

Exhibit No.:  
Issues: Cost of Service and Rate Design  
Witness: Maurice Brubaker  
Type of Exhibit: Surrebuttal Testimony  
Sponsoring Party: Velvet Tech Services, LLC  
Case No.: EO-2022-0061  
Date Testimony Prepared: January 14, 2022

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

\_\_\_\_\_  
In the Matter of the Application of Evergy )  
Missouri West, Inc. d/b/a Evergy Missouri )  
West for Approval of a Special High Load )  
Factor Market Rate for a Data Center )  
Facility in Kansas City, Missouri )  
\_\_\_\_\_ )

**Case No. EO-2022-0061**

Surrebuttal Testimony and Schedules of

**Maurice Brubaker**

**on Cost of Service and Rate Design**

On behalf of

**Velvet Tech Services, LLC**

January 14, 2022



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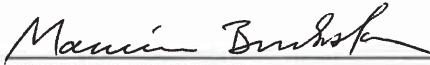
Case No. EO-2022-0061

STATE OF MISSOURI     )  
                                  )     SS  
COUNTY OF ST. LOUIS    )

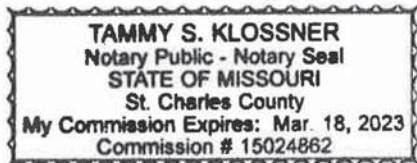
**Affidavit of Maurice Brubaker**

Maurice Brubaker, being first duly sworn, on his oath states:

1. My name is Maurice Brubaker. I am a consultant with Brubaker & Associates, Inc., having its principal place of business at 16690 Swingley Ridge Road, Suite 140, Chesterfield, Missouri 63017. We have been retained by Velvet Tech Services, LLC in this proceeding on their behalf.
  
2. Attached hereto and made a part hereof for all purposes are my surrebuttal testimony and schedules which were prepared in written form for introduction into evidence in Missouri Public Service Commission Case No. EO-2022-0061.
  
3. I hereby swear and affirm that the testimony and schedules are true and correct and that they show the matters and things that they purport to show.

  
\_\_\_\_\_  
Maurice Brubaker

Subscribed and sworn to before me this 14<sup>th</sup> day of January, 2022.



  
\_\_\_\_\_  
Notary Public

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

<b>In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Special High Load Factor Market Rate for a Data Center Facility in Kansas City, Missouri</b>	) ) ) ) ) ) ) ) ) )	<b>Case No. EO-2022-0061</b>

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In the Matter of the Application of Evergy )  
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Facility in Kansas City, Missouri )

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Case No. EO-2022-0061

**Surrebuttal Testimony of Maurice Brubaker**

1 Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A Maurice Brubaker. My business address is 16690 Swingley Ridge Road, Suite 140,  
3 Chesterfield, MO 63017.

4 Q WHAT IS YOUR OCCUPATION?

5 A I am a consultant in the field of public utility regulation and President of Brubaker &  
6 Associates, Inc., energy, economic and regulatory consultants.

7 Q PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

8 A This information is included in Appendix A to this testimony.

9 Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?

10 A I am appearing on behalf of Velvet Tech Services, LLC (“Velvet”).

1 Q ARE YOU FAMILIAR WITH THE SUBJECT MATTER AND FILINGS IN THIS  
2 PROCEEDING?

3 A Yes. I have read all of the testimony filed in this case, reviewed the data responses  
4 submitted and participated in the technical conferences and settlement conferences in  
5 this proceeding.

6 Q WHAT IS THE SUBJECT OF YOUR SURREBUTTAL TESTIMONY?

7 A In my surrebuttal testimony, I respond to various comments and proposals made by  
8 Missouri Public Service Commission Staff ("Commission Staff") witness Robin  
9 Kliethermes and Office of the Public Counsel ("OPC") witness Dr. Geoff Marke.

10 I address the major concerns with these testimonies, but the fact that I may not  
11 address a particular point made or position taken by these witnesses should not be  
12 construed as an endorsement of that statement or position.

13 Q PLEASE GIVE THE COMMISSION A HIGH-LEVEL OVERVIEW OF WHAT VELVET  
14 IS SEEKING, AND HOW DECISIONS MADE IN THIS PROCEEDING WILL IMPACT  
15 VELVET'S ABILITY TO INVEST IN, BUILD OUT, AND OPERATE A LARGE NEW  
16 DATA CENTER IN THE KANSAS CITY AREA.

