

Matter of the Application of Evergy Missouri West, Inc.

Hearing before:

Judge Charles Hatcher

January 26, 2022

Vol 03

PHIPPS REPORTING

Raising the Bar!

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 STATE OF MISSOURI
3 _____

4 TRANSCRIPT OF PROCEEDINGS
5 Evidentiary Hearing
6 January 26, 2022
7 Jefferson City, Missouri
8 Volume 3
9

10 In The Matter Of The)
11 Application of Evergy Missouri)
12 West, Inc. d/b/a Evergy Missouri)
13 West for Approval of a Wholesale) File No. EO-2022-0061
14 Energy Market Rate for a Data)
15 Center Facility in Kansas City,)
16 Missouri)

17

18 _____

19 CHARLES HATCHER, Presiding
20 REGULATORY LAW JUDGE.
21 RYAN A. SILVEY, Chairman,
22 MAIDA J. COLEMAN,
23 JASON R. HOLSMAN,
24 GLEN KOLKMEYER,
25 COMMISSIONERS.

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29 REPORTED BY:
30 Lisa M. Banks, CCR
31 PHIPPS REPORTING
32
33

1 APPEARANCES:

2 MR. ROGER STEINER, (Via WebEx)
3 Evergy, Inc.
4 1200 Main Street, 16th Floor
5 Kansas City, Missouri 64105
6 (816)556-2314
7 Roger.steiner@evergy.com
8 FOR: Evergy Missouri West

9 MR. JAMES FISCHER (Via WebEx)
10 Fischer & Dority
11 101 Madison Street, Suite 400
12 Jefferson City, Missouri 65101
13 jfischerpc@aol.com
14 (573)636-6758
15 FOR: Evergy Missouri West

16 MS. STEPHANIE BELL (Via WebEx)
17 MR. MARC ELLINGER (Via WebEx)
18 Ellinger & Associates, LLC
19 308 East High Street, Suite 300
20 Jefferson City, Missouri 65101
21 sbell@ellingerlaw.com
22 (573)750-4100
23 FOR: Velvet Tech Services, LLC.

24 MR. LEWIS MILLS (Via WebEx)
25 Bryan Cave Leighton Paisner, LLP
26 221 Bolivar Street, Suite 101
27 Jefferson City, Missouri 65101
28 lewis.mills@bryancave.com
29 (573)556-6627
30 FOR: Google, LLC.

31 MR. DAVID WOODSMALL
32 308 East High Street, Suite 204
33 Jefferson City, Missouri 65101
34 david.woodsmall@woodsmallllaw.com
35 (573)797-0005
36 FOR: Midwest Energy Consumers Group

37 MR. JEFFREY KEEVIL
38 Governor Office Building
39 200 Madison Street, Suite 800
40 P.O. Box 360
41 Jefferson City, Missouri 65102-0360
42 573.751.1854
43 FOR: Staff Of Missouri Public Service Commission

1 MR. JOHN CLIZER
 Governor Office Building
2 200 Madison Street, Suite 650
 Jefferson City, Missouri 65102
3 573.751.5324
 FOR: Office Of the Public Counsel
4
5
6
7
8
9
10
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1 P R O C E E D I N G S

2 JUDGE HATCHER: The time being 8:30,
3 recess has expired. We are on the record. This is the
4 evidentiary hearing in File Number EO-2022-0061. This is
5 Evergy Missouri West's request for a special high-load
6 factor rate. At this point in the hearing, we are
7 beginning the recross examination of Mr. Darrin Ives of
8 Evergy Missouri West, and Mr. Fischer was questioning him
9 and then I stated we are going to go back through recross
10 examination for the limited purpose of questioning about
11 what has been called the EDR language. I believe that is
12 all the introductions we need.

13 Mr. Fischer, your witness.

14 And Mr. Ives, I remind you that you were
15 sworn in yesterday and that still applies.

16 MR. KEEVIL: Judge, just one question.
17 I think you said Mr. Fischer was doing recross on
18 Mr. Ives.

19 JUDGE HATCHER: Redirect, thank you. I
20 misspoke. Again, I'm much better in writing than I am
21 live. Mr. Fischer will be finishing his redirect.

22 Mr. Fischer, the floor is yours.

23 MR. FISCHER: Thank you, Judge.

24 REDIRECT EXAMINATION BY MR. FISCHER:

25 Q. Mr. Ives, when we left off last night, I

1 believe I had had a document marked as Exhibit 7. Do you
2 have that exhibit in front of you?

3 A. I do.

4 Q. Could you explain what this exhibit is?

5 A. Yeah. Just briefly, because I know I
6 talked about it a little bit earlier yesterday. But this
7 exhibit is a response to what we saw come in in the OPC,
8 MECCG and Staff stipulation around the position for EDR
9 and having to be off of an EDR for five years before you
10 could adopt Schedule MKT.

11 I mentioned yesterday that it's the
12 Company and Velvet's position that it likely takes the
13 combination of both the EDR availability and a rate like
14 the Schedule MKT rate to work for these high-load --
15 high-load factor customers that experience a relatively
16 long ramp of bringing their load online.

17 So this schedule really says you could
18 take the Schedule PED in advance of moving to the market
19 rate, but would be required to move to the MKT rate at
20 the earlier of two years after being on the Schedule PED
21 or when you're average monthly peak load exceeded 50
22 megawatts recognizing that that's -- that's the average
23 monthly peak load, but you're going to start at virtually
24 zero on day one when you join that PED and ramp from
25 there.

1 But it sets it at two years and then at
2 the end of this language it says if a customer decides to
3 stay on the PED past that trigger, that two years or for
4 the average peak load of 50, then if it wanted to move to
5 Schedule MKT, they would have to be on a regularly
6 available rate and precluded from that MKT rate until
7 they were off of the PED for the period of time that they
8 extended.

9 So let's just say, quick example,
10 instead of doing two years, they went five years on the
11 PED, so they would've extended by three years. This
12 schedule would say they have to be on a regular embedded
13 cost tariff rate for at least that three years that they
14 extended before they could move to Schedule MKT.

15 **Q. Are you suggesting that this language or**
16 **something very similar would be included in the tariff?**
17 **Is that where this would go?**

18 A. Yes.

19 **Q. Okay.**

20 MR. FISCHER: Judge, with that, I would
21 move for the admission of Exhibit 7. And as I understand
22 it, I can tender the witness for additional cross on this
23 exhibit?

24 (WHEREIN; Every Exhibit 7 was offered
25 into evidence.)

1 JUDGE HATCHER: Yes. That is how we're
2 going to proceed. I will go ahead and deal with Exhibit
3 7 presently. Are there any objections to the admission
4 of Exhibit 7 onto the hearing record? Hearing none, it
5 is so admitted.

6 (WHEREIN; Everyy Exhibit 7 was received
7 into evidence.)

8 JUDGE HATCHER: And since we are dealing
9 with the language that we discussed through last night on
10 how to proceed, we are going to go back to recross on the
11 Exhibit 7 language. So I will go to my handy cheatsheet
12 and on cross first we come to Velvet Tech.

13 Counselor Bell, did you have any
14 questions?

15 MR. ELLINGER: This is Marc Ellinger.
16 At the moment, we're having a slight technical issue.
17 Could we pause for just a second to allow Ms. Bell to
18 reconnect?

19 JUDGE HATCHER: Absolutely. Not a
20 problem.

21 MS. BELL: No questions, Your Honor.

22 JUDGE HATCHER: All right. Thank you.
23 That was a little soft. Ms. Bell said no questions.
24 We'll go to Mr. Mills with Google. Any recross from you?

25 MR. MILLS: Thank you, Judge. Just a

1 few.

2 RE CROSS EXAMINATION BY MR. MILLS:

3 Q. Mr. Ives, in looking at the language
4 that we're discussing here, where it says the economic
5 development rider, is that referring to Schedule PED?

6 MR. FISCHER: Mr. Mills, we lost -- you
7 cut out on us. Could have could you repeat your
8 question? I'm sorry for the interruption.

9 MR. MILLS: Yes.

10 BY MR. MILLS:

11 Q. In the language that has been admitted
12 in the record as Exhibit 7, it refers to economic
13 development rider. Is that Schedule PED?

14 A. Yes, that's the intention.

15 Q. Were you involved in the drafting and
16 adoption of Schedule PED?

17 A. Yes, intimately.

18 Q. Okay. So Schedule PED is effectively
19 Evergy's attempt or Evergy's implementation of Section
20 393.1640; is that correct?

21 A. That's correct.

22 Q. Is there anything in Section 1640 that
23 indicates that the legislature had an intention of
24 limiting the use of other lawfully applicable tariffs
25 once a customer had taken advantage of the provisions

1 under Section 1640. I'm sorry, Section 393.1640?

2 A. No. Not that I'm aware of. I think I
3 mentioned that yesterday, maybe in response to you,
4 Mr. Mills. But I am not aware of any such limitation.

5 Q. At the time that Section 393.1640 was
6 promulgated and passed into law, was the statute that
7 gave rise to Schedule SIL already in effect?

8 A. Well, there was -- I would just say --

9 Q. And perhaps --

10 A. Go ahead, Mr. Mills.

11 Q. Perhaps it will refresh your
12 recollection that's 393.355. It was initially passed
13 with a limited time period and then reauthorized. Does
14 that help?

15 A. Yeah. I believe that is right. I was
16 pausing because there's really not a statute that gave
17 rise to Schedule SIL. Certainly some of the
18 characteristics were similar, but we didn't -- we didn't
19 file for Schedule SIL under 393.

20 Q. Okay. That is a good point. Thank you.
21 But nonetheless, there was at the time that the
22 legislature passed 393.1640, other statutes that would
23 offer customers significant discounts and the legislature
24 chose not to restrict the use of 393.1640 in any way?

25 A. That's correct. And I think we might

1 have talked yesterday as well. I mean, there are also
2 other special contract tariffs in place that would have
3 been in place at that time as well.

4 Q. Right. So there are any number of other
5 discounted mechanisms that a customer could use once the
6 ability to use something like Schedule PED under 393.1640
7 had expired?

8 A. That's correct.

9 Q. And the legislature would have been
10 aware of all of those?

11 A. That's correct.

12 MR. MILLS: No further questions.

13 JUDGE HATCHER: Thank you, Mr. Mills.

14 And I was remiss in a couple of announcements. We will
15 be breaking at ten o'clock until eleven o'clock and that
16 will accommodate today's agenda session. And also
17 speaking of the commissioners, we had all of the
18 commissioners online for the hearing yesterday and this
19 morning we have three. We have Chair Silvey,
20 Commissioner Coleman and Commissioner Kolkmeier online.
21 I do expect Commissioners Holsman and Rupp to be joining
22 us shortly. Those were my forgotten announcements.

23 Let's proceed.

24 COMMISSIONER HOLSMAN: Commissioner
25 Holsman is on, Judge.

1 JUDGE HATCHER: I'm sorry. Commissioner
2 Holsman is on.

3 COMMISSIONER HOLSMAN: Thank you.

4 JUDGE HATCHER: Thank you, Commissioner.
5 Let's proceed then with our recross
6 examination on Exhibit 7, Mr. Woodsmall.

7 RE CROSS EXAMINATION BY MR. WOODSMALL:

8 Q. Good morning, sir. Can you hear me?

9 A. I can hear you.

10 Q. Mr. Mills contemplated a couple of my
11 questions. The first one just to clarify, you mentioned
12 economic development rider and he, I believe through
13 questioning, you mentioned that that was supposed to
14 refer to Schedule PED; is that correct?

15 A. That's correct.

16 Q. Okay. Does Evergy West also have a
17 tariff called economic development rider that's
18 independent of PED?

19 A. We do have such tariff. It's obviously
20 -- it operates at different thresholds than Schedule PED.

21 Q. So would this provision apply both to
22 the economic development rider as well as Schedule PED?

23 A. It was intended to and not written as
24 probably as tightly as what is in the MEEG, OPC and Staff
25 stipulation, but intended to address the 393 and the

1 Schedule PED.

2 Q. Okay. So it's not meant to address any
3 situation where such a customer receives a discount under
4 the independent economic development rider; is that true?

5 A. That's true.

6 Q. Okay. Would you intend to expand this
7 to include both the EDR as well as PED?

8 A. I didn't intend that. I intended to
9 find middle ground between the two stipulations and the
10 OPC and party stipulation addressed the 393, which would
11 be the PED.

12 Q. Okay. That's clear. Now, just to run
13 through an example. It is my understanding that in order
14 to ever receive the PED, you must request it prior to
15 taking service; is that right?

16 A. Yeah. I believe that is correct.

17 Q. Okay. So the PED would start on day one
18 when they use their first kilowatt hour of electricity;
19 is that correct?

20 A. That's correct.

21 Q. Okay. And --

22 A. Married with -- just to make sure that
23 everybody understands. I know you do, Mr. Woodsmall, but
24 applied to a standard available rate and this customer --
25 in a customer's like this circumstance, it would be the

1 large power rate.

2 Q. Right. But what I am trying to get to
3 is a customer couldn't take service under the large power
4 rate without the discount for a couple of years and then
5 say, okay, now I want to kick in the economic developer
6 rider discount?

7 A. That's correct. And there's also
8 language -- and I know you didn't ask this, but just to
9 be clear, there's also language that says they couldn't
10 take it stacked with the MKT rate in the tariff proposals
11 from both parties.

12 Q. Okay.

13 A. Or both competing stipulations.

14 Q. Okay. So the customer -- I will call
15 them a potential MKT customer because they are not MKT
16 yet. But the potential MKT customer comes in day one,
17 they start receiving service under the large power rate
18 with the EDR discount. And that goes along for two
19 years. Now, I assume that they could switch to MKT
20 before two years. Is that their option?

21 A. Yeah. I believe that would be -- that
22 would be kind of a standard vested option that the
23 customer could do.

24 Q. Okay. And so otherwise they continue on
25 LP without the -- with the EDR discount, and then at two

1 years or hitting 50 megawatts, that's when they have to
2 make a decision? It's the earlier of those two events;
3 is that correct?

4 A. Yes, sir. It's the earlier of those two
5 triggers.

6 Q. Okay. Now, getting some clarification
7 as to what Mr. Mills was talking about, this does not
8 limit the customer's ability to receive the PED discount,
9 does it? I noticed on the fourth line it says --

10 A. For the additional term,
11 Mr. Woodsmall?

12 Q. Right?

13 A. It does not. It says if they -- if they
14 don't move to Schedule MKT when they hit the earlier of
15 those triggers, but they stay on the Schedule PED, then
16 there is a limitation on when they can begin on the
17 Schedule MKT.

18 Q. Okay. And that's that fourth line, if
19 the customer remains on the economic development rider.
20 So they always have the option to keep the EDR discount
21 for the maximum statutory five years; is that correct?

22 A. That is an option that they could avail
23 themselves of knowing that they can't immediately move to
24 Schedule MKT in that circumstance.

25 Q. Okay. And to just kind of draw an

1 analogy, are you familiar with them MEEIA statute?

2 A. I am familiar, generally.

3 Q. Well, let me ask more specifically, with
4 the MEEIA opt-out provision?

5 A. Yeah. I don't have that language in
6 front of me, but I am familiar with the opt out,
7 generally, yes.

8 Q. Okay. And just to analogize, if a
9 customer -- certain customers have a legal right to opt
10 out; is that correct?

11 A. That's correct.

12 Q. But if they take a MEEIA refund, they
13 are not allowed to opt out right away; is that correct?

14 A. That's correct.

15 Q. And so I see somewhat of an analogy
16 here. If you take this discount for more than two years,
17 then you can't immediately opt in to MKT tariff. Do you
18 see some analogy there?

19 A. Yeah. That's the way that it's written,
20 is to just ensure that if you overextend past that
21 trigger, that the customer recognizes that they can't
22 immediately opt in to MKT. They would have to go on to a
23 generally available rate for at least the length of time
24 that they overextended that trigger.

25 Q. Okay. Last question. On the third line

1 you talk about the second trigger, if you will. You talk
2 about customers' average monthly peak load exceeding 50
3 megawatts. Do you see that?

4 A. Yes, sir.

5 Q. Over what period of time would average
6 monthly peak load be calculated?

7 A. Well, the intention and the way it's
8 written is over that period that they're on. So it
9 would, you know -- if you took the full year two years,
10 it would run to the full two years. And it's intended to
11 tie back to that 50 megawatt threshold that's in the
12 availability section of the tariff.

13 Q. Okay. So it wouldn't be calculated over
14 just a 12-month period. It would be calculated over a
15 potentially rolling two-year period?

16 A. Well, I wouldn't -- I wouldn't say
17 rolling. It would just be -- it would just be that
18 two-year period, right. Because if they haven't hit the
19 50 by that two-year period, the two-year trigger would
20 suggest they need to move.

21 Q. Okay. While I don't like it, I
22 understand what this means now. I appreciate your
23 clarification. Thank you, sir.

24 A. Thank you.

25 JUDGE HATCHER: Thank you,

1 Mr. Woodsmall. That takes us to Staff.

2 Mr. Keevil, any questions?

3 MR. KEEVIL: Yeah, very briefly.

4 RECROSS EXAMINATION BY MR. KEEVIL:

5 Q. Mr. Ives, before you proposed this
6 language yesterday afternoon, what other parties, if any,
7 had you discussed this language with?

8 A. A form of this language at somewhere
9 within the meetings that all parties had that got us as
10 close on these two proposed tariffs as we are, discussed
11 a form of this.

12 Q. Yeah. That's not what I asked,
13 Mr. Ives. I said this language, this specific language?

14 A. I think it is this specifically language
15 to be honest.

16 Q. Did you discuss this with Velvet prior
17 to proposing it?

18 A. I think every party to this proceeding
19 had a discussion on this language at some point. But I
20 have -- but Velvet certainly saw this language as well in
21 advance of the proposal.

22 Q. Are you talking about settlement
23 discussions again, Mr. Ives?

24 A. I'm talking about the technical
25 conference, meetings, just like what we heard yesterday

1 when that was the only forum the parties heard that OPC,
2 Staff and MCEG had a concern in this area.

3 Q. Mr. Ives, let me ask -- I don't know how
4 to make this question any simpler, but you apparently
5 don't want to answer it. This language, was this
6 approved by Velvet prior to your proposal yesterday?

7 A. I would not say approved. It was
8 discussed with them and I think everybody had seen it at
9 some point.

10 Q. I'm not asking about everybody now. I'm
11 asking about Velvet. Did you run this by Velvet before
12 you proposed it yesterday?

13 A. I've answered that.

14 MR. Fischer: Objection; asked and
15 answered.

16 BY MR. KEEVIL:

17 Q. Well, was the answer -- that's a yes or
18 no question, Mr. Ives. Is the answer yes or no?

19 A. Well, your -- what specifically is your
20 question?

21 Q. Did you run this language by Velvet
22 before you proposed it yesterday?

23 A. Yes.

24 Q. Okay. Did you run this language by
25 Google before you prepared it yesterday?

1 MR. MILLS: Judge, I'm going to object
2 to the extent of the phrase "run this by" is unclear to
3 me. Could we ask counsel to rephrase that?

4 MR. KEEVIL: I don't think it is unclear
5 at all, Judge.

6 JUDGE HATCHER: I have to say I am also
7 not confused. Did you show it to Google? Did you send
8 it to them? Did you wave it at them? Any of those?

9 MR. MILLS: Judge, if that's the
10 question, then I'm going to object that it's asking about
11 what happened during settlement discussions.

12 JUDGE HATCHER: Okay.

13 MR. MILLS: And that is privileged and
14 it's an improper question seeking to ask the witness to
15 divulge privileged settlement discussion.

16 MR. KEEVIL: This is not settlement
17 discussions. He dropped this exhibit at the hearing. I
18 agree this should have been covered in settlement, but it
19 was not, rather Everyg has chosen to use the hearing
20 process as their means of settlement. And this is not a
21 settlement document. This is a hearing exhibit.

22 MR. MILLS: The document is. What
23 Mr. Keevil is asking about is what discussions that
24 Everyg had with other parties prior to the hearing about
25 this language. And those are by definition settlement

1 discussions and they are privileged.

2 MR. KEEVIL: I am not asking for what
3 Google discussed. I'm asking if Mr. Ives showed this
4 language to Google.

5 JUDGE HATCHER: If Google is saying that
6 that's --

7 MR. MILLS: What settlement offers were
8 made are privileged. Whether or not the party accepted
9 those offers is also privileged, but the fact that an
10 offer was made is a privileged matter. And I don't --
11 I'm sure Mr. Keevil understands that and I don't know why
12 we're still banging on this.

13 JUDGE HATCHER: We're not, Mr. Mills.
14 If you are claiming that this is part of settlement
15 discussions, you are an officer of the court. I'm going
16 to take that at face value.

17 MR. KEEVIL: If Mr. Mills is claiming
18 this is a settlement discussion, then I assume that
19 it was discussed.

20 JUDGE HATCHER: I would not have made
21 that assumption, but I am not a lawyer in the case.

22 MR. KEEVIL: All right. No further
23 questions.

24 JUDGE HATCHER: Okay. Thank you,
25 Mr. Keevil.

1 Mr. Clizer, the witness is yours.

2 MR. CLIZER: No questions. Thank you,
3 Your Honor.

4 JUDGE HATCHER: Excellent. Mr. Ives,
5 let me see if there are any commissioner questions. Are
6 there any Commissioner questions for Mr. Ives on the
7 Exhibit 7 language? Okay. Mr. Ives, you are excused.
8 Let us move --

9 MR. FISCHER: Judge?

10 JUDGE HATCHER: Yes, go ahead.

11 MR. FISCHER: Judge, do I have an
12 opportunity for just a very limited redirect on this line
13 of cross or not?

14 JUDGE HATCHER: We are this far in,
15 Mr. Fischer. And if you say it's going to be very brief,
16 I will allow it.

17 MR. FISCHER: Thank you, Judge. I have
18 very brief questions regarding that last exchange.

19 FURTHER REDIRECT EXAMINATION BY MR. FISCHER:

20 Q. Mr. Ives, when was the first time that
21 you learned there was what I'll just call an EDR issue
22 with the Staff, Public Counsel and MECG?

23 MR. KEEVIL: Objection, Your Honor.

24 JUDGE HATCHER: Yeah.

25 MR. KEEVIL: Because if Mr. Mills is

1 right about this being settlement discussions and
2 privileged, so is this.

3 JUDGE HATCHER: I'm -- Mr. Fischer, can
4 you tell me what relevance the timing would have?
5 Because the only thing I would see is whether it comes
6 into settlement or not?

7 MR. Fischer: Let me withdraw the
8 question if it is controversial, Judge.

9 JUDGE HATCHER: Thank you.

10 BY MR. FISCHER:

11 Q. Mr. Ives, was the EDR issue filed in
12 any testimony in this case?

13 A. No. To my recollection, it was not in
14 any materials for this case until it came into the --

15 MR. KEEVIL: Objection. Right there he
16 is starting to get into settlement.

17 THE WITNESS: -- case docket in the
18 nonunanimous stipulation of OPC, MECG and Staff.

19 BY MR. FISCHER:

20 Q. So you had no opportunity to raise this
21 language until now?

22 A. I had nothing to respond to in the
23 record until it came in in the stipulation.

24 MR. FISCHER: Thank you, Judge. That's
25 all the questions I have.

1 JUDGE HATCHER: Okay. Thank you.

2 Mr. Ives, you are excused.

3 Mr. Brubaker, if you would please speak
4 up on WebEx and I will swear you in.

5 MR. KEEVIL: What about the other Evergy
6 witnesses?

7 THE WITNESS: Yes. Good morning, Judge.
8 Am I coming through okay?

9 JUDGE HATCHER: Yes, you are.

10 The other two Evergy witnesses are
11 tentatively scheduled for 10:00 a.m. this morning, which
12 -- her first availability, which of course, will be in
13 recess. And then Ms. Hataway, I believe we were told
14 would probably be available afternoon. So I'm going to
15 go ahead --

16 MR. FISCHER: That's correct.

17 JUDGE HATCHER: -- and go through the
18 witnesses and then we'll circle back to those two and
19 kind of cross that bridge when we get there.

20 MR. KEEVIL: Okay.

21 JUDGE HATCHER: Mr. Brubaker.

22 (Witness sworn.)

23 JUDGE HATCHER: Would you please state
24 and spell your last name for the record?

25 THE WITNESS: Yes, my name is Maurice

1 Brubaker, M-A-U-R-I-C-E, B-R-U-B-A-K-E-R.

2 JUDGE HATCHER: Thank you.

3 And Velvet, your witness.

4 MAURICE BRUBAKER, having first been duly sworn testifies
5 as follows:

6 DIRECT EXAMINATION BY MS. BELL:

7 Q. Mr. Brubaker, who are you employed by?

8 A. By the firm of Brubaker and Associates,
9 Incorporated.

10 Q. And did you cause to be filed in this
11 case what has been marked as Exhibit 300, the surrebuttal
12 testimony of Maurice Brubaker with four schedules
13 attached?

14 A. I did.

15 MS. BELL: Your Honor, I'd like to offer
16 Exhibit 300 and there is a public and confidential
17 version.

18 JUDGE HATCHER: Thank you. Exhibit 300,
19 the confidential and public version has been offered for
20 evidence into the record.

21 (WHEREIN; Velvet Exhibit 300 was offered
22 into evidence.)

23 JUDGE HATCHER: Are there any
24 objections? Hearing none, it is so admitted.

25 (WHEREIN; Velvet Exhibit 300 was

1 received into evidence.)

2 JUDGE HATCHED: Go ahead, counselor.

3 MS. BELL: I tender the witness for
4 cross.

5 JUDGE HATCHER: Thank you. And
6 according to my list, first cross will go to Everygy.

7 MR. FISCHER: Thank you, Judge. I just
8 had a couple of questions or a few.

9 CROSS-EXAMINATION BY MR. FISCHER:

10 Q. Mr. Brubaker, would you turn to Page 2
11 of your surrebuttal testimony?

12 A. Yes, I have it.

13 Q. There on Line 18 and 19 you mention that
14 Velvet conducted a multi-state search for a suitable
15 location for a new \$800 million enterprise data center;
16 is that right?

17 A. Correct.

18 Q. Would it be correct for me to conclude
19 that Velvet looked at other states besides Missouri for
20 the possibility of locating their \$800 million facility?

21 A. Yes, it would.

22 Q. Let's turn to Page 3 of your testimony.
23 And beginning on Line 8 through about Line 13 you mention
24 that if the Schedule MKT presented by Mr. Ives is
25 approved by the Commission, then Velvet can have

1 confidence that the rate structure in place in Kansas
2 City will provide competitively priced electricity; is
3 that correct?

4 A. Yes.

5 Q. Why is that important to Velvet?

6 A. Well, electricity prices are a very
7 important input. I'm sorry. Okay. Important part of
8 the cost of operating a data center. And so the price
9 that data centers pay for electricity is critical in the
10 overall decision-making process as to where facilities
11 will be placed. Also for Velvet it's important to be
12 able to access renewable energy in the market. And
13 Velvet has pledged to acquire enough renewable energy in
14 the SPP footprint to serve its entire energy needs.

15 So the Schedule MKT includes a mechanism
16 by which that can be accomplished by pricing the power to
17 Velvet from Evergy at the SPP hourly market price. That
18 allows Velvet to mirror that against some independently
19 acquired renewables.

20 Q. That was my next area of question. On
21 Page 3 at the bottom of your page. On Line 22, you
22 mention that Velvet has a commitment to support 100
23 percent of the data center load with new renewable energy
24 resources located in the Southwest Power Pool footprint.
25 Do you see that?

1 A. I do.

2 **Q. Would you explain how that will be**
3 **accomplished? Your understanding at least?**

4 A. Well, there's probably more than one way
5 to do. But one way that would typically be done would be
6 for Velvet to enter into of renewable purchase power
7 agreement with a third party, which would mirror the
8 pricing from the SPP hourly market. So that effectively
9 Velvet would receive the renewable energy and also would
10 receive compensation for the output of those facilities
11 at the overly market price which would offset the price
12 that they're paying to Evergy for the power. That
13 minimizes the risk of a spread on the locational marginal
14 prices.

15 So that's a very important feature to
16 this contract. In order to be able to proceed forward,
17 it's my understanding that Google -- not Google, sorry
18 about that -- that Velvet needs to have some confidence
19 that that structure would be in place. And if the
20 Commission approves the MKT tariff, they're reasonably
21 confident that that will allow them to move forward.

22 They'll still be subject to the actual
23 contract signing and presentation to the Commission for
24 the Commission review and approval. There's some risk
25 there still, but it's my understanding Velvet is willing

1 to accept that risk based on having Schedule MKT approved
2 so they can forward knowing that the -- there's an
3 umbrella out there, which they can operate.

4 Q. Is it your understanding that Velvet
5 intends to support 100 percent of its load in Missouri
6 with renewables?

7 A. Yes. That's the commitment they've made
8 and that's in their support statement that's attached to
9 Mr. Ive's testimony that they are committing to supply
10 100 percent of the energy requirements for the facility
11 with newly constructed renewable resources in the SPP
12 footprint.

13 Q. If Velvet is required to pay the RESRAM
14 in addition to that 100 percent commitment, would you
15 understand that they would be paying more than -- 100
16 percent of their load would be supported by renewables
17 in --

18 A. Yeah.

19 Q. Let me restate that. That was not
20 clear.

21 If they have to pay the RESRAM on top of
22 this commitment that they will have 100 percent of their
23 load supported by renewables, would it be fair to say
24 that they're actually paying more than 100 percent of
25 their load will be supported by renewables, including

1 **that RESRAM charge?**

2 A. Yes. It would be basically 115 percent.
3 If I can make an analogy it would be sort of like going
4 to a bring-your-own party and then having to also pay for
5 a part of somebody else's refreshments.

6 Q. I would like to also ask you to turn to
7 **Page 4 of your surrebuttal testimony on Lines 9 through**
8 **about 11.**

9 A. Yes, I have it.

10 Q. There you say that, I'm aware that
11 Velvet has proposed to charge per KW to further the
12 expansion of renewable energy for Evergy retail
13 customers. This renewable surcharge will decrease the
14 cost of Evergy ratepayers. Would you explain what you're
15 talking about there?

16 A. Yes. The numbers are confidential.
17 However, Velvet was interested in showing its good faith
18 in making a contribution to the benefit of the system
19 over and above just bringing their own renewables. And
20 that's been called the -- I forget exactly what the term
21 is. It's an amount of money they will pay through their
22 regular rates, which will be used by Evergy to compensate
23 them for purchasing renewables.

24 Q. That would benefit other non-Velvet
25 ratepayers; is that your understanding?

1 A. I would because Velvet will have its own
2 resources and so these funds could be used to purchase
3 renewable resources to benefit others on the rest of the
4 system.

5 Q. I think my last area is on Page 10 of
6 your surrebuttal. Would you turn to Page 10 and look on
7 Line 5, 5 through 7?

8 A. Okay.

9 Q. There you're talking about the all
10 relevant factors test that is usually applied to
11 situations in which proposals are made to change existing
12 rates. Do you see that?

13 A. I do.

14 Q. Are you talking about general rate cases
15 there?

16 A. I am.

17 Q. What is your understanding of what it
18 means to consider all relevant factors in the context of
19 a rate case?

20 A. It usually means that you look at all
21 things that could impact on the structure of the proposal
22 or the decision or the rate and take those into account.
23 It's like in rate cases you might look at the cost of
24 service, but then the Commission always has other
25 considerations beyond that which they sometimes describe

1 as other relative factors.

2 Q. So would it be correct that, for
3 example, if the Commission was looking at a proposal to
4 impute revenues in the context of a special contract
5 case, it would look at all relevant factors and whether
6 it was in the public interested to do that?

7 A. Yes. Yes, I would think so. That would
8 be consistent with that concept. The concept under, I
9 guess, the general umbrella of economic development, so
10 recognizing that that statute was created for the
11 explicit purpose of creating and stimulating economic
12 activity in Missouri, service territory of Evergy and
13 seeing that those -- those impacts that would occur
14 because of the economic development of other enterprises
15 would also be a relevant factor under that consideration.

16 Q. Is the existence of what has been
17 referred to as an economic development rider or PD-- PED
18 important development?

19 A. I think it is. If you look at the whole
20 process we talked at earlier, the multi-state research
21 and the importance of electricity in the overall
22 operation of an enterprise, we know that Velvet spent a
23 fair amount of time looking for places to be negotiating
24 with Evergy for a structure that they could live with.
25 Anytime you're building a new enterprise, a facility,

1 particularly one that's \$800 million, there's lots of
2 pieces that have to be coordinated and come together to
3 make a deal workable.

4 And certainly that economic development
5 rate and its availability to them along with the ability
6 to access renewables through the market are also
7 important. So all those pieces together make the deal
8 viable. The absence of one or more of those pieces, I
9 can't say. It just would make -- I can say it would make
10 it much less viable.

11 **Q. Well, your surrebuttal testimony did not**
12 **really discuss the importance of the economic development**
13 **rate, did it?**

14 A. No.

15 **Q. Why was that the case if it is an**
16 **important development?**

17 A. At that point in time I was not aware
18 that there were any issues about the application and
19 availability of the economic development rate.

20 MR. FISCHER: Judge, that's all the
21 questions I have.

22 Thank you very much, Mr. Brubaker for
23 your patience.

24 THE WITNESS: Thank you.

25 JUDGE HATCHER: Thank you, Mr. Fischer.

1 And that takes us to Mr. Mills for Google.

2 MR. MILLS: Judge, I have no questions
3 at this point.

4 JUDGE HATCHER: Thank you, sir.

5 And that takes us to Mr. Woodsmall.

6 MR. WOODSMALL: Good morning, sir. Can
7 you hear me?

8 THE WITNESS: Good morning. I can.

9 CROSS-EXAMINATION BY MR. WOODSMALL:

10 Q. Just to try to work through this, first
11 off, you are not employed by Velvet? You are simply
12 retained by them for this case; is that correct?

13 A. Yes.

14 Q. And at what point in time were you
15 retained by them?

16 MS. BELL: Objection; it's irrelevant.

17 MR. WOODSMALL: I'm trying to get at how
18 long he has been working on this case, what firsthand
19 acknowledged he may have. If he has been working on this
20 for five years, he's likely to have it a lot more
21 knowledge than if he has been working on it for three
22 months. So I'm trying to determining when he first was
23 retained.

24 JUDGE HATCHER: I'm going to sustain the
25 objection as to when he was hired because in my mind,

1 that might get into when has settlement issues begun,
2 when has negotiations begun. And I think you can still
3 ask the other questions as to his firsthand knowledge.

4 BY MR. WOODSMALL:

5 **Q. Without divulging any settlement**
6 **information with nothing more than a date, when were you**
7 **first retained by Velvet?**

8 MS. BELL: I'm going to renew my
9 objection. And I also want to object that this could
10 potentially implicate -- I'll just sustain my objection
11 on relevance.

12 MR. WOODSMALL: Well, if it begins to
13 implicate something other than a simple question when he
14 was retained, we can deal with that then. All I want to
15 know is a date.

16 JUDGE HATCHER: I'm continuing to
17 sustain the objection. The witness is instructed not to
18 answer with a specific date. I would think that a
19 question, do you have more than one year of experience
20 dealing with Velvet might get to your concern about how
21 much time he has spent. But stay away from specific
22 dates.

23 MR. WOODSMALL: Okay. Let's work back
24 through that.

25 BY MR. WOODSMALL:

1 Q. You filed this testimony on January
2 14th, which is two, three weeks ago. Do you have more
3 experience than two or three weeks with Velvet?

4 A. If that was a question, the answer is
5 yes.

6 Q. Do you have more experience than one
7 month with Velvet?

8 A. Yes.

9 Q. Do you have more experience than two
10 months with Velvet?

11 JUDGE HATCHER: Can we expand that. I
12 have an objection from the Bench.

13 MR. WOODSMALL: I don't know how else to
14 get it other --

15 BY MR. WOODSMALL:

16 Q. Do you have more experience --

17 JUDGE HATCHER: Try six months.

18 BY MR. WOODSMALL:

19 Q. Okay. Do have more than six months of
20 experience with Velvet? So prior to August of 2021?

21 A. I do not.

22 Q. Okay. Do you have more than three
23 months? I'm just trying to get a ballpark within a
24 month.

25 JUDGE HATCHER: That seems like a pretty

1 close calculation to a specific date, which I just said I
2 don't want.

3 MR. WOODSMALL: Okay.

4 BY MR. WOODSMALL:

5 Q. So let's try to do it this way. Evergy
6 filed its testimony in this case on November 2nd, 2021.
7 Do you have more experience with Velvet than November
8 2nd, 2021?

9 A. Well --

10 MS. BELL: I'm going to object. It is
11 just irrelevant and it could potentially implicate
12 attorney-client communications and settlement
13 communication.

14 MR. WOODSMALL: I'm not going to go into
15 attorney-client. If I do, please stop me. I just want
16 to know when he was bought forward so I can understand
17 later his -- because I'm going to go into this -- how
18 much of this is firsthand knowledge versus how much was
19 related to him by other people.

20 MS. BELL: Your Honor, I'm still going
21 to object. I don't know why that's relevant.

22 MR. WOODSMALL: I'll show you if he just
23 tells me if he was retained prior to November 2nd, 2021.

24 MS. BELL: And we're back to the
25 question of a specific date, which I believe Your Honor's

1 already ruled on.

2 MR. WOODSMALL: I'm not asking for a
3 specific date. I'm asking for whether he was retained
4 prior to testimony being filed in this case.

5 JUDGE HATCHER: And where are we at?
6 He's been working -- consulting for Velvet for over three
7 months but less than six?

8 MR. WOODSMALL: No. You didn't allow
9 the three months. You allowed me to ask if it was more
10 than six months.

11 JUDGE HATCHER: Okay.

12 MR. WOODSMALL: He said, no. So now I'm
13 just trying -- this is the last question to see --

14 JUDGE HATCHER: So he's over a month,
15 under six.

16 MR. WOODSMALL: And whether he was
17 retained prior to testimony being filed. Last question
18 on that.

19 MR. KEEVIL: Judge, I do think
20 Mr. Fischer asked Mr. Brubaker when he first became aware
21 of the EDR issue being involved, so I do think how long
22 Mr. Brubaker has been involved in the process is relevant
23 for no other reason than for that. Mr. Fischer has
24 already opened up when did you first become aware
25 question.

1 MS. BELL: That goes to do
2 Mr. Brubaker's testimony. He was talking about the PED
3 issue in his testimony, why it wasn't in the surrebuttal
4 and why he was addressing it today.

5 JUDGE HATCHER: Well, I want to split a
6 hair here. The Commission routinely looks into the
7 background of the experts and consultants and their
8 familiarity with what they are testing about --
9 testifying about. However, I am sensitive to the
10 settlement issue that has been brought up, as to when
11 Mr. Brubaker might have been bought aboard and how that
12 would relate to settlement issues.

13 MR. WOODSMALL: Your Honor, we weren't
14 having settlement discussions on November 2nd, 2021. So
15 whether he was retained before that date couldn't be
16 settled because they weren't -- I wasn't even in the case
17 yet. There were no interveners, so there couldn't have
18 been settlement.

