' MSJ offered more than one ground on which the trial court could have issued its grant of summary judgment in the final decree.

"When a trial court grants summary judgment without articulating the reason it was granted, we will affirm if summary judgment is appropriate under any theory." *Dueker v. Gill*, 175 S.W.3d 662, 667 (Mo. App. S.D. 2005). Though sovereign immunity would not have been a proper basis upon which to grant summary judgment to the City Defendants on the Overcharge Claims, we must review the other theories relied upon in the motions for summary judgment to determine if the trial court's ruling may be affirmed on any of those grounds. Accordingly, we decline the invitation of Appellants in Point I to reverse the trial court's summary judgment ruling as to the Overcharge Claims on the limited basis raised in Point I.

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<sup>12</sup> See, e.g., *Junior Coll. Dist. of St. Louis v. City of St. Louis*, 149 S.W.3d 442, 448 (Mo. banc 2004) (holding that "when a municipality is in the business of selling [a utility] to customers for profit or revenue, it is engaged in a proprietary function").

<sup>13</sup> The underlying motions are the City Defendants' MSJ, the N. Harris Defendants' MSJ, the N. Harris Defendants' Motion for Reconsideration, Plaintiffs' Motion for Reconsideration, and the Plaintiffs' Motion to File a Sur-Reply.

In Points III, IV, V, VI, and VII, Appellants argue that the trial court erred in granting summary judgment for Respondents on the Overcharge Claims for other reasons cited in the respective motions for summary judgment; however, given that Appellants have failed to create a dispute as to the material fact of whether Appellants were overcharged, we find that issue dispositive of these points on appeal.

A defendant may establish a right to summary judgment by showing that a plaintiff opposing summary judgment “has presented insufficient evidence to allow the finding of the existence of any one of the [plaintiff’s] elements.” *Ameristar Jet Charter, Inc. v. Dodson Int’l Parts, Inc.*, 155 S.W.3d 50, 58 (Mo. banc 2005). Appellants claimed in the Operative Petition that they received bills “charging and/or demanding payment for more electricity consumption than Plaintiffs and the Class Members had actually consumed.” L.F., D. 297 at 16-17, ¶¶ 61, 64. Respondents contend Appellants have provided no “evidence of (i) how much electricity they ‘actually consumed’ and (ii) the amount by which they were overcharged,” thereby rendering their overcharge claims unactionable.

Specifically, each of the named Plaintiffs below signed discovery responses confirming that they did not know how much electricity they used and would need an expert to provide such information.<sup>14</sup> L.F., D. 140 at 2-3; L.F., D. 143 at 2-3; L.F., D. 145 at 3-4. At their depositions, they conceded they did not know how much electricity

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<sup>14</sup> In fact, Plaintiffs objected to the City Defendants’ questioning of individual class members on the quantity of electricity City wrongfully overbilled, citing the need for expert testimony on the issue. L.F., D. 142 at 3-4 (Jones); L.F., D. 144 at 1-3 (Sportscycle); L.F., D. 145 at 2-3 (Nativity).

they used or the amount overcharged.<sup>15</sup> L.F., D. 141 at 3; L.F., D. 144 at 3-8; L.F., D. 146 at 3-4.

Plaintiffs' experts could do no better and each conceded in their depositions that they had no opinions on class members' actual electricity usage. L.F., D. 149 at 5 ("Q. In reaching the opinions you've reached today, did you undertake any analysis of how much electricity any individual rate payer used? A. No."); L.F., D. 149 at 7 ("Q. Do you have an opinion on whether any rate payer or group of rate payers was charged for more electricity than they actually used? A. That's not something I'm going to be testifying to."); L.F., D. 151 at 3-4 ("Q. Did you do any analysis of the actual amount of electricity consumed by IPL rate payers? A. No. Q. Okay. Do you know how much of the named plaintiffs in this case used in electricity for any point in time? A. No.").

Conversely, as required by Rule 74.04, the City Defendants submitted a Statement of Uncontroverted Material Facts with its Motion, L.F., D. 138, and offered evidence in support of the following facts:

- The named Plaintiffs claimed they were overcharged for electricity consumption (L.F., D. 138 at 1-2, ¶¶ 2, 6, 9);

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<sup>15</sup> Demonstrating the necessity for expert witness testimony, Barry Jones testified that his opinion about overcharging was based upon him reviewing his bills from June 2018 to July 2018 and claiming he was on vacation in July 2018, so he believed his bill should have been less than June 2018, L.F., D. 229 at 7, 27:14-28:1; that said, Jones also concedes that he never tried to measure his actual electricity usage, L.F., D. 229 at 8, 30:22-24; he could not recall the dates he was on vacation, nor what the temperature was while he was on vacation, L.F., D. 229 at 8, 32:9-20.