17 A As set forth in Velvet's support statement (included as Schedule DRI-3 attached to the  
18 direct testimony of Evergy Missouri West ("Evergy") witness Darrin Ives), Velvet  
19 conducted a multi-state search for a suitable location for a new \$800 million enterprise  
20 data center. This data center is expected to employ more than 50 direct, full-time  
21 employees at an average salary of more than \$80,000/year. Construction and  
22 operation of the data center will make a significant economic contribution to the Kansas  
23 City area. Witnesses McCarthy and Stombaugh, presented by Evergy, provide

1 important background information. However, please also see the extensive impact  
2 study prepared by Research Triangle Institute (“RTI”), provided hereto as Confidential  
3 Schedule MEB-1. (This document also was provided in response to OPC Data  
4 Request 0025.) For further support of the economic impact of the data center, please  
5 see Schedule MEB-4, which includes studies of the beneficial economic contributions  
6 of data centers in other locations. (Those studies were provided to the parties in  
7 Velvet’s Supplemental and Second Supplemental Responses to OPC DR 0023.)

8 If the special High Load Factor Market rate (“Schedule MKT”), presented as  
9 Schedule DRI-1 to the direct testimony of Evergy witness Ives, is approved by the  
10 Commission in this proceeding, then Velvet can have confidence that the rate structure  
11 in place in Kansas City will provide competitively priced electric service in a way that  
12 facilitates its efforts to meet the renewable goals necessary to proceed with its plans to  
13 invest in the data center. Subsequently, it is expected that Evergy and Velvet will  
14 present to the Commission for consideration a specific contract that will operate under  
15 the umbrella of Schedule MKT for which approval is sought in this proceeding.  
16 Confidential Schedule DRI-2 attached to the direct testimony of Evergy witness Ives is  
17 an example contract which contains prices, terms and conditions representative of what  
18 the parties would seek to have approved. It is important to emphasize that the specific  
19 terms, conditions and pricing for the specific contract would be subject to Commission  
20 approval in the subsequent proceeding.

21 Velvet’s support statement in Schedule DRI-3, attached to the direct testimony  
22 of Evergy witness Ives, sets forth Velvet’s commitment to support 100% of the data  
23 center load with new renewable energy resources located in the Southwest Power Pool  
24 (“SPP”) footprint. This is a major commitment on the part of Velvet, and will bring new  
25 renewable resources to the area. The structure of the energy pricing in the Market

1 Rate is important because the hourly SPP price that Velvet will pay not only facilitates  
2 Velvet's contracting with new renewable resources because of the ability to align its  
3 own renewable energy requirements with SPP-located resources, but also insulates  
4 other customers from variations in energy costs.

5 **Q ARE YOU AWARE OF ANY DIRECT BENEFITS PROVIDED BY VELVET TO**  
6 **EVERGY RETAIL CUSTOMERS?**

7 A Yes, besides the significant economic benefits that Velvet will bring to the Kansas City  
8 area, including a larger retail customer base from new employees and new businesses,  
9 I am aware that Velvet has proposed a charge per kW to further the expansion of  
10 renewable energy for Evergy retail customers. This renewable surcharge will decrease  
11 the costs to Evergy ratepayers. I am not aware of such a provision in any other  
12 contract.

13 **Q HOW IS THE BALANCE OF YOUR TESTIMONY ORGANIZED?**

14 A In the balance of my testimony I respond to certain points raised by other witnesses. I  
15 first address the rebuttal testimonies of Commission Staff witnesses and then address  
16 the OPC rebuttal testimony.

1 **Response to Commission Staff Witness Robin Kliethermes**

2 **Q AT PAGES 8 AND 9 OF HER REBUTTAL TESTIMONY, STAFF WITNESS**  
3 **KLIETHERMES CONTENDS THAT SCHEDULE MKT NEED NOT BE APPROVED**  
4 **IN THIS DOCKET, BUT RATHER COULD BE HANDLED IN EVERGY'S NEW**  
5 **GENERAL RATE CASE FILED ON JANUARY 7, 2022. WOULD THIS BE**  
6 **SATISFACTORY TO VELVET?**

7 **A** Absolutely not. Velvet needs a decision now in order to know whether it should proceed  
8 further with its plans to develop the \$800 million facility that will contribute substantially  
9 to employment and other economic activity in the Kansas City area. Delaying  
10 consideration of Schedule MKT to this rate case is not only unnecessary but if the  
11 Commission were to go along with this request, it would be a very negative signal to  
12 Velvet, to Evergy, and to any other similarly situated customer seeking to locate in  
13 Missouri. There is absolutely no valid reason not to consider Schedule MKT in this  
14 case. As noted previously, Schedule MKT functions basically as an umbrella which  
15 allows for customer-specific special contracts to be filed and evaluated by the  
16 Commission in a subsequent docket, closer to the time that the customer is ready to  
17 take permanent electric service under Schedule MKT. Furthermore, there is no  
18 justification for requiring a rate case to be filed by a utility seeking a rate like  
19 Schedule MKT. As previously noted, Schedule MKT is enabling and provides an  
20 umbrella under which customer-specific special contracts can be developed and filed  
21 with the Commission for review and approval. Such a precedent could dissuade future  
22 players from even considering Missouri as a site location.