19 JUDGE HATCHER: I have already allowed
20 that reasoning to apply to discussions between Google and
21 Everygy. So I believe that the application is -- the
22 objection is settlement discussions between two parties.
23 So here I would see a similar -- go ahead.

24 MR. WOODSMALL: Your Honor, I don't want
25 to get into settlement. There were no parties yet, so

1 there couldn't have been settlement. I am just simply
2 asking was he retained prior to the date the case was
3 filed. That's it and I will be done with this line.

4 JUDGE HATCHER: I will allow it.

5 MS. BELL: I would renew my objection,
6 but yes.

7 JUDGE HATCHER: Noted and overruled.

8 THE WITNESS: I don't remember exactly.
9 I believe I had an inquiry as to whether I would be
10 interested or available to assist with the filing and it
11 progressed from there to further discussions. Whether
12 that was before or after the exact filing date, I am not
13 sure. I think the discussions extended until after the
14 filing was accomplished, the tariff filing.

15 BY MR. WOODSMALL:

16 Q. Okay. Can you tell me how much you are
17 being compensated for your appearance here today?

18 MS. BELL: I'm going to object. That's
19 irrelevant.

20 MR. WOODSMALL: Financial bias of a
21 witness is always relevant, Your Honor.

22 JUDGE HATCHER: I agree. Mr. Brubaker,
23 go ahead.

24 THE WITNESS: For this case, I being
25 compensated at my regular hourly rate, as well as the

1 hourly rate of other members of the firm that may be
2 involved in the case.

3 BY MR. WOODSMALL:

4 Q. And do you know how much you billed to
5 date for this case? Your firm, not just you?

6 MS. BELL: I'm going to object. That's
7 irrelevant.

8 MR. WOODSMALL: Again, Your Honor.

9 JUDGE HATCHER: Overruled. Go ahead.

10 MS. BELL: And it gets into
11 attorney-client privilege information.

12 JUDGE HATCHER: If you can tell me how
13 that's attorney-client privilege, Ms. Bell.

14 MS. BELL: Yes. The amount that's spent
15 relates to attorney-client work and it also --

16 MR. WOODSMALL: Your Honor, if I may
17 respond. Ms. Bell's client is Velvet, not Mr. Brubaker.
18 Mr. Brubaker is an independent consultant hired to
19 present his opinion. He is not the client of Velvet.

20 MS. BELL: Your Honor, I -- Mr. Brubaker
21 is retained through my firm, for this case.

22 MR. WOODSMALL: That doesn't make him
23 your client anymore than if I hired someone to testify
24 about blood alcohol, an expert witness is my client.

25 JUDGE HATCHER: I am sorry, Ms. Bell,

1 you're overruled. Your objection is noted for the
2 record.

3 BY MR. WOODSMALL:

4 Q. Can you tell me how much your firm has
5 billed to date, Mr. Brubaker?

6 A. We billed through December. I think
7 it's -- I don't have an exact figure. It's in the range
8 of probably \$15-\$20,000.

9 Q. Do you know, over and above that, any
10 estimate of how much you will bill through the completion
11 of this case?

12 A. I have no idea. No way to predict that.

13 Q. Okay. So moving on. Mr. Fischer's
14 questioning raised some questions for me. First off, on
15 Page 4 of your testimony, do you have that?

16 A. I do, yes.

17 Q. You talk there about Velvet providing a
18 renewable surcharge. Do you see that?

19 A. Yes.

20 Q. When you have -- when you put that
21 commentary there, that is only referring to Velvet; is
22 that correct?

23 A. Correct.

24 Q. So you don't know if Google or anybody
25 else will take a similar position, do you?

1 A. I do not.

2 Q. And do you know if this provision is
3 included in the tariff anywhere such that a future MKT
4 customer will have to make a similar arrangement?

5 A. I do not believe that it is.

6 Q. Okay. So --

7 MR. KEEVIL: I'm sorry. What was that
8 answer?

9 BY MR. WOODSMALL:

10 Q. Would you repeat the answer, sir?

11 A. I'm sorry. I do not believe that it is.

12 Q. okay. So to your mind, there is nothing
13 that prevents a future MKT customer from taking service
14 under this tariff without providing this renewable
15 surcharge?

16 A. I think that would -- I think that would
17 follow.

18 Q. It would follow that they could take
19 service under the MKT without the renewable surcharge?

20 A. Yes.

21 Q. Okay. Moving to the page before, Page 3
22 -- let me know when you are there?

23 A. Okay.

24 Q. On Line 11 you talked about
25 competitively price electric service. Do you see that?

1 A. Yes.

2 **Q. When I think of competitively price**
3 **electric service, in my mind you have to know**
4 **competitively priced with what competitors; is that fair?**

5 A. Well, no it would be by competitors, it
6 would just be alternative resources that could be
7 applied.

8 **Q. Okay. So let's ask it this way: Who do**
9 **you consider to be a competitor of Velvet?**

10 MS. BELL: Objection.

11 JUDGE HATCHER: On what grounds?

12 MS. BELL: It is irrelevant and I
13 believe Mr. Woodsmall is trying to get at the identity of
14 Velvet, which is irrelevant and the identity of Velvet
15 could potentially -- it's irrelevant first of all.

16 MR. WOODSMALL: Your Honor, how can you
17 determine if this price is competitively priced unless
18 first you know who the competitors are; and then
19 secondly, what they are paying for electricity. You
20 know, otherwise, it is just a statement. They opened the
21 door by saying this is necessary to provide competitively
22 priced electricity. If we find out that competitor ABC
23 pays 10 cents a kilowatt hour then this isn't
24 competitively priced. So they opened the door by making
25 this statement and I need to be able to ask questions

1 about it. Now, if they want to withdraw the testimony,
2 I'm good with it.

3 JUDGE HATCHER: Remind me of your
4 question, Mr. Woodsmall.

5 MR. WOODSMALL: On Line 11 he talks
6 about competitively priced electric service. To get at
7 whether it's competitively priced, I'm asking him who
8 does he -- who does he consider to be a Velvet
9 competitor.

10 MR. MILLS: Judge, I'm good object also
11 because it assumes facts not in evidence. He's assuming
12 that competitively priced refers to competitors of Velvet
13 rather than competitors of Evergy, which I believe is the
14 more accurate interpretation of the testimony.

15 MR. Fischer: Judge, this is Jim
16 Fischer. I would join in that objection. Clearly
17 competitive priced electricity relates to competitors of
18 Evergy, not competitors of Velvet.

19 MR. WOODSMALL: The line right before it
20 says then Velvet can have confidence. I'm only asking
21 for who he considers to be a Velvet competitors.

22 MS. BELL: And again, Your Honor, a more
23 reasonable interpretation of the testimony is not only
24 what was raised by Mr. Fischer and Mr. Mills, but also
25 competitively priced as it compared to what is available

1 in other states.

2 BY MR. WOODSMALL:

3 Q. Let's get around it this way,
4 Mr. Brubaker. Do you recall testifying on behalf of
5 Noranda in a previous Ameren case?

6 A. Many times. Not in any detail, but I
7 vividly remember the experiences.

8 Q. Okay. Do you recall then Noranda saying
9 they needed a competitively priced source of electricity?

10 A. I don't recall their specific
11 contentions, how they -- how they raised it.

12 Q. You don't recall a man named Henry Fayne
13 filing testimony with you talking about the price of
14 electricity for other aluminum smelters?

15 A. Yes, I'm sure that there was lots of
16 testimony about that.

17 Q. Okay. Do you recall Mr. Fayne on behalf
18 of the same customer giving the electric price for the
19 other domestic aluminum smelters?

20 MR. MILLS: Judge, I'm going to object.
21 This is getting very far afield. We're talking about a
22 different witness in a different case in a different set
23 of situations to try to make the point that competitively
24 priced means something about the user rather than the
25 supplier of the commodity.

1 MR. WOODSMALL: I want to get --

2 MR. MILLS: If you're talking about the
3 price of a commodity, it has to be the price set by the
4 supplier, not the user.

5 MR. WOODSMALL: Your Honor, if their
6 competitors A, B, and C pay .10, .11, and .09 cents for
7 electricity, how do we know then that this is
8 competitively priced? They used the phrase in their
9 testimony and I'm allowed to just ask him what does he
10 mean by that.

11 MR. MILLS: Judge, this is Mr. Mills
12 again. He has not asked that question. I think that
13 would be a great place to start. Why don't we go there
14 and then I think he will explain what he meant by the
15 phrase and we can clear this all up.

16 BY MR. WOODSMALL:

17 Q. Okay. What do you mean on Lines 10 and
18 11, then Velvet can have confidence that the rate
19 structure in place in Kansas City will provide
20 competitively priced electric service?

21 A. What I mean by that is that if you look
22 around at prices that other suppliers are offering, that
23 the price available under the -- or at least expected to
24 be available under the MKT tariff, would be what Velvet
25 would consider to be competitive from their perspective.

1 **Q. Okay. Competitive from their**
2 **perspective?**

3 A. In light of what they could buy power
4 for at other places and what kind of arrangements they
5 might have for power in other places.

6 **Q. Okay. So now we're comparing with other**
7 **utilities. When you use that phrase "competitively**
8 **priced," what other utilities are you comparing to?**

9 A. What -- you know, I didn't look at
10 particular utilities. I'm aware that Velvet conducted a
11 multi-state search to find out the -- what was available
12 in other states. And electricity being a key input to
13 their cost structure, certainly they would have
14 considered all of those aspects, including the price of
15 electricity elsewhere. And they make the decision --
16 they made the decision from their own perspective as to
17 whether or not that was expected to be competitive.

18 **Q. Okay. Are you the only witness here for**
19 **Velvet?**

20 A. Yes.

21 **Q. Okay. You have not done any independent**
22 **investigation to determine whether the rates under MKT**
23 **are competitively priced; is that correct?**

24 A. No, but what is important is that Velvet
25 believes that they're competitively priced and given the

1 structure that's offered to them, they've negotiated for
2 this transaction, they are satisfied that it is. And
3 that's what will drive the decision-making.

4 Q. If Velvet came inside and said the sky
5 is purple, are you taking their word for it or are you
6 going to go out and independently verify that?

7 MR. FISCHER: Objection, Your Honor.
8 That's argumentative.

9 MR. WOODSMALL: I think as an expert
10 witness, making statements about something being
11 competitively priced, I am allowed to determine whether
12 it was solely someone else's position or whether he has
13 done anything to verify that.

14 JUDGE HATCHER: I'm fine with that.
15 Let's ask that question.

16 BY MR. WOODSMALL:

17 Q. Okay. Did you hear that question, sir?

18 A. I did. I have not done a search to
19 compare prices in other locations. I wasn't asked to do
20 that. I didn't think that was particularly important to
21 whether or not this was competitive because what matters
22 at the end of the day is whether the people spending the
23 money believe that it is.

24 Q. And you would agree that the people
25 spending the money obviously want the lowest price of

1 **electricity possible; is that true?**

2 A. Well, consistent with reliability and
3 other factors.

4 Q. Right. So whether they think three
5 cents is competitively priced electricity, for economic
6 reasons, they are going to want to two cents, wouldn't
7 they?

8 A. I think they want a viable price with a
9 structure that gives them the ability to acquire
10 renewable resources for all of their energy requirements.

11 Q. But a viable price. All else being
12 equal, if they pay less for electricity, they are going
13 to make more in profits; isn't that true?

14 A. That's probably true of electricity and
15 other inputs as well.

16 Q. So Velvet has an inherent desire in this
17 case to get the lowest price of electricity; is that
18 true?

19 A. The lowest reasonable price consistent
20 with being able to acquire renewable resources and having
21 a reliable supply of power.

22 Q. All else being equal, Velvet has an
23 incentive to get the lowest price of electricity as
24 possible; is that true?

25 A. With the caveats that I attached to my

1 prior answer, that is correct.

2 Q. Do you know -- okay.

3 Let's start with this: Do you have any
4 background or understanding of the market for data
5 centers or the location of data centers?

6 A. Yes.

7 Q. Do you know whether data centers -- did
8 I hear something? I'm sorry.

9 Do you know whether data centers must
10 locate in areas geographically? That is, when a data
11 center looks to locate, they may need to place it in a
12 certain place in the country to meet demand, you know,
13 maybe in the Midwest rather than California?

14 A. Yes, those are considerations.

15 Q. So Velvet may have a need, regardless of
16 electric price to have a data center in the Midwest; is
17 that true?

18 A. Yes. That's true.

19 Q. So in your testimony you give examples,
20 Schedule MEB -- MEB-2.

21 A. Two?

22 Q. Yes. You give six examples. Do you see
23 that?

24 A. I do, yes.

25 Q. Let's look at the ones furthest away.

1 If a data center has an element of needing to be placed
2 where -- for geographic reasons -- Virginia Electric and
3 Power, Number 4, is quite a ways away; is that correct?

4 A. It's probably the most geographically
5 distant one that's mentioned.

6 Q. Okay. So the rate that Virginia
7 provides may not be relevant -- may not be relevant given
8 that the data center might need to be placed in the
9 Midwest; is that true?

10 A. Can we pause for just a second? The
11 purpose of presenting these schedules was not for their
12 price; it was for their price structure. There were
13 questions raised, I think, by Staff about having other
14 utilities that priced based on a market price by a power
15 pool number or something else. These were presented for
16 that purpose, not for the fact that what the level of the
17 price may be.

18 Q. But you are not representing that these
19 are potential competitors for the location of data
20 centers then?

21 A. I didn't bring them in for that purpose,
22 but certainly other -- there are other Midwest locations
23 out here including Omaha, northern Indiana, Wisconsin for
24 Alliant Energy, so half of them roughly are
25 geographically similar.

1 Q. Which three did you give?

2 A. Omaha Public Power District, Northern
3 Indiana Public Service Company, and Alliant Energy in
4 Wisconsin.

5 Q. Okay. Let's go through that then.
6 Northern Indiana, that is a publicly traded electric
7 utility; is that correct?

8 A. It is.

9 Q. And given the name, would you agree that
10 it is located in Indiana?

11 A. That'd be a fair surmise, yes.

12 Q. Okay. Would you agree that given that
13 it is in Indiana that it is located in the MISO RTO?

14 A. Yes.

15 Q. Okay. So they are not in the SPP RTO;
16 is that correct?

17 A. Yeah. That would be correct. Yes.

18 Q. Okay. And would you agree that
19 renewable energy, Kansas, Oklahoma is much more prevalent
20 in SPP than in MISO?

21 A. Yes.

22 Q. Okay. So they might not offer the same
23 opportunities to a data center that a utility in SPP
24 offers; is that correct?

25 A. That's true. These tariffs were not

1 presented for the purpose of demonstrating a level of
2 electricity prices, but simply for the proposition that
3 other utilities offer hourly pricing for large loads.
4 That's all.

5 Q. Okay. Omaha Public Power, that is in
6 Nebraska, isn't it?

7 A. Yes.

8 Q. And Nebraska, Omaha Public Power is not
9 regulated by a Nebraska public utility commission; is
10 that correct?

11 A. Yeah. They don't have a public utility
12 commission statewide. They are subject to local
13 regulation.

14 Q. And would you agree that Nebra-- or
15 Omaha Public Power is not part of SPP?

16 A. I believe that's correct.

17 Q. Okay. So as a utility then, since
18 they're not part of SPP, they may not offer the same
19 access to renewables that a utility in SPP offers; is
20 that correct?

21 A. It may be different, but it may not be
22 significantly different.

23 Q. But they --

24 A. Omaha -- the Omaha rates have been held
25 up by several different data center providers as being an

1 example of what kind of a rate they prefer to have.

2 Q. But since Omaha is not located in SPP,
3 to get renewable energy, they would have to pay a
4 transmission fee that utilities in SPP don't have to pay;
5 is that correct?

6 A. Let me look a second here. If you
7 wanted to sell elsewhere, that would be true. If you
8 want to put it in Omaha, that would not be true.

9 Q. Okay. Alliant Energy, where are they
10 located?

11 A. They are located in Wisconsin.

12 Q. Okay. Given that they are located in
13 Wisconsin, they're also not part of SPP; is that correct?

14 A. That's correct.

15 Q. So of the six utilities that you listed
16 there as examples, none of those are located in SPP; is
17 that correct?

18 A. Correct.

19 Q. So none of those can offer the same
20 access to the prevalent wind energy that you discuss that
21 is located in SPP; is that correct?

22 A. Correct.

23 Q. Okay. The examples that you gave on on
24 MEB-2, you simply just gave the examples of a
25 market-based tariff. Is that a fair generalization?

1 A. Yes.

2 Q. Okay. Did you look at any of those
3 utilities to see if those utilities also offer discount
4 tariffs similar to the PED?

5 A. I know that some do. I didn't
6 particularly look at the utilities for that purpose.

7 Q. So you don't know then how those
8 utilities would treat service when trying to consider
9 both an economic disconnect and a PED? You haven't made
10 that analysis, have you?

11 A. No. I didn't look at that. That wasn't
12 the purpose of presenting these schedules, as I've said
13 before.

14 Q. Okay. So you wouldn't know if those
15 utilities simply say the MKT tariff is out here, get on
16 it, but we're not going to allow you to use a discount as
17 well. You don't know that?

18 A. I don't know that. No.

19 Q. Okay. Are you familiar with the
20 Missouri Energy Efficiency Investment Act known and
21 MEEIA?

22 A. Yes.

23 Q. And are you aware of the fact that
24 certain industrial customers can opt out of MEEIA costs?

25 A. Yes.

1 Q. And those customers, I believe -- were
2 you here when Mr. Ives testified?

3 A. I was.

4 Q. All right. And opt-out customers are
5 only allowed to opt out to the extent they haven't taken
6 an energy efficiency rebate in three years; is that
7 correct?

8 A. That's generally correct. I don't
9 remember the specific details, but what you say is
10 generally correct.

11 Q. So there if you take a rebate, a
12 discount, you're not allowed to opt out for a period of
13 time; is that correct?

14 MS. BELL: I want to object. I think he
15 wants --

16 MR. WOODSMALL: I'm asking his
17 understanding of the opt-out process.

18 MS. BELL: I'm trying to understand. I
19 think we need clarity on Mr. Woodsmall's question. He
20 said if you take a rebate, but I think he needs to
21 clarify what rebate.

22 BY MR. WOODSMALL:

23 Q. If you take something of financial
24 compensation from a utility and its customers, you're not
25 allowed to opt out for a period of three years; is that

1 **correct?**

2 MS. BELL: I'm going to object. I
3 believe that calls for a legal conclusion.

4 MR. WOODSMALL: I'm asking for his
5 understanding. He said that he is familiar with it.

6 JUDGE HATCHER: Ms. Bell, your objection
7 is overruled. We've been allowing our consultants and
8 expert witnesses to testify as to their understanding
9 with the acknowledgement that the commissioners are the
10 ones who make that final determination. Go ahead with
11 your question.

12 By MR. WOODSMALL:

13 **Q. Do you recall the -- let me just ask it**
14 **so the record is clear.**

15 **Is it your understanding that under**
16 **MEEIA if a customer takes a rebate that they are not**
17 **allowed to opt out for three years?**

18 A. There is a restriction on that, I don't
19 know I wouldn't -- if you represent to me it's three
20 years currently I'll accept that. There have been some
21 changes over the last five years and I am not totally up
22 to speed on that, but in general that is correct.

23 **Q. Just so the record is clear, you don't**
24 **debate that if you take a rebate, you can't opt out for a**
25 **certain period of time. You just don't know whether it**

1 is for three years?

2 A. Correct.

3 Q. Are you familiar with the EDRs in other
4 states?

5 A. Some of them.

6 Q. Would you agree with the notion that an
7 EDR is designed to attract customers by giving them a
8 discount for electric service?

9 A. Yes.

10 Q. Okay. And in general, after a certain
11 period of time that customer then goes back to paying the
12 full tariffed rate; is that correct?

13 A. It may.

14 Q. You're aware of EDRs where a customer
15 can stay on perpetually?

16 A. Well, the EDR is made -- they themselves
17 may expire or they -- and they may be alternative EDRs or
18 alternative tariffs that their customer can migrate to.

19 Q. Okay. You filed testimony on the issue
20 of class cost of service many, many times in your career,
21 haven't you?

22 A. I have.

23 Q. And in general, it is your testimony
24 across-the-board that customers should pay cost-based
25 rates to send proper price signals for purposes of

1 equity, those type of reasons; is that correct?

2 A. Yes.

3 Q. Okay. When a customer receives an EDR,
4 are they paying a cost-based rate?

5 A. They are temporarily paying of rate less
6 than truly allocated embedded cost, generally under some
7 program that the legislature had decided is an important
8 thing to have for the state.

9 Q. But given your past testimony, it is a
10 rate that is below cost-based rate; is that correct?

11 A. In the convention sense of fully
12 embedded cost, yes. But we have to recognize that the
13 economic discount rates have a purpose and they been
14 approved by the legislature, typically, and implemented
15 by the Commission and as such are not things that I have
16 ever opposed.

17 Q. Okay. But given all of that, you do
18 acknowledge it is something that is less than a
19 cost-based rate?

20 A. Can be.

21 Q. What was that? You cut out?

22 A. It that can be. If the embedded rates
23 are high enough, then even with the discount you stay may
24 be above embedded cost and soon it will be above
25 incremental costs.

1 Q. Okay. So you are saying if the current
2 embedded rate is above cost of service, the discount may
3 keep the rate still above cost of service?

4 A. It may or it may not, but at least there
5 would be less of a cost of service.

6 Q. What is your --

7 A. I'm sorry.

8 Q. Excuse me.

9 A. I'm going to stop. Go ahead.

10 Q. Have you done class cost of service
11 studies in the Evergy West service area before?

12 A. I have.

13 Q. Do you have any opinion on whether the
14 large power is at, above, or below cost of service?

15 A. The last I looked it was above cost of
16 service.

17 Q. Yeah. Okay. So it is above cost of
18 service. So that it is paying some degree of subsidy is
19 what you are saying?

20 A. Yes.

21 Q. Okay. Do you have any opinion whether
22 that rate when reduced by 40 percent for that PED would
23 be at, above, or below cost of service?

24 A. It'd probably below embedded cost of
25 service, but likely above incremental cost.

1 Q. Well, in fact the PED statute says that
2 it must be above incremental cost; is that true?

3 A. Yes.

4 Q. Okay. So final question: When a
5 customer receives a PED discount, who makes up for that
6 discount?

7 A. My understanding of the process under
8 the statute is that the utility is permitted to recoup
9 that from other customers.

10 Q. Okay. And would you agree that as the
11 size of the customer increases in terms of energy usage,
12 the nominal value of the discount increases as well?

13 A. Depending on the structure of the rate,
14 all other things equal, that would be true.

15 Q. Okay. And so if you have -- the PED
16 allows for use for customers as small as 300 kilowatts.
17 So a nominal value the other customers have to absorb
18 will be much, much more of a data center with usage of
19 100 megawatts than it would be of Joe's Pizza with a
20 usage of 300 KW?

21 A. That would be true. And a data center
22 may also bring a lot more economic benefit than a pizza
23 parlor.

24 Q. No question. But you don't know that,
25 do you?

1 A. Yeah, I do. I've never saw a pizza
2 joint as big as a data center.

3 Q. But you could have -- let's just explore
4 that. You say in your testimony that Velvet will hire or
5 employ 50 individuals; is that correct?

6 A. Yes. That's what they've said.

7 Q. And that is at an average salary of
8 80,000 a year; is that correct?

9 A. Yes.

10 Q. So that is an annual payroll of \$4
11 million; is that correct?

12 A. I think that math would work out.

13 Q. Do you know whether the discounts under
14 the PED could amount to more than \$4 million annually?

15 A. They probably would, but there are a lot
16 more economic benefits than just payroll.

17 Q. Do you know, given your familiarity with
18 the Evergy West service area, whether there are other
19 industrial customers that employ many more than 50
20 employees a year?

21 A. I am sure that there are.

22 Q. Okay. Triumphant Foods, do you know if
23 they employee more than 50?

24 A. Yes.

25 Q. Boehringer in St. Joe?

1 A. Yep.

2 Q. **AG Processing in St. Joe?**

3 A. Yes.

4 Q. **Okay. So there are many, many customers**
5 **that employ more 50 employees a year that are served by**
6 **Evergy but they are not getting the PED; is that correct?**

7 A. That's right because they are not
8 meeting the qualifications that have been set out to
9 qualify to, the conditions --

10 Q. **That is --**

11 A. The conditions they are required to
12 qualify.

13 Q. **That is because they are a legacy**
14 **customer; not a customer coming new into the service**
15 **area?**

16 A. Right. That is the decision that the
17 legislature made instead of offering PED.

18 MR. KEEVIL: I cannot understand him.
19 He's just mumbling.

20 JUDGE HATCHER: Mr. Brubaker, can you
21 get a little closer to the microphone and give us that
22 last answer once again, please.

23 THE WITNESS: I'll try. I think what I
24 said when I concluded the answer by saying -- we're
25 talking about the difference between legacy customers and

1 new customers and I simply said that the legislature had
2 made the decision about the availability of the reduction
3 and credits under the EDR.

4 BY MR. WOODSMALL:

5 Q. So just to tie this all up, there may be
6 -- there are Evergy West customers that employ many, many
7 more employees per year than Velvet. And they won't have
8 access to the MKT and they don't have access to the PED
9 discount; is that correct?

10 A. Not unless they meet the qualifications
11 for the PED, that would be true.

12 Q. And since they are legacy customers,
13 that don't meet the qualifications for PED; is that
14 correct?

15 A. They could if they added -- added load
16 or they added to the economic activity.

17 Q. But for their legacy operations, they
18 don't?

19 A. They do not.

20 MR. WOODSMALL: No further questions.

21 Thank you.

22 JUDGE HATCHER: Thank you,
23 Mr. Woodsmall. I am noting the time is 9:55. We will be
24 breaking at ten o'clock for agenda. I have previously
25 mentioned that we will break until 11:00. I notice that

1 the agenda schedule is fairly light, so let's make that
2 10:00 to 10:45.

3 Mr. Keevil, that gives us five minutes.
4 I'm going to go ahead and let you get started and -- but
5 we will be stopping just before 10:00.

6 MR. KEEVIL: I'm going to try to get
7 down by 10:00, Judge.

8 JUDGE HATCHER: Excellent. Go ahead.

9 MR. KEEVIL: Depending on Mr. Brubaker's
10 answers.

11 CROSS-EXAMINATION BY MR. KEEVIL:

12 Q. Mr. Brubaker, Mr. Fischer and
13 Mr. Woodsmall asked you some questions about your
14 testimony on Page 4, Lines 9 and 10 where you're talking
15 about Velvet proposing a charge for KW to further the
16 expansion of renewable energy. Do you see that, sir?

17 A. I do.

18 Q. Now, my understanding is that that
19 charge will be contained in Velvet's contract with Evergy
20 assuming the tariff gets approved that Velvet will enter
21 into with Evergy. Is that your understanding, it will be
22 in the contract?

23 A. Yes, in the contract.

24 Q. Okay. And each customer under the
25 tariff that qualifies will have to enter into its own

1 special contract with Evergy. Correct?

2 A. That's correct.

3 Q. And those contracts will vary from
4 customer to customer regarding the charges contained
5 therein. Correct?

6 A. I would expect that to be the case.
7 Yes.

8 Q. Thank you. One other line of
9 questioning here is you attached several economic
10 development impact studies to your testimony. Did you
11 prepare any of those impact studies?

12 A. I did not.

13 Q. Did your consulting firm prepare any of
14 those impact studies?

15 A. We did not.

16 MR. KEEVIL: Thank you. No further
17 questions.

18 JUDGE HATCHER: Thank you. That brings
19 us to Mr. Clizer for cross-examination with two minutes
20 to go. Let's go ahead and adjourn now. We will be at
21 recess until 10:45 this morning.

22 (OFF THE RECORD.)

23 JUDGE HATCHER: Let's go back on the
24 record, the hour of recess having expired. Again, the
25 Commission has set this time aside to finish the

1 evidentiary hearing in EO-2022-0061. This is Evergy
2 Missouri West request for a special high-load rate. We
3 were in the middle of examining Velvet Witness Brubaker
4 and it was OPC's cross-examine that we were at.

5 Mr. Clizer, you have the floor.

6 MR. CLIZER: Thank you.

7 CROSS-EXAMINATION BY MR. CLIZER:

8 Q. Just real quick, Mr. Brubaker, you can
9 hear me?

10 A. I can hear you, yes. A little bit
11 faint, but I can hear you.

12 Q. Sorry. I will try and speak up. Okay.
13 I would like to start by discussing very briefly there
14 the RESRAM concern. And I'm going to start by attempting
15 to fairly explain or identify Velvet Tech's concern. So
16 if you will indulge me.

17 As I understand it, Velvet Tech's
18 concern is effectively this: Velvet Tech intends to meet
19 its own energy needs with 100 percent renewables and it
20 feels that if it does that it is also required to pay
21 RESRAM, it is paying twice. It that a fairly accurate
22 assessment?

23 A. At least more than once. I wouldn't say
24 twice, but at least more than once.

25 Q. Okay. Fair enough. I just want to make

1 sure that we were on the page as to that. All right.
2 Let's consider, for example for a moment, a large auto
3 manufacturer like Ford who is being -- who might build a
4 plant in Evergy West service territory. This customer is
5 going to take under the LP or large power rate. All
6 right. As it stands, taking energy on the large power
7 plant this customer, Ford, would be paying a RESRAM.
8 Correct?

9 A. Yes, basically.

10 Q. And if this customer chose on its own to
11 have 100 percent renewable goal similar to Velvet,
12 meaning this customer also strives to meet 100 percent of
13 its load requirement with renewable resources, under your
14 theory this customer would also be paying more than once
15 as you phrase it?

16 A. With just a straight application of the
17 RESRAM, that would be the case.

18 Q. Correct. And that would be true if I
19 exchanged Ford for any other large power customer who
20 might operate in Evergy West territory like AG Power or
21 others?

22 A. Absent some other alternative
23 arrangement, that would be true.

24 Q. And we could even say a residential
25 customer, for example. If I lived in Evergy West service

1 territory, I would be paying the RESRAM for my
2 residential rate assuming that I receive power from
3 Evergy West. Correct?

4 A. You might be, but if you're on the SSP
5 program you would get to subtract your renewable
6 purchases from your metered energy, so you would not be.

7 Q. Fair enough. I'm going to move on. I
8 want to discuss and make sure that it is very clear on
9 the record exactly how Velvet Tech intends to meet its
10 renewable goals. So to start with, 100 percent of the
11 energy, the actual flow of electricity that Velvet Tech
12 intends to use is going to be supplied by Evergy.

13 Correct?

14 A. Yes. Correct.

15 Q. Velvet Tech is not planning to go and
16 build its own generating facility somewhere. Correct?

17 A. They could or they could enter into a
18 PPA with other third parties.

19 Q. Well, let's just talk about just
20 building for just a second. If Velvet Tech were to build
21 its own generating facility that would reduce the amount
22 of retail sales it would need from Evergy. Right?

23 A. It would depend on where the -- where
24 the facilities are located.

25 Q. Okay. Would you agree with me that for

1 the most part Velvet Tech intends to meet its renewable
2 goals by purchasing and retiring renewable energy credits
3 also known as RECs?

4 A. My understanding is that they intend to
5 support the construction of new renewable resources from
6 which they will be receiving the REC equivalents from the
7 output.

8 Q. Fair enough. But to make sure it is
9 clear. Velvet Tech is going to support the building of
10 new renewables which will produce renewable energy
11 credits that Velvet Tech will then acquire and retire in
12 order to meet its goal of claiming that it is receiving
13 100 percent renewables; is that accurate?

14 A. Correct.

15 Q. All right. And, again, just to be
16 clear, if Velvet Tech receives and retires these
17 renewable energy credits, Evergy will not be able to
18 claim renewable energy based on those credits. Correct?

19 A. Right. Because they will have already
20 been claimed against the Velvet load.

21 Q. I think that was all of my questions.
22 Thank you.

23 A. Thank you.

24 JUDGE HATCHER: Thank you, Mr. Clizer.
25 We'll now move to commissioner questions. Are there any

1 questions from any of the commissioners? And again, if
2 you are on the phone, to unmute is *6. All right,
3 hearing none, the Bench does have several questions.

4 QUESTIONS FROM JUDGE HATCHER:

5 Q. First, Mr. Brubaker, I would like to as
6 they say, rehabilitate your testimony on one point.

7 A. I am always happy to have that happen.

8 Q. Thank you for allowing me to use the
9 lawyerly phrase. But what I want to do is turn to your
10 Schedule 2. And that was the one you were discussing
11 earlier. The first page of it is the market-based rate
12 schedules. I want to turn to the second page.

13 A. Okay.

14 Q. You were discussing with Counselor
15 Woodsmall whether those examples of various energy
16 companies were in the MISO or in the SPP RTO. I would
17 refer you to, again, your Schedule 2, Page 2, on the
18 right-hand side, the third bullet down. And then I would
19 re-ask Mr. Woodsmall's question: Is the Omaha Public
20 Power District in the Southwest Power Pool?

21 A. Thank you, Judge. They are in the
22 Southwest Power Pool. That kind of occurred to me over
23 the break and so I was able to verify that. But I
24 appreciate the opportunity to square that away.

25 Q. Thank you, sir. I do have some other

1 questions, though. I apologize. This is probably a
2 better question for Evergy, but it escaped me at the
3 time. How would customers being served on the SIL tariff
4 qualify to move to the MKT tariff if that would be
5 approved?

6 A. I've not looked at the SIL tariff in
7 that regard, Judge, so I can't answer that.

8 Q. That is okay. I was taking a gamble. I
9 do have some other questions. We have been talking a lot
10 about renewable energy. Could you clarify with what
11 certainty the Commission can rely on the statements made
12 by Velvet and Evergy, and yourself about the use of
13 renewable energy by Velvet?

14 A. Velvet has made the representation that
15 they intend to acquire new resources or the output of new
16 resources in SPP. I'm sure that could be put into the
17 contract, if necessary, to ensure that that happens. I
18 will say that it is consistent with my understanding of
19 Velvet's overall approach to the acquisition of
20 electricity is to serve them all with renewables.

21 Q. Okay. And going back to your testimony,
22 in your testimony you mentioned the Nucor case and
23 discussed that. I would ask that you expand on that and
24 could you give the Commission and the record a little bit
25 more flavor about what Nucor is and what that case was

1 **about?**

2 A. Okay. I will preface this by saying I
3 was not a participant in that case, but I've read a lot
4 of the documents, so my answer is based on that limited
5 understanding. Nucor is basically a -- we call a melt
6 shop. They have electric arc furnaces and processing
7 facilities to produce and -- produce steel and to produce
8 finished steel products. My understanding is that they
9 are a customer of Evergy Metro and a commission-approved
10 contract for them about -- I think a little over a year
11 ago.

12 They have -- the rates are not, I
13 understand with Evergy, is that Evergy will acquire
14 resources. And resources I think in order to supply that
15 load, the energy portion of that load and will acquire
16 capacity resources as well. If my memory is correct,
17 Nucor is explicitly exempted from the RESRAM charges on
18 the basis of them having renewable energy. Those are the
19 highlights as I recall them, Judge. If there are other
20 things you'd like me to comment on I'd appreciate a
21 question to respond.

22 **Q. Thank you. I'd like to move on. I am**
23 **looking at Page 8 of your surrebuttal testimony. And you**
24 **state that the intent of the tariff is for the customer**
25 **to pay all costs including additional costs. My question**

1 is what evidence or dialogue did you have with Evergy or
2 did Velvet have with Evergy to base that statement on?
3 I am looking at Lines 19 through 21 on Page 8.

4 A. Yes. I think that is part of Velvet's
5 support statement and certainly part of Evergy's
6 testimony in this case, was that they will be
7 self-supporting in that respect. I can't immediately out
8 of the air point you to a specific reference.

9 Q. So you're basing your statement in your
10 testimony on your reading of the submitted verbiage in
11 the tariff and also on Evergy's and Velvet's prior
12 statements and testimony?

13 A. Yes. Yes, sir.

14 Q. All right. And then I wanted to then
15 talk about voltage levels. Could you explain how -- how
16 do the costs differ at different voltage levels? I'm
17 referencing Page 9 of your testimony, Lines 18 through
18 20?

19 A. Certainly. The highest level on the
20 system is what is called the transmission level and
21 that's generally a 161,000 volts or up. That's where the
22 generating facilities and the interconnection points
23 typically are. So if a customer takes service at the
24 transmission level, then all of the downstream, the lower
25 voltage facilities, are not necessary to provide service.

1 So if Velvet takes service at the transmission level,
2 which is what they are set up to do, they will pay for
3 the high-voltage transmission of Evergy and they will pay
4 the contract cost or construction cost with whatever
5 generation is needed to be provided for their use.

6 Going down from that there's a
7 subtransmission level, which basically is after you
8 transform the voltage power from a transmission level to
9 a lower level. I think generally 34 kV. And to get
10 there you have to have additional transformation
11 facilities and probably some transmission wires, we can
12 call it that. And then if you go down again to primary
13 or secondary level, you incur additional transformer
14 cost, additional wires cost to get the power to customers
15 at that lower level.

16 **Q. Okay.**

17 A. Velvet is intending -- Velvet is
18 constructing its own substation from 69 kV down to where
19 they won't receive service and so all those costs are
20 voided by Evergy.

21 JUDGE HATCHER: Okay. Thank you. I
22 would like to note that Evergy witness Jill McCarthy has
23 signed on to the WebEx. My intention is to take her
24 testimony next after we finish with Mr. Brubaker. And I
25 am basing that on what I believe will be the offer of OPC

1 and Staff to go ahead and delay their witnesses to allow
2 Ms. McCarthy to testify as their witnesses do, of course,
3 work in the Governor Office Building. I see nods of
4 assent. Thank you both for assenting to that.

5 BY JUDGE HATCHER:

6 Q. Mr. Brubaker, we are down to the last
7 couple of questions for you. And these are going to be
8 the same questions that I asked of Evergy about the
9 proposed Schedule 1 tariff, the competing nonunanimous
10 stipulations. Do you have those in front of you?

11 A. Yes, sir, I do.

12 Q. I am going to try and paraphrase those
13 questions. But looking at the OPC, Staff and MECG
14 Schedule 1, what portions does Velvet oppose and would
15 you explain why those aren't appropriate?

16 A. Thank you, Judge. I would preface it by
17 saying I thought that Mr. Lutz's testimony yesterday
18 highlighted a lot of that, so I will focus on the major
19 items. First of all, there is a limitation on the use of
20 the economic development rider, the PDR, which would
21 preclude a customer from taking the MKT tariff if the
22 customer had taken a economic development type discount
23 in the prior five years. We would object to that. That
24 is an integral part the arrangement between Velvet and
25 Evergy. That is a major piece of the overall structure

1 of the deal, so to speak. So that is considered to be
2 critical.

