

In the Matter of:

THE SECOND PRUDENCE REVIEW OF THE MISSOURI ENERGY EFFICIENCY INVESTMENT, etc.

EO-2020-0227, VOL. II

April 22, 2021



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing, via WebEx

April 22, 2021

Jefferson City, Missouri

Volume 2

In The Matter of the Second Prudence)
Review of the Missouri Energy)
Efficiency Investment Act (MEEIA)) File No. EO-2020-0227
Cycle 2 Energy Efficiency Programs of)
Evergy Metro, Inc. d/b/a Evergy)
Missouri Metro)

CHARLES HATCHER, 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 HATCHER: Let's go on the record. Today
3 is Thursday, April 22nd, 2021. This is a continuation of the
4 evidentiary hearing in File Number EO-2020-0227. All of the
5 counsel are in attendance and we left off completing
6 Mr. Fortson's testimony yesterday. So today we will start with
7 Ms. Tandy.

8 If Ms. Tandy could speak up and I will swear you
9 in.

10 MS. TANDY: Good morning, Judge. This is Cindy.

11 JUDGE HATCHER: Thank you. Hold on just a
12 second.

13 (Witness sworn.)

14 JUDGE HATCHER: Thank you.

15 Mr. Keevil, your witness.

16 MR. KEEVIL: Thank you, Judge. Can you hear me?

17 JUDGE HATCHER: Yes, please go ahead.

18 MR. KEEVIL: Thank you.

19 CYNTHIA TANDY, having been first duly sworn, testifies as
20 follows:

21 DIRECT EXAMINATION BY MR. KEEVIL:

22 Q. Ms. Tandy, would you first, please state your
23 name and spell it for the record?

24 A. Yes, Cynthia M. Tandy. Cynthia, C-Y-N-T-H-I-A,
25 M, Tandy is T, as in Tom, A-N-D-Y.

1 Q. Thank you. Have you caused to be prepared for
2 this case direct testimony and surrebuttal testimony?

3 A. Yes, I did.

4 MR. KEEVIL: Judge, let me get Ms. Tandy's
5 direct marked as Exhibit -- I believe I am up to 102 and
6 Ms. Tandy's surrebuttal as Exhibit 103.

7 BY MR. KEEVIL:

8 Q. Ms. Tandy, you heard me mention exhibit numbers
9 there. Your direct, Exhibit 102, and your surrebuttal Exhibit
10 103. Do you have any corrections or additions you need to make
11 to any of those pieces of testimony?

12 A. Yes, I do. On Exhibit 103, my title has changed
13 since I produced this and I am now senior utility regulatory
14 auditor.

15 Q. Can you give me a page?

16 A. It is on Page 1, the second question and the
17 answer to that question, Line 11.

18 Q. Thank you. That is only in your surrebuttal?
19 It's also in your direct?

20 A. Yeah. You're right. It is probably wrong in
21 there also. That's correct, Mr. Keevil. It should be senior
22 regulatory auditor both on Line 11.

23 Q. All right. In both of these testimonies. Any
24 other corrections or additions to either of the pieces of
25 testimony?

1 A. No.

2 Q. And didn't you also contribute certain sections
3 to the Staff's reports which were attached to Mr. Fortson's
4 direct testimony?

5 A. Yes, I did.

6 Q. All right. If I were to ask you the questions
7 contained in Exhibits 102 and 103 as you've corrected them here
8 this morning, would your answers be the same as contained in
9 those pieces of testimony?

10 A. Yes, they are.

11 Q. And are those answers true and correct to the
12 best of your knowledge and information?

13 A. Yes, they are.

14 MR. KEEVIL: Judge, with that I would offer
15 Exhibits 102 an 103 into the record and tender Ms. Tandy for
16 cross-examination.

17 (WHEREIN; Exhibits 102 and 103 were offered into
18 evidence.)

19 MR. KEEVIL: I believe she's here for Issue 7 of
20 the issues list.

21 JUDGE HATCHER: Thank you, Mr. Keevil.

22 Are there any objections to the admission of
23 Exhibit 102 and Exhibit 103? Let the record reflect there were
24 no objections. The exhibits are so admitted.

25 (WHEREIN; Exhibits 102 and 103 were received

1 into evidence.)

2 JUDGE HATCHER: The witness has been tendered to
3 Mr. Hall.

4 MR. HALL: Thank you, Judge. I have no
5 questions.

6 JUDGE HATCHER: Thank you, Mr. Hall.

7 Now we turn to Evergy.

8 MR. STEINER: No questions, Your Honor.

9 JUDGE HATCHER: Thank you. Are there any
10 commissioner questions? We are at commissioner questions for
11 Ms. Tandy. We will go on to Bench questions.

12 QUESTIONS BY JUDGE HATCHER:

13 Q. Ms. Tandy, I've asked this of several witnesses.
14 Can you tell me how many curtailment events were called, broken
15 down by Evergy Metro and West and by the residential in the DRI
16 program?

17 A. I'm sorry, Judge. I did not take part of that
18 section in the report.

19 Q. Okay. That is fine.

20 JUDGE HATCHER: That does -- I think qualifies
21 for recross if anyone has any recross.

22 Mr. Keevil, any redirect?

23 MR. KEEVIL: No, Your Honor. No redirect.

24 JUDGE HATCHER: Okay. Thank you, sir.

25 Ms. Tandy, you are excused.

1 MS. TANDY: Thank you.

2 JUDGE HATCHER: And our next witness is
3 Mr. Luebbert.

4 Mr. Luebbert, if you can speak up, I will swear
5 you in.

6 MR. LUEBBERT: Good morning, Judge.

7 (Witness sworn.)

8 JUDGE HATCHER: Thank you, sir.

9 Mr. Keevil, your witness.

10 MR. KEEVIL: Thank you, Judge.

11 J. LUEBBERT having been first duly sworn, testifies as follows:

12 DIRECT EXAMINATION BY MR. KEEVIL:

13 Q. Excuse me. Mr. Luebbert, would you please
14 state your name and spell it for the record?

15 A. Yeah. My name is J. Luebbert, L-U-E-B-B-E-R-T.

16 Q. And are you the same J. Luebbert who has caused
17 to be prepared in this matter both direct and surrebuttal
18 testimony?

19 MR. KEEVIL: Which, Judge, I would ask that
20 Mr. Luebbert's direct be marked as Exhibit 104 and his
21 surrebuttal be marked as Exhibit 105. I would also note, Your
22 Honor, that both the direct and the surrebuttal have both public
23 and confidential versions. So for numbering we would have 104
24 Public and 104 Confidential as well as 105 Public and 105
25 Confidential.

1 BY MR. KEEVIL:

2 Q. Mr. Luebbert, are Exhibits 104 and 105 -- you
3 heard me refer direct as 104, surrebuttal as 105. Are those the
4 pieces of testimony that you caused to be prepared for this
5 hearing?

6 A. Yes.

7 Q. And did you also contribute to the Staff's
8 report -- or reports, which were attached to Mr. Fortson's
9 direct testimony in this matter?

10 A. Yes, I did.

11 Q. Do you have any additions or corrections that
12 you need to make to either of those pieces of testimony 104 or
13 105?

14 A. No.

15 Q. If I were to ask you the questions contained
16 therein, would your answers be the same today as they are
17 contained in those pieces of testimony?

18 A. Yes.

19 Q. And are those answers true and correct to the
20 best of your information, knowledge, and belief?

21 A. Yes.

22 MR. KEEVIL: Judge, I would offer Exhibits 104
23 Public and 104 Confidential and 105 Public and 105 Confidential
24 into the record.

25 (WHEREIN; Exhibits 104P, 104C, 105P, and 105C

1 were offered into evidence.)

2 JUDGE HATCHER: Thank you, Mr. Keevil. I will
3 take them up as one question.

4 Are there any objections to the admissions of
5 any of the exhibits Mr. Keevil just listed, which includes the
6 direct of Mr. Luebbert, Exhibit 104 Public and Confidential, and
7 surrebuttal of Mr. Luebbert, 105 Public and Confidential?

8 Seeing no objections, it is so admitted and the
9 witness has been tendered.

10 (WHEREIN; Exhibits 104P, 104C, 105P, and 105C
11 were received into evidence.)

12 JUDGE HATCHER: Mr. Hall any questions?

13 MR. HALL: Yes, Your Honor. Thank you.

14 CROSS-EXAMINATION BY MR. HALL:

15 Q. Good morning, Mr. Luebbert?

16 A. Good morning.

17 Q. Mr. Luebbert, do have a copy of your surrebuttal
18 testimony in front of you?

19 A. If you'll give me just a moment I can pull it
20 up. Okay.

21 Q. Could you please turn your attention to Pages 6
22 and 7 and let me know when you are there?

23 A. Okay.

24 Q. I'm looking at the portion of your answer
25 starting on Line 19 of Page 6 going to Line 9 on Page 7. I was

1 trying to break that down into layman's terms. In this answer
2 are you saying that Evergy did not defer a future combustion
3 turbine investments through its MEEIA Cycle 2 programs?

4 MR. KEEVIL: Mr. Hall, I'm not really objecting,
5 but I don't see a question. From your question it seems like
6 his answer began on Line 19. I believe that answer starts
7 several lines earlier just for clarification purposes.

8 MR. HALL: Yes. Thank you for that, Mr. Keevil.
9 The full answer does start on Line 9 on Page 6.

10 MR. KEEVIL: Thank you.

11 THE WITNESS: I'm sorry. Can you repeat the
12 question?

13 BY MR. HALL:

14 Q. Sure. Mr. Luebbert, I am reading -- I'm trying
15 to break this down to brass tax. In this answer are saying that
16 Evergy did not defer a future combustion turbine investment
17 through its implementation of its MEEIA Cycle 2 programs?

18 A. I think specifically for the Demand Response
19 Programs, which I'm addressing in this review, those -- the
20 Demand Response Programs, the life of those programs ended as
21 soon as the end of Cycle 2 occurred. So to the extent that a
22 substantial deferral of combustion turbines did not occur before
23 then, it will not occur in the future due to the implementation
24 of the DRI programs in 2018 and 2019. Does that answer your
25 question?

1 Q. So you testified the DRI programs. What about
2 the thermostat programs?

3 A. I would say the same holds true for them as
4 well. They will require continued program funding and basically
5 a continued increase in program funding in order to possibly
6 realize some benefit out in the future. But the funding that
7 occurred in 2018 and 2019 I don't believe has deferred any
8 combustion turbine.

9 Q. If there was no deferral, what is used as an
10 avoided cost calculation in the EM&V process for these assets,
11 both DRI and the thermostat program?

12 A. So what was used in EM&V process for all of the
13 programs was -- the what I've quoted here as -- on Page 7 -- as
14 the proxy avoided capacity costs, which the Company came up with
15 in their application for Cycle 2 as a proxy for the levelized
16 annual cost of a simple cycle natural gas combustion turbine.
17 So that value is provided to the EM&V contractors. And those
18 values are then multiplied by any demand savings which occurred
19 in the implementation year. That is not --

20 Q. All right.

21 A. -- to say that those -- sorry go ahead.

22 Q. No. Please finish your answer.

23 A. I was going to say that is not to say that those
24 quote/unquote benefits that are used in that EM&V process are
25 ever actually realized by ratepayers through a reduction in

1 their bills.

2 Q. When you are referring to the savings are -- for
3 Evergy's programs is there -- are the savings always measured as
4 actual kilowatts saved or is there an estimation that is going
5 on as well?

6 A. There's always an estimation when they're trying
7 to determine what those savings are. The EM&V process is really
8 there to try to make those estimates on the kilowatts or
9 kilowatt hours saved as accurate as they can, but they're always
10 -- you know, there's generalizations that are occurring there
11 and assumptions that are used in order to estimate those.

12 Q. Are any of the savings deemed?

13 A. Yes.

14 Q. Were any of the savings deemed for the Cycle 2
15 programs?

16 A. I think it -- I think the timing changes my
17 answer. So when you're looking at the application for approval
18 of the programs, any of the savings that are assumed there are
19 just that; they are assumptions that haven't been verified to
20 that point and haven't been -- haven't gone through the EM&V
21 process to kind of make sure that they at least as closely as
22 possible reflect reality as far as the kilowatts savings.

23 Q. From that answer I take it you mean that through
24 the EM&V process there's a verification of savings, but you had
25 also said earlier that even with verified savings there's not

1 necessarily what you call benefits. Why are there not benefits
2 even if there are savings?

