

Matter of the Application of Evergy Missouri West, Inc.

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Hearing before:

Evidentiary Hearing

January 25, 2022

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vol 2

**PHIPPS REPORTING**

*Raising the Bar!*

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

January 25, 2022

Jefferson City, Missouri

Volume 2

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In the Matter of the )  
Application of Evergy ) File No. EO-2022-0061  
Missouri West, Inc. d/b/a )  
Evergy Missouri West for )  
Approval of a Wholesale )  
Energy Market Rate for a )  
Data Center Facility in )  
Kansas City, Missouri )

CHARLES HATCHER, Presiding  
REGULATORY LAW JUDGE  
RYAN A. SILVEY, Chairman,  
SCOTT T. RUPP,  
MAIDA J. COLEMAN,  
JASON R. HOLSMAN,  
GLEN KOLKMEYER,  
COMMISSIONERS

REPORTED BY:  
Tracy Taylor, CCR No. 939

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A P P E A R A N C E S (CONT'D)

JEFF KEEVIL

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FOR: Staff of the Missouri Public Service Commission

1                   JUDGE HATCHER: All right. Let's go on  
2 the record. Good morning. My name is Charles  
3 Hatcher. I'm the Regulatory Law Judge presiding over  
4 this hearing. Today is January 25th, 2022. The  
5 Commission has set this day for an evidentiary hearing  
6 in File Number EO-2022-0061.

7                   For the record, we are having a hybrid  
8 hearing and that means that some participants are  
9 physically in person here in Courtroom 310. Others  
10 will be participating via WebEx, and that is a  
11 videoconferencing internet application.

12                   The WebEx participants will be viewing a  
13 monitor showing the live stream. The WebEx  
14 participants will have all the same abilities and  
15 responsibilities as those in person. The WebEx video  
16 will not be part of the record and will not be  
17 viewable by those viewing the PSC live stream. The  
18 broadcast audio, however, will be taken down by the  
19 court reporter as part of the record.

20                   I have a couple of WebEx announcements  
21 specifically. I do ask that everyone please mute  
22 themselves. We will proceed slowly at every step to  
23 allow for unmuting. The WebEx chat function is not  
24 private. Phone users, if you have called in, please  
25 use \*6 to unmute.

1                   And a warning for the attorneys. If you  
2 have your client in the same room as your WebEx, the  
3 computer microphones these days are good enough that  
4 whispered conversations have been overheard on the  
5 WebEx.

6                   Let's go ahead and move on to entries of  
7 appearance. First for Evergy, Mr. Fischer, please.

8                   MR. FISCHER: Yes, Judge. Let the record  
9 reflect the appearance of James M. Fischer and Roger  
10 Steiner on behalf of the company in this case. Our  
11 contact information is included in the application and  
12 other pleadings in the case. Thank you.

13                  JUDGE HATCHER: Thank you, Mr. Fischer.  
14 For Staff, Mr. Keevil.

15                  MR. KEEVIL: Yes, Judge. Appearing on  
16 behalf of Staff, Jeffrey A. Keevil, PO Box 360,  
17 Jefferson City, Missouri 65102.

18                  JUDGE HATCHER: Thank you.  
19 And Mr. Clizer.

20                  MR. CLIZER: John Cli-- John Clizer  
21 appearing on behalf of the Missouri Office of the  
22 Public Counsel. My contact information has been  
23 provided with the court reporter.

24                  JUDGE HATCHER: And Velvet Tech Services,  
25 Ms. Bell.

1 MS. BELL: Yes. Stephanie Bell and Marc  
2 Ellinger with Ellinger and Associates on behalf --

3 THE COURT REPORTER: I'm sorry. I can't  
4 hear her.

5 JUDGE HATCHER: Ms. Bell, could you maybe  
6 move that microphone a little closer to your mouth?  
7 And we'll try over here to turn the volume up. Go  
8 ahead again.

9 MS. BELL: Stephanie Bell.

10 JUDGE HATCHER: Perfect, thank you.

11 MS. BELL: And Marc Ellinger with  
12 Ellinger and Associates for Velvet Tech Services. And  
13 our information is included in our application to  
14 intervene.

15 JUDGE HATCHER: Thank you.

16 And Mr. Mills?

17 MR. MILLS: Thank you, Judge Hatcher.  
18 Lewis Mills of the law firm of Bryan Cave Leighton  
19 Paisner on behalf of Google, LLC. My address is 201  
20 Bolivar Street, Jefferson City, Missouri 65101.

21 JUDGE HATCHER: And Mr. Woodsmall.

22 MR. WOODSMALL: Thank you, Your Honor.  
23 David Woodsmall on behalf of the Midwest Energy  
24 Consumers Group.

25 Your Honor, I didn't print out my opening

1 statement. Can I leave while you take up everything  
2 else and I'll be right back? Don't slow down the  
3 opening statements for me is what I'm saying.

4 JUDGE HATCHER: I won't, but I'm going to  
5 have a pressing announcement you'll want to hear in  
6 just a minute.

7 Let's move to preliminary matters. I  
8 have two. The first is perfunctory. This is about  
9 the exhibits. Just to ease the confusion during  
10 Covid, I, the Regulatory Law Judge, will take  
11 responsibility again to make sure and get marked and  
12 submitted to EFIS the pre-filed testimony that is in  
13 EFIS and any exhibits that anyone produces today and  
14 they e-mail it to me. The other normal procedure is  
15 to e-mail it to Exhibits@PSC.MO.GOV. I will revisit  
16 those instructions later.

17 My second announcement is -- concerns the  
18 schedule for today. Late last night at  
19 approximately -- or exactly 4:49 and then later at  
20 approximately 8:00 p.m., the parties, if I can  
21 describe them as two sides, have filed what could be  
22 called competing tariff wordings.

23 In comparing these last night, I found  
24 that there were many similarities and there were a few  
25 differences. Not everyone has had as much time as I



1 have to work after hours and overnight to read through  
2 these tariffs.

3           So what we're going to do is we're going  
4 to go through opening statements and then we're going  
5 to break until one o'clock. The Commission has some  
6 very pointed questions about the two provisions. And  
7 the Commission wants to go through each provision  
8 asking each witness in turn why this is there or why  
9 they disagree.

10           So in order to accomplish this in the  
11 most efficient way possible and in order to keep the  
12 hearing on schedule, in order to continue trying to  
13 pursue expedited treatment as requested, we -- the  
14 Commission seeks to have all the witnesses prepared  
15 for those questions. So just putting that out there  
16 for everyone to know that's the direction for the  
17 questions.

18           Yes, Mr. Keevil?

19           MR. KEEVIL: When you say "the  
20 provisions," are you referring to the tariffs which  
21 were filed with the competing stipulations? Those are  
22 the two? Okay.

23           JUDGE HATCHER: Yes, sir.

24           MR. KEEVIL: Because there were several  
25 other versions previously filed. That's why I wanted

1 to clarify.

2 JUDGE HATCHER: Yes. In preparation for  
3 the hearing, I also printed those out and then last  
4 night, lo and behold, someone had compiled two --  
5 several of them into these two.

6 So I think that's the intent of the  
7 parties is to use these two as a starting point. And  
8 therefore, in response, the Commission wants to have  
9 opening statements, hear the lay of the land, and then  
10 give everyone, particularly the witnesses, a few  
11 hours' break to go over and be prepared to answer the  
12 detailed questions of why you agree or disagree line  
13 by line.

14 Okay. Where are we now?

15 MR. FISCHER: Judge, this is Jim Fischer.  
16 In order to make that more efficient, would you like  
17 for the counsel to have a little bit of direct with  
18 the witness to go through those provisions or should  
19 we just wait for the Commission and the Judge to ask  
20 his questions?

21 MR. CLIZER: I would prefer, if I may,  
22 that the Commission ask its questions and that we can  
23 clean up on redirect, if necessary. That would be my  
24 preference.

25 MR. KEEVIL: I agree.

1 JUDGE HATCHER: On WebEx, did you hear  
2 that, Mr. Mills?

3 MR. MILLS: Yes.

4 JUDGE HATCHER: Okay. Was that  
5 acceptable?

6 MR. KEEVIL: Yeah, that's acceptable to  
7 me.

8 JUDGE HATCHER: Well, so I can get out of  
9 making a decision, I wanted to see if Mr. Mills will  
10 just agree.

11 MR. MILLS: Judge, I have no objection to  
12 that procedure.

13 JUDGE HATCHER: Excellent. We will do  
14 that. And we will proceed to opening statements then.  
15 Let me check my handy list. Evergy will be doing the  
16 first opening. And for everyone's information, this  
17 will go Evergy, Velvet, Google, Staff, OPC and then  
18 MECG.

19 Evergy, the floor is yours.

20 MR. FISCHER: Thank you, Judge. I do not  
21 have a PowerPoint this time. I'm just going to be  
22 giving an opening statement. In order to conserve  
23 bandwidth, would it be helpful for me to turn the  
24 video off or would you prefer to see my face?

25 JUDGE HATCHER: No, you're fine. Go

1 ahead, Mr. Fischer.

2 MR. FISCHER: Okay. Thank you, Judge.  
3 My name, again, is Jim Fischer. And Roger Steiner and  
4 I will be representing Evergy Missouri West in this  
5 proceeding today.

6 Evergy has been approached by multiple  
7 potential customers seeking to locate large high load  
8 factor facilities in the Kansas City area. Most of  
9 these high load factor loads are data centers. These  
10 customer loads have the potential to be much larger  
11 and more consistent than loads currently served by  
12 Evergy Missouri West.

13 Now, there's a common need expressed by  
14 these customers for dynamic rate designs that allow  
15 them to competitively meet their corporate renewable  
16 goals. This case involves Evergy's request for the --  
17 for the approval of a proposed special high load  
18 factor market rate tariff.

19 This tariff is designed to meet the needs  
20 of these large high load factor customers by providing  
21 an energy rate based upon the day-ahead hourly price  
22 of energy observed by the Southwest Power Pool  
23 integrated marketplace.

24 And for the court reporter, I'll probably  
25 refer to the Southwest Power Pool as SPP.

1 All other elements of the proposed rate  
2 are determined based on the incremental cost to serve  
3 the customers.

4 Attracting large high load customers to  
5 Missouri would be a significant economic win for the  
6 state. The ability of Missouri to win such projects  
7 over the competition from multiple other aggressive  
8 states exemplifies the public/private partnership  
9 approach to economic development taken in Missouri.

10 The price of electricity comprises a  
11 substantial component of a data center's operating and  
12 expense costs. Therefore, a competitive electricity  
13 rate is very important to large data centers and  
14 represents a primary factor to their decision to  
15 locate in Missouri.

16 Velvet Tech is an intervenor in this case  
17 and is what we refer to as a design case customer that  
18 could be served under the proposed tariff. To better  
19 describe their need, involvement and support, Velvet  
20 has provided a letter of support which is attached to  
21 the direct testimony of Darrin Ives.

22 Maurice Brubaker, an outside expert with  
23 many years of experience before this Commission and  
24 many other Commissions, has also filed surrebuttal  
25 testimony on behalf of Velvet, which addresses the

1 needs of this design case customer.

2           The design case customer has purchased  
3 land and received approval from the Kansas City City  
4 Council for the construction of the data center. The  
5 expected construction cost of the data center is  
6 approximately 800 million dollars and will employ  
7 50 full-time employees.

8           Current plans call for the data center to  
9 be in service by the end of 2023. Installation and  
10 commissioning of data center equipment will follow and  
11 the load will increase as the data center builds out.  
12 The data center will be part of the Golden Plains  
13 Technology Park, an innovative 882-acre data center  
14 campus development in Kansas City, Missouri.

15           During the ramp-up period, Velvet will be  
16 eligible for the Economic Development Rider, which I  
17 sometimes refer to as the EDR, which is authorized by  
18 Section 93 -- 393.1640, and Everygy's EDR tariffs which  
19 will called the Missouri West Limited Large Customer  
20 Economic Development Discount Rider Schedule PED.  
21 This is a very important provision to Velvet and other  
22 large data customers that would be building in  
23 Missouri.

24           After the ramp-up period, which may last  
25 approximately two years, then Velvet would be eligible

1 for the special high load factor market rate that is  
2 the subject of this proceeding.

3           Let me digress for just a moment, Judge.  
4 As you've mentioned, last night Staff, Public Counsel  
5 and MECG filed a Non-Unanimous Stipulation and  
6 Agreement, which we will address in the proceeding, as  
7 you suggested. But at this point in my opening, I  
8 think I need to bring to the Commission's attention  
9 one provision in the tariff attached to that  
10 Non-Unanimous Stipulation filed by Staff, Public  
11 Counsel and MECG, which we believe may potentially  
12 kill the possibility of a large high -- high load  
13 factor data center like Velvet from coming to Missouri  
14 and accepting service under the special high load  
15 factor market rate tariff.

16           Customers like Velvet need a way to  
17 transition to the MKT rate. The Economic Development  
18 Rider is designed for large loads and design case  
19 cus-- case projects that have ramp-up periods over  
20 several years. The statutes, particularly Section  
21 393.140, provides a means to offer limited competitive  
22 pricing for such customers.

23           If the company is unable to use such  
24 pricing mechanisms as a transition, then the project  
25 economics will be threatened and other locations will

1 be given a competitive advantage. The position filed  
2 by these parties includes a provision that the special  
3 high load factor market rate tariff would only be  
4 available if the customer -- and I'll quote from their  
5 tariff -- has not accepted a discount under Section  
6 393.1640 in the past five years. This statutory  
7 section refers to the Economic Development Rider.

8           This tariff provision, if adopted by the  
9 Commission, would potentially be a deal killer and  
10 would certainly be a significant negative signal to  
11 new prospective customers in regard to Missouri  
12 economic development and electric rate  
13 competitiveness. And for that reason, I would urge  
14 the Commission to reject that proposed addition to the  
15 tariff.

16           I'd also like to point out that there is  
17 no pre-filed testimony filed by Staff, Public Counsel  
18 or MCEG which addresses this provision. It is not  
19 included in the joint list of issues that was filed by  
20 the parties and it is not mentioned in any of the  
21 position statements filed by Staff, Public Counsel or  
22 MCEG.

23           Darrin Ives will be available to address  
24 this provision, which will effectively keep data  
25 centers from coming to Missouri in at least -- in



1 taking service under the proposed special high load  
2 factor market rate.

3 But back to more of my prepared remarks.  
4 In order to support this construction schedule,  
5 Evergy, Velvet -- and Velvet request a decision by the  
6 Commission so that the special high load factor market  
7 rate can be effective by March 31st, 2022 and support  
8 customer decisions to continue investment at the site.

9 Under the proposed tariff, customers must  
10 have a monthly demand of 100 megawatts or be  
11 reasonably projected to be at least 150 megawatts  
12 within five years of the new customer first receiving  
13 service from the company, as well as have an average  
14 annual load factor throughout the year of 85 percent  
15 or greater.

16 The details of the proposed tariff are  
17 contained in the direct testimony of Darrin Ives and  
18 his attached Schedule DRI-1, with proposed  
19 modifications to the tariff included in the  
20 surrebuttal testimony of Brad Lutz.

21 And as I'll explain in a moment, many of  
22 the modifications were intended to address the  
23 concerns raised by Staff and Public Counsel witnesses  
24 in this case. In addition, Evergy and Velvet filed a  
25 Non-Unanimous Stipulation last night which has a

1 tariff that includes modifications to the original  
2 tariff which are acceptable to Evergy and Velvet.

3                   This Non-Unanimous Stipulation and  
4 Agreement represents the joint recommendation of  
5 Evergy and Velvet in this proceeding under the  
6 Commission's rules related to Non-Unanimous  
7 Stipulations and Agreements.

8                   Evergy West chose to design a simple  
9 three-part rate for providing service to these large  
10 high load factor customers. The key element is the  
11 energy pricing. The energy price is set by the  
12 Southwest Power Pool day-ahead hourly price at the  
13 Evergy West node.

14                   The customer service charge and the  
15 capacity charge are based on the incremental cost to  
16 serve and negotiated amounts to address design risk.  
17 This tariff is similar to a tariff that Velvet brought  
18 to the attention of Evergy has worked well for the  
19 Omaha Public Power District.

20                   That rate structure was approved in 2017  
21 to provide service to large transmission level  
22 customers in the Omaha area, providing its customers  
23 access to SPP energy prices and bring-- bringing  
24 economic development benefits to the area. It also  
25 supported customers in meeting their renewable energy

1 goals by pricing retail energy at SPP market prices to  
2 align with pricing of customer renewable projects on  
3 the SPP grid.

4           Similarly, high load factor customers  
5 like Velvet would be served under the special high  
6 load factor market rate tariff and would not be served  
7 under Evergy's base rate fuel adjustment clause or  
8 Renewable Energy Standard Rate Adjustment Mechanism,  
9 which sometimes I refer to as RESRAM.

10           The SPP energy pricing reflects the cost  
11 of fuel and other fuel-related incremental costs and  
12 is, therefore, unnecessary to have Evergy's fuel  
13 adjustment clause apply to these customers.

14           The RESRAM would not be applicable to  
15 Velvet because -- since Velvet will be sourcing  
16 sufficient renewable resources to cover 100 percent of  
17 its expected load, exceeding the 15 percent renewable  
18 energy standard in Missouri. Under these  
19 circumstances, it's not appropriate to require Velvet  
20 to pay a second time, under the RESRAM, for covering  
21 Missouri's renewable energy standard requirement.

22           In this case, Evergy is seeking only the  
23 approval of the special high load factor market rate  
24 tariff, or what is sometimes referred to as the  
25 Schedule MKT tariff.

1                   Evergy and Velvet have not finalized a  
2 market rate contract at this time. But an exemplar  
3 special high load factor market rate contract which  
4 will be used in the future is attached to Mr. Ives'  
5 testimony as Schedule DRI-2. This contract example is  
6 intended to inform the Commission of the general form  
7 of the future special high load factor market rate  
8 contract.

9                   If the tariff is approved by the  
10 Commission, the company plans to file a market rate  
11 contract under the terms of the tariff at a future  
12 date, currently expected to be in early 2025. At that  
13 time, Evergy will seek approval of the actual contract  
14 with the data center customer.

15                   As I mentioned and the Judge noted, last  
16 night Evergy and Velvet entered into a Non-Unanimous  
17 Stipulation and Agreement that recommends the approval  
18 of the special high load factor market rate, Schedule  
19 MKT. Attached to that stipulation is a red-line  
20 tariff, which represents the joint recommendation of  
21 Evergy and Velvet.

22                   Under the terms of paragraph 4 of the  
23 stipulation, the signatories are recommending the  
24 approval of the special high load factor market rate  
25 tariff, which is attached to the stipulation.

1 Under the terms of paragraph 5, there  
2 will be extensive cost and revenue tracking. Now,  
3 these are significant ratepayer protections to ensure  
4 that other customers are not adversely affected by the  
5 high load factor customers that are a part of this  
6 tariff. These protections are also found in paragraph  
7 4 in the contract documentation section of the tariff  
8 itself. The specifics of these protections are  
9 contained in paragraphs 5A through 5C of the  
10 stipulation.

11 The Commission Staff and other parties  
12 will be kept informed through detailed and regular  
13 reporting commitments. The anticipated reporting  
14 format is similar to what was agreed to and approved  
15 by the Commission in File Number EO-2019-0244  
16 involving the Nucor contracts.

17 Under paragraph 5A, Evergy Missouri West  
18 will identify and isolate the plant costs and revenues  
19 to provide service to the contract customer.  
20 Paragraph 5B, Evergy Missouri West will also identify  
21 and isolate the supply costs attributable to the MKT  
22 contract customer. These are expected to consist of  
23 energy priced at the SPP day-ahead marketplace hourly  
24 prices for the Missouri West load node and will be  
25 accounted for at these rates.

1 Paragraph 5B includes the categories of  
2 costs which will be used to track and settle customer  
3 loads. It also includes provisions for identifying  
4 and tracking costs of capacity. Under subsection 5C,  
5 all revenues received from the contract customer will  
6 be tracked, including any negotiated special  
7 contributions.

8 Related provisions are contained in the  
9 modified tariff being recommended by Evergy and Velvet  
10 requir-- requiring periodic reporting and provisions  
11 to identify the customers' cost and revenues for  
12 consideration in a general rate case.

13 At numbered paragraph 4 of the modified  
14 tariff, the tariff includes what has been referred to  
15 as a hold harmless provision to protect the other  
16 Evergy customers. Non-participating customers will be  
17 held harmless if the Commission determined that there  
18 is any deficiency in the revenues compared to the cost  
19 to serve the contract customer.

20 In the event that the Commission ordered  
21 a deficiency adjustment, a rate adjustment sufficient  
22 to pay for half of the determined deficiency  
23 adjustment would be made to the contract rate  
24 customer, with the remainder of the deficiency  
25 adjustment being borne by Evergy.

1 Under this protection, non-participating  
2 customers would not bear any of the deficiency found  
3 by the Commission. While -- while we think this type  
4 of deficiency adjustment is quite unlikely, this type  
5 of provision is important to Public Counsel and Staff  
6 and has been included in the tariff being recommended  
7 by Evergy and Velvet.

8 Paragraph 6 addresses two proposed  
9 variances from the Commission's renewable energy  
10 standard rules which are found on -- in  
11 20 CSR 4240-20.100. Under the first period, the rule  
12 definition of the total retail electric sales, which  
13 is defined from the rule at subsection 1W, would not  
14 include the contract customer's load.

15 The signatories agree that if the MKT  
16 customer demonstrates that it has retired or had  
17 retired on its behalf renewable energy credits greater  
18 than or equal to the then existing RES, R-E-S,  
19 requirement applied to the MKT customer load, then the  
20 Schedule MKT customer retail sales are not included in  
21 Evergy's calculation of its RES portfolio requirement  
22 in subsection 2 of the rule.

23 This variance would ensure that Evergy's  
24 RES requirement would not be increased as a result of  
25 the contract since the cust-- since the contract

1 customer would have already covered the state's  
2 existing renewable energy goals.

3                   And under the second variance, the ar--  
4 the compliance cost needed to serve the Schedule  
5 MKTR -- MKT customer would not be characterized as  
6 part of the company's RES requirement under the  
7 Section 20.101(s)(1).

8                   Now, these two variances -- the effect of  
9 the variances are to recognize that Evergy's RES  
10 requirements and the RESRAM itself should not be  
11 affected by the contract customer's participation  
12 since the customer will have demonstrated that it has  
13 retired or had retired on its behalf, RES equal to  
14 more -- equal to or more than perhaps what would  
15 otherwise be considered its share of the RES standard  
16 compliance cost.

17                   Paragraph 7 is designed to ensure that  
18 the contract customer's participation on the system  
19 would not affect the rate limitations on other large  
20 power customers contained in the PISA statute, which  
21 is Section 393.1655. This provision was approved by  
22 the Commission in the Nucor case as well.

23                   Now, Evergy's witnesses, Mr. Darrin Ives,  
24 Mr. Brad Lutz, will be happy to address any of the  
25 Commission's questions that it has about the



1 Non-Unanimous Stipulation and the attached tariffs.  
2 They'll be available at one o'clock to discuss and  
3 compare the provisions of both the Evergy and Velvet  
4 tariff and the tariffs attached to the Non-Unanimous  
5 Stipulation of Staff, Public Counsel and MCEG.

6                   Very briefly I'd like to just turn to a  
7 couple of the concerns that were raised by the parties  
8 in the case. As I mentioned, Evergy has made  
9 modifications to its proposed tariff which are  
10 attached to the Evergy/Velvet Non-Unanimous  
11 Stipulation.

12                   Many -- many of these changes were in  
13 direct response to the suggestions made by Staff and  
14 Public Counsel witnesses. And we'd like to thank the  
15 Staff and Public Counsel for making these suggestions,  
16 which we believe have improved the provisions  
17 contained in the tariff itself.

18                   While we obviously were not able to  
19 settle the case due to some of the issues I'll  
20 discuss, I think many of their proposals have been  
21 constructive and we appreciate their work on the  
22 tariff provisions.

23                   Now, turning briefly to some remaining  
24 issues, Staff and Public Counsel have suggested that  
25 the proposed tariff is discriminatory based largely on

1 the fact that the company's originally proposed tariff  
2 was limited to customers that fell under specified  
3 industry codes, which are referred to as NAICS codes  
4 518210 and 541511. These relate to data centers.

5 Now, in response to that concern, the  
6 company has agreed to delete that provision from the  
7 availability section of the tariff. Instead, the  
8 tariff would be available to all large customers with  
9 a specified load and annual average load factors of  
10 85 percent or more that met the availability  
11 requirements.

12 Staff has also suggested that it was  
13 unlawful to exempt customers from the FAC and the  
14 RESRAM. Now, I've already addressed the policy  
15 reasons why it would not be appropriate to apply these  
16 riders to the customers like Velvet, but under  
17 Section 386.266, the Commission has the statutory  
18 authority to authorize, in its discretion, a fuel  
19 adjustment clause, but that statute does not require  
20 that it do so.

21 It's within the Commission's authority,  
22 as it determines just and reasonable rates, to exempt  
23 customers such as Velvet from the FAC when the  
24 contract pricing structure does not make sense to have  
25 a separate fuel adjustment clause component. For

1 example, the Commission has approved the Nucor  
2 contract, which does not include a fuel adjustment  
3 clause.

4 And I did note that the Staff and Public  
5 Counsel tariff, which is attached to their  
6 non-unanimous agreement also now recommends that the  
7 fuel adjustment clause should not apply to the  
8 Schedule MKT customer.

9 Similarly, the rules on renewable energy  
10 standard authorize electric companies to establish a  
11 RESRAM, but the rules do not require it to do so. As  
12 I mentioned, in this case Velvet will be sourcing  
13 renewable energy to cover 100 percent of its load.  
14 And it would not make sense from a public policy  
15 perspective to apply a separate renewable energy  
16 standard surcharge to this customer and require  
17 Velvet, in effect, to pay twice or more for renewable  
18 energy resources.

19 As I've already discussed, in the  
20 Evergy/Velvet Non-Unanimous Stipulation and Agreement,  
21 the parties have suggested the Commission should grant  
22 a variance from the Commission's RES rules to exempt  
23 customers like Velvet who are securing or sourcing  
24 their renewable energy requirements themselves from  
25 having to double pay for renewable energy facilities

1 under the RESRAM surcharge.

2           Staff also questioned a provision in the  
3 company's proposed tariff that would allow the  
4 company, in its discretion, to add more voltage levels  
5 to the tariff. This -- or in their discretion, they  
6 could add those voltage levels. This particular  
7 provision has also been removed to address the Staff's  
8 concern.

9           Staff also suggested that if the company  
10 is required to build facilities solely to serve a  
11 customer and the customer's additional load  
12 requirements, then the tariff should state the costs  
13 are identified and recovered from the customer. These  
14 costs will be identified and recovered from the  
15 customer and will be specified in the market rate  
16 contract that will be filed at a later date for the  
17 Commission's approval.

18           Staff also suggested that the time for  
19 reviewing the provisions of the market rate contract  
20 should be lengthened beyond the 60 days that was  
21 originally proposed in the tariff. In response, the  
22 company has revised its proposed timetable to a 90-day  
23 review period.

24           The Staff also raised concerns to ensure  
25 that the Schedule MKT-related costs not included in

1 the fuel adjustment clause charge recovered from other  
2 customers. And further ordered the Commission to  
3 track those related costs separately from other costs  
4 specifically identified in the FAC monthly reports  
5 that are submitted to the Commission. This concern  
6 has been fully addressed in the cost and revenue  
7 tracking section of the Non-Unanimous Stipulation and  
8 Agreement.

9                   So in conclusion, Evergy believes that  
10 its proposed modifications in -- of the tariff have  
11 addressed concerns raised by Staff and Public Counsel.

12                   And Evergy will be sponsoring the  
13 testimony of four witnesses: Michelle Hadaway, the  
14 director of regional engagement division from the  
15 Missouri Department of Economic Development, who will  
16 be adopting the testimony of Mr. Mark Stombaugh. And  
17 she -- she's not available until tomorrow so we can  
18 take her out of turn, if that would be appropriate or  
19 if -- if people want to waive on cross, we might be  
20 able to shorten it.

21                   The second witness is Ms. Jill L.  
22 McCarthy, the senior vice president of corporate  
23 attraction, leading a high-achieving recruitment team  
24 in the Kansas City Area Development Council. She will  
25 be available -- or excuse me. I think it's Jill

1 that's not available until tomorrow.

2                   And then Brad Lutz, director of  
3 regulatory affairs for Evergy; and Darrin Ives, the  
4 vice president of regulatory affairs will be available  
5 to answer all the Commission's questions regarding the  
6 differences in the tariff proposals and our  
7 stipulations.

8                   So in conclusion, the company would  
9 respectfully respect the Commission approve the  
10 special high load market rate tariff as modified in  
11 the Evergy/Velvet Non-Unanimous Stipulation and  
12 Agreement and the form contract with additional  
13 customer protections contained in the Non-Unanimous  
14 Stipulation and Agreement signed by Evergy and Velvet.

15                   I appreciate your patience on this longer  
16 opening statement and I'd be happy to answer any  
17 questions.

18                   JUDGE HATCHER: Thank you, Mr. Fischer.  
19 Are there any questions for Mr. Fischer? Thank you.  
20 And -- yes, go ahead, Mr. Chairman.

21                   CHAIRMAN SILVEY: I was going to say no  
22 questions, but I'm letting you know I'm here.

23                   JUDGE HATCHER: Thank you. And on that  
24 note, I did want to state for our court reporter, that  
25 on WebEx we do have all five Commissioners; Chairman

1 Silvey, Commissioner Coleman, Commissioner Holsman,  
2 Commissioner Kolkmeyer and Commissioner Rupp.

3 We'll move on to Velvet's opening.

4 Ms. Bell.

5 MS. BELL: Yes, Your Honor. Confirming  
6 that you received a copy of my slides which were  
7 e-mailed and that they are available on the screen?

8 JUDGE HATCHER: Yes. Heading there now.

9 MS. BELL: Do I need to screen share them  
10 on the WebEx?

11 JUDGE HATCHER: Why don't we go ahead and  
12 do that? I'll pull up the WebEx on that monitor and  
13 so then you can just screen share from there.

14 MR. KEEVIL: Judge, I can't hear her. Is  
15 there any way she can -- you can turn her up?

16 MS. BELL: Is this better?

17 MR. KEEVIL: That's better.

18 JUDGE HATCHER: That's better. Thank  
19 you, Ms. Bell.

20 MS. BELL: And Judge, on the screen share  
21 on -- it's not giving me the option to share at this  
22 point.

23 JUDGE HATCHER: All right. Test, test.  
24 Ms. Bell, can you hear me?

25 MS. BELL: Yes.

1 JUDGE HATCHER: Excellent. Go ahead and  
2 get started. I have your presentation up on the  
3 screen.

4 MS. BELL: Okay. And this will allow me  
5 to share the -- are you going to show it on the  
6 screen? Okay. I think I can share it from the WebEx.  
7 Can I try that?

8 JUDGE HATCHER: No, ma'am. We don't  
9 have -- no, ma'am. We already made the choice to put  
10 that up. The WebEx wasn't coming up immediately on  
11 that screen. So I will follow you on -- as you go  
12 through and I'll do the clicking on this end, if  
13 that's acceptable.

14 MS. BELL: Okay. Thank you, Your Honor.  
15 May it please the Commission.

16 Mr. Chairman, Commissioners and Judge, my name is  
17 Stephanie Bell and I am here on behalf of Velvet Tech  
18 Services, LLC with Marc Ellinger. I want to start by  
19 thanking the parties and the Commission for  
20 considering and for working to accommodate Velvet's  
21 timeline.

22 This case is fundamentally about economic  
23 growth and development in Missouri. Velvet Tech is  
24 proposing to construct a major facility in the Kansas  
25 City Metro area. This facility will result in



1 millions of dollars of wages being brought into the  
2 Missouri economy. It will create thousands of new  
3 construction jobs and a number of full-time highly  
4 compensated jobs.

5 Schedule MKT is -- is a critical tool to  
6 help move this project and Missouri forward. Approval  
7 of schedule --

8 RECORDING: You're muted. You can press  
9 \*6 any time to unmute yourself.

10 THE COURT REPORTER: Can you stop her? I  
11 missed -- once that came on, I can't hear.

12 JUDGE HATCHER: Ms. Bell? Ms. Bell?

13 MS. BELL: -- major economic development  
14 projects in Sedalia, Missouri.

15 JUDGE HATCHER: Ms. Bell, can you hold on  
16 a minute, please?

17 MS. BELL: -- Commission approved  
18 tariffs --

19 JUDGE HATCHER: Ms. Bell?

20 MS. BELL: -- similar to the provisions  
21 requested here.

22 I do want to stress this is -- the MKT  
23 Schedule is a cost-based solution. It is designed to  
24 recover costs and Velvet intends for it -- intends to  
25 cover its costs.

1 JUDGE HATCHER: Ms. Bell?

2 MS. BELL: This is a unique opportunity  
3 that merits a unique solution. Velvet is supporting  
4 new renewable energy developments to support  
5 100 percent of its load to the SPP grid. And Evergy  
6 is purchasing energy from SPP to serve Velvet's load.  
7 Again, this is not just the 15 percent minimum in  
8 statute, but 100 percent renewable energy.

9 This type of above and beyond commitment  
10 should be applauded by this Commission. Approval of  
11 Schedule MKT is in the best interest of all of  
12 Evergy's customers and in the best interest of the  
13 state of Missouri. As I will discuss, the evidence  
14 and law demonstrate that this Commission can and  
15 should approve Schedule MKT.

16 Next slide, please.

17 Allow me to discuss the project that  
18 Velvet is bringing to Missouri. Located in the  
19 northern part of Kansas City, the Kansas City Metro  
20 area, Velvet proposes to construct an enterprise data  
21 center with an investment of approximately 800 million  
22 dollars.