3 In terms of the hold harmless provision,
4 I think a couple of things. First of all, what it says
5 is that non-participating customers will be held harmless
6 and that is fine, but it doesn't say who makes up the
7 difference whether it is the utility or the customer or a
8 combination of the two. That's left open and Velvet
9 would prefer to see that tied down a little bit more as
10 is the case in the alternative, if I may, version, of
11 Schedule 1 or the tariff.

12 And then the RESRAM provisions are a
13 another major item where we would wind up paying more
14 than once for our renewable requirements. Those are the
15 main items, the high points of that. There are other
16 language things here and there that are just supportive,
17 but not as critical.

18 Q. Thank you. Thank you, Mr. Brubaker.
19 I'm going to just list the other objections from Mr. Lutz
20 and Mr. Ives and I'm just going to ask at the end if you
21 agree with those just so for the record we have your
22 objection.

23 A. Sure.

24 Q. They also objected to -- I'm sorry.
25 They requested the substation voltage offering. They

1 suggested the change on Page 3 under term to both be 90
2 days to correct the energy use and also to give notice to
3 switch rates, the hold harmless objection language and
4 substitution language, and also the last sentence on sub
5 five regarding securitization, and the RESRAM. Do you
6 join with Mr. Lutz and Mr. Ives' objections to those
7 items?

8 A. Yes, I do. And if I could take the
9 liberty and go back and expand on my prior answer on the
10 hold harmless.

11 Q. Yes.

12 A. The other aspect of that that is
13 troublesome is that the OPC, Staff, MECG version would
14 not allow other factors to come into play to be evaluated
15 in the Commission's consideration of whether or not we
16 have a hold harmless provision. So with that addition, I
17 would -- I don't agree with the expression of Mr. Lutz on
18 the objections of Evergy.

19 Q. Thank you. I know that was a summary
20 question. Is there any other -- are there any other
21 provisions that you think should be inserted that we
22 haven't discussed or should be removed that we haven't
23 discussed in either version? Either the OPC/Staff
24 version or the Evergy/Velvet version?

25 A. We are comfortable and support the

1 Everygy/Velvet version of the tariff, Judge.

2 Q. Okay. Thank you.

3 JUDGE HATCHER: That concludes my
4 questions for Mr. Brubaker.

5 That will they start us back to recross
6 and that will go Everygy, Google, MECG, Staff, and OPC.
7 The same order. So Everygy, your witness.

8 MR. FISCHER: Yes, Judge. Just very
9 briefly.

10 RE CROSS EXAMINATION BY MR. FISCHER:

11 Q. Mr. Brubaker, just to clarify one point.
12 The judge asked you about the Nucor case. Is it your
13 understanding that that facility is located in Sedalia,
14 Missouri and that would actually be in Everygy West
15 territory?

16 A. That is my understanding, yes.

17 MR. FISCHER: That's all I have, Judge.
18 Thank you.

19 JUDGE HATCHER: Thank you, sir. We'll
20 move on to Google. Mr. Mills, your witness.

21 MR. MILLS: I have no questions, Your
22 Honor. Thank you.

23 JUDGE HATCHER: Thank you. And that
24 will move us to Mr. Woodsmall. MECG, your witness.

25 MR. WOODSMALL: Just briefly.

1 RE CROSS EXAMINATION BY MR. WOODSMALL:

2 Q. Going back to the question from
3 Mr. Fischer, when you said previously that Nucor was
4 located in Evergy Metro service area, did you misspeak or
5 did you truly believe it was in Evergy Metro?

6 A. I misspoke.

7 Q. Okay.

8 A. They are with Evergy West.

9 Q. Okay. Turning to your Schedule MEB-2,
10 do you still have that?

11 A. Nearby, yes.

12 Q. Nearby or you do?

13 A. I'm ready.

14 Q. Okay. Would you turn to -- I guess it's
15 -- it says Page 1 of 4. It is the part about OPPD. Do
16 you see that?

17 A. Yes.

18 Q. The judge pointed out the third bullet.
19 Would you read the second bullet on that Page 1 of 4?

20 A. The one right above the reference to
21 SPP? Is that what you're referencing?

22 Q. Yes?

23 A. Says the customer must own or acquire
24 their own substation.

25 Q. So that is consistent with the provision

1 in the OPC, Staff, MECG provision, that the customer own
2 its own substation; is that correct?

3 A. I think that is correct. Yes.

4 Q. Okay. And turning to the next page,
5 Page 2 of 4, the second paragraph, do you see also that
6 third line it says -- second to third line, where the
7 customer owns its own electric substation for the
8 delivery. Do you see that?

9 A. Go ahead and just read to me, if you
10 would. I can't see it right away.

11 Q. It says -- the second paragraph under
12 applicability, it says, applicability blah blah blah.

13 A. Yeah. Okay.

14 Q. Where the customer owns its own electric
15 substation for the delivery of service?

16 A. I got it.

17 Q. And that is also consistent with the
18 provision in the Staff, OPC, MECG tariff which would
19 require the MKT customer to its own substation; is that
20 correct?

21 A. Yes. That's correct.

22 Q. Turning to the next page, Page 3 of 4,
23 the second to last paragraph. It is under administrative
24 where it says, OPPD assumes no liability for
25 customer-owned facilities. Would you agree that since

1 the customer is required to own its own substation under
2 the Staff, OPC, MEGC tariff that this provision would be
3 consistent as well?

4 A. Probably, although contractually it can
5 always agree to pay a fee to have maintenance conducted
6 by the utility or other replacement facilities. Those
7 would be just subsequent things that probably would be in
8 any contract.

9 Q. But when a customer owns its own
10 facilities, they are responsible for all operation and
11 maintenance costs, aren't they?

12 A. They are, but they can contract with the
13 local utility or a third party for some of those
14 services.

15 Q. Okay. And do you see anything in this
16 tariff by which such a customer has contracted with OPPD
17 to do the operation or maintenance cost?

18 A. No. I wouldn't expect to see it in the
19 tariff. Those would be -- those just happen as a
20 business arrangements among parties.

21 Q. But the arrangements can't be contrary
22 to the tariff, can they?

23 A. It wouldn't be contrary to the tariff.

24 Q. Okay.

25 MR. WOODSMALL: I don't believe I have

1 any other questions. Thank you.

2 JUDGE HATCHER: Thank you,
3 Mr. Woodsmall. That takes us to Mr. Keevil.

4 MR. KEEVIL: No questions, Judge.

5 JUDGE HATCHER: Thank you, sir. That
6 takes us to Mr. Clizer.

7 MR. CLIZER: Yes, Your Honor.

8 RE-CROSS EXAMINATION BY MR. CLIZER:

9 Q. Good afternoon, again. Or good morning?
10 Sorry, Mr. Brubaker.

11 A. Late morning.

12 Q. You received a question from the Bench
13 regarding the hold harmless agreement, and you went back
14 and clarified your response after-the-fact. Do you
15 recall that?

16 A. I do, yes.

17 Q. I want to walk through this to make sure
18 I understand how this would work. As I understand the
19 tariff -- and this is for both proposals -- the tariff
20 would set out a fixed rate for service except for the
21 actual energy charge, which should be pegged to SPP
22 prices.

23 A. Correct.

24 Q. Do you concur with that assessment?

25 A. Yes.

1 Q. I'm sorry. There was a bit of a
2 technical difficulty. Can you repeat your answer?

3 A. I'm sorry. I'm shuffling my papers.
4 Yes, I agree with that.

5 Q. In the event that there was a shortfall
6 in revenue because the contract did not cover the full
7 cost to serve Velvet Tech how would Evergy recover that
8 -- any part of that shortfall from Velvet Tech given the
9 fact that it is a fixed-rate contract?

10 A. Well, I think that is outside -- I mean,
11 that's part of it, but the provision that Evergy and
12 Velvet have set forth has a provision for that. If the
13 Commission found that there was a deficiency, then that
14 could be -- I think way ours is, it's a combination of
15 the Company and the customer.

16 Q. Right. You're referring to what you
17 have put forward -- sorry -- what Velvet Tech/Evergy
18 tariff has put forward?

19 A. Yes.

20 Q. I'm asking if we removed that line,
21 right, and we have just a plain old hold harmless, how
22 does Evergy collect any amount of revenue shortfall from
23 Velvet Tech given that Velvet Tech has a fixed-rate
24 contract?

25 A. I think the way we look at it the

1 Commission has supervision over these contracts and would
2 actually be making the determination about that.

3 Q. Let me posit this way.

4 A. The mechanism is -- go ahead.

5 Q. I would submit to you that with a
6 fixed-rate contract any revenue deficiency or shortfall
7 that occurred with a true hold harmless provision would
8 have to be borne exclusively by Evergy. Do you agree
9 with that?

10 A. Yeah, I think I would agree with that.

11 Q. And if that is the case, then the true
12 hold harmless provision, as I am referring to it, would
13 have no ill effects on Velvet Tech, would it?

14 A. Not in the short run, at least.

15 Q. What do you mean by not in the short
16 run?

17 A. Well, sometimes there will be renewals
18 of the contract and it's usually -- things that went
19 array in the first term of the contract tend to get
20 addressed in the second term.

21 Q. So your fear, effectively, is that
22 without a -- I don't want to use the term true hold
23 harmless just because I feel like that is a little too
24 argumentative. I'm trying to think of a better way to
25 phrase it. Without the OPC, MECG, Staff version of the

1 hold harmless, your fear is that Velvet Tech would
2 ultimately have to pay a higher price in contract
3 negotiations if there was some kind of revenue
4 deficiency; is that accurate?

5 A. Yes.

6 Q. So at the end of the day, Velvet Tech's
7 opposition to the hold harmless agreement comes down to
8 its fear of having to pay more money?

9 A. Well, I think if the Commission found
10 that there was a need for some compensation, that's why
11 the version of the tariff that we've offered allows for
12 that for sharing between the two parties, and hold other
13 customers harmless.

14 MR. CLIZER: I think I'm good there.
15 Thank you very much.

16 I have no further questions.

17 THE WITNESS: Thank you.

18 JUDGE HATCHER: Thank you, Mr. Clizer.
19 That takes us to redirect. Counselor Bell, your witness.

20 MS. BELL: Thank you, Your Honor.

21 REDIRECT EXAMINATION BY MS. BELL:

22 Q. Let's start with a --

23 JUDGE HATCHER: Ms. Bell?

24 MS. BELL: Yes?

25 JUDGE HATCHER: You might have a speaker

1 on in your office that you will need to turn off. We're
2 getting a little bit of an echo. I'm sorry. Go ahead.

3 MS. BELL: Is this better? All right.

4 BY MS. BELL:

5 Q. Okay. So we're going to start with the
6 questions of OPC regarding customer concerns with the OPC
7 nonunanimous stipulation. If the Commission were to take
8 OPC's Schedule 1, would customers in general, customers
9 -- a future MKT customer find the option more or less
10 attractive?

11 A. I think it would find it less
12 attractive.

13 Q. So there's no -- the elimination of the
14 PED discount makes Schedule MKT more or less attractive
15 to a prospective MKT customer?

16 A. It certainly makes it less attractive.
17 Sorry. Yes. It certainly makes it less attractive.

18 Q. And to try to clarify that last
19 conversation you were having with Mr. Clizer, with
20 respect to Velvet, they have a fixed-rate contract?
21 That's your understanding?

22 A. Correct.

23 Q. But each contract would be unique to the
24 customer. Correct?

25 A. Correct.

1 **Q. So for future customers, would OPC's**
2 **hold harmless provision make Schedule MKT more attractive**
3 **or less attractive for future customers?**

4 A. It would make it less attractive. In
5 fact, Mr. Ives said if that were adopted they wouldn't
6 offer the tariff.

7 **Q. And then with respect to the OPC's**
8 **provision on the RESRAM, would that make Schedule MKT**
9 **more or less attractive to a prospective MKT customer?**

10 MR. KEEVIL: I'm going to object, Judge.
11 This is all calling for speculation. We're talking about
12 some customer that Mr. Brubaker doesn't even know who the
13 heck it is and asking how that customer is going to view
14 the various tariff provisions. That's just pure
15 speculation.

16 JUDGE HATCHER: I'm going to allow it.
17 Go ahead.

18 THE WITNESS: In general, that would
19 make the tariff less attractive.

20 BY MS. BELL:

21 **Q. And Mr. Brubaker, can you give the**
22 **Commission a brief understanding of who you typically**
23 **have represented in your PSC history?**

24 A. Well, we have represented a lot of
25 customers, folks in the Kansas City area and Sedalia

1 area, as well St. Louis, customers of previously KCP&L,
2 Ameren.

3 Q. And you typically deal with large
4 industrial or commercial customers?

5 A. Yeah. We typically deal with large
6 customers many who are industrial, some are governmental.
7 Others may be commercial type customers.

8 Q. You had mentioned the Solar Subscription
9 Program offered by Evergy?

10 A. Yes.

11 Q. Can you explain how that SSP program
12 works?

13 A. Yes. Under the SSP program the utility
14 constructs or requires somehow a solar facility and then
15 retail customers are allowed to contract for the output
16 or shares of the output of that facility.

17 MR. CLIZER: I'm sorry, Your Honor.

18 THE WITNESS: And return by paying --

19 MR. CLIZER: When was subscription
20 programs --

21 THE WITNESS: And then when it comes to
22 the billing --

23 MR. KEEVIL: He mentioned it.

24 MR. CLIZER: Okay.

25 THE WITNESS. -- accounting the amount

1 of number of kilowatt hours from the solar facilities
2 that are under contract to the customer gets subtracted
3 from the customer's metered energy so that the solar
4 energy is netted from that total energy requirements
5 which then exempts that part RESRAM.

6 BY MS. BELL:

7 Q. Does that mechanism also allow the
8 kilowatt hours for the customer covered by renewable
9 energy to be exempted from the electric utility's sales?

10 A. Yes.

11 Q. Okay. You were asked about Velvet's
12 commitment on renewables. Do you recall that
13 conversation?

14 A. I do.

15 Q. Okay. Will Velvet's need and renewal
16 commitment result in the development of new renewable
17 energy on SPP?

18 A. Yes. Velvet is committed to support the
19 construction of new facilities in SPP.

20 Q. And under the provision proposed in
21 Everage and Velvet's stipulation, will Velvet be required
22 to document that that new renewable energy has been --
23 well, just document the renewable energy?

24 A. Yes, and to provide evidence that the
25 renewable energy certificates associated with that

1 generation has been retired on its behalf.

2 Q. With the conversation you had about
3 other customers, like Ford for example, with Mr. Clizer,
4 would they have any commitment to add new renewable
5 energy to the grid?

6 A. Not under the construct that was in
7 question, they would not.

8 Q. Let's go back to the Solar Subscription
9 Program. Functionally, how is the application of SSP
10 different from what Evergy and Velvet are asking for
11 here?

12 A. It's essentially the same thing.

13 Q. And are you aware if the Commission has
14 granted variances related to RES compliance before?

15 A. I'm aware. Yes, they have.

16 Q. I want to turn to some of the questions
17 that Mr. Woodsmall was asking you. Are you aware if any
18 data centers operate in Iowa?

19 A. Many, yes.

20 Q. And does Iowa have a large --

21 MR. WOODSMALL: Your Honor, I object.
22 When I tried to ask questions about data centers and
23 competitors, I was shut down. And now -- I mean, I don't
24 have a problem with her asking these questions if I can
25 go back and ask my questions. But she objected to all

1 those and now she is coming back to it.

2 MS. BELL: Your Honor, the only question
3 I objected to was the identification of competitors.
4 Mr. Brubaker testified that the availability of
5 competitive options in other states is -- was what his
6 testimony was saying. And then Mr. Woodsmall suggested
7 that -- Mr. Woodsmall suggested and Mr. Brubaker
8 testified about certain options that were not in SPP.

9 MR. WOODSMALL: But that was all he
10 testified on. When I started to ask questions about
11 competitors and data centers and those type of things, I
12 was shut down. And so I even mentioned to try draw an
13 analogy when we did cases for aluminum smelters, we
14 looked at competitive aluminum smelters. And I was shut
15 down with any questions regarding the potential rates of
16 data centers.

17 MR. MILLS: Judge, if I may. This is
18 Mr. Mills. I believe that the premise of Mr. Woodsmall's
19 question was the phrase "competitively priced," and it
20 was clear from Mr. Brubaker's answer that he was -- when
21 he was using the term "competitively" that term was
22 modifying price as in the price offered by suppliers, not
23 the price obtained by competitors to data centers. I
24 believe that is the reason why the questions as to
25 competitors of Velvet were not allowed because it wasn't

1 germane to Mr. Brubaker's testimony about competitive
2 alternatives from supplier.

3 MR. WOODSMALL: But that is exactly
4 where she's going now. She's asking about the rates of
5 competitors in Iowa.

6 MS. BELL: No. That's not where I'm
7 going, Your Honor. If I'm --

8 JUDGE HATCHER: Ms. Bell?

9 MS. BELL: If I --

10 JUDGE HATCHER: Ms. Bell?

11 Let's let her get there, Mr. Woodsmall.
12 Your objection is overruled.

13 Ms. Bell, please continue.

14 BY MS. BELL:

15 Q. Does Iowa have a large amount of wind
16 generation?

17 A. It does, yes.

18 Q. Would you agree that Iowa is a good
19 location for wind development?

20 A. It is. It's a very, very wind rich if I
21 could use that term. There are windmills all over the
22 place. In fact, Mid-American Energy in its standard
23 portfolio already can serve its retail load with a
24 profile that is over 60 percent renewable energy and
25 going to 100 percent if they continue their buildout at

1 wind facilities.

2 Q. So if Velvet could not locate in
3 Missouri, would you believe Iowa could be another site
4 for their evaluation?

5 A. It certainly could be, Mid-American
6 allows all of their customers to claim the renewable
7 attributes of energy facilities for their own account.
8 And that's a very attraction proposition.

9 Q. And if Velvet located in Iowa instead of
10 Missouri, Missouri would lose out on the economic
11 benefits provided by Velvet?

12 A. They would, yes.

13 MS. BELL: Thank you. No more
14 questions.

15 JUDGE HATCHER: Thank you, Mr. Brubaker.
16 You are excused. You're free to continue to participate
17 by watching the hearing in the WebEx.

18 As I stated earlier, we going to take
19 Ms. McCarthy and she is available on the WebEx.

20 Ms. McCarthy, if would go ahead and
21 speak up and I will swear you in.

22 THE WITNESS: Yes, this is Jill
23 McCarthy.

24 (Witness sworn.)

25 JUDGE HATCHER: Thank you, ma'am.

1 Mr. Fischer, your witness.

2 MR. STEINER: Judge, I will be doing
3 this witness.

4 JILL MCCARTHY, having been first duly sworn testifies as
5 follows:

6 DIRECT EXAMINATION BY MR. STEINER:

7 Q. Will you state your name for the record?

8 A. Jill McCarthy.

9 Q. And where do you work and what's your
10 position there?

11 A. I work at the Kansas City Area
12 Development Council. It's also known as KCADC. My
13 position there is senior vice president of corporate
14 attraction.

15 Q. Did you cause to be filed direct
16 testimony in this case, which has been premarked as
17 Exhibit 4?

18 A. Yes.

19 Q. Do you have any changes or corrections
20 to that testimony?

21 A. I do, actually. I have two. One is --
22 there is a typo on Page 13, Line 6. It -- the word
23 "student" should be "study."

24 Q. Okay.

25 A. And the other is on Page 15, Line 21. I

1 would like to change the word "has" to "will have."

2 Q. Okay. With those two corrections, is
3 this Exhibit 4 true and correct to the best of your
4 knowledge and belief?

5 A. Yes.

6 MR. STEINER: Judge, I would offer at
7 this time Exhibit 4 into the record.

8 (WHEREIN; Everyg Exhibit 4 was offered
9 into evidence.)

10 JUDGE HATCHER: Thank you. Are there
11 any objections to the admission of Exhibit 4, the
12 testimony of Ms. Jill L. McCarthy? No objections, it is
13 so admitted.

14 (WHEREIN; Exhibit 4 was received into
15 evidence.)

16 JUDGE HATCHER: Please go ahead.

17 MR. STEINER: I would tender the witness
18 for cross-examination at this time.

19 JUDGE HATCHER: Thank you, Mr. Steiner.
20 We first go to Counselor Bell with
21 Velvet, please.

22 MS. BELL: No questions, Your Honor.

23 JUDGE HATCHER: Thank you. Next we go
24 to Mr. Mills with Google.

25 MR. MILLS: Just very briefly.

1 CROSS-EXAMINATION BY MR. MILLS:

2 Q. At Pages 12 to 14, roughly, in your
3 testimony you talk about some of the benefits that would
4 accrue to Missouri and the area from Velvet's project.
5 Are you familiar with that part of your testimony?

6 A. Yes.

7 Q. Would similar benefits accrued to the
8 state and to the region from another similar data center?

9 A. Are you talking about a future like data
10 center?

11 Q. Yes?

12 A. Yes. Yes.

13 MR. MILLS: That's all I have. Thank
14 you.

15 THE WITNESS: Thank you.

16 JUDGE HATCHER: Thank you. And that
17 takes us to Mr. Woodsmall.

18 CROSS-EXAMINATION BY MR. WOODSMALL:

19 Q. Good morning. Can you hear me?

20 A. Yes. Thank you.

21 Q. Can you give me in just a couple
22 sentences what the purpose of your testimony is?

23 A. I would say the purpose of my
24 testimony is to speak in support of Velvet Technology
25 Services and their hyper scale data center development in

1 the Kansas City region. That may be too --

2 Q. And is that because -- is that because
3 you believe it will enhance economic development in the
4 area?

5 A. I do believe it will enhance economic
6 development in the area.

7 Q. And you mention in your testimony that
8 it will employ 50 jobs; is that correct?

9 A. I think that they have committed to --
10 let me look at my paper --

11 Q. Page 15, Line --

12 A. Yes. So a minimum of 50, yes. I think
13 they're more likely to be 75, but I will leave that to
14 Velvet.

15 Q. Okay. Let's use 75. In the area that
16 your group represents, do you believe that 75 is a large
17 number of customers or a large number of employees?

18 A. I would say every operation has a
19 different job and capital investment impact. 75 jobs
20 with 81,000 average wage is a great benefit to the area.
21 That is 75 jobs that weren't there before. The other
22 piece of this would be the construction jobs that are
23 hired in the region and are kept active for multiple
24 years. It takes a long time to buildout a hyper scale
25 campus.

1 Q. Let me ask it this way: If this brought
2 in 75 jobs at \$80,000 a job, but in the process you lost
3 a customer that has 500 jobs at \$80,000 a job, you would
4 be more hesitant with your recommendation; is that true?

5 MR. STEINER: I'm going to object. This
6 assumes facts that are not in evidence.

7 MR. WOODSMALL: It's a hypothetical.

8 JUDGE HATCHER: Yeah. I'm going to go
9 ahead and allow it.

10 THE WITNESS: So if I understand what
11 you're saying is that if I support a project with 75 jobs
12 at 81,000 and we have another project with 500 at 81,000,
13 I see no reason why wouldn't support both projects. One
14 would not be a cause and effect to lose one. The
15 projects that we work with our competition is other
16 markets, not other projects in our region. And so I
17 would say they're not connected in any way.

18 BY MR. WOODSMALL:

19 Q. You don't see any connection? Well,
20 let's go through that. Do you, as part of your job,
21 consider the importance of affordable electric rates to
22 employers in the area?

23 A. Yes.

24 Q. And how do you go about doing -- how do
25 you go about considering those rates? What documents?

1 **What do you consult in order to make that determination?**

2 A. We engage with the business development
3 team at Evergy to speak specifically to rates. Rates are
4 also based on use, on load, you know, all of the factors
5 that come in. An office project has a different rate
6 than a car manufacturer and automotive supplier. So that
7 is not my core business. We look to always engage the
8 appropriate party to speak to their input on a project.
9 It takes a lot of different players.

10 **Q. So your primary source is to go straight**
11 **to the utility to ask them if their rates are affordable?**

12 A. What we would be asking is what would
13 the rate be based on the use, load, number of hours
14 worked by a certain user.

15 **Q. But you don't know independently if**
16 **Evergy's rates are competitive with other utilities in**
17 **the Midwest?**

18 A. I can only speak from my own experience
19 on that in Economic Development, not as an Evergy
20 employee, that over the years that I have worked in
21 Economic Development and the projects that I have worked
22 on, for those where energy has been a big driver, if we
23 weren't where we needed to be, we -- that was a factor in
24 losing the project. And if we were where we needed to
25 be, it was a factor in winning.

1 Q. So do you know if the Kansas City area
2 electric rates are competitive with those in Ameren
3 service area?

4 A. I can't speak to that specifically. I
5 can make an assu--

6 Q. Do you know whether the rates in the
7 Energys service area are competitive with those
8 Mid-American in Iowa?

9 A. Again, I cannot speak to that
10 specifically.

11 Q. Are you aware whether the electric rates
12 in Kansas City are competitive with those with Oklahoma
13 Gas and Electric in Oklahoma?

14 A. I cannot comment specifically on that.

15 Q. Does your organization ever get involved
16 in Public Service Commission decisions like the current
17 Energys rate cases seeking to maintain competitive
18 electric rates?

19 A. I can't say one way or another. I know
20 I personally have not testified on behalf, but I cannot
21 speak to whether or not another member of team has in the
22 past.

23 Q. How long have you been with this group?

24 A. Twenty-three years.

25 Q. So in 23 years you are not aware of any

1 instance where this group has intervened in a Public
2 Service Commission case seeking to inquire about the
3 competitiveness of Evergy rates?

4 A. I don't have one that I comes to mind.
5 That doesn't mean that it hasn't happened in the past. I
6 just cannot -- I'm sorry. I can't recall.

7 Q. Do you believe that large customers
8 would prefer lower electric rates than higher electric
9 rates?

10 A. Yes, sir.

11 Q. Would you agree that large employers may
12 make decisions about moving their facility or relocating
13 their production because they are seeking lower electric
14 rates?

15 A. Yes, I believe that could be a factor.

16 Q. Do you believe -- do you believe that --
17 have you heard the statements in this case of customers
18 -- every customer in this case saying they're worried
19 about these costs being shifted to all other customers?

20 MR. STEINER: So let me just interrupt.
21 What is the question, David?

22 MR. WOODSMALL: Whether she is aware
23 that all of the customers in this case are sharing
24 concerns that costs will be shifted from MKT customers to
25 all other customers?

1 THE WITNESS: I can't speak to that. I
2 have no knowledge of that.

3 BY MR. WOODSMALL:

4 Q. You haven't been sitting in this hearing
5 listing to those concerns?

6 A. I've just been on for about 35 minutes.

7 Q. Would you be worried if large --
8 millions of dollars of cost are be shifted from MKT
9 customers to all other customers?

10 MS. BELL: I am going to object. That
11 question assumes facts not in evidence.

12 MR. WOODSMALL: I'm just asking if she
13 would be worried if that happened.

14 JUDGE HATCHER: I will overrule the
15 objection and allow this tentatively, and hopefully we're
16 at the closing end of this.

17 Go ahead, Ms. McCarthy on the
18 hypothetical.

19 THE WITNESS: On the hypothetical, if
20 that was something that was happening, then yes, I would
21 find that concerning. I'm -- I have no knowledge or
22 indication that that would happen in this case.

23 BY MR. WOODSMALL:

24 Q. Did you make any inquiry, conduct any
25 study, talk to anybody other than Evergy about that

1 possibility?

2 A. I have not.

3 Q. Did you read any of the testimony of any
4 of the customer groups in this case?

5 A. I glanced through one testimony that was
6 provided. I would have to go to see. I'm sorry. I
7 don't remember what it was.

8 MR. STEINER: I think it was Witness
9 Marke.

10 THE WITNESS: That's correct.

11 BY MR. WOODSMALL:

12 Q. Did you receive the testimony of witness
13 Marke?

14 A. I did.

15 Q. Did you understand that testimony?

16 A. In all honesty, I have been out with
17 another client on another project the last two days and
18 so I glanced through it very rapidly. I did not read it
19 in total.

20 Q. So did you understand that you had
21 opportunity to file surrebuttal to respond to his
22 testimony?

23 A. I'm sorry. I don't really know what
24 you're asking me.

25 Q. Mr. Marke filed a round of testimony and

1 **there was a subsequent round of testimony to address**
2 **that. Were you aware you could file testimony to respond**
3 **to Mr. Marke?**

4 A. Not really.

5 Q. **Did you find anything in the testimony**
6 **of his that you read that you had reason to question?**

7 A. So I would say for the very little that
8 I was able to read, because again, I been out of town the
9 last two days with a client, we likely disagree on the
10 process of economic development and the impact of
11 economic development.

12 Q. **But did you agree with Mr. Marke's**
13 **concerns that MKT customers would cause a negative impact**
14 **on other customers?**

15 MR. STEINER: I'm going to object. I
16 don't think she believed she read that.

17 MR. WOODSMALL: Okay. If she didn't
18 read that then, just tell me you didn't read that.

19 THE WITNESS: I didn't read that part.

20 BY MR. WOODSMALL:

21 Q. **Okay. Are you aware that in several**
22 **recent Evergy rate cases industrial customers have made**
23 **the claim that Evergy's industrial rate is not**
24 **competitive with other utilities?**

25 A. I've heard that. I've heard it about

1 electricity. I've heard it about water in different
2 markets. Yes. I mean, we're never going to be
3 competitive with every other market.

4 Q. That's disconcerting. Does that bother
5 you?

6 A. I think that what we like to do is to
7 make sure that all of our partners are as competitive as
8 can be and to really pull in new companies, capital
9 investments, jobs, payroll, that is good for the economy,
10 good for the diversification of the economy, good for
11 jobs that are being offered to our residents.

12 Q. Well, let's boil it down to a
13 hypothetical. Do you know who Ford Motor Company is?

14 A. Yes, sir.

15 Q. Okay. Let's just say they were in the
16 Evergy West service area to clean this up. Would, you
17 agree that Ford Motor Company employees many more than 50
18 employees -- 75 employees that Velvet will employ?

19 A. I do.

20 Q. Would you agree that Ford Motor Company
21 is always making decisions about where to increase or
22 decrease production based upon cost?

23 A. Yes, sir.

24 Q. And if I were to tell -- would you agree
25 that Ford Motor Company is very -- is a very electric

1 **intensive industry?**

2 A. I would.

3 **Q. And if I ever tell you just as a**
4 **hypothetical, that MKT customers were shifting costs on**
5 **other customers like Ford and if that they respond to**
6 **that by shifting production and jobs, would that concern**
7 **you?**

8 A. It would --

9 MR. STEINER: This is a hypothetical.
10 Right?

11 THE WITNESS: Yes.

12 MR. WOODSMALL: Yes.

13 BY MR. WOODSMALL:

14 **Q. It would concern you?**

15 A. It would, but I had no knowledge -- I
16 have no knowledge of such an event occurring.

17 **Q. But you've never gone out to study it or**
18 **consider it or talk to Ford or talk to industrial**
19 **customers or talk to anybody but Evergy?**

20 A. That's correct.

21 MR. WOODSMALL: I have no further
22 questions. If you need help with this, call me. I'm
23 always around to help you with industrial concerns.

24 JUDGE HATCHER: Mr. Woodsmall.

25 MR. WOODSMALL: I'm done.

1 MR. STEINER: Was that a question,
2 David?

3 MR. WOODSMALL: It was an offer.

4 JUDGE HATCHER: Let's move on. That
5 brings us to Mr. Keevil with Staff. Any questions?

6 MR. KEEVIL: I will keep this short.

7 CROSS-EXAMINATION BY MR. KEEVIL:

8 Q. Thank you, Ms. McCarthy. First of all,
9 what exactly -- remind of your agency name?

10 A. It's the Kansas City Area Development
11 Council.

12 Q. Okay. And is it a governmental agency?
13 Is it a private agency? Is a public-private partnership?
14 What exactly is it?

15 A. We are a private not-for-profit agency.
16 We focus on the economic interests of an 18-county,
17 50-city template for the core of our business. We are
18 able to expand out of that area on select types of
19 projects.

20 Q. Okay. Where do you get your money, your
21 funding to run your agency?

22 A. Yes. We are funded from corporate --
23 primarily from corporate investors in our agency. We
24 have 250 corporate investors and then -- that's probably
25 about 90 percent of our budget. And then the other 10

1 percent comes from agencies within that 18-county,
2 50-city footprint.

3 Q. Okay. Is Evergy one of your corporate
4 investors?

5 A. They are.

6 Q. Approximately how much do they pay you
7 each year?

8 A. I don't have a specific dollar amount.
9 I can't answer that.

10 Q. Is it \$1,000? More than \$1,000?

11 A. Our base is \$10,000 per year. I think
12 the average for our investors is closer to 17 or \$18,000
13 per year.

14 Q. 17 or 18? And what is the maximum?

15 A. There is no maximum. That would be a
16 great problem to have.

17 Q. You don't have levels of sponsorship?

18 A. I do not.

19 Q. Okay. How is a company's contribution
20 to your agency determined? I mean, you say the average
21 is 17, the minimum 10, I think you said. How do you
22 determine who pays what?

23 A. It's really handled between the company
24 and our CEO. It's just -- it's something that is
25 negotiated between the company and our CEO. You know,

1 for some companies they probably see more benefit
2 financially. Other companies are invested because they
3 feel that our agency does good for the region as a whole.
4 It may not impact them in a have financial way.
5 Sometimes -- you know, so what we do is to bring in new
6 businesses so that creates capital investment, payroll,
7 jobs.

8 Q. I just asked how you determine who pays
9 you what. I think we're getting way beyond --

10 A. Yeah. Sorry. My apology. Is it a
11 negotiation between the CEO and the company that is an
12 investor.

13 Q. Do you testify in a lot of
14 administrative proceedings on behalf of your other
15 sponsors?

16 A. I have not.

17 Q. Have you testified in any administrative
18 proceedings on behalf of your other sponsors?

19 A. I've testified before in Missouri to
20 special committees and in Kansas relative to incentives
21 that --

22 Q. You're talking about legislative
23 hearings?

24 A. Yes, sir.

25 Q. Okay. I asked about administrative

1 **hearings. I'm sorry.**

2 A. No, sir. My apology.

3 Q. You've never testified -- so this is the
4 **first time you've ever been called upon to testify in an**
5 **administrative hearing on behalf of one of the companies**
6 **that sponsors your agency?**

7 A. That's correct.

8 Q. Okay. You mentioned -- let me ask you
9 **this: Who asked you? How did -- did every Evergy ask**
10 **you or did Velvet Tech as you?**

11 A. That's a really good question. I cannot
12 remember. It could've been either. I'm sorry. I just
13 don't remember.

14 Q. Okay. You talked a lot about the point
15 **of your agency or the mission of your agency is to pull**
16 **in new customers. I understand that, but is part of your**
17 **mission also to retain existing customers?**

18 A. It is not. We have partnerships with
19 local economic development agencies. They are really
20 responsible for their own parochial borders. We can
21 support them if they need it.

22 Q. So if a customer -- a new customer is
23 going -- hypothetically, if a new customer is going to
24 **shift costs onto existing customers, do you care about**
25 **that?**

1 A. I do. I can't say that I have ever been
2 in an experience such as that.

3 Q. Okay. Congratulations, now you have.
4 You also talked in response to someone. I forget. I
5 think it was Mr. Woodsmall. Page 15 of your testimony
6 talks about Velvet Tech will support more than 50
7 employees with an average wage of \$81,000. And then
8 above that you say Velvet Tech is committing over 800
9 million in investment. When you use the word
10 "committing" in regard to that, what sort of commitment
11 are you talking about?

12 A. So the scope of the project and the cost
13 of the building and the equipment being placed in the
14 building is over \$800 million.

15 Q. How about just employees and wages, what
16 kind of commitments do you have on the number of
17 employees -- new employees and wages?

18 A. The last paperwork that I saw indicated
19 75 employees at \$81,000 average wage.

20 Q. Okay. 75. What kind of paperwork are
21 we talking about? Is this some sort of guarantee --
22 corporate guarantee from Velvet?

23 A. So basically every project has a minimum
24 threshold that are saying that they will guarantee X
25 number of jobs, X capital investment, and a certain level

1 of payroll. And generally when Economic Development
2 incentives are received, those markers have to be met for
3 the incentives to hold true.

4 Q. Generally, but we're not talking
5 generally. We are talking specifically here. What sort
6 of guarantees have you received from Velvet that they are
7 going to employee 50 or 75 people?

8 A. So they have a Chapter 100 agreement
9 with the city.

10 Q. No. What specific guarantees have you
11 received from Velvet that they are going to employee 50
12 or 75 --

13 MR. STEINER: Jeff, I think she was
14 trying to answer.

15 JUDGE HATCHER: Mr. Keevil, I do agree
16 that that was the forthcoming answer.

17 Ms. McCarthy, could you go ahead and
18 continue, please?

19 THE WITNESS: Yes. Thank you. The
20 Chapter 100 agreement with the city of Kansas City,
21 Missouri also specifies the minimum amounts related to
22 jobs, capital investment, and payroll. And those
23 incentives are tied to meeting those markers. That is
24 the contract. My agency does not make contracts. We
25 don't have incentives. That comes from the city, the

1 state, and a utility on a project such as this.

2 Q. Okay. So you don't grant incentives
3 from your agency? You don't make contracts with your
4 agency; is that accurate?

5 A. That would be accurate.

6 Q. Okay. So you would not be the one --
7 your agency would not be the proper party to be in any
8 position to enforce any guarantees or rescind any
9 Economic Development incentives which might have been
10 created in the event that -- in the event that Velvet did
11 not meet their quote/unquote commitment; is that correct?

12 A. That's correct.

13 Q. Okay. What is experience do you have in
14 the utility ratemaking or rate setting?

15 A. I have no experience.

16 MR. KEEVIL: All right. I think that is
17 all I have, Judge.

18 JUDGE HATCHER: Thank you, Mr. Keevil.
19 Before we turn to Mr. Clizer I just want to note it's
20 11:56. I'd like to make my intentions known to everyone
21 on WebEx and listening and in the room. I do intend to
22 allow Ms. McCarthy to finish her testimony and then we
23 will break for lunch. I would also expect perhaps -- I
24 would expect a request that Ms. McCarthy might be excused
25 for the rest of the day, so just be prepared for that.

1 Mr. Clizer?

2 MR. CLIZER: Thanks to the two gentleman
3 who came before me, I have no further questions.

4 JUDGE HATCHER: Thank you, sir. That
5 will turn to commissioner questions. Again, we do have
6 commissioners on the line. If you are on the phone, it
7 is *6 to unmute. Are there any commissioner questions
8 for Ms. McCarthy? Hearing none, the Bench also has no
9 questions. I believe that takes us back to recross. So
10 that goes to --

11 MR. CLIZER: Your Honor, without Bench
12 questions there would be nothing to recross.

13 JUDGE HATCHER: Thank you. I always
14 trip up on that. Thank you. Anything further for
15 Ms. McCarthy before we move on?