3 A. So just because a demand-side program saves or
4 decreases demand does not necessarily mean that customers
5 avoided paying for a combustion turbine for that same amount of
6 demand. So to kind of explain this a little bit better, when
7 they are looking at the levelized cost of the combustion turbine
8 they break that down into a dollars per kilowatt year. And so
9 that number is then multiplied by the kilowatts savings through
10 found through the EM&V process. But that is not to say that
11 customers' rates are going to reflect a reduction by that amount
12 based on that demand savings in years 2018 and 2019.

13 One thing that is kind of important to keep in
14 mind is that for the vast majority of programs the EM&V process
15 is looking at a scope or a measure life or an average measure
16 life for a program that can be up to 20 years long. That's
17 really not the case for a demand response program because of the
18 fact that as soon as the cycle is over those savings are no
19 longer -- they are no longer there for customers unless
20 customers continually fund additional demand response programs
21 and increase that amount that they are paying year over year
22 over year. So by the end of 2019 to the extent that a
23 combust--

24 Q. Mr. Luebbert, are you still there?

25 A. -- from --

1 Q. Mr. Luebbert, you cut out a little bit right
2 after you had mentioned that 20-year life. Could you please
3 restart your answer from there?

4 A. Yeah. Can you hear me okay?

5 Q. Yes.

6 A. Sorry about that. That is the second time that
7 I've cut out this morning. If it happens again, please don't
8 hesitate to let me know.

9 So for a typical program you are looking at
10 measure life that can go up to 20 years. With the demand
11 response programs it is really -- it's a different -- it's a
12 different type of program in that at the end of 2019 customers
13 will no longer be receiving any demand reduction from the Demand
14 Response Incentive Program or the Residential Programmable
15 Thermostat Program unless they continue to pay for additional
16 program costs in 2020 and on. Right. So to the extent that by
17 the end of 2019 you haven't deferred a combustion turbine based
18 on those demand reductions for demand response, they're not
19 going -- you're not going to recognize those benefits at some
20 point in the future because you're going -- your demand impact
21 from that program is over.

22 So what I based a large majority of my
23 recommendation on are the benefits that could have been realized
24 in the short term in 2018 and 2019, which were identified as
25 potential benefits by the Company, but that they failed to even

1 attempt to achieve.

2 Q. So Mr. Luebbert, let me attempt to restate your
3 answer. An EM&V proxy of what it costs are applied to savings
4 to have a representation of -- and I'm putting quotation marks
5 around this word -- benefits. Do I understand that correctly?

6 A. Yes.

7 Q. But if there isn't an actual avoided cost, then
8 the proxy of what it cost is overstated?

9 A. Yes. And any analysis that you would look at
10 for as far as whether a program is cost effective is likely
11 skewed by that prism.

12 Q. So avoided costs -- if proxy avoided costs are
13 overstated, both cost effectiveness and benefits are going to be
14 overstated at the end?

15 A. Yes.

16 Q. Even if there are savings -- even if there are
17 kilowatts savings from these programs?

18 A. I think that I would say if they were kilowatts
19 savings as in demand from the programs, for these specifically,
20 but yes.

21 Q. Thank you for that clarification.

22 MR. HALL: I have no further questions.

23 JUDGE HATCHER: Thank you, Mr. Hall.

24 We turned Everygy for cross-exam.

25 MR. HARDEN: Thank you, Your Honor.

1 CROSS-EXAMINATION BY MR. HARDEN:

2 Q. Good morning, Mr. Luebbert. How are you today?

3 A. Good morning. I am doing well.

4 Q. I'd like to -- I sent over -- what was it, two
5 days ago now, a couple of exhibits. Exhibit -- what has been
6 marked as Evergy's Exhibit 1 and 2. I am going to refer to
7 those. Do you have those by any chance?

8 A. If you could tell me the title of each exhibit
9 that would be helpful.

10 Q. Sure. Exhibit Number 1 is the Stipulation and
11 Agreement. It is a pleading entitled Stipulation and Agreement
12 Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA
13 3 Case. And Exhibit Number 2 is the Order approving that
14 Stipulation and Agreement.

15 A. Okay. Give me just a moment to get those pulled
16 up.

17 Q. You bet.

18 A. Okay. So I've got the Stipulation and Agreement
19 regarding extension of MEEIA 2 pulled up.

20 Q. Great.

21 A. And you said the Report and Order?

22 Q. Yeah, the Report and Order is Number 2.

23 A. Okay. I think I've got them.

24 Q. Okay. And kind of working backwards here so on
25 Exhibit Number 2, that Order approving the Stipulation and

1 Agreement was issued and became effective February 27th of 2019;
2 is that correct?

3 A. It looks like the issue date was the 27th and
4 then the effective date was March 17th, 2019.

5 Q. Thank you. So on Exhibit 1, which is the actual
6 Stipulation and Agreement, which was approved by the Commission,
7 that was negotiated and entered into prior to the -- at least a
8 portion the summer of 2019. That agreement was entered into
9 before the relevant audit period in this case; is that correct?

10 A. I don't believe so. The audit period as I
11 understand it included 2018 and 2019. And this would have been
12 -- so it would have been, I guess, partial.

13 Q. Right?

14 A. Okay.

15 Q. So it was entered into prior to the summer of
16 2019?

17 A. That's correct.

18 Q. Okay. I would like to turn your attention then
19 -- and -- to Page 3 of the Stipulation and Agreement.

20 A. Okay.

21 Q. And in section -- let me go back just a little
22 bit here. Part of this prudency review, the audit period deals
23 with the number of demand response events, which Evergy called
24 in the summer of 2019; is that correct?

25 A. You are saying that part of the review -- I'm

1 sorry. Could you repeat the question?

2 Q. Sure. It's pretty straightforward. I mean,
3 part of the reason we are here today it is a prudency review
4 based upon Staff's disagreement with the number of demand
5 response events which were called by Evergy in the summer of
6 2019. Is that --

7 A. I don't know that I would -- I don't know that I
8 would characterize it that way. I think the recommended
9 disallowances that I had aren't necessarily tied to a specific
10 number of events called, but the lack of an attempt to maximize
11 the benefits that are available from the program given the
12 parameters of the program and the tariff.

13 Q. Okay. But certainly the disallowances which you
14 recommend to the Commission are based upon additional demand
15 response events being called by Evergy. Would that be accurate?

16 A. I would say that it would have been a better
17 decision to call more events targeting areas that you could
18 derive benefits from, yes.

19 Q. Okay. So let's look at Section 7 here on Page 3
20 of this agreement. And specifically Subsection B. And I'm
21 going to read it. For the Programmable Thermostat Program the
22 Company will call five demand response events per jurisdiction
23 during the summer of 2019 (June through September). Company
24 will present data to the DSM advisory group following the 2019
25 season detailing the customer participation rates. (Example,

1 opt-out percentage, participation duration) during each demand
2 response event conducted in 2019. Did I read Section 7B
3 correctly there, Mr. Luebbert?

4 A. I believe you read it correctly. Yes.

5 Q. Thank you, sir. And Staff was a signatory to
6 this agreement; is that correct?

7 A. Yes.

8 Q. And this agreement was approved by the
9 Commission; is that also correct?

10 A. Yes, it is.

11 Q. Okay. And Staff doesn't dispute whether or not
12 Everygy abided by the terms of this agreement; is that also
13 correct?

14 A. Well, I guess I would say there was some
15 confusion on the number of events as I wrote in direct
16 testimony. As -- from my recollection Mr. File provided some
17 more information in his testimony stating that five events were
18 recalled in 2019 and listed the dates.

19 Q. Okay. But you certainly would it be fair to say
20 that the issues presented in this case are not based upon
21 Staff's assertion that the Company in any way violated this
22 Stipulation and Agreement?

23 A. I don't think that the disallowances that I
24 recommended are the result of that Stipulation and Agreement.

25 Q. Thank you, Mr. Luebbert. Now, there was a fair

1 amount of overlap here in issues between what we have in this
2 MEEIA proceeding as well as the FAC proceeding which occurred
3 not too long ago. And I may refer back to your testimony there,
4 Mr. Luebbert. Do you have a transcript of the FAC proceeding?

5 A. I do and it's -- I think it was broken into two
6 different documents. So if you could direct me which one you're
7 looking at.

8 Q. Sure. I think most of your testimony is
9 contained, if not all of it, in Volume 2.

10 A. I have Volume 2 open.

11 MR. KEEVIL: Excuse me, gentleman. What case
12 number are we talking about, I think for the record it would be
13 good for the FAC case that you're referencing.

14 MR. HARDEN: Let me try to find it here. 0262.

15 THE WITNESS: If I may, it's EO-2020-0262.

16 MR. HARDEN: Thank you, Mr. Keevil and
17 Mr. Luebbert.

18 BY MR. HARDEN:

19 Q. So would it -- in that proceeding -- does it
20 remain your position that the objective of the MEEIA programs is
21 to decrease system peak load?

22 A. I don't know that that is the only objective of
23 the MEEIA programs.

24 Q. Okay. Would you be comfortable in believing
25 that it's the primary objective?

1 A. I think -- as I've said in that case as well, I
2 think it is an objective and it's what Mr. File has stated as
3 the primary objective of the demand response programs.

4 Q. Well, I believe he stated that it was the annual
5 system peak load reduction and then you countered that you
6 believe that under the tariff that it was -- one of the
7 objectives was it was system peak load, which I think is a
8 little bit different. Would you agree with that?

9 A. You are asking if I would agree that there is a
10 difference between system peak load and annual peak load?

11 Q. Yes?

12 A. Yes, there can be a difference.

13 Q. Okay. I would like you -- if we could turn to
14 the transcripts in the FAC proceeding to Volume 2, it's Page
15 162, Line 9 through 20?

16 MR. HALL: Mr. Harden, what page number please?

17 MR. HARDEN: 162.

18 THE WITNESS: Do you mind if I take a second to
19 read this?

20 MR. HARDEN: No. Absolutely.

21 BY MR. HARDEN:

22 Q. Just let me know when you are ready.

23 A. Okay.

24 Q. Okay. So in response to a question, Can you
25 provide how quickly customers under this standard must recognize

1 tangible financial benefits in your opinion, you responded,
2 Yeah. That's a good question. I'm glad you asked. The issue
3 I've taken with these programs, specifically the demand response
4 programs, is that they're only approved or they're only -- the
5 measured lives are only for the period of time that the cycle is
6 approved for.

7 So in this case for Cycle 2, 2018 and 2019 is
8 the only period, and that's the period that's subject to the
9 MEEIA prudence review. It's the only period that those programs
10 are going to achieve demand reductions. And in this case Evergy
11 failed to derive those benefits for customers within that time
12 period and that is why I've recommended the disallowance.

13 Did I accurately reflect your testimony there,
14 Mr. Luebbert?

15 A. You read what is there. I think at the
16 beginning you asked about some standard. If you could clarify
17 that with your question that would be helpful.

18 Q. Yes. I believe that the standard I was
19 referring to was the one that you had provided which is that
20 customers must receive tangible financial benefits?

21 A. And I think that should certainly be a goal of
22 any demand response program.

23 Q. Sure. As a matter of fact, that is what you
24 just reflected in the -- I think that this is pretty consistent
25 with what you just testified to with Mr. Hall's questioning,

1 isn't it?

2 A. Yes.

3 Q. Okay. Now, you probably don't have this in
4 front of you, but subject to check, I would like to read
5 portions of regulation here of the definitions for demand-side
6 programs and demand-side program investment mechanisms. And so
7 regulation 20 CSR 4240-20.092. Again, these are the definitions
8 for the demand-side programs and demand-side program investment
9 mechanism. And I'm looking at Section 1C on avoided costs.

10 A. Okay.

11 Q. I'm looking at the last sentence of that
12 definition of avoided costs. It says the utility shall use the
13 integrated resource plan and risk analysis used in its most
14 recently adopted preferred resource plan to calculate its
15 avoided costs. Now, it would be correct to say that the purpose
16 of this calculation of its avoided cost is to determine whether
17 or not the given MEEIA program is cost effective; is that
18 correct?

19 A. So I would say is the avoided cost used by the
20 Company are not the result of an integrated analysis or risk
21 analysis that came out of their IRP. They were proxy avoided
22 cost that was calculated as the levelized cost of a hypothetical
23 CT and it doesn't reflect the first part of that rule, which
24 states that it's the cost savings obtained by substituting
25 demand-side programs for existing and new supply-side resources.

1 Q. Okay. Well, let's put aside whether or not --
2 and that's somewhat new that you don't believe that the Company
3 utilizes its IRP in determining what the avoided costs of these
4 programs are. But let's kind of put that aside for just a
5 second.

6 Would you agree with me that under the
7 regulation, the Company was supposed to look at its IRP in
8 determining what avoided costs are for these programs?

