

In the Matter of:

THE APPLICATION OF EVERGY METRO, INC., d/b/a EVERGY MISSOURI METRO, etc.

EU-2020-0350, VOL. III

November 13, 2020



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

November 13, 2020

Jefferson City, Missouri (WebEx)

Volume 3

In the Matter of the Application)
of Evergy Metro, Inc. d/b/a Evergy)
Missouri Metro and Evergy Missouri) File No.
West, Inc. d/b/a Evergy Missouri) EU-2020-0350
West for an Accounting Authority)
Order Allowing the Companies to)
Record and Preserve Costs Related)
to COVID-19 Expenses)

JANA JACOBS, Presiding
REGULATORY LAW JUDGE

RYAN A. SILVEY, Chairman
WILLIAM P. KENNEY,
SCOTT T. RUPP,
MAIDA J. COLEMAN,
JASON R. HOLSMAN,
COMMISSIONERS

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P R O C E E D I N G S

1
2 JUDGE JACOBS: So from what I can tell, we
3 have all the essential parties present. Let's get on
4 the record this morning to resume the evidentiary
5 hearing in Case No. EU-2020-0350. This is Evergy's
6 Application for an Accounting Authority Order Related to
7 COVID-19 Expenses. Okay. So the time is now 9:01 a.m.
8 This is the second day of the evidentiary hearing.

9 And I think we heard from Mr. Robertson before
10 we actually got on the record yesterday, but it was
11 actually Ms. Henry who appeared for Sierra Club. So
12 Mr. Robertson, did you want to enter your appearance
13 this morning?

14 MR. ROBERTSON: Yes, Judge. I will be
15 replacing Ms. Henry as attorney for the Sierra Club
16 today. My contact information is on the filings in the
17 case.

18 JUDGE JACOBS: Okay. Thank you very much.
19 And are you familiar with how to mute and unmute your
20 line there on the screen? Do you see that?

21 MR. ROBERTSON: Yes.

22 JUDGE JACOBS: Okay. Your line seems okay
23 right now, but I want to make sure everyone understands
24 that their line should be muted unless they're
25 addressing the Commission. That will help us have a

1 better quality proceeding for Ms. Bentch, our court
2 reporter, to get the record today. So I don't know that
3 it's necessary for all of the entries of appearance to
4 be repeated, but I would like to know who's present for
5 Everygy, as far as counsel goes in Kansas City, because I
6 can't see everyone.

7 MR. ZOBRIST: Judge, Carl Zobrist speaking
8 here and Robert Hack.

9 JUDGE JACOBS: Thank you very much. Then we
10 also have Mr. Fischer who I can see. So those are all
11 the preliminaries I thought we needed to get into before
12 we went on to testimony this morning. If anyone has
13 anything they wanted to raise on before we move on to
14 Office of Public Counsel's witnesses, please speak up
15 now so that we can take care of that. Did anybody have
16 anything? Okay. It doesn't look like it.

17 So that means that if Office of the Public
18 Counsel is ready to go, then we can get started with
19 your witnesses. Before we got on the record, I did ask
20 Mr. Hall if he wanted to change the order of his
21 witnesses today as he had mentioned yesterday, and I
22 think his answer was that he didn't need to do that. I
23 will let Mr. Hall address that now.

24 MR. HALL: No, that's accurate. That's
25 accurate, Judge. There was a slight concern yesterday

1 evening but no, that's not a problem.

2 JUDGE JACOBS: Okay. So did you want to
3 introduce your first witness and I'll get that person
4 sworn in?

5 MR. HALL: Thank you, Judge. At this time
6 Public Counsel calls Mr. Robert Schallenberg to the
7 stand.

8 JUDGE JACOBS: Okay. Mr. Schallenberg, I can
9 see a video feed with that name on it. Could you raise
10 your right hand, sir, and I'll get you sworn in, we'll
11 make sure we can hear you.

12 (Witness sworn.)

13 JUDGE JACOBS: This is our first test. I'm
14 going to need you to unmute and then you're going to
15 affirm once again that you're going to tell the truth
16 today.

17 THE WITNESS: Yes.

18 JUDGE JACOBS: Great. Thank you. That works.
19 And we can hear you loud and clear. You may proceed.
20 Thank you. I think, Mr. Hall, you're muted as well,
21 sir.

22 MR. HALL: My apologies.

23 ROBERT SCHALLENBERG,
24 called as a witness in behalf of the Office of the
25 Public Counsel, being sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. HALL:

2 Q. Mr. Schallenberg, good morning. Could you
3 please state your name and spell it for the court
4 reporter?

5 A. Robert E. Schallenberg,
6 S-c-h-a-l-l-e-n-b-e-r-g.

7 Q. By whom are you employed and in what capacity?

8 A. I am the Director of Policy for the Office of
9 the Public Counsel.

10 Q. And on whose behalf are you testifying today?

11 A. Office of the Public Counsel.

12 Q. Are you the same Robert Schallenberg that
13 caused to be filed rebuttal testimony that has been
14 premarked as Exhibit 200 in both confidential and public
15 versions?

16 A. Yes.

17 Q. If I asked you the same questions contained in
18 that testimony, would your questions be the same or
19 substantially similar?

20 A. My answers would be the same, yes.

21 Q. Do you have any corrections to make to your
22 testimony at this time?

23 A. No.

24 MR. HALL: At this time, Your Honor, I offer
25 Exhibit 200 into evidence and tender my witness for

1 cross.

2 JUDGE JACOBS: Thank you. And did
3 Mr. Schallenberg's testimony have confidential and
4 public versions?

5 MR. HALL: Yes. There was a public and
6 confidential version. The confidential version is the
7 one that our email system is too large to send, but both
8 of those have been prefiled in EFIS. If you need the
9 document sent to you again, we can make that work.

10 JUDGE JACOBS: I don't think that that will be
11 necessary if you're offering the same documents that are
12 in EFIS. I'm just clarifying that it's both versions.

13 MR. HALL: Correct.

14 JUDGE JACOBS: OPC has offered Mr.
15 Schallenberg's testimony in confidential and public
16 versions as Exhibit 200. Are there any objections to
17 that? Hearing no objections, that exhibit will be
18 admitted to the record, as that would be 200 and 200C I
19 think is the way that we would do that.

20 (OPC EXHIBITS 200 PUBLIC AND CONFIDENTIAL WERE
21 RECEIVED INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

22 JUDGE JACOBS: Okay. Do we have any
23 cross-examination for Mr. Schallenberg from the National
24 Housing Trust?

25 MR. LINHARES: No, no cross-examination.

1 Thank you, Judge.

2 JUDGE JACOBS: Thank you. All of your places
3 have moved on my screen. So I'm looking at the wrong
4 spot for people'S faces. Renew Missouri, do you have
5 any questions?

6 MR. OPITZ: No questions from me, Judge.
7 Thank you.

8 JUDGE JACOBS: Does counsel for Evergy have
9 any questions for Mr. Schallenberg today?

10 MR. ZOBRIST: No questions, Judge.

11 JUDGE JACOBS: And counsel for Staff?

12 MS. MYERS: No questions, Judge.

13 JUDGE JACOBS: Missouri Industrial Energy
14 Consumers? I did see Ms. Plescia's face earlier today.
15 I hope she isn't having a connection problem. I will
16 ask if Midwest Energy Consumers Group has any questions?

17 MR. WOODSMALL: No questions. Thank you.

18 JUDGE JACOBS: Let me check my email to make
19 sure there isn't a connection issue. It looks like
20 we're okay. And Sierra Club, Mr. Robertson, did you
21 have any questions, sir?

22 MR. ROBERTSON: No, thank you.

23 JUDGE JACOBS: Thank you. That would open up
24 the opportunity for any Commissioners to ask questions
25 of Mr. Schallenberg. Were there any questions from the

1 Commission today?

2 CHAIRMAN SILVEY: No questions, Judge.

3 JUDGE JACOBS: Thank you very much. Of
4 course, if anything occurs to the Commissioners, I know
5 they're going to speak up and let me know that they need
6 to say something.

7 I had a couple questions to ask Mr.
8 Schallenberg.

9 QUESTIONS BY JUDGE JACOBS:

10 Q. I wanted to hear your opinion in regard to
11 general instruction 7 and the application of that in
12 regard to AAO applications before the Commission. Is
13 there anything that you would say about that, sir?

14 A. I think general instruction 7 is fairly clear.
15 Now, on the other hand, it was never designed to be used
16 specifically as an AAO in Missouri guideline, but that's
17 the way once the Commission adopted the Uniform System
18 of Accounts, that general instruction 7 is part of that.
19 So that's how it becomes relevant to the proceeding.

20 Q. Thank you. And I also wanted to ask you,
21 which I think is also connected to that general
22 instruction which includes the provision regarding
23 materiality and the 5 percent concept, if you were
24 looking at that and trying to figure out the income
25 figure that you would apply to evaluate that 5 percent

1 standard if it were accepted as such, where would you
2 look to figure out what the income figure would be that
3 you would apply in that analysis?

4 A. I would apply the net income amount for the
5 period which the event the AAO occurs or is occurring
6 and use that as a baseline and then I would factor that
7 down to 5 percent and factor for taxes and that would
8 give me a baseline of what materiality would be. And if
9 it's under that baseline, it would not qualify to be
10 material. Obviously if it's over that baseline, it
11 would be material.

12 Q. And I understand that you were previously an
13 auditor for the Commission. So you're probably familiar
14 with the kinds of reports that are made to the
15 Commission by utilities?

16 A. Yes.

17 Q. So are there any specific reports or other
18 sources that you're familiar with that are available to
19 the Commission that the Commission could use for that
20 purpose of determining net income?

21 A. I would say the Commission has an annual
22 report filing from all the utilities and in that it
23 gives net income for the respective utilities. So you
24 could get the information from that. There may be some
25 difficulty in that it's only annual and it doesn't get

1 filed until April or May with an extension so there
2 might be some lag in getting your hands on it. Like I
3 know 2019 is available now.

4 JUDGE JACOBS: Okay. Thank you very much.
5 Those were the only questions that I had. Are there any
6 questions from the Commission at this point? I have no
7 indication that there are any additional questions. Is
8 there any questions at this point from National Housing
9 Trust for Mr. Schallenberg?

10 MR. LINHARES: No, thank you, Judge.

11 JUDGE JACOBS: And Ms. Plescia, it looks like
12 you might have had a connection problem. So did you
13 want an opportunity to ask questions of Mr.
14 Schallenberg?

15 MS. PLESCIA: Well, first of all, thank you
16 very much, Judge, for giving me the opportunity. My web
17 connection went out twice, both of the opportunities
18 probably that I had to ask questions. I didn't have any
19 questions. Thanks for asking though.

20 JUDGE JACOBS: Okay. If that happens to
21 anybody during the hearing, just speak up and let me
22 know hey, I wasn't able to get in, and I'm sure everyone
23 would appreciate knowing that and giving you an
24 opportunity.

25 MS. PLESCIA: Thank you.

1 JUDGE JACOBS: Renew Missouri, did you have
2 any questions?

3 MR. OPITZ: None at this time, Judge, thank
4 you.

5 JUDGE JACOBS: And Evergy?

6 MR. ZOBRIST: No questions, Judge.

7 JUDGE JACOBS: Thank you. And any questions
8 from Staff?

9 MS. MYERS: No questions, Judge.

10 JUDGE JACOBS: I just asked Ms. Plescia with
11 Missouri Industrial Energy Consumers. Now I'll move on
12 to Midwest Energy Consumers Group?

13 MR. WOODSMALL: None. Thank you.

14 JUDGE JACOBS: And Sierra Club?

15 MR. ROBERTSON: No, thank you.

16 JUDGE JACOBS: Thank you so much. Is there
17 any redirect from Office of the Public Counsel?

18 MR. HALL: None. Thank you.

19 JUDGE JACOBS: Okay. So thank you very much,
20 Mr. Schallenberg. That will conclude your testimony at
21 this time.

22 MR. HALL: At this time Public Counsel calls
23 Dave Murray to the proverbial stand. Dave, how is your
24 audio and visual connection this morning?

25 THE WITNESS: This is Dave Murray. I have my

1 audio on. I can try to start the video if you would
2 like.

3 MR. HALL: Mr. Murray, if you're able to,
4 please do.

5 THE WITNESS: Okay.

6 MR. HALL: Mr. Murray, by whom are you
7 employed and in what capacity?

8 JUDGE JACOBS: So let me swear in Mr. Murray
9 first, please.

10 MR. HALL: My apologies.

11 JUDGE JACOBS: Good morning, Mr. Murray.
12 Could you raise your right hand, please?

13 THE WITNESS: Yes, good morning.

14 JUDGE JACOBS: Good morning.

15 (Witness sworn.)

16 JUDGE JACOBS: Thank you. You may proceed,
17 Mr. Hall.

18 MR. HALL: Thank you.

19 DAVID MURRAY,
20 called as a witness in behalf of the Office of the
21 Public Counsel, being sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. HALL:

23 Q. Mr. Murray, by whom are you employed and in
24 what capacity?

25 A. I'm employed by the Missouri Office of the

1 Public Counsel as a Utility Regulatory Manager.

2 Q. And on whose behalf are you testifying today?

3 A. On behalf of the Missouri Office of the Public
4 Counsel.

5 Q. Mr. Murray, are you the same Dave Murray who
6 caused to be filed rebuttal testimony in this docket
7 that has been premarked as Exhibit 201?

8 A. Yes, I am.

9 Q. If I asked you the same questions contained in
10 that exhibit, would your answers be the same or
11 substantially similar?

12 A. Yes.

13 Q. Do you have any corrections to make to your
14 testimony at this time?

15 A. No.

16 Q. Are the answers given in your exhibits true
17 and accurate to the extent of your belief and knowledge?

18 A. Yes.

19 MR. HALL: At this time, Your Honor, I offer
20 Exhibit 201 into evidence and tender my witness for
21 cross.

22 JUDGE JACOBS: Thank you very much. Any
23 objections to Exhibit 201, which is the rebuttal
24 testimony of David Murray? Hearing no objections, that
25 exhibit will be admitted to the record.

1 (OPC EXHIBIT 201 WAS RECEIVED INTO EVIDENCE
2 AND MADE A PART OF THIS RECORD.)