16 MR. STEINER: I have a turn for
17 redirect, Judge.

18 JUDGE HATCHER: Yes. Mr. Steiner,
19 you're correct. I'm sorry. Go ahead.

20 REDIRECT EXAMINATION BY MR. STEINER:

21 Q. Do you recall being asked by Mr. Keevil
22 about members at your organization?

23 A. Yes, sir.

24 Q. And are there -- how many of those
25 members -- how many members are there, first?

1 A. There are about 250.

2 **Q. And do you know how many of those are**
3 **regulated by the Missouri Service Public Commission?**

4 A. I do not. There are other utilities
5 that are investors, but I don't know.

6 **Q. Okay.**

7 MR. STEINER: That is all I have.

8 MR. KEEVIL: Judge, what was her exhibit
9 number again? I'm sorry.

10 MR. STEINER: 4.

11 JUDGE HATCHER: 4.

12 MR. KEEVIL: Thank you.

13 JUDGE HATCHER: Mr. Steiner, did I -- I
14 may not have heard you request Ms. McCarthy to be
15 excused. Was that your request?

16 MR. STEINER: It is my request, may she
17 be excused?

18 JUDGE HATCHER: Thank you.

19 Ms. McCarthy, if you would so choose, you are excused
20 from appearing for the rest of the hearing. Thank you
21 very much, ma'am, for your patience and participation
22 today. You are welcome to remain on the WebEx and
23 observe.

24 THE WITNESS: Thank you.

25 JUDGE HATCHER: With that -- thank you,

1 Ms. McCarthy.

2 With that, we will adjourn for lunch.

3 It is 11:59. Let's come back at what one o'clock and we
4 will continue with our witnesses. On my schedule I
5 believe we will be going to the Staff witnesses at then
6 OPC witnesses and circling back to see if Ms. Hataway is
7 available.

8 MR. STEINER: I appreciate that, Judge.
9 And I think she will be available. But we will see what
10 happens at one o'clock.

11 JUDGE HATCHER: Excellent. Thank you,
12 Mr. Steiner. We are at recess for lunch and we are off
13 the record.

14 (OFF THE RECORD.)

15 JUDGE HATCHER: Let's go on the record,
16 the hour of recess having expired. Let's return to our
17 evidentiary hearing in File Number EO-2022-0061. I note
18 for the record that Michelle Hataway, the scheduled
19 witness for Evergy is showing on the WebEx.

20 Mr. Steiner, are we to assume that we
21 are going to proceed with Ms. Hataway next?

22 MR. STEINER: Yes. That makes sense to
23 me.

24 JUDGE HATCHER: Okay. Ms. Hataway, if
25 you would speak up to bring you to the front of everyone

1 on the screen. Thank you, ma'am.

2 THE WITNESS: Can you --

3 JUDGE HATCHER: No, you're fine.

4 (Witness sworn.)

5 JUDGE HATCHER: Thank you. You are now
6 sworn. If you would state and spell your name for the
7 record and then you are Evergy's witness.

8 THE WITNESS: Okay. Michelle,
9 M-I-C-H-E-L-L-E, Hataway, H-A-T-A-W-A-Y.

10 JUDGE HATCHER: And Mr. Steiner or
11 Mr. Fischer go ahead.

12 MR. STEINER: All right.

13 MICHELLE HATAWAY, having been first duly sworn, testifies
14 as follows:

15 DIRECT EXAMINATION BY MR. STEINER:

16 Q. Would you tell us where you work and
17 what is your position there?

18 A. So I work for the Missouri Department of
19 Economic Development and I am the division director for
20 region engagement team.

21 Q. And what are your responsibilities in
22 that job?

23 A. So I manage six different regions and
24 teams within each region to work with existing companies.
25 I also work with Missouri partnership on attracting new

1 businesses to Missouri.

2 Q. Are you adopting the direct testimony of
3 Mark Stombaugh, which was previously marked as Exhibit 5?

4 A. Yes.

5 Q. And are the answers contained in the
6 testimony true and correct to the best of your knowledge?

7 A. They are.

8 MR. STEINER: Your Honor, at this time I
9 will tender the witness for cross-examination. I will
10 also move for admission of Exhibit 5.

11 (WHEREIN; Exhibit 5 was offered into
12 evidence.)

13 JUDGE HATCHER: Thank you, sir. You've
14 heard the motion. Are there any objections to the
15 admission of Mr. Stombaugh's testimony being sponsored by
16 Ms. Hataway? Seeing no shaking of heads, no objections,
17 the Exhibit Number 5 is so admitted onto the record.

18 (WHEREIN; Everyg Exhibit 5 received into
19 identification.)

20 JUDGE HATCHER: You have tendered the
21 witness.

22 That takes us to cross-examination, Ms.
23 Bell, for Velvet. Counselor, go ahead.

24 MS. BELL: No questions, Your Honor.

25 MR. KEEVIL: Judge, can you turn this up

1 -- I am having trouble hearing the witness and Ms. Bell.

2 MS. BELL: No questions, Your Honor.

3 JUDGE HATCHER: Thank you, ma'am.

4 And, Mr. Mills?

5 MR. MILLS: No questions, Your Honor.

6 Thank you.

7 JUDGE HATCHER: Thank you.

8 Mr. Woodsmall?

9 MR. WOODSMALL: Thank you, Your Honor.

10 CROSS-EXAMINATION BY MR. WOODSMALL:

11 Q. Ma'am, can you hear me?

12 A. Let's try. You're kind of far away, but
13 let's try it.

14 Q. Can you hear me better now?

15 A. I can. Thank you.

16 Q. Great. Thank you. Good afternoon. How
17 long have you been with the Department of Economic
18 Development?

19 A. Six years.

20 Q. Six years. And how long have you been
21 in your current position?

22 A. Almost 30 days.

23 Q. Is that a permanent title or just
24 pending? Interim?

25 A. No. It is permanent.

1 Q. Gotcha. Congratulations.

2 A. Thank you.

3 Q. Does the Department of Economic
4 Development in its various roles consider the
5 competitiveness of electric rates to other regions
6 states?

7 A. We don't. We rely on our partners, the
8 utility companies and co-ops out in the field to
9 determine that.

10 Q. Okay. You don't ever try to
11 independently verify what they tell you then as to the
12 competitiveness of their rates?

13 A. No.

14 Q. Okay. Do you know how -- do you
15 independently know how Evergy's rates compare to any
16 other utilities?

17 A. I don't. No.

18 Q. Do you agree that high, uncompetitive
19 electric rates threaten the viability of certain
20 customers in Missouri?

21 MR. STEINER: I am going to object to as
22 facts not being in evidence for the question.

23 MR. WOODSMALL: I will rephrase, Your
24 Honor.

25 JUDGE HATCHER: Thank you.

1 BY MR. WOODSMALL:

2 Q. Would you agree that if Evergy's
3 electric rates are not competitive that it threatens --
4 it may threaten the viability of energy intensive
5 customers in the service area?

6 A. Just generally for the ability to do
7 business? Is that what you are asking?

8 Q. Correct?

9 A. Well, I think having stable energy is
10 important for them to be able to do business.

11 Q. And I'm not talking about -- when you
12 use the word "stable." I agree with you. Reliable
13 electric is important. But I am just now talking about
14 electric rates. Would you agree that if Evergy's
15 electric rates are uncompetitive with other areas, that
16 it may threaten the viability of certain customers in the
17 service area?

18 A. I don't know if I would be an expert to
19 be able to answer on that. I think what we focus on when
20 we talk to existing companies and attraction pieces to
21 some extent is the reliability. The cost perspective I
22 don't know if I would be able to accurately answer.

23 Q. Okay. How do you know then that Evergy
24 rates as they exist right now aren't low enough to
25 attract data centers on their own?

1 A. Well, so we rely particularly on the
2 companies and consultants in general who educate us about
3 those. And then again, our partners who are the co-ops
4 and the utility pieces to continue to educate us about
5 those with perspective to cost of energy.

6 **Q. Okay. So with regard to cost of energy,**
7 **you're simply repeating the things that Evergy has told**
8 **you?**

9 A. Well, I don't speak to cost of energy.
10 What I am saying is our partner speaks to the cost of
11 energy. And that's who we bring to the table whenever
12 energy pieces do come up.

13 **Q. If it has been shown that the addition**
14 **of an MKT customer would cause cost to be shifted to**
15 **other customers, would that could concern you?**

16 MR. STEINER: I'm going to object. She
17 already said she doesn't look at that, David.

18 MR. WOODSMALL: Well, I am asking her
19 independent of that, if it was shown whether that would
20 cause her concern.

21 MR. STEINER: Independent of what? She
22 is here as a witness as part of Economic Development.

23 MR. WOODSMALL: And in fact, energy
24 costs are part of Economic Development. I'm just asking
25 her if it has been shown, regardless of what Evergy has

1 told them, that the MKT customers will cause cost to
2 shifted on non-MKT customers, if that would concern her.
3 I'm just asking if that concerns her.

4 JUDGE HATCHER: I will allow what.

5 THE WITNESS: I think it -- it could
6 concern. But again, what I would do is if a customer or
7 company drew that to our attention, we would bring in our
8 local utility partners to come speak to it.

9 BY MR. WOODSMALL:

10 Q. Okay. You would bring in the utility
11 partners. You wouldn't in attempt to in anyway verify
12 that concern yourself?

13 A. Correct. We would bring in the utility
14 partners.

15 Q. Do you know of independent data sources
16 that show the competitiveness of Missouri rates?

17 A. I do not off of top of my head, but I
18 believe if I needed to I could always go to the Public
19 Service Commission for information.

20 Q. But you do know -- you've never
21 consulted any sources to compare Evergy's rates, to
22 Ameren rates, to utilities outside of Missouri?

23 A. No.

24 Q. Okay. So you don't know, yourself, if
25 Every's rates are uncompetitive with any other service

1 area?

2 A. No. I do not. But I do believe that we
3 need to be competitive in order to be able to attract and
4 retain businesses in Missouri.

5 Q. Okay. With that in mind, are you aware
6 that Evergy has a pending rate case right now at the
7 Public Service Commission?

8 A. I was -- I would say, no. I don't know
9 if I understand. No.

10 Q. Do you understand that a utility must
11 file a rate case in order to increase their rates?

12 A. Yes.

13 Q. And are you aware that Evergy has filed
14 such a case seeking to increase its rates in Missouri?

15 A. No. I don't think I was aware of that.

16 Q. Okay. To your knowledge, has DED ever
17 intervened in such a rate case to determine whether a
18 certain utility's rates are competitive with other areas?

19 A. Not to my knowledge.

20 Q. Okay. Did you read any of the rebuttal
21 testimony in this case?

22 A. No.

23 Q. So if I told you that the commission
24 staff and the Office of Public Counsel -- the Office of
25 Public Counsel being responsible for representing

1 customers, if I told you that they raised concerns that
2 this was harmful to other customers, you weren't made
3 aware of that because you didn't read the testimony?

4 A. I was made aware of that, but I did not
5 read the testimony.

6 Q. Okay. You didn't independently attempt
7 to determine whether what Staff and Public Counsel said
8 was accurate or not?

9 JUDGE HATCHER: Mr. Woodsmall, if she
10 didn't read the testimony, I don't know how she could
11 come to any conclusions.

12 MR. WOODSMALL: She said she was told
13 about it, but she didn't read.

14 JUDGE HATCHER: My apologies.

15 BY MR. WOODSMALL:

16 Q. So given that you were told about it,
17 did you ever attempt to independently verify whether
18 there was some credibility to Staff or Public counsel's
19 concerns?

20 A. No.

21 Q. Okay. Would you agree that in your
22 testimony, I believe you state that Velvet -- yeah. On
23 Page 3, Line 13, you state that the project plan calls
24 for than 50 new full-time positions. Is that your
25 testimony?

1 A. Correct.

2 Q. And if it was shown that the addition of
3 Velvet shifted costs on to other customers such that,
4 let's say a customer with 500 employees left the state,
5 would that concern you?

6 MR. STEINER: Objection. I think she's
7 already testified she doesn't look at that, David.

8 MR. WOODSMALL: I'm just asking if that
9 concerns her under that hypothetical.

10 MR. STEINER: Concerns her as a personal
11 matter? I mean, what? It's not her job.

12 MR. WOODSMALL: Her job is Economic
13 Development. That's the entity that she works for.

14 JUDGE HATCHER: I will allow what. Go
15 ahead.

16 MR. WOODSMALL: Do you recall the --

17 THE WITNESS: Could you repeat the
18 question?

19 MR. WOODSMALL: -- question?

20 THE WITNESS: No. Could you repeat it,
21 please?

22 BY MR. WOODSMALL:

23 Q. If it was shown that the addition of
24 Velvet with 50 jobs cause cost to shift such that a
25 different company with 500 jobs left the state, would

1 **that concern you?**

2 A. I have never heard of a company leaving
3 because of a rate increase or a cost in a utility piece.

4 **Q. Have you heard of Noranda?**

5 A. Yes, I have.

6 **Q. Do you recall their situation?**

7 A. A little bit. Correct. Yes. But feel
8 free to remind me.

9 **Q. Now, tell me your understanding of**
10 **Noranda relative to their cost of electricity?**

11 A. I don't know -- again, I am not the
12 expert when it comes to the cost of electricity. I do
13 know that was a piece in deciding. I don't know if that
14 was the only reason of them closing, was my
15 understanding. I wasn't an area of the state at the time
16 that I covered. At that time, I was covering -- yeah. I
17 was covering a different area of the state.

18 **Q. Okay. I'm sorry. I was walking over**
19 **you while you attempted to answer. So when you said**
20 **you're not aware of any company that may leave because of**
21 **high electric rates, you are not saying that it doesn't**
22 **happen. You are just saying you are not aware of it?**

23 A. I am not aware of it.

24 **Q. Okay. And do you dispute at all that**
25 **that could happen?**

1 MR. STEINER: I'm going to object.

2 What's "that?"

3 THE WITNESS: I mean, it's not
4 something --

5 JUDGE HATCHER: Yeah. I'm going to
6 uphold the objection.

7 MR. WOODSMALL: Okay.

8 JUDGE HATCHER: We are getting pretty --
9 I'm going to uphold the objection.

10 MR. WOODSMALL: okay. I'll clarify that
11 question, then I think I'm done. Well, never mind, I
12 don't even need to clarify that. I think I am done.

13 Thank you, ma'am.

14 JUDGE HATCHER: Thank you,
15 Mr. Woodsmall. Let's move to Mr. Keevil.

16 MR. KEEVIL: Excuse me. I will try to
17 be brief, Judge.

18 CROSS-EXAMINATION BY MR. KEEVIL:

19 Q. Can you hear me, Ms. Hataway?

20 A. I can. Thank you.

21 Q. Thank you. I apologize. When you first
22 took the stand I missed your job title. What is your job
23 title?

24 A. Yes. I am the division director for the
25 regional engagement team.

1 Q. Division director of the region -- is
2 that the same thing as Mr. Stombaugh was?

3 A. Correct.

4 Q. So you've have taken his former
5 position?

6 A. Correct.

7 Q. All right. Thank you. Looking at the
8 testimony itself, he makes a statement there on Page 2,
9 Lines 10 through 12 that he provided direct testimony in
10 Case EO-2019-0244 on behalf of KCP&L. Is that also true
11 of you? Do you file testimony --

12 A. I --

13 Q. -- in case number --

14 A. I was aware that --

15 Q. Go ahead.

16 A. I was aware that he had done that. I
17 have not.

18 Q. You have not filed testified. Is this
19 the first time you've testified in a PSC proceeding?

20 A. Is it obvious?

21 Q. No. I just wanted to get this clear.
22 So you have no experience with utility rate setting or
23 ratemaking; is that correct?

24 A. Correct.

25 Q. All right. Were you personally involved

1 in the effort to get Velvet Tech to locate in Missouri?

2 A. I was not.

3 Q. You were not. Okay. So from where does
4 your knowledge of what Velvet Tech represented come? How
5 do you know what they claim or anything about the
6 project?

7 A. So the department has worked with them,
8 but we did not actively recruit them. Missouri
9 Partnership was a part of that and they are a part of
10 DED, right. So when we looked at the application and
11 them applying and using the data center program, that all
12 goes through DED. That is where we come in.

13 Q. That was the data center program trying
14 to determine whether they qualify for incentives or
15 what's that do?

16 A. Correct. So the data center program was
17 actually created in 2015 and it is program that is really
18 -- the legislators put forward to attract data centers to
19 Missouri. So it is another tool in our toolbox that we
20 use for economic development.

21 Q. In the testimony on Page 3, Lines 15
22 through 17, it says, please describe Golden Plains
23 Technology Park. And then there is a reference to a
24 website. It says diodeventures.com/projects. Would you
25 agree that -- that Diode Ventures, I mean, that's a --

1 basically of Velvet website. Correct? Let me rephrase
2 that. Do you know whose website is shown on Line 17,
3 Page 3 of the testimony?

4 A. No. I went there several weeks back,
5 but I don't recall at this point. I'm sorry.

6 Q. Okay. If I could have you look over at
7 Lines 3 and 4 of Page 4 of testimony, it says, a pivotal
8 component to success in -- I assume that means in
9 recruiting companies to Missouri -- is the availability
10 of highly reliable and redundant electrical power. Do
11 you see that, ma'am?

12 A. Yes.

13 MR. KEEVIL: Why is Ms. Bell on the
14 screen instead of Ms. Hataway? Oh well, Never mind.

15 BY MR. KEEVIL:

16 Q. Ms. Hataway, I see that makes no
17 reference to rates. Does that go back to the statements
18 you made in regard to -- in response to Mr. Woodsmall
19 that you don't really look at utility rates?

20 A. Correct.

21 MR. KEEVIL: I think that is all the
22 questions I have, Judge.

23 Thank you, Ms. Hataway.

24 THE WITNESS: Thank you.

25 JUDGE HATCHER: Thank you. That would

1 bring us to cross-examination by Office of the Public
2 Counsel Mr. Clizer.

3 MR. CLIZER: I have no questions. Thank
4 you, Your Honor.

5 JUDGE HATCHER: Thank you. And that
6 will bring us to commissioner questions. Again, we do
7 have the commissioners on the WebEx. If you are on the
8 phone it is *6 to unmute. Do we have any commissioner
9 questions for Ms. Hataway? All right. Hearing none, we
10 don't have any Bench questions. So that would take us
11 back to redirect for Everygy, go ahead.

12 MR. STEINER: Thanks, Your Honor.

13 REDIRECT EXAMINATION BY MR. STEINER:

14 Q. Just briefly, Mr. Keevil mentioned -- or
15 you mentioned in response to Mr. Keevil the data center
16 program. Do you recall that?

17 A. Yes.

18 Q. And did Velvet qualify for incentives
19 under that program?

20 A. Correct. They're pretty -- according to
21 the statute -- again, that was setforth in the 2015 by
22 the legislators, the program -- along as you meet the
23 requirements of the program, you are eligible for the
24 benefit.

25 Q. Okay. That's all I needed. Thank you.

1 A. Thank you guys.

2 JUDGE HATCHER: Thank you. Ms. Hataway,
3 you are excused from our virtual witness stand. You are
4 free to stay around on the WebEx. I'm sorry.

5 Mr. Steiner, where you going to request
6 Ms. Hataway to be excused?

7 MR. STEINER: I was, Your Honor.

8 JUDGE HATCHER: Thank you. Ms. Hataway,
9 you are so excused if you wish. Let's move on to Staff
10 witnesses. Mr. Fortson?

11 MS. BELL: Your Honor, one other
12 preliminary matter I'd like to address.

13 JUDGE HATCHER: Yes, Ms. Bell. Can you
14 speak up?

15 MS. BELL: Yes, I can. I was just
16 wanting to ask the Commission and the judge to go ahead
17 and take notice of Schedule SIL and the special contract
18 schedule and schedule SSP. I also have three other
19 agency records I would like the Commission to take notice
20 of and enter into the record.

21 JUDGE HATCHER: Okay. Let me backup.
22 You want to submit Evergy tariffs SIL and SSP and special
23 contract tariff.

24 MR. KEEVIL: I think they should be
25 separate exhibits, Judge.

1 MS. BELL: I have them -- they be 301,
2 302 and 303.

3 MR. WOODSMALL: Will you circulate those
4 so we all understand what is being requested?

5 JUDGE HATCHER: Ms. Bell, did you hear?
6 is your mic on?

7 MR. WOODSMALL: I am sorry.

8 MS. BELL: Yes. I can circulate them
9 this afternoon.

10 MR. WOODSMALL: Once I look at them, I
11 can make a quick decision.

12 JUDGE HATCHER: Okay. Here's -- I'll
13 take care of that. And we're going to jump just a little
14 bit ahead to what we would have discussed at the end of
15 the hearing and that is the submission of exhibits. All
16 of the prefiled exhibits, the regulatory law judge will
17 take responsibility for making sure they are filed with
18 the transcript.

19 For the newly submitted exhibits, that
20 will be an option or the parties can email that. I am
21 setting a date of Friday for the submission of those
22 exhibits. And Ms. bell, I will set the same date for
23 yours and I will allow objections through Monday. Monday
24 is also the due date of our expedited transcript.

25 Let me state that again and make sure

1 that we have enough time. Friday, parties will turn in
2 any exhibits that have not already been received.

3 Specifically, these three.

4 MS. BELL: And Your Honor, I have three
5 more as well; the Staff brief and the stipulation in the
6 Nucor case as well as the stipulation in EO-2014-0151. I
7 believe the Commission can take notice or accept them as
8 agency records under 536.070.

9 JUDGE HATCHER: Thank You. That is
10 correct.

11 MS. BELL: And so -- yeah. And so I
12 believe the only objection, you know, would be that for
13 some reason the document isn't a true and accurate
14 version of what it purported to be. But I would like the
15 Commission to at least rule today that it will accept
16 notice of those documents assuming they are the correct
17 copies.

18 JUDGE HATCHER: okay. We'll go ahead
19 and ask the other attorneys also. But let's go ahead and
20 first deal with the three that Ms. Bell has offered.
21 These are three tariffs that Evergy is in control of; is
22 that correct? What I'm trying to get to, Ms. Bell, is
23 who's -- the Commission is not going to take
24 administrative notice of these. The Commission is going
25 to prefer that they be submitted as standalone exhibits

1 so that they are a little bit easier to review, just for
2 these three.

3 I'm just to find out, who -- do you have
4 possession of the official copies, Ms. Bell, that you
5 want to submit or is Evergy going to be submitting --

6 MS. BELL: I have the copies that are
7 available in Commission records online.

8 JUDGE HATCHER: Okay. And you're going
9 to -- 301 will be then SIL tariff?

10 MS. BELL: Correct, Your Honor.

11 JUDGE HATCHER: 302 will be the SSP.

12 And remind me, that is the solar --

13 MS. BELL: Subscription program.

14 JUDGE HATCHER: Thank you.

15 MR. KEEVIL: Pilot. Solar subscription
16 pilot rider. That was 302, Judge?

17 JUDGE HATCHER: Yes, sir. And 303 will
18 be the special contract. Can you give me a little bit
19 more on that, Ms. Bell?

20 MS. BELL: Sure. I can give you the
21 number off of it. It is the special contract rate and it
22 is revised sheet 141, 142 and 143.

23 JUDGE HATCHER: Okay.

24 MR. KEEVIL: Judge, may I inquire of
25 Ms. Bell regarding the special -- excuse me -- the solar

1 subscription pilot tariff?

2 JUDGE HATCHER: Yes.

3 MR. KEEVIL: Ms. Bell -- excuse me -- on
4 your version of the SSP tariff, Exhibit 302, are you
5 showing that as revised sheet Number 109 through 109.5?

6 MS. BELL: Just confirming. Beginning
7 on 109 and, yes, to 109.5. You're right.

8 MR. KEEVIL: 109.5. All right. Thank
9 you.

10 JUDGE HATCHER: Okay. Ms. Bell, yes,
11 please submit those three, 301, 302, and 303. If you
12 have those, the Commission would appreciate those being
13 submitted today, but the deadline will be Friday. I will
14 set a deadline of Monday for objections to 301, 302, and
15 303.

16 JUDGE HATCHER: Yes. And you had -- you
17 requested notice. Let me remember. It was the Staff
18 brief, the Commission decision and what was the third
19 one, Ms. Bell?

20 MS. BELL: So the Staff brief in
21 EO-2019-0244. That's the Nucor case and the nonunanimous
22 stipulation and agreement in the same case and the
23 nonunanimous stipulation in EO-2014-0151.

24 MR. KEEVIL: What is that?

25 JUDGE HATCHER: 0151. Could you give us

1 a little description of that case, please?

2 MS. BELL: Sure. That case, I believe
3 is the -- I think -- I apologize. I think I had the case
4 number on. It is the stipulation and ER-2018-0145. That
5 is the case -- the stipulation that ultimately resulted
6 in a Commission order after moving Schedule SSP.

7 MR. KEEVIL: ER what?

8 JUDGE HATCHER: 2018-0145.

9 MR. KEEVIL: 0145. What's that? That's
10 not the case -- 146 approved SSP.

11 MS. BELL: Okay. They were --

12 JUDGE HATCHER: Ms. Bell?

13 MS. BELL: The nonunanimous stipulation
14 states both case numbers. Again, I am happy to email
15 copies of this out to everyone today.

16 JUDGE HATCHER: This one, I can probably
17 ask here presently. Let's -- you said you want the Staff
18 brief from the Nucor case; is that correct?

19 MS. BELL: Correct.

20 JUDGE HATCHER: Okay. So let's call
21 that one 304.

22 MS. BELL: Okay.

23 JUDGE HATCHER: Does anybody have any
24 objections?

25 MR. CLIZER: Your Honor?

1 JUDGE HATCHER: Or does anybody have a
2 request to think about it until Monday with --

3 MR. WOODSMALL: The latter.

4 MR. CLIZER: Can ask for a moment of
5 just clarification?

6 JUDGE HATCHER: Sure.

7 MR. CLIZER: Is this a request to take
8 sorry or are we introducing an exhibit?

9 JUDGE HATCHER: That right. I did just
10 state an exhibit number. I apologize. This is why I am
11 much better in writing.

12 MS. BELL: No. Your Honor, on these I
13 under 536.070, the Commission can receive agency records
14 as evidence, so I would prefer all of these, the tariffs
15 and the records of the Commission be accepted into
16 evidence as exhibits. I just think it makes it easier on
17 the Commission because they've been referenced and it's
18 allowed under statute.

19 JUDGE HATCHER: Ms. Bell, I appreciate
20 your suggestion, but I'm going to let the Commission make
21 that decision. Let's get back to your asking to take
22 notice, not for the exhibits. Are you asking to take of
23 the Staff brief in the Nucor case. Correct?

24 MS. BELL: No. I'm asking for these to
25 be admitted into evidence. And yes, the Staff brief.

1 MR. KEEVIL: For what purpose? I mean,
2 you can't just -- I mean, that was a brief in that case.
3 Pursuant to a stipulation -- as she's indicated there was
4 a stipulation in that case. That's completely improper,
5 I think, to introduce a brief from that case in here
6 unless she just wants to see say, yeah, Staff filed a
7 brief.

8 JUDGE HATCHER: No. Ms. Bell has stated
9 that she wants these admitted as exhibits, therefore we
10 will follow that procedure and we will give her until
11 Friday, the 28th to submit these as proposed exhibits and
12 we will give all the other parties until Monday the 31st
13 end of the day, which is the same due date as the
14 expedited transcripts. I will take up her motion with
15 the Report and Order if not addressed earlier.

16 MR. KEEVIL: And just to be clear, going
17 back to Mr. Clizer's point, you are having Ms. Bell
18 submit them as exhibits, not taking official of them?

19 JUDGE HATCHER: Ms. Bell strongly
20 requested that is how I would phrase it. Ms. Bell, do
21 you disagree?

22 MS. BELL: No. I agree, Your Honor.
23 And I can just -- it might make it easier if I reference
24 536.070, and under subsection --

25 JUDGE HATCHER: No, ma'am. That does

1 not make it easier. I appreciate that you're citing the
2 statute that gives the Commission the permission to cite
3 its own records. That's permissible. We are at the
4 point where I'm just simply asking it's your request that
5 the Commission take notice or introduce as exhibits? And
6 I thought I heard you state strongly that you wanted them
7 as exhibits; is that correct?

8 MS. BELL: Yes, and in the alternative,
9 if the Commission were to deny that, then I would
10 alternatively ask that the Commission take notice of
11 them.

12 JUDGE HATCHER: Okay. Thank you. So
13 Ms. Bell, let's get the numbers then. 304 will be the
14 Staff brief from Nucor case, which is equal EO-2019-0244,
15 305 will be the nonunanimous stipulation in the Nucor
16 case, the same case citation, and Exhibit 306 will be the
17 stipulation from ER-2018-0145. And I will add 0146, as I
18 would guess that those cases were likely consolidated in
19 some regard. Have I summarized those --

20 MS. BELL: Your Honor --

21 JUDGE HATCHER: Go ahead.

22 MS. BELL: They were, Your Honor. And I
23 would just add that I believe there were multiple
24 stipulations in that case, case so I will clarify it was
25 the one dated September 25th, 2018.

1 JUDGE HATCHER: Did you have a specific
2 date for the Nucor case or is that just one stip?

3 MS. BELL: It was just one stip, Your
4 Honor.

5 JUDGE HATCHER: Okay. All right. Thank
6 you. That will take care of our exhibit discussion.

7 MR. WOODSMALL: Your Honor, I was going
8 to ask later to take official notice of some documents as
9 well. Without trying to rehash all of this, do I just
10 simply send them around by Friday and follow the same
11 procedure?

12 JUDGE HATCHER: If you're going to ask
13 to take notice -- and I would assume the documents were
14 already in EFIS, my inclination would just be to ask the
15 parties now.

16 MR. WOODSMALL: Okay.

17 JUDGE HATCHER: And if everyone agrees,
18 then we will take notice. If you wanted, as Ms. Bell
19 does, in an exhibit, then we will follow that.

20 MR. WOODSMALL: Okay. Let's -- do you
21 want me to do it now or at some other point?

22 JUDGE HATCHER: Your call.

23 MR. WOODSMALL: In the same Nucor case
24 that Ms. Bell is discussing, that case was appealed and
25 there were three briefs filed in the state court's filing

1 system. It's readily available to everybody. There was
2 Everyg's brief. There was the Commission's brief and
3 there was Nucor brief. For similar reasons as Ms. Bell
4 wants to take notice of certain Nucor things, I would ask
5 to take notice of those briefs and I will circulate those
6 by Friday.

7 JUDGE HATCHER: Yes, thank you. I would
8 like to follow that procedure.

9 MR. WOODSMALL: Do you want me to mark
10 them as exhibits now or I can do them all as one exhibit,
11 your preference, Your Honor.

12 JUDGE HATCHER: Let's go ahead and
13 separate them.

14 MR. WOODSMALL: Honestly, I don't know
15 what my exhibit numbers are.

16 JUDGE HATCHER: I don't think you have
17 any.

18 MR. WOODSMALL: There you go. I will
19 just make them 900, 901 and 90--

20 MR. KEEVIL: You have assigned them.

21 JUDGE HATCHER: Yeah. Yeah. But I
22 don't think he has any exhibits yet. What were your
23 numbers?

24 MR. WOODSMALL: I don't know what my
25 block is.

1 MR. CLIZER: It is almost --

2 JUDGE HATCHER: 300 is Velvet.

3 MR. WOODSMALL: 900 is going to be safe.

4 JUDGE HATCHER: 900 it is.

5 MR. WOODSMALL: 900 would be the
6 Commission's brief in the Nucor appeal; 901 would be
7 Everyg's brief in the same appeal; and 902 would be
8 Nucor's brief from that appeal. I will -- I already have
9 them gathered and I will have them to parties certainly
10 by Friday, if not tomorrow.

11 JUDGE HATCHER: Thank you, sir. I
12 appreciate that.

13 MR. WOODSMALL: Thank you.

14 MR. CLIZER: Your Honor?

15 JUDGE HATCHER: Mr. Clizer.

16 MR. CLIZER: I have a question for the
17 Bench. I realize you might be able to answer this now,
18 but I'm going to pose it anyway. Does the Bench believe
19 it is necessary to take administrative notice of the
20 tariffs that are currently effective for Everyg West in
21 order for the Bench to cite to those tariffs in its Order
22 or for parties to cite to them? To be very clear, if I
23 cite to Everyg West current tariff and say that
24 residential service rate is X, does that need
25 administratively noticed our can we all just agree that

1 it is there. It has the force and effect of law and the
2 Commission has the authority to cite to it under the
3 statute that Ms. Bell suggested?

4 JUDGE HATCHER: I would think that is
5 reasonable.

6 MR. CLIZER: Then I don't need to take
7 administrative notice.

8 JUDGE HATCHER: Okay. Let's get back to
9 witnesses. Mr. Fortson, thank you for your patience.
10 Come on down and I will swear you in.

11 (Witness sworn.)

12 JUDGE HATCHER: Thank you, sir. Please
13 have a seat.

14 Mr. Keevil, your witness.

15 MR. KEEVIL: Thank you, Judge.

16 BRAD FORTSON, having first been duly sworn, testifies as
17 follows:

18 DIRECT EXAMINATION BY MR. KEEVIL:

19 Q. Mr. Fortson, would you please state and
20 spell your name for the record?

21 A. Brad, B-R-A-D, Fortson, F-O-R-T-S-O-N.

22 Q. Thank you. And are you the same Brad J.
23 Fortson -- actually the testimony says -- same Brad
24 Fortson who filed rebuttal testimony in this case?

25 A. Yes.

1 **Q. Do you have any changes or corrections**
2 **or additions you need to make to that testimony?**

3 A. Not to my knowledge.

4 **Q. If I were to ask you the questions**
5 **contained in that testimony, would your answers be the**
6 **same as contained therein?**

7 A. Yes.

8 MR. KEEVIL: Judge, I believe
9 Mr. Fortson's testimony is Exhibit Number 100, and I
10 would offer Exhibit 100 into the record.

11 (WHEREIN; Staff Exhibit 100 was offered
12 into evidence.)

13 JUDGE HATCHER: Any objections to the
14 submission of Exhibit 100, the rebuttal testimony of
15 Mr. Fortson? Hearing none, so admitted.

16 (WHEREIN; Staff Exhibit 100 was received
17 into evidence.)

18 MR. KEEVIL: Thank you, Judge. I would
19 tender the witness for cross-examination.

20 JUDGE HATCHER: Thank you, sir. And
21 that goes to Mr. Clizer.

22 CROSS-EXAMINATION BY MR. CLIZER:

23 **Q. Good morning. Good afternoon. My**
24 **apologies.**

25 A. Good afternoon.

1 Q. You wouldn't happen to have a copy of
2 the tariff submitted by Evergy and Velvet, the
3 stipulation tariff?

4 A. I do.

5 Q. If you can turn to -- I want to say I
6 believe it's Paragraph 8 under additional provisions.

7 MR. KEEVIL: I don't think there are
8 eight paragraphs.

9 BY MR. CLIZER:

10 Q. It's the paragraph that starts, service
11 under the tariff shall be excluded from?

12 A. Got it. Paragraph 5 maybe.

13 Q. My apologies. There is a sentence that
14 reads: The company will be rework all -- remove all
15 identifiable cost of service under this tariff from the
16 FAC charge from our customers and the company will track
17 those costs and identify those cost separately, and other
18 costs, specifically identified in the FAC monthly reports
19 submitted to the Commission. Do you agree with that?

20 A. Yes.

21 Q. Does that sentence address concerns that
22 you had raised in your testimony regarding the FAC?

23 A. As far as -- my testimony went into a
24 little bit more detail, but as far as the tariff goes
25 this would cover the concern generally.

1 **Q. All right. Are there any other**
2 **additional language you would ask the Commission,**
3 **according to the tariff, to address the concerns you**
4 **raised with regard to the FAC in your testimony?**

5 A. I wouldn't say I would recommend or
6 suggest any additional language, but I think the
7 additional detail and attachments that I included with my
8 testimony should be noted as guidance for what Staff had
9 in mind for separately tracking those costs.

10 MR. CLIZER: Thanks. I have no further
11 questions.

12 JUDGE HATCHER: Thank you.
13 Mr. Woodsmall.

14 MR. WOODSMALL: Very briefly, Your
15 Honor.

16 CROSS-EXAMINATION BY MR. WOODSMALL:

17 **Q. Good afternoon, sir.**

18 A. Good afternoon.

19 **Q. Can you tell me what your title is with**
20 **the PSC?**

21 A. I'm the regulatory compliance manager in
22 the Energy Resources Department.

23 **Q. And in that role, you are responsible**
24 **for fuel adjustment clause filings?**

25 A. Yes.

1 Q. Okay. And given that role, are you
2 familiar with SPP charges? Southwest Power Pool charges?

3 A. Yes.

4 Q. Would you agree that certain Southwest
5 Power Pool charges are captured on an energy bases per
6 KWH?

7 A. Yes.

8 Q. And that other charges are captured on a
9 demand basis per KW?

10 A. Yes, they can be. Correct.

11 Q. Okay. And costs may be incurred by
12 Evergy associated with an MKT customer on either a per KW
13 page or -- basis or a per KW (sic) basis; is that
14 correct?

15 A. That is correct.

16 Q. And it is your belief that any
17 incremental costs incurred whether incurred per KWH or
18 per KW, attributable to an MKT customer, should be
19 identified and separated out for that customer; is that
20 correct?

21 A. Correct.

22 Q. Okay. Let's take a situation where
23 there are costs incurred by legacy customers, not MKT
24 customers. And an MKT customer comes on and there's no
25 incremental costs. They are just free riding, if you

1 will. Are you comfortable with that concept?

2 A. Yes.

3 Q. Would you agree that some amount of
4 those costs should be allocated and attributed to the MKT
5 customer?

6 A. I would agree with that.

7 MR. WOODSMALL: Okay. No further
8 questions. Thank you, sir.

9 JUDGE HATCHER: Thank you.

10 And, Mr. Mills?

11 MR. MILLS: Thank You, Judge.

12 CROSS-EXAMINATION BY MR. MILLS:

13 Q. Mr. Fortson, in your prefiled testimony,
14 do you offer any reasons arguing that the Commission
15 should reject the MKT tariff?

16 A. I simply state for the reasons stated in
17 Ms. Kliethermes's testimony which has been adopted by
18 Mr. Busch.

19 Q. I understand. My question is do you
20 offer any of your own reasons to your testimony?

21 A. No.

22 MR. MILLS: That is all I have. Thank
23 you.

24 JUDGE HATCHER: Thank you, Mr. Mills.

25 And Ms. Bell?

1 MS. BELL: No questions, Your Honor.

2 JUDGE HATCHER: Thank you.

3 And Evergy?

4 MR. Fischer: No thank you, Your Honor.

5 JUDGE HATCHER: Thank you.

6 Are there any commissioner questions?

7 It's *6 to unmute. Any commissioner questions for Staff
8 Witness Fortson? The Bench does have a couple of
9 questions.

10 QUESTIONS BY JUDGE HATCHER:

11 Q. I'm going to limit mine to the dueling
12 Schedule 1s. And this is going to be the exact same
13 questions I've asked the other witnesses. Let's take the
14 Evergy and Velvet Schedule 1?