9 A. So I think if I understand what you're asking,
10 is --

11 Q. I can restate it.

12 A. Yeah. Please do.

13 Q. Okay. So was the Company, pursuant to the
14 regulation, supposed to utilize the integrated resource plan and
15 risk analysis used in its most recent IRP to calculate its
16 avoided costs?

17 MR. HALL: Object. That's a purely legal
18 question.

19 JUDGE HATCHER: I will allow it. It can go to
20 weight.

21 THE WITNESS: So I think -- this may be
22 repeating what I said before, but in my eyes the proxy avoided
23 costs used by the Company was not an outcome of the analysis or
24 the integrated resource analysis or the risk analysis in their
25 IRP. It was just a calculation of the levelized costs for

1 combustion turbines.

2 BY MR. HARDEN:

3 Q. Okay. And so again, what I would like to do is
4 let's for a second get away from what the Company did or didn't
5 do in terms of its calculation of avoided costs. Okay? What I
6 would like to do is compare what your -- essentially your legal
7 standard for this prudence review or the time frame versus what
8 the regulation says.

9 You would agree with me that the IRP looks out
10 over approximately a 20-year time frame; is that accurate?

11 A. Yes.

12 Q. Okay. Now you have proffered that in order for
13 a utility to prudently implemently its MEEIA programs, that the
14 appropriate time frame for them to do that is the period of time
15 that the cycle is approved for; is that accurate?

16 A. For -- specifically for these demand response
17 programs or all programs?

18 Q. No. Let's say the demand response programs or
19 the programs which are at issue in this case?

20 A. So I think there's a really fine line that needs
21 to be kind of addressed, which is estimating the cost
22 effectiveness through the EM&V process does not necessarily
23 indicate that the programs were implemented prudently. And I
24 think, you know, a really similar -- a really similar thing to
25 think about is for a traditional supply-side resource the

1 Company should always be seeking to maximize revenues and
2 minimize costs to the extent possible in order to lower fuel and
3 purchase power costs expense all else being equal. And that is
4 kind of the point that I am making here is that the Company knew
5 of potential benefits that it could derive for ratepayers and it
6 failed to attempt to derive those benefits.

7 Q. Do you think it would be better if that last
8 sentence in 1C there on 092, if that were rewritten using the
9 time period you've provided to read, The utility shall use the
10 period of time that the cycle is approved for to calculate its
11 avoided cost?

12 MR. KEEVIL: I'm going to object to that. I
13 think there is some confusion here regarding what this
14 regulation applies to and what we are here today doing. Because
15 this regulation in its definition for demand-side program and
16 demand investment mechanisms, whereas we are here today on the
17 prudence review, which I believe is even pursuant to a separate
18 rule. I think we are mixing apples and oranges to a certain
19 extent and I object on that basis.

20 JUDGE HATCHER: Mr. Harden?

21 MR. HARDEN: Well, sorry. I've got an echo.
22 Give me two seconds here, while I adjust.

23 I think it gets to the key issue in this case,
24 which is at what time frame that the Commission is supposed to
25 be looking at to determine whether or not the Company acted

1 prudently. And we have a regulation here, which I would like
2 the Commission to take judicial notice of, which clearly states
3 that in calculating the avoided costs, that the utility is
4 supposed to look at its integrated resource plan, which looks
5 out over a 20-year horizon. What we have here is testimony from
6 Staff saying that they believe the Company acted imprudently
7 because it failed to implement the programs in a way where they
8 were cost-effective within what is essentially a two-year time
9 frame. So I don't think it is apples and oranges. I think it
10 has everything to do with the core issue in this case.

11 MR. HALL: Judge, I politely raise my objection
12 again. He is raising another legal argument. And at this point
13 he's arguing with the witness. That wasn't a question.

14 MR. HARDEN: I was responded to Mr. Keevil's
15 objection, which I was asked to do.

16 MR. KEEVIL: Judge, Mr. Keevil. The point that
17 Mr. Harden is focusing on avoided costs, whereas, I believe
18 Mr. Luebbert testifies to Evergy's failure to achieve customer
19 benefit. I'm not sure that avoided costs are necessarily in and
20 of themselves relevant to Mr. Luebbert's testimony and that is
21 the point I am making. Mr. Harden's making one argument about
22 what it costs. Mr. Luebbert's making a point about actual
23 benefits to customers, which is not necessarily the same thing.
24 So again, we have apples and oranges.

25 JUDGE HATCHER: Okay. Mr. Harden, as I

1 understood your question you are asking Mr. Luebbert's
2 preference for what the legal standard should be. And I'm going
3 to disallow that question. I do see that the discussion of 2C
4 is relevant. But I also think you have made your point. I'm
5 not sure how many questions you can have left.

6 MR. HARDEN: I agree with you. I agree with
7 you, Your Honor. The point has been made and I don't want to
8 belabor it further.

9 Mr. Luebbert, thank you for your patience in all
10 of that.

11 BY MR. HARDEN:

12 Q. Let me ask you, do you continue to agree that
13 historically capacity additions of supply-side resources have
14 tended to be lumpy? In other words, that they do not happen
15 evenly across time, but some years there are a lot of capacity
16 additions and some years there's very little?

17 A. Yes.

18 Q. Okay. Do you agree that when utility customers
19 take advantage of a utility's demand-side programs and adopt
20 practices resulting in the use of less energy, that this
21 produces avoided cost savings in the form of less wear and tear
22 on the equipment used by the utility and lowered environmental
23 costs?

24 A. I do not agree with that sentiment. Because of
25 Evergy's participation in SPPIN the reductions from these demand

1 response programs are unlikely to impact the amount that
2 Evergy's supply-side resources are dispatched given that the
3 relative size of the demand response programs to the relative
4 size of the SPP markets.

5 Q. On Page 8 of your surrebuttal testimony starting
6 on Line 6 you provide, Evergy decision-makers have not fulfilled
7 their responsibility to derive tangible financial benefits that
8 mirror the claimed avoided capacity costs value. Did I read
9 that correctly?

10 JUDGE HATCHER: Mr. Harden, can you give me the
11 page and line number?

12 THE WITNESS: I'm sorry. I need the same.

13 MR. HARDEN: Give me two seconds here.

14 THE WITNESS: I think you said Page 8.

15 JUDGE HATCHER: Line 6 of the surrebuttal.

16 MR. HARDEN: Did I say surrebuttal?

17 JUDGE HATCHER: Yes. And the direct doesn't
18 have 8 pages.

19 MR. HARDEN: Okay. Give me two seconds here.
20 Sorry.

21 THE WITNESS: I think you might be referring to
22 my surrebuttal testimony in the FAC prudence case.

23 MR. HARDEN: Is that right? Hold on just a
24 second.

25 JUDGE HATCHER: Mr. Harden, could you ask your

1 question without --

2 MR. HARDEN: It's 0227. Do you know what, and
3 the problem is here I have the wrong page number. Look on Page
4 20. Again, I apologize.

5 THE WITNESS: Okay.

6 BY MR. HARDEN:

7 Q. Evergy Line 14?

8 A. Okay. Give me just a moment please.

9 Q. Sure.

10 JUDGE HATCHER: That's the one.

11 MR. HARDEN: There you go. Yeah. I apologize.

12 THE WITNESS: Okay. I am there.

13 BY MR. HARDEN:

14 Q. Evergy decision-makers have not fulfilled their
15 responsibility to derive tangible benefits that mirror the
16 claimed avoided capacity cost values. Now, I just want to make
17 sure that I understand your position because that word "mirror"
18 suggests that within that two-year time frame that it is your
19 position that Evergy was supposed to get all of derived tangible
20 benefits equal to all of the claimed avoided capacity costs
21 within the two-year time frame that you -- that you advocate
22 for. Do I understand that correctly?

23 A. So I guess what this statement comes back to is
24 that Evergy portrayed that there was potential customer benefits
25 equal to the amount of the avoided cost that they put forward in

1 front of the Commission within their application for Cycle 2.
2 Following that, Evergy had the opportunity to derive these
3 tangible financial benefits that I've estimated within the first
4 two years -- or within 2018 and 2019 from their demand response
5 programs and that it was imprudent for Evergy not to attempt to
6 achieve those benefits.

7 Q. Okay. But you don't mean -- because that is an
8 important point. I just -- so when you say "mirror," you're not
9 suggesting that within a two-year time frame that Evergy was
10 supposed to come up with all of the avoided costs that it -- you
11 know, justified these programs for within that two-year time
12 frame using only day-ahead LMP arbitraging and Schedule 11 fees
13 from SPP?

14 A. I think Evergy should be attempting to maximize
15 the benefits in each year regardless of what avoided costs they
16 used for their application for approval.

17 Q. Okay. Now would you continue to agree as you
18 did in the FAC proceeding that it is -- that the Company did,
19 through its implementation of the MEEIA program, but in fact
20 there was some reduction in SPP Schedule 11 fees and a peak
21 reduction for the day-ahead LMPs and Schedule 11?

22 A. I'm sorry. Could you repeat your question?

23 Q. Sure. As the Company implemented its MEEIA
24 programs, would you that in fact, there was some reduction in
25 the SPP Schedule 11 fees as well as a reduction in day-ahead LMP

1 prices because of their --

2 A. From the implementation of the portfolio as a
3 whole, yes. I would agree with that statement.

4 Q. Thank you. I'm sorry. Did everybody hear me?

5 A. I did not hear you.

6 JUDGE HATCHER: You are live now. Go ahead.

7 MR. HARDEN: I'm sorry.

8 BY MR. HARDEN:

9 Q. Mr. Luebbert, can you hear me now?

10 A. I can now, yes. I thought you had asked a
11 question and I didn't hear it. Sorry.

12 Q. Give me two seconds. Would you agree that
13 calling of addition DR events could in fact affect customer
14 behavior? For example, their inclination to override an event?

15 A. It may or it may not.

16 Q. Based upon that answer, would you agree that it
17 may or may not by logical extension calling additional DR events
18 could affect customer behaviors in a manner that makes it more
19 difficult for the Company to reduce annual systemwide peak load?

20 A. I am not sure that I have seen enough data to
21 say that that is the case for Evergy's service area and for
22 Evergy's customers. And I -- and part of the problem is a very
23 small sample size and to extrapolate anything from a sample size
24 that small may not give the best result.

25 Q. Sure. I understand that. You have not seen

1 anything empirical to base it on. But by logical extension you
2 just said that it could affect customer behavior. If it could
3 affect customer behavior, would you agree with me that it could
4 then affect the Company's ability to when it does call DR events
5 to reduce annual systemwide peak load?

6 A. Well, I think this goes to a bit more broader of
7 a point, which is in a circumstance contemplated by Evergy where
8 you would need this resource to meet your resource adequacy
9 needs for SPP, the likelihood of you only having to call one or
10 two demand response events in a given year to mitigate your --
11 even if your only goal is to mitigate the system annual peak,
12 the likelihood of only needing to call one or two events to
13 ensure that that's the case is pretty unlikely in my eyes. And
14 to the extent that you have to ensure that that peak is
15 mitigated, you would likely call multiple events in
16 circumstances in which the Company believes that a peak may
17 occur.

18 And then once that peak has been mitigated,
19 there's going to be a second peak that could also be mitigated
20 and then a third peak. So to the extent that the thought is you
21 should only test two events per year for the next ten to 15
22 years in hopes that someday you will be able to avoid an SPP
23 resource adequacy fee is flawed in my opinion because of the
24 fact that when that does happen you will need to be able to call
25 multiple events and understand what types of -- I mean, I guess

1 to your point if there is a diminishing factor for calling
2 multiple events, I would think that not only Evergy but Staff
3 and the Commission would want to know what type of, you know,
4 peak reductions can still occur if you have to call more than
5 two to three events in a year.

6 Q. Okay. On Page 4 of your rebuttal testimony in
7 this case -- I'm going to read and tell me if I get anything
8 wrong. This is -- on the issue of --

9 A. Is it my surrebuttal?

10 Q. That actually it is on the -- it's your
11 rebuttal.

12 MR. KEEVIL: There is no rebuttable.

13 MR. HARDEN: Oh, shoot. Hold on. Sorry.
14 Sorry. It must be direct. Well, let me just ask you if you
15 agree with this.

16 BY MR. HARDEN:

17 Q. Your impact analysis was based upon historical
18 data; is that correct?

19 A. The -- you're asking me if my impact analysis
20 that I based my recommended disallowances on is based on
21 historical data?

22 Q. Yes?

23 A. The impact analysis was, yes, the -- whether the
24 decision --

25 Q. I get that argument.

1 A. -- to achieve those is not.

2 Q. Right. Now, do you agree that day ahead LMP
3 prices can be effected by entirely unforeseeable events
4 unrelated to the weather, like transmission outages and that
5 kind of thing?