23 Other states have provided the necessary  
24 rate structures to allow construction of similar data  
25 centers. Missouri has been losing out on these

1 projects, the construction jobs and the economic  
2 growth to other states like Nebraska.

3 Next slide.

4 As you can see, this is a massive project  
5 with a long list of benefits to the northern part of  
6 western Missouri. It will be constructed in Platte  
7 and Clay Counties and will have a number of buildings  
8 and related improvements.

9 Next slide.

10 To make this project work, it's like  
11 putting together the pieces of an intricate puzzle.  
12 There has been -- there has to be sufficient electric  
13 power, high quality fiber optic lines, sufficient and  
14 appropriate land, proximity to an airport, a highly  
15 skilled workforce.

16 These items can be found in a number of  
17 areas, but this is -- in this case it's -- what makes  
18 Missouri appealing is that it has -- the project has  
19 been backed by state and local economic development  
20 support. And it is all of these pieces together with  
21 the option for a suitable energy rate that allows the  
22 project to come together.

23 Support from economic development  
24 partners has been critical. But still, one piece of  
25 the puzzle remains; a cost-based and competitive

1 energy rate. Schedule MKT helps complete that puzzle.  
2 This tool will help this incredible project come to  
3 fruition. Not only is Velvet seeking a cost-based and  
4 competitive rate, but it's also seeking a long-term  
5 solution in conjunction with a short-term solution.

6 Next slide, please.

7 When we're talking about a suitable  
8 energy rate, I'd like to review the pieces of the  
9 energy rate proposed. It is a cost-based rate that is  
10 designed to cover costs. It consists of three  
11 components; one, an energy price at day-ahead prices  
12 and that will be the most substantial piece of the  
13 pricing system; two, a customer service charge which  
14 is designed to cover the cost of metering, billing,  
15 administration. It also accounts for increases in  
16 cost over the contract term and the customer service  
17 charge is higher than what was previously approved in  
18 Schedule SIL.

19 The third piece is a capacity charge.  
20 This charge will be inclusive of interconnection costs  
21 not paid up front and expected transmission costs. It  
22 also is related to the large monthly minimum demand  
23 amounts that are found in the exemplar contracts  
24 attached to Mr. Ives' testimony as Schedule DRI-2.

25 Next slide.

1                   These types of rates have been approved  
2 in a number of different states including Nebraska,  
3 Nevada and New Mexico. Each rate has allowed for  
4 large economic development projects to move forward  
5 and for new jobs and growth to be created -- to be  
6 created. Missouri -- here, Schedule MKT gives  
7 Missouri an additional tool to compete with other  
8 states.

9                   Next slide.

10                   The Kansas City Area Development Council  
11 understands how valuable this project is and has  
12 expressly noted that we -- that a new tool needs to be  
13 offered to bring these projects to our city.  
14 Specifically in the testimony of KCADC witness Jill  
15 McCarthy said, Based on existing offerings, Missouri  
16 has been bypassed by developers of hyperscale data  
17 centers.

18                   For a number of reasons, Schedule MKT  
19 should be approved.

20                   You can advance the slide, Your Honor.  
21 Thank you.

22                   Okay. Schedule MKT should be approved.  
23 It furthers economic development goals of Kansas City  
24 and of the state of Missouri. It also furthers the  
25 state's renewable energy goals. In addition, it

1 provides direct and indirect benefits to other  
2 ratepayers. It also mitigates risks to other  
3 ratepayers. These -- for these reasons, the  
4 Commission should approve Schedule MKT.

5 A little more specifics on these  
6 particular items. First, as far as direct economic  
7 benefits go, Schedule MKT unlocks 1,000 construction  
8 jobs, 50 full-time jobs with an average salary of  
9 77,000, and at least an investment in an 800 million  
10 dollars facility. That's what's been being proposed.

11 These opportunities don't come before  
12 this Commission or the state or Kansas City every day.  
13 And when they do, the Commission has the authority and  
14 the flexibility to unlock these benefits.

15 Next slide.

16 This project also potentially unlocks a  
17 huge development opportunity beyond just the Velvet  
18 project. Is it will -- Velvet will serve as an anchor  
19 for the Golden Plains Technology Park. It will aid in  
20 the development of an 882-acre data center campus and  
21 an additional 4.3 billion of investment into the  
22 northern Kansas City area.

23 Next slide.

24 With respect to indirect benefits,  
25 according to an RTI study, every one million dollars

1 of capital investment supports six jobs and every  
2 direct data center job supports an additional 2.5  
3 jobs. That means just this project will support  
4 nearly 5,000 jobs in the Kansas City area.

5 The project also supports indirect  
6 benefits.

7 Next slide, please.

8 This includes a larger customer base,  
9 both residential and commercial. A larger customer  
10 base is in the interest of all ratepayers. It also  
11 generates additional tax base growth in the form of  
12 real property taxes, PILOTS and business personal  
13 property taxes. This means more money for things like  
14 schools, police, fire and other essential services.

15 COMMISSIONER KOLKMEYER: Judge, this is  
16 Commissioner Kolkmeier.

17 JUDGE HATCHER: Yes, Commissioner. Go  
18 ahead.

19 COMMISSIONER KOLKMEYER: Judge Hatcher?

20 JUDGE HATCHER: Yes, sir.

21 COMMISSIONER KOLKMEYER: Or Ms. Bell, can  
22 you share your slides on the WebEx or is it only in  
23 the room?

24 MS. BELL: I can -- I believe I can try.

25 COMMISSIONER KOLKMEYER: Okay.

1 MS. BELL: It's saying that I can.  
2 Hatcher, is --

3 JUDGE HATCHER: Commissioner, I've  
4 e-mailed Ms. Bell's slides out so you should have  
5 those in your e-mail, but yes.

6 MS. BELL: Judge Hatcher, is that all  
7 right with you?

8 JUDGE HATCHER: Absolutely, please.

9 COMMISSIONER KOLKMEYER: That's okay,  
10 Ms. Bell.

11 MS. BELL: Okay. Thanks. And  
12 Commissioner, I did e-mail these slides to the Judge  
13 and he indicated he would be able to e-mail the slides  
14 to all Commissioners.

15 COMMISSIONER KOLKMEYER: Okay. Thank  
16 you.

17 MS. BELL: Uh-huh. There are also direct  
18 benefits to other ratepayers through the renewable  
19 energy surcharge. If you go to Schedule DRI-2  
20 attached to Darrin Ives' testimony, which is the  
21 exemplar market rate contract, you see it provides --  
22 the demand charge is inclusive of a renewable energy  
23 support charge that is over and above the other  
24 charges we already talked about.

25 That charge is for the benefit of all



1 retail customers to support the recovery of new  
2 renewable resources. These are direct benefits to  
3 other ratepayers.

4 Next slide.

5 This also mitigates the risk to other  
6 customers. First, the five-year term. The Commission  
7 has previously approved contracts at ten years an in  
8 excess of ten years. A shortened term mitigates any  
9 risk to other customers.

10 Second, the renewable design itself  
11 mitigates risk. It's -- it insulates customers from  
12 some risk. If the company were to build its own  
13 renewables and something were to happen to an MKT  
14 customer, other ratepayers could bear the risk of that  
15 company investment. Here, the customer is bearing the  
16 risk of adding additional -- supporting additional  
17 renewables into the SPP grid.

18 The rate design itself helps mitigate  
19 risk. First, the energy price at SPP day-ahead price  
20 is the largest piece. And there, there really is no  
21 estimating. That cost is passed directly onto the  
22 customer.

23 Finally, as Mr. Fischer pointed out,  
24 Velvet and Evergy entered into a Non-Unanimous  
25 Stipulation yesterday, which adds a hold harmless

1 provision to the current schedule. That mitigates  
2 risk for other customers.

3 I want to talk briefly about the other  
4 arguments that have been made by other parties.  
5 First, Staff has spoken -- Staff's testimony focused  
6 on lawfulness. But Schedule MKT is authorized by law.  
7 Section 393.150 gives the Commission broad authority  
8 in approving new service offerings.

9 Recently, Staff has made arguments about  
10 the Commission's limited authority in other cases and  
11 now makes similar arguments here. Here, Staff argues  
12 that the Commission can only proceed in a general rate  
13 case and that it must proceed under 393.355. These  
14 arguments are strange given Staff's positions were  
15 opposite in the Nucor case and the Commission agreed.

16 Next slide.

17 In the Nucor case, Staff argued that the  
18 Commission -- that the -- that 3-- 393.355 was not the  
19 exclusive means for the Commission to proceed and the  
20 Commission agreed.

21 Next slide.

22 In the Nucor case, Staff also argued that  
23 the Schedule SIL not need to be introduced in a  
24 general rate case. And in the Report and Order, the  
25 Commission agreed.

1 With respect to -- next slide, please.

2 With respect to the RESRAM issue that  
3 Staff has raised, now in this case for the first time,  
4 the Staff argues that the Commission lacks the  
5 authority to except a customer from RESRAM.

6 Next slide.

7 But as Mr. Fischer pointed out in  
8 Schedule SIL, which the Commission approved in 2019,  
9 SIL customers are exempt from RESRAM charges.

10 Next slide.

11 Section 393.1040 is the renewable energy  
12 standard statute. There, the Commission's authority  
13 in relation to the RES and RESRAM is very broad. I'll  
14 read the first line. The Commission shall, in  
15 consultation with the department, prescribe by rule a  
16 portfolio requirement for all electric utilities to  
17 generate or purchase electricity generated from  
18 renewable energy resources.

19 Basically what the legislature is saying  
20 to the Commission, we want you to make sure there are  
21 15 percent of energy sales are from renewable  
22 resources. You figure out the details via rule.  
23 Again, in the first line it says, The Commission shall  
24 prescribe by rule.

25 Next slide.

1                   The Commission heard the legislature and  
2 did describe the details in a rule, 20 CSR  
3 4240-20.100. There, the Commission promulgated a  
4 36-page under rule under the broad authority delegated  
5 to it by the legislature. The rule makes clear that  
6 the RES portfolio requirements are based on total  
7 retail electric sales and that term is defined in  
8 rule.

9                   Again, I'll read the highlighted  
10 portions. The RES portfolio requirements are based on  
11 total retail electric sales of the electric utility.  
12 And then underneath that there is a definition for  
13 total electric sales -- or total retail electric  
14 energy usage.

15                   Here, we have a situation where Everygy  
16 and the customer are saying the new load will not only  
17 be 15 percent renewable, it will be 100 percent  
18 renewable. Zooming out for a moment, let's assume  
19 this project goes forward. When you compare energy  
20 sales before and after the addition of this customer,  
21 sales are greener.

22                   RECORDING: You're being asked to unmute  
23 yourself. To unmute, press \*6.

24                   MS. BELL: -- equitable for a customer to  
25 pay RESRAM essentially to green 15 percent of a load

1 that is already 100 percent supported by renewables.  
2 The Commission and the parties to this -- and many of  
3 the parties to this case have previously come to the  
4 same conclusion.

5 Next slide.

6 The Commission recently approved Evergy's  
7 Schedule SFP. That's the solar subscription rider.  
8 In that rider, the customer shared a renewable energy  
9 if subtracted from the energy consumed. The result is  
10 two-fold. One, the customer share renewable -- if the  
11 customer's share of renewable energy covers its usage,  
12 because net energy is zero, there is no RESRAM charge.

13 And two, the customer's renewable energy  
14 is not included in total electric retail sales as  
15 defined by Commission rule. I want to go over that  
16 again.

17 With SFP, if the customer's share of  
18 renewable energy covers its usage because net energy  
19 is zero, there's no RESRAM charge and the customer's  
20 renewable energy is not included in total electric  
21 retail sales.

22 That is exactly what Evergy and Velvet  
23 are requesting the Commission do here. This is  
24 consistent with the intent of the statute, with the  
25 state's renewable goals, with the plain language of

1 the rule and with Commission precedent.

2 Next slide.

3 Alternatively -- alternatively, if the  
4 Commission were to find any material difference  
5 between what it authorized in Schedule SFP and what is  
6 being requested in Schedule MKT, the Commission has  
7 the express authority to grant a variance from these  
8 RES rules and could and should grant the variances as  
9 set forth in the stipulation filed by Evergy and  
10 Velvet last night and described by Mr. Fischer this  
11 morning.

12 The Commission regularly grants variance  
13 to the RES rules. For example, in 2019, in File  
14 Number EO-2019-0316, when Staff determined a utility  
15 missed the appropriate percentage in one year, the  
16 Commission granted a variance to essentially let the  
17 utility make it up the next year.

18 Here, a unique customer sought a solution  
19 that was cost based and aligned their corporate  
20 commitment to be 100 percent renewable. They are  
21 committed to supporting their load with renewables  
22 into the SPP grid and it is from SPP which Evergy will  
23 get the capacity for the customer's load.

24 With respect to OPC's focus on the hold  
25 harmless issue, the hold harmless has not been

1 required before and is not necessary in this case. As  
2 we have addressed already, there are a number of  
3 factors that mitigate risk to other customers. OPC's  
4 position appears to be that contract tariffs or EDR  
5 tariffs should only be approved if they contain a  
6 strict hold harmless provision.

7                   Yet, the Commission has approved multiple  
8 special contracts -- contract tariffs and EDR tariffs  
9 across multiple utilities and only one ever has  
10 included a hold harmless provision.

11                   Next slide.

12                   For the special contract tariff that  
13 currently exists for Evergy, a review of that will  
14 reveal there is no hold harmless for customers being  
15 served under that tariff. Still, the stipulation  
16 includes a hold harmless provision in an attempt to  
17 balance the interests that have been presented by the  
18 parties in this case.

19                   Velvet has stated that it desires to  
20 cover its cost to serve. And Evergy and Velvet agree  
21 that the tariff is designed to cover the cost to serve  
22 any MKT customers. Consistent with those commitments,  
23 the Evergy Non-Unanimous Stipulation presents a hold  
24 harmless provision.

25                   As the judge pointed out, many of the

1 provisions in the two competing stipulations are  
2 similar. The only real difference between the hold  
3 harmless provision here is that the hold harmless  
4 provision in the Evergy stipulation allows --  
5 expressly allows for the company or for the MKT  
6 customer to show benefits to offset any deficiency.

7 This is consistent with Commission's past  
8 practices in adopting special contract tariffs where  
9 it reviews net benefits and allows a weighing of  
10 benefits against cost.

11 Next slide.

12 As Mr. Fischer has pointed out, the  
13 Non-Unanimous Stipulation filed by Evergy and Velvet  
14 last night, it addresses many of the concerns of OPC.  
15 It address many of the concerns of Staff. As I've  
16 walked through today, it's consistent with Commission  
17 precedent. It's consistent with tariffs -- the  
18 special contract tariff, with Schedule SIL, with  
19 Schedule SFP. It's also consistent with the State's  
20 economic development goals and goals for renewable  
21 energy.

22 Velvet witness Maurice Brubaker is  
23 available to answer questions from the Commission at  
24 one o'clock today.

25 Next slide.



1                   A few comments on the OPC Non-unanimous  
2 Stipulation. First, the stipulation fundamentally  
3 ignores that the tariff requires a negotiated  
4 contract. The company, under the tariff, is not  
5 required to offer a contract to anyone. The evidence  
6 will show that the company will just simply not offer  
7 contracts if the schedule -- if -- under MKT if the  
8 Commission adopts Schedule 1 as proposed by OPC.

9                   This so not a workable solution and it's  
10 not in the best interest of all ratepayers or of the  
11 state. As Velvet has expressed, the availability of a  
12 long-term cost base and competitive rate is important.

13                   In addition, the OPC stipulation raises a  
14 new issue. I would reiterate Mr. Fischer's comments  
15 and state my objection to the introduction of a new  
16 issue with respect to PED that was not addressed in  
17 rebuttal, in surrebuttal or in the list of issues.

18                   Without waiving that objection, I would  
19 like to comment on OPC's inclusion of a prohibition on  
20 the PED schedule for any MKT customer.

21                   Next slide, please. Thank you.

22                   With the EDR statute, it's 393.1640. In  
23 that statute, it says, The discount shall be applied  
24 to an incremental load from the date when the meter  
25 was set until the date the incremental load no longer

1 meets the criteria. It expressly authorizes the use  
2 of the PED schedule that Everyg has adopted.

3 In addition, the statute sets forth what  
4 limitations can be placed on the EDR schedule. It  
5 says, The electrical corporation may include in its  
6 tariffs additional or alternative terms and conditions  
7 to a customer's utilization of the discount, subject  
8 to approval of such terms and conditions by the  
9 Commission.

10 The statute does not authorize the  
11 complete prohibition on the use of the EDR statute  
12 authorized in 393.1640.

13 OPC's proposal to bar a future  
14 customer -- a future MKT customer from a short-term  
15 solution should be rejected by this Commission. As  
16 consistent with the statute, Schedule PED promotes  
17 economic developments benefits accruing to the state  
18 as a whole. The discount is available on a  
19 nondiscriminatory basis pursuant to statute. It's  
20 available to any customer that meets the criteria.

21 No other tariff has any similar exclusion  
22 prohibiting customers from changing tariffs. Nothing  
23 prevents a customer from being on schedule --

24 RECORDING: You're being asked to unmute  
25 yourself. To unmute, press \*6.

1 THE COURT REPORTER: I can't hear her at  
2 all when that does that.

3 MS. BELL: -- Schedule SIL. Further,  
4 there's no guarantee from any customers served under  
5 the PED that they will pay back any discounts they  
6 receive. Availability of the Schedule PED discount  
7 was important to Velvet in its decision-making. The  
8 customer, again, needed a short-term and a long-term  
9 solution.

10 Velvet has already applied for and  
11 received approval to take service under Schedule PED  
12 and did so before finalizing any agreements related to  
13 Schedule MKT. In addition, unlike other customers who  
14 take service under P--

15 RECORDING: You're being asked to unmute  
16 yourself. To unmute, press \*6. You're being asked to  
17 unmute yourself. To unmute, press \*6.

18 MS. BELL: In addition, Velvet has  
19 voluntarily committed to giving up the majority of the  
20 EDR benefits. The EDR would allow Velvet to stay on  
21 the EDR for five years and move to the MKT tariff  
22 before it would be required. Velvet proposed to take  
23 service under Schedule PED for the first two years  
24 during the period of its smallest load.

25 Next slide.

1                   In conclusion, I want to direct the  
2 Commission to the support statement offered by Velvet  
3 that's attached to Mr. Ives' testimony in Schedule 3  
4 and reiterate that we do appreciate the Commission's  
5 consideration of a structure that supports economic  
6 development and opens pathways for customers to meet  
7 their own sustainability goals.

8                   Missouri really does stand at a  
9 crossroads. The Commission can and should unlock an  
10 opportunity for growth and development of a gigantic  
11 scale. The opposition to this growth opportunity  
12 should be rejected as it has no basis in fact or law.

13                   Staff and OPC's positions contradict  
14 positions that they have previously taken before this  
15 Commission. Approval of Schedule MKT is lawful and  
16 consistent with the Commission precedent on special  
17 contract tariffs and renewables.

18                   Unlike the arguments advanced by Staff  
19 and OPC, the Commission has broad authority and  
20 flexibility to approve a solution like the  
21 Velvet/Evergy stipulation that balances the interests  
22 of all parties.

23                   Further, the Commission should approve  
24 Schedule MKT because it's not only in the best  
25 interest of the state, it's in the best interest of

1 all of Evergy's customers. The opportunity is here  
2 before the Commission for the sake of ratepayers,  
3 citizens, taxpayers, and all Missourians. We urge the  
4 Commission to approve Schedule MKT. Thank you.

5 JUDGE HATCHER: Thank you. Thank you,  
6 Ms. Bell. Are there any questions for Ms. Bell at  
7 this time?

8 All right. Let's move on. Mr. Mills for  
9 Google, your opening statement, please.

10 MR. CLIZER: Your Honor, could I query?  
11 Are you on mute for some reason because -- those \*6s,  
12 were they trying to get you to unmute?

13 MR. MILLS: Judge, Hatcher, are you ready  
14 for us to proceed with opening statements?

15 JUDGE HATCHER: Yes, go ahead.

16 MR. KEEVIL: That didn't happen until you  
17 switched over to the -- Ms. Bell's presentation from  
18 Mister -- from the other presentation that was up  
19 there. I don't know if that somehow affected your  
20 WebEx or not. But I think Mr. Mills is still waiting  
21 for you to respond, I guess. I don't know.

22 JUDGE HATCHER: Mr. Mills, are you able  
23 to hear me?

24 MR. MILLS: This is Lewis Mills. Can  
25 someone in the hearing room confirm what's going on

1 there?

2 JUDGE HATCHER: Okay.

3 MR. MILLS: I can see Mr. Clizer on the  
4 screen, if you can give me some hand signals.

5 MR. WOODSMALL: I'll call him.

6 MR. CLIZER: One second. Let's play  
7 charades.

8 JUDGE HATCHER: Let me take care of that.  
9 (Off the record.)

10 JUDGE HATCHER: Okay. Can everyone hear  
11 me now?

12 MR. MILLS: Yes.

13 JUDGE HATCHER: That sounds like  
14 Mr. Mills on the WebEx?

15 MR. MILLS: It is.

16 JUDGE HATCHER: Excellent. Thank you,  
17 sir. We have found our mistake. We are unmuted now  
18 for everyone.

19 Mr. Mills representing Google, would you  
20 please go ahead and give us your opening statement?

21 MR. MILLS: Thank you, Judge. May it  
22 please the Commission. This is Lewis Mills on behalf  
23 of Google, LLC.

24 Google has an interest in this proceeding  
25 because it is looking at potentially developing data

1 center facilities that would take service under a  
2 similar tariff that is likely to be filed for the  
3 Evergy/Metro service territory.

4           For all of the reasons that Velvet has  
5 announced in its opening statement today and in the  
6 filed testimony and in the letter attached to  
7 Mr. Ives' original direct testimony, Google believes  
8 that there is a significant economic opportunity for  
9 the state and for the Kansas City area that is  
10 presented with the MKT tariff.

11           As the testimony of Maurice Brubaker  
12 makes clear, for large data center facilities to do --  
13 come to Missouri, to be located in Missouri, one of  
14 the requirements is that there's an attractive  
15 electricity rate. And for that reason, Google is  
16 supportive of the efforts of Evergy and Velvet to  
17 present and advocate for the MKT schedule.

18           There are -- as both counsel for Velvet  
19 and for Evergy have pointed out, there are a number of  
20 concerns that they have enunciated with the proposals  
21 in the Staff/OPC and MECG Non-Unanimous Stipulation  
22 and Agreement. And I agree with their objections to  
23 those -- those provisions. And with that, I am happy  
24 to answer any questions.

25           JUDGE HATCHER: Thank you, Mister --

1 thank you, Mr. Mills. Are there any questions for  
2 Mr. Mills?

3 If not, we will move on to Staff of the  
4 Commission. Mr. Keevil, your opening statement, sir.

5 MR. KEEVIL: Thank you, Judge. May it  
6 please the Commission.

7 Let me just begin here by saying that  
8 there is, in my opinion, no reason to even consider  
9 approving this tariff other than the potential  
10 economic development impact. And I say "potential"  
11 because as far as I'm aware, there have been no  
12 guarantees of -- you know, Ms. Bell mentioned certain  
13 jobs would be created or money that would be spent or  
14 whatever. But as far as I'm aware, there's nothing to  
15 actually prevent Velvet or anyone else from not  
16 following through on what she stated.

17 Now why do I say this economic  
18 development would be the only reason you might approve  
19 the tariff? Well, for one thing, the tariff as  
20 proposed by Evergy flies in the face of fully  
21 distributed cost rate-making as used in Missouri. So  
22 when Ms. Bell kept referring to the tariff as a  
23 cost-based rate, depends on how you define cost-based.

24 As Mr. Fischer and I think Ms. Bell  
25 all -- both recognize, this proposal by Evergy is



1 primarily an incremental cost rate. It is not the  
2 same as the fully distributed cost that Missouri uses  
3 for rate-making in most instances. And for that  
4 matter, what they're proposing is not even a rate.

5           As you've heard Mr. Fischer and Ms. Bell  
6 talk, what they're proposing is certain parameters be  
7 set forth in this tariff, certain parameters be set  
8 forth within a contract to be entered into in the  
9 future perhaps between Evergy and the customers.

10           Contract with a five-year term and a  
11 limited period of time for the Staff and Public  
12 Counsel and parties to review the contracts and the  
13 Com-- possibly even a limited time for the Commission  
14 to approve it. If you look in the tariff, they talk  
15 about 60 or 90 days, the -- filing the contract 60 or  
16 90 days before it becomes effective. And I think that  
17 just goes to show that this entire process has been,  
18 in my opinion, rushed.

19           Velvet Tech or -- yes, Velvet Tech and  
20 Evergy were in negotiations apparently for months or  
21 possibly even years prior to filing this proposal with  
22 the Commission. And then they requested expedited  
23 treatment of the filing and -- even though Velvet Tech  
24 does not expect to be taking service under this tariff  
25 until some time in 2025. And that just doesn't sound

1 right to me that we have to rush through this process,  
2 as important as it is, under the circumstances.

3 Now, another problem with the proposal --  
4 and Judge, when I say "the proposal," I'm referring  
5 primarily to what Evergy originally filed. I haven't  
6 had time really to go through the non-unanimous stip  
7 that Evergy and Velvet Tech filed last night. So most  
8 of my comments are directed toward the original filing  
9 as made by Evergy.

10 But another problem with that is that it  
11 attempts to remove the customers on this rate from  
12 basically all riders and surcharges, several of which  
13 Staff believes are required by statute. And while  
14 Ms. Bell spent a lengthy period talking about  
15 variances from the Commission rule on the RESRAM, you  
16 know, we don't dispute that the Commission can grant a  
17 variance to its rule. The problem is the statute  
18 itself. I'm not aware of Commission authority to  
19 grant variance from a statute.

20 And I think if you read the entirety of  
21 the statutes -- and Ms. Bell put only a portion of it  
22 up on the screen and read only a portion of it -- I  
23 think it's the statute that is the problem in -- in  
24 exempting these people from the RESRAM.

25 And keep in mind also that there are at

1 least two different pieces to this RESRAM question,  
2 Judge. There's the can they be exempted or are they  
3 exempted from the RESRAM charge question and then  
4 there's also the question of whether they're -- the  
5 additional load that they impose on the Evergy system  
6 counts towards Evergy's renewable energy standard  
7 requirements in terms of how much of Evergy's  
8 portfolio has to be renewable.

9           And I found it curious that Ms. Bell  
10 spent so much time arguing that they could get a -- or  
11 they don't even need a variance from the requirement  
12 because the Commission can just say they don't fall  
13 under it because they do -- you know, they're --  
14 Velvet is paying certain amount for renewable -- found  
15 that curious when they have a provision in their  
16 stipulation which they filed last night requesting a  
17 variance from the rule. So if they don't need a  
18 variance, there's no need to request the variance in  
19 their stipulation that they filed last night.

20           I would also like to remind everyone that  
21 what we're talking about here is not just a contract  
22 between Evergy and Velvet. This tariff would apply to  
23 all future Schedule MKT customers as well. And we  
24 don't know what would -- what may be in the contract  
25 between Evergy and those customers.

1                   We don't know if those customers are  
2 going to be as willing as Velvet was to pay a certain  
3 amount for renewables. We don't know a lot of things  
4 that may be or may not be in the contracts between  
5 Evergy and future customers. So the fact that Velvet  
6 is willing to do something does not mean that all of  
7 these future customers will likewise be willing to do  
8 that.

9                   So I don't believe you can focus solely  
10 on Velvet and what they have offered to do in the  
11 contract because that really means nothing for other  
12 potential customers on this rate schedule.

13                   As I mentioned, another problem with  
14 the -- with the proposal as originally filed by  
15 Evergy, there is no real protection for other  
16 customers. And Mr. Fischer mentioned that the  
17 economic development rider provision in the  
18 stipulation which was filed by OPC, Staff and MEGC  
19 would kill the deal.

20                   I think it's important that you recognize  
21 why that was included. And that was because -- simply  
22 to serve as protection for other customers who would  
23 otherwise wind up picking up the -- or paying --  
24 subsidizing the discounts being received by customers  
25 on the economic development rider or tariff. I

1 suspect Mr. Woodsmall will address that further when  
2 he gets up here.

3           Mr. Fischer also mentioned that on the  
4 RESRAM issue, that the company is not required to have  
5 a RESRAM. So therefore, I guess under Mr. Fischer's  
6 argument, since they don't -- aren't required to have  
7 one, then anyone can be exclude from it.

8           Well, that's not what the statute says  
9 really, but his point's correct that they're not  
10 required to have a RESRAM, but the problem is they do  
11 have a RESRAM. They chose to have a RESRAM. They  
12 weren't forced to have one. It was their choice. And  
13 now that they've made the choice to have one, they're  
14 stuck with the statutory and other requirements that  
15 commensurate with it.

16           The same with the exemptions from PISA  
17 that they're trying to receive by virtue of their  
18 Non-Unanimous Stipulation. Mr. Fischer referred to I  
19 think paragraph 7 in here. Yes, it's paragraph 7 of  
20 their Non-Unanimous Stipulation seeks to exempt them  
21 from certain provisions of the PISA statute.

22           Again, that was the company's choice to  
23 choose to elect to have PISA and once they've elected  
24 it, they can't pick and choose what provisions they  
25 want and what provisions they don't want. You -- you

1 take it or you leave it, one or the other.

2 And as I indicated, we -- Staff hasn't  
3 really had a great deal of time to go through the stip  
4 that was provided last -- or filed last night by  
5 Everygy and Velvet, but we will have witnesses  
6 available at one o'clock to address questions.

7 Mr. Fortson originally filed testimony  
8 regarding the fuel adjustment clause. Mister -- or  
9 Ms. Eubanks filed testimony regarding the RESRAM.  
10 Ms. Kliethermes originally filed testimony supporting  
11 the revised tariff that Staff permitted.  
12 Unfortunately, Ms. Kliethermes has resigned her  
13 position at the Commission and taken a job elsewhere  
14 so Mr. Fortson -- or excuse me, not Fortson --  
15 Mr. Busch will be adopting her testimony and will be  
16 available to answer questions.

17 With that, Judge, we -- when I say "we,"  
18 I say Staff and I hopefully believe Public Counsel and  
19 MCEG ask that you would adopt the tariff attached to  
20 the stipulation filed by the three of us because that  
21 contains what we believe to be the necessary consumer  
22 protections required under a tariff of this nature, as  
23 well as recognizes the legal implications.

24 If Everygy's tariff is approved, it's not  
25 clear, but I would certainly believe it's their intent

1 to exclude customers on this rate from all surcharges  
2 and riders. Not -- not really just FAC and RESRAM,  
3 but they would exclude customers, I believe, from any  
4 future securitization charges, possibly even tax  
5 charges. I mean it's -- it's really pretty wide open  
6 what they seem to want to exclude customers from.

7                   Like if it's not in the contract that  
8 they will execute -- and we don't know what the terms  
9 are really going to be in those contracts. But if  
10 it's not in those contracts, then the customer  
11 wouldn't pay it. And that -- we don't believe that  
12 would work.

13                   So with that, Judge, I will stop and take  
14 any questions you might have.

15                   JUDGE HATCHER: Thank you, sir. Are  
16 there any questions?

17                   Hearing none, we'll go ahead and go to  
18 Mr. Clizer for the Office of the Public Counsel

19                   MR. CLIZER: Give me just one second  
20 while I get situated. I will be at the podium unless  
21 you -- I'm going to leave these with you. Take them,  
22 throw them away, whatever suits you.

23                   JUDGE HATCHER: Thank you.

24                   MR. CLIZER: Is this on? I can't tell.  
25 I'll just project.

1                   If it would please the Commission.   John  
2 Clizer on behalf of the Missouri Office of the Public  
3 Counsel. I want to start off by saying this is a bit  
4 of a weird case. And it's a weird case because, you  
5 know, most of the time you've got one party coming up  
6 saying, Commission, don't do X and the other party  
7 coming up saying, Commission, do X.

8                   Well, here all the parties are basically  
9 saying yeah, Commission, go ahead and put the special  
10 market rate tariff into effect. There's just a slight  
11 disagreement on which tariff. And as, Judge Hatcher,  
12 you pointed out at the beginning of this hearing,  
13 there's not actually a whole lot in disagreement  
14 actually.

15                  The two tariffs, if you compare them  
16 side-by-side, have a lot in common. And that's really  
17 a good thing. I mean I think that the Commission  
18 should be happy that the parties were able to work  
19 together, were able to get so much agreed to before  
20 this and that we were able to narrow this down to such  
21 minute changes.

22                  Now that being said, there are still a  
23 few slight differences that need to be addressed.  
24 Now, there are two that are near and dear to the OPC's  
25 heart and those are the two I'm going to focus on.



1 That's not to exclude the other ones; those are  
2 important too. But I want you to just focus on these  
3 two.

4 And those are the inclusion of an  
5 explicit hold harmless provision and a mechanism to  
6 deal with the RESRAM. Now, as that first one, you're  
7 thinking probably, but wait. Counsel for Evergy,  
8 counsel for Velvet Tech, they said they do have a hold  
9 harmless provision. Right?

10 Wrong. Their hold harmless provision  
11 isn't really a hold harmless provision. And the  
12 reason for that is while they have a sentence that  
13 says yes, customers will be hold harmless for any  
14 revenue deficiency, they immediately follow it up with  
15 a sentence that says but it's expressly recognized  
16 that the company can -- has the right to present  
17 evidence if the Commission's consideration of other  
18 economic benefits.

19 All right. What is this and how is this  
20 supposed to work? Well, I'll give you a quick  
21 example. Evergy signs a contract with Velvet Tech.  
22 We'll just use them as the example. Unfortunately,  
23 the contract price doesn't cover the cost of serving  
24 Velvet Tech. There's a revenue deficiency.