3 JUDGE JACOBS: Looks like we would start with
4 any cross-examination from National Housing Trust?

5 MR. LINHARES: I have no cross-examination for
6 the witness. Thank you, Judge.

7 JUDGE JACOBS: Thank you. Renew Missouri?

8 MR. OPITZ: No, thank you, Judge.

9 JUDGE JACOBS: Will there be any
10 cross-examination from Every today?

11 MR. ZOBRIST: Just a couple of questions,
12 Judge.

13 JUDGE JACOBS: And this is?

14 MR. ZOBRIST: Mr. Zobrist.

15 JUDGE JACOBS: Thank you. Please proceed,
16 sir.

17 CROSS-EXAMINATION BY MR. ZOBRIST:

18 Q. Good morning, Mr. Murray.

19 A. Morning, Mr. Zobrist.

20 Q. Could you turn to page 2 of your rebuttal
21 testimony?

22 A. Sure. Page 2?

23 Q. Yeah, page 2, your first question at the top
24 of the page and your subsequent answer.

25 A. Yes, I'm there.

1 Q. And you stated there that you believe that the
2 Commission should not approve Evergy's requested AAO or
3 should at least exclude lost revenues in an approved
4 AAO; is that correct?

5 A. Yes.

6 Q. And as we're sitting here today, is it also
7 not correct that Evergy is not asking the Commission to
8 approve the AAO that it requested in its application?

9 A. That's my understanding with the stipulation
10 and agreement.

11 Q. And the AAO application did seek deferral for
12 lost revenues caused by the COVID-19 pandemic, correct?

13 A. Yes.

14 Q. And by contrast, paragraph 6 in the
15 Non-Unanimous Stipulation and Agreement provides that
16 Evergy agrees not to defer into a regulatory asset any
17 lost revenues from reduced customer usage due to the
18 pandemic or other waived fees except as provided in
19 paragraph 2(d); is that correct?

20 A. That's my understanding.

21 Q. And therefore the request of Evergy, as well
22 as Staff, MEEG, MIEC and the Sierra Club meets your
23 recommendation that if the Commission does grant an AAO,
24 the AAO should at least exclude lost revenues, correct?

25 A. That is correct.

1 MR. ZOBRIST: Thank you, Mr. Murray. No
2 further questions, Judge.

3 JUDGE JACOBS: Thank you. Did we have any
4 questions from Staff?

5 MS. MYERS: No questions, Judge.

6 JUDGE JACOBS: And Missouri Industrial Energy
7 Consumers?

8 MS. PLESCIA: No questions. Thank you.

9 JUDGE JACOBS: And Midwest Energy Consumers
10 Group?

11 MR. WOODSMALL: No questions. Thank you.

12 JUDGE JACOBS: And Sierra Club?

13 MR. ROBERTSON: No, Judge.

14 JUDGE JACOBS: Thank you very much. So the
15 floor is open to any questions from the Commission for
16 Mr. Murray. I have a few questions that I'm going to
17 ask Mr. Murray at this point and then if the Commission
18 speaks up at all, they'll certainly have a chance.

19 QUESTIONS BY JUDGE JACOBS:

20 Q. So Mr. Murray, is it your opinion that the
21 United States is in a recession at this time?

22 A. It's usually announced after the fact by the
23 Bureau of Economic Research. So yes, I believe they
24 announced that we were in a recession fairly quickly. I
25 don't know. They will announce the end of that when

1 they deem that they believe that the end of the
2 recession occurred. Usually that's after the fact. So
3 I really can't say whether or not that is something that
4 their opinion will be as to when the end of the
5 recession will occur.

6 Q. Okay. So what you're saying is --

7 A. To be determined.

8 Q. So we get into a recession, but economists
9 don't actually decide it's a recession until after we're
10 well into it and then they let us know when it started
11 and when it ended?

12 A. I believe the Bureau of Economic Research has
13 announced that we're in a recession. As to when that
14 recession will end, it could be last month. They have
15 to analyze the data to determine when they believe the
16 recession ended, and that's usually after the fact.

17 Q. Okay. And then it sounds like you're
18 referring to a specific opinion of a specific entity?

19 A. Bureau of Economic Research, correct.

20 Q. Okay. And do you happen to recall what date
21 that they attributed the start of the recession to?

22 A. I'm sorry. I do not.

23 Q. Okay. And do you -- Would be you be able to
24 provide any opinion about the causes of the recession?

25 A. Other than from sources, not first hand. It

1 would be relying on authoritative sources.

2 Q. Okay. So do you happen to know what those
3 sources are saying about what's causing the recession
4 that has begun at some point and we aren't sure if we're
5 out of it yet?

6 A. I'd have to take a look at the specifics from
7 the Bureau of Economic Research. More than likely it's
8 either the pandemic obviously caused a lot of the
9 lockdowns as far as mitigation efforts. So you know,
10 there's -- I think it gets to a point where it's loosely
11 attributed to the pandemic but is it the actual actions
12 taken to try to mitigate the spread of the pandemic. I
13 think you're probably aware of seeing mobility, cell
14 phone mobility data as to whether or not people are
15 voluntarily staying in place. But you know, as far as
16 whether or not it's the actual government lockdowns or
17 voluntarily I guess minimizing your movement.

18 Q. Is there anything that you could say if you
19 were comparing this recession to the recession that the
20 economy went through in 2007 ending in about 2009 or so?

21 A. The 2007 to 2009 was obviously a very
22 prolonged recession very much due to the great financial
23 crisis, very much a structural financial collapse. This
24 recession is obviously attributed to the public health
25 and actions taken to address the public health situation

1 which obviously you see the debates on the potential
2 V-shaped, hockey stick, K-shaped types of recoveries,
3 but yes, that definitely was very fast and steep decline
4 in the second quarter. The classic definition of a
5 recession is two consecutive quarters of decline. I say
6 classic textbook definition. That's not the Bureau of
7 Economic Research. It's a specific definition. But
8 point being is that it was a very long recovery in the
9 2007 to 2008 or 2007-2009 recession and great financial
10 crisis which seemed to have a very long lasting impact.

11 Q. And I have asked a few witnesses about where
12 they would look if they were trying to figure out net
13 income or income in reference to the materiality
14 standard that if that term is fair to use in regard to
15 general instruction 7. So I'll just go ahead and ask
16 you that question as well. Is there a particular place
17 that you think the Commission could look to figure that
18 out?

19 A. Depends on how current you want the
20 information to be. As far as I guess going into this
21 case with 2020 being the period that's being evaluated,
22 you could just look at the year end 2019, compare the
23 annual reports filed with the Missouri Public Service
24 Commission, actually the annual reports filed with the
25 Security and Exchange Commission and also the

1 information that's filed for the fuel adjustment clause
2 filings for surveillance.

3 Q. Okay. And I have one more question for you.
4 Are you aware of what percentage of arrearages owed to
5 Evergy were ultimately converted to bad debt for these
6 companies before the pandemic? Is that information that
7 you have?

8 A. Sorry, I do not know that.

9 JUDGE JACOBS: Okay. All right. So let me
10 check my email and see if I have any messages. Looks
11 like I'm done with my questions. We can go on to any
12 recross. If there's anything from National Housing
13 Trust?

14 MR. LINHARES: No, thank you, Judge.

15 JUDGE JACOBS: And Renew Missouri?

16 MR. OPITZ: No questions. Thank you.

17 JUDGE JACOBS: Anything from Evergy?

18 MR. ZOBRIST: Just briefly, Judge.

19 RECROSS-EXAMINATION BY MR. ZOBRIST:

20 Q. Mr. Murray, the Bureau of Economic Research,
21 is that part of one of the federal government
22 departments?

23 A. Yes.

24 Q. Is it the United States Department of
25 Commerce?

1 A. I don't know.

2 Q. But the agency that you referred to is a
3 federal agency that's part of the federal government; is
4 that correct?

5 A. Yes.

6 Q. And do they periodically issue authoritative
7 reports upon which experts like you and others rely upon
8 as authoritative?

9 A. Yes.

10 Q. I'm sorry. Mr. Murray, was that a yes?

11 A. Yes.

12 MR. ZOBRIST: Thank you very much. That's all
13 I have, Judge.

14 JUDGE JACOBS: Thank you. Do we have any
15 recross from Staff?

16 MS. MYERS: No cross, Judge.

17 JUDGE JACOBS: Thank you. Anything from
18 Missouri Industrial Energy Consumers?

19 MS. PLESCIA: Yes, I have a couple of
20 questions for Mr. Murray.

21 RE-CROSS-EXAMINATION BY MS. PLESCIA:

22 Q. Good morning, Mr. Murray. How are you?

23 A. Good morning. How are you doing?

24 Q. I'm doing fine. I wanted to follow up on a
25 couple of the Judge's questions about income and the FAC

1 surveillance reports. Can you tell me how often those
2 reports are filed?

3 A. Quarterly.

4 Q. And what categories or types of information
5 are included in that report?

6 A. Basically anything that allows you to assess
7 the financial performance of the Company as far as real
8 time data and more or less in, I guess in how it may be
9 evaluated from a ratemaking perspective as far as, you
10 know, what the authorized rate of return is, how they're
11 doing in comparison to authorized rate of return. So
12 it's basically an income statement, a balance sheet
13 assessment that allows you to determine whether or not
14 there was any concern as to whether or not the fuel
15 adjustment clause is I guess necessary from a
16 perspective of, you know, allowing higher earnings than
17 are allowed and also lower earnings than are allowed.

18 Q. Do you think it's fair to say that one of the
19 purposes of a FAC report, surveillance report is to
20 monitor the earnings of the Company?

21 A. Yes. Sorry.

22 MS. PLESCIA: I tried to recalculate what you
23 said. I don't have any further questions. Thank you.

24 JUDGE JACOBS: Ms. Bentch, are you okay? Was
25 that too garbled for you?

1 THE COURT REPORTER: I guess she could just to
2 be clear if she could repeat that last question.

3 MS. PLESCIA: Sure. I think the last question
4 I had was is it fair to state that the purpose of, one
5 of the purposes of the FAC surveillance reports is to
6 monitor the earnings of the Company. That was my last
7 final question.

8 JUDGE JACOBS: And Mr. Murray?

9 MR. MURRAY: My answer was yes.

10 MS. PLESCIA: I'm sorry if my audio isn't
11 coming through clearly.

12 JUDGE JACOBS: I think you just had an
13 intermittent problem. I think it's okay.

14 MS. PLESCIA: Thank you.

15 JUDGE JACOBS: So then I think we're ready to
16 proceed to any questions from Midwest Energy Consumers
17 Group if you had any?

18 MR. WOODSMALL: No questions.

19 JUDGE JACOBS: And Sierra Club?

20 MR. ROBERTSON: No, thank you.

21 JUDGE JACOBS: Thank you. Is there any
22 redirect from Office of the Public Counsel?

23 MR. HALL: Yes, briefly, Judge.

24 REDIRECT EXAMINATION BY MR. HALL:

25 Q. Mr. Murray, in response to questions from the

1 bench you referred to a K-shaped recovery. I would like
2 you to expand on that. What do you mean by K shaped?

3 A. A K-shaped is the view that, you know, that
4 the higher socioeconomic classes of our economy will
5 rebound quicker than the lower income class of the
6 economy.

7 Q. And why is it referred to as K-shaped?

8 A. Because the wealthier would experience a
9 rebound quicker than the lower income. So the upper
10 part of the K represents the higher income, higher
11 wealth aspect individuals in the economy and the K, the
12 lower part of the K is the lower income, you know,
13 individuals in a service sector, work from paycheck to
14 paycheck.

15 Q. So the data looks like a K if we put it on a
16 graph?

17 A. I say the data. It's more -- I'm not going to
18 say this is an official -- It's not an official I guess
19 GDP because it bifurcates. It's trying to break up the
20 potential rebound of the economy into different, you
21 know, different classes of wealth and income in the
22 economy. So it's not going to be an official I guess
23 authoritative type of graph if you will. It's just used
24 to explain what happens when you have a situation like
25 we just have had where the service workers have been the

1 most impacted by the lockdowns.

2 Q. Do you think the Evergy's requested AAO in the
3 form of a stipulation and agreement exacerbates or moves
4 away from the K-shaped recovery?

5 A. It's obviously utility customers that have
6 problems with paying their bills are probably in the
7 lower socioeconomic status. So that would exacerbate to
8 the extent they have increased costs put on them.

9 MR. HALL: Thank you, Mr. Murray. No further
10 questions.

11 JUDGE JACOBS: Thank you, Mr. Murray. That
12 will conclude your testimony.

13 THE WITNESS: Thank you.

14 MR. HALL: At this time I would call for the
15 availability of Dr. Geoff Marke.

16 JUDGE JACOBS: Okay. And there I see a video
17 feed for Dr. Marke. It looks like the line is muted and
18 he should have the ability to unmute the line. It might
19 be on the video screen. There we go. Okay. So
20 Mr. Marke, can you raise your right hand, or I'm sorry,
21 you're doctor. Dr. Marke, can you raise your right hand
22 for me, please?

23 (Witness sworn.)

24 JUDGE JACOBS: Thank you very much. You may
25 proceed, Mr. Hall.

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DR. GEOFF MARKE,
called as a witness in behalf of the Office of the
Public Counsel, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. HALL:

Q. Dr. Marke, by whom are you employed and in
what capacity?

A. I'm the Chief Economist with Missouri Office
of the Public Counsel.

Q. And on whose testimony are you -- On whose
behalf are you testifying today?

A. The Missouri Office of the Public Counsel.

Q. Are you the same Dr. Geoff Marke who caused to
be filed two exhibits that were prefiled marked as
Exhibit 202 and 203, the corrected rebuttal testimony
and surrebuttal testimony respectively?

A. Yes.

Q. If I asked you the same questions contained in
both those exhibits, would your answers be the same or
substantially similar?

A. Yes.

Q. Are the answers contained therein true and
accurate as to the fullest extent of your belief and
knowledge?

A. Yes.

Q. Did you also -- Do you also have proposed

1 corrections to your testimony?