6 A. Yes, they can be.

7 Q. All right. Mr. Luebbert, do you have any
8 experience in predicted either monthly or annual peak load?

9 A. No, I do not.

10 Q. So going backwards a little bit to your impact
11 analysis. Now, you've said that that was based upon historical
12 analysis. I'm sorry, historical data. And you agree that the
13 Company would not have had that information at the time of the
14 decision? And again, I'm confining this. I understand that
15 your prudency analysis is ostensibly not based on historical
16 data but I am just talking about your impact estimate. You do
17 not disagree that the Company would not have had that data at
18 the time the decision was being made. Right?

19 A. They would have had some of the information.

20 Q. Well, so for example, let me ask you just on the
21 weather forecast. You didn't go back to a given day in 2018 or
22 2019 to see what the forecast was for the next day and then
23 verified whether that forecast was right? You didn't do
24 anything along those lines, did you?

25 A. No, I did not.

1 Q. Okay. So is it safe to say that you identified
2 the monthly peak loads in hindsight and then you assumed that
3 Evergy would have been successful in picking the dates?
4 Again, for your impact analysis?

5 A. Yes. I believe that's correct.

6 Q. Okay. Now, you don't disagree, do you, that the
7 capacity sales in SPP are bilateral in nature; is that correct?

8 A. I agree.

9 Q. I am about to wrap up here, Mr. Luebbert. Going
10 back to the short-term -- I'm sorry the tangible financial
11 benefit sort of standard that you set out in your testimony. Do
12 you know of any statute, rule, or commission order that sets
13 forth that tangible financial benefit as the standard by which
14 MEEIA programs or its management should be assessed or based?

15 MR. KEEVIL: I'm going to object to that as
16 calling for a legal analysis.

17 MR. HARDEN: Well, I am asking him about his
18 testimony. I do not come up, the Company certainly did not come
19 up with a tangible financial benefit. So I'm simply asking
20 where that came from if there's a legal basis for it or quite
21 honestly any place that came up with tangible financial benefit.
22 It is literally the crux of the case.

23 JUDGE HATCHER: Mr. Keevil?

24 MR. KEEVIL: I'm not sure I understood the
25 response. If he is looking for a legal analysis or not, Judge.

1 But I suppose Mr. Luebbert could say if he is aware of any
2 statutes or regs that reference it, but beyond that I am not
3 sure what the purpose of the question is.

4 JUDGE HATCHER: Thank you. Overruled. Go
5 ahead, Mr. Harden.

6 MR. HARDEN: Thank you.

7 BY MR. HARDEN:

8 Q. Mr. Luebbert, do you know of any authority,
9 statute, rule, commission order that sets forth what you had
10 deemed tangible financial benefits as the standard by which a
11 MEEIA program or its management should be assessed or judged?

12 A. So I think a prudent decision-maker would seek
13 to maximize the potential benefits and reduce costs to the
14 extent possible. And that's really what I'm talking about when
15 I am saying that Evergy had the responsibility to derive those
16 tangible ratepayer benefits but failed to do so, especially
17 given the rate structure that they had in place and the
18 incentive structure that they had place which would have
19 required minimal additional costs with the potential to increase
20 the potential benefits for ratepayers. But Evergy failed to do
21 that within the prudence review period.

22 Q. Okay. This is related, but it's also going back
23 a little bit. It's in line with the weather question I asked
24 you a bit ago. Did the Company have the LMP prices when it made
25 the decision to call events?

1 A. Can you clarify which LMP prices?

2 Q. Well, the ones in the future?

3 A. Well, they -- depending on when the decision is
4 made, the Company would have -- could potentially have the
5 day-ahead LMP prices to the extent that the Company made the
6 decision within the 24-hour period. The Company would have not
7 have had real-time LMB prices at the time of deciding whether or
8 not to call an event.

9 MR. HARDEN: Mr. Luebbert, I appreciate your
10 time this morning and I've got no further questions.

11 I would like to make sure -- I would like to
12 offer in evidence Exhibit 1 as well as Exhibit Number 2 that we
13 discussed early on the cross-examination.

14 (WHEREIN; Exhibits 1 and 2 were offered into
15 evidence.)

16 MR. HARDEN: This is the Stipulation and
17 Agreement regarding the extension of the MEEIA 2 programs and
18 into the summer of 2019 as well as the Order approving the
19 Stipulation and Agreement.

20 JUDGE HATCHER: Thank you, Mr. Harden. Are
21 there any objections to the admission of Exhibits 1 and 2 to the
22 record? Hearing no objection, it is so admitted.

23 (WHEREIN; Exhibits 1 and 2 were received into
24 evidence.)

25 JUDGE HATCHER: We going on to Commissioner

1 questions that I have -- I want to make sure that the
2 commissioners' attendance is noted in the record for today as it
3 was yesterday. So I'll call roll call for commissioner
4 questions. I saw Chairman Silvey was in attendance.

5 Chairman, do you have any questions?

6 CHAIRMAN SILVEY: No questions, Judge.

7 JUDGE HATCHER: Thank you, Chair.

8 And Commissioner Kenney, any questions?

9 And Commissioner Rupp?

10 COMMISSIONER RUPP: No questions.

11 JUDGE HATCHER: Thank you, Commissioner.

12 Commissioner Coleman, any questions?

13 And Commissioner Holsman, any questions?

14 Okay. I see the time as 10:11. Let's go ahead
15 and jump into Bench questions for Mr. Luebbert. I'm looking at
16 taking a break shortly to try and get us halfway to lunch and
17 have a break. If anyone needs a break speak up.

18 QUESTIONS BY JUDGE HATCHER:

19 Q. Mr. Luebbert?

20 A. Yes, sir.

21 Q. You answered Mr. Harden's question about the
22 tangible financial benefits authority by stating that your
23 belief that a company should maximize benefits and minimize
24 costs. Could you tell me where the maximize benefits and
25 minimize costs authority came from?

1 A. So I think this goes back to what I was
2 mentioning before with a traditional supply-side resource. The
3 Company is tasked with maximizing its revenues from that
4 resource and minimizing cost to the extent possible.

5 Q. Yes. Where are you reading -- are you reading
6 that somewhere. You said the Company is tasked with it. Who
7 tasked them?

8 A. So I guess absent of fuel adjustment clause, the
9 Company is incentivized by their -- basically by increasing
10 their revenues by keeping fuel costs low in a non-test year or I
11 guess outside of a rate case test year. Because of the fact
12 that rates would have been set at a given costs and to the
13 extent you can minimize that, you'd maximized the shareholder
14 benefit. Now with FAC there is some sharing their, which
15 obviously allows for the customers to pay for the fuel cost,
16 fuel and purchase power cost and there is a sharing percentage
17 involved.

18 But I think from past testimony that I recall
19 that the Company has said that 5 percent sharing is enough of an
20 incentive to make sure that they are keeping their fuel and
21 purchase power costs as low as they can. So this -- my
22 statement that they should be maximizing benefits at the lowest
23 possible cost is based on what I would say a reasonable person
24 would do if they were implementing the program.

25 Q. Okay. So under a reasonable person standard,

1 you are saying they would obviously, a reasonable person would
2 maximize revenue and minimize cost. Okay.

3 A. Right. If I could pay hundred dollars and
4 benefit myself \$200, it would be imprudent for me to accept
5 \$120. Right?

6 Q. No. But I'm not the one answering questions. I
7 understand your example, but I think some of those -- there are
8 other risks that we would have to put in.

9 Let me switch questions or thoughts, either or
10 both. I asked a calculator question yesterday to a calculate a
11 rate and I wanted to explain that a little bit further. First
12 Mr. Luebbert, did you bring a rate calculator with you or did
13 you already calculate these rates?

14 A. I did listen to your question yesterday and I
15 was hoping to get some clarification, so if you would like to
16 ask I may have some follow-up clarification.

17 Q. Excellent. What the Commission wants to compare
18 is to try and get their arms wrapped around a dollar per dollar.
19 It has been very difficult because as we've discovered the set
20 up to the program is based on estimates and the end auditing is
21 based on a review of accounting, but also with some of those
22 savings based on those previous estimates. So to try and come
23 up with a formula that might give us what Evergy's savings is,
24 so we presumably know what Evergy's costs were for the DSIM
25 program and just as a proposed theory for how we come up with a

1 dollar number to show a benefit.

2 So with that in mind, the highest electric rate
3 was chosen. So out of Evergy Metro's and Evergy West
4 residential customers there are several rates of classes. That
5 might not be the right word, but there are several rates within
6 that. The highest is what is called residential customers
7 without space heat. Since we are talking about summer months
8 and we are talking about peak, choosing the highest customer
9 class cost and at the highest amount, so not just the customer
10 in that class, but a customer class in that class over 1,000
11 kWh. And taking that highest value residential customer savings
12 number, I think, and comparing that. Did that help,
13 Mr. Luebbert?

14 A. So are you -- are you wanting to estimate what
15 the benefits for the customer class is or are you wanting the
16 build benefit for a specific customer?

17 Q. For the class.

18 A. So the question is -- I guess another
19 clarification. Are you asking about the entirety of the program
20 portfolio in a given year or you asking about a specific
21 program?

22 Q. The final question is do you know the dollar
23 value of the kilowatt hour savings for Evergy Metro residential
24 customers at that rate? So I think if we take the peak kilowatt
25 hours saved. So what was -- what was avoided and that amount of

1 electricity kilowatt hours that was avoided multiplied by the
2 highest residential customer rate to equal out to a dollar
3 amount?

4 A. Okay.

5 Q. And let me check this email to see if I can get
6 clarification. We want to take the kilowatt hour savings from
7 Table 2 and multiply by this rate.

8 A. And are you asking if that quantification would
9 give you an estimate of the benefits to the customer class?

10 Q. No. I'm just asking what the number is and then
11 the commissioners will draw the conclusion if that is an
12 accurate representation of the savings.

13 A. Okay. I guess I need to clarify this that any
14 reduced kilowatt hours sales for the residential class the
15 Company will be made whole through the use of throughput
16 disincentive for that reduced sales amount.

17 Q. Okay. I still want the number. I'm looking at
18 Table 2. And I think if we take the first year gross annual
19 energy savings deemed actual. So I believe the 121,323,629
20 number and that's from Table 2 of Evergy Metro's report?

21 A. Okay. If you give me just a moment --

22 Q. Sure.

23 A. -- I will get there.

24 JUDGE HATCHER: And what might be a good time
25 now is to take a quick break to let Mr. Luebbert do some

1 calculations.

2 BY JUDGE HATCHER:

3 Q. Mr. Luebbert, are you prepared to move forward
4 with the calculations on your own for a few minutes?

5 A. I just want to clarify before we do break. You
6 said Page 7; is that correct? Or Page 5?

7 Q. Page 5, Table 2. The table that I had all the
8 questions about yesterday.

9 A. Okay. And you're wanting to -- sorry go ahead.

10 Q. First your gross annual energy savings deemed
11 actual, so the \$121,323,629 amount in Evergy Metro's Table 2?

12 A. Okay. And you want that multiplied by the
13 highest rate.

14 Q. Highest rate --

15 A. And base rate.

16 Q. Customer rate?

17 A. Which is the .14916 per kWh; is that correct?

18 Q. Yes.

19 A. And are you asking what that product will mean
20 or are you just wanting to --

21 Q. No.

22 A. You're just wanting me to calculate what that
23 number times the other number would equal.

24 Q. Yes. Both for Evergy Metro and for Evergy West?

25 A. Okay.

1 JUDGE HATCHER: All right. We will take a short
2 restroom break. We will come back at 10:35. We are in
3 intermission everyone. Thank you.

4 (OFF THE RECORD.)

5 JUDGE HATCHER: Back on record, intermission
6 having concluded. We were in the middle of Bench questions for
7 Mr. Luebbert. And Mr. Luebbert was calculating a couple of
8 theoretical rate amounts.

9 BY JUDGE HATCHER:

10 Q. Mr. Luebbert? Are you still there? You are
11 currently muted by the way.

12 A. I apologize. At some point I will get the hang
13 of this double mute and at which point we will probably be back
14 in person.

15 Q. Not a problem. I had to postpone an entire
16 hearing yesterday, so I've got you beat.

17 Were you able to calculate the two numbers I
18 asked for?

19 A. Yes, I was.

20 Q. Thank you. And I do apologize. I am not trying
21 to make you do my homework. I realize I could have multiplied
22 those together but I am mindful that we want that in the record
23 for the commissioners to be able to put in their decision. Can
24 you go ahead and give me those numbers?