25 Normally, that revenue deficiency if

1 there's a true held harmless, is going to have to be  
2 settled between the company and Velvet Tech. Other  
3 customers aren't going to pay for it. But with this  
4 line in here what the company -- I'm sorry, what  
5 Evergy is going to do is they're going to come back  
6 and they're going to say all the other customers  
7 should pay for that revenue deficiency because this  
8 company brought other benefits or something like that.

9           So it's not really holding harmless the  
10 other customers for the revenue deficiency. It's  
11 providing an out to Evergy. And that's what the OPC  
12 is trying to avoid. In fact, if you remove just that  
13 sentence, what's in the OPC/Staff/MECG Non-Unanimous  
14 Stipulation tariff and what's in the company/Vel-- I  
15 keep saying company and that's going to be  
16 confusing -- Evergy/Velvet Tech tariff are almost  
17 identical.

18           There are some wordsmithing changes,  
19 there are some differences I'll admit, but the core  
20 principle is nearly identical if you remove that one  
21 sentence.

22           And I want to make it very clear. What  
23 the OPC is asking for is, at heart, really nothing  
24 more than a direct adoption of the language that  
25 already exists in Evergy's SIL, which stands for

1 special incremental load tariff. This tariff -- I  
2 don't want to be too oblique here, but it was  
3 effectively created more or less to serve Nucor, which  
4 you might have heard referenced earlier.

5                   It is a tariff that specifically is  
6 designed to allow for special contracts like the kind  
7 that are in this tariff. In fact, in her rebuttal  
8 testimony, witness for Staff, Ms. Robin Kliethermes,  
9 told the Commission you don't even need the MKT  
10 tariff. You already have the SIL.

11                   Now, Evergy has responded that no, we  
12 need the MKT. And I'm not here to argue that point.  
13 What I am here to say is all we're asking for is to  
14 take the language that already exists in one tariff  
15 that Evergy already agreed to, and to pretty much copy  
16 and paste it to into this tariff, changing only really  
17 the names.

18                   And you can see this if you look at the  
19 handout that I have provided. Effectively at the top,  
20 you'll see what's in the SIL tariff. And at the  
21 bottom you'll see what Ms. Mantle proposed in her  
22 rebuttal testimony -- surrebuttal testimony, sorry,  
23 which is really basically the exact same thing with  
24 some names switched around.

25                   So at the end of the day, all that we

1 need for the hold harmless is pretty much the exact  
2 same language that's already in the SIL.

3 I just want to pause for a second because  
4 the counsel for Velvet Tech suggested that a hold  
5 harmless had never been required. I think that the  
6 fact that it exists in the SIL tariff proves that  
7 wrong. I mean it's in every one of these tariffs, so  
8 we're not asking for anything new.

9 The other thing I want to point out is  
10 why is it so important to have this kind of hold  
11 harmless language? And the answer to that is really  
12 quite simple. You need to think about how these  
13 special contracts work. Right? You have a company,  
14 Velvet Tech, who's coming to negotiate with Evergy.

15 Now, the company, Velvet Tech, obviously  
16 has a desire to keep its cost as low as possible. So  
17 they have a strong impetus to say we want the lowest  
18 rates we can go.

19 Evergy stands to profit from the  
20 arrangement because they're going to build to meet the  
21 capacity requirements of serving this new company.  
22 They're also going to build out distribution,  
23 et cetera.

24 But does Evergy have a reason to get as  
25 much as possible in rates from Velvet Tech? If you

1 don't have the hold harmless, the answer is no because  
2 any deficiency can be just pushed off to the other  
3 customers. If you do have the hold harmless, however,  
4 if you say to Evergy any deficiency is something on  
5 your head, Evergy suddenly has a strong, strong reason  
6 to make sure that they're negotiating correctly with a  
7 contract that will cover all costs.

8           That's the basic reason we want the hold  
9 harmless, which like I said, is, at heart, really  
10 nothing more than a copy and paste from an existing  
11 Evergy tariff. And if you remove the sentence  
12 regarding their ability to come in for other  
13 benefits from what Evergy and Velvet Tech have  
14 proposed, you have in principle what the OPC, Staff  
15 and MCEG have put forward.

16           All right. I'm moving off that issue.  
17 Let's talk about the RESRAM. So I'm going to start at  
18 a very high level just to make sure we're all on the  
19 same page. There's a RES statute. It says the  
20 company will procure so much of its energy from  
21 renewable sources. The amount is based as a  
22 percentage of retail sales.

23           If Evergy -- sorry, if Velvet Tech or any  
24 other company who takes under this tariff qualify as  
25 retail sales, per the statute, that will increase the

1 amount of renewables that Evergy will need to have to  
2 meet the statute. If Evergy has to buy or build to  
3 meet that increased renewable demand, they will incur  
4 costs.

5           The whole issue is simply this: How do  
6 we ensure that Velvet Tech or any other company who  
7 takes under this tariff, pay their fair share of any  
8 increased RES compliance costs? There are several  
9 available options. And if you look at the backside of  
10 the handout, you'll see I've kind of laid them out.

11           You have one from the testimony of Lena  
12 Mantle, one from the testimony of Claire Eubanks,  
13 Maurice Brubaker on behalf of Velvet Tech put forward  
14 one, and then you have the two at the bottom that came  
15 from the two unanimous -- Nonunanimous Stipulations.  
16 I'm just going to focus on those two.

17           And actually, really I'm just going to  
18 turn to the one that Velvet has put forward. So what  
19 Velvet has put forward, which is fairly unique,  
20 effectively says if the company who takes under the  
21 tariff has enough renewables to meet their  
22 obligations, they're not going to pay for the RESRAM.  
23 And in addition to that, we're going to subtract their  
24 renewables effectively from Evergy's retail sales for  
25 the RES compliance.

1                   Here's the problem. If you ask me  
2 personally, I don't think that's legal. And I think  
3 the problem comes with the fact that you're going to  
4 have to use the plain and obvious language in the RES  
5 statute.

6                   And counsel for Staff basically said the  
7 same thing. But their proposal would solve the  
8 problem in as far as it would mean that there was not  
9 increased RES compliance cost passed on to other  
10 customers.

11                   And I'm going to be very frank with the  
12 Commission. For that reason, I'm not sure that the  
13 OPC would pursue a legal challenge if the Commission  
14 went with what Velvet Tech and Evergy are proposing.

15                   Now, Mis-- counsel for Velvet Tech have  
16 laid out, in short, their legal argument for why they  
17 think the Commission can do this. And I expect that  
18 they'll cover it more in briefing.

19                   Ultimately I think it's going to be up to  
20 the Commission to make a judgment call on whether or  
21 not they think that's legal. If the Commission says  
22 no, we don't think we can reduce retail sales for  
23 whatever reason, the alternative is what the OPC,  
24 Staff and MECG have put forward, which is quite simply  
25 to say look, as long as you cover your costs of RES

1 compliance in the contract that you've agreed to,  
2 you're not subject to the RESRAM.

3           And to its credit, Velvet Tech has  
4 already said well, we intend to pay a certain amount  
5 for renewables under the contract. So this should  
6 work out like -- it all should be gravy and we don't  
7 have any problems.

8           But at the end of the day, like I said,  
9 you have several competing options. I personally  
10 don't think what they've proposed is legal, but  
11 ultimately it's going to be the Commission who has to  
12 make that determination.

13           Okay. All right. Now, there were a  
14 couple other issues that have been thrown out. The  
15 EDR, for example. I'm going to be frank. I don't  
16 think that I am the best person to speak on that,  
17 especially when I'm about to followed up by  
18 Mr. Woodsmall who is, I'm sure, going to do a  
19 fantastic job explaining why the EDR provision that's  
20 in our tariff needs to be there. So I'm going to let  
21 him handle that one.

22           There's also a question regarding  
23 securitization. That was touched on very briefly by  
24 Mr. Keevil for Staff. That is a problem. You'll find  
25 in the OPC/Staff/MECG tariff, there is a line -- and I



1 can point it out more specifically if you request --  
2 that basically says customers will bear any future  
3 surcharge, including, for example, securitization.  
4 That's meant to address that problem.

5           Outside of these four, maybe a couple  
6 more issues, we are really, really close. And I hate  
7 that we have to be here. I think everybody on both  
8 sides worked really hard to avoid this hearing. It's  
9 unfortunate, but it is what it is.

10           I will say this in closing. What the  
11 OPC, Staff and MCEG have put forward has attempted --  
12 truly attempted to hit every single one of the major  
13 goals of what Velvet Tech and Evergy originally  
14 proposed. For example, the three-part rate, boom,  
15 that's in there. The having rate set by SPP prices,  
16 that's in there. Exclusion from the FAC, that's in  
17 there. A way to avoid the RESRAM, technically that's  
18 in there. If they can pay it through the tariff, they  
19 don't have to pay the RESRAM.

20           We are making a good faith effort to make  
21 this work and I hope the Commission recognizes that  
22 for what it is. Other than that, I'll simply ask if  
23 there are any questions; and if not, I thank for your  
24 time.

25           JUDGE HATCHER: Thank you, Mr. Clizer.

1 Are there any questions for Public Counsel?

2 Hearing none, we'll move on to MECG  
3 opening statement by Counselor Woodsmall. The floor  
4 is yours, sir.

5 MR. WOODSMALL: Thank you, Your Honor.  
6 And I sent you the PowerPoint and I hope you have sent  
7 that on.

8 JUDGE HATCHER: I have.

9 MR. WOODSMALL: Okay. Let me get this  
10 set up. I remember when I used to be able to do this  
11 without reading glasses on.

12 Good morning. David Woodsmall on behalf  
13 of Midwest Energy Consumers Group. As you know, MECG  
14 represents the interests of large commercial and  
15 industrial customers before the Commission. In this  
16 case, MECG represents the interests of approximately  
17 50 large Evergy customers that are concerned with the  
18 structure of Evergy's proposal.

19 It is important to recognize that the  
20 parties stand in -- where the parties stand in this  
21 case. While Evergy and Velvet claim that the tariff  
22 is in the public interest, the industrial customers,  
23 the residential customers, all the customers, and the  
24 entity responsible for providing an objective opinion,  
25 the Staff, they all disagree. All three of those --

1 every customer group says that this is not in the  
2 public interest, that it is harmful for current  
3 customers.

4 As an initial matter, I want you to think  
5 about why Evergy needs this tariff. Evergy states  
6 that it needs this tariff to attract these mammoth  
7 100 megawatt customers in Missouri.

8 What is implicit in that statement?  
9 Think about that. We need this special contract to  
10 attract customers. The obvious takeaway from Evergy's  
11 statement is that its current rates are so high and so  
12 uncompetitive that they can't attract these customers  
13 on their own. The same rates that everybody else is  
14 subjected to isn't good enough to bring in business so  
15 they need something special.

16 So instead of using its collective brain  
17 power to find ways to make its current rates more  
18 affordable, Evergy instead devises schemes like that  
19 before the Commission today. Schemes that  
20 intentionally seek to avoid statutes and the consumer  
21 protection mechanisms in those statutes and instead  
22 pushes the edges of regulation simply to inflate its  
23 own corporate profits at the expense of its current  
24 customers. And I'll show that all to you.

25 In the course of this case, Staff, OPC

1 and MECG have identified several aspects of the  
2 proposal that are detrimental to current customers.  
3 I'm going to address the two largest detriments, in my  
4 mind.

5           It is important, however, to recognize  
6 Staff, OPC and MECG are not -- they are not against  
7 economic development. Heck, given the nature of the  
8 customers I represent, I have to factor in economic  
9 development. But economic development can't simply be  
10 done with blinders on. It needs to be done with  
11 specific intention to ensure that current customers  
12 don't suffer.

13           Giving Velvet or Google the special rates  
14 and the special conditions contained here today when  
15 it means that other customers already saddled with  
16 uncompetitive rates, if they end up closing and  
17 employees go unemployed, what have we accomplished?  
18 So don't do economic development with blinders on, as  
19 Evergy now asks you.

20           With all this in mind, OPC and MECG  
21 executed a Non-Unanimous Stipulation that we believe  
22 fixed many of the problems with the MKT tariff. With  
23 the tariff changes incorporated into that tariff and  
24 discussed here today, Staff, OPC and MECG all agree  
25 that this tariff can be approved.

1 I mentioned earlier that with this  
2 proposal, Evergy is seeking to avoid statutes and  
3 consumer protection mechanisms. This is what I'm  
4 talking about. There's already a statute in place to  
5 attract customers like this. Section 393.355 gives  
6 the Commission the authority to approve rates outside  
7 of a rate case for a ten-year period. That is  
8 important because the rate is locked in. You can  
9 effectively bind future Commissions by using this  
10 statute. That statute is applicable to any new load  
11 in excess of 50 megawatts.

12 But there's a catch. And this is the  
13 catch that Evergy doesn't like. There's a provision  
14 in there -- a consumer protection provision -- that  
15 says the Commission must also approve a tracking  
16 mechanism for net margins such that a utility's,  
17 quote, net income is neither increased nor  
18 decreased.

19 So there's a statute that gives the  
20 Commission the authority to approve rates to attract  
21 these customers, but it says that the utility can't  
22 make money off of it. That any profits derived from  
23 that have to go back to the other customers. Well, if  
24 they can't make money off of it, you can bet Evergy  
25 won't do it.

1                   It is this consumer protection tracking  
2 mechanism that leaves Evergy scrambling for other  
3 alternatives. Given that Evergy is allowed to -- is  
4 not allowed to realize either an increase or decrease  
5 net income, any additional profits associated with  
6 these new customers go to the benefit of legacy  
7 customers.

8                   Since it doesn't like that fact that  
9 profits go to these customers, Evergy schemes and  
10 plots to come up with a method to attract these  
11 customers but also to allow them to keep all the  
12 benefits.

13                   Schedule MKT is their proposed method.  
14 And there's two parts to this that you need to  
15 understand. This is as complicated as it gets. You  
16 know, I've been doing this 30 years and it took a long  
17 time delving into this. This is tough stuff. So you  
18 have to really pay attention to how the individual  
19 parts work together to see where the detriments are to  
20 current customers.

21                   Under this plan, Evergy intentionally  
22 sacrifices its current customers, customers already  
23 saddled with uncompetitive rates so that it can  
24 attract these mammoth customers, enjoy huge amounts of  
25 profits. As I noted, the MKT customer wins, Evergy

1 wins, legacy customers lose.

2                   So let's talk more about how Evergy's  
3 scheme works. There are two parts, as you can see  
4 here. The first part, in order for Evergy to make  
5 these profits, they need both of these parts. So  
6 first, Evergy proposes to serve the new customer under  
7 the large power tariff with the 40 percent discount  
8 provided by Section 393.1640.

9                   So these customers are coming to  
10 Missouri, but they're not immediately going onto the  
11 MKT tariff. They are going onto the large power  
12 tariff with the economic development discount.

13                   Then prior to the end of those five-year  
14 discounts, Evergy will migrate the new customer to the  
15 MKT tariffs sought in this case. Both of these steps  
16 provide harm to customers, but let's look at the first  
17 one.

18                   Section 393.1640 provides for 40 percent  
19 discount to any new customer with a load of 300 kW and  
20 load factor of 55 percent. This is an important part  
21 however -- there is an important part, however, that  
22 the utility doesn't absorb these discounts. Instead,  
23 the statute specifically states that the other  
24 customers are responsible for this -- these discounts.

25                   So envision what's happening here. A new

1 customer comes in, they get a 40 percent discount.  
2 That new customer's happy, discounted rates. The  
3 utility's happy because even though they're giving a  
4 discount, all the other customers are picking up that  
5 discount so the utility is getting all its profits.

6 So initially other customers are getting  
7 harmed because they're picking up these discounts.  
8 And the bigger the customer, the more those discounts  
9 are in nominal dollars.

10 The rationale behind the 393.1640  
11 discounts is fairly obvious. It's nothing more than a  
12 loss leader. It attracts new customers to the system  
13 by granting a 40 percent discount for five years. So  
14 the five years, the new customer's happy because it is  
15 receiving the discounted rates. The utility is made  
16 whole. All the other customers are left holding the  
17 bag. This is the loss leader because the legacy  
18 customers are sucking up these cos-- these discounts.

19 So this -- so in reality, after -- after  
20 five years though, the legacy customers get their end  
21 of the deal. That's the quid pro quo. We're giving  
22 the new customer a discount up front, but after five  
23 years, that new customer is paying full rates so  
24 they're sucking up some of the cost.

25 So the quid pro quo: New customer gets a



1 discount; after five years, they're paying their full  
2 amount; the legacy customers will have lower rates.

3                   But that's not what's happening here.  
4 Here, Evergy has created an evil scheme that seeks to  
5 prevent the legacy customers from ever seeing the  
6 benefit of these new customers. Evergy lures these  
7 new customers to the service area with the use of  
8 these discounts, as well as the eventual migration to  
9 the MKT.

10                   So initially the new customer will  
11 receive a discounted rate under 393.1640. The new  
12 customer wins, Evergy wins with a new customer and the  
13 higher profits. Legacy customers lose because they're  
14 left holding the bag.

15                   Like I said, under the initial discount  
16 mechanism, five years, the customers gets a discount.  
17 After five years, they pay their full freight. We  
18 miss out on that because they get the discount and  
19 then right before new cu-- regular customers, legacy  
20 customers are to get their benefit, Evergy's going to  
21 move them out and move them onto MKT. We never get  
22 the benefits of these discounts.

23                   How much are we talking about here?  
24 A hundred megawatt customer, how big is that? It's  
25 the size of a hundred Wal-Mart's. It's the size of

1 like forty hospitals. These are mammoth. These are  
2 bigger than any other customer that Evergy West or  
3 Evergy Metro even has. These are mammoth customers.  
4 And as the size goes up, the amount of discounts and  
5 nominal dollars go up.

6           So a hundred megawatt customer using an  
7 85 percent load factor would usually have an annual  
8 bill of approximately 45 million dollars. Therefore,  
9 40 percent discount for this customer would be as much  
10 as 18 million a year. That is 18 million a year that  
11 Evergy is wanting all the other customers to have to  
12 suck up. That's 18 million a year that other  
13 customers will have to eat, without ever getting the  
14 benefit of this customer paying full tariff rates.

15           So that is the scheme. Evergy wins  
16 because they get a new customer in and higher profits.  
17 The new customer wins because they get a discount and  
18 then onto the MKT tariff. But legacy customers don't  
19 get their quid pro quo.

20           Here is an attempt at a graphical  
21 representation of what happens. In the first phase,  
22 like I said, Evergy wins because of the higher profits  
23 from the new customer. You see that here. Win,  
24 increased profits. The new customer wins because they  
25 are receiving the discounted rate. The legacy

1 customers, however, lose from paying these rates.

2 But then we get over to the second part  
3 when they migrate that customer to MKT. Everyy gets  
4 less of a win. They're getting something because they  
5 built some facilities, they're getting some profit.  
6 The new customer is now getting a huge win because  
7 they're on SPP.

8 The legacy customers, while they lost in  
9 the first phase from the discounts, they're losing  
10 again because they're left holding the bag for these  
11 discounts and they never got the opportunity for these  
12 mammoth customers to pay full freight rates.

13 They also lose because, as I'll talk  
14 about, they have to ensure that incremental costs are  
15 being paid by these customers. They have to make sure  
16 there's no free ridership associated with these  
17 customers. It's a lose/lose/lose all across the board  
18 for legacy customers.

19 Given this, Staff, OPC and MECG have  
20 proposed a simple provision. It's very simple. The  
21 Commission -- the Commission, by statute, can't  
22 preclude these discounts. They're in a statute.  
23 The Commission can't say we're not going to do it.

24 So if these customers want to be on the  
25 LP tariff with a discount, they have to get on. What

1 we're asking for is not to limit the discounts. We're  
2 simply asking you to put an availability provision  
3 that says if you're a customer and you've accepted  
4 these discounts, that you can't move onto this tariff  
5 for a period of five years.

6           What that does, that gives the legacy  
7 customers the opportunity to get the benefit that they  
8 were -- that they were promised under these economic  
9 development rate ri-- discounts.

10           Bottom line, MECG does not oppose the MKT  
11 tariff. I think it is a valuable option to have out  
12 there to bring in economic development. So we do not  
13 oppose it.

14           The only problem is Evergy's insistence  
15 that this tariff be linked to the customer's use of  
16 their LP tariff with the discount. Do the MKT tariff.  
17 Do it. It's great. Just put the customers on there.  
18 Don't make them migrate through an LP tariff with  
19 these discounts that simply inflate the utility's  
20 profits at the expense of legacy customers. Track  
21 these customers, get them on the MKT tariff.

22           The MKT tariff itself -- I'll move over  
23 this quickly. We have a provision in there to ensure  
24 that the customers on the MKT tariff pick up all of  
25 their incremental cost. So if they come on there and

1 a cost is incurred, they need to pick that up. But  
2 the other thing is, there needs to be recognition of  
3 costs already being incurred by legacy customers to  
4 prevent them from being a free rider.

5 So this is in the stipulation. And when  
6 we talk about that at 1:00, I'll point this out. So  
7 this is just necessary to make sure that legacy  
8 customers don't pay any more than they should.

9 And I kind of give it a chart here on --  
10 when you talk about energy, you know, legacy customers  
11 are saddled with Evergy's aged generations. MKT  
12 customers get to use SPP for its energy. Legacy  
13 customers are saddled with Evergy's aged facilities  
14 for capacity.

15 That's not what's going to happen with  
16 the MKT customers. MKT customers are going to be  
17 given capacity either through a bilateral contract or  
18 Evergy procuring something at least cost options.  
19 We're not -- legacy customers aren't guaranteed least  
20 cost because we're saddled with these facilities.

21 So renewable credits, that was talked  
22 about a lot. Evergy has excess renewable credits now.  
23 To the extent those are used for a Velvet or a Google  
24 or ABC, whoever it is, make sure we get paid for  
25 those. Customers paid for the facilities that

1 generate those RECs. So don't let them ride on that.

2 Don't let them be free riders there.

3                   Stuff about transmission facilities,

4 utilities overheads. I've talked about all this.

5 Public Counsel and Staff talked about RESRAM. Staff

6 has talked a little bit about only allowing this for

7 transmission voltage customers. There was talk about

8 a need for 90 days to review the special contract.

9                   Bottom line, approve the MKT tariff.

10 Just don't bury your heads in the sand. Don't do it

11 with blinders on. Do it with intentional focus on how

12 will this affect legacy customers. And in that

13 regard, do not allow customers to impose these

14 discounts on legacy customers and then immediately

15 migrate to the MKT, thus denying legacy customers the

16 value that they should be getting. Thank you.

17                   JUDGE HATCHER: Thank you, Mr. Woodsmall.

18 That wraps up our opening statements.

19                   As I discussed at the very beginning, due

20 to our competing stipulation tariff languages, the

21 Commission is going to take a break until 1:00 p.m.

22 We're going to recess until 1:00 p.m. with the purpose

23 of allowing the witnesses some time to get familiar

24 with the two schedules to be prepared to discuss the

25 differences and why they agree or don't agree.

1                   Are there any issues before we recess  
2 until 1:00 p.M?

3                   MR. WOODSMALL: Your Honor, when you say  
4 the witnesses, MECG did not have a witness. Will it  
5 be able to make comments in response to those  
6 questions since the tariffs are a legal document and  
7 the reasons why a provision may be in there?

8                   JUDGE HATCHER: Off the top of my head,  
9 my first answer would be that would be in the briefs.  
10 But I see your challenge in wanting to address it as  
11 it goes on. Let me put my thinking cap on and I'll  
12 think about that. If you all would do the same, we'll  
13 try and come up with a solution.

14                  MR. WOODSMALL: Thank you.

15                  MR. STEINER: Your Honor, this is Roger  
16 Steiner. We would to object that. He's not available  
17 for cross-examination, he's not sworn.

18                  MR. WOODSMALL: I'll make myself  
19 available. Honestly, if you want to cross me, Roger,  
20 you can.

21                  JUDGE HATCHER: We'll stop there and  
22 let's all just put our thinking caps on. We'll see  
23 what solutions we can come back with at one o'clock.  
24 Anything else before we go on a break?

25                  Excellent. We are adjourned until -- or

1 recessed until 1:00 p.m. Thank you all.

2 (A recess was taken.)

3 JUDGE HATCHER: The hour of recess having  
4 expired, let's go back on the record. It is  
5 one o'clock. This is a Regulatory Law Judge Charles  
6 Hatcher, presiding over the case designated  
7 EO-2022-0061, a special tariff request from Evergy  
8 Missouri West.

9 Before we begin, I want to flesh out a  
10 little bit of our plan for this afternoon. I had  
11 stated earlier that the Commission is going to have  
12 some specific questions and we are going to go through  
13 the tariff line by line. I was speaking  
14 metaphorically.

15 We're going to have the same standard  
16 hearing operation. We will call witnesses in the  
17 order which was produced by the parties. They will,  
18 in turn, introduce their pre-filed testimony, we'll go  
19 through cross-examine.

20 When we get to those particular witnesses  
21 who would have substantive answers on the tariff,  
22 we'll just go through our normal process and I am just  
23 looking to get those questions asked on the record.  
24 So it doesn't matter to me if I ask them or if someone  
25 asks them before me. I'm just looking to get



1 witnesses to answer why their provision is in, why the  
2 other provision shouldn't be in, and vice-versa for  
3 witnesses regarding the opposite side's proposed  
4 tariff.

5                   So with that, let me go ahead and make  
6 sure I have all of my counsel online. Mr. Fischer,  
7 are you on our WebEx? Mr. Fischer, if you're on a  
8 phone, it is \*6 to unmute.

9                   MR. FISCHER: Yeah, Judge, I'm on. I'm  
10 not on the phone. I'm sorry. I was out of the room.

11                   MR. FISCHER: Nope, that is fine. And  
12 Mister -- I'm sorry, and Counselor Bell, are you also  
13 on the phone or on the WebEx? I just want to make  
14 sure you're available.

15                   MS. BELL: Yes.

16                   JUDGE HATCHER: Okay. Thank you.

17                   I have talked to our background office  
18 staff and they assure me that the ability to share  
19 your screen is now available -- and this is for all of  
20 the counsel. We now have the WebEx showing on the  
21 witness stand monitor, which if you look on your WebEx  
22 screen, you'll be able to see that.

23                   What that does for us is it helps the  
24 court reporter, but also it allows those of us  
25 physically in the courtroom to see what a counsel or a

1 witness would like to share on their screen in WebEx  
2 without having to look at the very tiny picture that  
3 is now in the WebEx, the camera view of the screen.  
4 Sorry for the long-winded explanation everyone.

5 Let's get to our first witness. By my  
6 list, that's Michelle Hadaway, who will be adopting  
7 the testimony of Mark Stombaugh; is that correct?  
8 Ms. Hadaway please speak up and I'll get you sworn in.

9 MR. STEINER: Judge?

10 JUDGE HATCHER: Yes, go ahead.

11 MR. STEINER: This is Roger Steiner with  
12 Everygy. I apologize. I was under the impression that  
13 we would start with the witnesses that knew about the  
14 tariff and Ms. Hadaway is not one of those. She is  
15 traveling in the car and I can call her and get her so  
16 she can appear now or we could possibly take her  
17 tomorrow starting at noon, whatever your preference  
18 is. But I apologize. She's not listening in right  
19 now. I need to notify her if you want to talk to her.

20 JUDGE HATCHER: No. Please let's go  
21 ahead and we will drop her to tomorrow. We already  
22 had Ms. McCarthy scheduled for tomorrow. Let's move  
23 to --

24 MR. STEINER: That's correct. Your  
25 Honor --

1 JUDGE HATCHER: I'm sorry. Go ahead.

2 MR. STEINER: we could ask right now if  
3 parties have questions for these two witnesses. We  
4 could figure that out if they do need to appear  
5 tomorrow.

6 JUDGE HATCHER: I'd prefer to wait until  
7 the end of today to find that out.

8 MR. STEINER: Okay.

9 JUDGE HATCHER: Okay. So the first  
10 witness I have then -- Ms. Bell?

11 MS. BELL: Your Honor, one other  
12 preliminary matter. We had made a request to have a  
13 copy of all of the documents and anything that was  
14 shared in opening statements this morning. And so we  
15 would like that ordered, that anything shared this  
16 morning, be shared with all the parties.

17 JUDGE HATCHER: I don't think we need to  
18 order that. If you don't get copies by tomorrow, just  
19 bring it up, Ms. Bell, and I will e-mail the copies I  
20 received.

21 MR. CLIZER: Your Honor, I apologize. As  
22 a preliminary matter, would it be permissible if I  
23 were to offer this demonstrative? And I ask that just  
24 for the purposes of facilitating discussions on this  
25 topic.

1 JUDGE HATCHER: Right. Ms. Bell, I think  
2 that takes care of our conversation.

3 I want to move to Mr. Clizer's e-mail.  
4 That was e-mailed to the group of us. And Mr. Clizer  
5 purports that this is a -- I'm going to call it a  
6 red-lined version comparison. But upon talking a  
7 little bit more, what I believe Mr. Clizer is going to  
8 do here in just a minute is he is going to offer this  
9 as a demonstrative so that all of the witnesses can  
10 then use that. And then we will circle back at the  
11 end of the day to then see if we want to offer his  
12 e-mailed version into the record.

13 MR. CLIZER: For the record, I just want  
14 to explain exactly what it is and how it came about  
15 really quick.

16 JUDGE HATCHER: Okay.

17 MR. CLIZER: This was -- what I did --  
18 because I developed this. I pulled the PDF version of  
19 the stipulation that was filed on behalf of Evergy and  
20 Velvet Tech from EFIS. I converted it from a PDF into  
21 a Word document. I did my best to accept the changes  
22 that had been made because they were in red line in  
23 the version that was filed in PDF. And then I used  
24 Microsoft Word's comparison tool against a Word  
25 document version of the tariff that was filed by the

1 OPC, Staff and MECG.

2                   So all of the changes that are in here  
3 are computer generated by Microsoft Word by just  
4 feeding two documents into it and then it does the  
5 rest. I attempted to verify that all the changes were  
6 accurate. I'm not going to say for certain because I  
7 didn't actually hand do it.

8                   I would like to offer it solely just so  
9 that people can more easily identify what changes  
10 they're referring to. I don't necessarily need it in  
11 the record, although I think it might be useful to  
12 point to in briefing as just a way of clarifying what  
13 the changes are, but I'll withhold the request to  
14 actually offer it until the Judge would like to take  
15 it up.

16                   For reference though, I would offer it as  
17 OPC 202 just so people can refer to it that way if  
18 it's easier.

19                   JUDGE HATCHER: Okay. Does anyone have  
20 any objections to, at this moment, just the use of  
21 demonstrative 202?

22                   MR. MILLS: Judge, this is Lewis Mills.  
23 I don't have any objection to using it in the hearing.  
24 I do think that -- and I think it was a great idea to  
25 come up with this, but I think between now and when

1 we're actually filing briefs, we can come up with  
2 something that is not quite so messy, that more  
3 accurately and more easily identifies the changes  
4 between the two documents.

5           So as I said, I don't object to using it  
6 during the hearing, but I think, you know, it's -- I  
7 think it would be helpful to all parties and the  
8 Commission to have a cleaner version of this document  
9 for -- at least for the briefing phase.

10           MR. CLIZER: I have no objection to that.  
11 And I do apologize for the rough nature of it. It was  
12 a rush job.

13           JUDGE HATCHER: Okay. What I'm hearing  
14 is that we are all on the same page that this is a  
15 good start and we'll see where we're at at the end of  
16 the day.

17           With that, let's call up Mr. Bradley D.  
18 Lutz. Mr. Lutz, I see you are on WebEx. If you could  
19 speak up so you'll pop up to the top of the screen and  
20 I will swear you in before your testimony.

21           THE WITNESS: Good afternoon.

22           JUDGE HATCHER: Thank you, sir.

23           (Witness sworn.)

24           JUDGE HATCHER: Thank you. And Everyg,  
25 that will be your witness.

1 MR. FISCHER: Thank you, Judge.

2 BRADLEY D. LUTZ, having been first duly sworn,  
3 testified as follows:

4 DIRECT EXAMINATION BY MR. FISCHER:

5 Q. Mr. Lutz, would you state your name and  
6 address for the record?

7 A. My name is Brad Lutz. I work at 1200  
8 Main in Kansas City, Missouri.

9 Q. Are you the same Brad-- Bradley D. Lutz  
10 that caused to be filed in this case surrebuttal  
11 testimony?

12 A. I am.

13 Q. And I'll let you know that that's been  
14 marked as Exhibit Number 6. If I were -- do you have  
15 any changes or corrections that you need to make to  
16 that testimony?

17 A. I do not.

18 Q. If I were to ask you the questions that  
19 are contained in that document today, would your  
20 answers be the same, and are they true and accurate to  
21 the best of your knowledge and belief?

22 A. They are.

23 MR. FISCHER: Judge, with that then, I  
24 would move for the admission of Exhibit Number 6 and  
25 tender the witness for cross-examination or questions

1 from the Bench, however you'd like to proceed.

2 JUDGE HATCHER: Thank you Mr. Fischer.

3 Are there any objections to the entry of  
4 Exhibit Number 6, the surrebuttal testimony of  
5 Mr. Lutz onto the hearing record?

6 MR. CLIZER: No objection. Would it be  
7 possible for the Court to turn up the volume on the  
8 speaker in here? Thank you.

9 JUDGE HATCHER: Thank you. Without  
10 objection, and the speaker volume being turned up, the  
11 exhibit is so admitted. That is Exhibit Number 6.

12 (Exhibit 6 was received into evidence.)

13 JUDGE HATCHER: And I believe  
14 Mr. Fischer, you tendered the witness so on to  
15 cross-examination for Mr. Lutz. First we turn to  
16 Ms. Bell.