2 A. I do.

3 Q. And did you have those corrections
4 conveniently done beforehand as an exhibit premarked as
5 Exhibit 204?

6 A. I did.

7 Q. And that is your errata sheet?

8 A. That is correct.

9 Q. And once we incorporate the changes in Exhibit
10 204, are there any other changes you need to make to
11 your testimony?

12 A. No.

13 MR. HALL: Your Honor, at this time I move for
14 the admission of Exhibits 202, 203 and 204 and tender
15 Dr. Marke for cross.

16 JUDGE JACOBS: Thank you very much. So 202 is
17 the corrected rebuttal testimony of Dr. Marke, 203 is
18 the surrebuttal testimony and 204 is the errata sheet.
19 Are there any objections to those exhibits being
20 admitted to the record? Hearing no objections, those
21 exhibits will be admitted.

22 (OPC EXHIBITS 202, 203 AND 204 WERE RECEIVED
23 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

24 JUDGE JACOBS: So we would proceed then to any
25 cross-examination starting with National Housing Trust?

1 MR. LINHARES: Judge, I have a few questions.

2 JUDGE JACOBS: Okay. Please proceed, sir.

3 CROSS-EXAMINATION BY MR. LINHARES:

4 Q. Good morning, Dr. Marke.

5 A. Good morning.

6 Q. So Dr. Marke, I want to start with a question
7 about the working docket, the COVID-19 working docket.
8 Can you explain how you have personally been involved
9 with stakeholders in this docket?

10 A. Well, the Office of the Public Counsel did
11 file comments in the working docket, the Commission's
12 working docket to deal with arrearage payments. But
13 even preceding that, we've been working with all of the
14 utilities and the various stakeholders on weekly
15 COVID-19 phone calls.

16 Q. And would you say you have concern about the
17 empirical data you've seen about the spread of COVID-19
18 and the utility's response to it?

19 A. There's a lot of noise in the data. There's,
20 you know, there's a couple factors, you know, you need
21 to consider based off the empirical data that we've got.
22 One is there's a time issue that there's a lag of at
23 least about a month before we get an accurate sense of
24 what's taking place with the utilities. So for example,
25 right now we're still waiting on October data and at

1 best I'm able to go ahead and get a sense of what was
2 the world like for utility customers back in September,
3 which is also the same time when customers were getting
4 various stimulus safety net relief checks in place, and
5 a lot of that has dried up since then. You know, here
6 we are mid November. It is much more difficult to go
7 ahead and gauge.

8 Q. Yeah, okay. You discussed a lag. What about
9 utilities arrearage amounts and specifically Evergy
10 Metro and Evergy West's arrearage amounts? Do you have
11 concerns there?

12 A. The arrearage amounts across utilities has
13 increased. That's without a doubt. You know, I think
14 that there's a misconception with what's taking place as
15 far as disconnects and arrearages. A lot of people
16 perceived that there would be this mass tsunami of
17 disconnects that would take place as soon as the
18 moratorium was lifted. The reality of it is is that the
19 payment plans have increased about five fold. So across
20 the board you have huge, huge increases in payment
21 plans. But with that month over month the arrearage
22 amounts have increased considerably. I have a lot of
23 concern about Evergy in particular -- in particular
24 Metro and West but in particular Metro.

25 The average residential arrearage amount is

1 categorically higher than any other utility in Missouri
2 right now. There's probably various reasons for that,
3 but moving forward of all my utilities those are -- both
4 Metro and West are my biggest concerns in terms of sheer
5 dollar amount of arrearage that needs to be overcome.

6 Q. Yeah, okay. So you referenced payment plans.
7 Can you explain your opinion on the importance of
8 arrearage management plans or payment plans which we've
9 heard a lot of testimony about and in particular what is
10 the value of these plans for shareholders and for
11 ratepayers, in your opinion?

12 A. Sure. There's a two-fold purpose I would say.
13 There's value for both shareholders and for ratepayers
14 at the end of the day to ensure that arrearage amounts
15 are as low as possible. If those arrearage amounts are
16 not brought down, if they're let to lag or if they're
17 increased over time, eventually those arrearage amounts
18 will be uncollectibles. Today we have, you know, rates
19 are set to account for some of that. The big concern,
20 and this was referenced a lot by Evergy's witnesses
21 yesterday, was that big tail, that big tail that might
22 take place, you know, later down the line that could
23 expose the Company and potentially customers to this
24 large uncollectible amount.

25 This is a concern for all utilities. This was

1 a concern with Spire. This was a concern with
2 Missouri-American. And this is where arrearage
3 management plans are so important, because at the end of
4 the day you're going to have pay one way or the other,
5 you know. You're going to have -- We're either going to
6 have to pay at the end when we settle rates with those
7 uncollectible dollars or we can be proactive and try to
8 mitigate that problem today. And that's what we came up
9 with with the Spire case. That's what we proposed here
10 with Evergy, because we really feel like, you know, at
11 the end of the day it is beneficial for both
12 shareholders and ratepayers.

13 Let me emphasize the shareholder aspect on it
14 because there's been a lot of lip service given to lost
15 revenues here. If you're keeping customers on and
16 they're paying down their bill, you're going to have
17 less lost revenues as well. It's a feedback that's
18 taking place across the system. Our office has been a
19 big proponent of trying to enable customers to take
20 advantage of existing stimulus that's out there but also
21 to try to bring down what can be a really
22 psychologically large arrearage amount. And the last
23 one I'll just say this is really just trying to
24 emphasize the we're all in it together approach. You
25 know, I'm very thankful that Spire and Missouri-American

1 did take that approach. I do have a lot of concerns
2 with how Evergy has handled it to date.

3 Q. Okay. So you referenced the Spire and the
4 Missouri-American Water case. Public Counsel entered
5 into the Unanimous Stipulation and Agreement in the
6 Spire case; is that correct?

7 A. That's correct.

8 Q. Can you explain what was different in that
9 case and why Public Counsel has not joined the
10 stipulation in this case?

11 A. The two biggest things, the first one is the
12 gambling provision that my counsel referenced earlier.

13 Q. Right.

14 A. We just think that's unfair at the end of the
15 day especially considering everything that's taking
16 place. It seems -- I question how we -- First of all, I
17 question how we could agree to something to better terms
18 with Evergy than what we agreed to with Spire and
19 Missouri-American, but the gambling provision in
20 particular, the idea of the Company saying well, we want
21 to leave the door open if things get really bad and
22 we're going to be sheltered with this risk but we want
23 to cease being aggressive or continuing to offer payment
24 plans or arrearage management plans seems wrong period.
25 The second part is the arrearage management plans or in

1 Missouri-American's case, you know, it was bill credits.
2 But for a Company that has the largest arrearages in the
3 state of Missouri right now, I mean, categorically
4 larger than other utilities, to not continue to pursue
5 arrearage management programs, you know, that show both
6 Company and ratepayers are in it seems wrong.

7 Q. And regarding that arrearage management
8 program, that agreement reached in the Spire case, can
9 you explain how parties arrived at the amounts and the
10 matching framework there?

11 A. I can. In general --

12 MS. MYERS: Judge, I'm going to object here.
13 I think these are confidential settlement discussions.

14 MR. LINHARES: Judge, understood. I'm not
15 trying to elucidate the figure that was arrived at but
16 merely the process by which parties arrived at that, and
17 I don't believe the framework of the matching program is
18 confidential.

19 MS. MYERS: Judge, if I may respond to what
20 Mr. Linhares said. I would agree if he's talking about
21 the framework that's in the public document. That's not
22 confidential. But by his own words referencing the
23 discussions that got there, those would be confidential.

24 MR. LINHARES: Okay. Fair enough. I will
25 withdraw the question and rephrase.

1 JUDGE JACOBS: Okay. Go ahead.

2 BY MR. LINHARES:

3 Q. Dr. Marke, can you explain what Public Counsel
4 finds valuable in both the figure dollar amount and the
5 matching framework that you've agreed to in the Spire
6 stipulation?

7 A. In the Spire stipulation, it specifically
8 spelled out that the balance of annual energy efficiency
9 funds that were unspent would be matched, a certain
10 dollar amount, those that were allocated on the
11 residential side would be matched by the Company for an
12 additional million dollars and used to help customers
13 pay down overall arrearages. So if the customer had an
14 arrearage dollar amount, let's say they were at \$200 and
15 they were at threat of getting disconnected, they could
16 enter into this plan if they showed that they were
17 harmed by COVID in some manner and they would
18 immediately get a \$100 credit that would be expunged
19 from their balance. From there, dollar for dollar it
20 would be matched. If that customer donated the dollar,
21 an additional dollar would be donated through this
22 program. As long as the customer was remaining current,
23 they could pay down their balance. That was the impetus
24 behind it because we saw obviously that the heating
25 season was about to begin and we wanted to get that

1 approved as quickly as possible so customers could take
2 advantage of it.

3 Q. Okay. To your knowledge, has the Commission
4 approved a matching payment arrangement like this one in
5 an AAO case or in another case?

6 A. The framework of what I have suggested here in
7 testimony back in I guess July was the same framework
8 that the Commission approved for Liberty Utilities when
9 they acquired Empire District Electric Company. That is
10 part of that document.

11 Q. Just briefly, what about the Missouri-American
12 Water case, why did they utilize a bill payment program
13 rather than this matching program?

14 A. The short answer is that the Missouri-American
15 customers weren't as negatively impacted or the Company
16 in terms of arrearage amount and number of customers on
17 payment plans wasn't as pronounced as it was for the gas
18 and certainly not as pronounced as it is for electric.

19 THE COURT REPORTER: I'm sorry, Dr. Marke.
20 Could you go back a little bit with your answer. I had
21 a hard time understanding you.

22 THE WITNESS: Sure. For Missouri-American
23 Water, customers for Missouri-American Water were not as
24 negatively -- have not been as negatively impacted as
25 customers, natural gas or electric customers. The

1 Missouri-American customers in particular it was just
2 the bill credit seemed like a more forthright quicker
3 way to go ahead and sort of that K-shaped subdemographic
4 that Mr. Murray referenced.

5 BY MR. LINHARES:

6 Q. So Dr. Marke, if we're trying to arrive at an
7 equivalent dollar amount for Evergy, if they were to
8 adopt the matching arrearage management program like the
9 one you've proposed in this case, what would you
10 estimate that being based on the dollar amount in Spire?

11 A. Oh, given their sizes, I would say about a
12 million dollars per company --

13 Q. So \$2 million?

14 A. -- is an approximate number, yes.

15 Q. Okay. I want to ask you a couple questions
16 about Evergy's payment plans that have a one, four-month
17 and 12-month payment plan. We heard testimony about
18 that yesterday. I believe the one and four-month
19 payment plans ended this summer and the 12-month payment
20 plan ends next month. Is that your understanding?

21 A. The one-month and four-month payment plans
22 ceased getting applicants. They ceased any new
23 applicants in August, right, and the 12-month plan is
24 essentially the cold weather plan which allows for 12
25 months. So really all Evergy has done is started that

1 cold weather option earlier than would otherwise take
2 effect here two weeks ago.

3 Q. Okay. Great. And I'm looking at your
4 rebuttal testimony here on page 17, around line 16. Do
5 you have that in front of you?

6 A. One second. I've got two monitors here. Page
7 17, yeah.

8 Q. I'm looking at a table that says payment
9 arrangement credits by program. Do you see that?

10 A. Yes.

11 Q. So I'm just wondering do you have any concerns
12 about how Evergy has operated its customer arrearage
13 payment program that was in place earlier this year and
14 the current one?

15 A. Yes. So Table 2 is a really good example of
16 that. It is obviously missing August. But if you look
17 at those two months, we're saying June, July and then
18 we're missing August. That's it. We had roughly under
19 a hundred days where there's a payment plan arrangement
20 in place during summer. Then it stopped. For those two
21 months, you have 1,129 customers that were able to take
22 advantage of it. So one, this is a very, very small
23 amount relative to the overall population of customers
24 that are in arrearage. Two, it's already done. And
25 it's done before stimulus bills, really before you see

1 that pronounced K dive of customers that are making, you
2 know, at or near let's say 200 percent of federal
3 poverty line. Three, my big concern with this is that
4 this whole overall design is what I would characterize
5 as one that's probably largely filtered by freeriders.
6 What I mean by that is customers that would have paid
7 their bills regardless of whether or not there was a
8 one-month or a three-month option. Our concern is not
9 customers that could pay their balance in a month. Our
10 concern is customers that aren't going to have their
11 job, you know, for a prolonged period of time. Our
12 concern is customers that are going to be, you know, at
13 risk of losing their power over the winter. You know,
14 that's the big concern. This payment arrangement is,
15 you know, I applauded the Company insofar as it's coming
16 forward with something, but the design itself is flawed.

17 Q. Okay. And regarding the design of these
18 payment plans, I want to ask let's say a customer is out
19 of work, they have been out of work for awhile, they're
20 struggling to pay their bill. Say they've signed up for
21 the 12-month payment plan. In your understanding, what
22 happens if a customer misses a payment?

23 A. Well, that's a bit of a general argument for I
24 guess the question. It would depend at what point, was
25 this their first missed payment, did they miss something

1 before they entered into this arrangement, is there any
2 matching funds, is it during the cold weather rule where
3 they could or could not be shut down. There's some
4 variables I guess at play there.

5 Q. Yeah. I mean, in your understanding is there
6 a way for a customer to be kicked off of the payment
7 plan I suppose?

8 A. Sure, by nonpayment, right.

9 Q. Okay. I just have a couple questions about
10 Evergy's Economic Relief Pilot Program which has been
11 the subject of your testimony and others. I'm looking
12 at your surrebuttal on page 6 and lines 11 through,
13 let's see, page 6, lines 11 through 14 you're talking
14 about the ERPP or the Economic Relief Pilot Program and
15 how the program has had an uptick in participation. And
16 in particular in your footnote there I'm wondering if
17 you could just summarize the footnote that you put in
18 your testimony there.