15 A. Okay.

16 Q. Would you tell me which portions of this
17 you oppose and why you find them not to be appropriate?

18 A. I can. I would like to make clear and
19 maybe a caveat that in my testimony I only spoke to the
20 FAC. So I could speak or answer what I can and what
21 can't, I will likely differ to Ms. Eubanks and Mr. Busch.

22 Q. Thank you.

23 A. So most of this first page, I would
24 suggest -- like, they are referring to -- or deferring to
25 Mr. Busch for the first couple of these bullet points.

1 For the substation voltage customer, I would offer that I
2 believe in Staff's testimony or in Ms. Kliethermes's
3 testimony that -- which has been adopted by Mr. Busch,
4 the concern with the substation voltage was that --

5 Q. I'm going to --

6 A. Sorry. Go ahead.

7 Q. I think you were right at the beginning.
8 Your testimony was on the FAC. I'm going to just try and
9 focus on that.

10 A. That is perfectly fine.

11 Q. The first time I see the FAC in the
12 Evergy Velvet Schedule 1 is Page 5 of 7?

13 A. Uh-huh.

14 Q. Can you discuss their Paragraph 5?

15 A. Yeah. So with that all being said that
16 makes this much simpler. So their Paragraph 5 is -- the
17 language they have included is the exact same language
18 that we have -- Staff, OPC and MECG have included as it
19 pertains to the new sentence that starts, the Company
20 will remove, and ends with submitted to the Commission.

21 Q. Okay. So in some --

22 A. If I may?

23 Q. Yes. Thank you.

24 A. I believe, as far as Staff, and --
25 Staff, OPC, MECG and the Company go as far as the FAC we

1 are on the same page as far as the language that is
2 included in the tariff and the idea that it will be --
3 the cost will be separated and tracked. Tracked
4 separately and identified similar to how it is in the SIL
5 tariff.

6 Q. Thank you. That made that clear. I
7 have no further questions.

8 JUDGE HATCHER: Let's move back to
9 recross examination. Mr. Clizer?

10 MR. CLIZER: No questions. Thank you,
11 Your Honor.

12 JUDGE HATCHER: Mr. Woodsmall?

13 MR. WOODSMALL: No questions. Thank
14 you.

15 JUDGE HATCHER: Mr. Mills?

16 MR. MILLS: Sorry. I was on mute. No
17 questions.

18 JUDGE HATCHER: You're fine.

19 And Ms. Bell?

20 MS. BELL: No questions, Your Honor.

21 JUDGE HATCHER: Thank you.

22 And Everygy?

23 JUDGE HATCHER: I didn't quite catch
24 that, Mr. Fischer.

25 MR. FISCHER: I'm sorry. I have no

1 questions.

2 JUDGE HATCHER: Okay. Thank you. And
3 that will take us to redirect.

4 Mr. Keevil?

5 MR. KEEVIL: Yes. Very briefly.

6 REDIRECT EXAMINATION BY MR. KEEVIL:

7 Q. Mr. Fortson, in response to Mr. Clizer
8 and the Judge, I believe you mentioned the separating and
9 tracking the various costs that would otherwise flow
10 through the FAC. And in response to Mr. Clizer you
11 referred to certain conditions and parameters or
12 something attached to your testimony. Could you turn to
13 those -- I believe it is Schedule BJF-R3 and BJF-R4 to
14 your rebuttal testimony.

15 A. I'm here.

16 Q. Are those the separation and tracking
17 conditions to which you are referring?

18 A. Yes. BJF-R3 sort of details what is
19 recommended to be separated and how to be separated.
20 BJF-R4 would be more of an illustration of how that would
21 be separated.

22 Q. At the Schedule BJF-R3, where does that
23 come from? Is that from -- obviously, it's just a few
24 pages of another document. Is that from a stipulation or
25 what is that from?

1 A. Yes. That was a -- give me just a
2 moment. That's from the nonunanimous stip and agreement
3 filed in Case Number EO-2019-0244.

4 Q. 0244, that's -- Okay. Are you asking
5 that the Commission is -- order approving the tariff
6 include these conditions on Schedule BJJF-R3?

7 A. It would be my recommendation that in
8 approving -- along with approving the tariff, it would be
9 noted that it should be ordered to be tracked the way I
10 have suggested and identified the way I have suggested.

11 Q. And when you say "approving the tariff,"
12 are you referring to the tariff attached to the OPC, MECG
13 and Staff stipulation?

14 A. I am.

15 MR. KEEVIL: That's all I have, Judge.
16 Thank you.

17 JUDGE HATCHER: Thank you, Mr. Fortson.
18 You are excused.

19 Engineer Eubanks, please come to the
20 witness stand.

21 MR. KEEVIL: Judge before you -- oops,
22 let me turn my mic on. Before you swear Ms. Eubanks in,
23 this may short-circuit part of what Ms. Bell was talking
24 about earlier. I would like to introduce as a
25 demonstrative -- at least -- no, I wouldn't say -- just

1 introduce it as an exhibit. I think my next exhibit is
2 104. This is the SSP tariff that Ms. Bell was referring
3 to earlier.

4 (WHEREIN; Staff Exhibit 104 was offered
5 into evidence.)

6 JUDGE HATCHER: Thank you, sir.

7 MR. KEEVIL: You're welcome.

8 JUDGE HATCHER: Okay. Exhibit 104. It appears
9 to be a solar subscription pilot rider. It is marked
10 KCP&L Greater Missouri Operations Company. And it is
11 P.S.C. MO No.1, Second Revised Sheet Number 109. And
12 then that continues .1, .2, .3, .4, and .5. Are there
13 any objections to the admission of Exhibit 104, which is
14 the solar subscription pilot rider onto the hearing
15 record? Hearing none, it is so admitted.

16 (WHEREIN; Staff Exhibit 104 was received
17 into evidence.)

18 MR. KEEVIL: Thank you, Judge. I'm
19 sorry. You still have to sort -- I'm getting ahead of
20 myself. I'm sorry, Judge.

21 JUDGE HATCHER: Thank you.

22 Ms. Eubanks?

23 (Witness sworn.)

24 JUDGE HATCHER: Thank you.

25 Mr. Keevil, your witness.

1 CLAIRE EUBANKS, having first been duly sworn, testifies
2 as follows:

3 DIRECT EXAMINATION BY MR. KEEVIL:

4 Q. Yes, ma'am. Would you please state your
5 name and spell it for the record?

6 A. Claire Eubanks, C-L-A-I-R-E,
7 E-U-B-A-N-K-S.

8 Q. Thank you. Have you caused to be
9 prepared for this case what's been marked as Exhibit
10 Number 101, the surrebuttal/cross surrebuttal
11 testimony of Claire M. Eubanks?

12 A. I have.

13 Q. All right. And, if I were to ask you
14 the questions -- first of all, do you have any changes or
15 corrections you need to make to the testimony?

16 A. No.

17 Q. If I were to ask you the questions
18 contained in Exhibit 101, would your answers be the same
19 as contained therein?

20 A. Yes.

21 MR. KEEVIL: Judge, with that, I would
22 offer Exhibit 101 into the record.

23 (WHEREIN; Staff Exhibit 101 was offered
24 into evidence.)

25 JUDGE HATCHER: You have heard the

1 motion to counsel. Are there any objections to the
2 admission of Exhibit 101, the testimony Claire M. Banks
3 -- Eubanks? Sorry. Hearing no objections, it is so
4 admitted.

5 (WHEREIN; Staff Exhibit 101 was received
6 into evidence.)

7 MR. KEEVIL: Thank you, Judge. I would
8 tender the witness for cross-examination.

9 JUDGE HATCHER: Thank you. And that
10 goes to Mr. Clizer.

11 CROSS-EXAMINATION BY MR. CLIZER:

12 Q. Good afternoon, Ms. Eubanks.

13 A. Good afternoon.

14 Q. All right. Yesterday I had a
15 conversation with Evergy witness Brad Lutz and I tried to
16 walk through how the RESRAM was going to work as proposed
17 in Evergy/Velvet's tariff. I don't know if you recall
18 that?

19 A. I do recall.

20 Q. I'm going to go through the same
21 exercise with you just for the sake of the record so it
22 is very clear how the OPC, MECG, Staff proposal will
23 work. Okay?

24 A. Okay.

25 Q. What we're going to do is a

1 hypothetical. I would ask you to assume the role of
2 Everygy. I'm going to be a customer who takes under the
3 MKT tariff. All right?

4 A. Okay.

5 Q. I have a 100 megawatt load requirement.
6 I'm buying 100 megawatts from you. You have 100
7 megawatts of retail sales. Would you agree with that?

8 A. I do. I do have one clarifying
9 question.

10 Q. Go for it.

11 A. You mentioned RESRAM, did you mean to
12 say renewable energy standard requirements? Are you
13 talking about the RES requirements or the adjustment
14 mechanism?

15 Q. We'll get to that in a second.

16 A. Sorry.

17 Q. So just to repeat, I have a 100
18 megawatts load. I'm buying a 100 megawatts from you.
19 You have 100 megawatts of retail sale. Correct?

20 A. Correct.

21 Q. Under the RES statute to the renewable
22 energy standard, 15 percent of that has to be renewables
23 or -- it either has to come -- it has to come from
24 renewable energy which means they could either build or
25 buy RECs. Correct?

1 A. That's correct.

2 Q. All right. If I, as a customer,
3 purchase 100 megawatts of renewable energy credits and
4 retire them, I can claim all of my energy was renewable.
5 Correct?

6 A. The customer is retiring all of the
7 renewable energy credits?

8 Q. Yes?

9 A. Which is measured in megawatt hours, but
10 for 100 megawatts of load.

11 Q. Yeah?

12 A. Yes.

13 Q. But that doesn't change the fact that
14 Evergy still has to meet its RES requirement. Correct?

15 A. That is my position. Yes.

16 Q. All right. So that's the problem. The
17 solution that has been put forward in the OPC, MEGC,
18 Staff tariff -- I'm going to attempt to paraphrase it and
19 I would like for you to tell me if think my paraphrasing
20 is correct. Effectively, there's going to be a charge
21 placed in the contract and if that charge covers the cost
22 that Evergy incurs to meet the renewable standard, the
23 customer will not have to pay a RESRAM?

24 A. If it covers the incremental cost
25 attributable to that customer that is not being provided

1 for in another way through some other kind of support
2 charge, then yes.

3 Q. Okay. Just to piggyback on what you
4 just said right there, if under our scenario, you as
5 Evergy, already have 30 megawatts of renewables, there
6 would be no incremental cost charged to serve me under
7 the RES. Right?

8 A. That's correct.

9 Q. In which case MEEIA's customer would
10 have to pay nothing under the tariff or the RESRAM?

11 A. Correct.

12 Q. All right. I think I've nailed that one
13 down. So one other thing really quick. Were you here
14 yesterday during the testimony of Mr. Darrin Ives on
15 behalf of Evergy?

16 A. I was for most of it.

17 Q. And do recall Mr. Ives testifying
18 effectively that if the Commission is to order the OPC,
19 Staff, MEEG tariff, the Company will either not offer
20 contracts or not move forward with the tariff?

21 A. I recall that conversation.

22 Q. Were you involved in Case ET-2021-0151,
23 the Evergy electrification docket?

24 A. Yes.

25 Q. Did you read the testimony of one Chuck

1 Caisley filed on behalf of Evergy in that docket?

2 A. I did.

3 Q. Do recall Mr. Caisley making a very
4 nearly similar statement in that document arguing that if
5 the Commission did not grant the application as put forth
6 by Evergy, Evergy would cease pursuing electrification in
7 the state of Missouri?

8 A. I do recall testimony very similar to
9 what you just said.

10 Q. Did the Commission just grant the
11 application put forward by Evergy or did they make
12 modifications to that application?

13 A. I believe they made some modifications
14 to the application. That's the best of my recollection.

15 MR. CLIZER: I have no further
16 questions. Thank you.

17 THE WITNESS: Thank you.

18 JUDGE HATCHER: Thank you, Mr. Clizer.

19 That brings us to Mr. Woodsmall.

20 CROSS-EXAMINATION BY MR. WOODSMALL:

21 Q. Taking off of that last question do you
22 ever get involved MEEIA cases or are you familiar at all
23 with MEEIA cases?

24 A. Generally, but actually Mr. Fortson was
25 probably the better witness for MEEIA cases.

1 Q. Okay. Do you recall if Evergy made a
2 similar threat in a MEEIA case that if the Commission
3 didn't approve their MEEIA case the Commission -- or
4 Evergy wouldn't do any energy efficiency?

5 A. Personally, I don't recall.

6 Q. Okay. Were you here earlier when --
7 well, let me start with laying some foundation. What is
8 your role at the PSC?

9 A. I'm the manager of Engineering Analysis
10 Department.

11 Q. And in that role are you responsible for
12 RESRAM matters, solar subscription matters?

13 A. Renewable energy standard compliance. I
14 have worked on the RESRAM for prudence reviews. Those
15 duties are shared between different departments. Solar
16 subscription rider yes, renewable energy, purchase
17 schedule, yes, net metering, informal complaints related
18 to solar and net metering and the like, yes.

19 Q. Okay. Previously, Mr. Keevil marked
20 Exhibit 104 regarding Evergy's solar subscription pilot
21 rider. Do you have that?

22 A. I do.

23 Q. Were you here earlier when Mr. Brubaker
24 testified?

25 A. I was.

1 Q. Did you hear him talk to some extent
2 about the solar subscription pilot rider?

3 A. Yes.

4 Q. Do you agree with what he was saying
5 about that?

6 A. Not entirely. I think he mentioned that
7 Evergy would potentially procure a PPA under the solar
8 subscription rider. That's not accurate. To my
9 knowledge they're intending to construct either a solar
10 resource in Evergy Missouri West or Evergy Missouri Metro
11 service territories. But -- and then also, I think it is
12 really important to note that the customers under that
13 tariff are subject to the RESRAM charge.

14 Q. So are you saying that even though they
15 make a separate payment to be sourced from a solar
16 subscription -- a solar facilities, they pay extra for
17 that and they pay the RESRAM?

18 A. They pay the RESRAM charge based on the
19 sales under that prescription rider, yes.

20 Q. Okay. And is that also true with -- I
21 believe Mr. Lutz called it a renewable energy program.
22 Are you familiar with that?

23 A. I am familiar with that. I haven't
24 reviewed that specific tariff. But yes, to my knowledge
25 the only tariff that is not subject to RESRAM is the SIL

1 tariff.

2 Q. Okay. So under the renewable energy
3 program those customers pay extra to be sourced from a
4 renewable facility and they still play the RESRAM as
5 well?

6 A. Yes. And those RECs under the renewable
7 energy purchase schedule are retired on those customers
8 behalf. So they are getting the renewal attributes
9 associated with the program also.

10 Q. Got you.

11 MR. WOODSMALL: I have no further
12 questions. Thank you.

13 THE WITNESS: You're welcome.

14 JUDGE HATCHER: Thank you,
15 Mr. Woodsmall.

16 Let's move to Mr. Mills. Any questions?

17 MR. MILLS: I have no questions. Thank
18 you, Your Honor.

19 JUDGE HATCHER: Thank you.

20 And Ms. Bell, any questions?

21 MS. BELL: Yes, Your Honor.

22 CROSS-EXAMINATION BY MS. BELL:

23 Q. Ms. Eubanks, with respect to the SSP
24 program --

25 JUDGE HATCHER: Ms. Bell, could you

1 speak up just a little bit, please?

2 MS. BELL: I can, Your Honor.

3 BY MS. BELL:

4 Q. With regard to SSP program, the customer
5 -- let's do a hypothetical. If the customer -- if the
6 customer's energy usage is 50 kilowatts and if the
7 customer also has 50 kilowatts of solar energy, under the
8 tariff are those two items netted? Those two items are
9 netted. Correct?

10 MR. WOODSMALL: Your Honor, as an
11 initial matter, I don't want to be a pain in the ass
12 here, she's talking in terms of kilowatts which are
13 demand and I believe the relevant unit is energy kilowatt
14 hours. So if you she can rephrase --

15 MS. BELL: Correct.

16 MR. WOODSMALL: -- just for the clarity
17 of the record.

18 MS. BELL: Yes. Thank you.

19 BY MS. BELL:

20 Q. If you will turn to revised sheet 39 --
21 if you will turn to monthly billing.

22 A. I'm there.

23 Q. And under 2, the participant's kilowatt
24 hours, which are for solar resource energy, are
25 subtracted from the energy consumed. Correct?

1 A. That is correct. It is very similar to
2 net metering in that the usage is netted with the
3 generation. The difference between net metering and this
4 program is that Evergy will have its own resource,
5 whereas net metering is on a customer's home or business.

6 Q. Okay. So in a hypothetical, if a
7 customer as 50 kilowatt hours of solar resource
8 production and their usage is 50 kilowatt hours, then
9 their energy use is zero. Correct?

10 A. In that hypothetical, off the top of my
11 head, I don't recall that they can fully subscribe 100
12 percent of their usage, but yes, in that scenario.

13 Q. Okay. If you look again under monthly
14 billing under No. 2, in the second sentence you will
15 agree it states, should the solar resource energy
16 production amount for a given month be larger than the
17 participant's metered energy consumption, the net energy
18 will be zero for that month. Correct?

19 A. So the retail electric sales to that
20 customer in respect to energy would be zero for that
21 month.

22 Q. And you would agree that any sort of
23 RESRAM charge times by zero would be zero. Correct?

24 A. So if you are asking if the RESRAM
25 charge is a KWH charge?

1 Q. Yes?

2 A. That is correct.

3 MS. BELL: No further questions, Your
4 Honor.

5 JUDGE HATCHER: Thank you, Ms. Bell.
6 And that moves us to Everygy.

7 MR. FISCHER: Thank you, Judge.

8 CROSS-EXAMINATION BY MR. FISCHER:

9 Q. Good afternoon, Ms. Eubanks.

10 A. Good afternoon.

11 Q. Can you hear me okay?

12 A. I can.

13 Q. Okay. Great. I just have one or two
14 little areas I'd like to clarify. In discussions with
15 Public Counsel, you were talking about the transportation
16 electrification case and Chuck Caisley's testimony. Do
17 you recall that?

18 A. I do.

19 Q. Did you happen to attend the hearings in
20 that case and hear Mr. Caisley testify from the stand?

21 A. I participated virtually as much as I
22 possibly could and I think I did get his testimony.

23 Q. I'm sorry. What did you say about his
24 testimony?

25 A. I do recall his testimony. I don't know

1 if I saw all of it or not.

2 Q. Okay. Great. That's fair. Do you
3 recall that he was crossed and also had a conversation
4 with several commissioners where he clarified those
5 statements that Public Counsel was asking about?

6 A. I do recall there being testimony during
7 the hearing on that.

8 Q. Do you recall that he indicated that
9 Evergy was looking to obtain the Public Service
10 Commission's view of how they should proceed with
11 transportation electrification and particularly what role
12 should the utility play in that marketplace?

13 A. That sounds like a fair summary of his
14 clarification.

15 Q. Do you also recall that Chairman Silvey
16 made a statement he was glad to hear that testimony
17 because he had interpreted his prefiled as more of a
18 demand or a threat?

19 A. I don't recall that specific statement.

20 Q. Okay. Thank you very much. I
21 appreciate your testimony.

22 A. Thank you.

23 JUDGE HATCHER: Thank you, Mr. Fischer.
24 Now we come to any commissioner questions for
25 Ms. Eubanks. Are there any commissioner questions for

1 Ms. Eubanks? All right. Hearing none, the Bench does
2 have a couple questions.

3 QUESTIONS BY JUDGE HATCHER:

4 Q. These are going to be the same tariff
5 questions I've asked, so if you would please pull out the
6 Evergy Velvet Schedule 1 from their nonunanimous
7 stipulation filed Monday.

8 MR. KEEVIL: Judge, if I could just jump
9 in here. Similar to Mr. Fortson who was just on the FAC,
10 Ms. Eubanks is really -- I think it's fair to say just on
11 RESRAM related matters. If you -- if either one of you
12 can disagree with me on that, but I just wanted to point
13 that out.

14 BY JUDGE HATCHER:

15 Q. My first question is: Is Mr. Busch the
16 better person to ask my standard questions of why Staff
17 disagrees with the Evergy Schedule 1 and what Staff likes
18 about theirs?

19 A. Yeah. I'm happy to attempt, but I can
20 focus on the RESRAM too.

21 Q. Yeah. Let's stick with the RESRAM and
22 we will let Mr. Busch delve into the others?

23 A. Okay.

24 Q. Yes. Please discuss -- let me find it.
25 Paragraph 6 under additional provisions in the Evergy

1 **Velvet Schedule 1?**

2 A. So that's concerning with the RESRAM
3 tariff language is the concept of subtracting renewable
4 attributes from the calculation of total retail electric
5 sales under the renewable energy standard compliance. So
6 that's 20 CSR 4240-20.100. So then just generally, all
7 customers pay the RESRAM charge. The only customer
8 tariff out there is not subject to the RESRAM charge is
9 the special incremental load which is Nucor, we've talked
10 about quite a bit today and yesterday.

11 The one major difference in my mind
12 between the special incremental load tariff and this
13 arrangement is that Evergy is contracting the PPA for
14 Nucor under the tariff, but is retaining all of the
15 renewable energy credits. And my understanding from that
16 case is that Evergy is retiring those on behalf of the
17 renewable energy standard compliance, not on behalf of
18 Nucor.

19 Q. You mentioned in your testimony when you
20 were talking about the private company in the early
21 hypothetical, the private company would be retiring the
22 credits. And you said they would accrue whatever
23 benefits there were for that?

24 A. So in my discussion with Mr. Clizer?

25 Q. Yes. But my question is can you fill me

1 in on that. I don't what a private entity -- I get
2 it where the utility is going to be using that, but I
3 don't know what the benefits are for the Company?

4 A. So a lot of large customers and even
5 small customers are interested in encouraging renewable
6 energy development locally on different scales. So there
7 is a market for renewable energy credits that is both
8 voluntary and for state compliance, like our renewable
9 energy standard.

10 Q. Okay. So the utility turns it in to
11 meet a statutory requirement. So let's take a
12 hypothetical company, shelve it, and they want to retire
13 it on their own. Is it the proverbial Goldstar that they
14 are after or is there some other benefit either economic
15 or regulatory?

16 A. So just speaking of renewable energy
17 credits, and not maybe the benefits of entering into a
18 PPA on the market.

19 Q. I get that because then Evergy gets to
20 keep it and they can turned it into credits. My question
21 is, I don't understand why Velvet wants it. I just don't
22 get it. Can you -- and I don't want to put too fine of a
23 point on it, but I don't know what those benefits are.
24 Are they goodwill for the Company or is it a more
25 tangible -- there are some economics underlying this?

1 A. I believe it's probably more, you know,
2 the corporate standards that they -- and I don't know
3 what those are, to be fair. You know, a lot of large
4 companies are interested in being, you know, some
5 percentage renewable. And so one way to demonstrate that
6 is having renewable energy credits that they are, you
7 know retiring on their own behalf or, you know, having
8 someone else retire for them.

9 **Q. So having the retired credit makes it**
10 **verifiable?**

11 A. Yes.

12 **Q. Okay.**

13 A. And that really gets to Staff's concern
14 with this tariff language because Evergy is asking the
15 Commission from a variance from existing renewable energy
16 standards requirements that Evergy needs to make based
17 upon renewable credits that Velvet, you know, intends to
18 acquire somehow, and use for their own voluntary
19 purposes. So they are adjusting the requirement, not the
20 actual -- they are not double counting a single renewable
21 credit, but they are both claiming the same megawatt
22 hours of electricity in a way in my opinion, if that
23 helps.

24 **Q. But only one entity is -- what did we**
25 **call it -- retiring the credit?**

1 A. Only one entity is retiring the credit
2 under what they are proposing and that is Velvet.

3 **Q. Can you distinguish the Nucor allowance**
4 **variation for RESRAM versus the current?**

5 A. Yes. Yeah. Like I mentioned before,
6 under the SIL tariff -- and it's not in the tariff or the
7 stipulation to my recollection -- but having participated
8 in some of the technical discussions and reviewing data
9 request responses, Evergy represented to Staff that the
10 PPA that they will acquire under the Nucor tariff any
11 renewable attributes -- well, I guess I should back up.

12 The renewable attributes needed for RES
13 compliance would be retired by Evergy. So Nucor is not,
14 to my knowledge, retaining all renewable attributes
15 related to that one PPA. I am not sure that they are
16 retaining any of them, but I know Evergy represented they
17 would retire credits.

18 **Q. Credits from their existing stockpile of**
19 **credits or credits from the energy that they are getting**
20 **to the PPA to service Nucor? The latter?**

21 A. The latter, yes.

22 **Q. Thank you. Help me understand the**
23 **difference, because both credits are being retired. Help**
24 **me understand why Staff is okay or accepting of the Nucor**
25 **RESRAM variance?**

1 A. Energys will be retiring renewable energy
2 credits from the PPA being used to serve Nucor for its
3 Missouri RES compliance. The difference in this case is
4 that Velvet is doing whatever they are going to do, you
5 know.

6 **Q. Getting their own power.**

7 A. They're getting their own power. It's
8 going to be somewhere in SPP. We don't know where. We
9 don't know if they're constructing. We don't know if
10 it's PPA, but it going to be renewable energy. They
11 won't get renewable attributes, renewable energy credits.
12 My understanding is they intend to retire 100 percent of
13 those for their corporate reasons.

14 **Q. And so in the normal course of business**
15 **Energys would be buying the electricity and then it would**
16 **go through the RESRAM calculations for credits increasing**
17 **their usage, which increases the credits that they need?**

18 A. So the RESRAM is the adjustment
19 mechanism, which is really related to the cost side.
20 That's a little bit more complicated.

21 **Q. Yes. Thank you.**

22 A. But for the standard, yes. And you
23 know, they report on that annually. We review the REC
24 balances and how many RECs they retire as part of my
25 department's responsibility.

1 **Q. So maybe re-explain what the variance is**
2 **in the Nucor?**

3 A. So the variance in the stipulation and
4 agreement is they want to change how the RES requirements
5 are calculated. So per the statute, they need to supply
6 15 percent of their sales through renewable energy, which
7 means the more energy they sell to customers, their
8 requirements will go up.

9 **Q. So the variance that they got in the**
10 **Nucor case is they don't have to count --**

11 A. There is not variance in the Nucor case.
12 That's what they are requesting in this case. Sorry for
13 not being clear on that.

14 **Q. I think it was my fault on not being**
15 **clear. I'm going to stop there.**

16 A. Okay.

17 JUDGE HATCHER: That brings us to
18 recross examination and that goes to Mr. Clizer. Thank
19 you, sir.

20 MR. CLIZER: Well, it's funny you say
21 that because I'm going to pick up from there. I think I
22 can bring it down really quick, though.

23 RECROSS EXAMINATION BY MR. CLIZER:

24 **Q. We're going to go back to my**
25 **hypothetical.**

1 A. Sure.

2 Q. In this case, though, I am now Nucor.
3 I'm taking service under SIL?

4 A. Okay.

5 Q. I still need 100 megawatts of load?

6 A. Yes.

7 Q. And you're still Evergy. So in order to
8 supply the 100 megawatts I need you're going to enter
9 into a purchase power agreement. Right?

10 A. That's correct.

11 Q. And the purchase power agreement that
12 you, Evergy, enter into to serve me is going have some
13 renewable components to it?

14 A. That's correct.

15 Q. Now, I'm paying you for that PPA?

16 A. Correct.

17 Q. And you are going to retire the RECs
18 that come from that PPA yourself?

19 A. That's right.

20 Q. So I pay for the energy, you retire the
21 RECs?

22 A. Correct.

23 Q. Now we switchover back to the MKT. In
24 that situation if I'm taking the MKT, I'm paying you for
25 the energy and I'm retiring my RECs?

1 A. You are, yes. Correct.

2 Q. That is the difference, who retires the
3 RECs?

4 A. Correct.

5 Q. If I was a customer of MKT and I bought
6 my RECs and gave them to you to retire them, would that
7 also solve the problem?

8 A. That would.

9 Q. But then I wouldn't be able to claim
10 that all of my energy was renewable?

11 A. Correct.

12 Q. And as to that point, I think this got
13 out, but let's make sure it's very clear: Velvet Tech
14 does not have a legal obligation to your knowledge to be
15 100 percent renewable?

16 A. Not to my knowledge. No.

17 Q. They might have a good internal reason,
18 but that is on them?

19 A. Correct.

20 Q. There's one last thing. The difference
21 between the OPC, MEGG, Staff tariff proposal and the
22 Velvet Tech, Evergy proposal, on the very end of that
23 OPC, MEGG, Staff proposal it states that the -- I want to
24 find the exact language here, so give me one second. I'm
25 sorry. You would agree that the last sentence reads --

1 and this is again from OPC, MECG, Staff -- in such an
2 event all monies collected through the renewable energy
3 contribution charge shall be used to offset Evergy
4 Missouri West's RESRAM revenue requirement; is that
5 correct?

6 A. That's correct.

7 Q. And the reason for that is to prevent
8 Evergy from effectively double dipping if it both gets a
9 payment from MKT customers and customers through the
10 RESRAM?

11 A. So my understanding is that it would
12 apply those collections to the RESRAM revenue
13 requirement, yes.

14 Q. You would agree that is an important
15 provision to have in there?

16 A. I agree.

17 MR. CLIZER: I will leave it to your
18 counsel to clean that up, if necessary. I have no
19 further recross. Thank you.

20 JUDGE HATCHER: Thank you, Mr. Clizer.

21 Mr. Woodsmall?

22 MR. WOODSMALL: Very, very briefly.

23 RE CROSS EXAMINATION BY MR. WOODSMALL:

24 Q. Currently Evergy West has a number of
25 customers. And let's say a hypothetical, their sales to

1 all of their customers including Nucor is 100 kilowatt
2 hours?

3 A. Okay.

4 Q. Evergy retires all the RECs necessary
5 for compliance for all of those sales including Nucor; is
6 that correct?

7 A. That's correct.

8 Q. Okay. Under the SIL, what the Company
9 wants to do is exempt all of the sales to the MKT
10 customers so that Evergy doesn't retire them; those
11 customers somehow retire those on their own; is that
12 correct?

13 A. So my understanding is they're just
14 lowering the requirement.

15 Q. Does that --

16 A. There is some -- in the stipulation I
17 think there is some, you know, documentation considered.
18 Is that what you're asking?

19 Q. Well, I'll go to the next question.
20 Does that affect your department's ability to verify
21 these RECs in compliance with the REC statute?

22 A. So we do have access to all of the
23 electric utilities electronic tracking of their renewable
24 energy credits. Anything that's in the North American
25 Renewables registry, for our utilities we have access to.

1 You know, I think there was some attempt in the
2 stipulation to provide information. It is not
3 necessarily what -- I will have to look at it. I think
4 they acknowledged, you know, needing some sort of
5 documentation. But really it is that they're changing
6 what the requirement is regardless of, you know, whether
7 they are retiring RECs or not.

8 Q. Got you. Thank you so much.

9 A. Sure.

10 JUDGE HATCHER: Thank you,
11 Mr. Woodsmall.

12 That takes us to Mr. Mills. Any
13 questions?

14 MR. MILLS: No questions. Thank you.

15 JUDGE HATCHER: Thank you, counselor.

16 That takes us to Ms. Bell?

17 RE CROSS EXAMINATION BY MS. BELL:

18 Q. Thank you. Would you agree that the
19 purpose of the renewable energy standard is to ensure
20 that 15 percent of energy is renewable?

21 A. 15 percent of energy? 15 percent -- I
22 would agree that the sales made by our investor-owned
23 utilities must demonstrate that 15 percent of those sales
24 are sourced from renewable energy.

25 Q. And why -- okay. Well -- okay. And

1 would you agree if Evergy was currently sitting at 15
2 percent renewables and Velvet documents in the NAR system
3 that it is bringing 100 percent renewables to the SPP,
4 which covers its load from Evergy, that following Velvet
5 being added to the system there will be more renewable
6 energy than less?

7 A. That was very long question. I will
8 tell you the part that I agree with, and that is that
9 Velvet has represented in the hearing today that they
10 intend to procure renewable energy resources at 100
11 percent of their load.

12 Q. And you would -- so turning to the
13 Evergy/Velvet stipulation, if you look up the RESRAM
14 provision in Paragraph 6, if Velvet for any kilowatt
15 hours not supported by renewable energy and those
16 kilowatt hours would be subject to the RESRAM?

17 A. I am sorry. Can you rephrase the
18 question?

19 Q. Sure. In reading Paragraphs 6, if
20 Velvet fails on its commitment to make 100 percent
21 renewables, if it comes in at 50 percent, then the
22 kilowatt hours not supported by renewables would be
23 subject to the RESRAM? Or not meeting the -- okay.
24 Strike that question.

25 Okay. You would agree with me that if a

1 schedule MKT customer does not have renewable attributes
2 equal to the existing renewable energy standard, then a
3 customer would be subject to the RESRAM?

4 A. I'm sorry. Could you repeat the
5 question?

6 MS. BELL: No further questions.

7 JUDGE HATCHER: Thank you, Ms. Bell.

8 That takes us to Evergy. Any questions
9 from Evergy?

10 MR. FISCHER: Yes. Just briefly, Judge.

11 RECROSS EXAMINATION BY MR. FISCHER:

12 Q. Ms. Eubanks, you had some questions
13 regarding the Nucor situation?

14 A. Yes.

15 Q. And that is under SIL tariff. Correct?

16 A. That is correct.

17 Q. Now, service under that tariff -- are
18 you familiar with the provision that says that service
19 under this tariff shall be excluded from projected energy
20 calculation as used to establish charges under riders FAC
21 and RESRAM?

22 A. I don't have that SIL tariff in front of
23 me, if you could somehow put me to it.

24 Q. Yeah. I think your counsel has maybe
25 put that into the record.

1 MR. KEEVIL: No. He didn't.

2 BY MR. FISCHER:

3 Q. But rather than taking time to find it,
4 are you familiar with that, that basically the service --
5 the Nucor service is used as -- it's excluded from the
6 FAC and the RESRAM?

7 A. I -- off the top of my head, I believe
8 they are excluded from RESRAM. But I don't have the
9 tariff language in front of me.

10 Q. Okay. Well, I think we can just quote
11 that in the brief, but I think there is a provision that
12 says, service under this tariff shall be excluded from
13 projected energy calculations used to establish charges
14 under riders FAC and RESRAM. Would that surprise you?

15 A. To my recollection that sounds familiar.

16 Q. Okay. Great. The other area or -- in
17 your role at the Commission you would be quite familiar
18 with the RES and RESRAM rules that the Commission has; is
19 that right?

20 A. Yes.

21 Q. Is it correct that under those rules the
22 RES portfolio requirements are based on total retail
23 electric sales of the electric utility?

24 A. Yes.

25 Q. And then there's a definition in the

1 rule, is that right, of total electric sales?

2 A. There is a definition in the rule, yes.

3 Q. And is it correct, there is not a
4 definition of that term in the statute. It refers to the
5 Commission shall establish rules; is that right?

6 MR. KEEVIL: Judge, I'm going to object.
7 I don't think the statute even uses that term.

8 BY MR. FISCHER:

9 Q. So it's not defined in the statute.
10 Correct, Ms. Eubanks?

11 A. It uses the term electric utility sales.

12 Q. Right and that total retail -- excuse
13 me. I think the term in the RESRAM rule says that total
14 electric retail sales or total retail electric energy
15 usage means the megawatt hours of electricity delivered
16 in a specified time period by an electric utility to its
17 Missouri retail customers as reflected in the retail
18 customer's monthly billing statement. That is the
19 definition in the RESRAM statute. Is it your
20 understanding that that's one of the area's the Company
21 is asking for a variance?

22 MR. KEEVIL: Judge, I'm going to
23 objective. If Mr. Fischer is testifying, he can take the
24 stand. But I don't think what he's -- what he read
25 claimed first to be a rule. Then he claimed it to be a

1 statute. And whatever is in the rule or in the statute
2 speaks for itself and he can cite that in his brief. I
3 just don't think it's proper.

4 MR. FISCHER: If I misspoke, I was
5 referring to the rule. But I will withdraw that
6 question.

7 BY MR. FISCHER:

8 Q. I will just ask this one: Ms. Eubanks,
9 is it your understanding the Company is asking for a
10 variance from the RESRAM or the RES rule itself?

11 A. It is my understanding that the Company
12 is asking for a variance from the renewable energy
13 standard rule, yes.

14 MR. FISCHER: Thank you. That's all I
15 have. Thank you.

16 JUDGE HATCHER: Thank you, Mr. Fischer.
17 Ms. Eubanks, you are excused from the witness stand.

18 MR. KEEVIL: Can I do a little redirect?

19 JUDGE HATCHER: Thank you.

20 MR. KEEVIL: Thank You.

21 MR. KEEVIL: Gosh darn it, and we are
22 recording this thing and everybody's gonna know. Yes,
23 Mr. Keevil, let's go back to redirect.

24 REDIRECT EXAMINATION BY MR. KEEVIL:

25 Q. First let's start out with -- well,

1 let's work backwards here. You've been receiving a lot
2 of questions about the RESRAM charge and the RES
3 requirement. Now, explain, is there a difference between
4 RESRAM charge and the RES requirement?

5 A. Yes.

6 Q. Would you please explain the difference
7 between those two and what those two represent?

8 A. Sure. So when we're talking about RES
9 requirements it's the renewable energy standard, which is
10 a statute that requires the utilities to provide
11 electricity from renewable energy resources and that's
12 based on their sales that they make. The highest level
13 of the standard is 15 percent and it starts in 2021 at 15
14 percent. There were stairsteps before then. And
15 continually, you know -- continues at 15 percent
16 annually.

17 When we're talking about the renewable
18 energy standard rate adjustment mechanism, that is
19 intended to represent the all cost and all benefits
20 related to compliance with the renewable energy standard
21 and that is a charge that per Evergy's tariff is assessed
22 to all customers.

23 Q. So getting a variance from a charge
24 wouldn't necessarily mean a variance from the RES
25 requirement. Correct?

1 A. That's correct.

2 Q. All right. Now, there's also been a lot
3 of talk in the hearing about the rule regarding RES. Is
4 there also a statute that talks about the RES?

5 A. There is.

6 Q. And to your knowledge -- I know you are
7 not a lawyer, but to your knowledge does the statute and
8 the rule -- let me backup.

9 Does the statute use the phrase "total
10 electric retail sales," which Mr. Fischer was referring
11 to?

12 A. It uses the phrase "electric utility
13 sales." The rule uses the phrase retail electric --
14 "total retail electric sales."

15 Q. So there is different references and
16 different terms?

17 A. To me they're the same, they mean the
18 same, but the words are different.

19 Q. Okay. When you -- going back to one of
20 the examples that Mr. Clizer, I think it was -- or maybe
21 it was the judge. Velvet, it's my understanding -- is it
22 -- who's going to be doing the contract in here? Velvet
23 is going to somehow execute -- is buying its own energy
24 through SPP?

25 A. So my understanding is the -- for

1 renewable energy, is that your question?