1                   The following appears at page 8 of Staff Witness Kliethermes' rebuttal  
2 testimony:

3                   "Q. Is the immediate approval of Schedule MKT necessary for the  
4 customer to take service?

5                   A. No. Mr. Ives states that a market rate contract is not expected to  
6 be filed until early 2025. The currently effective Schedule SIL  
7 allows the Company to negotiate rates with customers, and with a  
8 general rate case quickly approaching, there is no need to approve  
9 Schedule MKT in this case.

10 **Q       PLEASE RESPOND.**

11 A       As previously noted, Velvet needs a decision now in order to have the information  
12 needed to decide whether the project being considered is a "go" or "no go." Critical  
13 investment decisions need not, and should not, be held hostage to unnecessary  
14 regulatory procedures.

15 **Q       STAFF WITNESS KLIETHERMES ALSO CLAIMS (PAGE 5) THAT SCHEDULE MKT**  
16 **DOES NOT MEET THE REQUIREMENTS OF SECTION 393.355, RSMO. IS THIS A**  
17 **VALID CRITICISM?**

18 A       No, because Evergy is not seeking approval of Schedule MKT under the cited statutory  
19 provision. As in File No. EO-2019-0244 (the Nucor case), Evergy is not seeking  
20 approval under that statutory provision, but rather based on the Commission's general  
21 powers. I will also defer much of this argument to Velvet's legal counsel as I believe  
22 Staff witness Kliethermes' argument also requires a legal response.

1 Q ANOTHER OBJECTION STATED BY STAFF WITNESS KLIETHERMES IS AT  
2 PAGE 7 WHERE SHE CLAIMS THAT STAFF IS NOT AWARE OF AUTHORITY  
3 UNDER MISSOURI LAW TO EXEMPT CUSTOMERS FROM RIDERS SUCH AS THE  
4 FUEL ADJUSTMENT CLAUSE (“FAC”). HOW DO YOU RESPOND TO MS.  
5 KLIETHERMES?

6 A This is a rather curious contention on the part of Staff, since barely two years ago the  
7 Commission approved, in the context of the Nucor case (with support from the PSC  
8 Staff), Schedule SIL, which explicitly exempts service under that tariff from the FAC  
9 and RESRAM. Beyond the SIL, the Commission has previously granted large  
10 customers exemptions from the FAC. The Commission has previously approved  
11 contracts with exemptions under its broad statutory authority under Sections 393.130,  
12 393.140(11), and 393.150(1). In addition to that authority, the Commission has broad  
13 authority to grant variances from rules (and the riders are largely detailed by  
14 Commission rule).

15 Q AT THE TOP OF PAGE 7 OF HER REBUTTAL TESTIMONY, STAFF WITNESS  
16 KLIETHERMES ALSO CLAIMS THAT STAFF IS “...NOT AWARE OF AUTHORITY  
17 UNDER MISSOURI LAW FOR PROMULGATION OF FORMULA RATES,  
18 INCLUDING MARKET-BASED RATE STRUCTURES.” PLEASE RESPOND TO  
19 HER CRITICISM.

20 A First of all, the term “formula rates” generally is understood in the industry to refer to a  
21 regulatory paradigm under which the regulated utility annually files updated revenues,  
22 expenses, investments and other components for potentially adjusting the entire tariff  
23 structure based on changed revenues, expenses and investment. Nothing of the sort

1 is being requested here, so if that is what she meant by “formula rates,” it is a  
2 mischaracterization.

3 On the other hand, she may have intended for that characterization to apply to  
4 the idea that charges to customers may vary based on specific defined factors, rather  
5 than fixed numbers in the tariff. If that is what she meant, that is not an accurate  
6 characterization either. Evergy has a tariff in place called “Real Time Pricing” (KCPL  
7 GMO Revised Sheets 73 through 77) that explicitly states the conceptual basis for the  
8 RTP charge as an incremental energy charge plus other factors, none of which are  
9 specified in the tariff; but are left to determination each month by the utility based on  
10 general guidelines set forth in the tariff. The key component of the pricing under this  
11 rate is “MC”, the: “...day-ahead forecast of hourly short-run marginal cost of providing  
12 energy to Missouri retail customers...” (Revised Sheet No. 74).

13 The explicit reference in Schedule MKT to SPP market prices is far more  
14 specific than what the Commission has allowed to go into effect under the RTP rate.  
15 Again, Staff’s perception is incorrect, and its criticism is misplaced.