19 A. This is from two rate cases ago. The footnote
20 cited the concerns that we had with the Company not
21 being able to spend the Economic Relief Pilot Program
22 dollars which was largely a 50/50 sharing mechanism
23 between ratepayers and shareholders. There was a pretty
24 high profile story at the time about a grandmother who
25 was looking after her granddaughter that was on various

1 different medical equipment that was getting their power
2 shut off. Even through notes from the hospital they had
3 difficulty. They were still going to get their power
4 shut off but yet we had this ERPP money and others
5 available. So our concern with the Economic Relief
6 Pilot Program, and this was a recommendation by Mr.
7 Colton, to increase the funding for the ERPP was that we
8 haven't always spent down the ERPP money that we've had
9 in the past and, in fact, there's a lot of reasons that
10 came of it. At the time in that rate case, if I recall
11 correctly, the Salvation Army and the Salvation Army I
12 believe is still providing it, but when we reviewed the
13 Salvation Army's website for the ERPP money, we noted
14 that the terms of the program on its website were
15 different than what was in the tariff. There was a lot
16 of organizational structural problems, and it
17 underscored our concern about getting money to the
18 people that need it.

19 Q. Would that concern continue or even be higher
20 I suppose during this COVID crisis?

21 A. Very much so. I know the Company had
22 referenced CSR dollars that the money they've given
23 their customer service reps. That's all below the line
24 and I applaud the Company for doing that. I also really
25 have no sense of how much money that was, what the terms

1 were surrounding that, the basis for that, you know, did
2 a customer just call up and I guess what did they have
3 to say to elicit a certain dollar amount. There was a
4 lot of discretion given to the reps themselves. I guess
5 the concern there is just the uncertainty. I just don't
6 know. It's not a very transparent process. That's it.

7 Q. Okay. So some parties, in particular Staff
8 and the Company, have suggested that customer payment
9 plan arrangements aren't appropriate or they're not
10 traditionally a part of AAO proceedings. Do you agree
11 with that statement?

12 A. I struggle with Staff and the Company's
13 position on customer arrearage payments taking the
14 position that it's not appropriate to talk about this
15 stuff or to have it in there but yet including this
16 one-month and four-month customer payment plans in the
17 stip. I don't know how that works, how they can take
18 that position but yet include the stuff that we did for
19 three months this summer in it. So you know, make no
20 mistake about it like this is the worst time right now.
21 Right now what's taking place as we enter into the cold
22 and flu season, and you can see that with the number of
23 COVID cases increasing and the arrearage figures
24 increasing on top of that. So I think it's absolutely
25 appropriate, you know. It's seemingly what's

1 appropriate for an AAO. There's a lot of discussion
2 about that whether we're talking about materiality or I
3 would say the reoccurring factor here. So this is a
4 loose definition at this point of the Commission's
5 working definition.

6 Q. Dr. Marke, were you present and listening to
7 the testimony of Mr. Chuck Caisley for Evergy yesterday
8 and his cross-examination?

9 A. Yes, I did hear it.

10 Q. Okay. There was a discussion about Evergy's
11 customer programs and grants. Mr. Caisley in his
12 testimony was clarifying that the 2.2 million in
13 shareholder funds that also Mr. Fischer, counsel for
14 Evergy, addressed in his opening. Mr. Caisley clarified
15 that that was split between Kansas and Missouri
16 customers basically on a customer account basis. Do you
17 know, could you estimate how much of that 2.2 million
18 would be allocated to Missouri, in particular
19 residential Evergy customers?

20 A. So there's about -- It ebbs and flows a little
21 bit, but it's about a 60/40 split. It's about 60
22 Kansas, 40 Missouri. So if we said 2.2 million across
23 both states, it's going to be about a million. And of
24 that million dollars, that's allocated in four different
25 buckets. Most of those buckets are going to the grant

1 programs like the Kansas City Ballet, the Chambers of
2 Commerce, and so forth. And then you've got a bucket
3 for Dollar-Aide. If I was ballparking it, based off of
4 those numbers it looks like about 400,000 for
5 Dollar-Aide. That's what I would say. That's what
6 we're talking about. We're talking about \$400,000 based
7 off of those numbers that has been allocated to date for
8 bill credits for customers.

9 Q. Okay. So of that 2.2 million that we've seen
10 in testimony, you're saying that less than a quarter of
11 it would actually go to bill aid for residential
12 customers?

13 A. Right.

14 Q. Okay. Just two more questions here. Do you
15 know how much money Evergy made in tariff revenues in
16 2019 roughly?

17 A. I do. That is actually information that we've
18 -- the annual reports. It's something there's a
19 concurrent case we're working on the workshop where that
20 information has come up. It's about well over a billion
21 dollars, close to two billion dollars, I would say 1.7,
22 1.7 and 5 billion dollars between the two utilities,
23 tariffed revenues for 2019.

24 Q. Okay. And just to remind us, can you remind
25 us how much you estimated the arrearage management

1 program that you recommend would cost?

2 A. \$2 million.

3 MR. LINHARES: Okay. I have no further
4 questions. Thank you very much.

5 JUDGE JACOBS: Thank you. Is there any cross
6 from Renew Missouri?

7 MR. OPITZ: No, thank you, Judge.

8 JUDGE JACOBS: Does Evergy have any cross
9 today?

10 MR. HACK: Yes, please. This is Rob Hack.

11 JUDGE JACOBS: Thank you.

12 CROSS-EXAMINATION BY MR. HACK:

13 Q. Good morning, Dr. Marke.

14 A. Good morning, Mr. Hack.

15 Q. So we'll start with the last question. You
16 were addressing revenues for the Missouri operations of
17 Evergy, correct?

18 A. Yes.

19 Q. That is not earnings, correct?

20 A. That is correct.

21 Q. So the lion's share of those revenues are used
22 to support the Company's cost structure?

23 A. Yes.

24 Q. Do you have the Non-Unanimous Settlement with
25 you, Dr. Marke?

1 A. I do.

2 Q. Would it be fair -- I'm going to refer you to
3 paragraph 16 and in particular the last two sentences of
4 that paragraph and I'll try to cut to the chase. Are
5 you there?

6 A. I am.

7 Q. And has the Company and the joint signatories
8 to the Non-Unanimous Stipulation and Agreement set forth
9 the Company's agreement to evaluate the advisability of
10 extending the offering of 12-month payment plans beyond
11 the end of the calendar year for small business
12 customers and beyond the end of the cold weather rule
13 period for residential customers in consultation with
14 Staff, OPC and NHT after the first of the year?

15 A. That's what it says.

16 Q. Now, the cold weather rule does not apply to
17 small business customers, correct?

18 A. Correct.

19 Q. So the Company's continued offering of
20 12-month payment plans to small business customers in
21 November and December is not required by the cold
22 weather rule?

23 A. That's correct.

24 Q. Then the last sentence of paragraph 16 of
25 Exhibit 1 says in addition, the Company agrees to

1 evaluate the advisability of offering additional
2 customer assistance programs after December 31 -- it
3 says 2021 but it was corrected to 2020 -- in
4 consultation with Staff, the Office of the Public
5 Counsel and National Housing Trust, correct?

6 A. That's what it says, yes.

7 Q. In your discussions with Mr. Linhares, you
8 looked at page 17 I believe of your rebuttal testimony
9 and a table on that page. Do you remember that?

10 A. I do.

11 Q. That page speaks to the one and four-month
12 payment plans that the Company offered during the
13 summer, correct?

14 A. That's correct.

15 Q. The payment plans that are referenced there,
16 the numbers, don't include the 12-month payment plans
17 that the Company has been offering since basically the
18 pandemic began; is that correct?

19 A. There are no incentive payment plans for the
20 12 months.

21 Q. That's not what I asked you, Dr. Marke.

22 A. That table does not include the 12 months.
23 That table is to show the payment arrangements that are
24 in place for the incentive programs.

25 Q. Okay. And fair enough. But the table doesn't

1 show the 12-month payment plans that the Company has
2 entered into with customers throughout the pandemic and
3 continues to enter into, correct?

4 A. Correct.

5 Q. And are you aware that the vast majority of
6 payment plans the customers have entered into when you
7 consider the incentive payment plans that are referenced
8 on page 17 of your rebuttal and the 12-month payment
9 plans that the vast majority of the payment plans that
10 our customers have entered into are the 12-month payment
11 plans?

12 A. That's the only plan that's available right
13 now.

14 Q. That's not the question I asked you. Since
15 the beginning of the pandemic --

16 A. Yes.

17 Q. Thank you. And in your discussion with Mr.
18 Linhares you mentioned the long tail of uncollectibles,
19 and is that at least partially in relation to the length
20 of these payment plans?

21 A. Well, we don't know. I mean, that long tail
22 -- that long tail is a projection moving forward. We're
23 assuming there's going to be the potential for a long
24 tail come spring, but I think there's a chance that
25 could be a very long tail.

1 Q. Yes.

2 A. I didn't understand the question.

3 Q. Yes, I guess I'm trying to ask you is part of
4 the cause of that potential long tail the fact that
5 there are these 12-month payment plans, lengthy payment
6 plans?

7 A. Sure. If there was not a 12-month plan,
8 people would be disconnected.

9 Q. And Dr. Marke, would you also agree that
10 another cause or potential cause of the potential long
11 tail for uncollectibles is the fact that there's a cold
12 weather rule in Missouri that places significant
13 constraints on the Company's ability to shut off for
14 nonpayment between November and March of each year?

15 A. Could you repeat the question for me,
16 Mr. Hack?

17 Q. Yes. Would you also agree that another
18 potential cause of the potential long tail of
19 uncollectibles in relation to the pandemic is the fact
20 that there's a cold weather rule in Missouri that
21 precludes the Company in significant respects from
22 disconnecting customers for nonpayment during the winter
23 months of November through March?

24 A. I would not agree with that.

25 Q. So do you understand how net write-offs occur

1 on the Company's books?

2 A. Yes.

3 Q. And is it your understanding that net
4 write-offs only occur for an account after the account
5 is shut off for nonpayment?

6 A. Correct.

7 Q. And it occurs some period after the shutoff
8 for nonpayment, correct, 60 to 90 days?

9 A. Correct.

10 Q. And if the Company cannot shut off for
11 nonpayment to a significant degree weather related
12 during the winter months, net write-offs as a result of
13 that lack of shutoff activity are not going to be very
14 high, are they?

15 A. Than if there was no cold weather rule?

16 Q. Correct.

17 A. You're right. If there was no cold weather
18 rule, there would be more disconnections. I would say
19 that the cold weather rule has been in place since the
20 seventies, and essentially at this point rates have been
21 set to account for that.

22 Q. Have rates been -- I'm sorry. I didn't mean
23 to interrupt.

24 A. We're talking about close to 50 years of cold
25 weather rule in place at this point. You know, when we

1 set rates, we're setting rates with a certain sense of
2 an average dollar amount of uncollectibles that based
3 off of the historical average. If there was no cold
4 weather rule, there would be more pronounced.

5 Q. Let's talk about that. I apologize again.
6 Are you done?

7 A. The challenge.

8 Q. Are you done? So let's talk about the way
9 rates have been set over the past 50 years and in
10 particular maybe in GMO and Evergy Missouri Metro's last
11 rate case. To your knowledge, was the Company offering
12 12-month payment plans during the summer months when the
13 net write-offs were looked at in that last rate case?

14 A. No.

15 Q. And there wasn't a pandemic ongoing when the
16 net write-offs were looked at in the Company's 2018 rate
17 cases, correct?

18 A. Correct.

19 Q. I would refer you to your surrebuttal
20 testimony on page 5 I think starting on line 16. I'll
21 let you get there.

22 A. I'm there.

23 Q. And you recommend there that the Commission
24 require Evergy to offer a dollar for dollar matching
25 arrearage management program; is that correct?

1 A. That's correct.

2 Q. And also on the next couple of pages 6 and 7
3 you endorse expansion of Evergy's Economic Relief Pilot
4 Program, correct?

5 A. I wouldn't go so far as to say it was an
6 endorsement of the ERPP.

7 Q. How would you characterize it?

8 A. I would characterize it as a response to NHT's
9 request to increase the dollar amount. My testimony
10 spelled out my criticisms of that program and my
11 skepticism about the program moving forward, and then I
12 made a blanket comment or recommendation that if the
13 Commission elected to move forward with something like
14 this, then we would ask the shareholders bear that, not
15 ratepayers, based off of my concerns articulated
16 earlier.

17 Q. Fair enough. So your recommendation for a
18 dollar for dollar matching arrearage management program
19 and your, I'll characterize as a lack of opposition to
20 NHT Witness Colton's recommendation to expand the ERPP,
21 both of those positions you expressed are conditioned on
22 the booking of the associated costs below the line,
23 correct?

24 A. Yes.

25 Q. And by below the line, you mean that Evergy's

1 shareholders would be required to absorb the cost of
2 these programs without the ability to seek recovery in
3 rates, correct?

4 A. That is what my testimony said.

5 Q. And Evergy has made you aware that it objects
6 to being required to offer these programs through both
7 the absence of just compensation and the fact that it
8 would usurp management authority and discretion, is that
9 correct, meaning our view is that those things?

10 A. Yes.

11 Q. Thank you. Do you per chance have the Spire
12 and Missouri-American Water settlement agreements with
13 you?

14 A. I could get them fairly quickly. Which one
15 would you like me to look up first?

16 Q. Maybe Spire.

17 A. One second. I'm going to put my phone down.

18 Q. Okay. Thank you. Are you there?

19 A. Almost. I'm there.

20 Q. I would ask you to look at the last sentence
21 of paragraph 19 on page 8 and just read that last
22 sentence into the record. This is in the Spire
23 stipulation and agreement in Case No. GU-2020-0376.

24 A. I pulled up the wrong document. Hold on one
25 second. Got the motion for expedited.

1 Q. I think it might have been -- I'm sorry.

2 A. I got it now here. Is it the amended
3 unanimous stipulation and agreement?

4 Q. Yes, sir, sorry.

5 A. Okay.

6 Q. So page 8, paragraph 19, last sentence.

7 A. All right. I'm there.

8 Q. No, it's page 8, paragraph 19. What document
9 are you in, Dr. Marke? Limitation of Scope. It's the
10 paragraph immediately above interdependence.

11 A. I'm there now.

12 Q. So the last sentence of paragraph 19.

13 A. The Signatories further understand and agree
14 that no party to this Stipulation and Agreement shall
15 assert the terms of this Stipulation as a precedent in
16 any future proceeding.