2 Q. Yes?

3 A. For renewable energy my understanding is
4 they're -- they will do something whether it's procuring
5 a wind PPA somewhere in SPP, but I think Mr. Brubaker
6 indicated it could potentially be construction of a
7 resource.

8 Q. Okay. Now, getting away from Velvet
9 specifically, an MKT customer, will an MKT customer cause
10 Evergy's RES requirement to go up?

11 A. Yes.

12 Q. Okay. And that's true regardless of
13 whether -- of where -- how do I say this? I'm trying to
14 distinguish this from the Nucor. The Nucor situation
15 Evergy got the PPA for Nucor and got the RECs itself.
16 Correct?

17 A. Yes.

18 Q. Okay. That's not necessarily what is
19 happening here?

20 A. Correct.

21 Q. So even though Evergy and the MKT
22 customer have a different relationship under the SIL
23 tariff, the Evergy RES requirements are still going up
24 because of these MKT customers?

25 A. Exactly.

1 Q. All right. And do you see a distinction
2 there between the SIL tariff and the MKT tariff in that
3 regard?

4 A. So I don't think renewable energy
5 standard compliance or RESRAM is specifically in the SIL
6 tariff. I don't know that those phrases exist in the SIL
7 tariff. But I don't have it in front of me,
8 unfortunately.

9 Q. The only language I am aware of in the
10 SIL tariff regarding the RESRAM is that which Mr. Fischer
11 read to you just a moment ago. It says, service under
12 this tariff shall be excluded from projected energy
13 calculations used to establish charges under riders FAC
14 and RESRAM and the MEEIA program.

15 A. Yeah, so that is not the same as RES
16 requirements for the renewable energy standard. That's
17 for the RESRAM charge.

18 Q. Okay. So this -- okay. I will just
19 leave that alone. Going back to the SSP tariff, which I
20 think is Exhibit 104. Ms. Bell had you refer to
21 Paragraph 2 under monthly billing. Could you explain to
22 me your understanding of the relationship of that
23 paragraph to the either the RESRAM or the RES
24 requirement?

25 A. Yeah. So similar to net metered

1 customers, their net energy usage is what they are being
2 billed on. So to the extent the renewable energy
3 standard applies to what those customers are using, it is
4 a net amount. So the solar subscription pilot rider is
5 similar in a way to virtual net metering. So what's
6 different under the solar subscription pilot rider and
7 scheduled as SKT.

8 Q. SKT?

9 A. The one that -- the market rate.

10 Q. MKT?

11 A. MKT. I'm sorry. The MKT schedule is
12 that the energy usage is being netted within that solar
13 subscription pilot rider. So all the other components
14 that go into sales and also, you know -- I should also
15 note that the cost of the resource is, you know,
16 incorporated into other portions of that rate. I don't
17 know if that answers your question.

18 Q. No. I think you did. Ms. Bell was
19 asking you about if the energy -- the net energy for a
20 month was zero then would that make your RESRAM charge
21 zero?

22 A. So if there was no energy usage, there
23 would be no sales to the utility company and then there
24 would be no RES compliance requirements.

25 Q. If there were no sales?

1 A. Yes.

2 Q. Could I have you flip over to the last
3 page, the 109.5 sheet? Do you see a section there that
4 -- with all the adjustments and surcharges?

5 A. I do.

6 Q. Could you read me that sentence? It's
7 Fairly short section. Read that to me.

8 A. The rates hereunder are subject to
9 adjustment as provided in the following schedules, fuel
10 adjustment clause, FAC, renewable energy standard rate
11 adjustment mechanism rider, RESRAM, demand-side
12 investment mechanism rider, DSIM, tax and license rider.

13 Q. So what does that mean to you? What
14 does that section mean to you?

15 A. It means customers using the solar
16 subscription pilot rider will pay RESRAM charges based on
17 their usage.

18 Q. Okay.

19 MR. KEEVIL: I think that is all I have,
20 Judge. Thank you.

21 JUDGE HATCHER: Thank you. Ms. Eubanks
22 you are excused. Mr. Busch, hold on just a moment. We
23 are going to go ahead and take a break to stretch our
24 legs. Everyone come back at 3:00, three o'clock sharp.
25 That is 13 minutes from now. We are at recess and off

1 the record.

2 (OFF THE RECORD.)

3 JUDGE HATCHER: The hour of recess
4 having expired, let's go back on the record.

5 Mr. Busch, let me go ahead and swear you
6 in.

7 (Witness sworn.)

8 JUDGE HATCHER: Thank you. Please have
9 a seat. We are continuing the hearing in EO-2022-0061.
10 We are beginning with the testimony of Mr. Jim Busch who
11 is adopting the testimony of Robin Kliethermes.

12 Mr. Keevil, your witness.

13 MR. KEEVIL: Thank you, Judge.

14 JIM BUSCH, having first been duly sworn testifies as
15 follows:

16 DIRECT EXAMINATION BY MR. KEEVIL:

17 Q. Sir, would you please state your name
18 and spell it for the record?

19 A. My name is James Busch. Busch is
20 spelled B-U-S-C-H.

21 Q. Thank you. Now, are you adopting in
22 this proceeding the previously prefiled testimony of
23 Robin Kliethermes?

24 A. Yes, both her rebuttal and surrebuttal
25 testimony.

1 Q. Thank you. And when Ms. Kliethermes
2 filed this testimony, were you her supervisor?

3 A. Yes.

4 Q. All right. Now, have you read both
5 pieces of testimony?

6 A. Yes. I reviewed it before it was filed
7 and then I have read it again.

8 Q. Okay. Thank you. Are there any changes
9 or corrections you need to make to either Exhibit 102 or
10 103?

11 A. Not to my knowledge.

12 Q. I should've said earlier, I apologize,
13 the rebuttal testimony has been marked as Exhibit 102 and
14 the surrebuttal/cross surrebuttal as been marked Exhibit
15 103. Mr. Busch, if I were to ask you the questions
16 contained in Exhibits 102 and 103, would your answers be
17 the same as contained therein, substantially or the same?

18 A. Substantially the same, yes.

19 MR. KEEVIL: Judge, with that I would
20 offer Exhibits 102 and 103.

21 (WHEREIN; Staff Exhibits 102 and 103
22 were offered into evidence.)

23 JUDGE HATCHER: Thank you. You heard
24 the motion by counsel. Does anyone have any objections
25 to the admission of Exhibit 102 and 103, the rebuttal and

1 surrebuttal of Robin Kliethermes adopted by James Busch?
2 I'll take both questions in one motion. Does anyone have
3 any objections? Thank you. Let's not parse my question.
4 Hearing no objections, Exhibits 102 and 103 are admitted
5 onto the record.

6 (WHEREIN; Staff Exhibits 102 and 103
7 were received into evidence.)

8 MR. KEEVIL: Thank you, Judge. With
9 that, I would tender the witness for cross-examination.

10 JUDGE HATCHER: Thank you. That takes
11 us to Mr. Clizer.

12 CROSS-EXAMINATION BY MR. CLIZER:

13 Q. Good afternoon?

14 A. Good afternoon.

15 Q. Mr. Busch, would you happen to have a
16 copy of the stipulation tariff that was attached to
17 Schedule 1 to the Evergy and Velvet Tech nonunanimous
18 stipulation agreement?

19 A. Yes, the one filed a couple of nights
20 ago?

21 Q. Yes. Would you turn to Page 5 of 7 of
22 Schedule 1?

23 A. I don't see that mine has Page 5 of 7.

24 Q. It has the additional provisions?

25 A. Yes.

1 Q. I'm looking at Paragraph 4, second
2 paragraph beginning nonparticipating customers.

3 A. I was looking at ours. My apologies.
4 Yes, I am there.

5 Q. Okay. All right. I'm going to ask you
6 a couple of questions related to this paragraph. I just
7 want to be that first sentence to make sure that it is
8 accurate. Nonparticipating customers shall be held
9 harmless for any deficiency in revenues from the cost to
10 serve for which the rates were designed to recover by any
11 customer served under this tariff. Did I read that
12 substantially correct?

13 A. You did.

14 Q. All right. Now, let's just take
15 sentence alone in isolation. In your opinion, as a
16 regulator, if there is a deficiency in revenue between
17 the cost to serve a customer who takes under this tariff
18 and what is recovered in rates -- or rather through the
19 contract under this tariff, that deficiency cannot be
20 recovered from nonparticipating customers. Is that how
21 you would interpret that?

22 A. I'm sorry. Could you repeat that one
23 more time?

24 Q. Sure thing. In your opinion, as a
25 regulator, if there is a deficiency between the cost to

1 survey a customer who takes under this rate and the
2 contract revenues provided under this rate, that
3 deficiency cannot be passed on to nonparticipating
4 customers?

5 A. That's how I read that sentence, yes.

6 Q. Okay. Now, we had in the next sentence,
7 which reads, it is expressly recognized that the Company
8 and Schedule MKT customers shall have the right to
9 present evidence for the Commission's consideration of
10 other economic benefits as a result of MKT customers
11 taking service from the Company. Would you agree with me
12 that that sentence modifies the prior one and changes the
13 answer slightly?

14 A. Yes, it is -- the way I read that
15 sentence it is allowing further evidence to be put
16 forward by the Company, in this case Evergy, to explain
17 why other customers may not be held harmless.

18 Q. So you would agree with me if that
19 sentence is included, it is possible that nonparticipants
20 may be required to pay for part of the cost of serving
21 MKT customers in the result of a revenue deficiency?

22 A. That is my understanding, yes.

23 Q. All right. Would you agree with me that
24 the inclusion of that language will make it marginally
25 more likely that contract reviews under this tariff would

1 **become more contentious?**

2 A. Yes. I would imagine that that would
3 include further review and further discovery and further
4 -- yeah. It would make it much more difficult, yes.

5 Q. If you were in charge of a utility and
6 you are operating under a contract like the -- sorry.
7 Not the contract. Let me back that up and start over.

8 If you were in charge of a utility and
9 you are operating under a tariff like what Evergy and
10 Velvet Tech have put forward and it had this language in
11 there, would you be -- would you agree that you would be
12 slightly -- I'm going to start over again. I apologize.

13 If you were a utility and you were
14 operating a tariff that did not have this language, so it
15 was just the hold harmless, would you agree that you
16 would be slightly more cautious about entering into a
17 contract with a prospective customer?

18 A. Yes.

19 Q. You would put more effort into making
20 sure that the contract you signed recovered all costs.
21 Correct?

22 A. Yes.

23 Q. And that's because if it doesn't, it is
24 you who are on the line for making up the deficiency?

25 A. Depending on how a subsequent contract

1 was written with a customer, but for the most part, yes.

2 Q. All right. Now, you're familiar with
3 the Schedule SIL that's currently in effect in Evergy
4 West?

5 A. I have become familiar with it over the
6 last couple of days, yes.

7 Q. Fair enough. Would you agree with me
8 that the language included in OPC, MCEG, Staff tariff,
9 really the hold harmless provision is primarily adopted
10 from the language found in Schedule SIL?

11 A. I believe that was a part of the
12 testimony that Ms. Kliethermes wrote that I am adopting
13 and that the end intent of what we were writing and that
14 we came to an agreement with MCEG and OPC, is
15 substantially the same or similar to that language.

16 Q. Are you aware of any significant
17 differences between the Schedule SIL and the MKT tariff
18 and the facts surrounding them that would make it
19 uneconomic to include the same hold harmless language in
20 SIL in MKT?

21 A. I am not aware of any.

22 Q. You do not know of any differences
23 between the SIL tariff and the facts surrounding that and
24 the MKT tariff and the facts surrounding that, that would
25 mean it is uneconomic to use the exact same language from

1 **the SIL tariff and MKT?**

2 A. Nothing has been brought to my
3 attention.

4 Q. One last question. While other parties
5 will be able to review any contract that is filed, it is
6 only Evergy and the customer who are originally
7 negotiating the contract to be filed pursuant to this
8 tariff. Correct?

9 A. Yeah. The only negotiations I know for
10 the contract were between Evergy and any customer that
11 they might want to allow to be on the MKT tariff.

12 Q. All right. Thank you very much for your
13 time. I have no further questions.

14 JUDGE HATCHER: Thank you, Mr. Clizer.
15 That takes us to Mr. Woodsmall.

16 MR. WOODSMALL: No questions. Thank
17 you.

18 JUDGE HATCHER: Thank you,
19 Mr. Woodsmall. That takes us to Mr. Mills.

20 MR. MILLS: Yes, Judge. Just briefly.

21 CROSS-EXAMINATION BY MR. MILLS:

22 Q. Mr. Busch, can you turn to Page 5 of
23 Ms. Kliethermes's rebuttal testimony?

24 A. Page 5 of rebuttal, sir?

25 Q. Yes?

1 A. I am there.

2 Q. In Lines 5 through Line 17

3 Ms. Kliethermes gives four reasons why the Commission
4 should reject the tariff. Do you agree with all of those
5 reasons?

6 A. You said starting at Line 5 where it
7 says, equal to or in excess of a monthly demand of 100
8 megawatts.

9 JUDGE HATCHER: I can help here.
10 Mr. Busch, it's Page 5. Start at Line 13.

11 THE WITNESS: 13. Okay.

12 JUDGE HATCHER: He's citing the four
13 that Ms. Kliethermes put in her testimony.

14 THE WITNESS: I see three.

15 MR. KEEVIL: That's not it. Yeah.

16 JUDGE HATCHER: I'm sorry. The next
17 page?

18 MR. KEEVIL: He is talking about the
19 previous page, I think.

20 MR. MILLS: No. I'm sorry. It is Page
21 4.

22 JUDGE HATCHER: At the top, Lines 5
23 through 17, is Page 4?

24 MR. MILLS: Correct. I'm sorry.

25 THE WITNESS: Okay. So you said for the

1 reasons explained in more detail, Staff recommends the
2 Commission reject the Company's application because of --

3 MR. MILLS: Yes. My question is whether
4 you --

5 THE WITNESS: -- outside of a --

6 MR. MILLS: -- agree with all of those
7 reasons.

8 THE WITNESS: These four, the reasons
9 why were given.

10 MR. KEEVIL: What was the question? Was
11 there a question other than turn --

12 JUDGE HATCHER: Does he agree with them.

13 MR. KEEVIL: What?

14 JUDGE HATCHER: Does he -- Mr. Busch
15 agree with the four. The question as I understood it is,
16 Mr. Busch, do you agree with the four reasons presented
17 in the testimony you are adopting, specifically Page 4,
18 Lines 5 through 17.

19 MR. MILLS: That is the question. Thank
20 you, Judge.

21 THE WITNESS: I got it. We good? All
22 right. So at the time that this was filed, yes, those --
23 I agreed with those. I think subsequently, because of a
24 recent Commission order in the Evergy electrification
25 case, I think Number 1 may not apply anymore, about

1 establishing outside of a rate reschedule, outside of a
2 rate proceeding.

3 BY MR. MILLS:

4 Q. Is that your whole answer?

5 A. Yeah. I think the rest of it I still
6 agree with what she wrote at the time.

7 Q. Okay. Well, let's look at reason Number
8 4, the tariff is not necessary because other tariffs may
9 apply.

10 A. Uh-huh.

11 Q. Would a customer who qualifies for the
12 SIL tariff also qualify for the large power service rate?

13 A. What if a customer can be both the SIL
14 and the LPS tariff rate?

15 Q. No. My question is wouldn't any
16 customer who qualifies for SIL also qualify for LP?

17 A. I think that is correct.

18 Q. Okay. So if you were to follow the
19 reasoning given in reason Number 4, there would have been
20 no reason to adopt the SIL tariff. Correct?

21 A. Could you repeat that please?

22 Q. If the Commission were to have followed
23 this reason in the case in which they approved the SIL
24 tariff, they would never had done so because there was
25 already a tariff that would have been -- that Nucor

1 couldn't have taken service under. Correct?

2 A. Since I am not as familiar with the SIL
3 tariff or the Nucor, I don't know that I can answer the
4 question.

5 Q. Let's go about this another way. Aren't
6 there any -- well, aren't there quite a few residential
7 service classifications for --

8 A. Residen--

9 Q. Some for all electric customers; some
10 for space heating customers, things like that?

11 A. There are various -- there are various
12 classes of customers, yes.

13 Q. But within classes aren't there various
14 tariffs that have distinctions?

15 A. I think so, yes.

16 Q. So if you were to follow the reasoning
17 there, why would the Commission have ever approved more
18 than one tariff to serve residential customers assuming
19 that all residential customers could be served under a
20 single tariff?

21 A. Sorry. I'm trying to read that
22 statement, Number 4, while you were speaking at the same
23 time. Could you repeat that?

24 Q. Yes. If you follow the reasoning that
25 assuming that one tariff will serve any particular

1 **customer, why were there ever be more than one schedule**
2 **to serve residential customers?**

3 A. I am not familiar with the reasoning why
4 some of the customer classes have different -- different
5 characteristics. But generally speaking, you might have
6 a situation where like on a space heating a customer may
7 be only be using it space heating and may not be using it
8 for any other activity. So there could be situations
9 where the MKT tariff could have been fit underneath the
10 SIL tariff or the large power tariff and it wasn't
11 necessary to create a new tariff. Whereas in those other
12 cases there was reasoning why it would be necessary such
13 that it was only for specific use.

14 Q. Okay. I think that's somewhat of a
15 circular argument. Let's try to pull that apart. If a
16 customer could be -- if space heating customer could be
17 served under a generally applicable residential tariff,
18 why would you ever adopt a specific space heating tariff
19 under this reasoning?

20 A. I wasn't around when we created a new
21 tariff like that. I wasn't around. I don't remember
22 splitting off something like that into the residual
23 rates, so I don't know -- I can't speak to exactly what
24 the reasoning for was at that time. But if there were
25 specific factors that would cause it to not to make sense

1 for that -- those types of customers to be included in
2 the general applicable rate, then you would do that.

3 Q. And isn't that sort of the exact
4 argument that Velvet and Evergy have made here, that
5 there are reasons to have a different tariff than the LP
6 tariff to serve this kind of a load?

7 A. I would agree that is argument that they
8 are making.

9 Q. And because of the existence of things
10 like multiple residential tariffs, isn't it clear that
11 the Commission has agreed with those arguments in other
12 situations?

13 A. I would agree with that.

14 MR. MILLS: That is all I have. Thank
15 you, Judge.

16 JUDGE HATCHER: Thank you, Mr. Mills.
17 That takes us to Counselor Bell.

18 MS. BELL: No questions, Your Honor.

19 JUDGE HATCHER: Thank you. That take us
20 to Evergy.

21 MR. FISCHER: Thank you, Judge.

22 CROSS-EXAMINATION BY MR. FISCHER:

23 Q. Mr. BusCh, can you hear me okay?

24 A. Yes, sir. I can.

25 Q. Okay. During your cross-examination

1 from Public Counsel he was talking to you about the hold
2 harmless provision that was included in the SIL tariff.
3 Do you recall that?

4 A. Yes.

5 Q. Is it correct that in that Nucor case
6 the Company, Staff, and Public Counsel submitted a
7 stipulation and agreement that recommended the language
8 that is included in that tariff?

9 A. I know that the Staff was a part of the
10 stipulation. I know that Evergy was as well. I do not
11 know if Public Counsel was or not.

12 Q. Yeah. They may not been -- they may
13 have taken a non -- non-opposition position if I recall.
14 But anyway, that was a negotiated compromise that was
15 submitted by Company and Staff; is that right?

16 A. That is my understanding.

17 Q. Okay. He asked you a couple of
18 questions as a regulator. You have been with the
19 Commission a long time. Is it your understanding that
20 the Public Service Commission tries to take into account
21 all relevant factors whenever it looks at adjustments in
22 rate cases or other cases in front of the Commission?

23 A. Generally speaking, when we talk about
24 rate case that is the phrase that is used, to look at all
25 relevant factors.

1 Q. Do you understand that to mean that the
2 parties could basically present all sides of the question
3 and the Commission will look at the competent and
4 substantial evidence and make a decision based upon that
5 evidence?

6 A. I think it means, yes, all -- any
7 information that needs to be evaluated by the Commission
8 can be brought forth by the parties.

9 Q. And that could happen under the
10 Company's proposed -- the Company and Velvet's proposed
11 hold harmless language where the Commission could look at
12 other evidence beside just revenues and cost. They could
13 look at economic benefits or other things. Correct?

14 A. I think that is an accurate statement,
15 but the rate that the -- that is being contemplated under
16 MKT is slightly different than those other rates that we
17 are looking at in a normal general rate case.

18 Q. But if all relevant factors were taken
19 to an account when deciding whether a deficiency
20 adjustment was appropriate, the Commission would look at
21 all the evidence, all the sides of the question. Right?

22 A. I think they would, you know -- at any
23 opportunity for the hold harmless, I think there would be
24 a lot of factors that would be looked as well.

25 Q. Okay. Great. I also would like to go

1 to Page 4 of your -- of Robin Kliethermes's rebuttal
2 testimony and ask you a question about the second reason
3 that Staff lists there for opposing the Company's
4 proposal in this case. Do you see that?

5 A. On Line 9?

6 Q. Yes. Line 9 where it says, the
7 requested tariff gives undue authority to EMW to
8 determine appropriate SPP costs without Commission
9 approval? Do you see that?

10 A. Correct. Yes.

11 Q. Is it your understanding under both your
12 nonunanimous stipulation with the Staff and MECG as well
13 as the stipulation that's being proposed by Evergy and
14 Velvet that Evergy would intend to submit its market rate
15 contract through approval by the Commission in a future
16 proceeding?

17 A. I think it is fair to say that a lot of
18 that concern has been alleviated through the two tariffs.

19 Q. Okay. Great. Thank you. Then looking
20 at the third reason you have listed for opposing the
21 Company's position, you say the requested tariff is
22 discriminatory in that is only available to customers who
23 fall under NAICS Code 518210 or 541511. Do you see that?

24 A. Yes, sir.

25 Q. Is it your understanding that both of

1 the nonunanimous stipulations that have tariffs attached,
2 the one that Staff submitted as well as the one that
3 Evergy and Velvet submitted, no longer have a reference
4 to those codes?

5 A. You are correct.

6 Q. So is that concern also alleviated?

7 A. Yes.

8 MR. FISCHER: I think that is all the
9 questions I have. Thank you, Judge.

10 JUDGE HATCHER: Thank you, Mr. Fischer.
11 We'll go now to Commissioner questions. Again, we do
12 have commissioners on WebEx. Are there any commissioner
13 questions for Mr. Busch? All right. Hearing none, I do
14 have a couple of bench questions.

15 QUESTIONS BY JUDGE HATCHER:

16 Q. Would you characterize Evergy as easily
17 complying with or struggling to comply with the renewable
18 energy standard?

19 A. That -- Ms. Eubanks may have been a
20 better person to answer that question.

21 Q. Yeah.

22 A. But it is my understanding, and I could
23 be corrected, but I think they are meeting their
24 standards. They have more -- it my understanding they
25 have more RECs than they need.

1 Q. I know I've read that in testimony and I
2 thought it was in Ms. Kliethermes, but I couldn't locate
3 it immediately while I was up here.

4 A. That is my understanding.

5 Q. That is mine as well. Is there a
6 threshold level -- this is the same line of thought. Is
7 there a threshold level of new load whereby Evergy would
8 have to secure additional RES compliance -- RECs?

9 A. Yeah, I don't know how many they have.

10 Q. Okay.

11 A. That they can utilize. Sorry.

12 Q. No. No. You're fine. My fault. Let's
13 switch gears. And I am going to ask you about the
14 questions about Evergy and Velvet Schedule 1 from their
15 stipulation. So the same question as to the other
16 witnesses. Please tell me what Staff's issues are and
17 why?

18 A. Well, you know, I think that, you know,
19 as Mr. Lutz and Mr. Ives stated yesterday, the concern
20 they have with ours are basically the same concerns that
21 we have with theirs. Kind of going down, I wrote them
22 out too. I think the first one is they don't include the
23 language about the economic development rider, that PED
24 tariff. You know, that seems to be an issue where, you
25 know, the customer is getting a very substantial discount

1 in order to take service and then they're getting another
2 benefit by going directly after that into the MKT tariff.

3 You know, there's -- in my opinion, you
4 know, we use economic development riders in various
5 aspects to attract new load, to attract new customers, to
6 get existing customers to expand in Missouri in the
7 service territories of those entities for obvious
8 reasons.

9 So in my opinion, you know, it's -- the
10 reason to do it is because there's benefits and there's
11 benefits to the Company, the utility. There's benefits
12 to the region and to this state as has been discussed.
13 But, if one of those benefits is going to be lower
14 electric rates that means the rest of the customer base
15 for a short period of time is going to be paying for
16 those benefits. They're going to get that. And a reason
17 why for an electric company or a utility at any level, in
18 my opinion, to get more load is because then you can take
19 a lot of those massive fixed costs and you can spread
20 them out to a larger customer base. So you give them a
21 break to come into this system, to get them on, but at
22 some point in time they have to then start paying their
23 fair share. Otherwise, they are constantly getting these
24 benefits given to them when they are other customers who
25 are not getting those benefits.

1 So to me it's a -- when you do an
2 economic development rider it's to get a customer there
3 and then to get them onto a regular rate with all the
4 other customers. To me it's not supposed to be
5 transitory to go from here is a great rate we're going to
6 give you for two or three or five years and oh by the
7 way, once that is over with here is the better rate that
8 keeps the rest of the customers from benefiting from
9 getting on the system. So that is why I don't think -- I
10 think we need to put that economic development rider
11 prohibition into the tariff.

12 **Q.** So I just want to summarize and make
13 sure that we've hit all of the issues. On my notepad, I
14 have noted that 393.1640 language that has been called
15 the PED and the --

16 A. Schedule PED.

17 **Q.** Yeah. So that language, but we have
18 competing versions. And I'm basing that off of this
19 morning's offering from Evergy. They had offered -- not
20 offered --

21 A. Are you talking about Exhibit 7?

22 **Q.** Yes.

23 A. So I -- I don't know if they have made
24 an offer of this.

25 **Q.** I'm not asking you to comment.

1 A. Sorry.

2 Q. I'm just pointing out for my
3 understanding and to make it clear for the record. That
4 is a concern, and the two sides have two differing
5 versions of language that would go into a tariff. We
6 have -- that is one issue. Two is the substation
7 voltage, which is --

8 A. I'll get there.

9 Q. Just a yes or no, in or out. Every
10 wants it in.

11 A. We would like it out. Yes.

12 Q. We have the hold harmless language,
13 which we have competing versions of the verbiage. And I
14 understand everyone would have comments on how far
15 language goes. Securitization. We do not have been
16 competing versions; it just an in or out?

17 A. Uh-huh.

18 Q. And with the RESRAM paragraph we have
19 two competing verbiage offerings?

20 A. I think those are the major issues. I
21 think there's some language parsing, but generally the
22 rest of it is all pretty much acceptable. Those are the
23 two, four, five big issues, yes.

24 Q. Okay. Please go ahead if I interrupted
25 you?

1 A. That's fine. So I was just wrapping up
2 my EDR. You know, I think Mr. Ives, you know, this
3 morning and last night has given exhibit as an attempt to
4 bridge the differences in the PED, the whole economic
5 development rider issue. I think it's a good start. I
6 appreciate the willingness to talk about what, but it's
7 not quite -- I don't think it get's us quite to where we
8 need to go. But it is a good start and we appreciate
9 that.

10 The next issue as you pointed out, Your
11 Honor, is the substation voltage issue, which we have
12 excluded in our tariff filing. You know, one of the big
13 issues that we have been discussing over these last two
14 days is the hold harmless, the incremental cost, make
15 sure that these customers are paying the exact costs that
16 they have incurred. And when you do rate design, when we
17 do class cost of service the best way to ensure that the
18 appropriate class or the appropriate customer is paying
19 for it is to do a direct assignment.

20 The best way to do direct assignment is
21 if the customer owns that system. So they own their
22 substation. We don't have to worry about making sure
23 that those costs are assigned. It might be easy to
24 allocate the capital costs, but there are other costs,
25 maintenance and stuff like that, that would be more

1 difficult to parse out to just that customer than to the
2 other classes. So to make it easier, just to make it
3 clearer, keeping that substation voltage customer out
4 would be better.

5 In fact, you know, the tariff that
6 Evergy and Velvet has submitted, you know, does have
7 transmission voltage where the customer can own that
8 system. So they are okay with that. So I think, you
9 know, it would just be clearer going forward as the
10 person who's good to be responsible for the department
11 that has to allocate these costs down in the future.

12 The next one -- and I think Mr. Clizer,
13 Mr. Fischer and I were discussing all discussing the hold
14 harmless aspects of it. You know, I think the difference
15 -- and I understand where Evergy is coming from, but the
16 hold harmless, you know, we want to have economic
17 development but we want to make sure that the economic
18 development is sustainable and that it doesn't harm the
19 current customers. And so I think it is important to
20 have those type of hold harmless provisions into when you
21 have a special contract, when you are, you know,
22 contemplating a new tariff and a new situation like we
23 are contemplating with the MKT tariff.

24 You know, to start bringing in a lot of
25 those other factors, the benefits, you know, are we going

1 to start bringing in the fact that the reason why the
2 Company, Velvet or any of these large data centers or
3 whatever other companies may be able to take advantage of
4 this MKT tariff, the reason they are coming and getting
5 hooked up to a utility system is because they need to
6 have power all the time. We don't have a situation yet
7 where renewable energy is 100 percent on a 100 percent of
8 the time cost-effectively. That is a huge benefit that
9 those customers are getting by being hooked up to the --
10 just by having access to that.

11 So that is a benefit that they should be
12 paying for, but realistically through these special
13 contracts they are not paying for that. They're just
14 paying the incremental cost to be added to the system.
15 So then to come back, looking at the hold harmless, to
16 say well look at the economic benefits to the area.
17 Well, you know, what's the benefit to Velvet. Do we get
18 to look at their profitability for simply having access
19 to energy 100 percent of the time? If we can get access
20 to all of that information, then maybe we can have a
21 discussion about that, but I bet we're going to be told
22 we can't look at any of their information because the
23 Commission does not have jurisdiction over Velvet or
24 Google or anybody else.

25 So we're not going to be able to get

1 into all the benefits that they're receiving by simply
2 being a part of that system. So the best way to do that
3 is we put a hold harmless in there so that we can look at
4 the cost as contemplated by our tariff language.

5 I won't talk about all the RESRAM
6 changes. I think Ms. Eubanks had done an excellent job
7 and I will just bunch that. So I will leave that one
8 alone.

9 And then we include the securitization
10 language. You know, that is a relatively new tool that
11 has been passed by the legislature and, you know, I am
12 not an attorney, but it just seems that is something that
13 I've heard that all customers should have to pay for and
14 considering they are going to be benefiting from those
15 types of generating facilities, that if they are retired
16 and securitized I can't imagine why they shouldn't have
17 to pay their fair share. And I think that hits all of
18 the major differences between the two.

19 **Q. I just want to give a second. I'm going**
20 **to ask if there is anything else in the tariffs, either**
21 **one that you would like to comment on?**

22 **A.** No. I think all the parties have worked
23 extremely hard over a very condensed period of time to
24 come to a situation where we have boiled it down to two
25 competing tariffs that are, you know, some substantial

1 differences but are substantially the same in a lot of
2 other ways and I think that is a testament to all the
3 parties' willingness to sit at the table and talk with
4 each other.

5 JUDGE HATCHER: Thank you, Mr. Busch.
6 That would take us to recross examination.

7 Mr. Clizer?

8 RE CROSS EXAMINATION BY MR. CLIZER:

9 Q. Part of your discussion regarding the
10 hold harmless agreement or hold harmless provision, I
11 should say, with the judge, you were talking about our we
12 going to get a chance to look at some of the economic
13 benefits to Velvet Tech or any other customer that takes
14 under this schedule. Do you recall that?

15 A. I do.

16 Q. Does that include, for example, the
17 economic benefits of being allows to be on the EDR or
18 economic development rider for some period of time before
19 switching over?

20 A. I would hope so.

21 Q. You would agree with me that one of the
22 principal differences between a customer who takes under
23 this kind of tariff and a customer who takes under a
24 general rate are the general rates are set in general
25 rate cases where the parties aren't negotiating so much

1 as they are presenting evidence as to what the rate
2 should be. In this circumstance there's a strict
3 negotiation with the parties?

4 A. Right. The Customers -- most of the
5 customers, if not all of the customers, in a general rate
6 case are paying -- which we argue about a lot -- of --
7 their fully distributed costs, the cost of providing
8 service. Yeah. These types of customers are only paying
9 an incremental cost. So they are not paying necessarily
10 the exact type of cost that other legacy customers would
11 be paying.

12 MR. CLIZER: No further questions.

13 Thank you.

14 JUDGE HATCHER: Thank you.

15 And Mr. Woodsmall?

16 MR. WOODSMALL: Briefly, Your Honor.

17 RECROSS EXAMINATION BY MR. WOODSMALL:

18 Q. You talked a little bit in questions
19 from the Judge about whether Evergy has enough RECs. Do
20 you recall that?

21 A. I do recall not answering that question,
22 yes.

23 Q. Well, I think you did say you believe --

24 A. I believe they do, yes.

25 Q. And I'm not going to get far afield on

1 this. But would you agree that those RECs that Evergy
2 possesses are paid for by legacy customers in either
3 paying for a solar farm or wind PPA or something like
4 that?

5 A. That would be my understanding.

6 Q. And if there are excessive RECs, is it
7 your understanding that those RECs can be monetized in a
8 secondary market?

9 A. I believe I have had a conversation with
10 Ms. Eubanks about that very concept.

11 Q. Okay. And so since these can be
12 monetize, they have some value. So to the extent that
13 these are used to serve an MKT customer, that MKT
14 customer should pay, in some regard, legacy customers for
15 providing those RECs. Would you agree?

16 A. That sounds like a fair situation.

17 Q. Are you familiar with the concept of
18 free ridership?

19 A. A little bit.

20 Q. Okay. Otherwise, if they don't pay,
21 they are being a free rider on the assets being provided
22 by the legacy customers. Would you agree?

23 A. Yes.

24 Q. Okay. You talked a little bit with the
25 judge about the EDR concept. Do you recall that?

1 A. Yes.

2 Q. Would you agree that the ED -- would you
3 agree with the characterization that it's a loss leader
4 that it's designed to attract customers to get them on
5 the system at which point in the future they will start
6 paying full tariffed rates?

7 A. Yeah. I think that's what I was saying.

8 Q. Okay. And the idea being that at some
9 point in the future they will full tariffed rates and
10 then the other customers will see the benefit of their
11 existence on the system?

12 A. Yes.

13 Q. Okay. And if that -- if an MKT customer
14 is allowed to migrate off of the full tariffed rate
15 before paying that, the other customers lose their quid
16 pro quo, if you will?

17 A. Yes.

18 Q. Okay. Let's talk about the requirement
19 that the customer, the MKT customer provide its own
20 substation. Do you recall that question?

21 A. Yes.

22 Q. And is it your understanding that if the
23 substation is provided by Evergy, that substation is
24 dedicated solely to the MKT customer; is that correct?

25 A. I think that is -- that is the intent.

1 Q. Okay. And so if an MKT customer left,
2 left, went bankrupt, what have you, would you agree with
3 the characterization that that substation investment is
4 now stranded?

5 A. If there was no other customer to take
6 service off of that substation, then yes.

7 Q. And so to the extent that there is a
8 requirement that this customer, the MKT customer, has to
9 provide its own substation, we reduce, in fact eliminate
10 the risk of a stranded utility asset there; is that
11 correct?

12 A. That's correct.

13 Q. Is that one of the benefits of your
14 provision?

15 A. Yes. Yes.

16 Q. Okay. Now, very briefly on
17 securitization. Is it your understanding that Evergy
18 intends to initially serve these customers off the LP
19 tariff with a discount?

20 A. It's my understanding, yes. Using the
21 PED economic development rider in conjunction with the LP
22 tariff, yeah.

23 Q. So while they are on the LP tariff, they
24 are using, relying upon Evergy legacy assets, generating
25 plants, what have you; is that correct?

1 A. While on that and while they go to the
2 MKT, yes. Both.

3 Q. And so then if they have relied on those
4 legacy assets, do you see any reason why they should then
5 subsequently be exempted from the securitization costs
6 for that very legacy asset that they utilized?

7 A. I do not.

8 MR. WOODSMALL: I have no further
9 questions. Thank you, sir.

10 JUDGE HATCHER: Thank you,
11 Mr. Woodsmall. That takes us to Counselor Mills.

12 JUDGE HATCHER: Mr. Mills, I think you
13 might be muted. Mr. Mills?

14 JUDGE HATCHER: Mr. Mills, we're not
15 hearing you but I seeing on my WebEx that you appear to
16 be speaking. *6. We see you on the video. No
17 questions?

18 MR. MILLS: (Shook head.)

19 JUDGE HATCHER: I'm going to take his
20 shaking of the head as no questions.

21 THE WITNESS: I'm good with that.

22 JUDGE HATCHER: And we will move to
23 Ms. Bell. I'm sure Mr. Mills will contact me in some way
24 if I am mistaken.

25 Ms. Bell, witness.

1 MS. BELL: Can you hear me, Judge?

2 JUDGE HATCHER: Yes, ma'am.

3 MS. BELL: Okay. Great.

4 RE-CROSS EXAMINATION BY MS. BELL:

5 Q. Mr. Busch, good afternoon.

6 A. Good afternoon.

7 Q. When did you identify or become aware of
8 this PED issue?

9 MR. KEEVIL: Objection, I don't believe
10 that's in response to anything from the Bench.

11 JUDGE HATCHER: Ms. Bell, do you have a
12 response to Mr. Keevil?

13 MS. BELL: He was describing the EDR
14 issue in response to your question.

15 JUDGE HATCHER: Yeah. I am going to
16 allow it.

17 THE WITNESS: I do not remember exactly
18 when I -- when it first dawned on me that it was an
19 issue.

20 (WHEREIN; audio from WebEx to PSC
21 disconnected.)

22 JUDGE HATCHER: I'm sorry. Where are we
23 at, Ms. Bell? Ms. Bell, did you have a question?

24 THE WITNESS: I've got a secret mute
25 button over here that's muting all the attorneys.

1 MR. CLIZER: Judge?

2 JUDGE HATCHER: Yes?

3 MR. CLIZER: Would use of the chat
4 feature in WebEx be of use to see if they can hear us?

5 MR. KEEVIL: It says --

6 THE WITNESS: It says we're not hearing
7 the hearing room.

8 JUDGE HATCHER: I see that.

9 THE WITNESS: The hearing room is muted.

10 JUDGE HATCHER: If someone upstairs can
11 hear me, if you would please unmute the hearing room.

12 MR. KEEVIL: Well, we can see her. We
13 are ahead of where we were.

14 JUDGE HATCHER: Ms. Bell, can you hear
15 us?

16 MR. KEEVIL: She's shaking her head, no.

17 THE WITNESS: No. She can't.

18 Mr. Fischer is pointing --

19 MR. WOODSMALL: Timeout.

20 JUDGE HATCHER: We're going to take a
21 timeout.

22 (OFF THE RECORD.)