- The named Plaintiffs did not know how much electricity they actually consumed (L.F., D. 138 at 1-2, ¶¶ 3, 7, 10);
- Plaintiffs’ experts had no opinions on how much electricity had been consumed because none of them analyzed that issue (L.F., D. 138 at 3, ¶¶ 13-16);
- The named Plaintiffs’ bills were correct, as shown by a City employee’s manual recalculation of them for the period in question (L.F., D. 138 at 3, ¶ 17).

In support of its Statement of Uncontroverted Facts, the City Defendants presented engineering auditors and employees trained in electricity bill reviews. At best, Appellants presented the testimony of one expert, an accountant who performed no review of actual consumption of electricity; instead, this expert provided testimony of a numerical review of a quarterly revenue flow comparing 2018 and 2019 first quarter revenues that he believed demonstrated excessive billing, while conversely admitting that he failed to review the entire year of quarterly profits which demonstrated less profits at year-end from one year to the next. L.F., D. 226 at 64-67, 254:24-267:15 (“Q. Is it also reasonable to assume, then, that the new billing system caused that decrease of 3 million? A. I don’t know that. I don’t know that answer.”).

We recognize that, in their opposition to the City Defendants’ motion for summary judgment, Appellants cited to deposition testimony in which IPL employees generally described billing errors, including some overcharges to unnamed customers, during the transition to IPL’s new billing system. Because of the vagueness of this testimony, it is unclear whether the erroneous bills described in the testimony were actually *sent* to customers and whether any erroneous charges were corrected before this litigation began.

Despite this anecdotal evidence, however, Appellants presented no evidence establishing a genuine issue of material fact as to whether any particular individual—and in particular, any named plaintiff—had been overcharged.

Instead, there is a complete lack of proof by Appellants that City’s new billing software resulted in redressable class-wide damages, an essential element of their Overcharge Claims. “[I]f the plaintiff does not have a viable substantive claim of her own, she obviously is not well situated to be a class representative.” *Ressler v. Clay Cnty.*, 375 S.W.3d 132, 139-40 (Mo. App. W.D. 2012); *see also Roberts v. BJC Health Sys.*, 391 S.W.3d 433, 438 (Mo. banc 2013) (affirming summary judgment for a class of plaintiffs that could not prove that they were overcharged by health service providers); *Williams v. Boeing Co.*, 517 F.3d 1120, 1136 (9th Cir. 2008) (citing *Lierboe v. State Farm. Mut. Auto. Ins. Co.*, 350 F.3d 1018, 1022 (9th Cir. 2003) (holding that a “named plaintiff who did not have a viable claim against defendant could not serve as a class representative”)); *Burris v. First Fin. Corp.*, 928 F.2d 797, 806 (8th Cir. 1991) (affirming trial court’s decision that because none of the named plaintiffs “has a cognizable individual claim for relief . . . , none of them may serve as a class representative in a class action suit”). Appellants have made no argument that this suit could proceed where the class representatives lack viable individual claims.

“A defendant may establish a right to summary judgment by showing that the plaintiff is unable to produce sufficient evidence to establish one or more of the essential elements of the plaintiff’s claim.” *Hoffman v. Union Elec. Co.*, 176 S.W.3d 706, 707 (Mo. banc 2005).

Because Appellants have not provided material facts in dispute on the issue of whether any of the respondents engaged in tortious overcharging, Points III through VII must fail and those points on appeal are, thus, denied.

### **Point II – Charter Claims**

In Point II, Appellants argue the trial court erred in granting summary judgment for the City Defendants on the Charter Claims because the City Defendants failed to establish a right to judgment on the ground of sovereign immunity.

This is, however, the *only* basis upon which Appellants have challenged the trial court’s summary judgment ruling. In its motion for summary judgment, the City Defendants alleged *three* grounds supporting summary judgment: (1) because the City Defendants’ actions were governmental and legislative activities, the City Defendants are protected by the doctrine of sovereign immunity; (2) because the Charter Claims assert a claim for damages in violation of the retroactive ratemaking doctrine, the plaintiffs’ Charter Claims are prohibited; and (3) because there is no genuine dispute of the material facts that all of the City Defendants’ actions were authorized by the City Charter and a lawfully enacted ordinance implementing the Charter language, the Plaintiffs’ Charter Claims fail as a matter of law.

“When a trial court grants summary judgment without articulating the reason it was granted, we will affirm if summary judgment is appropriate under any theory.” *Dueker*, 175 S.W.3d at 667. “[A] summary judgment, like any trial court judgment, can be affirmed on appeal by any appropriate theory supported by the record.” *Rowland*, 621 S.W.3d at 668 (internal quotation marks omitted) (quoting *Mo. Bankers Ass’n, Inc.*, 448



S.W.3d at 270-71); it is the Appellants’ “burden on appeal to demonstrate that the trial court’s judgment was incorrect on any basis supported by the record and the applicable law. . . . As such, the [Appellants’] failure to properly challenge a finding and ruling of the trial court that would support its judgment . . . would be fatal to [their] appeal.” *STRCUE, Inc. v. Potts*, 386 S.W.3d 214, 219 (Mo. App. W.D. 2012) (alteration in original) (citations omitted); *Heuer*, 273 S.W.2d at 170 (“An issue adversely ruled on in the trial court but not presented on appeal must be regarded as abandoned.”).