16 **Q ARE STAFF WITNESS KLIETHERMES’ CRITICISMS AT PAGE 9 CONCERNING**  
17 **COSTS THAT WILL NEED TO BE INCURRED TO PROVIDE SERVICE A MATTER**  
18 **OF CONCERN?**

19 **A** No. It is clear that the intent of the tariff, and the subsequent contract, is that all  
20 additional costs incurred to provide service to the customer will be paid for by the  
21 customer, and not by other customers. Accordingly, these criticisms are without merit.

1 Q STAFF STATES IN SEVERAL PLACES THAT THE TARIFF IS DISCRIMINATORY  
2 AND IS ONLY AVAILABLE TO CUSTOMERS WHO FALL UNDER CERTAIN NAICS  
3 CODES. DO YOU AGREE?

4 A I agree that this provision which limits application of the tariff to certain end uses should  
5 be removed from the tariff.

6 Q AT PAGE 6 OF HER REBUTTAL TESTIMONY, STAFF WITNESS KLIETHERMES  
7 MENTIONS SOME OF THE SIMILARITIES AND DIFFERENCES BETWEEN THE  
8 OPPD TARIFF RATE 261M AND THE SCHEDULE MKT RATE PROPOSED IN THIS  
9 PROCEEDING. SHE BASICALLY STATES THAT THE MAIN SIMILARITY IS THE  
10 ENERGY PRICING BASED ON SPP PRICES, AND NOTES THAT THERE ARE A  
11 NUMBER OF DIFFERENCES BETWEEN THE OPPD RATE AND THE RATE  
12 PROPOSED HERE. ARE THOSE DIFFERENCES RELEVANT?

13 A No. The primary feature of the OPPD tariff is the fact that the pricing for energy is  
14 based on SPP hourly rates. All of the differences which she points out are normal  
15 differences between how utilities choose to design their tariffs. For example, whether  
16 demand charges are explicitly stated (OPPD) or are left to customer-specific  
17 determination (Evergy) is immaterial. What is important is that the pricing mechanism  
18 cover the relevant cost associated with the load. Similarly, whether a utility allows  
19 customers the option to take service at one of several voltage levels also is irrelevant,  
20 so long as the pricing formulas result in the customer paying its relevant costs.

1 Q AT PAGE 7 OF HER REBUTTAL TESTIMONY, COMMISSION STAFF WITNESS  
2 KLIETHERMES IS CRITICAL OF SCHEDULE MKT BECAUSE, AND SHE SAYS, IT  
3 CREATES A NEW CUSTOMER CLASS/TARIFF "...WITHOUT CONSIDERATION  
4 OF ALL RELEVANT FACTORS." IS THIS A VALID CRITICISM?

5 A No. The "all relevant factors" test has usually been applied to situations in which  
6 proposals are made to change existing rates. Of course, the case at hand here is  
7 different: current rates are not proposed to be changed, but a new tariff option is  
8 proposed to be added to the tariff. New tariffs bring new revenues, and as long as the  
9 new tariff is cost-based, and appropriately limited in its availability, the "all relevant  
10 factors" test is unnecessary and not applicable.

11 In fact, barely two years ago, Staff had a different position in the Nucor case  
12 (Case No. EO-2019-0244). In its November 1, 2019 brief, Staff discusses this at page 6  
13 under the heading "All Relevant Factors Need Not be Considered."

14 Q AT PAGE 4 OF HER REBUTTAL TESTIMONY, STAFF WITNESS KLIETHERMES  
15 DECLARES THAT SCHEDULE MKT IS NOT NECESSARY BECAUSE OF THE  
16 AVAILABILITY OF WHAT SHE DESCRIBES AS ALTERNATIVES, NAMELY THE  
17 SPECIAL RATE FOR INCREMENTAL LOAD SERVICE (SCHEDULE SIL), THE  
18 LARGE POWER SERVICE ("LPS") RATE SCHEDULE, OR THE SPECIAL  
19 CONTRACT RATE SCHEDULE. DOES THE AVAILABILITY OF THESE TARIFFS  
20 ELIMINATE THE NEED FOR SCHEDULE MKT?

21 A No. The primary reason that they are not suitable stems from Velvet's commitment to  
22 support its entire electric consumption with renewable resources on the SPP grid while  
23 remaining an Evergy customer. The only practical way to accomplish this was to utilize  
24 a tariff which set the energy pricing based on SPP market prices. This requirement,

1 coupled with the fact that existing tariffs include embedded cost recovery such as the  
2 FAC, and/or are well above embedded cost (e.g., Rate LPS), render them unsuitable  
3 for this application.

4 **Response to OPC Witness Dr. Geoff Marke**

5 **Q HAVE YOU REVIEWED THE REBUTTAL TESTIMONY OF OPC WITNESS DR.**  
6 **MARKE?**

7 A Yes, I have. Dr. Marke makes some of the same criticisms that are leveled by Staff  
8 witness Kliethermes. I will respond to the main ones.

