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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

File No.
ER-2022-0129

In The Matter of Evergy
Missouri West, Inc. d/b/a Evergy
Missouri West's Request for
Authority to Implement a General
Rate Increase for Electric
Service

File No.
ER-2022-0130

VIDEOCONFERENCE HEARING

DATE: Thursday, May 5, 2022
TIME: 10:30 a.m.
BEFORE: Honorable Ron Pridgin
LOCATION: Remote Proceeding
Jefferson City, MO 65101
REPORTED BY: Brett Torrence, Notary Public
JOB NO.: 5167460

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A P P E A R A N C E S

ON BEHALF OF EVERGY COMPANY:

JAMES M. FISCHER, ESQUIRE (by videoconference)
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101-3163
(573) 636-6758

ROGER W. STEINER, ESQUIRE (by videoconference)
Evergy Corporate Counsel
1200 Main Street
Kansas City, MO 64105

ON BEHALF OF THE MISSOURI OFFICE OF PUBLIC COUNSEL:

JOHN CLIZER, ESQUIRE (by videoconference)
200 Madison Street, Suite 650
Jefferson City, MO 65101

ON BEHALF OF MISSOURI PUBLIC SERVICE COMMISSION:

KEVIN THOMPSON, ESQUIRE (by videoconference)
P.O. Box 360
Jefferson City, MO 65101

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A P P E A R A N C E S (Cont'd)

ON BEHALF OF MECG:

TIM OPITZ, ESQUIRE (by videoconference)

Opitz Law Firm, LLC

6395 South Rangeline Road

Columbia, MO 65201-9544

ALSO PRESENT:

Alissa Greenwald, Kansas City Regional Director,
Renew Missouri (by videoconference)

Sarah Lange, Regulatory Economist III (by
videoconference)

J Luebbert, Engineering Specialist, MSPC (by
videoconference)

David Murray, Utility Regulatory Manager, OPC (by
videoconference)

Hari Poudel, MPSC Staff Member (by
videoconference)

Angela Shaven, OPC Staff Member (by
videoconference)

Michael Stahlman, Regulatory Economist III (by
videoconference)

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I N D E X

WITNESS:	DX	CX	RDX	RCX
MICHAEL STAHLMAN				
By Mr. Thompson	9			
By Mr. Steiner		11		

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
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Plaintiff:

(None marked.)

NO.	DESCRIPTION	ID/EVD
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Defendant:

(None marked.)

P R O C E E D I N G S

1
2 THE REPORTER: Good morning. My name
3 is Brett Torrence; I am the reporter assigned by
4 Veritext to take the record of this proceeding. It is
5 May 5, 2022, and we are now on the record at 10:30
6 a.m. You may proceed.

7 THE COURT: All right. Thank you, Mr.
8 Court Reporter. Good morning. This is Ron Pridgin;
9 I'm the judge presiding over this discovery
10 conference. And our court reporter has already kindly
11 announced the date and time, so I believe we're ready
12 to take entries of appearance. Could I start with the
13 company, please?

14 MR. FISCHER: Yes, Judge. On behalf of
15 the companies in this case, let the record reflect the
16 appearance of James M. Fischer and Roger W. Steiner.
17 I can give you addresses if you need them. My address
18 is 101 Madison Street, Suite 400, Jefferson City,
19 Missouri. And Roger, you want to give your current
20 address?

21 MR. STEINER: 1200 Main Street, Kansas
22 City, Missouri 64105.

23 THE COURT: All right. Mr. Fischer and
24 Mr. Steiner, thank you. Entry of appearance on behalf
25 of staff of commission, please.

1 MR. THOMPSON: Thank you, Judge. Kevin
2 Thompson for the staff of the commission, Post Office
3 Box 360, Jefferson City, Missouri 65102. With me in
4 the room is Michael Stahlman and J Luebbert, as has
5 been previously discussed. And having just joined us
6 is Sarah Lange, L-A-N-G-E.

7 THE COURT: Mr. Thompson, thank you.
8 Any entry on behalf of the Office of the Public
9 Counsel, please?

10 MR. CLIZER: John Clizer on behalf of
11 the Office of Public Counsel, last name C-L-I-Z-E-R,
12 address 200 Madison Street, Suite 650, Jefferson City,
13 Missouri 65101. And I am joined by David Murray and
14 Angela Shaven.