23 JUDGE HATCHER: We have reconnected our
24 phone system and WebEx. We are in the middle of the
25 testimony of Jim Busch and just for giggles, I would like

1 to go back to Mr. Mills. That was beginning of our
2 technical problems, I believe.

3 MR. KEEVIL: Well, we heard --

4 JUDGE HATCHER: I saw him shake his head
5 and I would just like to confirm if he has any questions.

6 Mr. Mills, did you have any questions
7 for Mr. Busch?

8 MR. MILLS: I do not. Thank you, Your
9 Honor.

10 JUDGE HATCHER: Thank you, sir.
11 Ms. Bell, you are up next. Your
12 witness.

13 MS. BELL: Yes, Your Honor.

14 BY MS. BELL:

15 Q. Mr. Busch, did you talk with anyone over
16 the brief break that we had?

17 A. I did not.

18 Q. Okay. So when did you first identify or
19 become aware of the PED issue?

20 A. I don't know. I don't remember.

21 Q. Was it before surrebuttal testimony was
22 due in this case?

23 A. I do not remember.

24 MS. BELL: No further questions.

25 JUDGE HATCHER: Thank you. That takes

1 us to Evergy.

2 MR. FISCHER: Thank you, Judge. Just
3 briefly.

4 RE CROSS EXAMINATION BY MR. Fischer:

5 Q. Mr. Busch, is it correct that Staff did
6 not address what is called the PED issue or the economic
7 development rider issue in its rebuttal testimony or
8 surrebuttal testimony?

9 A. That is correct.

10 Q. Is it also correct that you didn't
11 mention that in your position statement?

12 A. That specifically, I don't believe that
13 was mentioned in the position statement.

14 Q. Okay. As I understand it -- or is it
15 your understanding that the General Assembly passed a
16 statute 393.1640 that gives the authority to authorize
17 economic development riders?

18 A. It is a statute so I am positive the
19 General Assembly had to approve it and passed it.

20 Q. To your knowledge, does that statute say
21 anything about a loss leader?

22 A. I think it's silent on all this stuff.

23 Q. Is it your understanding that the
24 General Assembly establishes a public policy and
25 authority for economic development riders?

1 A. I don't know. I don't know that -- I
2 don't know that every economic development rider is based
3 on some general authority from the General Assembly,
4 maybe in the whole broad context that the PSC is, you
5 know, a creature of the legislature. But I don't know if
6 it has to have that specific statutory language or not.

7 **Q. Okay. Do you know whether there is any**
8 **restriction from going from the PED to the SIL tariff?**

9 A. I don't know -- I don't know about any
10 getting restrictions or any expressed written --
11 something expressly that says they can't do that. I
12 think it is silent on it.

13 **Q. So there is no restriction that you know**
14 **of in the SIL tariff that would say, if you've been on a**
15 **PED you can't come to the SIL. Correct?**

16 A. I am not aware of any of that. No.

17 **Q. On the substation voltage issue, is it**
18 **your understanding that the Company is trying to**
19 **establish a tariff that would apply to other customers**
20 **besides Velvet?**

21 A. I mean, the MKT is a tariff that will
22 apply to any customer who meets the availability
23 requirements.

24 **Q. So it could be that other customers that**
25 **are not necessarily wanting to take at the transmission**

1 level might want to use the tariff language to establish
2 service?

3 A. Well, they could but, is kind of -- you
4 know, similar to the OPPD tariff that this MKT was based
5 upon and that was a requirement there. So if that's part
6 of the availability, I think that is a part of the
7 tariff.

8 Q. I am not sure you answered my question.
9 Is it true that some customer that might like to take the
10 service under the MKT tariff, might not want to be a
11 transmission customer. It might need a substation?

12 A. It is true that a customer may want to
13 be on a tariff and they may not qualify. That is
14 correct.

15 Q. And is possible that in the contract,
16 the marker rate contract, you could recover the cost of
17 that substation?

18 A. I'm sorry, Mr. Fischer, what do you
19 mean? Could you just rephrase that a little bit, please?

20 Q. Would it be possible to use the market
21 rate contract to cover the cost of the substation if that
22 was needed by the customer?

23 A. Are you referring to the contract, the
24 tariff that Evergy has proposed?

25 Q. Yeah. I am suggesting that under the

1 **concept the Company is proposing that if you did have to**
2 **build a substation for a customer, you could recover that**
3 **through some other contractual means rather than just**
4 **rolling into other folks's rates, couldn't you?**

5 A. Theoretically, Yes.

6 Q. **And I believe you said that the**
7 **securitization concept was a relatively new tool; is that**
8 **right?**

9 A. I believe it was just passed this last
10 legislative session.

11 Q. **Has the Commission approved any**
12 **securitization program yet at this -- in this state?**

13 A. We only have one currently pending
14 securitization case. It has not been approved.

15 Q. **Do you expect that there will be**
16 **probably several issues that will have to be decided in**
17 **that case?**

18 A. I am looking forward to a very complex
19 case that we're going to have to deal with over these
20 next few months. Yes.

21 Q. **And one of the issues could be how do we**
22 **pay for it?**

23 MR. KEEVIL: Objection. Now he's
24 starting to ask for legal opinions and everything. The
25 statute they are talking about speaks for itself. If

1 Mr. Fischer wants to cite the statute in his briefing,
2 he's certainly free to do so, which I think I --

3 MR. FISCHER: I will withdraw the
4 question, Judge.

5 BY MR. FISCHER:

6 Q. Mr. Busch, you would expect many issues
7 to have to be decided, though, correct? In the future?

8 A. Yes. I would agree with that, sir.

9 MR. FISCHER: I think that's all the
10 questions I have, Judge. Thank you for your cooperation
11 in getting over these technical issues.

12 JUDGE HATCHER: Thank you, Mr. Fischer.
13 That leads us back to redirect.

14 Mr. Keevil?

15 MR. KEEVIL: Very briefly, Judge.

16 REDIRECT EXAMINATION BY MR. KEEVIL:

17 Q. Mr. Busch, I want to talk about the
18 inclusion or exclusion of substation voltage customers
19 from the MKT tariff. And I think you touched on this
20 with Mr. Fischer, but I just want to make it clear. Is
21 it your understanding that the MKT tariff was originally,
22 supposedly at least, pattern after the OPPD tariff?

23 A. That is correct.

24 Q. And does the OPPD tariff, what provision
25 does the OPPD tariff make regarding ownership of

1 facilities?

2 A. It's my understanding that that tariff
3 requires the customer to own the facilities.

4 MR. CLIZER: I apologize for
5 interrupting. What is the OPPD tariff?

6 MR. KEEVIL: Omaha Public Power
7 District.

8 MR. CLIZER: Thank you. I apologize for
9 interrupting.

10 BY MR. KEEVIL:

11 Q. Okay. Now that we've done that, let's
12 think where we were. Mr. Busch, when we're talking
13 about facilities, we're talking about owning the
14 substitution and the related facilities; is that correct?

15 A. Yes.

16 Q. Okay. There's also been discussion
17 regarding -- from Mr. Fischer in regard to the
18 quote/unquote hold harmless provision discussion
19 concerning all relevant factors. What is your
20 understanding of the all relevant factors generally?

21 A. Whenever I always heard that in my term
22 in my years of involved in rate cases and cost of service
23 -- class cost of service studies rate design, I always
24 looked at it as we would look at the overall costs that a
25 company, you know, that was a part of the company's cost

1 of service. You know, the whole idea is to determine
2 what the revenue requirement is and then you have to look
3 at the costs, which is the plant minus any accumulated
4 depreciation, return on that. You want to look at the
5 factors that would allow, you know, an appropriate return
6 on equity to be built in, you know, in conjunction then
7 with, you know, cost of debt for the rate of return, the
8 overall in debt plant, you know, when everything was
9 built and put into service.

10 And then you look at -- you know, you
11 normalize cost through a test year process and maybe its
12 updated through knowing measurable through a trueup. So
13 that gives you an idea of what the actual, you know,
14 operating and maintenance expense is, depreciation
15 expense. So you look at all of those factors to
16 determine the overall revenue requirement.

17 And those are the factors that are
18 really looked at. And then you get into, you know,
19 dividing up those costs to the various classes. You
20 know, that's where a little bit more of the sausage
21 making comes in because as various parties here have
22 difference opinions upon what's the appropriate way to
23 allocate cost and determining what -- how those -- which
24 class should pay what, if there is a quote/unquote
25 subsidy maybe out there, what the appropriate customer

1 charge should be. That's when you might start looking at
2 some other impacts.

3 I've been involved in a lot of cases,
4 especially in my time the last 13 years in the small
5 water and sewer world, where we've -- we as a staff and
6 have gone up to the Commission. The Commission has
7 approved some pretty substantial rates and there are
8 other factors that are out there, but the bottom line is
9 whatever the cost of service is, that is what the cost
10 should be passed along to the customers.

11 And that what we're talking -- so when
12 we look at all relevant factors, we're looking at the
13 relevant factors of providing, you know, utility service
14 to the customers.

15 **Q. And when you say cost of service, you**
16 **are referring to fully distributed cost or incremental**
17 **cost?**

18 A. A fully distributed cost.

19 **Q. All right. Which is not what this**
20 **tariff is based upon; is that correct?**

21 A. Yeah. This tariff is based upon more on
22 the incremental cost providing service to any customer
23 that might be able to take service off of it.

24 MR. KEEVIL: I think it that's all the
25 questions I have, Judge.

1 JUDGE HATCHER: Thank you, Mr. Keevil.

2 Mr. Busch, you are excused.

3 Let's move on to Dr. Marke. Thank you
4 for making your way up.

5 MR. KEEVIL: Judge, while he's doing
6 that, I've got Exhibits No. 100 through 104 were all
7 received. Does that comport with your --

8 JUDGE HATCHER: Yes, Sir.

9 MR. KEEVIL: Thank you.

10 JUDGE HATCHER: Dr. Marke.

11 (Witness sworn.)

12 JUDGE HATCHER: Thank you. Please have
13 a seat.

14 Mr. Clizer, your witness.

15 GEOFF MARKE, having first been duly sworn, testifies as
16 follows:

17 DIRECT EXAMINATION BY MR. CLIZER:

18 Q. Good afternoon, Dr. Marke.

19 A. Good afternoon.

20 Q. For the record, can you please state by
21 whom you are employed and in what capacity?

22 A. I'm the chief economist with the
23 Missouri Office of Public Counsel.

24 Q. And have you prepared or caused to be
25 prepared rebuttal testimony that is been prefiled in this

1 case and marked Exhibit 200?

2 A. Yes.

3 Q. And are the answers contained in that
4 rebuttal testimony true and correct to the best of your
5 knowledge and belief?

6 A. They are.

7 Q. If I asked you the same questions today
8 that are posed to you in that rebuttal testimony, would
9 your answers be the same or substantially similar?

10 A. Yes.

11 MR. CLIZER: I would move to introduce
12 OPC Exhibit 200, the rebuttal testimony of Dr. Geoff
13 Marke, public and confidential.

14 (WHEREIN; OPC Exhibits 200P and 200C
15 were offered into evidence.)

16 JUDGE HATCHER: You've heard the motion
17 by Counselor Clizer. Are there any objections to the
18 admission of the public and confidential versions of
19 Exhibit 200? Hearing none, so admitted.

20 (WHEREIN; Staff Exhibits 200P and 200C
21 were received into evidence.)

22 BY MR. CLIZER:

23 Q. It occurs to me that I didn't ask, do
24 you have any changes?

25 A. I do not.

1 MR. CLIZER: Okay. I just wanted to
2 make sure that was on the record. I tender the witness
3 for cross.

4 JUDGE HATCHER: Thank you, Mr. Clizer.
5 According to my sheet, cross-examine goes to Mr. Keevil?

6 MR. KEEVIL: Thank you, Judge. Just
7 very quickly.

8 CROSS-EXAMINATION BY MR. KEEVIL:

9 Q. Dr. Marke, if I could have you turn to
10 Page 3 of your rebuttal testimony. You talk about the --
11 you begin talking about the transparency and uncertainty
12 regarding Velvet Tech; is that correct?

13 A. That's correct.

14 Q. I know in your testimony you go into
15 this in more detail, but could you summarize why it's
16 important to know something about Velvet Tech?

17 A. Sure. This is a departure from how we
18 typically set rates. I mean, quite frankly the market
19 tariff that we are putting up is -- is a big departure,
20 it's a very generous departure if you combined that with
21 the EDR. As a sanity check for myself what I like to do
22 is to see where are applicable rates like this being
23 held. So what other states, what other data centers.
24 Yet as a sanity check, just as a course of business
25 action, the DRs that I send try to inform that knowledge.

1 So at a base level it was who is Velvet
2 tech. Where have you operated before? A lot of
3 affirmations were put in testimony about their economic
4 development and their success. Based off of my cursory,
5 you know, research I couldn't find anything to
6 substantiate that. The DRs and the discovery, you know,
7 provided additional hurdles over that.

8 All of that, again, is important because
9 on one level when we give out a discount, when we give
10 out an economic development rider, we want to minimize
11 free riders. We don't want just somebody that was going
12 to operate regardless. If they had made an announcement
13 for example that they were going to build the data center
14 there and then came back a month later and said now we
15 want take advantage of this. They might not be eligible,
16 for one.

17 The other one is to determine whether or
18 not it's a viable option. You know, will they be able to
19 operate. Have they done this in other places. Again,
20 are they a free rider or not. So at the end of the day
21 this was a frustration on my end that the discovery
22 responses I got back from the Company didn't really shed
23 any additional light on this or whether or not it was a
24 competitive rate or -- compared to what. You know, are
25 you operating compared to what other state.

1 **Q.** **Would you also -- or would you agree**
2 **that it would be helpful to know more about Velvet Tech**
3 **in order to know whether the long-term feasibility -- or**
4 **if this project is actually going to be feasible**
5 **long-term?**

6 **A.** We're representing the public here, you
7 know. As OPC -- I think one of the things that I try to
8 do is I feel like in a way I'm getting paid to be, you
9 know, reasonably skeptical, you know. And this is a
10 huge, huge endeavor that is being put forward. A huge
11 endeavor that's being put forward. So to the extent that
12 we don't know anything about them, that raises concerns.

13 **Q.** **I am not going to say this is going to**
14 **happen, but could it happen that after Velvet Tech begins**
15 **operations for whatever reason they -- let's say they**
16 **just go bankrupt. And then the -- what would that do to**
17 **the other customers if that were to happen?**

18 **A.** It would be critical that the tariff was
19 -- you know, and this is why we put forward the tariff
20 that we did was to hold customers harmless. Absent that,
21 customers could be exposed to an enormous amount of risk.
22 And at the end of the day what we're talking about is a
23 risk/reward option here. There's all reward it seems
24 from my angle, from the utility perspective and very
25 little risk.

1 Q. In the event of my hypothetical there
2 where Velvet went bankrupt, would there be could or could
3 there be stranded costs of Evergy's that would then need
4 to be either absorbed by Evergy or passed on to other
5 customers?

6 A. That is exactly what the situation would
7 align. It would be a huge stranded asset issue as to who
8 would be paying those -- that outstanding balance.

9 Q. And if you know more about Velvet, would
10 you be more comfortable? I'm not saying totally
11 comfortable, but more comfortable agreeing to the
12 proposal?

13 A. Anything would help.

14 MR. KEEVIL: Okay. Nothing further,
15 Judge.

16 JUDGE HATCHER: Thank you, Mr. Keevil.
17 That takes us to Mr. Woodsmall.

18 MR. WOODSMALL: Thank you, Your Honor.
19 Just so my questioning is clear with the record, did we
20 mark the -- how should I call it -- the EDR issue that --
21 the document that they initially brought up?

22 MR. KEEVIL: Yes.

23 MR. WOODSMALL: What was it marked as?

24 MR. KEEVIL: It's Exhibit 7.

25 MR. WOODSMALL: Exhibit 7. Okay.

1 MR. KEEVIL: I think it's been admitted,
2 too.

3 MR. MILLS: Then that will inform my
4 questioning and make it more clear.

5 CROSS-EXAMINATION BY MR. WOODSMALL:

6 Q. Good evening, sir?

7 A. Good evening.

8 Q. Have you been here throughout this
9 hearing?

10 A. In and out, yes.

11 Q. Okay. And do you recall late yesterday
12 evening the Company saying that they had attempted to
13 quote meet in the middle on the EDR issue?

14 A. Yes, I do.

15 Q. And towards that end, do you recall and
16 did you receive a copy what has now been marked Exhibit
17 7?

18 A. Yes, I did.

19 Q. Okay. Earlier Mr. Busch said while he
20 appreciated the Company doing that, he didn't think it
21 bridged the gap and fell short. Would you agree with
22 that characterization?

23 A. I would.

24 MR. MILLS: Let me market an exhibit,
25 Your Honor. What am I up to?

1 JUDGE HATCHER: 904.

2 MR. WOODSMALL: I marked Exhibit 904.

3 And this has been distributed to the parties that aren't
4 in the hearing room, Your Honor.

5 JUDGE HATCHER: Thank you.

6 BY MR. WOODSMALL:

7 Q. Sir, do you have what has been marked
8 Exhibit 904?

9 A. I do.

10 Q. And were you involved in the preparation
11 of this document?

12 A. I was.

13 Q. And is this document prepared in
14 response to Exhibit 7 that was discussed earlier and
15 designed to bridge the gap on the EDR issue?

16 A. It is.

17 Q. Tell me which works better for you. Do
18 you want to talk about the changes. First of all, is
19 this a redline of the Exhibit 7?

20 A. Yes, it is.

21 Q. And those redlines are shown there in
22 underline and scratch out; is that true?

23 A. That's correct.

24 Q. Let's walk through change by change.
25 First line it scratches out "economic development rider"

1 and several other places and replaces it with "Schedule
2 PED." Can you tell me what the rationale is for that?

3 A. For clarity.

4 Q. And by clarity?

5 A. That we're specifically talking about
6 the Schedule PED, the economic development offering, the
7 tariff offering.

8 Q. Okay. Then it scratches out the word
9 "make such requests" and replaces it to "migrate to
10 Schedule MKT." Can you tell me what the reasoning is
11 for that? And I believe it probably has something to do
12 with the two years, but go ahead?

13 A. Sure. Sure. So as it was drafted
14 yesterday make such a request within two years. The
15 request can take, you know, considerably a long time.
16 Whether or not you file something with the Commission it
17 could be, you know, dormant for quite a while. This
18 provides some real clarity in terms of as soon as certain
19 thresholds are met they mitigate into that MKT schedule.

20 Q. Okay. So let me just run a hypothetical
21 and see if I'm tracking the language right. You have ABC
22 Company come in that wants to be served eventually off of
23 MKT. And for a period of time they start taking service
24 off of the large power tariff with the PED discount; is
25 that correct?

1 A. That's correct.

2 Q. And what this says is that within two
3 years they must be migrated to Schedule MKT?

4 A. Yes, it does.

5 Q. Okay. And two years is the maximum. It
6 could be earlier depending on whether they meet this 50
7 megawatt average monthly peak load threshold as well?

8 A. That's correct.

9 Q. It's the lesser of the two?

10 A. That's correct.

11 Q. And that is consistent with the
12 Company's Exhibit 7?

13 A. Yes, it is.

14 Q. Then we get down to line -- is that six?
15 Yes, Line 6. It replaces "allowed to request service
16 under" and changes it to "migrated to." Is that
17 consistent with your previous change to the word
18 "migrate?"

19 A. Yes, it is.

20 Q. Okay. I believe that takes us out of
21 that first paragraph. Did you have anything else on that
22 that you wish to note?

23 A. No.

24 Q. Okay. Otherwise, the 50 megawatt
25 threshold is the same that the Company offered; is that

1 correct?

2 A. That's correct.

3 Q. The two years is the same as the Company
4 offered except for it is made more definitive by they
5 must be migrated in two years?

6 A. That is correct.

7 Q. Okay. Then we have a second -- I'll
8 call it a paragraph. It's a paragraph. It's one
9 sentence. Do you see that?

10 A. I do.

11 Q. Can you tell me what the reason is for
12 that? And first tell me what does it do?

13 A. Right. So -- I'll just read it here.
14 For a period of five years from the effective date of the
15 first special high-load factor market rate contract. I
16 will just take that line. For five years there, not an
17 indefinite amount of time. We are putting it out there
18 enough of an opportunity to go ahead and get some
19 legitimate data back.

20 All right. Next line, Schedule MKT
21 shall be limited to a lesser of three customers or 500
22 megawatts at which point the impact of this Schedule MKT
23 or non-MKT customers including the Schedule PED
24 discounts, shall be analyzed before any additional
25 customers can be included.

1 So the sentence there is describing some
2 parameters. It's putting some parameters around this
3 tariff so they don't get out of hand. To piggyback off
4 of Mr. Keevil's earlier, you know, questions to me, I
5 don't know who I'm dealing with. There's a lot of
6 uncertainty surrounding this departure from how we
7 typically set rates. What this allows is some confidence
8 that what we're being asked and tasked to do here on a
9 fairly expedited schedule. I mean, keep in mind, you
10 know, the number of rate -- the large rate case that
11 we've got going on, but also the Christmas holidays and
12 the COVID flu that is taking place has really stressed
13 resources in trying to come up with a path forward.

14 This allows a sanity check. Over the
15 next five years we could sit back and say whether or not
16 nonparticipants have been harmed, whether or not the
17 Company has been harmed, whether or not the rate itself
18 is -- has been designed in a way that we expect it. Has
19 it produced what we expected.

20 Three customers or 500 megawatts. I
21 cannot stress this enough that this isn't just a typical
22 economic development rate from, you know, like a
23 mom-and-pop store. These are huge, huge customers. So I
24 think Mr. Woodsmall, you gave the example of a Walmart
25 effectively as one megawatt. You know, having 500

1 Walmarts go up in Northern Kansas City over course of a
2 limited amount of time is going to put -- place an
3 enormous strain and will require lots and lots of
4 investment.

5 So this is -- right now we are dealing
6 with Velvet Tech. What customer in the future could be,
7 you know, be included on this, I don't know. So again,
8 the parameters provide some assurance that we can revisit
9 it in the future.

10 **Q. Okay. You mentioned one reason is that**
11 **there's uncertainty with who you're dealing with and you**
12 **talked about that. Would you also agree and explain why**
13 **there's uncertainty as to how this will affect non-MKT**
14 **customers?**

15 **A.** There is absolutely a lot of
16 uncertainty. I mean, there's lots of uncertainty right
17 now that taking place in this case. Right now, I don't
18 know whether or not, you know -- there is a potential
19 legality issue over the RES statute and how that works
20 with the mechanism, so the RESRAM mechanism, how that's
21 going to work with future surcharges that might appear.
22 You know, we've alluded to or talked explicitly about
23 securitization, but the idea that there could be a future
24 surcharge coming down the pipeline seems more than
25 reasonable to me given, you know, recent events.

1 So all of things play -- expose
2 nonparticipants to risk and a fair amount of risk. So
3 this is trying to keep it reasonable. And if it works,
4 great. Let's, you know, let's move from there.

5 **Q. You said we reviewed this. Would you**
6 **agree that Missouri has never seen anything like the MKT.**
7 **Ameren doesn't have it. Every Metro doesn't have.**
8 **Empire doesn't have it. This is a new beast to Missouri?**

9 A. Very much so. And, you know, again this
10 goes back to what I was saying earlier, you know, when I
11 was asking Velvet Tech for examples of where has this
12 been done before. I couldn't find any examples. The
13 Omaha Power District's been, you know, alluded to a lot.
14 It's a municipal utility. It's different conditions.
15 It's not a for-profit investor-owned utility. It is a
16 city. And economic development that is beneficial to a
17 city and how they are tied to their local utility is very
18 different than talking about an investor-owned utility
19 spanned over, in this case, hundreds of thousands of
20 customers.

21 **Q. And let's delve into that a little bit.**
22 **Would you agree with the notion that generally cities are**
23 **nonprofit? So Omaha has no incentive to try to take**
24 **steps to harm its customers to benefit its bottom line?**

25 A. Absolutely.

1 Q. And is Evergy nonprofit?

2 A. They are not.

3 Q. So they have an inherent incentive --
4 they have an inherent duty to their shareholders even
5 over any duty they may have to their ratepayers?

6 A. That is correct.

7 Q. Okay. You mentioned you tried to talk
8 about the magnitude, the size of these type of customers.
9 Would you agree with Mr. Brubaker's statement earlier
10 that as the size of these customers increases, as they
11 use more electricity, the PED discounts in nominal
12 dollars increases as well?

13 A. Absolutely. You know, just real quick,
14 I'd like to pause here and path and say there's one
15 electric utility in the state of Missouri that's not at
16 full capacity to meet its load. That is Evergy West.
17 That is where this is going. All right. You know, we've
18 thrown out Noranda a lot. Ameren was very long on
19 capacity. Then Noranda was able to meet that load, you
20 know, because they had so much capacity. Evergy West
21 cannot say that. So those -- that is a big concern.

22 Q. So following up on that, the concern
23 being that there may be some obligation to serve this MKT
24 customer and Evergy may be on the hook to build
25 generating facilities because they don't have enough

1 **generation, may be on the hook to the build generating**
2 **facilities to meet that capacity requirement?**

3 A. My concern is compounded by the fact
4 that in today's operating environment it's increasingly
5 more difficult to meet that capacity through traditional
6 resources. And as we venture more into a more fossil
7 fuel world, by necessity as it stands right now that's
8 meaning more money and a lot more uncertainty in terms of
9 liability.

10 Q. **So the risk to non-MKT customers would**
11 **be lessened if this was Evergy Metro or Ameren itself?**

12 A. If would be, yes.

13 Q. **Because they are so long in capacity?**

14 A. They are longer, yes.

15 Q. **Okay. Did you get an opportunity to**
16 **explain this or did I can cut you off at any point?**

17 A. I can -- I think I'm good. Thank you.

18 MR. WOODSMALL: I have no further
19 questions, Your Honor. Move for the admission of Exhibit
20 904.

21 (WHEREIN; MECG Exhibit 904 was offered
22 into evidence.)

23 JUDGE HATCHER: You heard the motion on
24 Exhibit 904. Are there any objections to the admission
25 onto the record of Exhibit 904?

1 MR. MILLS: Judge, this is Lewis Mills
2 on behalf of Google. I object to the admission of this
3 exhibit. I am not sure exactly what this is, who's
4 proposing it, what issue it's designed to solve it. But
5 it's a whole brand-new proposal coming in on -- in the
6 last hour of the hearing on the last witness. We have no
7 meaningful opportunity to explore this whole concept.

8 Nobody until this very moment has raised
9 the idea of limiting the number of participants allowed
10 under the this tariff. It wasn't raised in testimony.
11 It wasn't raised in the list of issues. I'm not going to
12 talk about whether it might have been raised in some
13 other context. But -- it certainly has never come up to
14 me. As I said, I have had no meaningful opportunity to
15 present evidence or even make argument about this. I
16 object to its admission.

17 MR. WOODSMALL: Your Honor, these are
18 the exact arguments that I made last night in response to
19 Exhibit 7 and --

20 MS. BELL: Your Honor?

21 MR. WOODSMALL: And those arguments fell
22 on deaf ears. In fact I believe the comment was, I have
23 a duty to inform the Commission. So that exhibit was
24 allowed in with the opportunity for cross-examination.
25 Now, we've tried to be -- we, at the top it says OPC

1 MECG, Staff have tried to be more up forward by doing it
2 before the other parties have done cross-examination. We
3 didn't attempt to do it in redirect. So we've put it out
4 there in response to the document that Velvet and Everygy
5 put out and would welcome cross-examination on it.

6 MR. CLIZER: I would also like to
7 reiterate --

8 MS. BELL: Your Honor, I would --

9 MR. CLIZER: -- that this document was
10 sent to the other parties before now.

11 JUDGE HATCHER: Go ahead, Ms. Bell.

12 MS. BELL: Your Honor, Velvet would also
13 register an objection to this language. While
14 Mr. Woodsmall is correct that the language was issued
15 yesterday for the other proposal, where he is incorrect
16 is it was put in at a time where everyone's witnesses
17 were allowed to discuss the language. At this point, all
18 of our witnesses have already presented testimony. And I
19 believe -- I would join and reiterate what Mr. Mills
20 said, we're not in a position at this time to make a
21 comment on language that was received in the last hour of
22 the hearing.

23 MR. WOODSMALL: Your Honor, that is the
24 nature of the burden of proof. You know, the witnesses
25 are simply scheduled in this case to recognize the

1 statutory burden of proof. It is not any way a contrived
2 procedure on our part to take advantage of anything. You
3 know, our witnesses who explained this in response to
4 their Exhibit 7 just simply were scheduled pursuant to
5 the burden of proof.

6 MR. KEEVIL: I was gonna say, Judge,
7 what Ms. Bell said would apply to any exhibit, which was
8 attempted to be offered by any party after the first
9 party. I can't believe that is ground from excluding an
10 exhibit.

11 JUDGE HATCHER: The objections are noted
12 and overruled. It is admitted onto the record.

13 (WHEREIN; MECG Exhibit 904 was received
14 into evidence.)

15 MR. WOODSMALL: I have no further
16 questions, Your Honor.

17 JUDGE HATCHER: Thank you, sir.

18 That moves to Mr. Mills.

19 MR. MILLS: Dr. Marke, is there anything
20 in -- Judge, was this exhibit marked as Exhibit 7; is
21 that correct?

22 JUDGE HATCHER: I thought it was 904.
23 Exhibit 7 was the competing language that was introduced
24 last night.

25 MR. MILLS: Okay. Excuse me.

1 CROSS-EXAMINATION BY MR. MILLS:

2 Q. Yeah. Part of my question, I think, is
3 going to go to the notion of whether or not this is
4 competing or not. Is there anything in the first
5 paragraph that -- of Exhibit 904, that attempts to limit
6 the number of customers under Schedule MKT?

7 A. No.

8 Q. Is there anything in any of the
9 testimony in this case that talks about limiting the
10 number of customers under MKT?

11 A. Not that I am aware of.

12 Q. Is there anything in the position
13 statement of any other parties that talk about limiting
14 of customers under Schedule MKT?

15 A. Not that I am aware of.

16 MR. MILLS: Judge, that's all I've got.
17 No further questions.

18 JUDGE HATCHER: Thank you, Mr. Mills.

19 Ms. Bell, any questions?

20 MS. BELL: Yes, Your Honor.

21 CROSS-EXAMINATION BY MS. BELL:

22 Q. We'll, start with Exhibit 7. Just for
23 clarity sake, Mr. Marke, what is meant by the effective
24 date in the first sentence of your language?

25 JUDGE HATCHER: You mean Exhibit 904?

1 MS. BELL: Correct.

2 JUDGE HATCHER: And you were talking
3 about the second paragraph, which is all new language
4 beginning, for a period of five years from the effective
5 date; is that your question?

6 MS. BELL: Yes.

7 JUDGE HATCHER: Okay.

8 THE WITNESS: When the tariffs are
9 approved and go to affect -- the contract, the contract
10 is approved. Sorry. By the Commission. There will be a
11 separate proceeding for the contract is my understanding.

12 BY MS. BELL:

13 Q. So for a period -- so your language
14 means for a period of five years from the effective date
15 of service?

16 A. That's correct.

17 Q. Or the effective date of the contract?

18 A. Of the service.

19 Q. And is that the service under MKT?

20 A. Yes.

21 Q. And how would your language affect
22 potential -- as the tariff is written, you would agree
23 that there's an opportunity for renewals?

24 A. As the Evergy tariff is written?

25 Q. As Schedule MKT is written, there is an

1 **opportunity for MKT customers to renew the contract**
2 **beyond the five years. Correct?**

3 A. That sounds right. If you could point
4 me to that, I could verify. Maybe a word search.

5 JUDGE HATCHER: I am looking on Page 4
6 of 7 of the Evergy/Velvet Schedule 1 under term.

7 THE WITNESS: Under term. Okay.

8 JUDGE HATCHER: The second sentence.
9 Customers may receive service for additional five-year
10 terms subject to updated pricing.

11 THE WITNESS: Yes. I see it now.

12 JUDGE HATCHER: Ms. Bell, is that phrase
13 you were wanting Dr. Marke --

14 MS. BELL: Yes. Thank you.

15 JUDGE HATCHER: Okay.

16 MS. BELL: Thank you, Your Honor.

17 BY MS. BELL:

18 Q. **So Mr. Marke, you would agree that there**
19 **is potential for renewals for this contract service?**

20 A. As this tariff is drafted that's the way
21 I would read it. So we would probably -- we would need
22 to make an addition to that. We would need to update the
23 term.

24 Q. **So Mr. Marke, can you explain to me how**
25 **your drafted language affects contract renewals?**

1 A. The contract would be for five years.

2 **Q. Then does your -- does your proposal**
3 **mean that customers could get -- who had an existing**
4 **contract would not be able to renew as a result of this**
5 **limitation?**

6 A. I don't believe so. You know, what this
7 is saying is that no new customers.

8 **Q. Now, you've heard the -- I think you**
9 **mentioned that expedited nature of this review?**

10 A. I did.

11 **Q. Would this language incentivize a race**
12 **by customers to come in and have contracts approved?**

13 A. I don't know. Maybe. I haven't dealt
14 with a contract -- or an economic development tariff as
15 large like this under these conditions.

16 **Q. But you would agree that the language as**
17 **written is a first-come/first-serve tariff?**

18 A. I would agree that it limits it to a
19 certain threshold, yes. For five years until we can
20 examine it.

21 **Q. Would you agree your language is**
22 **ambiguous about renewal of a contract?**

23 MR. CLIZER: I object that it calls for
24 a legal conclusion regarding ambiguity.

25 JUDGE HATCHER: Objection is overruled.

1 We've been allowing those. Go ahead, Dr. Marke.

2 THE WITNESS: As I read the -- as I read
3 the inclusion of our language it is silent on renewal.

4 BY MS. BELL:

5 Q. So it is ambiguous. Correct?

6 A. I don't believe so. I mean, the
7 provision applies to future customers, not current
8 customers.

9 Q. Could you point to the word "future" in
10 the language?

11 A. Additional customers, that's the
12 operative language that we've used. shall be analyzed
13 before any additional customers may be included.

14 Q. So if there was language in this
15 paragraph that -- expressly said customers served --
16 expressly said that customers with approved contracts
17 would continue to be allowed to be served under the MKT
18 on renewal, you would have no objection to that?

19 A. I wouldn't. That's presupposing that
20 they're meeting all the other thresholds that would
21 otherwise qualified them for that tariff.

22 Q. Okay. You had indicated that you were
23 dissatisfied with Velvet -- with Velvet and with Evergy's
24 data request responses?

25 A. Yes.

1 Q. Is that correct?

2 A. That's correct.

3 Q. Do you know if your counsel sought to
4 confer with the Judge over your dissatisfaction with the
5 responses?

6 A. I don't know. I honestly don't know.
7 We've been very busy, Ms. Bell.

8 Q. Did your -- did OPC file a motion to
9 compel regarding the DR responses it was dissatisfied
10 with?

11 A. I don't believe so.

12 Q. Okay. Were you in the room when your
13 counsel said in opening that the two schedules proposed,
14 the two competing schedules were very close?

15 A. I was.

16 Q. The Schedule 1 attached to the OPC
17 stipulation, it does not have a requirement for any
18 disclosures about Velvet for the Commission to approve
19 it. Correct?

20 A. Correct.

21 Q. In this case you would agree that Velvet
22 will only be served if two steps happen. First, that the
23 tariff is approved; and second, that the market rate
24 contract is approved as well. Correct?

25 A. Correct.

1 Q. It is your understanding from the
2 testimony that at the time the market rate contract is
3 approved the customer will be -- that the identity of
4 Velvet will be made known?

5 A. I don't know. I think you're probably
6 in a better position to opine on that.

7 Q. At the time that the market rate
8 contract is filed, will OPC have the opportunity to
9 submit data requests about any particular customer?

10 A. Sure.

11 Q. And are you aware of any customers other
12 than Velvet that are interested in Schedule MKT?

13 A. The presence of Google implies that they
14 might be of interest.

15 Q. And Google is an intervener in this
16 case. Correct?

17 A. That's correct.

18 Q. And did OPC issue any DRs to Google
19 regarding the concerns you had about future customers?

20 A. I'm sorry. Did I issue DRs to Google as
21 to Velvet Tech's identity? Did I -- I'm --

22 Q. You testified that the identity of a
23 customer is important?

24 A. Right.

25 Q. Correct?

1 A. I did.

2 Q. **And you know the identity of Google.**

3 **Correct?**

4 A. I do. I do.

5 Q. **Is there anything prohibiting -- if the**
6 **MKT contract is approved, is there anything prohibiting**
7 **Google from being the first customer served under MKT?**

8 A. No. If Google's contract get's approved
9 first, then they will be the first. I will ask the same
10 questions of Google that I'll ask of Velvet Tech where
11 what other market rates have they entered into, what
12 other data centers have they operated in other states,
13 what's the economic development, if any, that they're
14 receiving to ascertain the reasonableness of what we're
15 getting here in Missouri.

16 Q. **So if the parties in this case came**
17 **together on the a unanimous --**

18 JUDGE HATCHER: Ms. Bell, I'm going to
19 interrupt here.

20 MS. BELL: Okay.

21 JUDGE HATCHER: We've been talking a lot
22 about what I see as proposed conditions, suggested
23 language. I am very uncomfortable talking about
24 settlement, offer. The Public Service Commission has a
25 rule that says that those discussions are confidential

1 from the Commissioners.

2 MR. KEEVIL: Actually it says
3 privileged, Judge.

4 JUDGE HATCHER: I'm sorry, privileged
5 from the commissioners themselves. So that is where my
6 concern is coming out. Maybe this is a good time for me
7 also make a slight observation, that this case would
8 remain open until the filing of briefs which is again by
9 PSC rule, which would allow the parties away from the
10 courtroom, to discuss any further conclusion that they
11 might have and would be able to then make filings and
12 follow that path if they wanted to. But please let's be
13 careful with our next question in that regard.

14 MS. BELL: Yes, Your Honor.

15 MR. MILLS: Judge, this is Lewis Mills.
16 I would also note that this sort of process essentially
17 where there are what I would consider to be settlement
18 proposals being made by various parties in the case,
19 essentially freezes out those parties that don't have
20 witnesses. If the witnesses are advancing proposals to
21 settle and I don't have any witnesses, it makes it very
22 difficult for me to participate in this sort of
23 settlement discussion that ongoing at the very end of the
24 hearing.

25 JUDGE HATCHER: Mr. Mills?

1 MR. MILLS: I think you might've
2 misunderstood. I stated very plainly there are not any
3 settlement discussions going on in this courtroom at all
4 today or yesterday. There has been some language that
5 the Commission may or may not be persuaded by, but I am
6 interpreting that language to be suggested conditions. I
7 don't think that your having a witness or not having a
8 witness is going to preclude you from participating in
9 actual settlement discussions that, again, will not occur
10 in the courtroom and they got occurring now.

11 I would also mention that if there would
12 be some type of settlement, Google is a party and they
13 would be able to sign off or file objections or simply
14 make no statement at all.