25 A. Okay. So I want to clarify to make sure you I

1 am giving you what you're asking for. You are wanting the first
2 year gross annual energy savings deemed actual in Table 2 and
3 that's for the entire portfolio for the Company, both
4 residential and business. And you're wanting me to multiply
5 that by the highest rate for non-space heat customers over 1,000
6 kWh from, let's see -- I want to make sure I get the tariffs
7 right too. For Metro sheet Number 5A, and that's is the 10th
8 revised sheet Number 5A. And for West it would be the first
9 revised sheet Number 146.1; is that correct?

10 Q. Yes.

11 A. Okay. Those two numbers multiplied together for
12 Metro, I'm doing -- I have 121,323,629 multiplied by .14916
13 equals \$18,096,632.50.

14 Q. Thank you.

15 A. That's for Metro.

16 MR. KEEVIL: Could you repeat that?

17 18,096,000 --

18 THE WITNESS: \$632.50.

19 Are you ready for me to move on to West?

20 BY JUDGE HATCHER:

21 Q. Yes, I am.

22 A. Missouri West. Okay. So again on this
23 calculation what I am looking at is the West report Table 2,
24 first year gross annual energy savings deemed actual for the
25 entire portfolio as a 121,933,329 and I am multiplying that by

1 the rate for over 1,000 kWh for non-space heating customers on
2 Sheet 146.1 as .11927 and multiplying those two numbers together
3 comes up with \$14,542,988.15.

4 Q. Thank you, Mr. Luebbert. And could you tell me
5 why a -- the TRC test is not equivalent to a prudence finding?

6 A. Sure. So what the TRC test is looking at -- and
7 actually if you give me a moment, I'll pull up the definition of
8 the TRC from Chapter 20. It says it is a test that compares the
9 sum of avoided utility costs including avoidable -- avoided
10 probable environmental cost to the sum of all incremental costs
11 of end use measures that are implemented due to the program
12 including both utility and participating contributions, plus
13 utility cost to administer, deliver, and evaluate each
14 demand-side program and cost of statewide TRM for TRM and
15 statewide TRM.

16 So within that -- within that definition of the
17 TRC it is a comparison of avoided utility costs. And as I have
18 brought up in other dockets, the assumed value that Evergy has
19 used and continued to provide its EM&V contractor, is an
20 inflated value the doesn't reflect actual utility costs that
21 will be avoided.

22 To go a bit further in my eyes in order for the
23 demand response programs to be truly cost-effective the actual
24 realized ratepayer benefits of that program needs to outweigh
25 the cost associated with the implementation of that program.

1 And I mentioned before that, you know, the effect of any demand
2 reductions from the Demand Response Incentive Program ended with
3 the end of the event season in 2019. And so there will be no
4 further demand reductions that are the result of the
5 implementation of that program.

6 The -- the other part of my answer to your
7 question is that just because a program is deemed cost effective
8 through the EM&V process it doesn't demonstrate the Company
9 implemented the program prudently. Basing that cost
10 effectiveness on that hypothetical cost that will likely never
11 be realized by ratepayers doesn't alleviate the obligation for
12 Evergy to implement the programs in the most cost effective
13 manner possible.

14 In by eyes that would be implementing them in a
15 way that maximizes the actual ratepayer benefit, which all else
16 being equal would result in a bill reduction. Just because the
17 Commission approved a program based on what was portrayed as the
18 avoided capacity costs, doesn't mean that the program is
19 automatically prudent in its implementation. I think the
20 Company could implement its approved program within the confines
21 of the approved tariffs, the approved budgets, the proposed
22 program structure while still being deemed cost-effective
23 through EM&V and still have implemented the programs in an
24 imprudent manner which is what I have brought today.

25 Q. Okay. Thank you. I don't see any other

1 questions from me.

2 JUDGE HATCHER: We will return to recross
3 examination. I will start first with Everygy.

4 MR. HARDEN: Thank you, Your Honor. Can we have
5 just a second?

6 JUDGE HATCHER: Yes.

7 MR. HARDEN: Thank you, Your Honor. Very
8 quickly.

9 RE CROSS EXAMINATION BY MR. HARDEN:

10 Q. Mr. Luebbert, we just wanted to clarify and make
11 sure that we were on the same page on this Table 2 on the deemed
12 actual first year gross annual energy savings. At 121,323,629
13 which you then calculated to a rate base. Now, those are
14 savings annually. Right? So every year that is the savings
15 amount. Do you agree with that? That is not a one-time number.
16 That's an annual number of savings?

17 A. It is the first year annual savings for the
18 measures implemented for the portfolio as a whole.

19 Q. Okay.

20 JUDGE HATCHER: May I interrupt, Mr. Harden? I
21 apologize.

22 Mr. Luebbert, we had quite a conversation with
23 Mr. Fortson yesterday trying to square that away. I thought
24 that we landed on -- even though it says first year and annual
25 that it's really talking about the 21-month period that is the

1 title of Table 2, April 1st, 2018 through December 31st, 2019.
2 So I just want to point that out because you just in your answer
3 seemed to depend on the words "first year."

4 THE WITNESS: So I apologize for any confusion
5 here. I think what is in that table -- and the reason I'm
6 saying I apologize is because I was not involved in the creation
7 of that table. But I believe the contents of the table are the
8 sum of the first year annual energy savings over the 21-month
9 review period for the entire portfolio. And that may be
10 something that Mr. Fortson can clarify. I am sure he is still
11 available.

12 JUDGE HATCHER: Okay. Mr. Harden, go ahead and
13 I will advise Mr. Keevil to be talking to Mr. Fortson in the
14 background. Go ahead.

15 MR. HARDEN: Thank you. I just want to make
16 sure that I understand your answer one way or the other J.

17 BY MR. HARDEN:

18 Q. Are you saying that that number is the savings
19 for not just the first year, but for the consecutive years
20 thereafter for the programs?

21 A. That number would not be the same in each year
22 following because of differences in measured lives, which would
23 vary by measure and program and whether or not it was
24 residential or commercial.

25 Q. Okay. It would not be the same but -- all

1 right. Appreciate it. Thank you for the clarification.

2 JUDGE HATCHER: Mr. Harden, are you done?

3 MR. HARDEN: I'm sorry. Yes, I am. Nothing
4 further.

5 JUDGE HATCHER: Let's go to Mr. Hall.

6 MR. HALL: Thank you, Judge.

7 RECROSS EXAMINATION BY MR. HALL:

8 Q. Mr. Luebbert, could you turn back to the Table
9 2. It doesn't matter which version of the report, but Table 2
10 that the judge had you look at when you are finding the
11 variables to put in the formula he asked you to do.

12 Mr. Luebbert, can you hear me?

13 A. I apologize. Is that better?

14 Q. Yes. Did you hear my question?

15 A. I did. I am looking at the West report. I
16 could pull up Metro if that's your preference.

17 Q. It doesn't matter because --

18 A. Okay.

19 Q. -- the reason why I'm asking you to bring this
20 up is to ask you: These tables in both reports, these are
21 cumulative totals for the entire Evergy portfolio for both
22 companies. Correct?

23 A. I think the table is Company specific, but yes
24 it's the entire portfolio.

25 Q. So it is not isolating or looking at the

1 thermostat demand response programs?

2 A. No. And it's not isolating residential programs
3 either. This includes everything from the commercial industrial
4 custom program to, you know, the business standard as well as
5 all of the residential programs.

6 Q. And it's -- I mean, by that same logic it's also
7 not focusing on the Demand Response Incentive Program either?

8 A. I would say that Demand Response Incentive
9 Program has no impact whatsoever on the deemed actual first year
10 growth annual energy savings number.

11 Q. Why is that?

12 A. Because the Demand Response Incentive Program
13 does not -- there is no calculated kWh savings from that program
14 to my knowledge.

15 Q. So this -- I will look at the West report since
16 that's what you're at. If I could find it. So this hundred --
17 so there's \$120M figure, that is all of the programs in the
18 portfolio and that number is -- it's hiding whatever savings may
19 or may not have been achieved through the thermostat programs?

20 A. So just to clarify, you mentioned \$120M value.
21 This would be 120 million kilowatt hours. So just with that
22 clarification, yes. This doesn't -- it is not broken out by
23 program and it -- I guess, to what I said earlier, it includes
24 everything in the portfolio.

25 Q. So Mr. Luebbert, taking the formula at face

1 value, multiplying the kilowatt hour savings times a base rate
2 in customer bills, would that formula demonstrate any savings or
3 benefit for customers who do not participate in energy
4 efficiency programs?

5 A. No. It wouldn't be a good estimation of that.
6 And I will say first and foremost using the highest residential
7 rate and applying that to kilowatt hours saved from the
8 portfolio as a whole, is pretty misleading as far as what that
9 number would actually provide. The other thing that, you know,
10 I think really needs to be pointed out is those kilowatt hour
11 savings -- Evergy's made whole through the throughput
12 disincentive for that lost revenue. And so essentially what
13 that -- what that boils down to is a participating customer may
14 see a slight bill reduction based on their kilowatt hour
15 savings, but that revenue difference is then made up by the
16 class as a whole. So even if this is broken down to just say
17 residential customers' savings and you're multiplying that by
18 the highest rate, it still wouldn't be a good estimate of the
19 customer benefit.

20 Q. Let's extrapolate on that. I want to take like
21 a really aerial view of this. Let's look at the Evergy timeline
22 as an example. Is it your understanding that Evergy's base
23 rates were last set in 2018?

24 A. That is my understanding, yes.

25 Q. So that's what set these base rates and that

1 includes investments, O&M going forward for the Company?

2 A. It would have been based on the test year.

3 Q. Evergy Cycle 2 -- Cycle 2 Evergy applied and is
4 now -- Evergy applied for a third cycle MEEIA programs.

5 Correct?

6 A. That's correct.

7 Q. When was that approved?

8 A. I can give you the exact date. I believe it was
9 -- I'm sorry. What did you say?

10 Q. The exact date is not necessary. I'm just
11 looking for a broad timeline here?

12 A. I believe it was late 2019 was the original
13 Report and Order and that was followed up with an amended Report
14 and Order a couple of months after that.

15 Q. And as we've all been discussing over the past
16 few days in MEEIA application there are -- the proponents of the
17 event energy programs are going to provide X amount of savings
18 and they are going to have X proxy costs applied to the savings
19 to claim benefits. Correct?

20 A. Yes. And Evergy has an incentive to elevate the
21 estimated capacity savings in order to boost the cost
22 effectiveness of all their programs. And I -- this isn't
23 necessarily the venue that I have argued this, but I've argued
24 in others that their estimated avoided costs were unrealistic.

25 Q. Explain what you mean by incentive.

1 MR. HARDEN: I would like to launch a bit of an
2 objection. I think are pretty much well beyond the scope of the
3 Bench's questions on this, which is as I understand we are in
4 recross.

5 MR. HALL: I do need some leeway to explain that
6 this does direct to your questions. If given opportunity, I
7 will rephrase my question to try to get this more narrow.

8 JUDGE HATCHER: Overruled. I will allow it. Go
9 ahead.

10 BY MR. HALL:

11 Q. Mr. Luebbert, when any company -- when any
12 electric utility company is going to come in for a rate case
13 they're going to supply numbers for their investments in the
14 test year going forward to set base rate and to set rates in the
15 future. Correct?

16 A. Yes.

17 Q. Has Evergy come in for a rate case since their
18 last rate case in 2018?

19 A. They have not filed for a general rate case
20 since they last received --

21 Q. Based on your personal understanding and
22 knowledge, do you believe Evergy will be including more
23 investments in its next rate case relative --

24 JUDGE HATCHER: Mr. Hall, can you explain to me
25 how that is related to Cycle 2 prudence review?

1 MR. HALL: What I'm trying to get to, Judge, is
2 that the judge has asked Mr. Luebbert for this formula to derive
3 certain benefits that can be commuted to Cycle 2. Mr. Luebbert
4 has already testified there were no avoided costs in Cycle 2.
5 If there are no avoided costs then we should see more
6 investments going forward in the next rate case, meaning that
7 bills will go up and that any of these savings -- and of the
8 quote/unquote saving from the formula do not readily demonstrate
9 that customers actually save any money going forward.

10 JUDGE HATCHER: When you reference Luebbert's
11 formula, are you referencing the calculation that I asked him to
12 perform?

13 MR. HALL: Yes, Your Honor.

14 JUDGE HATCHER: That is not his. That came from
15 the Commission? It seems pretty speculative, Mr. Hall, is what
16 I'm getting at.