15 THE COURT: All right. Mr. Clizer,
16 thank you. Does any other party wish to enter an
17 appearance?

18 MR. OPITZ: Good morning, Judge --

19 THE COURT: Hearing no -- I'm sorry.

20 MR. OPITZ: Tim Opitz on behalf of
21 MECG. I'm just listening in today.

22 THE COURT: All right. Mr. Opitz,
23 thank you. Any other party wishing to enter an
24 appearance?

25 MS. GREENWALD: Good morning. This is

1 Alissa Greenwald with Renew Missouri, and I'm also
2 just listening in today.

3 THE COURT: All right. Ms. Greenwald,
4 thank you. Anyone else?

5 MR. STEINER: Judge, this is Roger
6 Steiner. I see a name on here I'm not familiar with,
7 Hari Poudel. Is that staff, or who is that?

8 MR. THOMPSON: Mr. Poudel is a staff
9 member.

10 MR. STEINER: Thank you.

11 THE COURT: Okay. Thank you. One last
12 chance. Does anybody else wish to enter an
13 appearance? All right. Hearing nothing, I believe
14 both staff and public council have raised some
15 discovery concerns, and that's the reason for today's
16 conference. My thought was to let staff speak about
17 its discovery concerns, let public counsel do the
18 same, and then let the company respond. And then I
19 will wrap up. Does anyone have any concerns or
20 objections with proceeding that way?

21 MR. THOMPSON: That's fine with staff.
22 Thank you, Judge.

23 THE COURT: All right. Hearing no
24 objections, Mr. Thompson, when you're ready, sir.

25 MR. THOMPSON: Thank you, Judge. There

1 was a fair number of DRs listed on staff's notice of
2 discovery disagreements that was filed the other day.
3 And I'm happy to report that all of those seem to be
4 resolved with the exception of 247.2 and 250.2, and
5 the parties are working diligently and in good faith
6 to resolve those as well.

7 At this time, Judge, I would request
8 that you place Mr. Stahlman under oath, and I will let
9 him give a statement on the record of the progress
10 towards resolving the issue with those two DRs.

11 THE COURT: Very good. Mr. Stahlman,
12 if you would raise your right hand to be sworn,
13 please.

14 WHEREUPON,

15 MICHAEL STAHLMAN,
16 called as a witness, and having been first duly sworn
17 to tell the truth, the whole truth, and nothing but
18 the truth, was examined and testified as follows:

19 THE COURT: Very good. Mr. Stahlman,
20 thank you. And Mr. Thompson, when you're ready.

21 MR. THOMPSON: Thank you, Judge.

22 DIRECT EXAMINATION

23 BY MR. THOMPSON:

24 Q State your name, please.

25 A Michael Stahlman.

1 Q How are you employed?

2 A Regulatory economist with the Missouri
3 Public Service Commission.

4 Q And I'm going to try to do this as quickly
5 as possible. Are you assigned to work on cases
6 ER-2022-0129 and 0130?

7 A Yes.

8 Q And are those rate cases brought by the two
9 operating companies of the Evergy Company?

10 A Yes.

11 Q And in the course of your work with respect
12 to that rate case, have you had a difficulty in
13 obtaining all of the information that you need to do
14 your job?

15 A Yes.

16 Q And that does relate to DRs 247.2 and 250.2?

17 A Those were follow-ups to other DRs and
18 trying to also get information that I needed.

19 Q Okay. And have you had conversations with
20 anyone from the company about the information you
21 still need?

22 A Yes.

23 Q And could you tell us, what does it look
24 like from your vantage point with respect to progress
25 and getting what you need?

1 A I think we're about resolved. I wish to --
2 I just got a DR response while -- or, not DR
3 response -- an email from Mr. Fast [ph] while sitting
4 in this room that should hopefully get me the rest of
5 the way to getting the information that I need.

6 MR. THOMPSON: Okay. Very good. I
7 have no further questions for Mr. Stahlman, and I
8 tender the witness.

9 THE COURT: All right. Mr. Thompson,
10 thank you. Mr. Clizer, any questions for this
11 witness?

12 MR. CLIZER: No questions. Thank you.

13 THE COURT: Thank you. Mr. Fischer,
14 Mr. Steiner, any questions?

15 MR. STEINER: Maybe a few.

16 CROSS-EXAMINATION

17 BY MR. STEINER:

18 Q Mr. Stahlman, do you agree with me that a
19 response to 247.2 and 250.2 was provided by the
20 company on a timely basis?

21 A Yes.

22 MR. STEINER: I think that's all I
23 have, Judge.

24 THE COURT: All right. Thank you. Mr.
25 Thompson, anything further?

1 MR. THOMPSON: I have no other
2 evidence. As I said, it looks like the other matters
3 have all been resolved or yet are not ripe at this
4 point. I don't think we really have anything for you
5 to decide, Judge. Thank you for your time.