17 MS. BELL: Thank you, Your Honor.  
18 Mr. Lutz, you have reviewed the OPC's Schedule 1 as  
19 compared with Evergy's Schedule 1. Correct?

20 A. I have.

21 Q. And you would agree that the two  
22 schedules differ in -- on several key respects?

23 A. They do.

24 Q. What are those respects?

25 A. Well, the -- probably the most meaningful



1 would be that around the hold harmless language and  
2 the treatment of the RES compliance and RESRAM would  
3 probably be the most prolific. Then the EDR  
4 provisions. And then there would be a nu-- a number  
5 of smaller changes.

6 **Q. Okay. And you would agree that Evergy**  
7 **does not support the OPC language on the hold harmless**  
8 **issue; is that correct?**

9 A. That is correct.

10 **Q. And why?**

11 A. Allow me to turn there just for a moment.  
12 First of all, the language that has been presented is  
13 largely copied from the company's SIL tariff. And we  
14 believe, again, that these two rate designs are -- are  
15 inherently different and that the conditions that  
16 underlie the SIL are not applicable or not the same  
17 for the high load factor or the Schedule MKT rate.

18 Further, there are a lot of other  
19 situations -- we call them benefits -- that we think  
20 need to be considered in the event of any kind of  
21 detriment that might be determined under this rate  
22 that we think needs to be considered under the full  
23 weight of the Commission review.

24 **Q. Okay. You would -- Mr. Lutz, in your**  
25 **surrebuttal testimony you indicated that there were --**

1 that the company accepted many of the changes proposed  
2 by OPC and Staff witnesses; is that correct?

3 A. That is correct.

4 Q. So other than the differences you have  
5 already determined, would you agree with Mr. Clizer's  
6 statement that -- that the two -- there are  
7 substantial similarities between the two -- the --

8 A. Oh, certainly. Yes. I would agree with  
9 that.

10 Q. And with respect to the other  
11 differences, would Mr. Ives be in a better position to  
12 respond to differences in the tariff?

13 A. Yes. Especially on -- on some of the  
14 items that I would characterize as maybe being more of  
15 a policy implication. You know, the hold harmless  
16 being a perfect example. You know, that being  
17 reflective of the corporate position, he would be --  
18 he would be very appropriate to address those  
19 questions.

20 Q. Okay. So with respect to the changes --  
21 to the OPC changes to the E-- EDR offerings, hold  
22 harmless and RESRAM which you identified, those are  
23 all issues Mr. Ives can speak to?

24 A. Yes. I would offer that he would be able  
25 to provide the more corporate policy view of those. I

1 could speak to more of the mechanics if that were a  
2 differentiation that you might wish to explore.

3 MS. BELL: No further questions, Your  
4 Honor.

5 JUDGE HATCHER: Thank you.

6 And Mr. Mills, any questions?

7 MR. MILLS: Judge, I believe that since  
8 Mr. Lutz identified Mr. Ives as the more appropriate  
9 person to ask questions of those, I will hold any  
10 questions for Mr. Ives.

11 JUDGE HATCHER: Thank you. And -- and  
12 Mr. Woodsmall?

13 MR. WOODSMALL: Yes, very briefly.

14 CROSS-EXAMINATION BY MR. WOODSMALL:

15 Q. Mr. Lutz, can you hear me?

16 A. I can.

17 Q. Good afternoon, sir.

18 A. Good afternoon.

19 Q. Just real quick, you mentioned the  
20 comment I think somewhere along the line that in a  
21 future proceeding the Commission should be able to  
22 consider -- I think you called them intangible  
23 benefits. Do you recall that statement?

24 A. Yeah. I mean something equivalent to  
25 that, yes.

1 Q. Okay. You've been doing rate-making for  
2 quite a while, haven't you?

3 A. I have.

4 Q. And -- well, how many years have you been  
5 doing rate-making?

6 A. Oh, roughly about 18, I believe.

7 Q. Okay. And in 18 years, can you think of  
8 any instance in which the Commission has considered  
9 intangible benefits in setting rates for a customer?

10 A. I can, but if you'll allow me a little  
11 bit of a liberty there. I mean I think in my -- in my  
12 view, I see those intangibles as being kind of the --  
13 the -- I use the phrase "policy," but maybe I use that  
14 as a blanket term for those items that are beyond the  
15 quantitative analysis that we traditionally offer in a  
16 rate design proceeding.

17 The best example that comes to my mind  
18 would be a customer charge just even in a  
19 residential -- residential rate. I -- I would offer  
20 that we're generally able to present analysis that  
21 shows that customer charge might be a certain number,  
22 but it's not uncommon for the Commission to weigh  
23 other factors and choose to set that rate at -- at  
24 some value that is different.

25 So at least that's one example that comes

1 to mind of a place where other factors are brought  
2 into mind to determine the final outcome of a rate  
3 design.

4 Q. But would you agree that to the extent  
5 that the Commission keeps a residential customer  
6 charge low, those -- that cost responsibility is still  
7 kept within the residential class and their energy  
8 charges; is that correct?

9 A. Yeah. I think that's fair.

10 Q. Okay. And if because of intangible  
11 benefits, as you call them, the Commission decides to  
12 set rates for these MKT customers in one manner, would  
13 those -- would offsets be kept within that class or  
14 could they be dispersed to other classes?

15 A. I suppose they would -- they could go to  
16 other classes. I mean the -- the equivalent there, I  
17 would offer, comes through potentially some of the  
18 allocation work that we do in our general rate  
19 designs.

20 Although I appreciate the -- what you're  
21 trying to say as far as containing costs, you know, to  
22 be truthful, there are a bit -- a number of  
23 generalizations that take place in the exercise of  
24 rate-making, whether it be through allocations,  
25 assignments, those kind of steps that -- that make

1 that an imperfect process.

2 But conceptually I support what you're  
3 saying is that there's intentions of trying to retain  
4 costs to certain categories of customers, but I think  
5 we fall short of perfection in that regard.

6 Q. But just to get to your initial premise,  
7 your initial premise was it may be difficult for the  
8 Commission to do exact rate-making for this customer;  
9 therefore, the Commission can consider intangible  
10 benefits, as you called them. Is that what you were  
11 saying?

12 A. Right. In the -- yes. And in this  
13 situation -- I mean I think the context is very  
14 important that if this were to occur, if this  
15 consideration were to occur, then it -- it's only  
16 after there's been some contention of a detriment  
17 that's -- that's occurred.

18 Then it's at that point that we're  
19 wishing -- or asking the Commission to take that more  
20 full view and make sure that we're not just looking at  
21 a very constrained set of accounts, for example, but  
22 instead, looking at the full benefit or -- or -- or  
23 the positives associated with that customer being  
24 present.

25 That the -- the constraint of accounts or

1 certain limits like that may not give the Commission a  
2 full view of what that customer has brought to -- to  
3 the company, to non-participants, to the region, all  
4 of those things I believe are factors that the  
5 Commission should bear in mind before they -- they  
6 make an assessment on what to do if a detriment  
7 occurs.

8 Q. Would you agree that there are other  
9 industrial customers that may provide similar  
10 intangible benefits in the area?

11 A. Certainly. Certainly.

12 Q. And would you agree --

13 A. You know --

14 Q. Would you agree that other industrial  
15 customers would likely employ more than the  
16 50 employees that Velvet is discussing in their  
17 testimony?

18 A. I -- yes, I would certainly believe that.

19 Q. Do you know of any instance in which  
20 those industrial customers that employ more than  
21 Velvet that offer intangible benefits are given  
22 similar considerations for intangible benefits?

23 A. Well, I don't -- first of all, I think  
24 that the condition that we're -- we're talking about  
25 that triggers this may not -- might not have a clear

1 genesis with those other customers. I don't know that  
2 we have a detriment situation that we're trying to  
3 resolve to introduce those benefits.

4 Q. Well, would you agree that in the mind of  
5 those customers, a residential subsidy would be a  
6 detriment?

7 A. In the mind of -- a residential subsidy  
8 would be --

9 Q. No. Let -- let me back up. Would --  
10 would you agree that in the mind of these large  
11 industrial customers, a residential subsidy could be  
12 considered a detriment?

13 MR. FISCHER: Judge, I'll object. I  
14 think that calls for speculation.

15 MR. WOODSMALL: Well, he's been doing  
16 rate-making for quite a while. I think he can -- he  
17 can envision what parties think, especially since he's  
18 been doing reside-- or class cost-of-service and  
19 revenue allocations for quite a while.

20 MR. FISCHER: If he knows, I guess he can  
21 answer.

22 JUDGE HATCHER: I'll allow it.

23 THE WITNESS: Okay. I mean to begin, if  
24 a -- if a residential subsidy exists -- and I would  
25 have to believe it's -- it's coming as a result of a



1 Commission order. I mean if that's the case, then I  
2 agree that -- I mean -- or I mean I think that it  
3 should be allowed or -- even though the industrial  
4 customer may not be happy about it, the fact that it  
5 exists and was part of a Commission order, I mean  
6 makes it just and reasonable in my mind.

7 And although you might not like it as  
8 a -- as an industrial customer, it doesn't change the  
9 fact that it's been weighed and found to be just.

10 BY MR. WOODSMALL:

11 Q. Okay. Let me just cut to it this way.  
12 In your 18 years, in all the orders you have read,  
13 have you ever seen Evergy or the Commission mention  
14 the economic benefits of a certain number of employees  
15 by any customers?

16 A. The only example I'm aware of would be  
17 the proceeding that we held for Nucor under the SIL  
18 where the economic development, benefits, the jobs,  
19 all of those details were very explicit in that  
20 approval. That's the only one that I would offer in  
21 my history.

22 Q. Okay. So only in a situation where a  
23 customer is a class in and unto itself have you ever  
24 seen that mentioned?

25 A. I believe that's fair. I mean otherwise

1 I mean customers are relying on other representation  
2 to keep their -- their interests aligned. And then  
3 the Commission weighs that as part of the record.

4 **Q. So for all the other industrial customers**  
5 **that employ hundreds of thousands of customers or**  
6 **individuals, none of those industrial customers are**  
7 **entitled to the same benefit?**

8 A. Well, I mean I think that it's -- I can't  
9 quite agree with your characterization. I mean I  
10 think that in practice, those benefits -- those --  
11 that -- those sales -- let's just boil it down to  
12 something simple and just talk about sales.

13 But let's say you got a -- a factory.  
14 Factory X that's a large customer and they're  
15 generating satellite companies or they're bringing in  
16 employees to the area. All of those things do bring  
17 in sales that ultimately contribute and lower the  
18 average cost to all customers.

19 So those benefits are finding a way  
20 through the rate-making process and getting in the  
21 books, getting in the tally, if you will. Maybe not  
22 as overtly as this, but -- as what's in front of the  
23 Commission with the high load factor rate, but I would  
24 contend that those elements are part of the overall  
25 and are not being ignored, but may not be extenuated

1 in the same fashion.

2 Q. They're not being ignored. Okay. I'll  
3 stop there. I have no further questions.

4 JUDGE HATCHER: Thank you, Mr. Woodsmall.  
5 Let's move on to Mr. Keevil.

6 CROSS-EXAMINATION BY MR. KEEVIL:

7 Q. Yeah, Mr. Lutz, very briefly. Regarding  
8 these intangible benefits and job creation and all  
9 this, what -- what guarantees has Evergy received from  
10 Velvet Tech regarding Velvet Tech's job creation?

11 A. No more than what we would see from any  
12 other economic development effort.

13 Q. So none; is that correct?

14 A. I believe -- say -- say that again. I  
15 missed it. I'm sorry.

16 Q. So the answer is none?

17 A. Well, I wouldn't say none. I mean  
18 guarantee is -- is -- is the word that's -- that we're  
19 hanging up on. I mean I don't know --

20 Q. No, it's the word you're hanging up on.  
21 That's -- I've used that word very specifically. What  
22 guarantees has Evergy received from Velvet Tech  
23 regarding its future job creation?

24 A. I believe in the traditional definition  
25 of guaranteed, I would say none.

1           Q.     Okay.  What guarantees has Evergy  
2 received from Velvet Tech regarding the length of time  
3 it will remain in Evergy's service territory?

4           A.     Under the same distinction on guaranteed,  
5 I would say none.

6           Q.     Okay.  You are the -- or for purposes of  
7 this case, you were the data request contact person.  
8 Correct?

9           A.     Correct.

10          Q.     Thank you.  Did Evergy run all of its  
11 data request responses past Velvet Tech before  
12 entering them into the Commission's EFIS system?

13                   MS. BELL:  I'm going to object.  Yeah,  
14 what's the relevance?

15                   MR. KEEVIL:  What did you say?  Yeah,  
16 what's the relevance?  Who are you speaking to?

17                   JUDGE HATCHER:  Ms. Bell?  Are you --

18                   MS. BELL:  I'm objecting.  Yes, I  
19 objected on the grounds of relevance.

20                   MR. KEEVIL:  Yes, I know that.  But it  
21 sounded like you were speaking to someone else in your  
22 room there.

23                   The relevance is to show the connection  
24 between Evergy and Velvet Tech and whether they're  
25 really two separate parties for purposes of this case

1 or just operating as one.

2 MS. BELL: Your Honor, if I may, I still  
3 would assert that that is irrelevant.

4 MR. FISCHER: Judge, I -- go ahead. I  
5 would join in that objection. And I think there's  
6 testimony in the record that there's no affiliation at  
7 all and no -- between Velvet and Evergy in this case.  
8 That's -- that's just a fact.

9 MR. KEEVIL: Well, Judge, I think it's  
10 important for the Commission to recognize how kind of  
11 Evergy was led in many respects in this case by Velvet  
12 Tech. We couldn't get responses from Evergy without  
13 receiving -- without Evergy receiving Velvet Tech's  
14 blessing. And I think it's important for the  
15 Commission to recognize the relationship here between  
16 the two parties.

17 JUDGE HATCHER: Are you saying that joint  
18 applicants or -- in this case -- essentially joint  
19 applicants don't usually work together?

20 MR. KEEVIL: Well, they weren't really  
21 joint applicants, Judge, if you remember.

22 JUDGE HATCHER: Right.

23 MR. KEEVIL: Velvet Tech filed an  
24 application to intervene in which I believe they  
25 represented that no party could represent their

1 interest adequately.

2 MS. BELL: Judge?

3 JUDGE HATCHER: Ms. Bell, go ahead.

4 MS. BELL: Judge, if I may, under the  
5 rules required for discovery and confidentiality, if  
6 one party is going to potentially disclose the  
7 information as it relates to the other party and that  
8 information may be confidential, then the party has a  
9 duty to not disclose confidential information of  
10 another party. So some coordination would be actually  
11 required under the rule.

12 JUDGE HATCHER: Well, I agree with  
13 Ms. Bell and for that reason, I'm going to go allow  
14 and allow the question. It seems like that's the  
15 normal course of business. So Mr. Lutz, if you would  
16 ask -- answer Mr. Keevil's question, please.

17 MS. LUTZ: Mr. Keevil, would you repeat  
18 the question just to make sure I answer it correctly?

19 MR. KEEVIL: Is there any chance you can  
20 read the question back?

21 THE COURT REPORTER: "Question: Did  
22 Evergy run all of its data request responses past  
23 Velvet Tech before entering them into the Commission's  
24 EFIS system?"

25 THE WITNESS: Thank you.

1 MS. BELL: Your Honor, I would renew my  
2 objection.

3 JUDGE HATCHER: So noted. Thank you,  
4 Ms. Bell.

5 THE WITNESS: In -- in answering, I would  
6 like to maybe include some of the additional detail  
7 that I heard afterwards to hopefully speak directly to  
8 your point. The -- and I would point out if you  
9 remember, that Velvet is our design case customer for  
10 this. So -- so in a short answer, I would answer yes,  
11 that they were aware of the responses that we  
12 provided.

13 Now, I would also say though that we  
14 are -- we were not constrained by Velvet in areas  
15 outside of convin-- excuse me, confidentiality and  
16 that that was the primary concern in many of the  
17 regards where -- where their input was sought. With  
18 respect to issues around the rate design and the  
19 tariff that we proposed, the company put forth its  
20 position in this filing.

21 BY MR. KEEVIL:

22 Q. All right. So you're saying that unless  
23 you thought a response was confidential, you didn't  
24 run it by Velvet Tech first?

25 A. Well, I'm -- I'm trying to parse the "run

1 it by." Because I think you're implying that we got  
2 their release or approval for something. And I would  
3 be willing to contend that we -- we informed Velvet,  
4 but I would not say that we were restricted in any way  
5 by Velvet except for areas of confidentiality where we  
6 deferred to their guidance on what was important to  
7 them.

8 Q. Okay. And when you say area -- well, you  
9 may have just answered it. When you say areas of  
10 confidentiality, could you be a little more specific  
11 there? What kind of areas are you talking about?  
12 Areas not encompassed by the Commission's rule on  
13 confidentiality or something else?

14 A. No. In --

15 MS. BELL: Your Honor, I would like to  
16 register a continuing objection to this line of  
17 questioning. It's just irrelevant to the issues  
18 before the Commission.

19 JUDGE HATCHER: Thank you, Ms. Bell.  
20 Your objection is noted and overruled. I can trust  
21 the Commissioners to judge for themselves the  
22 relevancy.

23 Please go ahead, Mr. Keevil.

24 MR. KEEVIL: I think there's a question  
25 outstanding, Judge.



1 THE WITNESS: Okay. Right. In working  
2 with Velvet, it was -- it's been clear to me, whether  
3 it be through the work that we've done together, maybe  
4 it be through the non-disclosures that we've executed  
5 with each other, that confidentiality is of utmost  
6 importance to them in this process.

7 And so it was in respect to that  
8 sensitivity that -- those agreements that deference  
9 was given on matters that had any -- any potential  
10 repercussions in the confidentiality area.

11 BY MR. KEEVIL:

12 Q. Okay.

13 A. It was out of an abundance of caution  
14 that we would seek any guidance on those matters to  
15 make sure that we were not inadvertently doing  
16 something that we shouldn't.

17 Q. In fact, the identity of Velvet itself is  
18 actually confidential. Correct?

19 A. Yes.

20 Q. Thank you. No further questions.

21 JUDGE HATCHER: Thank you.

22 And that brings us to Mr. Clizer.

23 CROSS-EXAMINATION BY MR. CLIZER:

24 Q. Good afternoon, Mr. Lutz.

25 A. Good afternoon.

1           Q.     Before we get too deep into the  
2 questions, I want to ask you just a few to make sure  
3 that the record is clear for what I'm about to  
4 discuss. So when I refer to Schedule MKT, you would  
5 agree with me that I'm referring to the market --  
6 special market rate tariff that Evergy is seeking  
7 approval of. Right?

8           A.     Right.

9           Q.     And for Schedule SIL, that is the special  
10 incremental load service tariff that Evergy already  
11 has in effect. Correct?

12          A.     That is correct. And Missouri West, to  
13 be specific, for Evergy.

14          Q.     Super. I just wanted to make sure that  
15 those terms were clear for the record. All right?

16          A.     Yes.

17          Q.     All right. You've already had quite a  
18 lengthy discussion with counsel for MECG regarding the  
19 benefits that would come from a customer entering into  
20 one of these two types of tariffs. Do you recall  
21 that?

22          A.     I do.

23          Q.     All right. So to be clear, if a customer  
24 takes service under the existing SIL tariff, that  
25 customer could also provide intangible benefits to

1 customers -- to other customers. Right?

2 A. Correct.

3 Q. Right. And there is no explicit language  
4 in the current SIL tariff that says the company has  
5 the right to bring on evidence of those other  
6 benefits. Correct?

7 A. That is -- that is correct.

8 Q. All right. So in both cases, the  
9 benefits are there, but we have a change in language  
10 between the tariffs; is that accurate?

11 A. That is correct. That is correct.

12 Q. All right. My next line of questioning  
13 is relatively simple. If your language is adopted  
14 with regard to the hold harmless, do you believe third  
15 parties like the OPC or Staff would have higher or  
16 lesser scrutiny of the contracts?

17 A. I -- I would hope it would be the same  
18 irregardless of that term.

19 Q. All right. I actually have no further  
20 questions. Thank you.

21 JUDGE HATCHER: Thank you, Mr. Clizer.

22 We'll now go to Bench questions. Are  
23 there any Commissioners who have questions for  
24 Mr. Lutz? Reminder if you're on a phone, it is \*6 to  
25 unmute. Are there any Commissioner questions for

1 Mr. Lutz?

2 CHAIRMAN SILVEY: No questions, Judge.

3 JUDGE HATCHER: Thank you. And once  
4 again, I do want to state for the record we do have  
5 all of our Commissioners here in attendance today.

6 QUESTION BY JUDGE HATCHER:

7 Q. Mr. Lutz, I do have several questions for  
8 you. First, would you please pull up your surrebuttal  
9 testimony?

10 A. I have it.

11 Q. Thank you. I'd like to look at page 4,  
12 lines 14 through 18.

13 A. I'm there.

14 Q. You state that Evergy intends to track  
15 all costs related to the MKT tariff customers  
16 consistent with the Nucor case and through its FAC  
17 mechanism; is that correct?

18 A. That is correct.

19 Q. Can you elaborate on the plan?

20 A. I can at a general level, if that would  
21 be a good place to start and then we can see if  
22 additional detail is needed.

23 Q. Yes, please.

24 A. The intent here is to take all of the  
25 costs that are coming into the company through these

1 types of transactions and make sure that we've  
2 identified and accounted for those that are unique to  
3 these customers. And we pull those out separate,  
4 whether it be through some kind of a special code or  
5 special notation in our books and records, but  
6 something that allows us to pull those out distinctly.

7           The Nucor experience is the best example  
8 and has been most effective in interacting with the  
9 parties, because we can -- we can point to that and  
10 show what our intentions are. And -- and through that  
11 Nucor effort, what you would see would be just a  
12 general delineation of those costs as they're  
13 separated from those that do float through the FAC  
14 charge.

15           So depending on the nature of the service  
16 and the charges that we receive back through that  
17 service, that would dictate what those accounts,  
18 records, details would look like. And I would expect  
19 that because we're using the SPP aspects, they will  
20 vary a bit from what Nucor had, but still be very much  
21 in line with spirit of what we were trying to do  
22 through that exercise.

23           **Q. Okay. And that really leads right into**  
24 **my next question. This case has been compared to the**  
25 **Nucor case. And in that case Evergy committed to a**

1 power purchase agreement through wind power, which it  
2 said would be easier to isolate from other power  
3 sources for tracking Nucor's energy use. Is a similar  
4 arrangement planned here?

5 A. No. There are -- there are no renewable  
6 responsibilities by Evergy under the MKT tariff. In  
7 this scenario, the renewable attributes are brought  
8 into play by the customer. And because we're using  
9 the SPP pricing as our common element, they can bring  
10 their renewable resources into play and use them as --  
11 against -- or in conjunction with maybe is a better  
12 way to say it -- their usage at this location.

13 So they can bring their own renewables  
14 in, manage them, bring them together through the SPP  
15 pricing and have better control over how those  
16 resources serve their purpose with respect to their  
17 load here in the Evergy jurisdiction.

18 Q. Can you explain why customers of the MKT  
19 tariff would be excluded from all riders except for  
20 the license and tax rider?

21 A. The -- the riders that have -- we're  
22 excluding are the ones that are currently in effect.  
23 And as we went through my testimony, you'll -- we  
24 identified like the FAC, the F-- the DSIM, which is  
25 our demand side investment mechanism, also the RESRAM.

1 And we spoke to those, and I can elaborate a little  
2 bit further on each one if you'd like.

3 But we believe that those riders were  
4 intended for purposes outside of this character of  
5 service and we sought to only apply the riders that  
6 were relevant to the service received by an MKT  
7 customer.

8 **Q. You said you could elaborate on that.**  
9 **Would you go ahead, please?**

10 A. Sure. Sure. The -- the biggest one is  
11 the FAC, the fuel adjustment clause. That is the  
12 largest charge, I would offer. And you know, it's --  
13 it's designed to address those -- those fuel costs  
14 that are incurring in between rate cases.

15 And in this scenario, we're relying  
16 entirely on the market to provide service to these  
17 customers. So many of the attributes that are  
18 collected through the FAC aren't applicable. And  
19 those that are, we -- we make provisions and  
20 agreements to isolate and charge through directly to  
21 the MKT customer. So the FAC is not relevant then  
22 in -- in that regard.

23 On the demand side investment mechanism,  
24 we think that it would not apply -- that it would be  
25 thorough the normal opt-out provision of that statute

1 and rule. Those that might not be familiar, the --  
2 the MEEIA, Missouri Energy Efficiency Investment Act,  
3 includes provisions that allow customers to opt out if  
4 they meet certain criteria.

5 We believe that these customers of this  
6 class will be able to meet those criteria and would be  
7 able to exercise their normal opportunity to opt out.  
8 So in a way we're not excluding that one, but expect  
9 that customers will exercise their rights to do so.

10 Under RESRAM, we talked about that in our  
11 testimony in a couple of different ways, both in mine  
12 and Darrin Ives. And we have a situation where a  
13 customer is bringing to the equation 100 percent  
14 renewables. And the way the RESRAM charge is set up  
15 to recover those costs, there are none to recover.

16 Somewhat similar to what we saw with the  
17 SIL rate, we have a situation where there is a  
18 renewable that is in play that -- that can address  
19 what the renewable energy standard was attempting to  
20 do and to do it in a much stronger way than just the  
21 limitations of the, say, 15 percent requirement. So  
22 that -- that led us to pull the RESRAM charge off of  
23 the applicability.

24 Q. And you brought up the -- the  
25 renewable -- renewables. And I wanted to discuss a



1 little bit something that OPC Witness Dr. Marke  
2 brought up in his data response request that  
3 renewables weren't part of this. Can you flesh that  
4 out a little bit more? You touched on it, that --  
5 that Velvet would be introducing their own renewables,  
6 but I'm not sure if that means their own solar fields  
7 on their land or they're purchasing and they're paying  
8 transmission costs. Could you help me with that?

9 A. Right. I believe this to be a -- even a  
10 utility scale purchase power type agreement somewhere  
11 in the SPP footprint. This would not be local onsite  
12 say like rooftop generation. That is not the  
13 character of what we're talking about. We're talking  
14 about large SPP market level renewables.

15 And maybe the distinction is the -- the  
16 ownership of those renewables, the management of those  
17 renewables, all of those aspects of their renewables  
18 are wholly on the customer side.

19 But what happens is as you -- as you  
20 determine the rate and you examine the workings of the  
21 rate, you need to bring the impact of that renewable  
22 back across the line and acknowledge that it is  
23 interacting with our rate designs in a certain way to  
24 achieve an outcome for the customer.

25 So I know that's probably confusing a few

1 folks as far as how those interact, but I -- I  
2 would -- I would reinforce the fact that those  
3 renewables, everything about the renewables and their  
4 physical existence, their operation, their -- their --  
5 the monies paid for those to exist, all of the  
6 interaction with the SPP market of those renewables is  
7 on the customer side and not part of what we do --  
8 would deal with in our execution of this -- of this  
9 rate.

10 Q. Okay. And speaking of the customer side,  
11 I'd like to talk about cost-of-service. Would the MKT  
12 tariff customers be entirely responsible for their  
13 cost-of-service, including the cost of construction to  
14 serve the new customers?

15 A. Yes.

16 Q. I'm going to take that as a yes to both,  
17 their --

18 A. Yes.

19 Q. -- cost-of-service and -- sorry to  
20 over -- over talk you.

21 A. No. No.

22 Q. Thank you, Mr. Lutz.

23 A. No. You're good. You're good. I'm  
24 sorry. But yeah, to -- to both. The rates are  
25 designed to recover the cost-of-service to that

1 customer and yeah, I would -- I would agree.

2 Q. Okay. I have a handful of questions  
3 left. Do you happen to have Ms. Mantle's -- that's  
4 OPC Witness Lena Mantle's testimony there?

5 A. I will need to open it, but I can have it  
6 momentarily.

7 Q. Okay. I'll go ahead and ask my question.  
8 I'm looking on page 3.

9 A. Okay.

10 Q. Ms. Mantle suggests that Evergy West  
11 customers may have to pay additional renewable  
12 resource charges because of the increase in load from  
13 this proposed tariff and its new customers.

14 Can you address that concern and the  
15 proposed tariff language that Ms. Mantle includes in  
16 her surrebuttal?

17 A. Okay. The -- let's see. Where to begin?  
18 The issue of compliance costs. We've talked about  
19 that in opening statements from a couple different  
20 points of view. But -- but the issue is -- is what to  
21 do if costs occur.

22 And what -- what we try to do in our  
23 language is to create a situation where that -- that  
24 increase in cost that is not being attributed really  
25 by any action on the part of Velvet in this case is

1 resulting in a charge.

2 As I just mentioned, they -- they are  
3 bringing their renewables, they will have their  
4 renewables. Our language I think has even set up  
5 details to make sure that that is -- is attested to or  
6 documented properly.

7 But the point being is that their  
8 renewables will help achieve the -- the purpose of not  
9 causing increased costs. What we're -- what we're  
10 trapped against or what the issue is, is the idea that  
11 their load has to be represented in the calculation of  
12 compliance. And if the company's language is  
13 accepted, there's a provision way for that to be  
14 avoided and those subsequent costs to not -- not occur  
15 in the way that's being laid out in some of these  
16 other examples.

17 Now, turning to Lena Mantle's testimony,  
18 her language specifically, you know, just lays out  
19 that if there's a cost, that it should be recovered  
20 from the -- the customers who caused that cost and  
21 that there's not a subsidy or any recovery from  
22 non-participants.

23 And you know, while -- while certainly  
24 being in spirit with what we're trying to do, we're  
25 back to that -- that point I just made about the fact

1 that the compliance mechanism is causing a double -- a  
2 double assessment almost. Where Velvet already has  
3 the renewables, is using it in this case to make their  
4 entire load green, but in -- but simply because of the  
5 execution of the RES mechanism, there's the potential  
6 that additional costs could occur.

7                   And it -- we're just trying to find a  
8 medium in there where we are able to achieve the  
9 intent of the compliance -- RES compliance mandate,  
10 but we're not setting up a situation where customers  
11 have to pay twice or the company has to pay twice for  
12 any step of that. That we tak-- that we find a way to  
13 acknowledge what the customer is bringing to the  
14 equation and we're not harming other customers in the  
15 process. It's just kind of little bit of a puzzle due  
16 to some of the structure of the calculations for the  
17 compliance.

18                   I'm -- you'll have to forgive me. That  
19 was a little bit of a long answer so if I missed  
20 your -- the point of your question, please ask it  
21 again and I'll retry.

22                   **Q. No, you're doing good. Thank you.**

23                   **My next four questions are going to be on**  
24 **the two proposed tariff stipulations.**

25                   **A. Okay.**

1           Q.     These are the same four questions I'm  
2 going to ask of all of these witnesses dealing with  
3 these tariff wordings. So again, I'm not concerned if  
4 I'm the one that asks these questions in the future.  
5 I'm just trying to get these on the record.

6                     What -- first, I want to take up the OPC,  
7 Staff and MCEG proposed Schedule 1.

8           A.     Okay.

9           Q.     What provisions do you oppose and would  
10 you explain why those aren't appropriate?

11           A.     Okay. Yes. Allow me a moment to  
12 organize my thoughts here. I'll try to take them in  
13 order, although I may -- I may be unsuccessful there,  
14 but I will try.

15                     Our first concern is in the availability  
16 section. There's an additional provision of the  
17 second bullet that says the customer has not accepted  
18 discount under 393.1640 in the past five years. That  
19 statute references to economic development riders.  
20 And I think we've been talking about that a number of  
21 times so far today.

22                     It -- we disagree with that. We believe  
23 that those EDRs are -- are valid and applicable in  
24 these situations. You'll even see that in our  
25 language. We've tried to meet -- meet in the middle

1 and provide some assurances that -- that those EDR  
2 provisions are used widely. But the simple exclusion  
3 of it that's offered in -- in the other parties'  
4 tariff proposal is -- is unacceptable to the company.

5 **Q. Okay. Go ahead.**

6 A. The second would be what's been deemed as  
7 the hold harmless language. That would be an  
8 additional provision section in -- in paragraph 4 and  
9 I believe is largely a replication of the SIL  
10 language.

11 The -- the first thing I would state  
12 there is the SIL tariff was -- was brought about in a  
13 completely distinct environment, different inputs,  
14 different considerations. Also was part of a  
15 settlement where the parties worked together on a  
16 number of gives and takes to achieve the final outcome  
17 with this provision being a part of that.

18 So as we turn to the high mark-- the high  
19 load factor market rate, the -- the situation is a  
20 little bit distinct. And the company believes that  
21 although they're -- we're welcome to, you know,  
22 investigate some kind of treatment if there is some  
23 detriment that's -- that's derived inadvertently from  
24 this rate, that to just have a -- a mandated equation  
25 for applying a -- a make whole adjustment to the

1 company without any -- with any consideration of other  
2 factors or -- or measures is not fair.

3 That -- that the company, you know,  
4 should be able to look at this in its entirety and  
5 judge if -- if there is any bearing to the other  
6 factors before just simply applying some make whole or  
7 hold harmless as we've heard it termed. So the  
8 company would reject the addition of that provision.

9 **Q. Thank you.**

10 A. And then -- you bet. And then on -- also  
11 on additional provisions on number seven, on the  
12 RESRAM charge. One of the main concerns that we have  
13 is the -- I'll call it the misappropriation of this  
14 renewable energy contribution charge.

15 I think you'll find when you look at  
16 DRI-2, attachment to Darrin Ives' testimony, the name  
17 is slightly different but the point being that  
18 charge -- that amount of money was set up for -- for a  
19 pretty distinctive purpose that -- that Velvet was  
20 seeking to advance renewables in our area and wanted  
21 to make a positive contribution to that.