9 **Q PLEASE CONTINUE.**

10 A First, on page 2 of his rebuttal testimony, Dr. Marke effectively recommends that  
11 Schedule MKT be reviewed in a rate case proceeding before the Commission rules on  
12 it. For reasons explained in more detail in my response to Staff witness Kliethermes,  
13 it would be a major negative factor if the Commission were to follow this path. Hundreds  
14 of millions of dollars of investment and employment of a large number of people hang  
15 in the balance. In my opinion, approval of the Market Rate Tariff, given its “umbrella”  
16 and enabling nature, coupled with the subsequent filing of a specific contract that will  
17 be subject to Commission review and approval, provides all of the safeguards  
18 necessary, without unduly burdening the process and risking the loss of this significant  
19 economic opportunity.

1 Q DR. MARKE SPENDS APPROXIMATELY EIGHT PAGES OF HIS TESTIMONY  
2 (PAGES 3-11) COMPLAINING ABOUT WHAT HE REGARDS AS A “LACK OF  
3 TRANSPARENCY, AND UNCERTAINTY REGARDING APPLICANT AND TERMS.”  
4 PLEASE RESPOND TO DR. MARKE’S CONCERNS.

5 A While I understand Dr. Marke’s desire for more information, that desire must be  
6 balanced against the need for confidentiality at this stage of the process, and the fact  
7 that what is sought in this proceeding is essentially an “umbrella” type of rate that  
8 provides access to the SPP market. This structure protects other customers from  
9 changes in energy prices and facilitates Velvet’s ability to support the energy usage of  
10 its proposed data center with new renewable resources. The fact is that the specific  
11 rates, terms and conditions that will apply to this load (if Velvet proceeds with  
12 development) will be determined in a future Commission proceeding in which OPC and  
13 other parties will have an opportunity to test the adequacy of the proposed rates, terms  
14 and conditions in insulating other customers from any adverse impacts. Dr. Marke’s  
15 criticisms would be of greater concern if the parties were proposing to adopt specific  
16 rates here without subsequent Commission proceedings, but parties are not proposing  
17 that, so Dr. Marke’s criticisms are not a reason to reject the tariff proposal or require  
18 that it be considered in a rate case.

1 Q AT PAGE 3 OF HIS REBUTTAL TESTIMONY, DR. MARKE EXPRESSES A  
2 CONCERN THAT THERE NOT BE ANY AFFILIATE TRANSACTION VIOLATIONS  
3 WITH THE REGULATED UTILITY. CAN YOU PROVIDE SUCH ASSURANCES TO  
4 DR. MARKE?

5 A Yes. It is my understanding Evergy will testify in surrebuttal that there are no affiliate  
6 relationships between Velvet or Velvet's affiliates, and Evergy or any of Evergy's  
7 affiliates.

8 Q PLEASE ELABORATE FURTHER ON THE NEED FOR CONFIDENTIALITY AT THIS  
9 STAGE OF THE PROCESS.

10 A Development of a large-scale facility that requires substantial construction and the  
11 acquisition of a significant amount of equipment as well as human resources means  
12 that extensive negotiations must be conducted on many fronts. The data center  
13 industry is an emergent business sector that is highly competitive. It is common for  
14 data center ownership to remain confidential until standard agreement and contracts  
15 are in place – all of which add up to a final location decision.

16 Unnecessary disclosure of the details of the project and the key players could  
17 place them at a competitive disadvantage when completing those negotiations. Further  
18 disclosure at this stage has down-sides, and no identifiable up-sides. Velvet already is  
19 taking on significant regulatory risk by agreeing to allow the final rates, terms and  
20 conditions to be determined at a later date and should not be further burdened by the  
21 requirement to make needless disclosures.



1 Q AT PAGE 8 OF HIS REBUTTAL TESTIMONY, DR. MARKE FOCUSES ON  
2 INCENTIVES AND SPECIAL RATES IN IOWA, ILLINOIS, NEBRASKA AND  
3 OKLAHOMA, AND STATES THAT HE IS NOT AWARE OF ANY DATA CENTER  
4 ELECTRIC TARIFF OFFERINGS IN THOSE STATES. HOW DO YOUR RESPOND  
5 TO DR. MARKE'S CRITICISM?

6 A It is important to keep in mind that the key is competitive electric rates, not whether  
7 they are specifically limited to use by data centers. I have already indicated agreement,  
8 and I believe Evergy also agrees, to eliminate the restriction in the Market Tariff that  
9 would limit application to data centers. Beyond that, I can state that in Iowa,  
10 MidAmerican Energy Company has an "Individual Customer Rate" ("ICR") which is  
11 explicitly set on a cost of service basis for each of MidAmerican Energy Company's  
12 large customers, many of which are data centers. The OPPD rate in Nebraska, which  
13 Dr. Marke discusses, is a market-based rate and OPPD states that it has data center  
14 customers. Illinois is a customer choice state in which a customer is free to negotiate  
15 power supply agreements with its supplier of choice. Oklahoma Gas and Electric  
16 Company offers a Day-Ahead Pricing ("DAP") rate. These obviously can be specifically  
17 tailored to individual customer needs. The big picture here is that there needs to be  
18 competitive rates, and that rates based on market pricing (such as is at issue here) go  
19 a long way toward satisfying that requirement.