6 THE COURT: Mr. Thompson, thank you.
7 Mr. Clizer?

8 MR. STEINER: Judge? Judge, can I
9 respond? Judge?

10 THE COURT: Yes. I'm sorry, Mr.
11 Steiner. Yes.

12 MR. STEINER: I'll let you go to Mr.
13 Clizer. I'm sorry.

14 THE COURT: Oh. Okay. I'm sorry. Mr.
15 Clizer, did you have anything to bring up?

16 MR. STEINER: Well, I'm sorry, Judge.
17 Now I'm going to -- I'm back on staff DRs. Could I
18 say something there?

19 THE COURT: Certainly.

20 MR. STEINER: Judge, I'd just like to
21 point out that in staff's statement of discovery
22 concern, there is no DR that is overdue, no DR that is
23 late.

24 MR. THOMPSON: That is true.

25 THE COURT: All right. Thank you. All

1 right. Very good. Thank you. Can we go on to see
2 what Mr. Clizer's concerns are?

3 MR. CLIZER: I'm okay with that --

4 THE COURT: Mr. Clizer, when you're
5 ready, sir.

6 MR. CLIZER: Yes. Okay. Right. So
7 the OPC has two concerns, each concern corresponding
8 to two pieces of evidence, so there's four pieces of
9 evidence in total. The first concern involves
10 production of documentation that was requested in DR's
11 3018 and 3019. These correspond to materials that
12 were related to Board of Directors meetings.

13 The OPC is requesting the production of
14 specific documents, and the company is declining to
15 provide those documents. By way of background, I will
16 say that the OPC requested, and the company supplied
17 general access to its Board of Directors materials and
18 minutes. We reviewed several boxes' worth of
19 material. We were able to come up with a short list
20 of these specific items that we felt were important to
21 include in our testimony and as evidence moving
22 forward in the case and requested copies of those
23 documents so that they could be attached as exhibits
24 to testimony and included in -- include when the
25 testimony gets filed.

1 We are asking for physical copies of
2 the documents so that they can be included as
3 exhibits. And I'll pause on that first issue so we
4 can discuss it before moving to the second.

5 THE COURT: All right. Mr. Clizer,
6 thank you. Any response, either Mr. Steiner or Mr.
7 Fischer?

8 MR. FISCHER: Yes, Judge. I'll respond
9 to that. Yeah. As Mr. Clizer pointed out, the
10 company did provide access to the Board of Directors
11 presentations, minutes, to Public Counsel and the Jeff
12 City office, I believe. And they have now requested
13 those, or some of those documents to be presented in a
14 physical form. Company's willing to do that; the
15 company intends to provide the copies of the requested
16 presentations on a confidential basis pursuant to the
17 commission's rules, with the exception of the two
18 documents that Mr. Clizer was about to discuss related
19 to request numbers 3018 and 3019.

20 Judge, due to the very sensitive and
21 confidential nature of this discussion, I'd like to
22 ask the judge to go in camera at this point and assure
23 that everybody that's on the call is either counsel or
24 staff or public counsel protected by the statutory
25 obligations to keep confidential information

1 confidential.

2 THE COURT: All right. Mr. Fischer,
3 thank you. Any objections to Mr. Fischer's request?

4 MR. THOMPSON: None from staff.

5 THE COURT: All right. And I'll simply
6 have to, I guess, rely on counsel to check to see if
7 everyone who is on the call is entitled to be on this
8 call during an in camera proceeding. I can't clear a
9 hearing room or courtroom. Does anyone have any
10 concerns that there's someone on the call who does not
11 belong in the in camera proceedings?

12 MR. FISCHER: It appears to be the list
13 is all staff, public counsel, or counsel of record.
14 So unless there's someone else that's on the call that
15 I'm not familiar with, I'd ask you to speak up if you
16 are.

17 THE COURT: Okay. Hearing nothing, we
18 will then go in camera and I'll have to rely on
19 counsel to let me know when we're ready to go back
20 into a public forum. And Mr. Court Reporter, going
21 forward, until instructed otherwise, this transcript
22 needs to be confidential.

23 THE REPORTER: Understood.

24 (Non-Confidential portion of transcript
25 ends.)

1 (Confidential portion of transcript
2 begins.)

3 THE COURT: All right. Thank you. I'm
4 assuming we need to go back to Mr. Clizer?

5 MR. FISCHER: I think I can address
6 the -- well, I don't know. If John would like -- if
7 Mr. Clizer would like to give another statement, or I
8 can just go directly to the issue as I understand it.

9 THE COURT: If the confidential
10 information --

11 MR. CLIZER: Go ahead.

12 THE COURT: I'm sorry. If the
13 confidential information is something that needs to
14 come from the company, and then we can go back in the
15 public forum, that would be my preference. I'm always
16 preferring to put as much of this in public record as
17 possible. So if counsel suggests otherwise, I'm
18 willing to listen.

19 MR. FISCHER: I think I can give you an
20 explanation from the company's perspective on these
21 two documents that are at issue if we do that in
22 camera.