17 MR. HALL: Fair enough, Your Honor. I will
18 redirect my questions and get more narrow at this time.

19 JUDGE HATCHER: Okay. Go ahead.

20 BY MR. HALL:

21 Q. Mr. Luebbert, do you recall the conversation I
22 had with you earlier about Evergy's avoided cost from Cycle 2?

23 A. I do.

24 Q. And do you agree with me that avoided costs
25 represent the deferral of future investments?

1 A. I think avoided costs should most accurately
2 reflect potential costs that can realistically be expected to be
3 avoided through the implementation of a program. I don't know
4 that we have seen that in either cycle application yet.

5 Q. If an electric utility does not avoid costs
6 through its energy efficiency programs, generally then we should
7 see more supply-side investments going forward?

8 MR. HARDEN: Your Honor, again this is beyond
9 the scope of what the Bench asked.

10 JUDGE HATCHER: Mr. Hall, do you have a
11 response?

12 MR. HALL: Yes, Your Honor.

13 JUDGE HATCHER: Do you have a response to the
14 objection?

15 MR. HALL: Yes. It was going within the scope
16 because this formula is -- from the context of the question, I
17 think it is getting to some type of purported benefit. What I'm
18 trying to establish with Mr. Luebbert is that there are no
19 actual benefits as represented from that formula.

20 JUDGE HATCHER: Okay. But I don't know how
21 you're connecting your argument that there are no benefits to a
22 future but rate case or even a present, ongoing rate case.

23 MR. HALL: I apologize for any lack of clarity
24 on my part. If you may, I will try again with a different
25 question to Mr. Luebbert.

1 JUDGE HATCHER: Okay. I will allow one more
2 question. Let's see if we can get there though.

3 BY MR. HALL:

4 Q. Mr. Luebbert, with all due respect to the
5 question offered from the Commission, do believe this formula
6 accurately represents benefits that Evergy's customers are
7 receiving from these demand-side programs?

8 A. No, I do not.

9 Q. Why not?

10 A. Well, I think that I have pointed out some of
11 the flaws in the estimation and the fact that you are using not
12 only -- you're summarizing -- or you are generalizing that you'd
13 be using the highest residential rate and then multiplying that
14 by kilowatt hour savings for the portfolio as a whole when
15 generally speaking the residential energy rate will be higher
16 than some other classes. That poses a problem. And then the
17 presence of a throughput disincentive wherein the Company is
18 made whole for any potential lost revenues means that the rate
19 class as a whole may not be -- they may not have that savings
20 because it will be recovered through the DSI.

21 Q. And I -- Mr. Luebbert, did you have anything
22 else to add?

23 A. No.

24 Q. Thank you.

25 MR. HALL: I have no further questions.

1 JUDGE HATCHER: Thank you, Mr. Hall. Redirect
2 from Mr. Keevil?

3 MR. KEEVIL: Yes, Judge. Thank you.

4 REDIRECT EXAMINATION BY MR. KEEVIL:

5 Q. Mr. Luebbert, let me see if I can put a finer
6 point perhaps on what Mr. Hall was asking you. Does the
7 calculation -- or do the calculations which you performed
8 pursuant to the Judge's request, do those calculations represent
9 savings for the customer class -- for any customer class for the
10 period under review?

11 A. No.

12 Q. Does it represent anything specific that you are
13 aware of?

14 A. I don't think that the estimation provides a
15 useful look at the effectiveness of the portfolio or any program
16 specifically.

17 Q. Okay. Would you agree -- this goes back to when
18 the Judge -- the Judge referenced something that Mr. Fortson had
19 said on the stand yesterday regarding what the amounts of Table
20 2 represent. I believe -- which figure was it from Table 2 that
21 you used, sir, in the calculation that the Judge asked you to
22 perform?

23 A. That would be -- yes. That was first year gross
24 annual energy savings, kWh deemed actual.

25 Q. Okay. Would you have agree, sir, that that

1 amount is a cumulative amount for the review period of April
2 1st, 2018 through December 31st, 2019?

3 A. I believe that is correct.

4 Q. Mr. Harden asked you some questions about your
5 testimony where you refer to changeable financial benefits and
6 Mr. Harden referred to your description of that as a standard
7 for evaluating MEEIA programs. And I don't remember whether it
8 was Mr. Harden or the Judge, but one of them asked you if you
9 were aware of any statutes or regulations regarding MEEIA where
10 that standard was set forth. Do you recall that line of
11 questioning, sir?

12 A. I do.

13 Q. I believe your answer was you weren't aware of
14 any statute or regulation which included that term. Was that
15 basically your answer?

16 A. I think that was part of my answer and I think I
17 also expanded that that doesn't necessarily mean -- that was
18 part of my answer, yes.

19 Q. Wouldn't you agree though, sir, that your use of
20 the term -- is it related more to the reasonable person standard
21 of the prudence review?

22 A. Yes.

23 Q. And as such it is really based on just general
24 concepts of ratemaking rather than specific statutory language?

25 A. Yes.

1 Q. Mr. Harden also asked you -- I believe he
2 referred to it as your impact analysis and he referred to it as
3 being based on historical information. When you were answering
4 those questions, sir, what did you understand the term as
5 Mr. Harden was using of impact analysis to mean?

6 A. So the way I understood the question was -- I
7 guess, first and foremost when I was looking at -- when I was
8 reviewing the program period, the first question that comes to
9 mind is did the program -- or did the utility make imprudent
10 decisions by not trying to attempt to achieve benefits? And the
11 answer to that question was yes, they did not attempt to achieve
12 those benefits despite recognizing that there was the potential
13 for those benefits. Then the next, you know, thought process
14 was, well, did they have the opportunity to attempt that without
15 incurring additional substantial cost? And answer to that
16 question, again, is yes, they could have attempted to call more
17 events and target events that wouldn't have cost -- that
18 wouldn't have increased program costs substantially. So at that
19 point within the -- kind of the reasonableness standard you have
20 to go back and you have to look at what impact that imprudent
21 decision made on customers. And so given the fact that the
22 prudence review occurs after the implementation period, I went
23 back and I looked at historical data to try to estimate what the
24 impact was of that imprudent decision in the first place. And
25 that by -- basically by default has to look at some historical

1 data.

2 Q. Did you employ hindsight analysis as Mr. Harden
3 suggested you did?

4 A. No, I did not.

5 Q. Can you --

6 A. Impacted analysis -- it was an impact analysis
7 of the imprudent decision in the first place. So if you know
8 that you can save -- or if you know you can save ratepayers
9 money and it's not going to increase program costs
10 substantially, you should do so because a reasonable person
11 would do so. The impact will always use some historical data to
12 understand what the actual impact was, but it is not hindsight
13 analysis.

14 Q. Okay. Mr. Harden also asked you some questions
15 about avoided costs and referred to the Commission's regulation.
16 Do avoided costs or does the term "avoided costs" equal benefits
17 to customers?

18 A. Not always. If avoided costs are accurate, it
19 can equal customer benefits. What I've -- what I've laid out in
20 this case and other cases is that the estimated avoided costs
21 but forth by Evergy are inflated and don't reflect what the
22 customers may actually see. And all of that is to really say
23 that the avoided costs may be used through the EM&V process to
24 come up with a cost effectiveness score or TRC number. But even
25 if that number is above one, that doesn't mean that the program

1 was implemented prudently. If there is an opportunity to save
2 ratepayers money at a minimal cost, Evergy is obligated to do so
3 and they haven't.

4 Q. Would you also agree, sir, then that cost
5 effectiveness analysis through the EM&V process does not
6 demonstrate that the Company implemented a program prudently?

7 A. No, it does not demonstrate that.

8 Q. What does it demonstrate?

9 A. The EM&V process verifies to the extent possible
10 actual kilowatt hours savings and kilowatt savings from
11 programs. Then, at least historically what has been done, is
12 the EM&V evaluator will multiply those savings by an avoided
13 energy cost and avoided capacity cost that is provided by the
14 Company. Now, what gets really important if you are looking at
15 comparing -- I'm going to say quote/unquote benefits to the cost
16 is whether or not you are looking at avoided costs that are
17 actually incurred or reasonably incurred or if you are looking
18 at a proxy number that is a hypothetical and unlikely to be
19 incurred. I guess -- in my eyes that EM&V process thus far has
20 utilized those proxy avoided costs that are unrealistically
21 expected or are unlikely to be incurred and therefore the
22 customer benefit gets diminished.

23 Q. All right. Mr. Harden also referred you to -- I
24 forget whether it was Exhibit 1 or Exhibit 2, but it was a
25 Stipulation from a prior case that referred to the Company

1 calling five events during 2019. Do you remember that, sir?

2 A. I do.

3 Q. Do you happen to have a copy of that Stipulation
4 handy?

5 A. I do.

6 Q. Now, is your recommendation contrary to the
7 provision there in Paragraph 7 of the Stipulation?

8 A. I don't believe it is.

9 Q. Why not?

10 A. I would view the five demand response events as
11 a minimum and I certainly think that Evergy could have called
12 more than five events. And regardless of what is within the
13 Stipulation for 2019, nothing was in effect in 2018 that
14 precluded Evergy to call up to or at the maximum number of
15 events to derive as much benefit as they could. So despite
16 their argument that they felt this number was a cap, which I
17 struggle to understand, there was no such perceived cap in 2018
18 and yet they called a minimum amount of events.

19 Q. In fact, they called I believe two in 2018, was
20 it?

21 A. That sounds correct. And I guess just to expand
22 on that a bit, as we were reviewing, kind of, the Cycle 3
23 application it became evident that the number of events being
24 called each year was trending -- it was decreasing. The Company
25 was calling fewer and fewer events. So this, what I would say,

1 is a minimum was something that we pushed for as far as being
2 included in the extension agreement because of the fact that
3 fewer and fewer events were being called.

4 Q. Okay. Excuse me. There's been a lot of
5 discussion both yesterday and today about -- excuse me --
6 calling events. And I want to get away from that, I think, for
7 just a moment here or see if there is a distinction. As I
8 understand your proposal regarding the thermostats, the
9 programmable thermostats, you're recommended disallowance is not
10 based entirely on whether or not Evergy called the proper number
11 of events as it concerns the thermostats; is that correct?

12 A. Absolutely correct.

13 Q. What is the basis for your recommendation
14 regarding the thermostats?

15 A. If you give me a moment, there were several
16 issues that I raised with the thermostat program specifically.
17 And as a -- kind of a high level -- one the issues was the fact
18 that Evergy gave away quite a few thermostats. And I'm not
19 going to differentiate between West and Metro, but Evergy as a
20 whole gave away quite a few thermostats that were never
21 ultimately enrolled in the Demand Response Program despite the
22 fact that the tariff says that customers' air-conditioners will
23 be cycled as part of that tariff. So essentially they gave away
24 thermostats that were useless from a demand response standpoint,
25 which we are not talking about cheap thermostats. They are, you

1 know, they're not -- not the traditional cheap thermostat you're
2 going to put on a wall. That was a decent size cost that I
3 recommended a disallowance for.

4 Another one of the issues that I raised was the
5 fact that Evergy hit its target for the program cycle as a whole
6 for thermostats in 2017 and then decided to use the most
7 expensive way possible to throttle additional adoption of the
8 thermostats, which was utilizing direct installation of
9 thermostats. And for, kind of, an explanation of what that
10 means is instead of allowing a
11 bring-your-own-thermostat-customer to install their own
12 thermostat and reimburse just for the cost of the thermostat,
13 the direct install method not only pays in full for the
14 thermostat, but also pays in full for professional installation
15 of that thermostat. And I personally have installed a smart
16 thermostat. They're not very difficult. They're fairly easy to
17 do. I think you could see that if you looked at the uptick in
18 bring-your-own-thermostats that occurred in 2019 once the
19 Company got its extension approved.

20 So basically what they were doing is they were
21 limiting how many people could install thermostats by making it
22 -- by making the program as expensive as possible in 2018. So
23 that was another issue that I raised as far as the residential
24 thermostat programs are concerned.

25 Q. And neither of those concerns have anything to

1 do with the number of events called; is that correct?

2 A. No, they do not.

3 Q. I believe in response to some questions from
4 Mr. Hall you were referring to or you said something about when
5 the cycle -- like Cycle 1/Cycle 2 that we are dealing with here
6 today, Cycle 2, when the cycle is over benefits from demand
7 response MEEIA programs end; is that correct?

8 A. Yes. Essentially what I am saying there is that
9 Evergy will not continue to see demand reduction from that
10 Demand Response Program after the cycle is over unless they
11 re-enroll those customers and pay them again and then recover
12 that cost from ratepayers through the DSIM again. So the demand
13 reduction stop as soon as the cycle is over.