20 Please see Schedule MEB-2 for tariffs available in other states to data centers  
21 and other large customers that recognize the need for innovative cost-based tariffs,  
22 including market pricing.

1 Q AT PAGE 10 OF HIS REBUTTAL TESTIMONY, DR. MARKE COMPLAINS THAT HE  
2 DOES NOT SEE THAT RENEWABLES ARE A REQUIREMENT FOR SERVICE AND  
3 THAT SUGGESTING THAT THE TARIFF RATE WILL UTILIZE RENEWABLE  
4 ENERGY IS MERELY ASPIRATIONAL. HOW DO YOU RESPOND TO DR. MARKE?

5 A First, it is true that the tariff will not provide the customer with renewable energy. The  
6 tariff will set the energy pricing based on SPP hourly charges. This pricing will align  
7 the retail energy price with the value of separate customer transaction(s) that would be  
8 negotiated with third parties to acquire renewable attributes generated by newly  
9 constructed renewable resources that will sell energy to market participants at SPP  
10 market prices. In this way, the Schedule MKT customer is supporting and encouraging  
11 new renewable resources that would not otherwise be built. Schedule MKT does not  
12 contemplate or require Evergy to buy energy from these new renewable resources,  
13 therefore, Schedule MKT does not expose Evergy's other customers to the risk of  
14 fluctuating energy prices in the SPP market. The SPP energy price risk is borne by the  
15 Schedule MKT customer. (Remembering the impacts of winter storm URI in February  
16 2021, and what that did to energy prices and utility bills, this arrangement will readily  
17 be understood to be a great benefit to other customers.)

18 Q HAS VELVET COMMITTED TO SUPPORT ALL OF ITS ENERGY USAGE FROM  
19 RENEWABLE ENERGY RESOURCES?

20 A Yes. This is stated on page 1 of Schedule DRI-3 to the direct testimony of Evergy  
21 witness Ives (Velvet's support statement) as follows:

22 "We are committed to supporting 100% of the new data center load with  
23 new renewable energy resources."

24 And further, that it will support the development of "...new renewable generation  
25 facilities within surrounding SPP..."

1 Q AT PAGE 12 OF HIS REBUTTAL TESTIMONY, DR. MARKE COMMENTS ON THE  
2 LOAD FACTOR PROVISION IN THE TARIFF. WHAT IS THE ISSUE HERE?

3 A As one of the requirements to qualify for this rate, Evergy's language requires the  
4 customer to demonstrate and maintain a load factor throughout the year of 85% or  
5 greater. On the other hand, Dr. Marke's proposal changes this to require maintenance  
6 of "...an annual load factor of 85% or greater at the service location." OPC's language  
7 (and to a somewhat lesser extent, Evergy's) fails to recognize that when facilities come  
8 on line they very often start at a relatively low load level (compared to the full load) and  
9 increase over time as additional equipment is added, and additional load is supported.  
10 Given this pattern, a facility could have a very high monthly load factor, but depending  
11 upon how fast the load is growing, the annual load factor could be much lower. I  
12 present a summary of these issues in Schedule MEB-3, and offer proposed language  
13 to address both the minimum load factor and minimum load issue. The recommended  
14 language is as follows:

15 At full load, Customer must be able to demonstrate and maintain an  
16 annual load factor throughout the year of 0.85 or greater. During initial  
17 startup or commissioning, not to exceed five years, the Customer must  
18 be able to demonstrate and maintain an average annual load factor  
19 throughout the year of 0.85 or greater.  
20 This language recognizes the inherent nature of the ramp-up and then requires  
21 a steady state annual load factor of 85% or higher. In my opinion, this addresses and  
22 resolves both issues.

23 Q DR. MARKE SUGGESTS A CHANGE TO THE AVAILABILITY SECTION TO ALLOW  
24 A CUSTOMER TO CURE AN AVAILABILITY ISSUE. DO YOU AGREE?

25 A I agree with Dr. Marke's suggestion, except that the cure period should be 90 days  
26 rather than 60 days, so we avoid taking the customer off the tariff for a short-term event.

1 Q DO YOU HAVE ANY COMMENT ON DR. MARKE'S RECOMMENDATIONS  
2 CONCERNING THE LANGUAGE AROUND "RATE FOR CAPACITY SERVICE"?