22 This -- this suggestion by -- by OPC and  
23 the others would -- would basically claim that and --  
24 and use it to offset any kind of compliance cost that  
25 might come about.



1                   It's our belief that a more elegant  
2 solution is to deal with the calculation of the  
3 compliance cost as we've laid out in our -- our  
4 proposal and that that could achieve I think much of  
5 the same intent of what we all are trying to do here,  
6 but just finding a way to do it through the  
7 calculation instead of -- I don't know -- re--  
8 reappropriating this -- this -- this contribution  
9 development as offered.

10                   I would say those are the main ones.  
11 There's a couple of smaller ones I would want to  
12 highlight back in the availability. We would like to  
13 continue to offer a substation voltage option.  
14 Although transmission is certainly most applicable in  
15 our design case, I don't -- I don't -- I hate to  
16 constrain us prematurely on that.

17                   The substation voltage is relevant.  
18 There -- there -- there is reasonable -- reason to  
19 anticipate that there could be customers that are --  
20 are -- are less comfortable owning those -- those  
21 attr-- or those pieces of plant and would look to the  
22 company to address those. So I think there is some  
23 value in continuing to own -- or offer a substation  
24 voltage in addition to the transmission.

25                   And let me see. One last double check.

1 And that might be my -- my concerns.

2 Right, I believe I would say there is  
3 some additional hold harmless language in additional  
4 provision section paragraph 3 that -- that would bleed  
5 over into the mechanics that are laid out in four.

6 Q. All right. Thank you. And I'm pretty  
7 sure you've already answered my next question. I'm  
8 going to go ahead and ask it just to be sure. Are  
9 there any provisions you believe should be included in  
10 the OPC/Staff/MECG Schedule 1 that are missing? And I  
11 think --

12 A. I wouldn't say that are -- right, I  
13 wouldn't say that they're missing. I think that  
14 we're -- I feel like the two groups are -- are pretty  
15 much aligned on the -- on the factors. It's just  
16 about which -- which choice do we make to go forward.  
17 I don't know that anything is missing from either of  
18 the offerings.

19 Q. Okay. Do you have any other concerns  
20 with the OPC/Staff/MECG offering?

21 A. I think I would only offer that it might  
22 be -- I don't want to call it a failure. That's --  
23 that's much too strong. But I -- I think we cannot  
24 lose sight that there is another part to this -- this  
25 process.

1                   That the tariff that we've proposed here  
2   contemplates a separate filing in a separate  
3   proceeding of -- and the introduction of a  
4   customer-specific market rate contract. And it's in  
5   that proceeding where a lot of detail will be  
6   provided, explored and vetted.

7                   And that I -- I don't want to lose sight  
8   of that. I certainly understand the desire to get the  
9   tariff right and provide a solid foundation for those  
10  future contracts. But I also want to realize that --  
11  that as the Commission ponders this -- this matter  
12  before them, that there -- there is yet another piece  
13  that -- that will allow the cus-- the Commission, the  
14  parties to get comfortable that things are  
15  appropriately structured, that rates are priced in a  
16  way to ensure recovery of costs, that there's another  
17  piece to this puzzle.

18                  So I guess I would just want to make sure  
19  that visibility is kept on that fact and that we don't  
20  get too lost in trying to make this perfect that we --  
21  that we hamstring the ability to bring that second  
22  part of the puzzle into play at a future time.

23                  **Q. Thank you, Mr. Lutz. And this will be my**  
24 **last question for you. I'd like to turn to the**  
25 **Evergy/Velvet proposed Schedule 1.**

1           A.     Okay.

2           Q.     Would you briefly explain the key  
3 provisions that were added? Or if you want, I know  
4 that -- that Evergy and Velvet had deleted some  
5 conditions. If you would walk us through that for the  
6 record and explaining why each was necessary.

7                   I'm -- I am -- I'm aware that there might  
8 be some agreement on the deletion of some language  
9 that you might want to go ahead and mention, but I do  
10 want to make you aware that the Commission is going to  
11 be particularly interested in areas of disagreement.

12          A.     Okay.

13          Q.     But go ahead and -- please go ahead. I'm  
14 sorry.

15          A.     Okay. Will do. And maybe just to be  
16 complete, I'll -- I'll largely just page through or  
17 step through the pages and try to hit the major change  
18 areas.

19          Q.     That sounds good.

20          A.     The availability section --

21          Q.     Yes. And if you could please continue  
22 telling us the section and the paragraph number, I  
23 will keep score at home.

24          A.     Will do. First, beginning in the  
25 availability sections there are a couple of edits

1 there that the company is proposing. I'll start at  
2 the bottom. The third bullet, the strike on the North  
3 American Industry Classifications Code.

4 I believe that we're aligned -- all of  
5 the parties are aligned around this to remove this  
6 availability criteria. So I believe that that's  
7 acceptable I think to all.

8 The one above it in the load factor, this  
9 is something that we've worked on and I think that the  
10 parties' two views are very close. There's just some  
11 subtle differences in the words. I think they kind of  
12 introduce the elements.

13 But the key factor here is we want two  
14 provisions for this definition of load factor. We  
15 want to recognize that customers will have a certain  
16 load factor when they're in a steady state and then we  
17 want to acknowledge that during periods of growth,  
18 during their initial start up and -- or what we call  
19 ramp up, that we have a different measure of that load  
20 factor.

21 Just mathematically there's some problems  
22 when you have a growing load, when you calculate load  
23 factor, you can -- you can actually show a reduction  
24 in that load factor because of that growth. So what  
25 we've got -- and the key word and admittedly it's

1 present in both versions so I'm comfortable with  
2 both -- so is the word "average" being associated with  
3 annual load factor for the ramp up periods. And that  
4 is present in both of the proposals before the  
5 Commission.

6 I've already spoke to the voltage -- the  
7 substation transmission voltage issue so I won't  
8 replicate that here.

9 I would probably move then to the rates  
10 and condition section, paragraph 4. And I think you  
11 will find -- because this is very consistent, but I  
12 think that this is a very important section because  
13 this helps detail what the future contract filing will  
14 look like.

15 This sets out many of the attributes and  
16 components of what that filing will include. I do  
17 believe that the two versions are pretty much aligned  
18 around these terms. Let's see.

19 Then moving into the conditional  
20 provisions, I think we're starting to get into the  
21 topics that we've already discussed with paragraph 3,  
22 paragraph 4 talking about the execution of the hold  
23 harmless and the company's belief that the -- the  
24 method that we've pro-- we have proposed provides the  
25 most balance, provides the full record for the

1 Commission to consider before taking action, instead  
2 of having a -- a formula that just applies a -- a --  
3 an adjustment regardless of the facts.

4 So then six would be the discussion about  
5 the RESRAM that we've already discussed. And I  
6 skipped this one, but also the FAC language that we've  
7 already discussed. So I think those have all been  
8 addressed in some way in my -- my testimony.

9 **Q. And I promised that was my last question,**  
10 **but just a quick follow-up. All of the parties also**  
11 **agree on the 90-day change to cure; is that correct?**

12 **A.** I believe so. I recall as I was looking  
13 at the two versions, I think there was but one place  
14 that we didn't align around the number 90 as far as  
15 our -- our time frame for -- for almost all elements  
16 in this tariff.

17 **Q. Yes. And I noticed that.**

18 JUDGE HATCHER: Just for everyone who  
19 will be testifying in the future, that reference to  
20 60 is on the OPC/Staff/MECG Schedule 1, page 3 under  
21 the paragraph Term.

22 Okay. Mr. Lutz, thank you very much.  
23 Hold on just a minute. We are going to go back to  
24 recross-examination. We will follow the same order of  
25 cross-examination and then that will be followed by

1 redirect.

2 So Velvet, Ms. Bell, that will start us  
3 off for recross-examination of Mr. Lutz. Ms. Bell, do  
4 you have any questions?

5 MS. BELL: No, Your Honor.

6 JUDGE HATCHER: Thank you. And for the  
7 record, Ms. Bell said no. She was a little hard to  
8 hear there.

9 Mr. Mills for Google, do you have any  
10 questions?

11 MR. MILLS: Yes, just briefly.

12 RECROSS-EXAMINATION BY MR. MILLS:

13 Q. Mr. Lutz, turning to the question of the  
14 differences between the hold harmless provisions  
15 proposed by Velvet and Evergy versus those proposed by  
16 OPC, Staff and MECG, is there explicit recognition in  
17 the OPC/Staff/MECG hold harmless provision of the  
18 Commission's ability to look at what you call  
19 intangible benefits?

20 A. I do not recall such provision in their  
21 version.

22 Q. Okay. And in the Velvet/Evergy version,  
23 does the Commission have the ability to look at what  
24 you called intangible benefits and reject those as an  
25 offset to shortfalls in revenue?



1           A.     Yes.  That's -- that is a key attribute  
2 of our proposal.

3           Q.     Okay.  So under the OPC/Staff/MECG  
4 proposal, they can't even look at them.  And under  
5 your proposal, they can look at them and decide if  
6 they don't matter or they shouldn't be considered or  
7 for whatever reason, reject them?

8           A.     Right.  It's -- it's my interpretation of  
9 the OPC language and the fact that it's similar to the  
10 SIL that there would just be a -- a mechanical  
11 calculation done at the time of rate-making where  
12 there would be no -- no real opportunity for, you  
13 know, consideration of those other factors.

14          Q.     Okay.  And in terms of the phrase  
15 "intangible benefits," would it be fair to call those  
16 real benefits that are difficult to quantify?

17          A.     I think that's fair, yes.

18          Q.     Okay.  Now, you were asked some questions  
19 by the Judge and I want to sort of go back to the  
20 process of what the Commission considers when it's  
21 doing allocations among customer classes in rate  
22 cases.  When the PSC makes decisions about those --  
23 those allocations, don't they consider the differences  
24 among the classes when they do that?

25          A.     I think --

1                   MR. WOODSMALL: Your Honor, I don't --  
2 I'd like to hear him tie this back to what question of  
3 yours this is. I think he's now attempting to  
4 redirect on questions that I had. So unless he ties  
5 it back to your question, I'm going to object that  
6 it's outside the scope of this round of testimony.

7                   MR. MILLS: Well, it has -- Your Honor,  
8 it has to do with the question of how the Commission  
9 considers costs that should be assigned between  
10 difference classes of customers. And I think you  
11 asked questions of him that leads to what should be  
12 assigned particularly to MKT customers as opposed to  
13 other classes.

14                  MR. KEEVIL: That was a question from  
15 Mr. Woodsmall, not a question from the Bench so I  
16 would join with Mr. Woodsmall's objection. I mean I  
17 thought this recross was limited to questions from the  
18 Bench.

19                  JUDGE HATCHER: That was my  
20 understanding, that recross was limited to questions  
21 from the Bench. I appreciate the effort, but I was  
22 not distinguishing classes of customers. I was  
23 distinguishing customers on the schedule MKT versus  
24 those not. So --

25                  MR. MILLS: Judge, I think in this

1 instance it's analogous to the allocation of cost  
2 among different customer classes.

3 JUDGE HATCHER: I'll allow it for the  
4 time being. Go ahead.

5 BY MR. MILLS:

6 Q. So in terms of the Commission's  
7 examination of differences among customer classes,  
8 don't they consider things like the fact that  
9 residential customers rely on electricity for heat,  
10 lights, in fact, for health and safety?

11 A. I believe so, yes.

12 Q. And that customers in industrial classes  
13 create jobs and have ripple effects throughout the  
14 economy?

15 A. Yes.

16 MR. MILLS: Thank you, Judge. That's all  
17 I have.

18 JUDGE HATCHER: All right. Thank you.

19 Let's move on to Mr. Woodsmall. Did you  
20 have any recross examination?

21 MR. WOODSMALL: I did. And I'm kind of  
22 going to bounce around here because there were a lot  
23 of questions.

24 RE-CROSS-EXAMINATION BY MR. WOODSMALL:

25 Q. You mentioned about the ability for this

1 customer to opt out of MEEIA costs. Do you recall  
2 those questions from the Bench?

3 A. I do.

4 Q. And is it your intention to state here in  
5 the context of this tariff that they are opted out of  
6 MEEIA costs or that they may be able to opt out under  
7 the normal procedure?

8 A. It's the latter. In the tariff we just  
9 highlight that the customer can exercise that option.  
10 I don't believe the timing is such that Velvet or any  
11 customer has actually exercised that under -- while  
12 being part of an MKT plan.

13 Q. Okay. So just so it's clear, Velvet,  
14 whoever, would have MEEIA costs on their bill until  
15 such point as they make the opt out showing and then  
16 the MEEIA costs would fall off the following January  
17 1st; is that correct?

18 A. Right. It would all be a matter of how  
19 they would synchronize with the statutory timing for  
20 that op out.

21 Q. Okay. But until such point, they will be  
22 charged MEEIA costs; is that correct?

23 A. Right. If the timing works out that way,  
24 yes.

25 Q. Okay. Are you familiar with -- oh, you

1 could tell me the formal name of the program. A  
2 program by which non-residential customers can  
3 purchase RECs from the company?

4 A. Yes. The -- well --

5 MS. BELL: I'm going to object. I  
6 believe this is outside the scope of the Judge's  
7 questions.

8 MR. WOODSMALL: I'm going to tie it  
9 together. I'm just asking if he's familiar with the  
10 program.

11 THE WITNESS: If you're referring to  
12 Missouri West, I'm not.

13 BY MR. WOODSMALL:

14 Q. Missouri West doesn't have a program by  
15 which non-residential customers can purchase RECs?

16 MS. BELL: I'm going to renew my  
17 objection and ask for the Judge to rule on it -- on  
18 whether or not -- the Judge did not ask any questions  
19 about RECs or this program.

20 MR. WOODSMALL: Your Honor, I'm  
21 attempting to lay a foundation to start talking about  
22 your RESRAM questions. RECs and RESRAM are all  
23 intimately connected.

24 JUDGE HATCHER: And I'm going to go ahead  
25 and overrule the objection on that point on promise of

1 linking that together shortly. Overruled. Go ahead.

2 BY MR. WOODSMALL:

3 Q. Do you recall the question, sir?

4 A. I believe I do. I don't believe that we  
5 have a REC sale tariff in the Missouri West  
6 jurisdiction.

7 Q. That's only in the Missouri Metro  
8 jurisdiction?

9 A. Honestly, I think it's only in our Kansas  
10 Central jurisdiction that we have a REC sales tariff  
11 currently approved by the Commission. Are you, by  
12 chance, referring to like the renewable energy rider?

13 Q. There you go. Yeah. And --

14 A. Yes.

15 Q. And that's a mechanism by which  
16 non-residential customers can purchase renewable  
17 energy in the associated RECs; is that correct?

18 A. Right. In that case, it -- they're not  
19 buying RECs per se, but we actually have a -- a  
20 resource in Missouri West jurisdiction, there is a PPA  
21 that backs that up. And they are participating in  
22 that -- that PPA.

23 They're not -- it's not a REC sale  
24 contract in the traditional form where you would go to  
25 either a market source or company source to buy say

1 green-E RECs or other market certified RECs. This is  
2 actual participation in a renewable resource obtained  
3 through a Purchase Power Agreement -- or Power  
4 Purchase Agreement.

5 Q. Okay. And would you agree that in that  
6 instance, those customers are bringing their own  
7 renewables in the form of RECs to the table?

8 A. Yes. Yes, I would.

9 Q. Okay. And are those customers -- do  
10 you -- do you exempt them from the RESRAM charge in  
11 those instances?

12 A. We have not.

13 Q. So in the same situation you would  
14 propose to exempt Velvet, but not these other  
15 customers that participate in the renewable energy  
16 program that you discuss?

17 A. Well, I'm trying to think of the way --  
18 way to address that. Because I believe that there  
19 is -- there's a level of nuance here that's -- that's  
20 I believe being lost. And especially in the Missouri  
21 West, you know, deployment of the renewable energy  
22 rider.

23 It's -- you know, it's largely configured  
24 as a -- as a monetary hedge, meaning that the  
25 participation in their green renewables is converted

1 to an adjustment. You know, it -- the -- I'm -- it's  
2 difficult to draw distinctions between the two or draw  
3 the right comparison between the two because of the  
4 structures.

5 Q. Okay. But let me ask it this way --

6 A. I hesitate to say -- I hesitate to agree  
7 with you completely.

8 Q. Okay. Let me ask it this way then.

9 Through this renewable energy program that you  
10 disgui- -- described, I'm sorry --

11 A. Uh-huh.

12 Q. -- customers may be purchasing energy and  
13 RECs that equals 15 percent of their load; is that  
14 correct?

15 A. They could be, yes.

16 Q. Okay. And even though they are meeting  
17 the RES requirement in Missouri, they are still  
18 charged a RESRAM cost; is that correct?

19 A. That is correct.

20 Q. Okay. We'll move on. You mentioned  
21 somewhere when discussing the EDR -- and I wrote down  
22 on the quote that you attempted to quote "meet in the  
23 middle" end quote. Do you recall that statement?

24 A. I do.

25 Q. I was just looking through the tariff



1 attached to your stipulation from last night. Can you  
2 tell me where that quote "meets in the middle"?

3 A. Right. You'll have to forgive me. I  
4 believe I misspoke. I think what -- what you caught  
5 me on is -- and you if remember, I've been working  
6 feverishly through the --

7 Q. I'm not holding it against you. I  
8 understand.

9 A. Right. I've got -- I have brought into  
10 the discussion items from -- from that that were not  
11 in our Unanimous Stipulation -- Non-Unanimous  
12 Stipulation, you are correct.

13 Q. Okay. And I'm not pointing fingers, but  
14 what you were referring to was things we talked about  
15 in settlement talks. Right? It's not in any formal  
16 document now; is that correct?

17 A. That is. Thank you for pointing that  
18 out.

19 Q. Yeah. No harm, no foul.

20 So and just so the record's clear, there  
21 has been in the context of the tariff that was  
22 attached to your Non-Unanimous Stipulation from last  
23 night, there is no movement on that EDR issue; is that  
24 correct?

25 A. There is no alternative position,

1 correct, to -- to what the OPC has offered, yes.

2 Q. Okay. There was some discussion about  
3 the hold harmless -- I'm sorry, I was giggling at  
4 someone.

5 There was some discussion in response to  
6 a question from the Bench about the hold harmless  
7 language. Do you recall that?

8 A. I do.

9 Q. Let me ask you a hypothetical. Well,  
10 before we start the hypothetical, would you agree that  
11 in your proposed tariff where it talks about capacity  
12 costs, rates for capacity service, are you familiar  
13 with that?

14 A. I am.

15 Q. Would you agree that that provides for  
16 the opportunity for the company to meet capacity needs  
17 of an MKT customer possibly through a PPA or by  
18 building to meet that capacity need; is that correct?

19 A. Correct.

20 Q. Okay. Now the hypothetical. Let's say  
21 you have 100 megawatt MKT customer. So you need  
22 100 megawatts of capacity. Right?

23 A. Okay.

24 Q. You -- you execute a PPA for  
25 100 megawatts of capacity and the customer goes away,

1 closes down, what have you. What happens with the  
2 cost for that PPA?

3 A. Well, I would say that some of that will  
4 be dependent on the language that is memorialized in  
5 the final contract with the customer under the market  
6 rate.

7 Q. Well, let me ask it this way --

8 A. That --

9 Q. Let me ask it this way then. Is it the  
10 company's intention to hold non-MKT customers harmless  
11 from such a PPA?

12 A. I'm -- I'm pausing because I'm trying to  
13 weigh the idea that there could be an upside from that  
14 capacity for non-participating customers if made  
15 available. So I guess what I would say is that we  
16 would -- we would want to look at the full impact of  
17 that to determine whether it was to the customer's --  
18 the non-participating customer's benefit to get that  
19 access to that capacity.

20 But conceptually I would say yes, it  
21 would be our intention to not impact non-participating  
22 customers negatively because of capacity obtained for  
23 customers under MKT.

24 Q. Okay. And similarly if you decided not  
25 through a PPA, but by building combustion turbines to

1 get up to 100 megawatts of capacity and this customer  
2 goes away, would you want to hold customers -- non-MKT  
3 customers harmless from any detriments associated with  
4 that capacity that you built?

5 A. Again, I'll say conceptually, yes, but  
6 the details would be worked out with the respective  
7 customer in the execution of that at the time of the  
8 market rate contract.

9 Q. Okay. Now, you're familiar with the EDR  
10 statute provision in general; is that correct?

11 A. I am.

12 Q. Would you agree that to the extent the  
13 company has a customer join its system and receives  
14 discounts, the company benefits because all the other  
15 customers are paying for that discount?

16 A. Well, I struggle with the  
17 characterization because I -- I think that it  
18 discounts the genesis of the EDR in the first place.  
19 You know, the -- the legislature has reviewed and  
20 approved that mechanism and -- and put it in play  
21 under a specific design. And the company -- and the  
22 Commission through its rule-making and the company  
23 through its tariffs and exercising that, complies with  
24 those.

25 So I -- I hesitate to agree because

1 there's an intent that -- that I think is behind or  
2 foundational to the EDR that we are completely  
3 complying with.

4 **Q. Well, and --**

5 A. You know, whether the company -- the  
6 company may not be harmed by it, but I don't know that  
7 I see it as being a -- like a profit source or  
8 something that's -- that's somehow evil or  
9 unanticipated by the legislature in their execution of  
10 that provision.

11 **Q. And -- and I'm not disputing anything**  
12 **that you said. I'm trying to just ask the simple**  
13 **question and let's go at it this way. Your rates**  
14 **currently have some profit built into them, return on**  
15 **equity; is that correct?**

16 A. Right. Yes.

17 **Q. And some amount of that is captured**  
18 **through energy charges; is that correct?**

19 A. Yes.

20 **Q. So to the extent ABC Company moves into**  
21 **your service area and uses electricity, you're -- the**  
22 **company is going to make more money because there are**  
23 **some amount of ROE in the energy charges; is that**  
24 **correct?**

25 A. I don't -- I don't know. I don't --

1           Q.     Well, we could go back through this. Can  
2 you tell me where you're having problems with it? It  
3 seems pretty simple.

4           A.     Well, it is, but I mean I think what  
5 you're doing in a way is taking advantage of the -- of  
6 the exercise of rate-making and the -- and the  
7 generalization of costs and -- and allocations and  
8 such and -- and characterizing a very specific EDR  
9 step and trying to turn it into, you know, some kind  
10 of a hidden subsidy.

11          Q.     No. It --

12          A.     And -- and I don't think it's hidden at  
13 all. I don't think that there's any -- any effort to  
14 try to game systems and bury charges in the -- in the  
15 energy component or -- I guess is where I'm  
16 struggling.

17          Q.     I'm -- you're trying to read way too much  
18 into the question and I get it. When I was in fifth  
19 grade and I'd read a true/false question, I'd do the  
20 same thing.

21                    But you said that there is return on  
22 equity -- some amount of return on equity that is  
23 captured in energy charges currently; is that correct?

24          A.     Right. I'll just say it this way, that  
25 in the overall rate-making scenario there is the

1 recovery of expenses, there's the recovery and return  
2 on plant, and all of that is cumulated into a revenue  
3 requirement that's captured and recovered through the  
4 company's rate designs through energy charges, demand  
5 charges and customer charges.

6 Q. Right.

7 A. How about that? I'll say that.

8 Q. And -- and to take that one step further,  
9 there is some recovery of ROE in energy charges; is  
10 that correct?

11 A. Say that again. I'm -- I'm -- I'm  
12 struggling to follow your question. Could you ask  
13 that one more time, please?

14 Q. There is some recovery -- not complete  
15 recovery. I'm just saying there is some recovery of  
16 return in the company's energy charges; is that  
17 correct?

18 A. Yes.

19 Q. Okay. So given that there's some  
20 recovery of return in energy charges, the company is  
21 better off with increased sales; is that correct?

22 A. Well, yeah. Everyone benefits from  
23 increased sales.

24 Q. Not disputing that. There -- the company  
25 is better off with increased sales; is that correct?

1           A.     Right. Current rate-making mechanisms,  
2 everyone benefits from increased sales.

3           Q.     So to the extent that a new customer  
4 comes into your service area and uses electricity, the  
5 company will benefit through an increased return on  
6 equity -- com-- compared to all else being equal?

7           A.     Okay. Yes, I'll accept that.

8           Q.     Okay. To the -- then let's take that one  
9 step further. Let's say a customer comes to your  
10 service area and uses increased electricity with an  
11 EDR discount. The company will benefit because  
12 there's increased sales; is that correct?

13          A.     Certainly. Because that part of the  
14 equation hasn't changed in your scenario.

15          Q.     Right. Correct. The discount is borne  
16 entirely by other customers. True?

17          A.     Well, but -- but it's intentional. I  
18 mean I'm trying to -- I guess I want to come back  
19 to --

20          Q.     I'm not denying that. I'm just saying  
21 the discount is borne by all the other customers.

22          A.     Right. The way the EDR is structured,  
23 that -- that cost, yes, is -- is socialized as a -- as  
24 a shared benefit or a shared expense of bringing that  
25 customer into the area under the EDR provisions, yes.



1 Q. Okay. No further questions. Thank you.

2 JUDGE HATCHER: Thank you. That takes us  
3 to Staff. Any cross-examination, Mr. Keevil?

4 MR. KEEVIL: Very -- very briefly, Judge.

5 RECROSS-EXAMINATION BY MR. KEEVIL:

6 Q. Mr. Lutz, on the tariff that was attached  
7 to the Evergy/Velvet stipulation -- excuse me -- the  
8 RESRAM provision, I believe, is paragraph 6 under  
9 Additional Provisions; is that correct, sir?

10 A. It is correct.

11 Q. And if I'm reading this correctly, the  
12 last sentence there says that, Renewable attributes  
13 means renewable energy credits that the MKT customer  
14 has retired or had retired on its behalf.

15 Did I read that correctly?

16 A. You did, yes.

17 Q. Now, in the -- the renewable energy  
18 statute, the provisions for retiring renewable energy  
19 credits and how many need to be retired and all that  
20 good stuff, the -- the statute is directed toward the  
21 utility company's retiring of credits, is it not?

22 A. Correct.

23 Q. Okay. And I don't believe the statute  
24 makes any provision for the utility getting credit for  
25 RECs that the customer retires. Is that your

1 **understanding as well?**

2 A. Correct, yes.

3 **Q. Okay. I think that's -- oh, yeah.**

4 MR. KEEVIL: No, that's all I have,  
5 Judge. Thanks.

6 JUDGE HATCHER: Thank you.

7 And that takes us to Mr. Clizer, Office  
8 of the Public Counsel.

9 MR. CLIZER: Thank you. I want to say,  
10 Your Honor, I didn't have a whole lot of questions,  
11 but boy, you asked some really good ones. So I  
12 apologize in advance, but this might take a little  
13 while. I'll try and make it quick.

14 RE-CROSS-EXAMINATION BY MR. CLIZER:

15 **Q. Good afternoon again, Mr. Lutz.**

16 A. Good afternoon.

17 **Q. All right. Let's start with the RECs and**  
18 **the revenue -- the RESRAM I mean. And you were asked**  
19 **a series of question from the Bench regarding, you**  
20 **know, how you interpreted what Lena Mantle had**  
21 **suggested with regard to the RESRAM and how the**  
22 **company's RESRAM mechanism would work. Do you recall**  
23 **all that?**

24 A. I do.

25 **Q. All right. I want to walk through the**

1 company's mechanism just so I have a good  
2 understanding of how it works and so I can brief it  
3 easily. And to do that, I'm going to ask you to go  
4 down a little hypothetical with me. Are you okay with  
5 that?

6 A. I am.

7 Q. All right. I'm going to have you be  
8 Evergy. I'm going to be a customer who takes under  
9 this tariff. All right?

10 A. Yep.

11 Q. And for the sake of this, I'm going to  
12 say I use 100 megawatts. Which I'm going to ask you  
13 really quick, 100 megawatts is the same as 100,000  
14 kilowatts. Correct?

15 A. Yes.

16 Q. All right. So you're Evergy, I'm a  
17 customer who's taking under the MKT tariff and I take  
18 100 megawatts. You follow me so far?

19 A. I am.

20 Q. And for the purpose of this, there's no  
21 one else for right now. Okay. If I'm buying  
22 100 megawatts of energy from Evergy, Evergy has sales  
23 of 100 megawatts for just -- just right now. You  
24 would agree with that?

25 A. Yes, I do.

1           Q.     All right.  And if there's a RES statute  
2 out there, a renewable energy standard statute that  
3 says Evergy has to -- 15 percent of Evergy's sales  
4 have to come from renewables, you would assume -- or  
5 you would agree with me that 15 percent of that  
6 100 megawatts need to be renewables that Evergy sold  
7 to me.  Would you agree with me?

8           A.     Or -- well, to follow the statute or  
9 there be a retirement of RECs equal to that.

10          Q.     Right.  And again, we're going to --  
11 we're going to walk through this real slow.  I just  
12 want to make sure it's all clear.

13          A.     Okay.

14          Q.     So if Evergy is selling me 100 megawatts  
15 and this RES statute is in place, then either Evergy  
16 has to -- 15 percent of that 100 megawatts has to come  
17 from renewables or you have 15 percent worth of  
18 renewable RECs retired.  Is that accurate?

19          A.     Yes.

20          Q.     And we're just going to refer to that as  
21 15 megawatts, right?  15 percent of 100 is 15?

22          A.     Yes.

23          Q.     Okay.  Great.  So let's add into this  
24 that I, the company, purchase --

25                   MR. KEEVIL:  Customer.

1 BY MR. CLIZER:

2 Q. The customer. Sorry. Thank you. I am  
3 going to purchase 100 megawatts of renewable energy  
4 credits myself and I'm going to retire them. Now,  
5 since I've purchased 100 megawatts of renewable energy  
6 credits and retired them, I can say all of my energy  
7 was renewable. Correct?

8 A. Correct.

9 Q. But the fact that I've purchased  
10 100 megawatts does not mean that Evergy's sold me  
11 100 megawatts of renewable energy. In other words, my  
12 decision to retire 100 megawatts doesn't translate to  
13 Evergy retiring 100 megawatts, correct, worth of RECs?  
14 Sorry.

15 A. No, I need to stop you there.

16 Q. Go ahead.

17 A. Because retiring 100 -- you're switching  
18 into compliance now. Is that what you -- the  
19 execution of compliance under the RES standard? Is  
20 that what you're referring to?

21 Q. Well, I want to make sure that things are  
22 really clear here. So if I retire 100 megawatts of  
23 renewable energy credits as a customer, what can  
24 Evergy claim with regard to that?

25 A. We would have no claim on customer

1 retirements for the purpose of RES compliance.

2 Q. Okay. So again -- and I promise you I'm  
3 going to get to how yours operates. I'm going to give  
4 you your chance to explain it. I'm just going real  
5 slow.

6 For right now, you, Evergy are still on  
7 the hook for meeting that 15 megawatts of renewable  
8 energy imposed by the RES. Correct?

9 A. Right.

10 Q. Okay.

11 A. Absent anything that's on the table  
12 before the Commission today.

13 Q. Right. Okay. Let's get to that part.  
14 So this is the critical part. If I understand  
15 Evergy's proposal, the 100 megawatts of renewable  
16 energy that I have retired, you're going to subtract  
17 that from the amounts of retail sales that Evergy has  
18 provided to me for the purposes of the renewable  
19 energy standard statute. Is that fair and accurate?

20 A. That is correct.

21 Q. Okay. So for the purpose of the RES,  
22 we're going to say since I retired 100 megawatts, it's  
23 as if Evergy didn't sell me anything?

24 A. For the purpose of compliance, yes.

25 Q. Right. Perfect. I wanted to make sure

1 that how this operated was really clear.

2 Okay. Now, I'm assuming that you're  
3 aware there's this legal issue out there. And I'm not  
4 about to ask you any legal questions.

5 A. Thank you.

6 Q. But I do have a series of questions that  
7 goes on from this. I want you to ask you, let's  
8 assume that there's a third party who comes in  
9 somewhere down the line. We're going to call them  
10 Regrow Missouri. And they bring a legal challenge to  
11 this tariff and they say you can't do that, Evergy.  
12 And a court agrees with them.

13 So we're back to the situation where  
14 Evergy is on the hook for 15 megawatts. Can we just  
15 assume that occurs for just a second? Are you okay  
16 with that --

17 A. Okay.

18 Q. -- under that scenario?

19 A. For illustration, sure.

20 Q. Under that scenario between you and me,  
21 who should pay for that 15 megawatts of renewable  
22 energy?

23 A. And you being the MKT customer and me  
24 being the company?

25 Q. Yes.

1           A.     Well, I would say it's probably not  
2 clear. I think that the two of us would have to talk  
3 about it.

4           Q.     Let's add in another party. Let's add in  
5 all the other customers. Is the answer going to be  
6 all the other customers or is it still going to be  
7 someone between Evergy and the MKT customer?

8           A.     Well, certainly the role -- or the goal  
9 is to not have other customers cover that cost. But I  
10 think that the way to achieve it is where you're  
11 trying to lead and that is to create a structure where  
12 that cost is -- is dealt with in a different way. So  
13 I mean I think we have to start to jump towards the  
14 conclusion a bit to get -- get to the answer.

15          Q.     That's fair. Honestly, I wasn't trying  
16 to lead anywhere. I really wanted to know, you know,  
17 what happens if this goes wrong, who's going to pay  
18 for it? But I'm actually going to --

19          A.     Well --

20          Q.     Okay.

21          A.     Well, Mr. Clizer, I guess what I was just  
22 going to say is that, you know, as we -- as we get  
23 further down the stream, there's higher amounts of  
24 speculation for the details. You know, like what is  
25 the nature of the -- of the lawsuit? What -- what



1 aspect of it? Was it an issue with simply the  
2 calculation? Was there, you know -- what -- what --  
3 what was the nature of the ruling?