23 THE COURT: All right. Mr. Fischer,
24 when you're ready, and then let me know when we're
25 ready to go back public.

1 MR. FISCHER: Okay. As I understand
2 it, the documents that are at issue are in reference
3 to DR number 3018 and 3019. On June the 8th of 2021,
4 and July the 8th of 2021, Morgan Stanley, an
5 investment banker, presented to the Board of Directors
6 presentations related to what is entitled "Project
7 Bluebird." Project Bluebird involved an effort by
8 Morgan Stanley and the Board of Directors to ascertain
9 the interest of other entities and the possible
10 purchase of Evergy.

11 Ultimately, Project Bluebird was
12 abandoned and no further action was taken in relation
13 to the Board of Directors' presentations. The first
14 document, I think, that's at issue is the June 8,
15 2021, presentation, and it was Morgan Stanley's
16 preliminary valuation analysis of Evergy and a
17 proposed process for contacting potential suitors to
18 participate in an exercise to determine the interest
19 in the market of a possible sale of Evergy.

20 The June 8, 2021, presentation contains
21 the names of possible suitors of Evergy, a financial
22 overview, Morgan Stanley's preliminary valuations of
23 the company, a discussion of the process to be used to
24 solicit offers for the company, and pro forma analysis
25 of quite sensitive financial data.

1 The next document was the July 8, 2021,
2 presentation, and it contained Morgan Stanley's report
3 of the results of the contacts with possible suitors
4 for the company, including the names of potential
5 suitors and their Phase 1 indications of interest for
6 Evergy, as well as the names of entities that declined
7 to participate in the exercise to test the waters for
8 a possible sale of the company. The Morgan Stanley
9 presentation contains highly sensitive material
10 regarding Evergy's financial analysis related to
11 various combinations with other public utilities.

12 The potential suitors of Evergy signed
13 nondisclosure agreements in order to participate in
14 the process. The suitors were also promised anonymity
15 by Evergy and Morgan Stanley from disclosure of their
16 identities and their first Phase 1 indications of
17 interest, as well as even the fact that they were
18 discussing possible transactions like this.

19 From the company's perspective, it
20 would be highly inappropriate for any of the
21 information about the suitors' participation in this
22 process to be provided to public counsel for use in
23 this rate case, even on a highly confidential basis.
24 None of the information in the Board of Directors'
25 presentation by Morgan Stanley, either on June 8th or

1 July the 8th have any relevance at all to the rate-
2 making efforts in this rate case since none of the
3 requested information includes any material that's
4 reasonably calculated to lead to anything that's
5 relevant to the rate case.

6 But due to the very sensitive nature of
7 these materials and the nondisclosure agreements that
8 are in place and the lack of any relevance to the rate
9 case, the presentation should not be physically
10 possessed by public counsel or any other party to the
11 proceeding. I think at that point, I can stop and
12 take any questions the judge might have, or however
13 you'd like to proceed.

14 But that's our basic position, Judge,
15 and we are very concerned about the giving of these
16 physical documents to public counsel or anyone else
17 when we just don't see that there's any relevance that
18 could possibly come from it. And we're very concerned
19 about the sensitive nature of it.

20 THE COURT: All right. Mr. Fischer,
21 thank you. I don't have any questions. Are counsel
22 ready to go back into a public forum?

23 MR. CLIZER: Can I ask really quick, is
24 the fact that the company was courting a potential
25 buyout itself sensitive information? Does that need

1 to be kept confidential?

2 MR. FISCHER: Yes. Under the
3 nondisclosure agreements, I think that would be the
4 case, John.

5 MR. CLIZER: Okay. So in that case,
6 Judge, we probably need to stay in camera for just a
7 little bit more. I apologize; I prefer to be public,
8 but just out of safety's sake.

9 THE COURT: No. I understand
10 completely. We can stay in camera, and I think Mr.
11 Fischer concluded the company's statements, so Mr.
12 Clizer, did you have anything further?

13 MR. CLIZER: Yeah. I have quite a few
14 things. First of all, I just want to point out that
15 there is absolutely no legal basis for withholding
16 this documentation provided what Mr. Fischer actually
17 just said. There is no basis on the idea that
18 something is sensitive that other parties are not able
19 to discover it. Parties discover sensitive
20 information in every case all the time; that
21 information is always designated as confidential.

22 Further, there are specific provisions
23 within the commission's own rules, under 20 CSR 4240-
24 2.135 that allows the company to believe that there is
25 a necessary -- that information needs a higher degree

1 of security to seek a commission protective order,
2 which the company has not bothered to do in this case.
3 They are still at liberty to attempt that, but they
4 haven't even made the effort to try and secure this
5 information, even though we've already seen it.