17 Q. Okay. Thank you. Let me ask you one more
18 question about Spire. Prior to the execution of that
19 agreement, are you aware of whether Spire had made any
20 charitable contributions on account of COVID akin to the
21 \$2.2 million we've been discussing that Everygy made
22 available in both states?

23 A. I'm thinking. I don't know.

24 Q. And I would also ask you with respect to
25 Spire, prior to the execution of this AAO agreement had

1 Spire offered incentive -- payment incentives for
2 customers to enter into short-term payment plans due to
3 the pandemic?

4 A. No.

5 Q. Okay. Thank you. Can we move to the
6 Missouri-American settlement agreement?

7 A. Yes.

8 Q. Do you want a case number?

9 A. I've got it.

10 Q. Okay.

11 A. I'm there.

12 Q. Page 7, paragraph 18.

13 A. Okay.

14 Q. Would you read the last sentence of that
15 paragraph, please?

16 A. Other than as explicitly provided herein, none
17 of the Parties shall be prejudiced or bound in any
18 manner in this or any other proceeding by the terms of
19 this Non-Unanimous Stipulation and Agreement regardless
20 of whether this Non-Unanimous Stipulation and Agreement
21 is approved.

22 Q. Thank you, Dr. Marke. Now, with respect to
23 the Missouri-American Water Company, prior to the
24 execution of this stipulation and agreement in Case No.
25 WU-2020-0417, had Missouri-American Water made a

1 charitable contribution on account of COVID akin to the
2 \$2.2 million Evergy charitable contribution that has
3 been discussed today?

4 A. Missouri-American Water I believe, I don't
5 know the exact dollar amount, anywhere between 200,000
6 and \$500,000 was included for their H2O program, bill
7 credit program prior to entering into the Non-Unanimous
8 Stipulation and Agreement.

9 Q. That was COVID related?

10 A. I'm sure it's on their website. Yes.

11 Q. Had Missouri-American Water Company offered
12 any incentives to their customers for entering into
13 short-term payment plans on account of COVID as we've
14 discussed that Evergy did?

15 A. I don't know. I know Missouri-American had
16 the longest moratorium, disconnection moratorium in
17 place, and I can't speak to whether or not -- I know
18 that they made bill payment arrangements. I don't know
19 if they accepted the 12 month or not.

20 Q. I'm asking you about incentives for entering
21 into short-term payment plans.

22 A. No.

23 MR. HACK: I just want to look at my list
24 here. I think that's all I have, Dr. Marke. Thank you
25 very much.

1 JUDGE JACOBS: Okay. Thank you. I apologize
2 but I'm going to have to have a 10-minute break. So we
3 will come back at 10:33 a.m. and resume. I apologize,
4 Dr. Marke.

5 THE WITNESS: Not a problem. Thank you.

6 JUDGE JACOBS: Thank you. We are off the
7 record for ten minutes.

8 (A recess was taken.)

9 JUDGE JACOBS: Okay. It is now 10:33 a.m. I
10 am still seeing some empty video slots. So we'll give
11 folks until 10:34 a.m. Okay. It's 10:34 a.m. We will
12 go back on the record and I will keep my eye open here
13 for our witness to return. Thank you, everyone. Looks
14 like we have our witness back and everyone are on the
15 record. I believe that we had wrapped up the
16 cross-examination by Everygy.

17 MR. HACK: That is correct.

18 JUDGE JACOBS: Thank you. I'm going to ask
19 everyone who doesn't need to speak right now to mute
20 your line and, Dr. Marke -- looks like Dr. Marke is
21 reconnecting his audio.

22 THE WITNESS: Can you hear me?

23 JUDGE JACOBS: Yes.

24 THE WITNESS: Perfect.

25 JUDGE JACOBS: So it looks to me like we're

1 ready to resume. Is everyone ready to go? I think we
2 have the essential parties here. So the next party that
3 might have questions for Dr. Marke would be Staff. Ms.
4 Myers, do you have any cross-examination?

5 MS. MYERS: Staff has no additional
6 cross-examination.

7 JUDGE JACOBS: Thank you. Will there be
8 anything from Missouri Industrial Energy Consumers?

9 MS. PLESCIA: No questions. Thank you.

10 JUDGE JACOBS: Thank you. And Midwest Energy
11 Consumers Group?

12 MR. WOODSMALL: No questions. Thank you.

13 JUDGE JACOBS: Thank you. Sierra Club, will
14 you have any questions today?

15 MR. ROBERTSON: No questions.

16 JUDGE JACOBS: Thank you. So that brings us
17 to any possible questions that we may have from the
18 Commission, and I know our Commissioners will speak up
19 if they have any questions for Dr. Marke. I think we
20 have a few lines that are not muted that probably should
21 be. So I'm going to do some muting here. That sounds a
22 little bit better, I think. Okay. I do have some
23 questions for you, Dr. Marke.

24 QUESTIONS BY JUDGE JACOBS:

25 Q. First of all, I wanted to ask you you had

1 mentioned that there is a -- I think perhaps you were
2 referring to the workshop case but you said there's a
3 concurrent case, maybe a case going on right now, and
4 that was where you were able to derive a revenue figure
5 for Evergy?

6 A. Yes.

7 Q. Is that the working case that maybe was
8 referenced earlier in this case or do you happen to know
9 the case number? I just wanted to know what case you
10 were referring to.

11 A. It's Case No. AW-2020-0148 In the Matter of a
12 Working Case to Consider Proposed Residential Customer
13 Disconnection Data Reporting Rule.

14 Q. Okay. And I believe that Ms. Myers had
15 referenced a couple of cases in her opening or at some
16 point, and I think it may have been that working case
17 that she was referencing but perhaps there's a different
18 one.

19 A. I don't think --

20 Q. Is it different?

21 A. I'm sorry.

22 Q. No, go ahead.

23 A. I guess Ms. Myers can speak for herself.

24 MS. MYERS: I was just going to confirm,
25 Judge, it was a different case.

1 JUDGE JACOBS: I apologize for cutting you
2 off. I am terrible about that. So I apologize. Thank
3 you for clarifying that, Ms. Myers.

4 BY JUDGE JACOBS:

5 Q. So you're actually talking about a different
6 case than Dr. Marke?

7 A. Yes.

8 Q. And what is that case if you just want to tell
9 me just a nutshell?

10 A. Sure. The utilities report the annual and
11 monthly disconnection data both in the annual reports
12 and through the cold weather reports on a monthly basis.
13 We tracked all of those reports over the course of about
14 ten years and we found a lot of discrepancies and
15 inconsistencies throughout the various reports and made
16 a motion to the Commission to open up a rulemaking
17 workshop to consider data standardization regarding
18 disconnection rules. So this -- The impetus behind this
19 perceived COVID is actually something we had filed back
20 in November of last year and the Commission agreed with
21 us and opened up a working docket. We were supposed to
22 have workshops in March. Obviously COVID hit and
23 everything got put on hold. And we are planning on
24 having our first workshop next Wednesday. The
25 information that our office -- that I filed in a

1 memorandum in that docket included annual reports and
2 numbers as it was one of the data points of reference.
3 We recently -- Because that was a year old, we revised
4 everything recently in anticipation of this workshop.
5 That's how I came across the numbers or have it handy.

6 Q. And I want to confirm your connection is
7 pretty good. This is probably me and not you. But that
8 was AW-2020-0148?

9 A. That's correct.

10 JUDGE JACOBS: Okay. Thank you very much.
11 There has been a lot of discussion in the proceeding
12 about the Spire and Missouri-American agreements, and
13 I'm going to take official notice. The Commission will
14 take official notice of those two cases which are
15 GU-2020-0376 and WU-2020-0417. I just double checked
16 those. I hope I didn't mess them up. Everyone knows
17 what I'm talking about if I did. Is there any objection
18 to the Commission taking official notice of those cases
19 in this matter?

20 MR. ZOBRIST: No, not from Evergy.

21 JUDGE JACOBS: Thank you very much. And I
22 know that really doesn't pertain to you, Dr. Marke, but
23 I didn't want to neglect to do that.

24 BY JUDGE JACOBS:

25 Q. It seems like your expertise might allow you

1 to answer this question. Before the pandemic, are you
2 familiar with what percentage of Evergy's arrearages
3 were generally converted to bad debt?

4 A. I wouldn't -- I don't know that off the top of
5 my head. Sorry. I'd have to go ahead and check back
6 other cases.

7 Q. That's fine. And could you explain the --
8 Your testimony includes some recommendations that you've
9 made that you are contending would help to maximize the
10 payment of arrearages, right, and avoid charging things
11 off as bad debt; is that right?

12 A. That's correct.

13 Q. Okay. And could you just explain how your
14 recommendations would accomplish that?

15 A. Sure. My recommendations would accomplish
16 that by encouraging customers to -- there's a
17 psychological factor in just having a very large
18 arrearage amount. A lot of companies try to entice
19 customers to stay on as customers. Obviously a utility
20 company doesn't have that problem. We're talking about
21 captive customers in this case. But loyalty plans,
22 matching plans, it's the same principle at work there.
23 So the idea that a customer has money, they've got to,
24 especially right now with the herding they've got to be
25 very careful and optimize their budgets for the most

1 essential needs. If they are looking at \$270 in
2 customer arrearage, that can be a sizable dollar amount.
3 Cutting that in half or getting some sort of incentive
4 to induce customers to pay some of that down is the
5 general principle behind that.

6 Q. And is there any reason why the Company has
7 any special incentive to try to make that happen as
8 opposed to not getting that customer to pay their
9 arrears?

10 A. I think the Company should have every
11 incentive to do that. I go back to this again I really
12 feel like this is not me trying to extort the Company or
13 put them out. We're looking at this as something that's
14 in their best interest at the end of the day too because
15 if those arrearages are left, you know, not paid down,
16 eventually they will become uncollectibles and that
17 dollar amount will have to be realized within a rate
18 case. So there's degree of, you know, who bears the
19 cost for those uncollectibles, you know. Our office's
20 position, you know, get them to try to mitigate that as
21 much as possible. We've had success with that at least
22 with two utilities.

23 MS. MYERS: Judge, sorry to interrupt. I was
24 getting messages that the live stream was not working.
25 I tried it myself. I don't know if we've been activated

1 back on the live stream or not.

2 JUDGE JACOBS: The stream looks like it's
3 connected on my end. All the essential folks who might
4 need to hear this hearing can join us on the WebEx. So
5 if the stream is down, we just have to press on. I will
6 pause for one minute and see if Justin McKinzie is aware
7 if there's a problem.

8 MR. MCKINZIE: I'm looking at it right now,
9 Judge.

10 MS. MYERS: I apologize for cutting in.

11 JUDGE JACOBS: No, that's okay. I think
12 everyone wants to know if that's working. I appreciate
13 it. I didn't get any messages that it was down.

14 MR. MCKINZIE: I haven't either.

15 JUDGE JACOBS: Okay. Sometimes people need to
16 just do the old trick of disconnecting and reconnecting.
17 Okay. All right. So you'll have to forgive me. You
18 had pretty extensive cross-examination and I have some
19 notes. So thank you for your patience as I make sure
20 that I ask these questions before I let you go.

21 BY JUDGE JACOBS:

22 Q. Okay. And you were asked several questions
23 about this, but I would like to ask you to just
24 summarize for me again the differences between the
25 stipulation that these parties, some of these parties

1 have reached and are now proposing to the Commission and
2 the agreements that OPC was able to join and supported
3 with Missouri-American and Spire. If you could just
4 point out what the differences are and why those
5 differences should be significant to the Commission.

6 A. Sure, Judge. Thank you. Three differences is
7 how I would characterize it. I think I said two before
8 but articulated three. So I'm going to say three now.
9 The first one is the gambling provision at the end of
10 this period. So the gambling provision if customer
11 arrearages are above a certain threshold, the Company
12 can continue to go ahead and book it as was agreed to
13 beyond their cutoff date. And if it's below, then
14 customers would be better off. So this is the long tail
15 provision. You know, we object to that because we
16 believe that that's unfair especially in light of not
17 having any mitigating efforts on the front end that we
18 proposed in the Spire case or Missouri-American case.
19 Also, this provision doesn't exist in those
20 stipulations.

21 The second thing is the customer arrearage
22 program itself. There is no mitigating program to try
23 to help customers like there is with the Spire case for
24 arrearages or for bill credits like there is for
25 Missouri-American. We believe that first just on a

1 fairness level we couldn't agree to something that we
2 already agreed to with the other utilities but just on a
3 scale and also like an importance factor the level of
4 arrearage amounts right now with Evergy customers are so
5 pronounced that we really feel like this is a necessary
6 component for what ultimately may be risk mitigation
7 mechanism for the Company.

8 The third point is my understanding is that
9 this stipulation does contain Evergy's short three-month
10 payment arrangement, the one that concluded in August,
11 the one-month and the four-month for new applicants. So
12 we object to going ahead and using that as the basis for
13 well, we've done enough, everything is fine now but yet
14 in the same breath saying but we want to have a clause
15 on the back end if things get really bad. It's really
16 that dichotomy right there.

17 Q. And the costs that Evergy incurred and may be
18 incurring as to the one and four-month arrearage
19 arrangements, those are included in costs that can be
20 deferred under the stipulation, right?

21 A. This is what I heard from witnesses yesterday.
22 \$31,000 and \$38,000 is I believe the cost for the
23 programs and they've made an emphasis on as of yet
24 undetermined amount of cost related to advertising and
25 promotional issues. I don't know what dollar amount

1 that would be.

2 JUDGE JACOBS: Okay. Those are the questions
3 that I had. I don't have indications that we have
4 Commission questions at this point, but the floor is
5 open for those. So that we can move on to recross.
6 Before I do that, I am going to note that on the
7 technical side the audio is down on the stream but my
8 understanding is that hearings press on whether or not
9 we're able to stream. So we're going to keep on going.
10 If you have folks outside of this hearing that needed to
11 hear it, that audio is down.

12 MR. MCKINZIE: Judge, this is Justin McKinzie.
13 I think I have the audio working again. Just FYI that
14 the last probably five minutes was not recorded.