4                   There -- there are a lot of key -- key  
5 facts, if you will, that I think start to inform  
6 the -- the final answer on what -- what we would do or  
7 what the customer would do.

8                   But I -- I can talk from just a spirit  
9 perspective, you know, which is probably more relevant  
10 to where we're at today is that we are trying to not  
11 create a situation where there's costs being created  
12 unreasonably or unnecessarily and that -- that  
13 additional recoveries are being made when -- when in  
14 this case the -- the renewables have already been  
15 secured, retired and -- and used, you know, for the --  
16 for the purpose of what the RES is trying to  
17 accomplish. So I hesitate on some of these because  
18 the devil's in the details.

19               **Q.**     Well said. I'm actually going to move on  
20 from that issue. So thank you. That was -- that was  
21 very helpful.

22               **A.**     Okay.

23               **Q.**     All right. Now, you were asked a  
24 question from the Bench whether or not it was your  
25 intent that MKT customers would be entirely

1 responsible for the cost of -- that they caused to be  
2 incurred. I butchered that ending, but do you recall  
3 what I'm referring to?

4 A. I do.

5 Q. And you -- you agreed. Right? It is  
6 Evergy's intention that MKT customers are going to be  
7 responsible for their own costs. Correct?

8 A. Correct. Correct.

9 Q. I mean it is accurate to say that Evergy  
10 is not seeking to have non-MKT customers subsidizing  
11 the MKT customers. Right?

12 A. Right. Not by design. I mean that's not  
13 the intent, no.

14 Q. And you would agree with me that if  
15 everything goes according to plan and the MKT  
16 customers are able to cover their own costs, there is  
17 no need for a hold harmless provision in that regard.  
18 Right?

19 A. Correct. That -- in my conversations I  
20 think with Mr. Woodsmall, that was the -- the --  
21 the -- you need an event, you need that -- that  
22 triggering event for those issues to come into play,  
23 so yeah, I agree.

24 Q. Right. The hold harmless agreement only  
25 matters if, for whatever reason, MKT customers don't

1 cover all of their own costs. Right?

2 A. Correct. Correct.

3 Q. Right. And there was a lot of discussion  
4 of Nucor in kind of regards to that. Do you remember  
5 that?

6 A. I do.

7 Q. And just to be clear, when it came to the  
8 SIL tariff, the company was willing to forgo the kind  
9 of intangible benefits analysis that you want in this  
10 tariff. Correct?

11 A. Correct. The situation was quite a bit  
12 different with -- with Nucor, yes. Plus, I pointed  
13 out that that was achieved as a part of a settlement.  
14 So there -- there was a broad set of gives and takes  
15 that occurred through that -- that agreement and this  
16 was part of that.

17 Q. And just -- just so I have it in the  
18 record, Nucor did take service under an SIL contract.  
19 Right?

20 A. Correct.

21 Q. And you would agree with me that Nucor  
22 did produce benefits?

23 A. I believe so. I believe that they --  
24 they performed largely as expected.

25 Q. That's honestly enough.

1           A.     Yeah.

2           Q.     Thank you. All right. Just a couple of  
3 more things really quick. You had talked about how it  
4 was the intent -- well, you had gotten a question from  
5 the Bench regarding riders. Do you recall that?

6           A.     I did.

7           Q.     And you said that the intent was to  
8 exclude MKT customers from all riders currently in  
9 effect. Do you recall that?

10          A.     I do.

11          Q.     All right. What about riders that are  
12 not currently in effect; i.e., that might come into  
13 effect in the future?

14          A.     Right. My experience with that, I mean a  
15 few of these riders have come into being since I've --  
16 I've been here. And -- and so I think the process  
17 that we usually follow is we review the proceeding  
18 that brings that into play and then we would execute  
19 tariff revisions where appropriate to deploy that  
20 consistent with the outcome of the filing that brought  
21 the rider into -- into -- into being.

22          Q.     If there was a statute that imposed a  
23 rider and did not give discretion, it effectively said  
24 all customers must be subject to this rider, you would  
25 agree with me that in the case of this MKT tariff, it

1 would need to be adjusted to reflect that rider.

2 Correct?

3 A. Well, I would just say that it would be  
4 part of that consideration. I would -- I would -- I  
5 don't want to constrain the future, I guess, based on  
6 my response today, but I would say that if we had a --  
7 a mandated cost recovery item, we would consider that  
8 and look for the appropriate way to -- to include it  
9 on all of the applicable tariffs that the company has,  
10 yes.

11 Q. I'm sorry. I just remembered a question  
12 I had regarding Nucor. Can you tell me --

13 A. Okay.

14 Q. -- was Nucor initially served off the SIL  
15 or did they first get served under a tariff with an  
16 EDR discount?

17 A. I -- I believe that they -- they were in  
18 a different place as far as construction relative to  
19 the rate-making and -- and the filings that we did. I  
20 believe they were already constructing. So they had  
21 power for construction purposes in advance of the  
22 filing. So I believe they went straight on the SIL  
23 rate.

24 Q. So just to make sure it's very clear --

25 A. The si-- sorry.

1           Q.     I'm sorry. Just to make sure it's very  
2 clear, Nucor did not take an EDR discount or an EDR  
3 rate?

4           A.     I don't believe so. I don't believe so.  
5 I mean -- and what I was just going to finish up was,  
6 you know, this situation we've got a much longer glide  
7 path, if you will, from -- from when a need was  
8 established to -- to when it will be executed.

9                     You know, the -- the decision-making  
10 process, as in many of the things that are occurring  
11 in this context, are kind of on a different timeline  
12 and different -- different -- positioned differently  
13 relative to the company than Nucor was.

14          Q.     Thanks. All right. Last -- last line of  
15 questioning. It should be fairly simple. You were  
16 asked a series of questions from the Bench regarding,  
17 you know, what would you add or subtract from this  
18 tariff or that tariff. I want to go through some of  
19 the differences real quick that I don't think were  
20 mentioned just to knock them out of the way.

21                     So do you have a copy of the  
22 demonstrative from the OPC that was sent out?

23          A.     I do. I've got it.

24          Q.     All right. Starting under the first  
25 bullet point for availability, at the end there's a

1 line that says, Provided the new customer's current  
2 load reaches a monthly demand minimum of 50,000  
3 kilowatts.

4 Would you find that objectionable?

5 A. I would not.

6 Q. If you'll flip over two pages under  
7 availability continued, starting with the paragraph  
8 that reads, Service under this tariff. At the very  
9 end there was a line that was struck that reads,  
10 Unless otherwise ordered by the Commission when  
11 approving a contract for service under this tariff.

12 Would you object to the -- striking that  
13 line?

14 A. I would not.

15 Q. Flipping over two more pages under  
16 availability continued again with the paragraph  
17 starting, Availability of service under this tariff.  
18 At the end of the paragraph there's a line that's been  
19 added that says, Availability is subject to Commission  
20 review.

21 Would you object to adding that line?

22 A. Let's see. I just want to make sure I  
23 notice the strike above it as well. So just looking  
24 at the entire context.

25 Q. I do apologize. That was not

1 intentional. I'm trying to move quickly. Yes, would  
2 you be okay with striking "or the Commission" and  
3 adding "availability subject to Commission review"  
4 both of those together?

5 A. Right. No, I would not object to either  
6 of those things.

7 Q. Super. And then flipping over another  
8 page and way down at the bottom under additional  
9 provisions, there's an addition that reads, Identified  
10 in the company rules and regulations. As applicable  
11 SPP settlements will be applied at the time service to  
12 the -- and then continued on the next page -- active  
13 billing period.

14 Would you object to the addition of that  
15 language?

16 A. I would not -- I would not object to  
17 that.

18 Q. Super. That was all of my questions.  
19 Thank you very much.

20 A. Okay.

21 JUDGE HATCHER: Thank you.

22 And that brings us to redirect from  
23 Everygy. Any questions on redirect?

24 MR. FISCHER: Yes, Judge. I have a  
25 number. He's covered quite the waterfront. Before I



1 begin, I'd like to ask whether my witness or my court  
2 reporter needs a break at all? He's been on the stand  
3 for almost two hours.

4 JUDGE HATCHER: Very thoughtful. I was  
5 coming to the same question. I was going to go after  
6 Mr. Lutz, but if anyone needs a break now, sounds like  
7 a good time.

8 MR. CLIZER: I would prefer after, if  
9 possible.

10 JUDGE HATCHER: Let's go ahead and -- and  
11 go through and we'll see how far we get. Go ahead.

12 MR. FISCHER: All right. Thank you,  
13 Judge.

14 REDIRECT EXAMINATION BY MR. FISCHER:

15 Q. Mr. Lutz, they covered a lot of the  
16 waterfront with you. I think I'd like to structure my  
17 redirect by going to the Judge's questions and  
18 covering some of the issues that way.

19 A. Okay.

20 Q. Particularly I believe he asked you a  
21 question about what provisions do you oppose. And the  
22 first one that you mentioned was the provision that  
23 the Public Counsel and MECG and Staff have regarding  
24 the requirement that they -- the customer not be using  
25 an EDR for five years. Do you recall that?

1           A.     I do.

2           **Q.     Is it your understanding that the EDR is**  
3 **a creature of statute?**

4           A.     It is. I do, yes.

5           **Q.     Does the company have discretion to deny**  
6 **a customer that is eligible under the statute from**  
7 **using that EDR?**

8                   MR. WOODSMALL: Your Honor, I object.  
9 It's a legal question.

10                   MR. KEEVIL: It's also misrepresenting --  
11 it's also misrepresenting the -- the tariff. The  
12 tariff does not purport to prevent someone from using  
13 the EDR. The tariff purports to prevent someone from  
14 using the MKT tariff who has used the EDR. So  
15 there's -- Mr. Fischer is misrepresenting the tariff  
16 language.

17                   JUDGE HATCHER: Mr. Fischer?

18                   MR. FISCHER: Judge, Mister -- Mr. Keevil  
19 may be right. I may have made a mistake on how I  
20 stated that. My -- my intention was that the -- my  
21 intention was to ask the question whether the company  
22 had discretion in denying a customer that wanted to  
23 use the EDR under the statute, if they were eligible  
24 under the statute could the company deny that.

25                   MR. WOODSMALL: Still a legal question.

1 JUDGE HATCHER: I'm going to overrule and  
2 allow the answer.

3 Go ahead, Mr. Fischer.

4 THE WITNESS: Okay. I believe that our  
5 only ability to deny is applicability terms. As long  
6 as they're in compliance with those, we -- we would  
7 issue the EDR.

8 BY MR. FISCHER:

9 Q. Okay. And without the ability to have an  
10 EDR, do you believe that it would be more difficult or  
11 less difficult to attract customers to the Kansas City  
12 area region?

13 MR. KEEVIL: Objection, calls for  
14 speculation. "Do you believe."

15 JUDGE HATCHER: Mr. Fischer, do you have  
16 a response?

17 MR. FISCHER: Well, again, Mr. Lutz has  
18 been doing this for 18 years it sounds like. And  
19 I can -- I can rephrase it to say -- if you'd like,  
20 but I think he can answer the question.

21 JUDGE HATCHER: No. I'm going to go  
22 ahead and overrule.

23 Please go ahead and answer the question.

24 THE WITNESS: Yes. Mr. Fischer, I've  
25 worked on a few of these large customer related things

1 and -- and yes, that price sensitivity is a  
2 significant issue. And I think that the lack of an  
3 EDR would be problematic.

4 BY MR. FISCHER:

5 Q. In the case of Velvet, which we're  
6 talking about in this case, is the EDR being used as  
7 any kind of transition to the new tariff?

8 A. I believe it is, yes.

9 Q. And would you explain why that's  
10 necessary is your understanding?

11 A. Right. Under my understanding and --  
12 and -- and exhibited in our testimony and -- and --  
13 and -- both written and oral -- is that there is a  
14 ramp up period associated with these customers. That  
15 unlike many where they could, you know, flip a switch  
16 and be at full load, this will take a period of time,  
17 potentially five years, for us to get to that steady  
18 state load.

19 And so allowing the EDR and the -- and  
20 the large power rate to be that introductory rate  
21 schedule, it allows for that ramping. It allows us to  
22 keep the high-- the higher thresholds that we desire  
23 for the special rate and allow the customer to kind of  
24 grow into it as opposed to, you know, some other  
25 approach.

1                   So certainly the EDR and the large power  
2 rate give us that transition that works well for not  
3 only us, but for the customer.

4                   **Q.     And is your tariff, your MKT tariff,**  
5 **designed just for Velvet or for others?**

6                   A.     Certainly for others. I mean the design  
7 case element can't be ignored, but we've certainly had  
8 conversations with other customers where we've been  
9 able to test and make sure that what we're doing makes  
10 sense for a broader -- broader source of potential  
11 customers than just Velvet.

12                  **Q.     Okay. Going on to the second major area**  
13 **that you had concerns with, I think it was in the hold**  
14 **harmless area in paragraph 4.**

15                  A.     Yes.

16                  **Q.     Do you recall those questions?**

17                  A.     I do.

18                  **Q.     I believe in those discussions you talked**  
19 **about you believe the Commission should consider**  
20 **intangible factors; is that right?**

21                  A.     Yes.

22                  **Q.     Is another way of saying that that they**  
23 **should consider externalities and other benefits?**

24                  A.     Yes.

25                  **Q.     In your 18 years around rate-making here**

1 at the Missouri Public Service Commission, have you  
2 heard parties suggest or perhaps read orders from the  
3 Commission that suggested that the Commission should  
4 consider all relevant factors in general rate cases?

5 A. Yes. I mean that's almost the perfect  
6 phrasing I think for what -- what our goal, is just to  
7 make sure the full breadth of factors are being  
8 considered before acting. Our -- our concern is with  
9 this prescriptive language that drives to a conclusion  
10 without any opportunity to -- to -- to analyze and  
11 understand what's going on.

12 Q. So is it my understanding you believe the  
13 Commission should take into account all sides of the  
14 issue?

15 A. Yes.

16 Q. And have you read orders that the  
17 Commission -- for example, the recent electric -- the  
18 transportation electrification order where they took  
19 into account other things besides just the rate-making  
20 aspects? They would have taken into account  
21 efficiency and off-peak usage and that kind of thing?

22 A. Certainly. I think that's a good recent  
23 example.

24 Q. And in a MEEIA case, would they take more  
25 into account, including social benefits and public

1 policy factors in developing their MEEIA rates?

2 A. Yes.

3 Q. You were also asked questions about  
4 whether industrial -- whether you'd ever heard of  
5 industrial customers having such things taken into  
6 account. Are you familiar with a case involving  
7 Noranda a few years ago?

8 A. From a distance, but yes, I am familiar.

9 Q. Do you know if the Commission took into  
10 account the employment situation of southeast Missouri  
11 in resolving that case?

12 A. I believe they did, yes.

13 Q. And is it your understanding that in the  
14 Nucor case, the Commission took a look at economic  
15 development benefits and employment benefits and tax  
16 revenues and those kinds of things were part of that  
17 record?

18 A. Yes.

19 Q. All of those things would be considered  
20 part of all relevant factors. Is that your  
21 impression?

22 A. Agreed. And I think that's definitely in  
23 the spirit of what we're -- what we're seeking in the  
24 proposal that we have.

25 Q. So that's what the company's asking for,

1 that the Commission consider all relevant factors when  
2 it's looking at whether the costs -- or whether the  
3 revenues are exceeding the costs and whether there  
4 should be an adjustment?

5 A. Correct.

6 Q. The third area that you suggested that  
7 you were concerned about was the RESRAM charge. Well,  
8 I think you've covered that quite -- quite adequately.

9 You were asked about the substation  
10 voltage, I believe. And is it your understanding that  
11 the -- that the company -- that Evergy's proposed  
12 tariff has deleted any discretion in increasing the  
13 voltage levels?

14 A. Correct.

15 Q. Was that taken out because the Staff and  
16 Public Counsel raised that concern?

17 A. It was. Certainly we were seeking to  
18 find as many opportunities to come together as we  
19 could.

20 Q. I believe you were also asked whether you  
21 had any other concerns. Did you discuss at all the  
22 concern about the securitization provision in the  
23 Public Counsel's tariff?

24 A. Yes. There was some questions about  
25 that, yes.



1           Q.     What's -- what's the company's view about  
2 whether that should be included in the tariff that the  
3 Commission might approve?

4           MR. WOODSMALL: Your Honor, is he asking  
5 a legal question about whether a securitization charge  
6 can be exempted? Or is he just, you know, asking him  
7 to talk about securitization? Because there's a  
8 statute that says all customers have to pick up  
9 securitization costs.

10          JUDGE HATCHER: That's not the question I  
11 heard.

12          MR. FISCHER: I'm sorry? Go ahead.

13          JUDGE HATCHER: No, I -- is that an  
14 objection?

15          MR. WOODSMALL: Yeah. My objection was  
16 is he asking him to give a legal conclusion about  
17 whether securitization costs can be exempted for a  
18 particular customer?

19          JUDGE HATCHER: That's not even the  
20 question I heard.

21          MR. WOODSMALL: Okay.

22          JUDGE HATCHER: Okay. So overruled if  
23 that is an objection.

24          MR. WOODSMALL: Would you have him repeat  
25 the question then?

1 JUDGE HATCHER: I think we're getting  
2 right there.

3 MR. WOODSMALL: Okay.

4 JUDGE HATCHER: Mr. Fischer?

5 MR. FISCHER: I'll just rephrase it.

6 JUDGE HATCHER: Yes, please.

7 BY MR. FISCHER:

8 Q. Let me rephrase it, Mr. Lutz. What is  
9 the company's view about whether the provision in the  
10 Public Counsel's tariff related to the securitization  
11 should be included?

12 A. I think it should not. I think it's  
13 premature and -- and I think our proposal has left  
14 that for the securitization filing and the process  
15 that I described to deal with it in that context.

16 Q. Has the Commission granted Evergy a  
17 securitization surcharge?

18 A. No.

19 Q. In the case of Nucor, the Public Counsel  
20 has suggested that there is just a straight hold  
21 harmless clause I think is how they've referred to it  
22 or something like that. In the event the Commission  
23 looked at the Nucor costs and revenues in some future  
24 rate case, would you expect them to consider all  
25 relevant factors in that decision?

1           A.       Yes.

2                   MR. FISCHER:   Okay.  Judge, with that,  
3 that's all the questions I have.

4                   JUDGE HATCHER:  Thank you.  We are going  
5 to go on recess until 3:15.  Everyone please go  
6 stretch your legs.  3:15.  We're at recess and off the  
7 record.

8                   (A recess was taken.)

9                   JUDGE HATCHER:  All right.  The hour of  
10 recess having expired, let's go back on the record.  
11 We are in the afternoon stages of our hearing for  
12 Evergy Missouri West's request for a special high load  
13 tariff.  That is File Number EO-2022-0061.

14                   We are about to take up the testimony of  
15 Mr. Darrin R. Ives of Evergy.  Mr. Ives, if you'll  
16 please speak up on WebEx, I will swear you in.

17                   THE WITNESS:  Judge, this is Darrin Ives.  
18 Can you hear me?

19                   JUDGE HATCHER:  Yes, sir.  Thank you.

20                   (Witness sworn.)

21                   JUDGE HATCHER:  Thank you.  And  
22 Mr. Fischer, your witness.

23                   MR. FISCHER:  Thank you, sir.

24                   DARRIN R. IVES, having been first duly sworn,  
25 testified as follows:

1 DIRECT EXAMINATION BY MR. FISCHER:

2 Q. Mr. Ives, could you state your name and  
3 address for the record?

4 A. Yes. My name is Darrin Ives. My address  
5 is 1200 Main, Kansas City, Missouri.

6 Q. Are you the same Darrin Ives that caused  
7 to be filed in this case confidential and public  
8 versions of your direct testimony, which have been  
9 marked as Exhibit 1 and 2 respectively, and  
10 surrebuttal testimony, which has been marked as  
11 Exhibit 3?

12 A. I am.

13 Q. Do you have any changes or corrections  
14 that you need to make to any of those testimonies?

15 A. None that I'm aware of.

16 Q. If I were to ask you the questions  
17 contained in those testimonies, would your answers be  
18 the same, and are they true and accurate to the best  
19 of your knowledge and belief?

20 A. Yes.

21 MR. FISCHER: Judge, with that, I would  
22 move for the admission of Exhibits 1, 2 and 3 and  
23 tender Mr. Ives for cross-examination.

24 JUDGE HATCHER: Thank you, sir. Are  
25 there any objections to the admission of Exhibit

1 Numbers 1, 2 or 3 onto the hearing record?

2 MR. KEEVIL: This is not an objection,  
3 Judge, but just a question. One and two -- which one  
4 is which?

5 JUDGE HATCHER: That is interesting. One  
6 is the confidential version and two is the public. Is  
7 that correct, Mr. Fischer?

8 MR. FISCHER: Yes, that's how it was  
9 marked.

10 MR. KEEVIL: So 1 is confidential, 2 is  
11 public. Okay.

12 JUDGE HATCHER: Okay. Yes. Go ahead. I  
13 thought I heard somebody.

14 Without objection then, Exhibits 1, 2 and  
15 3 are admitted onto the hearing record.

16 (Exhibits, 1, 2 and 3 were received into  
17 evidence.)

18 JUDGE HATCHER: Mr. Fischer has rendered  
19 the witness. According to my list, that means  
20 cross-examination by Velvet.

21 MS. BELL: Thank you, Your Honor.

22 CROSS-EXAMINATION BY MS. BELL:

23 Q. Good afternoon, Mr. Ives. Making sure  
24 you can hear me okay?

25 A. I hear you just fine. Good afternoon.

1           **Q.     Great. Thank you. First question, if**  
2 **the Commission accepts the OPC proposed tariff as**  
3 **attached to the OPC stipulation as Schedule 1, would**  
4 **Evergy offer a contract to Velvet?**

5           **A.     No. I don't believe Evergy can offer**  
6 **under the conditions that are in the OPC, Staff and**  
7 **MECG tariff. And I also believe it's unlikely a**  
8 **prospective customer can accept under that tariff.**

9           **Q.     There has been a lot of discussion about**  
10 **a deficiency in a rate case where the revenues did not**  
11 **exceed the cost. What happens if revenues exceed the**  
12 **expenses?**

13          **A.     If revenues exceed the expenses in a**  
14 **case, then -- I'll just give you a good example. If**  
15 **everything worked exactly as intended in pricing out**  
16 **the contract, the -- the current proposal by design**  
17 **case customer Velvet has the -- the renewable charge.**  
18 **And -- and under -- under our tariff proposal, that**  
19 **would be a benefit to -- to all customers, all -- all**  
20 **non-MKT customers. And -- and those revenues in**  
21 **excess of costs would -- would flow back in that case**  
22 **to the benefit of all those non-MKT customers.**

23          **Q.     Okay. So let's look at this, the energy**  
24 **rate. So the first piece being energy priced at SPP**  
25 **day-ahead prices, how would you expect that price to**

1 **compare with revenues?**

2 A. Yeah. So -- so -- so energy is designed  
3 in our tariff proposal to be a direct pass-through of  
4 the costs that we're incurring to supply energy at  
5 that SPP node for Velvet. So it -- it should --  
6 energy -- energy should be a straight pass-through.  
7 Revenues should equal cost.

8 Q. Okay. And would you agree that the  
9 customer service charge as proposed in the -- the  
10 customer service charge proposed for MKT customers is  
11 higher than the customer service charge proposed in  
12 the SIL tariff?

13 A. Yes. And -- and I think to be fair,  
14 designed under some of the same construct and thought  
15 as how we came up with that -- that SIL, but  
16 recognizing differences in service, the design  
17 customer, Velvet, as opposed to Nucor under the SIL.

18 Q. And -- and you recently filed a rate case  
19 in which you made a comment about whether or not the  
20 estimates in the Nucor contract for cost exceeds the  
21 revenues as expected; is that correct?

22 A. In -- in terms of whether the revenues  
23 exceed the cost as expected?

24 Q. Uh-huh.

25 A. Yes.

1           Q.     Okay.  There's been a lot of discussion  
2 about the addition to the OPC stipulation regarding  
3 the Schedule PED.  Do you recall that?

4           A.     I do.

5           Q.     Okay.  And the stipulation proposed by  
6 Evergy and Velvet is silent on that issue?

7           A.     It is.

8           Q.     There's no prohibition?

9           A.     No prohibition to -- to utilize --  
10 utilization of PED in advance of going onto the market  
11 tariff.  There is a prohibition of stacking the PED  
12 with the market tariff.

13          Q.     And the OPC stipulation, in your  
14 understanding, is a complete prohibition of the use of  
15 PED for --

16                   THE COURT REPORTER:  I'm sorry.  I didn't  
17 hear the end of what she said.

18                   THE WITNESS:  For five years.

19                   JUDGE HATCHER:  Ms. Bell, could you --  
20 Ms. Bell, could you repeat that question, please?  And  
21 perhaps maybe move your microphone just a tad bit  
22 closer to your mouth?

23                   MS. BELL:  Sure.

24 BY MS. BELL:

25          Q.     So the OPC stipulation is -- is proposing



1 **a complete prohibition on the use of PEDs for MKT**  
2 **customers?**

3 A. Well, it -- to be technical, it says that  
4 anybody that's going onto the MKT tariff will not have  
5 accepted a discount under the PED in the past five  
6 years.

7 Q. Okay. And how long currently is the PED  
8 discount available?

9 A. Well, so the -- so the PED provides a  
10 five-year discount. And the legislation that provides  
11 for it has a sunset. I don't have it in front of me.  
12 I think probably it sunsets in the latter part of the  
13 2020s, like 2028.

14 Q. Okay. Do you have -- so between the two  
15 positions, do you have any thoughts on how to resolve  
16 the conflict between the two stipulations?

17 A. Yeah, I have a couple. I mean I'll start  
18 with the foundation and -- and -- and why we're in the  
19 position we're -- we're in in the draft that we  
20 submitted. You know, and I think without belaboring  
21 the point, I think the PED is statutorily provided for  
22 and I think there is generally no -- no prohibition  
23 today from a customer moving on to a special contract  
24 tariff or an SIL tariff or any other tariff from --  
25 from the PED. So that's why we're at where we're at.

1 All that said, Mr. Lutz alluded to in his  
2 discussion some thoughts that were discussed with the  
3 parties during our discussions to try and work this  
4 out. Certainly -- certainly we've made a lot of  
5 progress on a lot of fronts, as you can tell by the  
6 similarity of the tariffs during those discussions.

7 MR. KEEVIL: I'm going to object, Judge,  
8 settlement discussions being privileged per Commission  
9 rules.

10 JUDGE HATCHER: Let's hold on just a  
11 minute. Counsels, we have an objection. I want to  
12 make sure that I get that. Mr. Keevil, go ahead.

13 MR. KEEVIL: Yeah, the Commission rules  
14 are fairly clear that settlement discussions are  
15 privileged communications. And it sounds to me like  
16 that Mr. Ives is about to delve into settlement  
17 discussions that did not make it into either of the  
18 filed stipulations with the tariffs attached. So I  
19 think it's objectionable as being privileged  
20 settlement discussions.

21 MR. WOODSMALL: I join in that. I gave a  
22 pass when Mr. Ives did it, now -- or when Mr. Lutz did  
23 it, and now it seems that Mr. Ives is doubling down on  
24 it. So yeah, I would object.

25 JUDGE HATCHER: I -- I am not going to

1 rule on the objections right now, because I did also  
2 let that pass when it was first mentioned. It  
3 didn't -- it was uncomfortable, but it didn't seem to  
4 cross a line.

5 I'm going to ask Ms. Bell, if you could  
6 perhaps rephrase or -- or get at your issue perhaps a  
7 different way.

8 MS. BELL: Your Honor, I think my -- I  
9 think my question is not whether -- about any sort of  
10 settlement discussions. My question is, does Mr. Ives  
11 have a -- have any independent thoughts of his own on  
12 how to resolve the conflict between the two positions  
13 of the parties.

14 JUDGE HATCHER: Okay. I'm going to let  
15 that go. Go ahead, Mr. Ives.

16 THE WITNESS: Thank you. And not  
17 intentional to move into settlement discussions. I  
18 was actually just trying to restate what was in the  
19 front page of OPC and parties' stipulation that  
20 indicated parties had met repeatedly through the  
21 pendency of the case in an effort to reach settlement.  
22 So I was trying to restate that point.

23 But -- but regardless, when -- when we  
24 saw at five o'clock last night that -- the first  
25 indication of anything in the record in this docket

1 around the Schedule PED, which was the item inserted  
2 into OPC, MECG and Staff's proposed tariff, we  
3 certainly had some discussions over the evening  
4 contemplating that.

5                   And feel comfortable that there is a  
6 solution -- which it's already been discussed in  
7 testimony in some respects from the standpoint that  
8 design case customer Velvet has already indicated that  
9 they don't intend to use the economic development  
10 rider through the entire period that would be  
11 available to them.

12                   They've indicated in their letter of  
13 support, I believe, that they would intend to move to  
14 this market tariff in 2025, which would be somewhere  
15 shy for sure of the five years they'd be eligible to  
16 participate in that.

17                   We could memorialize that thought process  
18 to, as Mr. Lutz indicated, find a way to meet in the  
19 middle from where these two stipulations are in front  
20 of the Commission today that said if you -- you could  
21 either be on PED for two years or up to an average --  
22 average monthly peak of 50 megawatts, recognizing  
23 where we've been all along, that the ramp is an  
24 important characteristics -- important characteristic  
25 to this set of customers.

1                   And it would be very difficult for the  
2 company and for a customer coming in with that ramp to  
3 manage the renewable supply that the customer intends  
4 to do, match to the energy that we're -- we'll be  
5 charging under this tariff during the ramp cycle. So  
6 that -- that would be a solution that could -- could  
7 be advanced.

8 BY MS. BELL:

9                   **Q.       Okay. Do you know -- just one moment.**  
10 **Do you -- Mr. Ives, do you know -- do you recall when**  
11 **Evergy approved Velvet for the PED?**

12                  A.       I don't remember the exact date. It may  
13 be in testimony, but it was -- I want to say it was in  
14 the fall of last year.

15                  **Q.       And do you know if it was before or after**  
16 **the market agreements were executed?**

17                  A.       Ab-- absolutely it was before. You know,  
18 I've got testimony in talking about the process  
19 that's -- that's -- that's -- we've undergone. And  
20 not only with design case customer Velvet, but -- but  
21 with some other interested parties over the last  
22 number of years.

23                               And we did not come to an acceptable  
24 resolution that worked for Evergy and Velvet in  
25 regards to Schedule MKT until shortly before we made

1 our first outreach to parties to discuss it in  
2 Septemb-- mid-September of -- of this last year.

3 Q. Okay. Are you -- and you have reviewed  
4 the two competing stipulations?

5 A. I -- I have. A few different ways, yes.

6 Q. And can you highlight the areas of  
7 differences where Everygy would object to OPC's  
8 differences generally?

9 A. Yeah. Generally I'll -- I'll answer that  
10 question. And it will be fairly similar to the  
11 testimony provided by Mr. Lutz, I think.

12 But certainly the -- the item we were  
13 just discussing about the application of Schedule PED  
14 is a difference that we wouldn't accept as written,  
15 but I mention there might be an ability to -- to find  
16 a compromise there, as I laid out.

17 The RESRAM, which Mr. Lutz discussed in  
18 quite a bit of detail. But the -- the position  
19 advanced by OPC, MEGC and Staff, it does not appear to  
20 be workable and, in my opinion, will create the -- the  
21 impact of additional compliance costs beyond what  
22 is -- what is required and should be required to meet  
23 the -- the RES compliance standards. So I would  
24 continue to advocate for our position, which calls for  
25 a variance from the rule in terms of calculating that

1 compliance.

2                   The hold harmless, Mr. Lutz talked about  
3 for a fair amount of time. I think it got summarized  
4 well with his discussions with the Judge and on  
5 redirect with Mr. Fischer. But -- but really what  
6 we're -- what we're asking for is the ability for the  
7 Commission to consider all relevant factors.

8                   The analogy I would make there is that --  
9 that -- maybe in a discussion Mr. Lutz had with  
10 Mr. Woodsmall, there was a question about if new  
11 suppliers came in related to a customer, who gets the  
12 benefit of that. In a normal circumstance, that  
13 ultimately accrues to the benefit of all customers,  
14 including the large customer that is being supplied.

15                   The position that MEEG, OPC and Staff  
16 promote would provide that benefit of those suppliers  
17 coming in to all non-MKT customers, but would not give  
18 any value to that to the MKT customer that brought  
19 that supplier forward. That's why we think the  
20 Commission should be able to consider all relevant  
21 factors before making that determination.

22                   Lastly, Ms. Bell, Mr. Lutz talked about  
23 the substation voltage. We believe it's appropriate  
24 to leave the substation voltage in there. We believe  
25 that there could be a class of customer that would

1 qualify for this that might not be interested in -- in  
2 owning that -- that substation, would prefer us to own  
3 that. And ultimately, the cost that would be built  
4 into the market contract would recover those costs so  
5 we don't think there's any reason not to include that  
6 in that -- in our tariff.

7                   And then the securitization line that was  
8 added in that stipulation by the parties, I  
9 wholeheartedly agree with Mr. Lutz. It is premature  
10 to put that line item in one tariff. The Commission  
11 will ultimately have to make a determination on a  
12 financing application and give a financing order that  
13 will address the applicability of securitized charges  
14 to -- to all customers. And -- and that -- that's the  
15 time to make that appropriate assessment.

16                   Hang on one second. Just let me look.

17                   Other than that, there are some minor  
18 word changes that Mr. Clizer went through with  
19 Mr. Lutz that -- that I generally agree with  
20 Mr. Lutz's answers on those.