3 A Yes. I believe his change regarding capacity costs is unnecessary given the change  
4 he suggested that the rate for capacity shall be inclusive of all capacity-based costs,  
5 recovery of any infrastructure investment made to meet capacity, or customer  
6 contributions. Dr. Marke goes on to state that the rate for capacity shall be inclusive of  
7 all capacity-based costs, recovery of any infrastructure investment made to meet  
8 capacity, or customer contributions. This is somewhat vague, but if the intent is that  
9 the rate can be a combination of both a charge per kW and facilities type charges to  
10 recover part of the cost, then I do not have an objection. It is important to note that the  
11 rate will be set based on all costs after identifying the least cost capacity options and is  
12 then set for the five-year term of the contract to provide some price stability to the  
13 Schedule MKT Customer.

14 Q DO YOU HAVE ANY COMMENTS ON DR. MARKE'S LANGUAGE CONCERNING  
15 THE "CONTRACT DETERMINATION" SECTION?

16 A No. I find Dr. Marke's language additions to be acceptable.

1 Q AT THE BOTTOM OF PAGE 14 DR. MARKE ADDRESSES CONTRACT TERM. THE  
2 PROPOSED CONTRACT HAS A FIVE-YEAR TERM WITH A FIXED PRICE. DR.  
3 MARKE, ON THE OTHER HAND, WANTS THE RATE TO TERMINATE 30 DAYS  
4 AFTER THE COMMISSION APPROVES A CHANGE IN THE COMPANY'S  
5 GENERAL RATES FOR SERVICE UNLESS A NEW MARKET RATE CONTRACT IS  
6 SUBMITTED AND APPROVED. DO YOU SUPPORT THIS REQUIREMENT?

7 A No. This means that the contract term would not be fixed and therefore price stability  
8 would not be achieved. For example, depending on the frequency of rate cases, a  
9 contract rate could be approved initially, and if the utility has a new rate case within,  
10 say 18 months, the rate previously approved would have to change. This does not  
11 afford rate stability. The five-year term in the proposed Market Rate tariff is a  
12 reasonable length of time; it affords some degree of price stability to the customer, and  
13 yet protects other customers from potentially enduring escalated costs for a substantial  
14 period of time.

15 In evaluating this provision, it is important to keep in mind that all of the energy  
16 costs will be passed through automatically to the customer under the Market Rate. This  
17 is the largest component of cost of service, and other customers would have absolutely  
18 no exposure to changes in these costs. Second, it is contemplated that new capacity  
19 resources will be acquired to support this service, and those costs will be assigned to  
20 the customer.

21 I would also point out that the recently approved contract for Nucor includes a  
22 ten-year fixed price contract which is, obviously, twice as long as the five-year contract  
23 period in Schedule MKT.

1 Q AT PAGE 16 OF HIS REBUTTAL TESTIMONY, DR. MARKE OBJECTS TO  
2 EXEMPTING CUSTOMERS UNDER THIS TARIFF FROM THE APPLICATION OF  
3 RIDER RESRAM. DO YOU AGREE?

4 A No, I do not. Velvet pledges to cover its total load with renewable resources. Applying  
5 additional charges for renewable energy not acquired to serve this customer would not  
6 be cost-based or equitable. The Commission has previously approved special  
7 contracts exempting customers from certain riders. It is just and reasonable to do so  
8 here. For example, Schedule SIL explicitly exempts the customer from the application  
9 of RESRAM.

10 Alternatively, it would be acceptable to add to the tariff that any customer  
11 exempted from RESRAM demonstrate that they have offset their load with renewable  
12 generation by at a minimum the Missouri renewable energy standard requirement in  
13 effect at the time of the contract. If there was a concern about the customer meeting  
14 the 100% renewable requirement, then the tariff could state that the customer would  
15 be exempt from RESRAM to the extent that the renewable energy provided by the  
16 customer covers the customer's load.

17 Q DO YOU HAVE ANY LANGUAGE SUGGESTIONS?

18 A Yes. Please consider the following provision:

19 A Schedule MKT customer who procures renewable generation to  
20 support all or a significant majority of its energy consumption would be  
21 exempted from the RESRAM calculation and charges for all energy  
22 supported by Schedule MKT customers procured renewable  
23 generation.

1 Q AT PAGE 16 OF HIS REBUTTAL TESTIMONY, DR. MARKE SUGGESTS THAT MKT  
2 CUSTOMERS SHOULD BE SUBJECT TO SECURITIZATION CHARGES. DO YOU  
3 AGREE?

4 A No. At this time, there are no securitization charges. Subjecting a customer to  
5 potential, unknown future charges is premature at this time.