15 MR. MILLS: Yes, Your Honor. I
16 understand. My point was that I am limited in my ability
17 to put forward these kinds of proposals by not having a
18 witness on the stand.

19 JUDGE HATCHER: I apologize for that.
20 Please go ahead with your questions.

21 BY MS. BELL:

22 Q. Mr. Marke, my question is not about any
23 past settlement agreements. But if the parties agree to
24 Schedule 1, but if all parties agree to Schedule 1, all
25 parties to agree to the Schedule 1 OPC proposed, would

1 you then reject the agreement because you did not know
2 who Velvet was?

3 A. No. I mean, Ms. Bell that is operating
4 under the premise that are hold harmless language is
5 there as well. And I'll expound on that, you know, later
6 with Commission questions. But there is a reason why we
7 want that there.

8 MS. BELL: No further questions.

9 JUDGE HATCHER: Thank you, Ms. Bell.
10 That takes us to Evergy.

11 MR. FISCHER: No questions, Your Honor.

12 JUDGE HATCHER: Thank you, Mr. Fischer.
13 That takes us back to redirect. I'm sorry. Hold on just
14 a minute. Let's go to commissioner questions first. We
15 do have the commissioners on WebEx. It is *6 to unmute.
16 Are there any commissioner questions for Dr. Marke? All
17 right, hearing none, we do have a couple of bench
18 questions.

19 QUESTIONS BY JUDGE HATCHER:

20 Q. Dr. Marke, are you the witness to talk
21 what about RESRAM or is that Ms. Mantle?

22 A. It's Ms. Mantle. I will say that.

23 Q. That's fine. I do recall in your
24 testimony you had discussed this a little bit. Would you
25 please -- I don't want to recite your testimony, but I do

1 want you to discuss the differences between the Omaha
2 Public Power District rate and the one that's being
3 proposed?

4 A. Yeah, the big thing being the no ramp up
5 period for Omaha. Again, this is where the EDR becomes a
6 critical issue for us and why the hold harmless language
7 is important for our office. Again this risk/reward.
8 We've been throwing the term hold harmless out a lot. I
9 would make the observation that nonparticipants would
10 already be on the hook for 40 percent of that discount.
11 Whether that is the five years or the two years that has
12 been offered up. I mean, there's going to be some dollar
13 amount that nonparticipants are going be asked to bear,
14 period. So right off the bat nonparticipants are paying
15 a cost.

16 If they switch over at that point, if we
17 accept what the Company is putting forward, then
18 customers are then exposed to the risk of that company
19 going under or any number of other factors that are not
20 meeting that revenue.

21 So the hold harmless is really designed
22 as a risk/reward. The Company is being rewarded. The
23 risk should be minimal. We have every reason to believe
24 it should be, but given the order of magnitude that we
25 are talking about here, I would be negligent not to go

1 ahead and advocate for customers to have some sort of
2 protection.

3 Q. Okay. Let's turn to our two competing
4 tariffs, the two Schedules 1s from the nonunanimous
5 stipulations. This is same question I've been asking all
6 the witnesses. We are going to start with Evergy Velvet
7 tariff. Please tell me your concerns and why.

8 A. So I am going to echo a lot of the same
9 sentiment that you heard from Mr. Busch. He identified,
10 I believe, five issues. I'm going to -- the voltage is
11 definitely more. I understand his rationale. We didn't
12 opine on that, but I understand the rationale behind
13 that. And would say really it's the same concern.

14 As far as I read the language in terms
15 of securitization and future surcharges, that's at the --
16 I'm trying to shoot from my hip.

17 UNIDENTIFIED SPEAKER: Haley, go throw
18 the Frisbee to him, please.

19 JUDGE HATCHER: If we could make sure
20 and have everyone on WebEx please mute their phones.
21 Thank you.

22 THE WITNESS: Okay. I'll get it from
23 the first page. I got unconditional provisions. Our
24 language that we, you know, included here -- and Judge,
25 I'm operating from the document that Mr. Clizer made to

1 try to merge both documents. So under additional
2 provisions in Number 3 -- what I'm going to try to do
3 here is to knock out both the Company and the OPC one
4 simultaneously.

5 **Q. I appreciate the efficiency.**

6 A. All right. Under Number 3 it says the
7 special high-load market factor we've included language
8 in there. This is the hold harmless language. The words
9 "non-market customer should be held harmless from any
10 deficiency in revenues provided by any customer served
11 under this tariff" is language adopted from the SIL
12 tariff.

13 The additional language that says "or
14 from any stranded investment or cost associated with
15 serving customers under this rate schedule" covers
16 capacity cost concerns.

17 On the fourth number under additional
18 provisions, there's largely -- we've got any rate
19 proceeding. At the time -- this is the third line. It
20 says, at the time. Before it said "of any general rate
21 proceeding." We've got "any rate proceeding," so this
22 would include FAC, RESRAM, possibly securitization,
23 another future surcharge.

24 The language that is included thereafter
25 in Section 4 is language, again, taken from the SIL

1 tariff.

2 The next paragraph in Section 4, we
3 omitted the "nonparticipating customer shall be held
4 harmless from any deficiency and revenue from the cost of
5 service." We've added -- we've effectively written
6 double down language on the hold harmless. Okay.

7 Moving onto rates and conditions. This
8 is just clarifying language that's in here.

9 Q. Tell me what page rates and conditions
10 are. I have seem to have gotten lost. We were on Page 5
11 of 7. Right? I'm sorry, 6 of 7 with paragraph --

12 A. It's kind of cut off on my page.

13 MR. CLIZER: I believe he is on 3 of 7.

14 JUDGE HATCHER: I see.

15 THE WITNESS: Okay. So the key thing
16 there is we've got -- we effectively changed 90 days. It
17 was 60, we put in 90. We spelled that out. You'll
18 notice under terms we added 60. So it's effectively the
19 same amount of days, we just added more on the front end
20 as opposed to the back end.

21 Moving on to the next page after that
22 under availability we added the phrase "availability is
23 subject to Commission review." Again, this is just to
24 make sure that the customer wouldn't arbitrary be kicked
25 off by the Company if they didn't like them.

1 So under availability -- I guess, this
2 would be Page 1. I'm sorry. When this was handed to me
3 it was obviously out of numerical order. The language
4 that was added there was just to make sure customers are
5 big enough.

6 Under -- this is Number 5 on -- I want
7 to say this Page 5 of 7. It says, customers -- at the
8 end of Numerical 5, the last sentence has been added.
9 Customers will be subject to any other charge or
10 surcharge including without limitation any charge related
11 to securitization of company assets. Again, that's just
12 covering what could happen in the future and making sure
13 that the tariff is legal.

14 Under additional provisions, this is the
15 RESRAM section. Effectively, our language has been added
16 there to make sure that the Company's in compliance with
17 the law. And again, Ms. Mantle is going to expand on --
18 you know, I definitely encourage you to ask her questions
19 on this because given the size of the customer, this is
20 not necessarily a trivial amount of money that could be
21 at stake here.

22 The other thing, you know, that I would
23 add as to the importance of this is the precedential
24 value. We know that there is a customer interested that
25 is interested in moving forward with the data center.

1 We don't know anything about that customer or that they
2 have operated anywhere else in the United States at this
3 point. But there is a customer interested in opening a
4 data center in the greater Kansas City area.

5 As this is defined, I mean, this could
6 include any number of different types of customers. I
7 will just give the example of bitcoin, for example. We
8 could have a customer that wanted to open up a bitcoin
9 mining and take advantage of this rate. Very speculative
10 business at the moment. Last Monday bitcoin hit a
11 six-month low in terms of overall cost. They could take
12 advantage of this. The Company could go ahead and
13 buildout. Everything that they needed to do all the
14 transmission, distribution, get the generation. And that
15 company could easily go under. I just use that as a
16 hypothetical.

17 There is a huge amount of risk that is
18 associated with that. And again, it is all the more
19 important why customers who are already being asked to
20 pay on the front end of this with that EDR get some sort
21 of level of protection on the backend.

22 I think that's -- the last thing I would
23 say on that is, you know, we do have statutory language
24 down the street, you know, that offers up -- you know,
25 that had been alluded to the opening. I think it was

1 even the Company's opening. But it effectively said the
2 Company would remain neutral and -- at the end of the
3 day. If that is the lodestar, you know, that is
4 effectively that we are looking at here, while we are
5 clearly deviating from that. You know, in terms of a
6 workaround, which is effectively what we are doing with
7 this tariff, we are onboard with that workaround as long
8 as customers are held harmless.

9 JUDGE HATCHER: Thank you, Dr. Marke.
10 That will end all of the questions I have. Let's go to
11 recross examination. That will go first to Mr. Keevil.

12 MR. KEEVIL: No questions.

13 JUDGE HATCHER: Thank you.

14 Mr. Woodsmall?

15 MR. WOODSMALL: No questions.

16 JUDGE HATCHER: Thank you.

17 Mr. Mills?

18 MR. MILLS: No questions.

19 JUDGE HATCHER: Thank you.

20 Ms. Bell?

21 MS. BELL: Yes.

22 RECROSS EXAMINATION BY MS. BELL:

23 Q. Mr. Marke, you had mentioned a bitcoin
24 -- a potential bitcoin customer. You would agree that
25 approval of this tariff would not automatically allow a

1 bitcoin customer to take service under MKT. It would
2 also require a contract. Correct?

3 A. That's Correct.

4 Q. And the Commission would have to approve
5 that contract. Correct?

6 A. Yes.

7 Q. Do you agree that Velvet will pay up
8 front for the transmission switching station, the line
9 extensions, and line relocation costs?

10 A. That's my understanding.

11 Q. Who will pull up the 800 million
12 investment in the data center facility?

13 A. That Velvet -- who will put up Velvet
14 Tech's capital?

15 Q. Okay. And where would they be stranded
16 investment if Velvet paid up front for investment
17 already?

18 MR. KEEVIL: I'm sorry, Judge. Did you
19 ask questions about stranded investment?

20 MS. BELL: Mr. Marke suggested that the
21 bitcoin customer could go away and that would -- and that
22 would potentially --

23 JUDGE HATCHER: We've already been
24 touching on that. I'm going to go ahead and allow it
25 Ms. Bell.

1 THE WITNESS: Sure. This goes -- I will
2 give you the example of the RESRAM. Again, if Velvet
3 Tech paid for their, you know, distribution,
4 transmission. Let's just say hypothetically they covered
5 all of their cost, you know, to be met there. As the
6 tariff that is being posed to us, the RES requirement
7 based off of the generation that Velvet Tech would be
8 bringing onto Evergy West load would be high enough where
9 customers would then be asked to go ahead and procure
10 more RECs or renewables in some fashion.

11 JUDGE HATCHER: This is a good time.

12 MS. BELL: And is that true --

13 JUDGE HATCHER: Ms. Bell? Let me --

14 MS. BELL: Is that true?

15 JUDGE HATCHER: I'm sorry. This a good
16 time to mention again anyone on the WebEx -- the computer
17 microphone these days are pretty powerful. If there's
18 someone else in the room with you, specifically
19 counselors, that microphone might pick up the other
20 person. With that said, Ms. Bell, please go ahead. I'm
21 sorry to interrupt.

22 BY MS. BELL:

23 Q. Would that be true with a purchase power
24 agreement, Mr. Marke, on stranded investment?

25 A. Yes. It wouldn't be true under the SIL

1 tariff because, again, that is a customer that is
2 retiring their RECs through the Company. Effectively,
3 the Company is retiring the RECs for that power purchase
4 agreement, like, Nucor. That's not the case here.

5 Q. You would agree under the SIL tariff
6 that it is company-owned renewables? That it's the
7 company PPA. Correct?

8 A. Yes.

9 MS. BELL: No further questions.

10 JUDGE HATCHER: Thank you, Ms. Bell.

11 That takes us to Evergy.

12 MR. Fischer: Just briefly, Judge.

13 RE CROSS EXAMINATION BY MR. FISCHER:

14 Q. Dr. Marke, is there any restriction for
15 a customer to go from the PED or the EDR and then go to
16 the SIL tariff that you know of?

17 A. Not that I am aware of.

18 Q. Do you now if there's any limitation
19 from a number of customers that may be served by the SIL
20 under the SIL tariff?

21 A. No. I don't believe there are.

22 MR. Fischer: That's all the questions I
23 have, Judge. Thanks.

24 JUDGE HATCHER: Thank you, Mr. Fischer.

25 That takes us to redirect.

1 REDIRECT EXAMINATION BY MR. CLIZER:

2 Q. Let's start by clarifying a few points.
3 Dr. Marke, when you were going through the tariff --
4 first of all, can you find the page that has availability
5 on the front?

6 JUDGE HATCHER: Mr. Clizer, let's
7 clarify. Which one are we looking at?

8 MR. CLIZER: I was going to doing the --
9 since he was using it, I was going to do the combined
10 version.

11 JUDGE HATCHER: Thank you.

12 THE WITNESS: I'm there.

13 BY MR. CLIZER:

14 Q. You had said something on this page?

15 A. I am not there. I am on availability
16 continued. I have got to point out that you are one that
17 stapled this. All right.

18 MR. KEEVIL: I wondered how you went
19 from Page 1 to Page 5.

20 THE WITNESS: Go ahead.

21 BY MR. CLIZER:

22 Q. All right. You had mentioned something
23 about language included here was to make sure customers
24 were big enough. Can you just identify what language in
25 particular you were referring to?

1 A. Okay. Here we go. Provided -- this is
2 the last line. It says, provided the new customer's
3 current load reaches a monthly demand minimum of 50,000
4 kilowatts.

5 Q. All right. Thank you. Can you find --
6 I'm not even going to ask you a page. Can you just find
7 the part that talks about the hold harmless agreement?

8 A. Yes. Okay.

9 Q. Now, when you were talking about what
10 was put in and what was cut out, you mentioned the fact
11 that we were cutting language that said it was hold
12 harmless and adding new effective hold harmless language.
13 Do you recall that?

14 A. Yes, I do.

15 Q. What is our problem -- as you see it,
16 what is the problem with the Company's proposed hold
17 harmless language?

18 A. The Company has, effectively, a clause
19 of the end of their hold harmless language that they --
20 it's the all relevant factors related to economic
21 development. The problem that I have with it is twofold.
22 One, that's is not really hold harmless if there's a
23 clause immediately saying that, well, by the way we can
24 go ahead and argue it that we are not being held
25 harmless, that customers can still bear all these costs.

1 The second part is the nature of the
2 specific item that the Company wants to argue which is
3 economic development benefits, which can be -- I mean,
4 arbitrarily it can be just about anything. We could --
5 That, you know -- Mr. Busch was asked this before whether
6 or not this would be a contentious hearing. It would be
7 a contentious hearing. The modeling that would go into
8 something like that, the assumptions behind that, the
9 double counting that could exist out of it. It would be
10 a regulatory nightmare.

11 **Q. Why exactly do you think it's so**
12 **important for that hold harmless that the OPC, MEGC and**
13 **Staff proposed? Why is it important to have that in**
14 **there?**

15 A. I can't stress this enough. But
16 customers are effectively already being exposed on the
17 front end of this. Nonparticipants are already ponying
18 up and going to be contributing that 40 percent discount
19 for a period of time. The hold harmless language really
20 is designed to go ahead and ensure that nonparticipants
21 -- that rates aren't raised just randomly. That we're
22 just throwing around money to attract clientele that may
23 or may not be stable. We don't necessarily know the
24 terms behind them.

25 **Q. Do you believe that kind of hold**

1 **harmless language would be important to making sure that**
2 **Everygy negotiates its contract in a manner that would**
3 **ensure all costs are recovered?**

4 A. Absolutely. I would double down and say
5 that there is existing tariff language that already has
6 the hold harmless. So when Mr. Fischer asked me about
7 that SIL tariff and whether or not anybody could switch
8 through it or -- that's the tariff we want, that
9 language, that hold harmless language. We are
10 comfortable with it. We, you know -- I don't know if we
11 were signatory or we didn't object, but we didn't object,
12 you know, in part because there is language there that
13 ensures that customers are not going to be, you know,
14 penalized for this.

15 Q. All right. I'm going to move on. You
16 were asked a question originally from the Bench regarding
17 the Omaha rate. And in the response to that question you
18 had said something about nonparticipants are already
19 paying a cost. You actually just said something very
20 similar again. Just to be clear, how?

21 A. On the Omaha rate?

22 Q. How are customers already going to be
23 paying a cost? Nonparticipating customers?

24 A. They're going to be paying the cost of
25 the economic development rider those first few years.

1 That could -- I mean, depending on the size of this
2 customer, you know, the period we're talking about, tens
3 of millions of dollars, 50 millions of dollars. A
4 hundred Walmarts, I mean, that could be, you know, at
5 full load until it hits that level. I mean, they can be
6 significant.

7 Q. Thank you. Okay. I'm going to move on.
8 Very last questions I think are going to involve this
9 Exhibit 904.

10 A. Can I real, just quick -- the EDR is
11 designed, again -- you know, and this has been hit home,
12 but I want to reiterate this: We've got that economic
13 development rider out there that customers take advantage
14 of for a set number of years and then they are on the
15 system. They're paying back. That's the give-and-take
16 that's taking place with customers here. The
17 nonparticipants are being made whole because we've got
18 that load coming on and they are a viable customer.
19 That's not happening here.

20 Q. My next question involves 904. This is
21 the OPC, MECG and Staff proposal --

22 A. Yeah.

23 Q. -- regarding the EDR availability
24 provision.

25 A. Yes.

1 Q. I'm not good spend very long on here. I
2 was to clear up a bit of confusion regarding renewals.
3 As you would understand it, if Customer A renews a
4 contract, are they a new customer at that point?

5 A. No.

6 Q. All right. So when you say three
7 customers, you mean three customers no matter how many
8 times they renew?

9 A. That's correct.

10 Q. And to be clear as to how this second
11 paragraph works, there's a five-year limitation that gets
12 kicked off when the first contract is approved?

13 A. That's correct.

14 Q. Okay. That's all the clarifying I need
15 there.

16 MR. CLIZER: I don't think I have any
17 further questions.

18 JUDGE HATCHER: Thank you.

19 Dr. Marke, you are excused.

20 Ms. Mantle, please make your way up to
21 the witness stand. I will make an announcement to all
22 parties. I intend to go forward with taking
23 Ms. Mantle's testimony tonight. My best guess is that
24 this will not take too long. I've already notified the
25 commissioners and inquired of our court reporter. So we

1 are going to move forward.

2 Ms. Mantle?

3 MR. KEEVIL: Judge, I need to move my
4 car at some point. You know, if we're out of here in
5 time to allow me to limp to the parking garage but before
6 the elevator closes, then that will be adequate.

7 JUDGE HATCHER: That is at 6:00.

8 MR. KEEVIL: The elevator closes at
9 6:00, yes.

10 JUDGE HATCHER: We're good.

11 MR. KEEVIL: Okay.

12 (Witness sworn.)

13 JUDGE HATCHER: Thank you. Please have
14 a seat.

15 Mr. Clizer, your witness.

16 MR. CLIZER: All right. I'm going to
17 try to do this on the speed run.

18 JUDGE HATCHER: No.

19 MR. CLIZER: Fair enough.

20 MR. KEEVIL: Please do.

21 LENA MANTLE, having been duly sworn, testifies as
22 follows:

23 DIRECT EXAMINATION BY MR. CLIZER:

24 Q. By whom are you employed?

25 A. Office of the Public Counsel.

1 Q. And what is your position?

2 A. I'm a senior analyst.

3 Q. And did you prepare or cause to be
4 prepared testimony -- surrebuttal testimony for this case
5 that has been premarked as OPC Exhibit 201?

6 A. Yes.

7 Q. And if I were to ask you the same
8 questions that I posed to you -- that were posed to you
9 in that testimony, would your answers today be the same
10 or substantially similar?

11 A. Yes.

12 Q. And are those answers true and correct
13 to the best of your knowledge and belief?

14 A. Yes.

15 Q. And do you have any corrections?

16 A. No.

17 MR. CLIZER: All right. I would like to
18 offer OPC Exhibit 201.

19 (WHEREIN; OPC Exhibit 201 was offered
20 into evidence.)

21 JUDGE HATCHER: You've heard the motion
22 by counsel. Are there any objections to the admission of
23 Exhibit 201 onto the hearing record? Hearing no
24 objections, it is so admitted. Go ahead.

25 (WHEREIN; OPC Exhibit 201 was received

1 into evidence.)

2 MR. CLIZER: I tender the witness for
3 cross.

4 JUDGE HATCHER: And we are going to
5 cross-examination of Ms. Mantle. First that will go to
6 Mr. Keevil.

7 MR. KEEVIL: You see Mr. Keevil waving?

8 JUDGE HATCHER: Is that a no?

9 MR. KEEVIL: That mean, yeah, waiving
10 cross.

11 JUDGE HATCHER: Okay. We move to
12 Mr. Woodsmall.

13 MR. WOODSMALL: No questions.

14 JUDGE HATCHER: Next we move to
15 Mr. Mills.

16 MR. MILLS: No questions. Thank you,
17 Your Honor.

18 JUDGE HATCHER: And Ms. Bell?

19 MS. BELL: Yes.

20 CROSS-EXAMINATION BY MS. BELL:

21 Q. Ms. Mantle, good evening?

22 A. Good evening.

23 Q. You would agree -- you would agree that
24 the policy of the renewable energy standard is to
25 encourage renewables and ensure at least enough

1 **renewables are used to cover some percentage of the load?**

2 A. I'm not sure what the legislature's
3 intent was in creating, drafting the statute that created
4 the renewable energy standard. I do know that it asks --
5 or it requires renewable energy to provide 15 percent of
6 the electric sales for the electric investor-owned
7 utilities in Missouri.

8 **Q. Just to clarify, it's at least 15**
9 **percent. Correct?**

10 A. Beginning in 2021, and continuing there
11 on, yes.

12 **Q. And you would agree that in Missouri**
13 **electric utilities have increased their renewable energy**
14 **percentage of load since the adoption of the statute.**
15 **Correct?**

16 A. Yes.

17 **Q. You would also agree that the Commission**
18 **has adopted a regulation that governs both the renewable**
19 **energy standard and RESRAM. Correct?**

20 A. Yes. They have rules.

21 **Q. And you would agree that there rule**
22 **contains an authorization for them to provide a variance**
23 **from the rule. Correct?**

24 A. I have not looked at that rule recently.
25 I do not know that for sure, but it is likely.

1 Q. Are you aware if any electric utilities
2 have applied for a variance from the RES rule?

3 A. I am not aware of any.

4 Q. And you are not aware of -- are you
5 aware if the Commission has granted any variances from
6 the RES rule?

7 A. Now that I've had a second to pause, I
8 do believe in the last RES report -- and I'm not sure for
9 which electric utility -- one of the utilities did ask
10 for and receive a variance having to do with small
11 metered customers?

12 Q. Thank you.

13 A. So yes, electric utilities have
14 requested and been granted variances.

15 Q. Can you take a look at the Evergy/Velvet
16 stipulation, paragraph -- Schedule 1, Paragraph 6?

17 A. I am there.

18 Q. Have you reviewed that provision in
19 preparation for today?

20 A. Yes, I have.

21 Q. Did you also review the stipulation that
22 was filed?

23 A. I did read it, yes.

24 Q. Let's assume a hypothetical where the
25 variances as described in these Evergy and Velvet

1 **simulations were granted. Okay?**

2 A. Okay.

3 **Q. And then Paragraph 6 in the tariff is**
4 **granted. Okay?**

5 A. Did you say --

6 **Q. Are you with me?**

7 A. -- Paragraph 6 of the tariff?

8 **Q. Of the Schedule 1 stipulation. The**
9 **Paragraph 6 you're looking at now. The Paragraph 6 of**
10 **Evergy and Velvet Schedule 1?**

11 A. Yes. I was just confused because
12 variance is also in Paragraph 6, so I wanted to make sure
13 I was clear.

14 **Q. Okay. So we are assuming a hypothetical**
15 **where the variance is requested in the stipulation are**
16 **granted and the tariff language attached in Paragraph 6**
17 **is also adopted. We're also going to assume the MKT**
18 **customer documents that RECs have been retired sufficient**
19 **to cover more than the RES renewable requirement,**
20 **currently 15 percent. Under that hypothetical, would you**
21 **agree there would be no additional cost under the**
22 **renewable energy standard?**

23 A. I pause because there is also a 2
24 percent solar requirement in the renewable energy
25 standard. I -- if you assume that RECs are retired for

1 at least 2 percent of the renewable standard is from the
2 solar REC and you make the assumptions that the variances
3 were granted and the language was -- was legal, then
4 there would be no cost then -- additional cost for the
5 customers.

6 MS. BELL: Thank you. No further
7 questions.

8 JUDGE HATCHER: Thank you, Ms. Bell.
9 That takes us to Everygy.

10 MR. Fischer: No thank you. No thank
11 you, Judge.

12 JUDGE HATCHER: Okay. I heard you had
13 no questions. That will take it to commissioner
14 questions. Again, we do have commissioners on the WebEx.
15 It is *6 to unmute if you are on a phone. Are there any
16 commissioner questions for Ms. Mantle? Hearing none,
17 Bench does have one question.

18 QUESTIONS BY JUDGE HATCHER:

19 Q. Would you clarify or elaborate on your
20 concerns with the MKT tariff customer's exclusion from
21 the RESRAM?

22 A. And again, as Staff Witness Eubanks
23 said, there's a difference between exclusion from the RES
24 and exclusion from the RESRAM. And exclusion from the
25 RESRAM means they just don't pay the cost. My biggest

1 concern with their language is -- I am not an attorney,
2 but I believe it's illegal. I believe the statute says
3 sales and it means the retail sales. It doesn't say
4 sales except for customers who got some type or renewable
5 source or some way to retire RECs, then they don't count
6 sales. They still do.

7 So -- and when you're talking about a
8 net metering customer or something, they don't have the
9 sales. The sales aren't there because that's been
10 covered. So, you know, I have a concern that it's not
11 legal.

12 And, you know, a few other things that
13 I've heard that's been kind of concerning to me, one of
14 them is -- well, I don't know that I've heard but the
15 thought is well, it's just 15 percent. It's not that
16 much. And so I did a bit of calculating this morning.
17 If you have one customer, 150-megawatt customer, which is
18 smallest customer that can be on this MKT schedule. At
19 an 85 percent load factor, that means at 85 percent of
20 the year they at 85 percent of the load. If it's a
21 hundred load, then that would 85 megawatts every hour at
22 least.

23 The annual megawatt hours for that
24 customer would be 1,116,900 megawatt hours. And that's
25 just simply 150 times 8,760 hours of the year, 85

1 percent. And I went to Evergy West RES plan that was
2 filed EO-2021-0348 that was their RES plan that they
3 filed this last summer. And from that I got the -- their
4 projected load for 2023 and that was 8,347,727 megawatt
5 hours. So this one customer would be over 13 percent
6 increase in load over that projected load. So that means
7 that the RES standard, the RES requirement goes up 13
8 percent.

9 Now, if the MKT customer is exempted
10 from paying for any of that, that's 13 percent of -- that
11 other customers have to pay. Of that, you know, that
12 would be on 167,535 megawatt hours. Of that, 3,351 are
13 solar megawatt hours and then the rest can be generated
14 from any renewable source. So the idea, well, is just 15
15 percent; 15 percent of my load isn't much, 15 percent of
16 one MKT customer is a lot. So and you know -- we're
17 talking just one load at the minimum level. So it
18 shouldn't be just thought well, this isn't going to be
19 very much. It is not going to be much hard to customers.

20 Another thing I've heard is well, Evergy
21 West has a surplus of RECs, doesn't it, so what's the big
22 deal. Well, these RECs are currently -- the generation
23 for those RECs is currently paid for by customers through
24 the FAC. And guess what, this customer won't have to pay
25 the FAC charge. It's not like these -- PP-- what they

1 are are purchase power agreements. Evergy West pays a
2 set amount per megawatt hour. Now, that's offset by
3 revenue from the SPP, but 98 percent of the months that
4 I've looked at -- and I've looked at all of them since
5 2008 -- that has been a loss for the customers.

6 We're talking about hundreds of millions
7 of dollars customers have paid through these PPAs for
8 wind power. And this MKT customer will not be paying for
9 any of that. So that's another one.

10 And there's also a renewable energy
11 contribution charge that's in the contract, the sample
12 contract. And it's like, oh, that sounds good, but
13 there's nothing that says how that money is to be used.
14 Evergy West can pocket that money. It doesn't say that
15 it's going to offset these costs that these other
16 customers have.

17 Now, that is one thing that the OPC and
18 Staff and MECG tariff is. It requires that money to go
19 offset RECs costs. So, I mean, that's a lot. And that's
20 some of the things that have really concerned me
21 listening in on the hearing in the last two or three
22 days. I sit here and I'm not even for sure if I answered
23 your question.

24 Q. You did great. Thank you. I'm going to
25 stop there. I'm very satisfied with that. Thank you

1 very much.

2 JUDGE HATCHER: Where are we at? We are
3 at recross and that goes to Mr. Keevil.

4 MR. KEEVIL: No questions.

5 JUDGE HATCHER: Mr. Woodsmall?

6 MR. WOODSMALL: No questions.

7 JUDGE HATCHER: That goes to Mr. Mills.

8 MR. MILLS: No questions. Thank you.

9 JUDGE HATCHER: Thank you.

10 And Ms. Bell?

11 MS. BELL: No questions, Your Honor.

12 JUDGE HATCHER: Thank you.

13 And Everygy?

14 MR. FISCHER: No questions, Your Honor.

15 JUDGE HATCHER: Redirect.

16 MR. CLIZER: Real quick.

17 REDIRECT EXAMINATION BY MR. CLIZER:

18 Q. So just to make sure I understood your
19 point regarding the FAC that you were explaining in
20 response to the Judge's questions. Everygy is currently
21 receive RECs that it's using to meet its RES requirement,
22 and it is actually losing money. Sorry. They are
23 receiving RECs through PPAs, to meet their RES
24 requirement; is that accurate?

25 A. I'm not sure exactly which PPAs because

1 I have not been able to get that from Evergy, but all of
2 their PPAs are losing money or costing customers money.
3 So in -- they supposedly retire some of those RECs to
4 meet the RES.

5 Q. Okay. And the loss of that money is
6 being flowed through to customers through the FAC?

7 A. Yes.

8 Q. So all the other customers are paying
9 for these RECs that meet this requirement that MKT
10 customers won't have to pay for?

11 A. If the Company's tariff is adopted,
12 that's correct.

13 MR. CLIZER: I'm going to leave it at
14 that. I have no further questions. Thank you.

15 JUDGE HATCHER: Thank you.

16 Ms. Mantle, you are excused.

17 Mr. Fisher?

18 MR. FISCHER: Yes, Your Honor.

19 JUDGE HATCHER: I would -- am prepared
20 to receive a motion from you for Exhibit 5 to be adopted
21 onto the hearing record. I do not recall if you made
22 that motion and I failed to write it down, but I don't
23 have on my sheet that it was made, so would you please
24 make that motion?

25 MR. KEEVIL: What was 5?

1 JUDGE HATCHER: Direct testimony of Mark
2 Stombaugh.

3 MR. FISCHER: Yes, Judge. We would move
4 that that be received into the record and any other
5 prefiled testimony that we did not have introduced.

6 JUDGE HATCHER: No, just that one.
7 You've heard the motion. I see shaking of head. Any
8 objections? No objections, it is so admitted.

9 nd Staff, I can confirm I have your
10 Exhibits 100 to 104.

11 Velvet, Ms. Bell, I just want to restate
12 where we are at. You will have Exhibit 301, the SIL
13 tariff. 302, I think you can probably skip. That was
14 the solar that was introduced --

15 MR. KEEVIL: Yeah, that's 104.

16 JUDGE HATCHER: -- as 104 by Staff.
17 Ms. Bell, your next number is 303. That is the special
18 contract rate from 141, 142, and 143. Exhibit 304 is the
19 Staff brief from Case Number EO-2019-0244. Exhibit 305
20 is nonunanimous stipulation from that same case number
21 ending 0244, and Exhibit 306 is the stipulation that is
22 dated September 25th, 2018 from Case ER-2018-0145 and
23 0146. And you have until Friday to submit those, and the
24 other parties have until Monday to file objections.
25 Ms. Bell, can you confirm I am correct?

1 MS. BELL: Yes, and Your Honor, I have
2 one more edition.

3 JUDGE HATCHER: Okay. Go ahead.

4 MS. BELL: And that is nonunanimous
5 partial stipulation and agreement in EO-2014-0151.

6 JUDGE HATCHER: Any date or is that the
7 singular stipulation?

8 MS. BELL: We will date it just to be
9 sure. It is dated October 20th, 2014.

10 MR. KEEVIL: What cases is that?

11 JUDGE HATCHER: It is case EO--

12 MR. KEEVIL: No. I mean, what --

13 JUDGE HATCHER: Ms. Bell, could you give
14 us a synopsis of what this case is?

15 MS. BELL: Sure. That is a nonunanimous
16 stipulation where parties proposed various variances to
17 the RES requirement and the Commission approved that
18 stipulation.

19 JUDGE HATCHER: Okay. Ms. Bell, we will
20 add that to the list for you to submit it by Friday,
21 subject to objections due by Monday.

22 That is also, just to reiterate our due
23 date for the expedited transcript.

24 Mr. Clizer, I can confirm I have all
25 three of your exhibits.

1 MR. CLIZER: I have three exhibits?

2 JUDGE HATCHER: Was that a question?

3 MR. CLIZER: Yes.

4 JUDGE HATCHER: Yes. You have rebuttal
5 testimony of Dr. Marke. You have the surrebuttal of
6 Ms. Mantle. Did you move the demonstrative 202?

7 MR. CLIZER: I am glad you bring that
8 up. We had talked about it yesterday. I will offer it
9 up tentatively and then if the parties would like to
10 propose a cleaner version in the interim, they can. But
11 I would like to offer it now tentatively to be submitted
12 by Friday.

13 (WHEREIN; OPC Exhibit 202 was offered
14 into evidence.)

15 JUDGE HATCHER: I'm just going to do it
16 now.

17 MR. CLIZER: Fair enough.

18 JUDGE HATCHER: 202 IS OPC's comparison
19 version showing the two different versions married
20 together, for lack of a better description. Any
21 objections to Exhibit 202 being admitted onto the hearing
22 record? Hearing none, it's so admitted.

23 (WHEREIN; OPC Exhibit 202 was received
24 into evidence.)

25 MS. BELL: Your Honor, one more thing.

1 JUDGE HATCHER: Yes, go ahead.

2 MS. BELL: I know I was -- I believe I
3 would also like to offer the stipulation and the attached
4 schedule into the evidentiary record.

5 MR. FISCHER: Everygy would join in that.

6 MR. KEEVIL: If we do that then we're
7 going to need to put ours in.

8 JUDGE HATCHER: Okay. And we will also
9 do the same for the other side. Let me grab that. There
10 you go. Okay. Question first: Do we have any
11 preferences for the stipulation and tariff to be one
12 exhibit or the stipulation as one exhibit, tariff as one
13 exhibit.

14 MR. KEEVIL: I think if you --

15 MR. STEINER: Judge, this is Roger
16 Steiner, Judge. I think it can be one because the tariff
17 says attachment.

18 JUDGE HATCHER: Excellent. Let's go
19 with one. We'll do -- we're going to call this an OPC
20 exhibit. Thank you for volunteering.

21 MR. CLIZER: Yep, 203. No. Yes, 203.

22 (WHEREIN: OPC Exhibit 203 was offered
23 into evidence.)

24 JUDGE HATCHER: Exhibit 203 is the
25 stipulation and attached Schedule 1 of OPC, Staff and

1 MECG. Are there any objections to the admission of OPC
2 Exhibit 203? Hearing none, it is so admitted.

3 (WHEREIN; OPC Exhibit 203 was received
4 into evidence.)

5 JUDGE HATCHER: I'm going to call this
6 an Evergy exhibit. Mr. Fischer, do you agreement with
7 that?

8 MR. FISCHER: Yeah. I think we're up to
9 8 now.

10 (WHEREIN; Evergy Exhibit 8 was offered
11 into evidence.)

12 JUDGE HATCHER: Yes, 8. Exhibit 8 will
13 be the nonunanimous stipulation and attached Schedule 1
14 tariff language from Evergy and Velvet marked as Exhibit
15 8. Are there any objections to the admission of Exhibit
16 8 onto the hearing record? Hearing none, it is so
17 admitted.

18 (WHEREIN; Evergy Exhibit 8 was received
19 into evidence.)

20 JUDGE HATCHER: Mr. Woodsmall --

21 MS. BELL: Your Honor?

22 JUDGE HATCHER: Ms. Bell, go ahead.

23 MS. BELL: My last Exhibit, Your Honor,
24 307, Schedule PED.

25 JUDGE HATCHER: Okay. Let me get my

1 paper. No, we did 307 was the nonstipulation -- I'm
2 sorry -- nonunanimous stipulation from EO-2014-0151. So
3 this would be 308.

4 MS. BELL: Correct.

5 JUDGE HATCHER: And tell me what it was
6 again?

7 MS. BELL: Schedule PED from the Evergy
8 West tariff.

9 JUDGE HATCHER: All right. Ms. Bell,
10 please same as with the others submit that by Friday.
11 The other parties will have until Monday to object to
12 that. Anything else, Ms. Bell?

13 MS. BELL: No, Your Honor.

14 JUDGE HATCHER: Thank you.

15 And Mr. Woodsmall. I have four exhibits
16 I can confirm. And I see a head nod. And I believe
17 those four are coming in on Friday?

18 MR. WOODSMALL: No, 901, 902, and 903
19 will be offered on Friday. 904 was the response to
20 Exhibit 7 that you accepted already.

21 JUDGE HATCHER: Yes. Thank you. 904 is
22 already accepted. And I apologize, I marked down 900.
23 It's 901, 902, and 903?

24 MR. WOODSMALL: Okay. So it's 900, 901,
25 and -- okay, please state it again just so I'm clear.

1 JUDGE HATCHER: The Commission's brief
2 would be 901.

3 MR. WOODSMALL: Okay.

4 JUDGE HATCHER: The Evergy brief would
5 be 902. And Nucor brief is 903.

6 MR. WOODSMALL: Right. And then the one
7 you accepted was 904.

8 JUDGE HATCHER: 904.

9 MR. WOODSMALL: Thank you, Your Honor.

10 JUDGE HATCHER: That takes care of
11 exhibits. We are within a couple minutes of finishing
12 the hearing. Are there any other matters before we
13 adjourn?

14 MR. WOODSMALL: We have a briefing
15 schedule already set?

16 JUDGE HATCHER: We do have a briefing
17 schedule and --

18 MR. KEEVIL: February 8 and 18.

19 JUDGE HATCHER: Yes. There you go.

20 MR. WOODSMALL: Thank you.

21 JUDGE HATCHER: That's it. Thank you,
22 Mr. Keevil. I don't have anything further. We are
23 adjourned and off the record.

24 (The hearing concluded at 5:32 p.m.)

25 (OFF THE RECORD.)

CERTIFICATE OF REPORTER

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I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Lisa M. Banks, CCR No. 1081

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