15 JUDGE JACOBS: We have a court reporter here
16 so we're okay.

17 MR. MCKINZIE: Okay. Thank you.

18 JUDGE JACOBS: Thank you so much for helping
19 us out. Is there someone else trying to get in? Okay.
20 It's just an echo. So we were ready to move on to
21 recross for Dr. Marke and we would start with National
22 Housing Trust and I'm going to try to figure out. Ms.
23 Plescia, I think that's your line that's causing that
24 problem.

25 MS. PLESCIA: I'm sorry.

1 MR. HALL: Sorry, Judge. I just wanted to
2 confirm. I just checked. The audio appears to be back
3 on on the stream.

4 JUDGE JACOBS: Okay. Great. Thank you,
5 Justin McKinzie, for helping us out and getting that
6 audio back up and now we're ready for recross. National
7 Housing Trust, do you have any?

8 MR. LINHARES: Thank you, Judge. I have no
9 recross.

10 JUDGE JACOBS: Thank you. Anything from Renew
11 Missouri?

12 MR. OPITZ: No, thank you, Judge.

13 JUDGE JACOBS: Everygy, did you have any
14 recross?

15 MR. ZOBRIST: No, Judge. Thank you.

16 JUDGE JACOBS: Thank you. Anything from
17 Staff? And I saw you nodded no, but it cut you off. I
18 understand you so we're okay. Missouri Industrial
19 Energy Customers?

20 MS. PLESCIA: No questions. Thank you.

21 JUDGE JACOBS: Thanks. Midwest Energy
22 Consumers Group?

23 MR. WOODSMALL: No, Your Honor.

24 JUDGE JACOBS: And Sierra Club?

25 MR. ROBERTSON: No, thank you.

1 JUDGE JACOBS: Thank you so much. Is there
2 any redirect for Dr. Marke from Office of the Public
3 Counsel?

4 MR. HALL: Yes, briefly, Your Honor.

5 REDIRECT EXAMINATION BY MR. HALL:

6 Q. Dr. Marke, do you recall Mr. Hack questioning
7 you about Evergy's position and I believe he used the
8 phrase usurping management authority?

9 A. Yes.

10 Q. Do you agree or do you understand that to mean
11 that Evergy has the position that there are certain
12 things that the Commission cannot order the Company to
13 do?

14 A. Yes.

15 Q. For the purposes of these next few questions I
16 want to stipulate that when I say MEEIA, I am referring
17 to Missouri's Energy Efficiency and Investment Act. Dr.
18 Marke, are you familiar with -- let me rephrase that.
19 Dr. Marke, did Evergy recently apply for a portfolio of
20 MEEIA programs?

21 A. Yes.

22 Q. And did the Commission approve those programs?

23 A. Yes.

24 MR. HACK: Objection, well beyond the scope of
25 my cross.

1 MR. HALL: If I may respond. The questioning
2 will ultimately get to the relation, which is the
3 Company's position on usurping management authority.

4 JUDGE JACOBS: I think we need to hear a
5 little bit more before we know. So you can proceed.

6 BY MR. HALL:

7 Q. Dr. Marke, did the Commission approve Evergy's
8 requested MEEIA portfolio programs?

9 A. Yes.

10 Q. Are you familiar with PAYS or Pay As You Save?

11 A. Yes, I am.

12 Q. Did the Commission approve Evergy's programs
13 but then condition that approval on Evergy approving a
14 PAYS program?

15 A. Yes, they did. The Company was granted a
16 MEEIA application on the condition that they move
17 forward with a PAYS program within its cycle. So that
18 was acceptable to the Company.

19 Q. To your knowledge, did Evergy challenge that
20 order or appeal it?

21 A. No.

22 MR. HALL: No further questions.

23 JUDGE JACOBS: Can you provide a case number
24 for this proceeding that you've referred to, Mr. Hall?

25 MR. HALL: Sure. The number is EO-2019-0133

1 -- It's companion, 33 and 32, I believe. Dr. Marke, am
2 I right on those numbers?

3 THE WITNESS: I'm looking them up. Can you
4 repeat them again, Mr. Hall?

5 MR. HALL: EO-2019-0132 and I cannot recall if
6 the companion case is 33 or 31.

7 THE WITNESS: It's 33.

8 MR. HALL: Thank you.

9 JUDGE JACOBS: Okay. So Mr. Hack, you'd
10 objected that that -- I guess you were making a
11 relevance objection?

12 MR. HACK: I was objecting because it exceeded
13 the scope of my cross, but I withdraw the objection.

14 JUDGE JACOBS: Okay. Thank you. So
15 essentially, Mr. Hall, you're drawing a parallel to a
16 different proceeding and trying to make an example of
17 another condition that has been attached when an
18 application was made; is that right?

19 MR. HALL: That is my attempted implication,
20 yes.

21 JUDGE JACOBS: Okay. All right. So I believe
22 that that should conclude Dr. Marke's testimony today.
23 So thank you very much, sir.

24 THE WITNESS: Thank you.

25 JUDGE JACOBS: And I believe that that's the

1 conclusion of the Office of the Public Counsel's
2 witnesses; is that right?

3 MR. HALL: Yes. I guess we're good and
4 Mr. Linhares is up to bat.

5 JUDGE JACOBS: I do have some questions
6 possibly about exhibits that were on your list but were
7 not offered. So because we've just finished your
8 witnesses, it would be convenient for me as the judge to
9 discuss your exhibits. Is that okay with you, Mr. Hall?

10 MR. HALL: Of course.

11 JUDGE JACOBS: Okay. You actually had the
12 most interesting exhibit list of all the parties. So
13 that's why you're going to get more attention. So we
14 have offered and accepted the Schallenberg testimony,
15 which is 200 and 200C, and then we have the Murray
16 testimony which is 201. 202, 3 and 4 are in regard to
17 Dr. Marke and those have come in. It looks like earlier
18 in the proceeding you did offer a data request that is
19 your 205; is that right?

20 MR. HALL: Correct.

21 JUDGE JACOBS: Then actually Everygy offered
22 the 206, 207, 208 exhibits and they have been admitted.
23 However, that leaves 209 and 210. And I don't -- I'm
24 just following up with you to clarify whether those are
25 still being offered or how you're approaching that or if

1 you want me to just refer to that -- okay. Go ahead and
2 explain.

3 MR. HALL: Judge, I apologize for any
4 confusion. I wished to premark as many exhibits that I
5 anticipated using at the hearing or at least there was
6 the potential of using them. Throughout the course of
7 the hearing just based on the flow, like I had realized
8 I had no reason for 209 and I had used 210 merely as an
9 aid in having a conversation with a witness. I don't
10 object to offering those exhibits into the record.
11 Their purpose is rather limited. And ultimately I
12 thought it was better when devising how to approach this
13 hearing for people to have more notice of what was
14 potential discussion versus dropping more and more
15 exhibits last minute through the course of a virtual
16 hearing.

17 JUDGE JACOBS: Thank you. And I agree with
18 that approach 100 percent. I just wanted to make sure
19 that I didn't miss anything that I can't clear up with
20 you later. So 209 and 210 really haven't been offered.
21 They won't be exhibits that you're offering in this
22 hearing. I just wanted to clarify that.

23 MR. HALL: Correct.

24 JUDGE JACOBS: Thank you very much. Okay. So
25 I think that does leave us with one witness this morning

1 and that's Mr. Colton. Is everyone ready to proceed
2 with that testimony or does Ms. Bentch need a break
3 before we get to our last witness? I thought I saw
4 Mr. Colton's name on the screen at some point.

5 THE WITNESS: I'm here, Your Honor.

6 JUDGE JACOBS: Okay. So is Mr. Colton going
7 to be appearing with audio only? I see you. I
8 apologize. There you are. I see Mr. Colton there. All
9 right. So would you please raise your right hand, sir,
10 and I'll get you sworn in and then I'll pass you off to
11 your attorney.

12 (Witness sworn.)

13 JUDGE JACOBS: Thank you very much. Mr.
14 Linhares, you may proceed.

15 MR. LINHARES: Thank you, Judge.

16 ROGER COLTON,
17 called as a witness in behalf of the National Housing
18 Trust, being sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. LINHARES:

20 Q. Good morning, Mr. Colton. How are you?

21 A. I'm doing well.

22 Q. Can you tell us by whom you are employed and
23 in what capacity?

24 A. I'm a principal in the firm of Fisher, Sheehan
25 & Colton.

1 Q. On whose behalf are you testifying today?

2 A. I'm testifying on behalf of the National
3 Housing Trust.

4 Q. Are you the same Roger Colton that authored
5 and caused to be filed the rebuttal testimony marked as
6 Exhibit 1000 in this case?

7 A. I am.

8 Q. Do you have any changes or alterations to your
9 testimony at this time?

10 A. I do not.

11 Q. If I asked you the same questions today, would
12 your answers be substantially the same?

13 A. Yes.

14 MR. LINHARES: Judge, at this time I offer
15 Exhibit 1000 for admission into the record and I tender
16 the witness for cross-examination.

17 JUDGE JACOBS: Thank you very much. Are there
18 any objections to the admission of Mr. Colton's rebuttal
19 testimony on to the record as Exhibit 1000? Hearing no
20 objections, that exhibit will be admitted.

21 (NATIONAL HOUSING TRUST'S EXHIBIT 1000 WAS
22 RECEIVED INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

23 JUDGE JACOBS: Okay. So we can proceed to any
24 cross-examination and we would start with the Office of
25 the Public Counsel. Is there any cross-examination from

1 Public Counsel today?

2 MR. HALL: Yes, Judge.

3 CROSS-EXAMINATION BY MR. HALL:

4 Q. Mr. Colton, good morning.

5 A. Good morning.

6 Q. Mr. Colton, could you briefly break down what
7 are the differences between your recommendations versus
8 Dr. Marke's recommendations on -- Pardon me. Let me be
9 more specific. What are the differences in your
10 recommendations and testimony as to customer arrearage
11 plans or proposals for the Company to respond to
12 COVID-19?

13 A. Well, my recommendations are I believe a
14 little more extensive than the Office of the Public
15 Counsel's where I believe too that the basis for
16 recommendations differ to a certain degree. I addressed
17 the arrearages. I addressed bills for current service.
18 I addressed the reduction of bills, COVID-19 bills that
19 would potentially lead to arrearages and the cost of
20 arrearages, reducing those bills through Everygy
21 efficiency. I addressed the access of customers to
22 those COVID-19 responses. So I believe that my
23 proposals were somewhat more extensive.

24 I also said that the basis for my
25 recommendations were a little different than the Public

1 Counsel's in that as I read the Public Counsel testimony
2 the Public Counsel was interested primarily in reducing
3 arrearages as a mechanism for a long-term reduction in
4 bad debt and my discussion explained that the purpose of
5 my proposals was not simply to reduce bad debt but was
6 to reduce the total costs associated with arrearages
7 that were incurred as a result of COVID-19 and those
8 total costs one component would be bad debt, one
9 component would be working capital that would be reduced
10 through my recommendations. One component would be
11 credit and collection expenses and other aspects beyond
12 bad debt that I talked about in my testimony.

13 Q. So by extensive, just to take an example, you
14 recommend a full moratorium on disconnections, correct?

15 A. I do.

16 Q. And that's something you disagree with as
17 between Public Counsel and your position?

18 A. I don't remember Public Counsel's position on
19 a full moratorium.

20 Q. Thank you. Mr. Colton, looking at your
21 background, you have some extensive education in
22 economics. Are you testifying today as an economist?

23 A. I get asked that question a lot. I don't
24 think one can define what I'm testifying as. As with
25 any utility regulatory matter, part of the expertise

1 that I'm bringing is both my academic background in
2 economics, my academic background in law, my practice as
3 an attorney who has litigated utility rate cases. I'm
4 not sure anybody has defined what utility regulatory
5 expertise constitutes as a discipline.

6 Q. Mr. Colton, you are generally aware of the
7 state of COVID-19 utility responses and the potential
8 for arrearages, correct?

9 A. Yes.

10 Q. And Mr. Colton, given your expertise and your
11 position as a witness now, applying that expertise to
12 your general knowledge of COVID-19, do you expect
13 customer arrearages to generally get worse or better in
14 the coming year?

15 A. I would expect utility arrearages to get worse
16 meaning that I would expect utility arrearages to climb.
17 And there are two aspects to arrearages, both the level
18 of arrears or I talk about the depth and breadth of
19 affordability, the depth and breadth of arrearages. So
20 the breadth of arrearages will increase meaning more
21 people will be in arrears. The depth of arrearages will
22 increase in that I would expect that those people who
23 are in arrears will be further in arrears.

24 MR. HALL: Thank you. I have no further
25 questions, Your Honor.

1 JUDGE JACOBS: Thank you. Do we have any
2 cross-examination from Renew Missouri?

3 MR. OPITZ: No, thank you, Judge.

4 JUDGE JACOBS: And from Sierra Club?

5 MR. ROBERTSON: No, thank you.

6 JUDGE JACOBS: Missouri Industrial Energy
7 Consumers?

8 MS. PLESCIA: No questions. Thank you.

9 JUDGE JACOBS: I've heard from Mr. Woodsmall
10 that he does not have any questions. Does Staff have
11 any cross-examination?

12 MS. MYERS: No questions, Judge.

13 JUDGE JACOBS: Any cross-examination from
14 Evergy?

15 MR. HACK: Yes, Judge. This is Rob Hack
16 again.

17 JUDGE JACOBS: Thank you.

18 CROSS-EXAMINATION BY MR. HACK:

19 Q. Good morning, Mr. Colton.

20 A. Good morning, Mr. Hack. It's been a number of
21 years.

22 Q. Yeah, coming on 20, I think. That's kind of
23 scary. I would refer you to pages 23 through 28 of your
24 rebuttal if you would.

25 A. I have it. I'm at page 23.

1 Q. Okay. And in that section of your testimony
2 you discuss what you call generally accepted regulatory
3 principles. You use that characterization on page 28,
4 line 6. Do you agree with that?

5 A. I do talk -- I don't see that on page 28, but
6 I accept that I do talk about generally accepted
7 regulatory principles, yes.

8 Q. And in particular how you believed those
9 principles, they should guide cost recovery with respect
10 to deferred COVID costs; is that correct?

11 A. How they should guide utility regulatory
12 Commission responses and utility responses to increased
13 COVID-19 costs.