6 Q DO YOU BELIEVE THE SPECIAL HIGH LOAD FACTOR MARKET RATE TARIFF  
7 SHOULD BE APPROVED BY THE COMMISSION?

8 A Yes. The Special High Load Factor Market Rate is essential for customers like Velvet  
9 to obtain a competitive energy price and align its own renewable energy needs. Velvet  
10 supports the Tariff as filed with the changes noted herein. The addition of a project of  
11 this importance to the State and the Kansas City region stands to benefit all customers.  
12 Velvet respectfully asks the Commission to approve the MKT Tariff.

13 Q DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

14 A Yes, with the understanding that the fact that Velvet may not address a particular point  
15 made or position taken by these witnesses should not be construed as an endorsement  
16 of that statement or position.

## Qualifications of Maurice Brubaker

1    **Q     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2    A     Maurice Brubaker. My business address is 16690 Swingley Ridge Road, Suite 140,  
3        Chesterfield, MO 63017.

4    **Q     PLEASE STATE YOUR OCCUPATION.**

5    A     I am a consultant in the field of public utility regulation and President of the firm of  
6        Brubaker & Associates, Inc. ("BAI"), energy, economic and regulatory consultants.

7    **Q     PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

8    A     I was graduated from the University of Missouri in 1965, with a Bachelor's Degree in  
9        Electrical Engineering. Subsequent to graduation I was employed by the Utilities  
10       Section of the Engineering and Technology Division of Esso Research and Engineering  
11       Corporation of Morristown, New Jersey, a subsidiary of Standard Oil of New Jersey.

12            In the Fall of 1965, I enrolled in the Graduate School of Business at Washington  
13        University in St. Louis, Missouri. I was graduated in June of 1967 with the Degree of  
14        Master of Business Administration. My major field was finance.

15            From March of 1966 until March of 1970, I was employed by Emerson Electric  
16        Company in St. Louis. During this time I pursued the Degree of Master of Science in  
17        Engineering at Washington University, which I received in June, 1970.

18            In March of 1970, I joined the firm of Drazen Associates, Inc., of St. Louis,  
19        Missouri. Since that time I have been engaged in the preparation of numerous studies  
20        relating to electric, gas, and water utilities. These studies have included analyses of  
21        the cost to serve various types of customers, the design of rates for utility services, cost

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1 forecasts, cogeneration rates and determinations of rate base and operating income. I  
2 have also addressed utility resource planning principles and plans, reviewed capacity  
3 additions to determine whether or not they were used and useful, addressed  
4 demand-side management issues independently and as part of least cost planning, and  
5 have reviewed utility determinations of the need for capacity additions and/or  
6 purchased power to determine the consistency of such plans with least cost planning  
7 principles. I have also testified about the prudence of the actions undertaken by utilities  
8 to meet the needs of their customers in the wholesale power markets and have  
9 recommended disallowances of costs where such actions were deemed imprudent.

10 I have testified before the Federal Energy Regulatory Commission ("FERC"),  
11 various courts and legislatures, and the state regulatory commissions of Alabama,  
12 Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia,  
13 Guam, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri,  
14 Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania,  
15 Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia,  
16 Wisconsin and Wyoming.

17 The firm of Drazen-Brubaker & Associates, Inc. was incorporated in 1972 and  
18 assumed the utility rate and economic consulting activities of Drazen Associates, Inc.,  
19 founded in 1937. In April, 1995 the firm of Brubaker & Associates, Inc. was formed. It  
20 includes most of the former DBA principals and staff. Our staff includes consultants  
21 with backgrounds in accounting, engineering, economics, mathematics, computer  
22 science and business.

23 Brubaker & Associates, Inc. and its predecessor firm has participated in over  
24 700 major utility rate and other cases and statewide generic investigations before utility  
25 regulatory commissions in 40 states, involving electric, gas, water, and steam rates and

**Maurice Brubaker**  
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1 other issues. Cases in which the firm has been involved have included more than 80  
2 of the 100 largest electric utilities and over 30 gas distribution companies and pipelines.

3 An increasing portion of the firm's activities is concentrated in the areas of  
4 competitive procurement. While the firm has always assisted its clients in negotiating  
5 contracts for utility services in the regulated environment, increasingly there are  
6 opportunities for certain customers to acquire power on a competitive basis from a  
7 supplier other than its traditional electric utility. The firm assists clients in identifying  
8 and evaluating purchased power options, conducts RFPs and negotiates with suppliers  
9 for the acquisition and delivery of supplies. We have prepared option studies and/or  
10 conducted RFPs for competitive acquisition of power supply for industrial and other  
11 end-use customers throughout the United States and in Canada, involving total needs  
12 in excess of 3,000 megawatts. The firm is also an associate member of the Electric  
13 Reliability Council of Texas and a licensed electricity aggregator in the State of Texas.

14 In addition to our main office in St. Louis, the firm has branch offices in Phoenix,  
15 Arizona; Louisville, Kentucky; and Corpus Christi, Texas.

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