21                   Under the term section of the tariff,  
22 there is one date for written notice that I think is  
23 listed at 60 days and the -- the parties' stipulation  
24 enlisted a 90 days in the stipulation advanced by  
25 Evergy and Velvet. I would suggest moving that to the



1 90 days consistent with the other date references in  
2 the tariff that we both have.

3 I think those are the points that I would  
4 highlight.

5 Q. Okay. Thank you. I think it was  
6 Mr. Keevil who had asked Mr. Lutz some questions  
7 about -- about employment numbers and about -- about  
8 whether or not there's any commitment by a customer to  
9 stay on the Evergy system. Do you believe it's a  
10 reasonable expectation that a customer, after  
11 investing 800 million, would leave Evergy's system?

12 A. I've been in discussion with either  
13 Velvet or other potential customers of similar scale  
14 for -- for a few years now. I think they are doing an  
15 incredible amount of due diligence and working with a  
16 number of parties throughout the state and the region  
17 and locally to ensure that when they do make a final  
18 decision to come in, that they can be a long-term  
19 customer and community partner.

20 Q. Thank you.

21 MS. BELL: No further questions, Your  
22 Honor.

23 JUDGE HATCHER: Thank you, Ms. Bell.  
24 That takes us to Google. Mr. Mills, any  
25 cross-examination?

1 MR. MILLS: Just briefly.

2 CROSS-EXAMINATION BY MR. MILLS:

3 Q. Mr. Ives, you discussed the possibility  
4 of some sort of a limitation on customers using the  
5 PED before moving to MKT. Do you recall that?

6 A. I do.

7 Q. Have you discussed that sort of  
8 limitation with any other prospective customers other  
9 than Velvet?

10 A. I have not. I have not discussed it  
11 directly with other customers in terms of having --  
12 having direct feedback from them of whether or not it  
13 would work for them.

14 Q. So is it possible that in offering  
15 something like that to make this tariff work for  
16 Velvet, it's possible that it may foreclose it as an  
17 avenue for future customers; is that correct?

18 A. It is certainly possible, Mr. Mills.  
19 I -- I wholeheartedly believe that after working on  
20 these types of customers for a number of years, that  
21 it takes all the resources of the state to be  
22 successful in this economic development. Ms. McCarthy  
23 talks about that a fair amount in her testimony.

24 I know for a fact that in discussions  
25 when we only had economic development rates or PED,

1 that was not enough to enticed -- entice this customer  
2 set to come into Missouri. So I know it takes both.

3 To your point, I don't know if it takes  
4 full availability of both or if the position that --  
5 that I just discussed would be acceptable. I have not  
6 talked with all those customers.

7 MR. MILLS: Thank you, Judge. That's all  
8 the questions I have.

9 JUDGE HATCHER: Thank you. And that  
10 takes us to Mr. Woodsmall.

11 MR. WOODSMALL: Yes. Just very briefly.

12 CROSS-EXAMINATION BY MR. WOODSMALL:

13 Q. Mr. Ives, do you recall some questioning  
14 from Ms. Bell trying to minimize the concern that  
15 Velvet or one of these customer -- customers may leave  
16 and you said that you believe they intend to be,  
17 quote, long-term customer and community partners?

18 A. I remember the discussion. I might not  
19 agree with all the words of your question.

20 Q. Do you recall saying that based upon your  
21 discussions, that you believe that they intended to be  
22 long-term customers and community partners?

23 A. I -- yes, I do.

24 Q. Do you believe that despite such  
25 intentions, that companies do go out of business, like

1 **Enron?**

2 A. They do. Could happen to a customer on  
3 PED or not or on Schedule MKT or not.

4 Q. Yeah. So there is no assurances that if  
5 the company builds capacity or enters into a capacity  
6 PPA to serve this MKT customer, that the MKT customer  
7 will be there through the end of that PPA; is that  
8 true?

9 A. There's no assurances that that customer  
10 will be there till the end of that term for sure.  
11 assurances, Mr. Woodsmall, that I'll be here at the  
12 end of that term.

13 Q. That was all I had. Thank you, sir.

14 A. But --

15 Q. No further questions.

16 JUDGE HATCHER: Okay. We -- we will have  
17 redirect so your counsel, Mr. Ives, will be able to --  
18 to see if you want to flesh that out any further.

19 That will take us to cross-examination  
20 from Mr. Keevil.

21 CROSS-EXAMINATION BY MR. KEEVIL:

22 Q. Very briefly, Mr. Ives. Schedule DRI-2  
23 attached to your direct testimony is the exemplar  
24 market rate contract. Correct?

25 A. It's been -- it's been since last night

1 when I've looked at that. I want to make sure that  
2 we're referring to the right schedule. I believe  
3 that's right.

4 Q. Okay.

5 A. Hold on a second. Schedule 1 is the  
6 tariff. Schedule 2, you're correct, is the exemplar  
7 contract.

8 Q. Okay. And really the point that I wanted  
9 to ask was, it is simply an exemplar contract, meaning  
10 it's not -- it hasn't been executed. Correct?

11 A. It -- it -- it is not executed,  
12 Mr. Keevil. Certainly it was informed with a lot of  
13 specific negotiation with design case Velvet to get to  
14 this exemplar status. Because we both had to have a  
15 high degree of confidence that -- that we could make  
16 this work.

17 But I think my testimony says that --  
18 that yes, for sure the intent would be to enter these  
19 market rate contracts closer to the time that a  
20 customer intends to take service under the tariff so  
21 that we have the most relevant pricing to set in these  
22 contracts.

23 Q. Okay. And that -- that was my  
24 understanding too, Mr. Ives. But during her  
25 questioning of you just a few minutes ago, Ms. Bell,

1 indicated -- or asked you a question about whether you  
2 had come to an agreement on something before you  
3 signed, I thought she said, the market contract. So  
4 my question is, have Evergy and Velvet signed a market  
5 contract?

6 A. We -- we have not signed an executable  
7 market contract. We have agreed in principle to the  
8 structure that would fit the exemplar contract  
9 utilizing best available pricing data at the time we  
10 were negotiating, but we have both agreed that that  
11 pricing will have to be reevaluated before we sign and  
12 execute a contract that can come forward to the  
13 Commission under this tariff.

14 Q. Okay. I thought I was with you for a  
15 second. So I mean without all the further  
16 explanation, you're saying that you have not -- you,  
17 Evergy, have not signed a contract with Velvet for the  
18 market rate. Is that true?

19 A. We -- we have not signed a market rate  
20 contract that's executable under the tariff until it  
21 is reevaluated for pricing.

22 Q. Okay. Have you signed one that's not  
23 executable under the tariff?

24 A. We -- we have signed one in the form of  
25 what our negotiations were to set a price that would

1 be available were we to execute it currently, so that  
2 we could both acknowledge our agreement that we  
3 negotiated a contract that could work for us, which is  
4 substantially informing the exemplar contract that's  
5 in Schedule DRI-2 of my testimony.

6 Q. Okay. So you say it is informing the  
7 exemplar, so it obviously had to come before the  
8 exemplar contract. Correct?

9 A. Well, we had to come to an agreement on  
10 something that would work before we could file a  
11 request for the tariff with the Commission or -- or we  
12 might have been wasting everybody's time.

13 Q. Well, you still might be, but that's  
14 neither here nor there.

15 A. I hope not. I hope we are not.

16 Q. Have any of those contracts, the  
17 contracts you have executed with Velvet, has that been  
18 submitted with the application or provided in response  
19 to a data request, to your knowledge?

20 A. No. Because it's not executable until  
21 it's updated for pricing at the time it's closer to  
22 service.

23 Q. Well, but you -- if it's a contract that  
24 was -- was it requested, to your knowledge, in -- in  
25 data request -- in discovery?

1           A.       So I -- to my knowledge, it was not  
2 requested.

3           **Q.       Okay.**

4           MR. CLIZER: I apologize for  
5 interrupting. What contract were you referring to  
6 there, for the sake of the record?

7           MR. KEEVIL: This -- this mystery  
8 contract between Evergy and Velvet that Mr. Ives said  
9 informed the creation of the exemplar contract.

10          MR. KEEVIL: I think that's all the  
11 questions I have, Judge. Thanks.

12          JUDGE HATCHER: Thank you, Mr. Keevil.  
13 That takes us to Mr. Clizer.

14          MR. CLIZER: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MR. CLIZER:

16          **Q.       Good evening, Mr. Ives, or afternoon.**

17          A.       Good evening, Mr. Clizer.

18          **Q.       I'm not sure when you can start wishing**  
19 **somebody a good evening. But regardless, so I want to**  
20 **talk about the very first question I think you were**  
21 **asked by Ms. Bell, which really kind of threw me for a**  
22 **loop.**

23                   And if I remember correctly, that  
24 question was whether or not Evergy would offer a  
25 contract if the OPC/MECG/Staff Non-Unanimous



1 Stipulation and Agreement tariff was put into effect.

2 Do you concur that that was the question or

3 substantially similar?

4 A. Yep. That was substantially similar to  
5 the question, yes.

6 Q. All right. And your response to that was  
7 that Evergy just won't offer a contract if the  
8 OPC/MECG/Staff stipulation tariff is put into effect?

9 A. That was the first half of my answer.  
10 The second half was that I'm not sure that a customer  
11 would accept it after -- after going through the --  
12 the implications of the tariff as proposed.

13 Q. All right. Well, we need to separate  
14 these because they're very different things. Whether  
15 or not a customer would take under it and whether or  
16 not you would offer it. I just want to be that --  
17 that -- I'm going to confuse myself here.

18 I just want to discuss whether or not you  
19 would offer the contract. So --

20 A. Yes, I would not offer the contract as  
21 proposed.

22 Q. What you're telling me is that if a  
23 customer comes before you and meets everyone of the  
24 availability requirements under this tariff you, as  
25 Evergy, can just unilaterally say nope, we're not

1 **providing service to you?**

2 A. Well, I think we've had a lot of  
3 availability discussion. And I think what it says is  
4 we'll evaluate the criteria, including the economics,  
5 to all parties. And ultimately I think you went  
6 through some language with Mr. Lutz that said  
7 availability could be subject to review.

8 But -- but to get to a market contract  
9 rate as is currently contemplated under the tariff, it  
10 takes an executed market contract between Evergy and a  
11 customer unless the Commission intervenes on the  
12 applicability language that says that they can review  
13 it.

14 Q. Okay. There's a lot there and I think we  
15 kind of need to unpack it just a little bit. So let's  
16 start with the simple one. Do you believe Evergy has  
17 the unilateral ability to deny availability under the  
18 terms of either stipulation? Let's start with  
19 **Evergy's version.**

20 A. Under Evergy's version, the tariff says  
21 the company will fully evaluate each customer's  
22 operation and the expected impacts to the company and  
23 remaining retail customers and will determine a  
24 customer's ability to participate in this rate based  
25 on that evaluation. The company will notify the

1 Commission if participation is not allowed.  
2 Participation in the rate will not be allowed if the  
3 company or the Commission determines it to be  
4 uneconomic for the company or the remaining retail  
5 customers.

6 That language says to me that we can make  
7 a determination that it is uneconomic to the company  
8 under the provisions put forward in the tariff  
9 advanced by OPC, MECG and Staff, and we would notify  
10 the Commission of that decision.

11 **Q. Great. We'll circle back to that in a**  
12 **second. But just to make sure it's clear, you're**  
13 **saying you can only not offer a contract if it's**  
14 **uneconomic?**

15 **A.** Well, I just read it. Says we'll fully  
16 evaluate each customer's operation and the expected  
17 impacts to the company and remaining retail customers,  
18 determine a customer's ability to participate in the  
19 rate based on that evaluation.

20 So I think if we were uncomfortable with  
21 the customer's operation and how it would impact the  
22 availability of this tariff or un-- uncomfortable with  
23 the expected impacts to the company and remaining  
24 retail customers, we could make that notification to  
25 the Commission under the tariff that we've put

1 forward.

2 Q. So again, under your tariff you can  
3 unilaterally deny availability to a customer?

4 A. Under my tariff, I can notify the  
5 Commission that the participation is not allowed and  
6 that the company -- or the -- that participation will  
7 not be allowed if the company or the Commission  
8 determines it to be uneconomic for the company or the  
9 remaining retail customers.

10 So there -- there obviously is a role for  
11 the Commission in that once we notify them if they  
12 wanted to question our full evaluation under that  
13 tariff provision.

14 Q. I'm sorry. You say it's obvious. I'm  
15 not so sure that I consider it the same thing.  
16 Because I'm still stuck on this idea that you're  
17 telling me we wouldn't offer a contract under this,  
18 which leads me to believe either that you've already  
19 determined it's uneconomic, even though the prices  
20 haven't been set as we just had that conversation, or  
21 you just have the unilateral ability to not offer a  
22 contract. And at this point I'm very confused as to  
23 which route you're going down.

24 A. I -- I -- I can't read the language any  
25 clearer than I've -- I've read it twice now.

1           Q.     Let's move on really quick then to what  
2 the OPC offered. Because we had additional language  
3 that said the availability will be subject to  
4 Commission review. You would agree with me that under  
5 that circumstance, even if you were to deny the  
6 availability, a customer could come before the  
7 Commission and say, hey, I deserve to be on this  
8 contract; let me.

9           A.     I agree with that, Mr. Clizer. And I --  
10 I would also say that under the company's view of the  
11 tariff, if I notify the Commission about participation  
12 not being allowed, I think the Commission still has  
13 the ability to respond to a customer inquiry like that  
14 and -- and have the same discussion that your added  
15 sentence does.

16                         MR. KEEVIL:   How?

17 BY MR. CLIZER:

18           Q.     I might circle back to that in a second.  
19 Let's move on really quick. So if I understand what  
20 you're trying to say, your position is effectively  
21 that somehow what the OPC, MECG and Staff have put  
22 forward would make it effectively impossible for a  
23 contract to be economic to the company; is that  
24 correct?

25           A.     I think the combination of the factors

1 that have been changed by the tariff put forth by the  
2 three parties has changed the fundamental of the  
3 relationship. And I think it will not work as  
4 intended with the work we've done today with our  
5 design case customer.

6 We would have to go back and consider if  
7 there was a way to make that tariff design work  
8 between the customer and us. But I wouldn't be able  
9 to execute what I plan to execute under the tariff as  
10 we constructed it.

11 **Q. With your test case customer. Okay. My**  
12 **point though is at a larger level. Are you suggesting**  
13 **that the changes that were made in the OPC/MECG/Staff**  
14 **proposed tariff would effectively make it impossible**  
15 **for a contract to be executed that would be economic**  
16 **to Evergy?**

17 **A.** I don't know about impossible. I think  
18 it's much more unlikely and carries much more risk.  
19 And -- and there is not -- you know, we've talked  
20 about -- or some people talked about in their opening  
21 statement significant profits and a number of things  
22 like that that -- that Evergy is pursuing.

23 That -- the only thing that's not a  
24 pass-through in this tariff design currently is the  
25 investment that's made on behalf of serving the

1 customer in this case substation. So -- so if there's  
2 more risk and more cost or exposure to the company, it  
3 doesn't take a whole lot to -- to make this not an  
4 economic contract for Evergy.

5 Q. Okay. First of all, I appreciate that  
6 you want to say a lot in response to these questions.  
7 I'm trying to keep this a little bit short so just  
8 bear that in mind.

9 All right. Walk me through. Exactly  
10 what changes make it so uneconomic for Evergy? And  
11 that's the key I want; for Evergy. What specifically  
12 are the changes that you're referring to?

13 A. I -- I think the hold harmless is a  
14 change that it is difficult to evaluate the risk on  
15 that. But I think not having the ability to make an  
16 all relevant factors discussion, which is really the  
17 only difference in the two, brings added risk to  
18 Evergy. I've got to evaluate how much that means if  
19 the Commission ultimately decides they don't need to  
20 look at all relevant factors.

21 Q. Okay.

22 A. I think -- I think that the RESRAM as  
23 proposed by the parties --

24 Q. I'm going to stop you. Hang on, hang on,  
25 hang on --

1           A.     -- in compe--

2           **Q.     Hang on just one second. Who are the**  
3 **parties in that statement, please?**

4           A.     I'm sorry. The -- the -- I thought we  
5 were talking about the tariff proposed by -- I thought  
6 we had been talking about the tariff proposed by OPC,  
7 MECG and Staff.

8           **Q.     That's fine. I just wanted to make sure**  
9 **it was clear for the record. Continue. I apologize.**

10          A.     That's okay. So -- so those three  
11 parties, their proposal on RESRAM, in my opinion, with  
12 the -- combined with the proposal on hold harmless,  
13 could create risk for Evergy that would need to be  
14 intact before I would move forward with a contract  
15 as -- as currently designed.

16          **Q.     Let's start with the RESRAM. How exactly**  
17 **does the OPC/Staff/MECG proposal create risk to Evergy**  
18 **with regard to the RESRAM proposal only?**

19          A.     Well, the first part is I -- I'm not sure  
20 how I implement it in a five-year contract with --  
21 with a fixed price, but that's -- that's probably left  
22 for a later question. But assume I can't change the  
23 price with the customer contract for five years. And  
24 assume that there's a cost that needs to be paid that  
25 goes beyond the renewable energy contribution charge.



1                   There's a -- there's a path I could see  
2 that parties would assert that that could fall to the  
3 hold harmless if -- if I can't adjust my arrangement  
4 with my customer.

5                   **Q.     Just to be clear, the contract that**  
6 **you're proposing has a price for capacity service.**  
7 **Right? I mean that one should be a simple yes or no.**

8                   A.     Yeah. It -- it covers capacity, sure.  
9 But it's got nothing to do --

10                  **Q.     Just hang on.**

11                  A.     -- with the RESRAM.

12                  **Q.     Let's keep this moving quickly. Does the**  
13 **price for capacity service, is that going to change**  
14 **over the five-year period of the contract?**

15                  A.     No.

16                  **Q.     Is the price for all other services going**  
17 **to change over the five years of the contract?**

18                  A.     Yeah. That -- I mean for all other  
19 services -- let me make sure you're pointing me to the  
20 right term.

21                  **Q.     I'm trying to figure out what parts --**

22                  A.     Number three in the -- number three -- go  
23 ahead.

24                  **Q.     I'm trying to figure out what parts of**  
25 **your tariff actually are variable. Because my**

1 understanding was that only the rate for energy  
2 service was variable and only in the sense that it's  
3 based on the SPP.

4 A. In -- in terms of -- in terms of the  
5 contract in -- in the three-part rate, the rate for  
6 energy service is variable, for sure. The rate for  
7 capacity is set for the customer, but for a five-year  
8 term based on contracts that are either entered or  
9 projected cost-of-service.

10 Q. So at a basic level, it is entirely  
11 possibly for Evergy to set a rate for a five-year term  
12 without exposing itself to too much risk, because it's  
13 already doing so in this contract?

14 A. I -- I don't know about that in regards  
15 to RESRAM.

16 Q. That's fine. I'll move on. Let's move  
17 on to the hold harmless provision. Would you agree  
18 that contracts that were entered or executed according  
19 to the SIL tariff were economic for Evergy?

20 A. State that again. You kind of broke up,  
21 Mr. Clizer.

22 Q. Sorry. Would you agree with me that  
23 contracts that were entered into or executed according  
24 to the SIL or -- I always forget -- special rate for  
25 incremental load service tariff that Evergy West has

1 in effect were economic to Evergy?

2 A. The one I have has been at this point.  
3 The contract has not run its full term.

4 Q. You would agree with me that it is  
5 possible for a contract to be executed that is  
6 economic that has the same hold harmless provisions  
7 that are found in the SIL tariff?

8 A. Sure. I mean it's certainly possible.  
9 That doesn't change that the risk has increased with  
10 the language that you proposed and -- and you were  
11 asking me why I wouldn't move forward with it.

12 Q. I think I'm good for now. Thank you.

13 JUDGE HATCHER: Thank you, Mr. Clizer.

14 We'll go to Bench questions. Are there  
15 any Commissioner questions for Mr. Ives? If you're on  
16 a phone, Commissioner, that is \*6 to unmute. And once  
17 again, for our listening audience, we do have all --  
18 all Commissioners in attendance on WebEx. I'm not  
19 hearing any questions. The Judge does have a handful  
20 of questions for Mr. Ives.

21 QUESTIONS BY JUDGE HATCHER:

22 Q. Mr. Ives, I would like to start with a  
23 phrase that I have seen in all incarnations of the  
24 proposed tariff, and that is the phrase "including all  
25 applicable SPP charges." I am looking at the EMW

1 Velvet Schedule 1, page 3 -- I don't know why I'm  
2 holding it up. I'm not on camera.

3 I'm on page 3 under number two, rate for  
4 capacity service. In the EMW Schedule 1, it's the  
5 red-line language. But I notice that it also appeared  
6 in the OPC/Staff/MECG Schedule 1. And it even  
7 appears, I'm told, in the very original Schedule  
8 DRI-1. Would -- would you please inform me what is  
9 included in, quote, all applicable SPP charges?

10 A. Yeah. I'll -- I'll give it a shot.  
11 The -- it's easier -- it's easier to talk about all  
12 applicable SPP charges when you move up to item one in  
13 the rates and conditions and the rate for energy  
14 service. We -- we added the clause in item two for  
15 capacity service, Judge, based on feedback from  
16 parties throughout this proceeding.

17 I believe, my current assessment, my  
18 team's current assessment is there are not SPP  
19 applicable charges in the capacity area. But it  
20 doesn't -- I mean that -- that pursuit, sir, wouldn't  
21 be over the term of the contract so we agreed to add  
22 it.

23 But if you move back up to the energy,  
24 there are a number of charges that come from SPP when  
25 you -- when you price energy at the day-ahead price at

1 a node to serve a customer like we're proposing that  
2 address -- I'll call it -- additional costs and  
3 considerations that SPP bills for.

4           Whether that's, you know, providing for  
5 spinning reserves or if you had a deviation between  
6 day-ahead and -- and real-time prices that would cause  
7 a make whole payment. There just are a number of --  
8 I'll call them billing charge codes that SPP submits  
9 charges through on a monthly basis.

10           And this commitment is there to say any  
11 of those costs that are applicable to load that's  
12 being served under this contract will be picked up in  
13 the energy price that's billed out to -- to this  
14 customer.

15           **Q.     And all of those costs would be in the**  
16 **contract that would be brought to the Commission for**  
17 **review ahead of time?**

18           A.     Yes. Certainly -- certainly when we  
19 bring that contract in, we'll have further definition  
20 of -- of our expectation about those -- those charge  
21 codes, specifically to kind of the underlying  
22 fundamentals of the contract that's brought forward.

23           Now, they -- they will change much like  
24 the energy costs on, you know, a period to period  
25 basis, right? Because those charges -- those charges

1 vary that come from SPP based on activities that are  
2 going on across the entire footprint. So we'll need  
3 to understand the codes that need to be addressed and  
4 then we'll need to pull those costs in from our SPP  
5 billings to convert those into a bill to a Schedule  
6 MKT customer.

7 **Q. Thank you. Under the rate for capacity**  
8 **service, how do you envision that Evergy will provide**  
9 **the work papers supporting its good utility practice?**

10 A. Yes. So a couple things, right? I mean  
11 we procure -- we procure capacity as part of our  
12 business. Right? I mean that's what we do either  
13 through the construction of capacity to serve  
14 customers or the execution of, you know, bilateral  
15 contracts to take capacity from customers.

16 So we would need to be able to  
17 demonstrate -- not only for parties, but demonstrate  
18 for the customer that we're putting that capacity in  
19 place for -- that -- that we've used good utility  
20 practice in evaluating those. So -- so we'll have to  
21 do some analysis around the cost of construction  
22 compared to, you know, RFP cost for financial capacity  
23 so that we can demonstrate that we -- that we've taken  
24 the right steps consistent with our -- with our  
25 charge.

1           **Q.     And when would Evergy be supplying that**  
2 **supportive paperwork to the Commission?**

3           A.     Yeah.  So the intention would be when --  
4 when we are talking about starting that -- that 90-day  
5 clock.  We actually have talked with the parties and  
6 some of the language that's added in here, you know,  
7 talks about the documentation -- you know, providing  
8 the documentation and the support underneath the  
9 details that are in the contract.

10                   And our goal would be to have that  
11 package ready to come in as work papers at the time we  
12 make that contract tariff filing -- or I'm sorry,  
13 market contract filing so the parties have access to  
14 that out of the gate versus having to submit a request  
15 for discovery for that type of information and have a  
16 time delay.

17           **Q.     And I may have missed it, but would you**  
18 **define good utility practice, if that is definable?**

19           A.     Yeah.  You know, it's -- it's -- it's a  
20 relatively general contractual term used to -- in  
21 order to say you have to be doing your diligence.  You  
22 need to have an evaluation and an assessment and have  
23 done appropriate research and have appropriate support  
24 for what you're advancing.  That -- that's kind of a  
25 laymen accountant's way of describing good utility

1 practice. Very common term in the industry.

2 Q. Okay. And still in that same paragraph,  
3 it states, All rate -- no, I'm sorry. The rate and  
4 all elements included in the rate will be specified in  
5 the special high load factor market rate contract.

6 Does Everygy plan to file the work papers  
7 supporting each of those elements included in the rate  
8 when it files the contract?

9 A. Yes. I think in the last sentence, like  
10 in number one, All the elements included in the rate  
11 be specified. The intention of that in combination  
12 with some of the other language in the tariff  
13 particularly under the contract documentation talks  
14 about details -- you know, in our tariff in  
15 particular, that first paragraph details about the --  
16 the rate, start date, term, operating parameters,  
17 terms and conditions related to the rate and all  
18 assumptions, inputs and calculations used to determine  
19 that rate filed with the Commission and documented  
20 through the market rate contract.

21 Q. Thank you. I'm going to switch gears.  
22 Would you describe the Omaha Public Power District,  
23 just what is it for the record?

24 A. In general, it's a -- it's -- it's kind  
25 of a state cooperative type approach, if you think



1 about it that way, to serve customers up in the Omaha  
2 area. I mean there's -- there's more of those  
3 structures up there that are -- are large service  
4 providers to customers. There's OPPD, there's an  
5 NPPD. They're not a vertically integrated IOU --  
6 shareholder-owned IOU, but -- but they're more state,  
7 local sponsored.

8 But they're doing the same -- in essence,  
9 they're doing the same work that we're doing in terms  
10 of, you know, providing and supplying electricity and  
11 the wires to get that electricity to customers in  
12 their territory.

13 **Q. Thank you. In your direct testimony you**  
14 **had discussed why predictable pricing was necessary.**  
15 **Could you expand on that?**

16 **A.** Yeah. For sure. I mean we've been --  
17 I've been through it a couple times and it's in  
18 testimony. I mean we've been discussing the  
19 opportunities for customers like Velvet with three,  
20 that I can think of off the top of my head, potential  
21 customers over the last three or four years, probably  
22 longer.

23 The -- one of the most significant  
24 hang-ups for these large high load, high load factor  
25 customers like these data centers is a predictability

1 of price when they're getting ready to come in and, in  
2 Velvet's case, invest 800 million dollars to put a  
3 location in.

4                   It is by far -- electricity is by far  
5 probably the most significant input to their cost of  
6 doing business once they've -- they've opened up their  
7 operations. And they're looking for areas across the  
8 country where they have strong predictability of  
9 price, one; two, a very competitive price because it's  
10 such a -- such an import for them.

11               Q.     Thank you. I'd like to turn now to  
12 nodes. And I'm going to ask for some expert type  
13 information. Would you please describe what the EMW  
14 node is? You referenced it in your direct testimony  
15 at page 7, but I want to, for the record, describe  
16 what the EMW node is, what's measured at the node,  
17 does Evergy have just one node and does Evergy Metro  
18 have a separate node?

19                   Sorry to throw all of that at you at  
20 once, but I want to kind of give you a flavor of where  
21 I was going with that.

22               A.     Yeah. No, that's all okay. And you're  
23 I -- I -- I probably should have -- I probably should  
24 have let you talk to Mr. Lutz about that because  
25 he's -- he's much more versed in that than I am.

1                   But from -- from my standpoint, Evergy  
2 West has one load node that we're served at by SPP for  
3 bringing energy into serve our customers at Missouri  
4 West. And we have -- pretty sure we have one load  
5 node for Metro that we bring in that -- the energy  
6 from SPP to serve that load. So that's kind of the  
7 SPP construct.

8                   And then you also have -- you also have  
9 points of interconnect with your sources of generation  
10 for our outflow of energy that goes into SPP. We get  
11 paid for our outflow of energy based on pricing that  
12 occurs at the node near our generating source.

13                   We pay for energy at the -- that the EMW  
14 load node -- the one that we have that serves our  
15 load, the -- so that's kind of the construct of the  
16 flow of billing between a utility operating an SPP and  
17 SPP, both from the revenues received from the supply  
18 we provide and then the cost we receive from the load  
19 that we take at that load node.

20                   **Q.     Are all of --**

21                   A.     Let me pause, because I may have not have  
22 answered your entire question.

23                   **Q.     No, no. You're good.**

24                   **Are all of those things measured at the**  
25 **node? And I'm a little confused here. Are we talking**

1 about electricity flow? Are we talking about the  
2 price or -- or the transportation? What's measured  
3 there?

4 A. Yeah, that's a great question. It's  
5 really everything. When -- when -- when you're  
6 bringing electricity to a load node, all applicable  
7 SPP charges are put on the bill based on the  
8 electricity you receive at that load node. So -- so  
9 all -- those all applicable SPP charges all come in on  
10 the bill based on what you take for kilowatt hours at  
11 that load node.

12 Q. Okay. I have just a handful of questions  
13 left. We have heard discussions today about the Nucor  
14 tariff and how that may or may not be suited for the  
15 Velvet Tech project. Just for clarity for the record,  
16 could you please identify which tariff Nucor is  
17 currently served under?

18 A. It's under -- I don't know the specific  
19 number, but it's at Sch-- it's probably at Schedule  
20 SIL. And we can get that to you, Judge, if we need to  
21 give you the specific tariff number and reference. I  
22 just don't -- I just don't have it.

23 Q. No. I think SIL was the identification I  
24 was looking for.

25 A. Okay.

1           Q.     On -- on -- that really kind of leads to  
2 this question. I want to kind of compare -- we've  
3 heard so much comparison of the Nucor tariff. Would  
4 you please describe to me what are the shortcomings or  
5 failings of that tariff if it would be applied to this  
6 current situation in Velvet Tech?

7           A.     Yeah. So -- so the simplest -- the  
8 simplest answer I can give you is that -- that tariff  
9 is designed for Evergy to source and provide the  
10 renewable generation to support a customer on SIL.

11                     Our arrangement and our discussions with  
12 parties that are interested in Schedule MKT have  
13 indicated that -- that that's not the best course of  
14 action. They -- they have some very specific  
15 corporate renewable standards that they intend to  
16 meet. They generally are a sophisticated group of  
17 customers that already understands how to interact,  
18 engage and own -- I'll call them utility scale, but  
19 large scale renewables across the country and  
20 globally.

21                     And it has become more difficult for  
22 Evergy to source that renewable generation to meet  
23 those requirements at the size and the potential scale  
24 of customers that would come in under Schedule MKT  
25 while we're also working on our plans to transition

1 our current generation portfolio to greener generation  
2 in support of all of our non-MKT customers.

3 And I mentioned in testimony, there --  
4 there are also some implications from a credit rating  
5 agency standpoint that put more pressure on the  
6 utility's ratings even with a Purchase Power Agreement  
7 to do that type of work that -- that also would hinder  
8 our ability to do what we need to do for other non-MKT  
9 customers.

10 So -- so with that, we had to seek out a  
11 solution that would allow the customer to meet  
12 their -- their corporate renewable requirements, allow  
13 them to participate in SPP with those renewables and  
14 take energy from us, which was important to them as  
15 well to us, and that's how we came to the structure we  
16 have.

17 The only other thing I would note -- and  
18 I'm sure there are more nuances. But -- but the one  
19 we have talked a lot about obviously is the hold  
20 harmless protections that are in the SIL based upon  
21 the facts and circumstances that were negotiated by  
22 all parties at the time for that tariff are not -- are  
23 no longer workable as we move forward and consider  
24 additional customer adds the size of those that we're  
25 talking about with the Schedule MKT.

1           Q.     Okay.  And with that, Mr. Ives, I'm going  
2 to turn to our final questions.  These are the same  
3 questions I've been telling the counsels about and  
4 also asked Mr. Lutz and will be asking the other  
5 witnesses that come through tomorrow.

6                     I'm tempted to give you the -- to recite  
7 the list back to you that Mr. Lutz identified and that  
8 you also identified when you were speaking with  
9 Mr. Clizer.  Do you -- let's do that.

10                    My question is, Mr. Ives, if you could  
11 please discuss the sections of the OPC/Staff/MECG  
12 proposed Schedule 1 from last night?  I'm going to  
13 list these sections, Mr. Ives, to see if we can get  
14 through this a little faster.

15                    The -- looking on the OPC/Staff under  
16 availability, the first bullet point, the company  
17 recognizes and accepts the new addition of the  
18 fragment of a sentence at the end starting, Provided  
19 the new customer's current load reaches a monthly  
20 demand minimum of 50,000 kilowatts; is that correct?

21           A.     Yes, sir.

22           Q.     Okay.  Evergy would object to the bullet  
23 points that references Section 393.1640?

24           A.     Yes, sir.

25           Q.     Evergy would like to see the substation

1 voltage offering that is in the Schedule 1 proposal  
2 from EMW and Velvet last night. As I'm turning the  
3 page --

4 A. Yes, sir.

5 Q. I'm sorry. Thank you, Mr. Ives.

6 As I'm turning the page, we get to -- I'm  
7 sorry, two pages -- we need to get to page 3 of the  
8 OPC/Staff. The company is recommending changing  
9 the -- under the term, changing the second reference  
10 to 60 days to be 90 days?