6 Which, again, I stress, like, we have
7 already seen the information; we only want a physical
8 copy for the purpose of being able to present
9 information to the commission. If the company truly
10 believes that that information is so precious, then
11 they should be the ones asking the commission to give
12 a protective order over it.

13 As to the relevance of the information,
14 as Mr. Fischer, I think, alluded to, the documents
15 include specific analysis by financial experts,
16 including Morgan Stanley, that directly identifies the
17 health of the company and elements that relate to its
18 cost of capital and cost of equity.

19 These are highly contentious issues
20 that are directly relevant in the present case. And
21 if the commission needs to, I can have OPC witness
22 David Murray explain the specific elements that the
23 OPC is seeking to present to the commission from these
24 documents.

25 THE COURT: All right. Mr. Clizer,

1 thank you. I don't necessarily need that information
2 from Mr. Murray; I'm not going to prevent you from
3 presenting it if that's what you want. But, I mean, I
4 think I see the nexus. Do we need to stay in camera
5 for further proceeding or not? Let me ask counsel.

6 MR. CLIZER: One last thing. As Evergy
7 is already aware, the OPC is more than willing to
8 ensure that there is no discussion or disclosure of
9 the identity of the individual entities who are
10 attempting to acquire or had at least expressed an
11 interest in acquiring Evergy, which is the only thing
12 I think we would need to say in camera.

13 We are more than willing to take those
14 documents with that particular information redacted.
15 We are not interested in identifying who the suitors
16 were; we are interested in the financial analysis
17 performed by Morgan Stanley and others related to
18 Evergy as an entity. So I think that would at least
19 in some way mitigate the concerns that Mr. Fischer
20 identified. And with that, I don't think I need
21 anything else in camera.

22 MR. FISCHER: Judge, I should respond,
23 I think, in camera. I would just suggest --

24 THE COURT: Sure. Go ahead.

25 MR. FISCHER: I would suggest the

1 nondisclosure agreements that the company has with the
2 various parties that entered into this exercise are
3 much broader than just not disclosing the identity of
4 the participants. They're much broader, including all
5 of the information that was provided in the analysis
6 that was done as a part of this exercise, and the fact
7 that they were even discussing about this kind of a
8 transaction.

9 And while Mr. Clizer is correct that we
10 could ask for a protective order, we also have, I
11 think, obligations to these other parties to give them
12 the opportunity to come in and ask for protective
13 orders as well. But it's such a sensitive area, I
14 think the commission needs to consider whether there
15 could be anything of real relevance here for a rate
16 case proceeding. It's -- we just don't see any
17 relevance that could possibly come from this.

18 I mean, if there was some specific fact
19 that the public counsel wanted to disclose as a part
20 of that, maybe we could talk about that. But that's
21 not what -- we don't think there's anything here
22 that's relevant, that would be possibly useful. And
23 the possible damage to the company and the people that
24 participated in this process could be -- would
25 outweigh any possible use of this kind of information.

1 THE COURT: All right. Mr. Fischer,
2 thank you. Anything further before we go back into a
3 public forum?

4 MR. THOMPSON: Nothing from staff.
5 Thank you, Judge.

6 THE COURT: All right --

7 MR. CLIZER: I do not believe I need
8 anything else in camera. I am so sorry.

9 THE COURT: Not a problem. All right.
10 Mr. Court Reporter, if you could take us back into a
11 public forum, please.

12 THE REPORTER: Absolutely.

13 (Confidential portion of transcript
14 ends.)

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1 (Non-Confidential portion of transcript
2 begins.)

3 THE REPORTER: Now back in a public
4 forum at 10:53 a.m.

5 THE COURT: Mr. Court Reporter, thank
6 you. We are now back in a public forum. We went in
7 camera for counsel to discuss some confidential
8 information. All right. I don't think I need
9 anything further from the parties but let me at least
10 give you one last chance. Is there anything else you
11 wanted to bring to my attention before we wrap up?

12 MR. CLIZER: Yes. There was an
13 entirely separate issue that the OPC had raised. That
14 was Issue 1 related to two pieces of evidence. We
15 have another issue related to two additional pieces of
16 evidence.

17 THE COURT: Mr. Clizer, when you're
18 ready, sir.

19 MR. CLIZER: All right. The short
20 version is that the company supplied a privilege log
21 in relationship to DR -- sorry -- OPC Data Request
22 3014, I believe, is the number. While we accept the
23 argument or the assertion of privilege as to most of
24 the items listed there, there are two items that we
25 dispute the existence of a privilege on. And we are

1 asking the commission to make a decision regarding the
2 applicability of privilege. And I can obviously give
3 it in more detail, but I'm going to pause at this
4 point to determine what the court needs to hear,
5 commission needs to hear.