Similarly, as we have noted earlier herein, “Issues not encompassed by the point relied on . . . are not preserved for review.” *Gamber*, 225 S.W.3d at 477; *Tribus*, 589 S.W.3d at 701 n.9 (citing Rule 84.04(e)) (“[A]n appellant shall limit argument to those errors included in its points relied on.”). In the context of our review of a summary judgment, “Issues raised only in the argument portion of the brief and not contained in a point relied on are not preserved for appellate review.” *Walker v. AI Solar Source Inc.*, 658 S.W.3d 529, 538 (Mo. App. W.D. 2022); *Davis v. Wieland*, 557 S.W.3d 340, 352 n.10 (Mo. App. W.D. 2018) (“Claims of error raised in the argument portion of a brief that are not raised in the point relied on are not preserved for our review.”) (internal quotations marks omitted); *C.S.*, 491 S.W.3d at 656 (same).

Here, Appellants only challenge one of the three grounds upon which summary judgment was sought by the City Defendants in their point relied on relating to the Charter Claims—sovereign immunity.<sup>16</sup> Because no separate claim of error was made as

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<sup>16</sup> We note that although Appellants argue in their second point relied on that the trial court erred in entering judgment for the City Defendants on the Charter Claims on

to the summary judgment grounds that Appellants' Charter Claims must fail due to (1) a violation of the retroactive ratemaking doctrine<sup>17</sup> or (2) no genuine dispute of fact exists that the City Defendants' actions were authorized by the Charter and City ordinances,<sup>18</sup>

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the ground of sovereign immunity, it is five pages later in the argument of this point relied on before Appellants have a sub-heading stating, "The City Respondents are not immune." Interspersed before and after this discussion with string and bulk citations is a circuitous argument section including miscellaneous arguments unrelated to its error asserted in the point relied on about "requiring adherence to the Charter" as to claimed excessive PILOT charges, surplus funding authorization under the Charter, whether PILOT collection is authorized by the Charter, whether the resiliency policy is authorized by the Charter, whether the damages claimed by Appellants on the Charter Claims violate the retroactive ratemaking doctrine (without any citation to precedent), and whether the conduct of the City Defendants is mandatory or discretionary conduct. As stated above, we will not consider arguments raised in the argument portion of the brief and not contained in a point relied on and, instead, those miscellaneous arguments are deemed waived.

<sup>17</sup> Even were we to consider Appellants' comments as to the retroactive ratemaking doctrine found in the argument section of its point relied on challenging the trial court's reliance upon the sovereign immunity doctrine, Appellants' comments are two paragraphs in length and cite to no precedent whatsoever in support of their purported argument that the retroactive ratemaking doctrine does not apply as a matter of law to this lawsuit. "Mere conclusions and the failure to develop an argument with support from legal authority preserve nothing for review." *Murphy v. Steiner*, 658 S.W.3d 588, 592 (Mo. App. W.D. 2022). "When an appellant cites no authority and offers no explanation why precedent is unavailable, appellate courts consider the [argument] waived or abandoned." *Grant v. Sears*, 379 S.W.3d 905, 917 (Mo. App. W.D. 2012) (alteration in original) (internal citations omitted). Appellants have waived or abandoned any claim of error as to the City Defendants' and the trial court's reliance upon the retroactive ratemaking doctrine as a separate ground authorizing summary judgment.

<sup>18</sup> On this topic, we note that the appellate briefing from the City Defendants lays out in Rule 74.04(c) format the undisputed facts, with supporting references to the summary judgment record, that support their position that there is no genuine dispute that the City Defendants' actions were authorized by the Charter and corresponding City ordinances. In fact, the City Defendants point to a formula calculation used by the City Defendants, the validity of which has already been recognized as proper. *Ludwigs v. City of Kansas City*, 487 S.W.2d 519, 521 n.4 (Mo. 1972). Instead of challenging these material facts and legal positions in a separate point relied on that appropriately references the factual dispute by reference to the summary judgment record and legal

Appellants' claim of trial court error in granting summary judgment on the Charter Claims must fail.

Point II is denied.

### **Conclusion**

The judgment of the trial court is affirmed.

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dispute by reference to controlling precedent, Appellants merely lump their conclusory statements of fact on this topic with string and bulk citations in an argument section of a point relied on reserved for discussion of sovereign immunity. This form of complaint of trial court error fails due to numerous Rule 84.04 briefing requirements discussed in our ruling today.