14 MR. KEEVIL: If you give me just a moment here,
15 Judge.

16 JUDGE HATCHER: Yes, go ahead.

17 BY MR. KEEVIL:

18 Q. Quick question here, Mr. Luebbert. The Judge
19 asked you I believe it was, why is the TRC tests not to a
20 prudence finding. Are there other cost-effectiveness tests for
21 -- to determine cost-effectiveness of energy efficiency program
22 or for a demand response program more specifically?

23 A. There are. I think what's really important to
24 keep in mind when you're looking at the cost-effectiveness test
25 is they rely so heavily on the need for the assumed avoided

1 costs to be realistically assumed to be able to actually avoid a
2 utility cost to the extent that they don't -- the
3 cost-effectiveness tests, the efficacy of them, is diminished.

4 MR. KEEVIL: I think that's all the questions I
5 have, Judge. Thank you.

6 JUDGE HATCHER: Thank you, Mr. Keevil. I
7 believe, Mr. Luebbert, you are excused. We will move on to our
8 next witness and that is Dr. Geoff Marke.

9 Dr. Marke, if he could speak up so I could swear
10 you in.

11 THE WITNESS: I am here, Judge.

12 JUDGE HATCHER: There you are.

13 (Witness sworn.)

14 JUDGE HATCHER: Thank you. Mr. Hall, your
15 witness.

16 MR. HALL: Thank you.

17 DIRECT EXAMINATION BY MR. HALL:

18 Q. Dr. Marke, good afternoon?

19 A. Good afternoon.

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

21 A. Missouri Office of Public Counsel, a chief
22 economist.

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

24 A. Missouri Office of Public Counsel.

25 Q. Dr. Marke, are you the same Geoff Marke who

1 cause to be filed rebuttal testimony in this case?

2 A. I am.

3 Q. At the same accompanying surrebuttal testimony,
4 was that also your product?

5 A. Yes.

6 Q. Did you also prepare an errata sheet for any
7 corrections that you had your testimony?

8 A. I did.

9 Q. If I asked you the questions contained in the
10 rebuttal -- in your rebuttal testimony incorporating the
11 corrections from your errata sheet, would your answers be the
12 same or substantially similar?

13 A. They would be the same.

14 Q. And in then is your rebuttal testimony correct
15 and true -- pardon me. Let me rephrase that. Is your rebuttal
16 with the corrective from your errata sheet true and correct as
17 to the best of your belief?

18 A. Yes.

19 Q. Same question, but as to your surrebuttal
20 testimony?

21 A. Yes.

22 MR. HALL: Your Honor, at this time I would
23 offer into evidence Exhibit 200, 201, and 202, the rebuttal
24 testimony of Dr. Geoff Marke, surrebuttal testimony and errata
25 sheet respectively.

1 (WHEREIN; Exhibits 200, 201, and 202 were
2 offered into evidence.)

3 JUDGE HATCHER: Thank you, Mr. Hall.

4 Are there any objections to the admission of the
5 three exhibits, the rebuttal, the surrebuttal, and the errata
6 sheet, Exhibits 200, 201, and 202?

7 MR. KEEVIL: Judge, I have an objection. This
8 is Mr. Keevil. No objection, but I don't remember, when was the
9 errata sheet submitted? I am not sure I have a copy of that.

10 MR. HALL: Mr. Keevil, I believe I emailed it
11 out to all parties the day before the hearing. I could resend
12 it to you at this time.

13 MR. KEEVIL: I appreciate that. The errata is
14 202? Marked Exhibit 202?

15 MR. HALL: Yes.

16 MR. KEEVIL: Thank you very much.

17 JUDGE HATCHER: Okay. Mr. Hall, have you
18 tendered the witness?

19 COURT REPORTER: Judge, this is the court
20 reporter.

21 JUDGE HATCHER: Go ahead, Lisa.

22 COURT REPORTER: I'm sorry. Did you receive
23 those then?

24 JUDGE HATCHER: I sure did.

25 COURT REPORTER: Sorry about that. Go ahead.

1 JUDGE HATCHER: Not a problem.

2 (WHEREIN; Exhibits 200, 201, and 202 were
3 received into evidence.)

4 MR. HALL: I had not yet tendered the witness.
5 I was sending the errata sheet to Mr. Keevil. At this time, I
6 tender the witness for cross.

7 JUDGE HATCHER: Thank you, sir.

8 We go to Mr. Keevil for cross.

9 MR. KEEVIL: I have no questions, Judge.

10 JUDGE HATCHER: Thank you, sir.

11 We will go to Everyg.

12 MR. FISCHER: Thank you, Judge. I have no
13 questions either.

14 JUDGE HATCHER: Thank you, Mr. Fischer.

15 Commissioner questions? Thank you.

16 And Bench questions. I do have a couple.

17 QUESTIONS BY JUDGE HATCHER:

18 Q. Dr. Marke, help me understand a 50-50 ratio for
19 incentive to non-incentive spending?

20 A. Sure.

21 Q. Not be considered imprudent; is that correct?

22 A. Correct.

23 Q. And you're testimony highlighted -- and I'm
24 going to mix up the numbers, I apologize. But Metro West has
25 administrative costs of 55 and 60 percent was the high? Of I've

1 also seen 59 percent and 55 percent?

2 A. Right. If I may I can clarify why there is a
3 difference.

4 Q. Yes.

5 A. The 50 percent represents 2018 as reported in
6 the EIA data. The 59 represents the fact that we're extending
7 beyond just the 2019 year.

8 Q. Okay. My question why is 50 percent acceptable
9 and 55 percent imprudent?

10 A. Right. So my rebuttal testimony articulated
11 some baseline numbers across the nation according to the EIA.
12 That is on Page 4, Figure 2. That 38 percent was the national
13 average for non-incentive spending. The -- I used that as an
14 acceptable baseline of averages and understanding that that
15 average encompasses small, big utilities and everything in
16 between, 500+ utilities across the nation. I then looked the
17 historical spending of each of the investor-owned utilities per
18 EIA 861 data. Those on Page 5 and 6. What you will notice
19 there is that these numbers are effectively -- you know, they
20 fluctuate year over year. But each one of these numbers is
21 below 50 percent as a general rule until we get to 2018.
22 There's reasons for that and the rest of my testimony
23 articulated, you know, why those costs are higher for Evergy and
24 why I'm asking 50 percent be used a threshold.

25 The 50 percent as opposing to saying 60 percent

1 or 55 percent is acknowledging in part that of the some of that
2 overhead cost is part of -- is part of the ability to just go
3 ahead and operate these programs. So the EM&V management -- at
4 the end of the day the 50 percent was an appropriate benchmark
5 to go ahead, from our perspective, to send to the Company that
6 we are not gonna sit there and say you should benchmark
7 absolutely at 38 percent or whatever the EIA is saying. But
8 clearly anything spending more than half of your energy
9 efficiency budget on non-energy efficiency matters is
10 problematic. The extreme would have been to add on a couple
11 more billion dollars to go to 60 percent and say we're going to
12 hold them to the US standard of 38 for 2018. I felt like we are
13 trying to be reasonable here because, Judge, at the end of the
14 day my goal is for the Company to do better, for ratepayers to
15 choose something more out of these programs in terms of the
16 money that's going into it.

17 So really the goal here, you know, in signaling
18 the mismatch between administrative spending and actual energy
19 efficiency spending is predicated on we want this Company to do
20 better moving forward.

21 Q. Would 51 percent be imprudent?

22 A. Moving forward or this case?

23 Q. Either?

24 A. My hope is that if by the Commission's
25 acknowledging that 50 percent as a one-time shock here that that

1 would set a precedent and the Company would be more conscious of
2 that moving forward and that they would -- if they came -- I
3 can't speak to how our office would respond to a 51 percent in
4 the future or not. At this point that would be speculative on
5 my part. It would be frowned upon at the end of the day.

6 Q. Is there -- it seems like we are either prudent
7 or imprudent. Is there a middle ground where the Company should
8 get a warning and say, Hey we need to back off a little or
9 change these numbers before it becomes imprudent? Or is it at
10 51 we're automatically deemed imprudent?

11 A. That's a great question. And there's a lot of
12 nuances that's involved in MEEIA. You know, no doubt we've
13 discussed a number of them. Let me try to give an illustrative
14 example. We've been throwing the term cost effective around
15 quite a bit today. And my testimony took issue with the term
16 cost effectiveness in that that's largely an EM&V issue or it's
17 -- really it -- I'll take that back. It's not really even an
18 EM&V issue; it's a market potential issue on the front end. So
19 when we're looking at these programs, is it cost-effective based
20 off the assumed avoided cost at this point moving forward? And
21 we're projecting that out over the next four years. The EM&V
22 imprudents are all looking at two distinct different things.
23 That is why they are separate cases. Mr. Harden introduced, I
24 think it was Exhibit 2. He introduced an EM&V study. And that
25 study is actually a really good illustrative example of what I

1 mean why cost effectiveness shouldn't be -- we should be careful
2 when we throw that term around. And how that plays into your
3 exact question as to is it imprudent or prudent.

4 On Page 32, it actually has a breakdown of the
5 different cost-effective ratios in that exhibit. You will note
6 that in 2018 the residential thermostat program had .34. That's
7 under one and that suggests that program is not cost-effective.
8 If we were to operate under a, you know, hard fast one, that if
9 it's, you know, below this threshold then we would say, oh, this
10 is imprudent and for the various reasons that we need to find
11 out. Interesting, what you see here in 2019 is the number goes
12 up so you have to ask yourself what was the different about 2018
13 versus 2019. I would offer up look at the EIA data. The big
14 difference -- if you look at my Page 6 of my rebuttal testimony,
15 every year of Evergy's programs we're talking, well, below 40
16 percent. I guess with the exception of 2013 year, but the
17 programs were only at \$7 million on Evergy West.

18 My point is that all of the sudden you see that
19 spike in non-administrative costs in 2019. That corresponds
20 again -- and it's not solely because although I take issue with
21 the thermostats, I'm taking issue with the entire portfolio of
22 administrative costs that Evergy is putting forward. So that
23 assumes a lot of things. And it gives the Company an enormous
24 amount of discretion as to how they spend their dollars. So if
25 I'm going to contract out to a third party of power to do

1 behavioral response programs, those are actual mailers that go
2 into customers, I'm paying a premium dollar as opposed to doing
3 that in-house, which is what other --

4 MR. FISCHER: Judge, I think at this point I'd
5 like interject an objection. I think Dr. Marke is going way
6 beyond the question from the Bench and has wandered off into
7 areas that I don't think is relevant at all.

8 THE WITNESS: Judge, if I may, I'll try to clean
9 it up.

10 MR. FISCHER: Judge, I would like to hear a
11 response from Public Counsel.

12 MR. HALL: I would offer that since it was the
13 Judge's question, the Judge has not objected or asked the
14 witness to narrow the response; that an objection to the witness
15 offering the response is not proper unless the Judge wants
16 Dr. Marke to rephrase his response or otherwise narrow it.

17 JUDGE HATCHER: I'm going to sustain the
18 objection.

19 Dr. Marke, I got the answer you're going for.
20 Thank you, sir.

21 THE WITNESS: Okay.

22 BY JUDGE HATCHER:

23 Q. Do you think OPC and Staff have any
24 responsibility for their approvals along the way such that you
25 even had a come in and have a stipulation saying, call this many

1 events? Do you think that Staff and OPC should have realized
2 that perhaps Evergy was a little reluctant and needed a more
3 structured system?

4 A. That's a fair question, Judge. I guess this is
5 what I struggle with, is that you know, my testimony talks about
6 at this point we're talking about 70,000+ thermostats that are
7 out there in their overall service territory. Right now we are
8 continuing to giveaway thermostats. Very -- heavy incentives.
9 A lot of dollars. And this is an unused asset that is out
10 there. To the extent that we've got a responsibility to point
11 that out, I believe we have. This sort of the last straw in
12 terms of making this an issue is actually taking it in front of
13 the Commission. But we do meet on a quarterly basis. We do
14 provide input. Ultimately, at the end of the day this is a
15 managerial decision. This is the Company's decision to either
16 execute and utilize these assets or not.

17 From my perspective, you know, I try to go out
18 of my way, you know, not to be accused of Monday morning
19 quarterbacking and giving fair notice that this is an issue for
20 us. Unfortunately this is where we are at.

21 Q. Okay.

22 JUDGE HATCHER: I believe that is all the
23 questions I have, Dr. Marke. Thank you.

24 THE WITNESS: Thank you.

25 JUDGE HATCHER: We go to recross. That takes us

1 to Staff. Mr. Keevil?