6 THE COURT: Well, and I'll kind of
7 leave that up to you, and I'll certainly give the
8 company a chance to respond. I don't plan on ruling
9 on anything today, so I guess I will leave that up to
10 you.

11 MR. FISCHER: Judge --

12 MR. CLIZER: I'm sorry. I don't know
13 what you mean by that.

14 THE COURT: Well, I mean, I kind of
15 just want to hear the parties and let them kind of
16 talk this out and hopefully resolve something. And if
17 not, then we'll just move on to the next step. I
18 mean, I'm not ruling -- I'm actually just kind of
19 pinch hitting for Judge Hatcher, and I'm not ruling on
20 anything today.

21 MR. CLIZER: All right. Fair enough.
22 Jim, go ahead.

23 MR. FISCHER: Judge, I would suggest,
24 once again, that we go in camera to just talk about
25 it, so I can give you better background on what these

1 documents are and why they are protected by attorney-
2 client privilege.

3 THE COURT: All right. Mr. Court
4 Reporter, are we ready to go back in camera?

5 THE REPORTER: Yes. We are.
6 Understood.

7 (Non-Confidential portion of transcript
8 ends.)

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1 (Confidential portion of transcript
2 begins.)

3 THE COURT: All right. Thank you. Mr.
4 Fischer, when you're ready.

5 MR. FISCHER: Mr. Clizer, I think
6 you're talking about the PowerPoint presentation
7 related to the Activist Considerations Elliot; is that
8 right?

9 MR. CLIZER: Based on the privilege log
10 that I received, the first issue with the pages 23 to
11 59 out of 160 of the Board of Directors' meeting
12 materials for the meeting on May 3rd through May 4th
13 of 2021. And the description of content reads,
14 "Extreme weather event, Uri presentation."

15 MR. FISCHER: Okay. And what was the
16 second one?

17 MR. CLIZER: That's the first item.

18 MR. FISCHER: Okay. And what's the
19 second one? So I can maybe address both together.

20 MR. CLIZER: Sure. The second one --
21 and, Dave, speak up if I get this wrong -- it was
22 the -- was it the January 12th? Yes. It was the
23 January 12, 2021, Board of Directors' materials and
24 minutes pages 2 through 34 of 35, which the
25 description of contents reads, "Continued discussions

1 regarding settlement with Activist, Bluescape, and
2 Elliot."

3 However, with regard to that one in
4 particular, the only item that we're seeking discovery
5 of is the Morgan Stanley report that was listed in the
6 attached materials. We recognize that the actual
7 PowerPoint presentation -- well, we're accepting the
8 claim of privilege regarding the actual presentation.
9 We just want the attached material.

10 MR. FISCHER: Okay. Well, Judge, let
11 me address that one first. On January 12th of '21,
12 the law firm of Cravath, Swaine & Moore, LLP,
13 presented a 35-page PowerPoint presentation to the
14 Board of Directors entitled, "Activist Considerations
15 Elliot." As a part of that legal presentation, Morgan
16 Stanley prepared, at the direction of the law firm, a
17 15-page presentation which discussed case studies
18 involving a group known as Elliot Management and its
19 advisors of previous proxy fights involving other
20 companies.

21 This presentation is subject to the
22 attorney-client privilege since it was prepared by
23 Everygy's law firm with the assistance and at the
24 direction of that law firm with the investment
25 banker's portion, Morgan Stanley. None of that

1 information in that presentation is relevant to the
2 rate case. But it's clearly protected by the
3 attorney-client privilege since it was presented by
4 the law firm and at the direction of that law firm,
5 Morgan Stanley did an analysis of other proxy fights
6 that occurred around the country.

7 And that's the reason we are asserting
8 attorney-client privilege on that whole document.
9 It's all part of the same legal presentation by
10 Cravath, even though Morgan Stanley was partly
11 involved in developing portions of that.

12 And then on the second document,
13 that -- on May the 4th of 2021, there was a Board
14 presentation by David Campbell, who is Evergy's chief
15 executive officer, and Kevin Bryant, who is Evergy's
16 chief operating officer, related to the extreme
17 weather event in February '21 known as Storm Uri,
18 U-R-I. That presentation was developed and reviewed
19 and edited by counsel in-house, and some of the pages
20 are designated as prepared at the request of counsel.
21 And for those reasons, we are asserting
22 attorney-client privilege on that document.

23 MR. STEINER: And, Judge, also
24 asserting attorney work product.

25 MR. FISCHER: Yeah. That's true too.

1 Sorry.

2 THE COURT: All right. Mr. Steiner,
3 thank you. Mr. Fischer, thank you. Do we need to
4 stay in camera for further comments?