14 Q. I note that you don't cite any Missouri
15 Commission cases that have adopted those principles; is
16 that correct?

17 A. I don't cite any cases Missouri or otherwise.

18 Q. Now, prior to filing your testimony, did you
19 or anyone else for NHT do any research in an effort to
20 find any Missouri Commission cases that adopt or support
21 what you call generally accepted regulatory principles?

22 A. I cannot speak on behalf of counsel. I can
23 say that I did not do research to determine Missouri
24 case law for purposes of testimony. Any case law
25 research would be performed for briefing purposes. But

1 I can't speak for counsel on what counsel did or did not
2 do.

3 Q. Thank you. I would refer you to page 31 of
4 your rebuttal testimony.

5 A. I'm at page 31.

6 Q. And in the middle of that page, Mr. Colton,
7 you present a chart of information you describe as
8 payment coverage ratio residential and low income,
9 correct?

10 A. I do.

11 Q. To be clear, this chart is not based on Evergy
12 data, right?

13 A. That's correct.

14 Q. In fact, on page 30 of your rebuttal testimony
15 you say that the chart uses consumers energy information
16 and I quote given the lack of Evergy data. Did I
17 characterize your testimony accurately?

18 A. Yes. At page 30, line 22, given the lack of
19 Evergy data, I first illustrate the problem using data
20 from Consumers Energy Michigan.

21 Q. Mr. Colton, did you or anyone else on behalf
22 of NHT send a data request, any data request to Evergy
23 seeking information in this proceeding?

24 A. To my knowledge, NHT -- I wouldn't send data
25 requests, of course. To my knowledge, NHT did not send

1 a data request given the time constraints involved.

2 Q. Before filing your testimony, did you ask
3 Evergy or anybody else for NHT ask Evergy whether
4 billing system changes would be needed to effectively
5 administering your proposed arrearage management
6 program?

7 A. No.

8 Q. Did you ask how much any necessary billing
9 system changes would cost?

10 A. No.

11 Q. Did you ask how long it would take for the
12 Company to make any necessary billing system changes?

13 A. No.

14 Q. Did you ask, prior to filing your testimony,
15 whether employee training would be needed for Evergy to
16 effectively administer your proposed arrearage
17 management program?

18 A. No.

19 Q. Did you ask how much any necessary employee
20 training would cost?

21 A. No.

22 Q. Did you ask how long it would take Evergy to
23 undertake any necessary employee training?

24 A. No.

25 Q. Prior to filing your testimony, Mr. Colton,

1 did you ask whether customer education and customer
2 communication materials would be needed for Evergy to
3 effectively administer your proposed arrearage
4 management program?

5 A. And I didn't clearly hear that. Customer
6 education and customer?

7 Q. Communication materials.

8 A. Did I ask the Company whether they would need
9 to prepare that? No.

10 Q. Did you ask how much any needed customer
11 communication and education materials would cost Evergy?

12 A. No.

13 Q. Did you ask how much time it would take for
14 Evergy to prepare customer education and customer
15 communication materials regarding your proposed
16 arrearage management program?

17 A. No.

18 Q. Is there anyplace in your testimony where you
19 set forth an estimate or an exact figure of the number
20 of customers for Evergy Missouri Metro and Evergy
21 Missouri West who are at or below 200 percent of the
22 federal poverty level?

23 A. No.

24 Q. And is there anyplace in your testimony that
25 sets forth what would be a subset of those customers who

1 have arrearages greater than \$300?

2 A. No.

3 MR. HACK: Thank you, sir. That is all I
4 have.

5 JUDGE JACOBS: Thank you. At this point, we
6 could take questions from the Commission. I don't have
7 indications that we have any of those, but I know our
8 Commissioners will speak up if we do.

9 QUESTIONS BY JUDGE JACOBS:

10 Q. I don't know, Mr. Colton, if you're able to
11 speak to any of the statements that are made in the
12 National Housing Trust statement of position. Is that
13 something that you can address or not?

14 A. I did not prepare that or participate in its
15 preparation; but if there are specific statements, I can
16 talk about them relative to my testimony.

17 Q. We'll see if you're able to answer this
18 question. Apparently one of the responses as to issue 2
19 in the statement of position indicates that tracking of
20 COVID-related revenues and expenses should take into
21 account the normal variation in expenses that Evergy
22 normally experiences. Are you able to tell us anything
23 about what that statement of position means in regard to
24 normal variation?

25 A. I know that I have testified in other states

1 about how utility revenue and expenses are not
2 consistent from year to year. So for example, in a
3 Rhode Island proceeding, I was testifying on behalf of
4 what, in essence, is the Staff, the Department of Public
5 Utilities, and examined the FERC Form 1 data and you can
6 look at FERC Form 1 data and expenses go up and down
7 from year to year. So there is simply a normal
8 distribution. I don't mean that in a statistical sense,
9 but there is a normal fluctuation or an expected --
10 normal may not be the best word. An expected
11 fluctuation from year to year in expenses.

12 Q. And would that be determined by looking at a
13 range of years?

14 A. That's what I would do, yes.

15 JUDGE JACOBS: Okay. I don't see that we have
16 any additional pending questions from the bench for Mr.
17 Colton. So we can move on to recross. If there is any
18 -- Does the Office of the Public Counsel have any
19 questions for Mr. Colton?

20 MR. HALL: None, thank you.

21 JUDGE JACOBS: And Renew Missouri?

22 MR. OPITZ: No, thank you, Judge.

23 JUDGE JACOBS: Thank you. Sierra Club?

24 MR. ROBERTSON: No, Judge.

25 JUDGE JACOBS: Missouri Industrial Energy

1 Consumers?

2 MS. PLESCIA: No questions, thank you.

3 JUDGE JACOBS: And Midwest Energy Consumers
4 Group?

5 MR. WOODSMALL: No questions, thank you.

6 JUDGE JACOBS: Staff?

7 MS. MYERS: No questions, Judge.

8 JUDGE JACOBS: Any recross from Evergy?

9 MR. HACK: No, Judge.

10 JUDGE JACOBS: Thank you. Any redirect from
11 National Housing Trust?

12 MR. LINHARES: Just briefly, Judge.

13 REDIRECT EXAMINATION BY MR. LINHARES:

14 Q. Mr. Colton, counsel for Evergy during cross
15 was just asking you about whether you or NHT asked any
16 questions about the costs of billing system changes or
17 training or time to implement the arrearage management
18 program and other recommendations you made in your
19 testimony and you answered no; is that correct?

20 A. That's correct, I answered no.

21 Q. If you had answers to any of these questions,
22 would you imagine it would change any of your
23 recommendations in your testimony in any way given the
24 security of the crisis?

25 A. No.

1 MR. LINHARES: Thank you. No further
2 questions.

3 JUDGE JACOBS: Thank you. That will conclude
4 your testimony today, Mr. Colton.

5 THE WITNESS: Thank you, Your Honor.

6 JUDGE JACOBS: Okay. So I think that puts us
7 into the position to wrap things up this morning. I
8 think what we'll be doing is kind of flashing back to
9 the opening of the proceeding when the Commission could
10 ask questions of counsel. So I do have a question to
11 ask the parties, and I will give any party that would
12 like to respond to that today I would encourage you to
13 address it today but also to address it in your
14 briefing.

15 So a question that has occurred to the
16 Commission is what the party positions are in regard to
17 the proposed stipulation and the AAO if the provisions
18 in paragraphs 16, 17 and 18, either the Commission were
19 to determine that it didn't have authority to order
20 those provisions in relation to an AAO or if the
21 Commission determined it would be inappropriate to use
22 its discretion to do so. Would that change the parties'
23 position in support of the AAO that is proposed by that
24 stipulation? And if you need me to clarify what I mean
25 by that, I can understand and I can try again.

1 MR. HALL: Judge, your paragraph numbers were
2 8, 16, 17 and 18?

3 JUDGE JACOBS: 16, 17 and 18.

4 MR. HALL: Thank you.

5 MR. HACK: Judge, I'm happy to take a stab at
6 answering, although I think my answer may be dependent
7 on a more specific understanding of what you mean, but I
8 would tell you that with respect to paragraph 16, the
9 first part of that paragraph until the second to the
10 last sentence simply recites historical information and
11 the existence of the cold weather rule which I think
12 does not implicate the Commission's authority in any
13 respect whatsoever.

14 The last two sentences deal with the Company's
15 commitment to an agreement to evaluate the advisability
16 of extending offers of 12-month payment plans beyond the
17 end of the year for small business customers and beyond
18 March 31 for residential customers in consultation with
19 Staff, OPC and NHT. And the last sentence does the same
20 thing with respect to additional customer programs.

21 JUDGE JACOBS: Hold on one second. Let's stop
22 right there.

23 MR. HACK: Okay.

24 JUDGE JACOBS: And I apologize for
25 interrupting you. I'm going to open this up so that I

1 can look at it while we talk about it. It's not as easy
2 to find as it should be.

3 THE COURT REPORTER: Judge, I just wanted to
4 verify was that Mr. Hack speaking?

5 JUDGE JACOBS: Yes. And I think, Mr. Hack,
6 you just responded but it looked like you were muted.

7 MR. HACK: The answer was yes, Ms. Court
8 Reporter. Thank you. It was Mr. Hack.

9 JUDGE JACOBS: Okay. I apologize for stopping
10 you while you were answering the question. I wanted to
11 be able to look at the specific paragraphs. So the
12 first part of your answer was saying that paragraph 16
13 simply recites what already happened and then there are
14 a couple sentences to the end there that do seem to
15 include some kind of obligation on the part of the
16 Company. So would you characterize the agreement to
17 evaluate the advisability of offering additional
18 customer assistance programs as part of the conditions
19 of this AAO under the stipulation?

20 MR. HACK: It is an agreement that is
21 expressly made by the Company as a part of this
22 Non-Unanimous Stipulation and Agreement. As Mr. Caisley
23 testified yesterday, I believe, these are re-evaluation
24 or continued evaluation for both items is something we
25 would be doing regardless. And I think as Dr. Marke

1 recognized in his testimony today, we have been meeting,
2 we the Company Evergy, have been meeting with Staff and
3 OPC on a regular basis to discuss customer payment
4 practices, COVID impacts. I do not know personally
5 whether National Housing Trust has been a part of those
6 discussions. These last two sentences of this paragraph
7 16 would expressly obligate us to invite NHT to those
8 discussions. Obviously they're not a signatory. They
9 could choose to attend or not.

10 But these are -- I do not see these last two
11 sentences as being -- as implicating Commission
12 authority at all.

13 Now, if we were to propose something or if the
14 Commission was to simply on its own accord order us to
15 do something with some conditions regarding cost
16 recovery, then there may be implications regarding
17 Commission authority. Is that fair? Does that make
18 sense?

19 JUDGE JACOBS: Well, I think we need to go
20 back to the first, really the first question that's
21 being asked here is not the question that I posed at the
22 beginning of the hearing which was really a question
23 about the extent of the Commission's authority. This is
24 a question about the parties' positions at this time.
25 So if the Commission determines either that it doesn't

1 have authority to direct these kinds of activities that
2 are identified in 16, 17 and 18 of the stipulation and
3 agreement or it decides that it's inappropriate and
4 therefore is not going to do so, what are the parties'
5 positions about going forward with the rest of the
6 agreement.

7 I doubt very much that Evergy's position would
8 be really hard for anyone to understand on that, but
9 perhaps the other parties might have a more complicated
10 position if these provisions are not included in an AAO
11 that the Commission would order. Right?

12 MR. HACK: I think you had just alluded to
13 this, Judge. We support all the paragraphs and we would
14 be willing to move forward without these as a part of
15 the order.

16 MR. WOODSMALL: Your Honor, this is Dave
17 Woodsmall for MECG. You'll notice in paragraph 16 it
18 talks towards the bottom that these payment plans affect
19 residential and small commercial. As you know from my
20 application to intervene, my interests are on behalf of
21 the large commercial and industrial customers. So this
22 paragraph really does not affect my interest in the
23 case. So MECG would be willing to go forward whether
24 this provision is in or out. That said, it is part of
25 an overall negotiated package and we'd urge the

1 Commission to leave it in.

2 JUDGE JACOBS: So are paragraphs 17 and 18
3 something that your client or clients believe would have
4 to be part of an AAO order that your clients are asking
5 the Commission to issue in this case?

6 MR. WOODSMALL: As Mr. Hack was talking about,
7 paragraph 17, I talked about paragraph 16 that doesn't
8 really implicate my interest, paragraph 17 is more a
9 reflection of what has happened in the past that the
10 Company has made this \$2.2 million of contributions. It
11 is important to us that that be below the line, and the
12 Company has made that affirmative agreement. Paragraph
13 18 concerns practices of full credit reporting. I
14 believe that's more of a residential issue. So that
15 doesn't implicate my interest either.

16 JUDGE JACOBS: So really the only portion of
17 these three paragraphs that is significant in your mind
18 for your interests would be that the contributions or
19 relief provided by the Company would be recorded below
20 the line essentially?

21 MR. WOODSMALL: Referring specifically to the
22 2.2 million it's already made. As far as programs above
23 and beyond that, those were addressed elsewhere in the
24 stipulation, but the 2.2 million you are correct.

25 JUDGE JACOBS: And I think that, you know, the

1 reference to these paragraphs probably should be
2 understood as a reference to any conditions that the
3 Commission would attach to an AAO such as have been
4 advocated by some of the parties to provide some relief
5 to customers. So I mean, that's really what these
6 paragraphs represent in the agreement. So I don't know
7 if there are some additional references to that that are
8 littered throughout the stipulation that should be
9 understood as being part of it, but the larger question
10 is if the Commission decides it either doesn't have
11 authority to attach this type of condition or declines
12 to use its discretion to do so does that change the
13 parties' positions in asking the Commission to issue the
14 AAO that Evergy has requested. And so I think you've
15 answered that now for your clients, Mr. Woodsmall, but
16 if you wanted to make additional comments I'm sure the
17 Commission would be happy to hear them.