2 MR. KEEVIL: Very briefly, Judge.

3 RECROSS EXAMINATION BY MR. KEEVIL:

4 Q. Dr. Marke, you referred to an exhibit that
5 Mr. Harden used at some point yesterday. But I believe Exhibit
6 1 and 2 were hi Stipulation and is an Order approving
7 Stipulation. Those you aren't the exhibits you were referring
8 to, were they, sir?

9 A. I have -- I received a copy of the -- was cc'd
10 on an email for an exhibit that included a document. My
11 understanding is that it was Exhibit 2, the Evergreen Economics.
12 I could be wrong.

13 Q. Okay. I'm sorry. You were referring to the
14 EM&V study by Evergreen when you were referring to this exhibit
15 for Mr. Harden?

16 A. That's correct.

17 Q. Okay. So whatever number that was.

18 MR. KEEVIL: Judge, do you have a number for
19 that one?

20 MR. FISCHER: Judge, I am not sure that that was
21 ever introduced.

22 MR. HARDEN: No, it was not ever introduced and
23 it wasn't utilized.

24 JUDGE HATCHER: Okay.

25 MR. KEEVIL: So it wasn't marked for

1 identification?

2 MR. HARDEN: Right, or offered.

3 MR. KEEVIL: Nothing further then, Judge.

4 Thanks.

5 JUDGE HATCHER: That takes us to recross from
6 Everygy.

7 MR. FISCHER: Thank you, Judge.

8 RECROSS-EXAMINATION BY MR. FISCHER:

9 Q. Dr. Marke, you were asked some questions about
10 your 50-50 split incentive cost to non-incentive cost by the
11 judge. Do you recall that?

12 A. Yes, I do.

13 Q. Is there any PSC rule that establishes a 50-50
14 split as the appropriate redline between prudence and
15 nonprudence?

16 MR. HALL: Objection, a legal question.

17 JUDGE HATCHER: I'm going to overrule that. We
18 have been allowing that throughout this hearing. It will go to
19 weight. I understand that Dr. Marke is not a lawyer.

20 BY MR. FISCHER:

21 Q. Would like to answer that Dr. Marke?

22 A. As far as -- to understand the question, just to
23 rephrase it, correct me if I am wrong. Do I know of any
24 precedent or PSC ruling that says 50-50 is the prudent standard?

25 Q. Yes?

1 A. I am not aware of a specific ratio. I'm not
2 aware of any ratio necessarily for a prudency standard.

3 Q. That is just one you've created for this case?

4 A. Based off my expertise.

5 Q. You were asked -- I think you answered some
6 questions on -- you mentioned the 38 percent national average
7 and that was acceptable to you; is that right?

8 A. That's correct.

9 Q. Do you agree that utilities may characterize
10 incentive and non-incentive costs somewhat differently depending
11 on where they're at?

12 A. I can agree with that.

13 Q. So not every utility in the country
14 characterizes incentives and non-incentive costs exactly the
15 same?

16 A. There's a lot of nuances within that, yes.

17 Q. Did you research the Missouri MEEIA rules for a
18 definition of incentive and non-incentive costs?

19 A. The MEEIA rules?

20 Q. Yes.

21 A. Not in preparing this testimony.

22 Q. Do you know if the Missouri PSC MEEIA rules
23 define incentive and non-incentive costs in anyway?

24 A. I cannot speak to that offhand.

25 Q. So you don't know or you haven't researched it?

1 A. I mean, being put on the spot here, I couldn't
2 recite verbatim what the codified rules say. If you can refer
3 them to me.

4 Q. I'm asking if you know whether they exist?

5 A. Well, I know this: I know that the individual
6 cost-effective tests articulate specific inputs that go into
7 that and reasonable minds can differ as to whether or not --

8 Q. No. My question Dr. Marke, is is there a
9 definition that you are aware of in the Missouri MEEIA rules
10 that define incentive and non-incentive costs?

11 A. I'm not -- again, I'm not aware of it.

12 Q. Did you time to find a definition?

13 A. I did not try to find definition of incentives.
14 I did not. Not for the Missouri rules.

15 Q. Did you include in your testimony how the Form
16 EIA-861 defines incentive and non-incentive costs?

17 A. Non-incentive as administrative, marketing, or
18 other and incentive as energy efficiency incentive spending.

19 Q. Did you include in your testimony how the form
20 defines incentive and non-incentive costs?

21 A. I put down the figure taken from the EIA
22 website. I did --

23 Q. Did that include a specific definition of what
24 is included in incentive and in non-incentive costs?

25 A. Other than what's in that figure, sir.

1 Q. So there is no definition of what is included.
2 You just have the numbers. Correct?

3 A. So -- that's correct.

4 Q. Did you have access to the underlying data of
5 the 500 or so utilities that you referenced using those Form
6 EIA-861?

7 A. The raw data that's supplied at the EIA level is
8 what I have.

9 Q. So would it be correct to conclude that you
10 don't know how each of those 500 utilities characterized
11 incentive and non-incentive costs for purposes of that EIA form?

12 A. I know that it's all self-reported data and
13 there is going to be variation across utilities no doubt.

14 Q. So it's correct to conclude that you don't know
15 how those 500 utilities characterized incentive and
16 non-incentive costs. Correct?

17 A. It would be a broad brush stroke is what I would
18 characterize. It's effectively what EIA is trying to state with
19 that figure.

20 Q. But you are saying that you can't -- you can't
21 conclude or we shouldn't conclude that you have the information
22 on how each of those companies defined incentive and
23 non-incentive costs. Correct?

24 A. I am aware of --

25 Q. Is that a yes or no?

1 A. Well, please give me a second, sir?

2 Q. I'm sorry. Go ahead.

3 A. Well, what I am aware of is the EIA data based
4 off of a fixed year EIA data range. And what I've got is the
5 Company's own self-reported data for six years. Each year the
6 Company's incentive non-incentive range was below a certain
7 threshold.

8 Q. That was not my question Dr. Marke. My question
9 is: Is it correct that you don't know how specifically these
10 utilities defined incentive and non-incentive costs for purposes
11 of that form?

12 A. I cannot speak to the 500+ utilities, sir.

13 Q. In preparation for your testimony in this case,
14 did you research previous decisions of the Missouri Commission
15 that looked at the difficulty of comparing management efficiency
16 from one utility to another?

17 A. I'm aware of it in general, the difficulties of
18 that.

19 Q. No, my question is did you research the Missouri
20 Public Service Commission decisions that addressed that topic?

21 A. Yes.

22 Q. Which decisions did you reference?

23 A. Did I reference or did I research?

24 Q. I'm sorry. Did you research?

25 A. In particular rate cases auditors, you know,

1 defining management expenses and I guess that's the extent of
2 what I know as that being a hot topic in terms of rates cases in
3 front of the Commission.

4 Q. So you don't recall any specific rate cases you
5 researched on that topic?

6 A. I can't think of one. I'll stand.

7 Q. So you are not familiar with the decisions that
8 abandoned the practice of adjusting the rate of return
9 determination for management efficiency because of the
10 difficulty of assessing management efficiency?

11 MR. HALL: Objection; assumes facts not in
12 evidence.

13 JUDGE HATCHER: Can you restate that question,
14 Mr. Fischer?

15 MR. FISCHER: Yes, sir. I was asking, so he
16 wasn't familiar with the decisions by the Missouri Public
17 Service Commission that abandoned the practice of adjusting the
18 rate of return determinations for management efficiency because
19 of the difficulty assessing management efficiency.

20 MR. HALL: Any Commission decision with that
21 conclusion would speak for itself. Mr. Fischer's question is
22 coming out of left field and not citing to any other -- we have
23 no idea what decision he is citing to. There's no decision like
24 that in the record previously. This is why I am saying it's
25 assuming any type of conclusion --

1 (WHEREIN; court reporter lost connection with
2 WebEx.)

3 COURT REPORTER: Can you guys hear me? Can you
4 guys hear me?

5 JUDGE HATCHER: Yes.

6 COURT REPORTER: Sorry. I had to get my video
7 on. So I got the objection and then I got Mr. Hall's saying
8 that he's coming out of left field and no idea what he is citing
9 to. Could you continue, Mr. Hall? I am terribly sorry. It
10 just hung up.

11 MR. HALL: For the purposes of the record the
12 Judge permitted the question to proceed. And then Dr. Marke, if
13 you would, could you repeat your answer to Mr. Fischer's
14 question?

15 THE WITNESS: I believe it was no.

16 MR. FISCHER: And if I didn't, I meant to thank
17 the witness for his patience and that was all the questions I
18 had.

19 JUDGE HATCHER: Thank you, Mr. Fischer. That
20 takes is to redirect.

21 Mr. Hall?

22 REDIRECT EXAMINATION BY MR. HALL:

23 Q. Dr. Marke, do recall your conversation with the
24 judge has to a distinction between a 50-50 ratio and 55-45
25 ratio?

1 A. I did.

2 Q. Do you agree with me what one difference between
3 those two ratios is that if you have a 55-45 ratio of
4 non-incentive to incentive spent then literally most of the
5 energy efficiency dollars would be non-incentive versus
6 incentive spend?

7 A. Correct. In the characterization that I said --
8 you know, my testimony was when we approve, you know, \$100
9 million in energy efficiency budget, you know, we announce that
10 we're expecting that that money goes primarily to energy
11 efficiency.

12 Q. Dr. Marke, Mr. Fischer went on to ask you about
13 Evergy's categorization of incentives and non-incentive costs
14 compared to other utilities. To your knowledge, has Evergy
15 attempted to compare its categorization of non-incentive to
16 incentive costs compared to the other utilities that were
17 analyzed in the EIA report?

18 A. No.

19 Q. And Dr. Marke, do you know of any -- do you know
20 of Evergy changing its policy as to the categorization of
21 incentive versus non-incentive costs over period -- over the
22 review period or the entirety of Cycle 2?

23 A. No.

24 Q. Over Cycle 1?

25 A. No.

1 MR. HALL: Your Honor, I have no further
2 questions.

3 JUDGE HATCHER: Thank you, Mr. Hall.

4 Dr. Marke, that does it for your testimony. You
5 are excused. Thank you.

6 THE WITNESS: Thank you, Judge.

7 JUDGE HATCHER: Everyone, we are at the end of
8 the hearing. I have a few announcements and then I will ask for
9 any other comments from Counsel. As to exhibits, I, the
10 Regulatory Law Judge, will take the responsibility of sending
11 the exhibits to the exhibit email address for marking and
12 official addition into the record. We have two outstanding
13 exhibits that are yet to be submitted. Evergy is going to
14 submit the errata sheet for Mr. File's testimony and that is not
15 due until Thursday, April 29th. And Staff was going to submit
16 as an exhibit all applicable tariffs for both Evergy Metro and
17 Evergy West during the time period of April 1, 2018 to December
18 31st, 2019, all tariffs that were in effect even if partially
19 during that time period.

20 I will follow up with a written Order to that
21 effect and I would also like to allow for one day to object to
22 those two exhibits. If that will not be enough time? Let me
23 know now.

24 MR. KEEVIL: Did you say Thursday for the MEEIA
25 tariff from Staff, Judge?

1 JUDGE HATCHER: Yes, sir.

2 MR. KEEVIL: Do we have an exhibit number
3 preassigned to them that I can reference when I file those?

4 JUDGE HATCHER: Let's do that right now. I
5 believe, Staff, you are at 101 is your next number.

6 MR. KEEVIL: I believe so, Judge. Yeah.

7 JUDGE HATCHER: So be it. Exhibit 106 is the
8 tariffs submitted by Staff due Thursday, April 29th.

9 And Everygy --

10 MR. HARDEN: I think it is Exhibit 7, Judge.

11 JUDGE HATCHER: Thank you. You are at 7 and
12 that is the errata sheet for Mr. File's testimony. And then I
13 would like to set a deadline for objections to those two
14 exhibits as one day later. So Friday, April 30th, I'd like to
15 hear if that gives everyone enough time to read over and file a
16 thoughtful objection. If not, we could change it to a Monday.

17 MR. HALL: Your Honor, I would ask for Monday
18 given the length of the entirety of the tariffs, but I don't
19 think any --

20 JUDGE HATCHER: Okay.

21 MR. HALL: -- more would be necessary.

22 JUDGE HATCHER: Sold. We will change the
23 objections due Monday. Let me find out what date that is, May
24 3rd. And again, I will follow up with a written Order
25 memorializing this.

1 Are there any other matters that need to be
2 addressed? All right. Seeing none, this evidentiary hearing is
3 adjourned and we are off the record.

4 (WHEREUPON; the hearing was adjourned.)
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CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Lisa M. Banks, CCR No. 1081

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