5 MR. CLIZER: Just because we're here,
6 and for the sake of safety, I would ask that we do so
7 once again, just so I don't accidentally divulge
8 anything that Everyg feels is confidential.

9 THE COURT: I understand completely.
10 Mr. Clizer, any response?

11 MR. CLIZER: Yes. Okay. Several
12 responses. First, with regard to the claims of
13 attorney work product, the doctrine of attorney work
14 product only applies when the material being prepared
15 is being prepared in the process or for preparation of
16 litigation.

17 There is no argument to be made that
18 either of these documents were being prepared for
19 litigation, as both of the materials were prepared for
20 the Board of Directors to be able to make decisions,
21 as is what a Board of Directors is expected to do. So
22 the attorney work product doctrine does not apply in
23 either case. There's additional arguments we've made
24 on that front, but I'll rest on that one for now.

25 As for the claim regarding

1 attorney-client privilege, the presentation of the
2 Morgan Stanley document, just because it's included as
3 a larger presentation by an attorney to a client, does
4 not necessarily mean that the document itself is
5 protected by attorney-client privilege. There is not
6 a way that you can bootstrap third-party analysis
7 simply by virtue of saying, "Well, our attorney handed
8 me the papers." If the individual analysis was not
9 conducted or prepared by an attorney, then the OPC has
10 a right to view it.

11 And as far as the May 4th situation, we
12 are asking for a document that contains -- hang on --
13 nearly 30 pages or more. The fact that some attorney
14 might, at some point, have had something to do with
15 some of it does not necessarily mean that the entire
16 document is privileged and excluded from discovery.
17 Moreover, the attorney-client privilege only applies
18 when the information being supplied is being -- or,
19 sorry. The attorney-client privilege only applies
20 when the communication is being made in order to
21 secure legal advice.

22 A presentation by the CEO and COO to
23 the Board of Directors is, again, not being made to
24 secure legal advice, but rather, it's being provided
25 to give the Board of Directors the information it

1 needs to make decisions, which is, of course, normal
2 for the course of business of a large corporation. So
3 it wouldn't apply in any case. Just the fact that an
4 attorney has looked at something does not mean the
5 attorney-client privilege applies. And I think I'm
6 done with anything that could be in camera at that
7 point, hopefully.

8 THE COURT: Mr. Clizer, thank you. Do
9 we need to stay in camera, or can we go back into a
10 public forum?

11 MR. FISCHER: I would respond just
12 briefly, Judge. Just, again, out of caution, let's
13 stay in camera.

14 THE COURT: All right.

15 MR. FISCHER: First, the Morgan Stanley
16 preparation, or that portion of that document was
17 prepared directly at the request of the law firm. It
18 includes an analysis of other proxy fights around the
19 country, case studies related to that, directly
20 relevant to all the legal issues being discussed in
21 the primary 35-page PowerPoint presentation. So I
22 think that attorney-client certainly applies there.

23 With regard to the David Campbell
24 presentation, the nature of that is with that weather
25 event, there was much litigation being anticipated

1 about to occur, and we've certainly seen that around
2 the country. I think it's a little short-sighted to
3 suggest that the chief executive officer giving a
4 presentation to the Board about that kind of an event
5 wouldn't involve the possibility of litigation.

6 And we certainly have the lawyers
7 involved in developing it and including their
8 perspectives and edits on that presentation. So we,
9 again, would suggest that that should be kept
10 privileged. That's all I have.

11 THE COURT: All right. Mr. Fischer,
12 thank you. Are we ready to go back into a public
13 forum?

14 MR. CLIZER: I believe so.

15 MR. FISCHER: Fine with me, Judge.

16 THE COURT: All right. Thank you. Mr.
17 Court Reporter, we're ready to go back in a public
18 forum. Let me know when we're ready to go.

19 THE REPORTER: Okay.

20 (Confidential portion of transcript
21 ends.)

22 //

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1 (Non-Confidential portion of transcript
2 begins.)

3 THE REPORTER: We are now back in a
4 public forum at 11:04 a.m.

5 THE COURT: All right. Mr. Court
6 Reporter, thank you. We are back into a public forum.
7 We went in camera for counsel to discuss some
8 confidential information. I think, Mr. Clizer, we're
9 back to you. Did you have anything else you would
10 like to bring to my attention?

11 MR. CLIZER: To quote State ex rel.
12 Koster v. Cain, 383 S.W. 3rd, 105, "The party
13 asserting attorney-client privilege bears the burden
14 of proof to demonstrate the privilege applies. A
15 blanket assertion of privilege is not sufficient."