18 MR. WOODSMALL: That was all I had. Thank
19 you.

20 MS. MYERS: Judge, I can attempt to address
21 your question from Staff's perspective. You know, Staff
22 supports the terms of the Non-Unanimous Stipulation and
23 Agreement in total, and I still agree with I believe
24 it's Mr. Woodsmall who said in his opening statement
25 that between the filed testimony in the case, as well as

1 the live testimony that's been given, there's enough
2 here for the Commission to make findings of fact and
3 conclusions of law for every single one of these terms.
4 And as you previously noted, all parties will be
5 addressing authority in brief. So we will also be doing
6 that.

7 But I guess to get a little more specific, you
8 know, our witness Ms. Dietrich was asked about I think
9 in particular paragraph 16 and 18 and her response was
10 while we did not address those in testimony we found
11 them to be reasonable.

12 That said, you know, paragraphs 16, 17 and 18
13 are not Staff proposals found anywhere in our testimony,
14 our prefiled testimony or our live testimony here. So
15 you know, I guess to mirror Evergy's response on would
16 Staff still support a deferral for Evergy for
17 COVID-related costs, yes, so long as those didn't
18 include lost revenues, as long as the other terms of the
19 stipulation and agreement were present if paragraphs 16,
20 17 and 18 were no longer there. But again, reiterate we
21 support in total all of the paragraphs in the document.

22 JUDGE JACOBS: Thank you very much. And I
23 believe on my list of opening statements it would have
24 been Sierra Club that would have spoken next. So would
25 counsel for Sierra Club like to say anything at this

1 point about the question that's been posed?

2 MR. ROBERTSON: Well, Judge, we filed
3 testimony only on the lost revenue issue. We are
4 broadly supportive of the protections advocated for by
5 NHT and OPC. I do not think however that our support
6 would change if those paragraphs were deleted. Let me
7 say that it's provisional because since I'm not directly
8 employed by the Sierra Club I find that sometimes it's
9 best to let their staff counsel speak rather than me.

10 JUDGE JACOBS: So there will be some briefing;
11 and to the extent that your client needs to clarify
12 their position, they're going to have a chance to do
13 that.

14 MR. ROBERTSON: I will certainly make it known
15 to them.

16 JUDGE JACOBS: Missouri Industrial Energy
17 Consumers, Ms. Plescia, did you want to address today
18 that question from the Commission?

19 MS. PLESCIA: Yes, I would like to make a few
20 comments. I understand that the Commission has full
21 authority to make any decision that it chooses to based
22 on the evidence in this case and that this stipulation
23 and agreement under the Commission's rules is merely a
24 position of the parties to be considered.

25 I think that when it comes to a stipulation,

1 as you know, so many tradeoffs are made by the parties
2 and there are so many things that go into the decisions
3 about parties to take these positions and include the
4 various provisions. And there is truly an
5 interdependency in the sense that the parties are making
6 tradeoffs with each other to arrive at a conclusion that
7 we are all going to mutually support something. There
8 are tradeoffs made by parties who may have sought these
9 consumer protections and maybe didn't oppose this for
10 example or would have done something differently if they
11 had known these provisions were taken out. That being
12 said, we recognize that the Commission is going to
13 decide based on the evidence what it finds to be
14 reasonable. So I want to affirm that the MIEC supports
15 the stipulation as it's written.

16 We understand the Commission may come up with
17 a different decision. We hope the Commission will
18 preserve as much as possible of the stipulation. My
19 clients are not -- are just large industrial -- not
20 large commercial but large industrial consumers and we
21 are relatively unaffected by residential and business,
22 small business consumer protection provisions, but we
23 also support them and think they're very valuable. And
24 I would just add that with respect to 16, 17 and 18,
25 these paragraphs have always struck me more as a

1 recitation of things that the Company was doing already
2 and each of them has an agreement, for example, for the
3 evaluation of programs.

4 The below the line aspect of it is certainly,
5 you know, an important aspect, but a lot of the things
6 in these paragraphs are just recitations of what the
7 Company is doing. I certainly am not prepared to say at
8 all that the MIEC wouldn't support the stipulation
9 without these items, but I hope the Commission will give
10 consideration to the fact that tradeoffs were made in
11 order to get to this document. And that's all I have.

12 JUDGE JACOBS: Thank you very much. Would the
13 Office of the Public Counsel like to make any comments
14 on these issues at this time?

15 MR. HALL: Sure. Thank you, Judge. While
16 understanding that Public Counsel opposes the
17 stipulation and agreement as currently drafted, our
18 opposition was rooted mostly in the presence of the
19 language contained in paragraph 8 in the absence of
20 language similar to what was agreed to in American Water
21 and Spire Missouri's COVID-19 related AAO.

22 For the paragraphs you're asking about, just
23 off the cuff 16 and 17 OPC sees as largely lacking
24 functionality. 18 would be the only paragraph that has
25 any sense of operative language in that it's something

1 that can be pointed to to -- it can be something that
2 can be pointed to in the event that Evergy wishes to
3 change its mind on the practice of waiving late payment
4 fees or credit reporting.

5 At this time, I think I'd like to make known
6 to the Commission that traditionally with the practice
7 of providing stipulations to the Commission the
8 Commission independently adopts the stipulation. If the
9 Commission has any reason to take offense or not like a
10 particular provision in the stipulation, the Commission
11 need not be subtle on that point and it can -- If the
12 Commission has any trepidation about it's authority to
13 order conditions, the Commission can most certainly ask
14 the parties to go back to the drawing board.

15 JUDGE JACOBS: Thank you, Mr. Hall. Is there
16 going to be -- Would National Housing Trust like to make
17 any comments at this point?

18 MR. LINHARES: Thank you, Judge. I'd like to
19 reiterate some of the comments of OPC's counsel. NHT
20 sees paragraph 16 as essentially without function. It
21 commits the Company to agreeing to evaluate the
22 advisability of extending its offer of a 12-month
23 payment plan. Of course, we'd be hoping that the
24 Commission would insist on a similar condition here in
25 this case, in fact, a stronger condition of a full

1 arrearage management program to limit customer
2 arrearages. So we don't see that paragraph as
3 committing the Company to much at all.

4 And I think the same can be said for 17 and
5 18. We would just urge the Commission to -- We have no
6 objection to the costs that are slated to be recovered
7 as part of the AAO proposal in this case. We'd just ask
8 that the Commission insist on several conditions given
9 the severity of the crisis that we find ourselves in,
10 and we'll flesh that out further in briefing.

11 JUDGE JACOBS: Okay. Thank you. Finally,
12 does Renew Missouri have any comments to make on that
13 question from the Commission?

14 MR. OPITZ: Sure, Judge. So I guess to the
15 broader question of Commission authority, I mentioned
16 generally in my opening statement that I believe the
17 Commission has broad authority to attach conditions and
18 I'll address that in briefing. And to the specific
19 questions about our position, change in position, if
20 those were added or deleted from the stipulation, I
21 don't think it would change our position. Renew
22 Missouri did not sign but did not object to the
23 stipulation.

24 JUDGE JACOBS: Okay. The question that was
25 posed to the parties at the beginning of the proceeding

1 was to address in briefing the Commission's authority to
2 attach conditions in an AAO order, and I think there
3 should probably be some nuance there because there are
4 all sorts of different kinds of conditions that the
5 Commission might attach in different orders. So I think
6 one of the questions that's posed there is the
7 Commission's authority to attach conditions that
8 essentially create new programs or require certain
9 treatment of customer arrearages or pick up some of the
10 recommendations that were made by some of the parties.
11 So that's where the main question of authority goes.

12 There may be other kinds of conditions that
13 would appear in a Commission order. I'll take, for
14 example, reporting requirements. So I think the
15 question would be while maybe it's a different situation
16 to question the Commission's authority to require
17 certain kinds of relief for some customers as opposed to
18 whether the Commission has authority to issue an AAO and
19 also tell the Company we're issuing this AAO and you're
20 going to report this information to us every six months.
21 So I hope that the parties will address the Commission's
22 authority and perhaps also different kinds of conditions
23 because that seems like an obvious issue there to me.

24 So I'm going to give you one more opportunity
25 I guess on substantive matters if there's anything you

1 wanted to say to the Commission at this point and then
2 we can talk about the briefing schedule and any other
3 closing matters that might exist. Does anybody need to
4 clarify anything that was said before or want another
5 opportunity to address the Commission on anything?

6 MR. HACK: Everyy does not. We're prepared to
7 brief.

8 MR. WOODSMALL: MECG will brief as well.

9 JUDGE JACOBS: Okay. It doesn't look to me
10 like we're going to have any late-filed exhibits. I
11 think everything that was offered has actually been
12 provided to me which means it's in the possession of the
13 Commission and I can actually hand it off to staff to
14 mark and file in EFIS and then all the parties would
15 have a chance to verify that what is labeled and filed
16 in EFIS matches what was offered. So I would anticipate
17 that would be the next step and then I would put an
18 order out that would specify a time period to let us
19 know if any mistakes were made. Does that seem like a
20 reasonable process?

21 MR. HACK: Judge, this is Rob Hack. I think
22 it does, but there was maybe a little bit of lack of
23 clarity in my mind on what you want us to do with
24 exhibits that were corrected on the stand but those
25 corrections weren't in the numbered exhibits that were

1 provided to the parties.

2 JUDGE JACOBS: Thank you for bringing that up.
3 I think that because of some other cases I had reviewed
4 I was under the impression that corrected testimony or
5 corrected exhibits actually did ultimately get corrected
6 in the true sense. So I think I had assumed that that's
7 how things would be done. And to be honest, I would
8 prefer that it was done that way because otherwise it's
9 necessary to make a note that this was corrected and
10 then make sure that in any order you reflect that
11 accurately if those changes happen to actually make a
12 difference. It seems like often they don't make much of
13 a difference.

14 So I mean, I think that was just part of my
15 not being familiar with exactly how things are typically
16 corrected before the Commission and also I would prefer
17 to just actually have things that are corrected filed in
18 their corrected form. But I can't -- I don't want to
19 invent a new procedure that nobody is familiar with. So
20 I'm willing to listen to the parties if they say this
21 works just fine like this, don't worry about it.

22 MR. HACK: I think given your preference and
23 the fact that I think the only correction that we
24 offered was in the Non-Unanimous Stipulation and
25 Agreement, which could be a meaningful document and it's

1 really only the change of one digit, I think we would go
2 ahead and commit to file a corrected Exhibit 1 so that
3 the record is clear.

4 JUDGE JACOBS: Does any party have any
5 objection to that?

6 MS. MYERS: Judge, Staff has no objection. I
7 would just ask the same question. We had a correction
8 to Ms. Bolin's testimony, Staff Exhibit 100 to both her
9 public and confidential versions. It was just a couple
10 of words; but like Mr. Hack said, I'm okay with just
11 filing that as well because I know you offered into the
12 record the corrected versions anyway.

13 JUDGE JACOBS: Because you're all being so
14 helpful, let's do plan on having corrected exhibits
15 filed. And so what I will do is put together an order
16 that will specify when they should be filed and also
17 that will probably coincide with when the rest of the
18 exhibits will be appearing in EFIS and have been marked
19 and that will let everybody know by what date they need
20 to make sure that everything was correct. So instead of
21 doing our in-person routine, which as I understand it is
22 people hand exhibits to the court reporter, she makes
23 sure they're all marked and then she hands them back
24 over to the Commission and we get them filed. Because I
25 already have them in my possession, I'll take care of

1 making sure they get filed. I'm not going to set any
2 time frames on that right now because I would just
3 rather do it in writing. So does anybody have any other
4 questions about exhibits?

5 MR. FISCHER: Judge, I just wanted to confirm
6 that my notes were right that all the Evergy exhibits
7 that we prefiled have been offered and accepted.

8 JUDGE JACOBS: I can go back and look at the
9 exhibit list that I have for you. I do have everything
10 marked as admitted based on the list of nine exhibits
11 from Evergy.

12 MR. FISCHER: That's my notes too. Thank you.

13 JUDGE JACOBS: And then as was discussed
14 before, there has been clarification or correction as to
15 a single date in the stipulation.

16 MR. FISCHER: Yes.

17 JUDGE JACOBS: Mr. Hack indicated that he
18 would submit a correction. So that will be submitted
19 under an order that will come out soon.

20 MR. FISCHER: Thank you.

21 JUDGE JACOBS: Okay. And I can look at all
22 the exhibit lists with each party if you would like, but
23 really they weren't very extensive. So I think it's
24 pretty clear. The only other minor complication we had
25 was the shared witness with the energy parties. So

1 that's going to be marked as a Midwest Energy Consumers
2 and Missouri Industrial Consumers Exhibit No. 300, I
3 believe. So I'll make sure that that happens as well.
4 Of course, there will be a time period to fix that if it
5 isn't done exactly right.

6 Any other comments or concerns on exhibits?

7 JUDGE JACOBS: Judge, please don't take this
8 as a complaint. Do you wish Public Counsel to still
9 file corrected testimonies of Dr. Marke's testimony
10 given the errata sheet?

11 JUDGE JACOBS: No, I think that that handles
12 that just fine. It's in writing, I don't have to
13 remember anything, and I can go back and look at it
14 anytime I want. So that's perfect.

15 MR. HALL: I truly didn't mean that to be a
16 complaint. We'll do it if you want.

17 JUDGE JACOBS: That's fine. All right. Any
18 other comments on exhibits? Okay. So I checked and our
19 transcript date normally would have been on
20 Thanksgiving, but our court reporter service has
21 graciously agreed that they're actually going to have
22 these ready for us on November 25. So that's when
23 transcripts will be available and initial briefs are
24 December 4 and reply briefs December 14. I presume
25 those dates are still acceptable to everybody. Okay.

1 I'm sorry? Are there any other matters to discuss
2 before we end our hearing?

3 MR. FISCHER: Judge, I just wanted to thank
4 the parties, the Commission, and particularly the
5 Regulatory Law Judge and the court reporter and our IT
6 guy for all the extra work that this brought to the
7 table. Certainly was an interesting proceeding and you
8 did a great job. Thank you for all cooperating to make
9 this a safe proceeding.

10 JUDGE JACOBS: Thank you very much,
11 Mr. Fischer. I think we've covered everything. Thank
12 you so much everyone for being here and keeping your
13 lines muted. So I hope you all have a wonderful day.
14 This proceeding is now adjourned. Thank you. We're off
15 the record.

16 (Off the record.)
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