11 A. Yes, sir.

12 Q. The company's objecting to -- and I'm  
13 flipping the page now -- additional provisions number  
14 three --

15 A. Can I take you back just one --

16 Q. Yes, please.

17 A. -- step, Judge?

18 Q. Yes.

19 A. I just want to be super clear. But in  
20 that top part of the contract documentation, there are  
21 some minor wording changes between the two tariffs in  
22 the -- specifically in the first six lines of contract  
23 documentation. I don't believe I have any concerns  
24 with them, but I just wanted to point out for you that  
25 they were there.



1 Q. Give me just a second as I find -- oh,  
2 okay. Under number four, contract documentation?

3 A. Yeah. I don't think the changes that  
4 are -- that are in the OPC/MECG/Staff version give me  
5 any pause. I just wanted to make sure you were aware  
6 there are a few changes there.

7 Q. All right. I have noted that. And then  
8 Evergy's opposing the hold harmless -- the second  
9 sentence of number -- paragraph number 3 under  
10 additional provisions and also Section 4. And I'm  
11 trying to parse how many sentences.

12 A. Yeah. I think if you start in the middle  
13 of OPC stipulation on the fifth line down in the  
14 middle, the sentence that starts, If the customer's  
15 rate revenues.

16 Q. Okay. Gotcha.

17 A. I think there from to the end.

18 Q. However, on -- while Evergy is objecting,  
19 Evergy is also proposing their own hold harmless  
20 provision that includes the ability to -- and I can't  
21 find the language -- oh, present evidence for the  
22 Commission's consideration of other economic benefits.

23 So Evergy is opposed to this hold  
24 harmless language from OPC and Staff and MECG, but  
25 does have its own that it's proposing; is that

1 **correct?**

2           A.     That -- that's correct. I mean you read  
3 the one sentence that certainly we've spent the most  
4 time talking about today in the hold harmless  
5 discussion.

6           I would note that in the bottom half of  
7 our hold harmless, our version differentiates that if  
8 the Commission determines there's a deficiency that --  
9 that needs to be addressed, half of it would be  
10 covered by the customer that's under the market rate  
11 contract, with half to be borne. That level of  
12 specificity is not in the OPC and other parties'  
13 stipulation.

14           **Q.     Thank you. I also have Evergy objecting**  
15 **to -- again, under additional provisions, I believe it**  
16 **is the second paragraph of para-- paragraph 4. And**  
17 **again, this is the OPC/Staff/MECG Schedule 1.**  
18 **Specifically --**

19           A.     Yeah. I think that's --

20           **Q.     Go ahead.**

21           A.     That's a continuation of the hold  
22 harmless. And I think -- I think we think all of that  
23 discussion should be replaced with the hold harmless  
24 provision that we advanced.

25           **Q.     Thank you. And the -- and the Oklahoma**

1 OPC/Staff/MECG Schedule 1 does exclude FAC charges,  
2 which Evergy agrees with, but in paragraph 7, the  
3 OPC/Staff/MECG Schedule 1 does not waive the RESRAM  
4 potential charges. And Evergy objects to that and  
5 does supply their own language; is that correct?

6 A. That -- that's correct. Our -- our --  
7 our recommendation would be to replace that item seven  
8 in the OPC and parties' stipulation entirely with the  
9 red-line item six in our version.

10 Q. Okay. Excuse me. I was trying to get  
11 now all of those questions that I had asked Mr. Lutz  
12 in a more economical version. Now that we have  
13 covered all that, Mr. Ives --

14 A. I have --

15 Q. Yes. Please go ahead.

16 A. I'm sorry, Judge. I have -- I have one  
17 more item. And it's in the OPC paragraph 5 under the  
18 additional provisions.

19 Q. I'm there.

20 A. In the last line, the last sentence in  
21 that section, they have added the discussion of  
22 securitization and company assets. And I might have  
23 addressed that earlier in response to a question,  
24 but -- but I think it's inappropriate and premature to  
25 put that into this tariff. And I think the correct

1 place for the Commission to ultimately set  
2 applicability of securitization charges will be in  
3 their financing order authorizing securitization.

4 Q. Thank you, Mr. Ives. Let's wrap up our  
5 discussion of the two competing tariffs. Do you have  
6 any other things that you would want taken out or put  
7 into the OPC/Staff/MECG Schedule 1 other than what we  
8 just listed?

9 A. No. I think that summarizes it well. I  
10 mean I would just reiterate, Judge, I mean, you know,  
11 by and large, there's been a lot of work done by the  
12 parties and there's a lot of similarity in the  
13 language, which both versions are -- are a fair amount  
14 different than the original tariff filed in my  
15 testimony, so we're accepting of the remainder.

16 Q. Thank you, Mr. Ives. Let's turn to the  
17 Evergy/Velvet proposed Schedule 1. I just would like  
18 to offer you an open-ended question. Would you like  
19 to go through that exemplar tariff and briefly explain  
20 any of those key provisions, why they were included or  
21 why they were not?

22 A. You know, I think we've covered it,  
23 Judge. I mean I think -- I think the items that we  
24 discussed as differences when we walked through the  
25 OPC and -- and parties' stipulation, it's kind of the

1 inverse here. Right? So I feel like we've addressed  
2 everything.

3                   And I think we've talked either with you  
4 or -- or in my testimony with others today on, you  
5 know, at least Evergy's perspective on the -- the  
6 versions we have advanced.

7                   I would just say maybe one thing. Sorry  
8 for rambling. But on the RESRAM discussion, which is  
9 paragraph six at the end of additional provisions in  
10 ours. You know, I think -- we believe -- and we  
11 provided a stipulation to go along with the tariff,  
12 that the Commission has the authority to provide a  
13 variance from the rule that would achieve the purpose  
14 we've laid out.

15                   I know -- and I won't elaborate on this  
16 because I know all parties will brief the -- the legal  
17 positions on all that. But -- but I would just say  
18 beyond what's in the stipulation, we would ask the  
19 Commission to accept the var-- or in the tariff, we  
20 would ask the Commission to order the variance that we  
21 also put in our stipulation.

22                   **Q.     Okay. I have two final questions.**  
23 **First, I want to follow up on Mr. Clizer's inquiry**  
24 **regarding risk. I'm trying to wrap my head around**  
25 **that the risk that the company would take. And in**

1 this situation, if -- if Velvet or some other high --  
2 high load customer starts down this path and Evergy  
3 builds the necessary infrastructure and then in three  
4 or four years, I'm not worried about the -- how many  
5 years, but Velvet takes a turn for the worse,  
6 computers are outlawed, I don't know what happens.

7           But is the risk that Evergy is concerned  
8 about -- if that would happen, then who is paying for  
9 the leftover costs of services, specifically that  
10 infrastructure, am I right in understanding that  
11 Evergy's concern is that if something should happen to  
12 Velvet before that cost of service payback is met,  
13 then Evergy's shareholders would have to shoulder  
14 that -- that burden? Is that the -- the risk that  
15 you're concerned about?

16           A. Well, I think -- I think that's a  
17 component of the risk for sure. Now, I'll temper that  
18 by saying that I think it's highly unlikely that the  
19 customers we're talking to under this tariff are --  
20 are going to face that circumstance.

21           But -- but that said, for sure. I  
22 believe if -- if that happened and the language  
23 advanced by OPC and parties on hold harmless were in  
24 place, then that's what would happen. I mean there  
25 would be a mathematical adjustment that would occur

1 and never get brought forth before the Commission that  
2 would ultimately impact Evergy for making an effort to  
3 participate in economic development in Missouri and  
4 providing an avenue for the State to have those  
5 opportunities.

6 I would suggest that there should at  
7 least be a discussion about that. We should -- we  
8 should evaluate whether that -- that investment, that  
9 capacity can provide benefit to -- to other customers  
10 on the system. We should evaluate whether it was the  
11 best -- in the best interest of the State to -- to  
12 make a run at a customer like Velvet and have an  
13 opportunity for them to come to Missouri.

14 And if it didn't work out, I would at  
15 least want to explore the question of whether that  
16 should all be shouldered by Evergy if it didn't work  
17 out. That seems unreasonable to -- to me to be in  
18 that situation on a mathematical calculation.

19 Q. Thank you. And that brings me to my last  
20 question. This is going to be a little bit more of a  
21 thoughtful question, a little bit out of the box.

22 We were briefly talking about Purchase  
23 Power Agreement. Would you call -- or would you  
24 consider the proposed MKT tariff a type of a virtual  
25 PPA that might sometimes also be called a financial

1 PPA rather than a physical is kind of what I'm getting  
2 at.

3 A. Yeah, I -- I'm going to parse it into two  
4 pieces. I -- I wouldn't characterize it that way for  
5 the energy charge because I would think of a virtual  
6 PPA kind of having a set price for energy just like a  
7 physical PPA would. Whereas, the energy charge that  
8 MKT customers are paying is a true market cost of  
9 energy and it's going to vary based on market  
10 dynamics.

11 And what the MKT customer is proposing to  
12 do is from their side, manage that risk by having  
13 resources supplying energy into the SPP and also use  
14 those resources that are supplying energy to manage  
15 their risk to provide the renewable attributes that  
16 help them meet their corporate renewable targets. And  
17 in our proposal, help Missouri meet its RES compliance  
18 mandates.

19 Q. Okay. Thank --

20 A. And I'm sorry.

21 Q. Go ahead.

22 A. One more thing. I would offer --

23 MR. KEEVIL: Jesus.

24 THE WITNESS: -- that the -- the  
25 provision of capacity in -- looked like the form of a



1 PPA. Because if we go -- if -- if we use good utility  
2 practice and the best source to supply them on the  
3 capacity is a financial or a bilateral transaction to  
4 secure that capacity as opposed to building directly  
5 for them, that will look a lot like the  
6 characteristics of a PPA for the supply capacity.

7 JUDGE HATCHER: Thank you, Mr. Ives.  
8 That's all the questions I have.

9 That does bring us back to recross.  
10 We'll follow the same format. We'll start with Velvet  
11 Technologies, Ms. Bell.

12 MS. BELL: Thank you, Your Honor. No  
13 recross.

14 JUDGE HATCHER: Thank you, Ms. Bell.  
15 That will move us to Google and Counselor  
16 Mills.

17 MR. MILLS: Yes, thank you, Judge.

18 RE-CROSS-EXAMINATION BY MR. MILLS:

19 Q. Mr. Ives, the Judge asked you some  
20 questions about areas in the Staff/OPC/MECG tariff  
21 that Evergy just agreed with. Just to sort of take  
22 that to the logical conclusion, if the Commission  
23 order in this case were to authorize Evergy to file a  
24 tariff that looked just exactly like the tariff that  
25 those parties have proposed, would Evergy file such a

1 **tariff?**

2 A. Well, I'll take one pause and that -- and  
3 I'll give you what I believe. We certainly would have  
4 to look at the language of the order and the support  
5 of the Commission's order in that regard to understand  
6 the background behind it.

7 But -- but if you get to the finish line  
8 and that's the final answer, I -- I -- I -- right --  
9 sitting here today, I don't believe we would file that  
10 tariff with those -- those revisions.

11 MR. MILLS: Judge, that's all I have.  
12 Thank you.

13 JUDGE HATCHER: Thank you. That takes us  
14 to Mr. Woodsmall.

15 RE-CROSS-EXAMINATION BY MR. WOODSMALL:

16 Q. **Yes, building off of that last question,**  
17 **if the Commission ordered you to file such a tariff,**  
18 **would you do it?**

19 A. Well, I -- I tend to not like to not  
20 follow Commission orders, so I guess we would -- we  
21 would have a discussion internally. That might  
22 result, Mr. Woodsmall, in some request for  
23 reconsideration and things like that. But if  
24 ultimately they ordered it, our role is to comply with  
25 Commission orders.

1           Q.     Okay.  And so you do agree that the  
2 Commission has the final word on this, not Evergy?

3                   MR. MILLS:  I object.  I believe that  
4 calls for a legal conclusion.  I think that the  
5 Commission in its order in this case will either  
6 authorize Evergy to continue with the tariffs that  
7 were filed with the -- with the case or authorize them  
8 to file a different tariff.

9                   I don't believe that there's an outcome  
10 in which the Commission can order Evergy to file  
11 tariff that it disagrees with so -- and I don't -- and  
12 I think that's part of the premise of the question and  
13 I don't think this witness is -- is -- as a  
14 non-lawyer, has the experience and the expertise to  
15 answer that question.

16                   MR. FISCHER:  Evergy would join in that  
17 objection, Judge.

18                   MR. WOODSMALL:  Your Honor, as we've had  
19 many, many objections already today on the basis of  
20 people offering -- being asked legal questions and  
21 they all came back to you've got a lot of experience.  
22 well, Mr. Ives has been their chief of regulatory for  
23 11 years.  I think given all his experience, he could  
24 tell us whether he believes that the Commission has  
25 the ability to order them to file a tariff.

1 JUDGE HATCHER: I'm going to overrule the  
2 objection and allow the answer. Mr. Ives is perhaps  
3 giving his view of what might be a legal question, but  
4 again, I'm going to trust in the Commissioners to be  
5 able to parse that themselves.

6 Mr. Ives, go ahead.

7 THE WITNESS: And Judge, I would just say  
8 our -- our obligation is generally to comply with  
9 Commission orders. All that said, I -- I don't make  
10 the decision on my own. I have regulatory legal  
11 counsel that sanity checks my efforts to play lawyer  
12 from time to time. So it would be a joint decision  
13 here, but we would generally endeavor to follow  
14 Commission orders.

15 MR. WOODSMALL: I'll let it go. Thank  
16 you, Your Honor.

17 JUDGE HATCHER: Thank you, Mr. Woodsmall.  
18 Let's move to Mr. Keevil.

19 MR. KEEVIL: Yeah, in the interest of  
20 time and everything else, Judge, I don't have any  
21 further questions.

22 JUDGE HATCHER: Okay. That will take us  
23 to Mr. Clizer.

24 MR. CLIZER: Thank you, Your Honor. I'm  
25 going to try to keep this brief.

1 RE-CROSS-EXAMINATION BY MR. CLIZER:

2 Q. Good evening again, Mr. Ives.

3 A. We are a lot closer to evening now than  
4 we were before, Mr. Clizer.

5 Q. Yes. All right. So with regard to the  
6 question on risk that was posed to you by the Judge,  
7 and you know, the question of whether or not Velvet  
8 Tech goes out of business, do you recall that  
9 question? Let me start there.

10 A. I do recall that.

11 Q. All right. And I want to just drill down  
12 and make this really, really clear. Under your  
13 understanding of the OPC/Staff/MECG tariff, if Nucor  
14 [sic] went out of business, you believe the company  
15 would be on the hook for picking up any costs that  
16 were unrecovered from Velvet Tech; is that accurate?

17 A. I think the way -- I think so, yes. I  
18 mean I think the way it's structured, that there's a  
19 consideration of the costs that -- that are incurred  
20 on behalf of that customer compared to the revenues  
21 that come from that customer.

22 If they go out of business, there aren't  
23 any revenues. And I think we would at least be  
24 subject to positions of parties that maybe there are  
25 still costs related to that investment, the need to be

1 there.

2 Q. And the key difference, in your opinion,  
3 with what OPC, Staff and MCEG put forward and what  
4 Velvet Tech and Evergy put forward is that in the  
5 situation of the latter, you can argue for why  
6 ratepayers should pay a portion of those unrecovered  
7 costs. Correct?

8 A. We can argue for the Commission to  
9 consider all relevant factors, yes.

10 Q. And what would be the practical -- one of  
11 the practical implications of that would be that you  
12 would want to argue that other customers should bear  
13 unrecovered costs. Correct?

14 A. I would want to demonstrate why they  
15 might be beneficial for other customers or there might  
16 be other considerations to bring to bear, yes. And  
17 the Commission would ultimately make the  
18 determination.

19 Q. Yeah. But I want to make sure that it's  
20 very clear on the record what the actual practical  
21 impact of that would be. That would result in other  
22 customers paying for the costs incurred to serve  
23 Velvet Tech. Can I get a yes or no?

24 A. Can't get a yes or no because I disagree  
25 with the premise of the question.

1           **Q.     What would be the purpose of arguing for**  
2 **all relevant factors -- what would be the purpose of**  
3 **arguing for all relevant factors if not for arguing**  
4 **why other customers should pick up part of the tab?**

5           A.     Because in that situation, there might be  
6 other customers that aren't on the MKT tariff that can  
7 benefit from the utilization of those resources that  
8 are no longer supporting Velvet. And unless I get to  
9 make that -- make that argument and put that position  
10 forward, nobody will ever know that.

11           **Q.     So again --**

12           A.     They'd just have made a mathematical  
13 adjustment and it will be gone.

14           **Q.     To be clear, the whole purpose is to make**  
15 **sure that non-MKT customers can be forced to bear part**  
16 **of the costs of serving the MKT customers?**

17           A.     No, I disagree with that. That's not  
18 what I said.

19           **Q.     Is there any circumstances, in your**  
20 **opinion, where it would be acceptable for a non-MKT**  
21 **customer to bear any part of the cost of serving an**  
22 **MKT customer?**

23           A.     Yeah, I do think it's possible that that  
24 could happen. We had this discussion in the hearing  
25 earlier today where there -- there are revenues that

1 come in -- let's call it for a significant supplier to  
2 somebody like Velvet that are accruing to the benefit  
3 of all non-MKT customers because they've come into the  
4 service territory and they are reducing the overall  
5 cost to non-MKT customers. In --

6 Q. Darrin, I really understand that you want  
7 to have --

8 A. -- OPC/Staff --

9 Q. Can -- it's 4:48.

10 A. I'm trying to answer the question.

11 Q. Can we keep things yes or no, please? Or  
12 at least shorten them?

13 A. I can -- I -- I'm trying to give you a  
14 scenario -- because you asked if there was a scenario,  
15 I'm trying to explain one.

16 Q. And the answer is yes, there is a  
17 scenario. I got my answer. Thank you.

18 A. Fair enough.

19 Q. Okay. So the purpose of your language in  
20 your tariff regarding your hold harmless is to make  
21 sure that you can make that argument and ensure that  
22 those non-MKT customers are paying part of the cost to  
23 serve MKT customers. Correct?

24 A. No. The purpose is to give the  
25 Commission the opportunity to make the evaluation of



1 whether that's appropriate or not.

2 Q. You know what? Fine. I'll take that.

3 All right. I'm going to move on for securitization,  
4 that's my last topic. I'm going to make this again --  
5 I should just stop trying to say anything about making  
6 it brief.

7 MR. KEEVIL: Yeah, we're past that point.

8 MR. CLIZER: I know.

9 BY MR. CLIZER:

10 Q. All right. I just -- I want to make sure  
11 I understand how this works. Let's say hypothetically  
12 that the Commission does not adopt the OPC/MECG/Staff  
13 language regarding securitization. That doesn't make  
14 it into the tariff. All right? That's our  
15 hypothetical. You with me so far?

16 A. I'm with you.

17 Q. Okay. The tariff is enacted, a customer  
18 takes service under this tariff, and they have a  
19 contract in place. You with me so far?

20 A. I am with you so far.

21 Q. After that, the company decides to  
22 securitize an asset. And let's assume for this  
23 purpose of this hypothetical, that the law requires  
24 the cost of that securitization to be borne by all  
25 customers. How does Evergy recover the cost of that

1 securitization from the MKT customer, given that the  
2 tariff is already in effect? I'm sorry. The contract  
3 is already in effect. Sorry.

4 A. I would refer you to Section 3.8 of the  
5 exemplar market contract that's on page 3 of 7 of  
6 DRI-2 to my direct testimony. There's a section  
7 called Mandated Cost Recovery Mechanisms and it  
8 addresses what I think your question is.

9 Q. And what's the problem with moving that  
10 section out of the exemplar contract and putting it  
11 directly in the tariff?

12 A. What's that?

13 Q. Why couldn't we move that out of the  
14 contracts -- the exemplar contract and put it directly  
15 in the tariff?

16 A. I don't think it's necessary. I think  
17 the Commission will make a determination of what  
18 tariffs a securitization charge apply to when they put  
19 out a financing order. Not a single tariff in my  
20 tariff book has that language that you're trying to  
21 put in this one. And I suspect it never will because  
22 the Commission will make that determination when they  
23 put out a financing order authorizing securitization.

24 MR. CLIZER: All right. No further  
25 questions.

1 JUDGE HATCHER: Thank you, Mr. Clizer.

2 That will take us to redirect from Evergy.

3 Mr. Fischer, go ahead.

4 MR. FISCHER: Yeah. Thank you, Judge.

5 REDIRECT EXAMINATION BY MR. FISCHER:

6 Q. Just briefly let's go to that last set of  
7 questions from Mr. Clizer first, when you were talking  
8 about I think the difference between the OPC hold  
9 harmless language and the Evergy/Velvet language.

10 Is it correct that under the Evergy  
11 proposal, the company would come forward if someone  
12 proposed a disallowance and suggest there might be  
13 overall relevant factors that might mean even though  
14 the revenues did not cover their costs, there might be  
15 other factors to be considered whether it be at a  
16 disallowance at all?

17 A. Yes. And it -- it could be because the  
18 determination of the math that OPC and parties propose  
19 is that at a single point in time in a filing, and not  
20 considering that the full range of benefits over the  
21 five-year contract with the customer. Or it could be  
22 that there are other revenues that are benefiting all  
23 non-market participant customers that should at least  
24 be considered by the Commission before we made a  
25 mathematical adjustment as proposed in their tariff.

1           Q.     Changing topics. I believe Judge Hatcher  
2 asked you about the phrase "including all applicable  
3 SPP charges." Do you recall that discussion several  
4 minutes back?

5           A.     I do.

6           Q.     I'd like to refer you to the  
7 Everygy/Velvet stipulation on page 2. Do you have  
8 that?

9           A.     Everygy/Velvet, yeah.

10          Q.     Stipulation. It --

11          A.     Oh, the stip. Sorry.

12          Q.     Yeah. In the middle of the page there it  
13 talks about applicable SPP charge categories may  
14 include and then it lists administration,  
15 auction/revenue rights, transmission/congestion  
16 rights, day-ahead ancillary, day-ahead energy,  
17 day-ahead uplift, real-time ancillary, real-time  
18 energy, and real-time uplift. Are those the kinds of  
19 categories that you were talking about?

20          A.     Yes. Thanks -- thanks for pointing that  
21 out, Mr. Fischer. I mean those are categories  
22 outlined in the stip. And as I mentioned, there are a  
23 number of discrete charge codes that SPP utilizes.  
24 My -- my team that's responsible here at Everygy for  
25 evaluating those bills and those charges tell me that

1 these are the major categories that sit over each of  
2 those individual charge code types.

3 Q. Going back to your cross-examination with  
4 counsel for Velvet, I believe you indicated that  
5 you've been thinking about ways to resolve the  
6 conflict between the two stipulations on what I call  
7 the EDR issue. Is that --

8 A. Yes.

9 Q. Do you recall that?

10 A. I did. I had some discussion with  
11 Ms. Bell and I think I had a discussion briefly with  
12 Mr. Mills about that too.

13 Q. Have you made an attempt to -- to  
14 memorialize that -- that solution in writing?

15 A. Yes. Yes, we have. We have a view on  
16 that.

17 MR. FISCHER: Judge, I would like to have  
18 an exhibit marked. I'm sending it to all the parties  
19 now. And I'd like to have my counsel in Kansas City  
20 post it on the screen, if they could.

21 MR. WOODSMALL: Your Honor, am -- are we  
22 going to get a chance to then cross-examine Mr. Ives  
23 on the contents of this? It seems deliberately to  
24 avoid the process by dropping it in now. I don't mind  
25 if we can look at it tonight and then cross-examine

1 him on it.

2 MR. KEEVIL: Well, not only that, Judge,  
3 but the farce that the cross-examination which led to  
4 this redirect was done by Velvet is just astronomical  
5 that -- I mean the friendly cross whenever Ms. Bell is  
6 asking Mr. Ives or Mr. Lutz anything -- so I mean we  
7 let it go, but it -- to think that she can ask a  
8 question about something and then Mr. Fischer comes  
9 along and drops in a neg-- or a written statement from  
10 Mr. Ives, which sounds like they're trying to  
11 negotiate a settlement through the hearing process to  
12 me, I mean this entire attempt is just ridiculous.  
13 I'm -- it should not be allowed.

14 MS. BELL: Your Honor --

15 JUDGE HATCHER: Go ahead, Ms. bell.

16 MS. BELL: Your Honor, if I may respond,  
17 you know, until we received the stipulation from OPC  
18 last night, this issue wasn't in the list of issues,  
19 the testimony or anything else. In addition, I  
20 believe my questioning was in -- was the very first  
21 questions to be asked of Mr. Ives. And he explained  
22 and they -- this proposal in his testimony.

23 If parties had additional questions  
24 regarding the resolution, you know, my question was do  
25 you have a proposed resolution. He stated what that

1 proposed resolution was. If parties had cross on that  
2 proposed resolution, they had the opportunity to do  
3 it.

4 MR. WOODSMALL: But now we have specific  
5 language. And like I say, the easy resolution is once  
6 we have this language, allow very, very, very limited  
7 cross to come back around on this language.

8 MR. KEEVIL: No. The easy resolution is  
9 not to allow this language. Then Mr. Woodsmall's  
10 would be the second easiest resolution. But this --  
11 this should not be allowed. This should be stricken  
12 and -- and we should move on and not condone such  
13 activity.

14 MR. CLIZER: I hate to dog pile, but --

15 MR. FISCHER: Everyy has the right on  
16 redirect to address the questions that were asked and  
17 to find a middle ground resolution that will -- will  
18 help the Commission find the public interest here.  
19 And we believe this -- this language would be a long  
20 way toward getting to middle ground. I would ask that  
21 this be marked as Exhibit 7 and I would like to ask  
22 Mr. Ives a couple questions.

23 MR. CLIZER: Okay. I don't mean to dog  
24 pile. I'm just throwing this out there. If they have  
25 a resolution that they think can solve it, just let

1 them bring it up in their brief. What question does  
2 he have to pose about this? I mean it should be  
3 explainable on its face.

4 JUDGE HATCHER: I --

5 MR. FISCHER: I would like to make a  
6 foundation to ask that this be admitted into the  
7 record.

8 MR. KEEVIL: Again, objection because the  
9 whole thing is just improper as -- because the -- the  
10 cross-examinat-- the alleged cross-examination which  
11 led to this was from their buddy in tariff writing,  
12 stipulation granting. It would be like if I was  
13 asking Mr. Clizer for something. I mean they can't  
14 manufacture -- and that's what they're trying to do  
15 here.

16 Ms. Bell asked the question. Mis--  
17 Mr. Ives comes back with some general answer. And  
18 then Mr. Fischer comes in with a specific written  
19 document. That is not proper. It's not -- I don't  
20 even know under what basis this would even begin to  
21 pass muster.

22 MR. FISCHER: Judge, I could ask -- I  
23 could ask Mr. Ives to read this into the record and he  
24 can do that on redirect. We're trying to just make it  
25 easy for the Commission to understand what the words



1 say.

2 JUDGE HATCHER: I am troubled by lots of  
3 things here. I am troubled by on redirect having a  
4 brand-new exhibit. However, hearing counsel argue  
5 against that raises questions in my mind about when  
6 exactly did the EDR issue become an issue. Because  
7 some parties have argued that OPC -- or the other  
8 parties brought this up relatively recently.

9 I also have a duty to the Commissioners.  
10 And having the verbiage set out is very tempting.

11 MR. WOODSMALL: Your Honor, if I could  
12 answer your one question.

13 JUDGE HATCHER: Yes.

14 MR. WOODSMALL: The -- it became known as  
15 an issue during a technical conference. If you look  
16 at the list of issues, it's not included there, but  
17 none of these are listed there. It just says what  
18 conditions, very general. So this has been known  
19 since a technical conference.

20 MR. CLIZER: Can I -- I'm sorry. I  
21 know --

22 JUDGE HATCHER: Go ahead. You're fine.

23 MR. CLIZER: I just -- I want to throw  
24 this out there. If it's just a matter of saying this  
25 is language that we think could solve it, again, they

1 can put it in their brief. I honestly don't mind if  
2 they just say like this is language right now. I have  
3 no problem with that.

4 My concern is if Mr. Ives goes on to  
5 therefore talk about it and try and explain it and  
6 make a pitch for why it's a good idea that we haven't  
7 been able to respond to. That's the critical factor  
8 here.

9 So if it's just a matter of saying this  
10 is language we propose -- again, I honestly think they  
11 can just do it in their brief and this isn't a big  
12 deal, but I personally don't have a problem with it  
13 just coming in now and just being this is language,  
14 that's it.

15 MR. KEEVIL: Well, I think the Judge was  
16 going to -- in the middle of making a ruling so I  
17 was -- like to hear the Judge's ruling before --

18 JUDGE HATCHER: I -- I am also aware that  
19 it is five o'clock and that there does exist a world  
20 outside off the Governor Office building.

21 I would like to stop here for tonight.  
22 Let this language get distributed. I saw that it was  
23 just e-mailed to everyone. That will give everyone a  
24 chance tomorrow -- well, Mr. Fischer, then I have a  
25 question. You're going to drop this let's say

1 tomorrow morning, introduce this as an exhibit.

2 Mr. Ives is going to testify on redirect. How exactly  
3 are the other counsel going to get to ask him any  
4 questions on this language?

5 MR. FISCHER: Judge, I think that's at  
6 your discretion. We believe this is a middle ground  
7 way to solve our -- our -- one of our major issues  
8 here. This is the language that Mr. Ives has -- has  
9 drafted and I think he could testify that this would  
10 be the kind of solution he would suggest.

11 If you want to ask -- if you want to let  
12 the other cust-- the other counsel ask him questions,  
13 that's fine with me. I think we could resolve it if  
14 that's all it takes. We believe this is in the public  
15 interest and it ought to be adopted.

16 JUDGE HATCHER: So I'm hearing no one  
17 objecting to recessing tonight.

18 MR. KEEVIL: No, I'm -- I'm certainly in  
19 favor of recessing.

20 JUDGE HATCHER: And coming back tomorrow  
21 with this exhibit with redirect and -- and then we're  
22 going to do, what, recross?

23 MR. WOODSMALL: Very limited recross,  
24 yeah.

25 JUDGE HATCHER: On just the EDR issue?

1 Okay.

2 MR. FISCHER: I'd say that's at your  
3 discretion, Judge.

4 MS. BELL: And Your Honor --

5 JUDGE HATCHER: Yes, go ahead, Ms. Bell.

6 MS. BELL: Your Honor, I would ask that  
7 it not be on EDR issue generally, but on this  
8 particular language. So very limited.

9 MR. WOODSMALL: Sure.

10 MR. CLIZER: Yep.

11 JUDGE HATCHER: I'm not sensing any  
12 heartburn in the room. I will use my discretion to do  
13 exactly that.

14 We are going to adjourn. I'm going to  
15 stop right here for just a second. Mr. Clizer.

16 MR. CLIZER: Was there any other redirect  
17 after this that we could -- or are we just --

18 MR. KEEVIL: We're done, John. Let's go  
19 home.

20 JUDGE HATCHER: The plan is for  
21 counsel -- this is unusual, I agree. However, moving  
22 the case forward and making all parties' presentations  
23 as clear as possible is important.

24 So with that, my plan is adjourn tonight.  
25 We'll come back tomorrow. At this point, Mr. Ives,

1 are you going to be available tomorrow at 8:30 a.m.?

2 If you could just give me a nod.

3 THE WITNESS: Yes, Judge.

4 JUDGE HATCHER: And we will then start  
5 with this exhibit on redirect. We will then depart  
6 from normal procedure, go through recross on this  
7 language and then go back to our regularly scheduled  
8 program, which will include Mr. Brubaker as a witness,  
9 Mr. Fortson, Engineer Eubanks, Mr. Busch, Dr. Marke  
10 and Lena Mantle.

11 MR. WOODSMALL: And the other two --

12 JUDGE HATCHER: Oh, and -- I'm sorry,  
13 you're right. And Ms. Hadaway and Ms. McCarthy.

14 MR. WOODSMALL: And we'll take those up  
15 first before moving off of Evergy's evidence?

16 JUDGE HATCHER: If the witnesses are  
17 available, yes.

18 MR. STEINER: Judge, this is Roger  
19 Steiner, Evergy. One is available at 10:00 and one's  
20 available after noon. So I have a little bit of time  
21 constraints, but we'll work them in.

22 JUDGE HATCHER: That's okay. We'll go  
23 with it and we'll cross that bridge when we come to  
24 it.

25 MR. WOODSMALL: Which is available first?

1 JUDGE HATCHER: Which witness is  
2 available first?

3 MR. STEINER: Let me check my notes here.  
4 I believe it's McCarthy.

5 JUDGE HATCHER: Okay. So the Regulatory  
6 Law Judge is going to use his discretion. I have laid  
7 out the plan that we are going to accomplish tomorrow.  
8 I will restate it briefly and then we will adjourn for  
9 the evening.

10 Tomorrow morning at 8:30 a.m. we will  
11 rejoin this hearing, again both by WebEx and in  
12 person. We will begin with the redirect by  
13 Mr. Fischer of Mr. Ives. And then with the expected  
14 introduction of the exhibit, we will make an exception  
15 and allow recross-examination on that language and  
16 then we'll move forward back to our regular witnesses  
17 and schedule.

18 Are there any other issues coming before  
19 the Bench tonight before we adjourn for the evening?  
20 Hearing none, we are adjourned. We are off the  
21 record.

22 (WHEREUPON, the proceedings adjourned  
23 January 25, 2022 at 5:08 p.m. until January 26, 2022  
24 at 8:30 a.m.)

25

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CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within the State of Missouri, do hereby certify that the testimony appearing in the foregoing matter was duly sworn by me; that the testimony of said witnesses 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 matter 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.

  
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Tracy Thorpe Taylor, CCR

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