16 The OPC is requesting, at the minimum,
17 that the commission take a -- receive copies of the
18 information that privilege is claimed to apply to, and
19 make a determination as to the applicability of that
20 privilege. The OPC stands on all of its previous
21 assertions regarding the law as to why privilege
22 would not apply to either of these sets of documents.
23 I'll leave it from there for now.

24 THE COURT: Mr. Clizer, thank you.
25 Anything further from the company?

1 MR. FISCHER: Roger, do you have
2 anything that you'd like to add on any of that? I
3 think, Judge, you've heard our arguments on that. And
4 we're certainly willing to deal with the commission
5 orders here.

6 THE COURT: All right. Anything
7 further from counsel?

8 MR. THOMPSON: Nothing from staff,
9 Judge. Thank you.

10 THE COURT: All right. Hearing
11 nothing, because I am essentially pinch hitting for
12 Judge Hatcher, I spoke with him briefly, and he said
13 his method of proceeding with these is to kind of give
14 the parties a little more time, continue the discovery
15 conference, and see if we need to go back and hash
16 this out again.

17 So with that that in mind, my plan is
18 to continue this conference until next Friday. I will
19 be on the bench next Wednesday and Thursday. And my
20 thoughts were if parties felt like they needed to go
21 back on the record, we could do that again next
22 Friday. And I would like to get pleadings from
23 parties -- I mean, it can just be a brief motion -- no
24 later than the close of business next Tuesday to let
25 me know if you feel like we need to go back on the

1 record and have, you know, continue this discovery
2 conference, or if you think you can resolve your
3 disputes. Does anyone have any concerns with that?

4 MR. THOMPSON: Would it be at the same
5 time?

6 THE COURT: I would kind of leave that
7 up to the parties to let me know, I guess, what times
8 are best for them.

9 MR. THOMPSON: Okay. Thank you, Judge.
10 Staff has no concerns.

11 THE COURT: Any comments from either
12 Public Counsel or the company?

13 MR. CLIZER: Your Honor, my concern is
14 simply that I'm not sure there's any grounds here for
15 continued discussion, to be honest. I mean, we're not
16 asking for much. With regard to the privileged
17 information, either it's privileged or not. Either we
18 see it or we don't.

19 And regarding the other two issues, I
20 mean, either we get a physical copy or we don't.
21 Again, we've already seen the information. So I'm not
22 sure what else there is to discuss, to be completely
23 frank.

24 THE COURT: Well, that's certainly fine
25 with me. It's not going to hurt my feelings if we

1 don't go back on the record. But I'm not ruling on
2 anything today, I guess, is my point. And I'll leave
3 it to the company and staff if they feel like, you
4 know, we want to meet again or not. It doesn't matter
5 to me. And if we do, I'm not sure if I would even be
6 the judge running the conference. So that's why I'm a
7 little hesitant to do anything else other than to hand
8 this back off to Judge Hatcher to see how he wants to
9 proceed.

10 MR. FISCHER: We're certainly willing
11 to go down the path that you're suggesting, Judge
12 Pridgin.

13 THE COURT: And I appreciate it. And,
14 you know, you're certainly free to file pleadings
15 saying, "Yeah. We want another conference," or "No.
16 We think it's pointless. We'd like to go on to a
17 motion to compel," or whatever you think the next step
18 is to try to resolve this dispute. That's perfectly
19 fine. I'm simply proceeding as Judge Hatcher says he
20 normally proceeds with these conferences, since it's
21 his case and not mine. Anything further from counsel?

22 MR. STEINER: We understand, Judge.

23 THE COURT: I appreciate it. Thank
24 you.

25 MR. STEINER: John, I'll give you a

1 call.

2 THE COURT: All right. Anything
3 further before we go off the record?

4 MR. FISCHER: I think Roger Steiner was
5 trying to make a statement there, if I heard him.

6 THE COURT: Yeah. If I heard
7 correctly --

8 MR. STEINER: Judge, I just said --

9 THE COURT: I'm sorry. Mr. Steiner, go
10 ahead.

11 MR. STEINER: Sorry. I just said,
12 "Judge, we understand." I said, "John, I'll give you
13 a call."

14 THE COURT: And I appreciate it.
15 Anything further from counsel before we go off the
16 record?

17 MR. THOMPSON: Nothing from staff,
18 Judge. Thank you.

19 MR. CLIZER: Nothing from OPC.

20 THE COURT: All right. With that, we
21 will then go off the record in this discovery
22 conference. Thank you very much. We are off the
23 record.

24 (Whereupon, at 11:10 a.m., the
25 proceeding was concluded.)

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CERTIFICATE OF DEPOSITION OFFICER

I, BRETT TORRENCE, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



BRETT TORRENCE

Notary Public in and for the
State of Missouri

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CERTIFICATE OF TRANSCRIBER

I, BRENNNA SHEA, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



BRENNNA SHEA

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