

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of Evergy Kansas Central and	)	Docket No. 21-EKCE-318-TAR
Evergy Metro Filing Tariff Revisions to	)	
Limited Large Customer Economic	)	
Development Discount Rider (LEDR)	)	

**NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION**

The Staff of the Kansas Corporation Commission ("Staff" and "Commission," respectively) hereby submits its Report and Recommendation (R&R) regarding the proposed Limited Large Customer Economic Development Discount Rider (Schedule LEDR) tariffs submitted by Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (Evergy Kansas Central) and Evergy Metro, Inc. (Evergy Metro) in this matter.

Staff recommends approval with edits to the Definitions section. Staff also recommends the Commission require a compliance filing for each discount authorized under Schedule LEDR and any subsequent changes to said discounts to aid in the development of the biennial status reports to the legislature.

WHEREFORE, Staff respectfully requests the Commission adopt its recommendations.

Respectfully submitted,

**/S/ Michael Neeley**

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## **REPORT AND RECOMMENDATION UTILITIES DIVISION**

**TO:** Chair Andrew J. French  
Commissioner Dwight D. Keen  
Commissioner Susan K. Duffy

**FROM:** Douglas Hall, Rate Analyst  
Justin Grady, Chief of Revenue Requirements, Cost of Service and Finance  
Jeff McClanahan, Director of Utilities

**DATE:** March 4, 2021

**SUBJECT:** Docket No. 21-EKCE-318-TAR

### **EXECUTIVE SUMMARY**

On June 1, 2020, Senate Substitute for House Bill No. 2585 (“HB 2585”) was approved by Governor Kelly, and went into effect on July 1, 2020. The bill gives the Kansas Corporation Commission (“KCC”) authority to approve special contract rates outside of a general rate proceeding, and to implement economic development rate schedules for new and expanded facilities of industrial and commercial customers.

On February 22, 2021, Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (“Evergy Kansas Central”) and Evergy Metro, Inc. (“Evergy Metro”) submitted for approval a Limited Large Customer Economic Development Discount Rider (Schedule LEDR) (“LEDR Tariff”) to comply with HB 2585. The LEDR Tariff sets out the conditions under which industrial and commercial customers may qualify for an economic development rate schedule, and to which facilities and services the rate schedule is applicable.

Because Evergy Kansas Central’s and Evergy Metro’s LEDR Tariff covers the entirety of the contents of and is consistent with the language of HB 2585, Staff recommends approval of the LEDR Tariff with edits to the Definitions section. Staff also recommends that the Commission require a compliance filing for each discount authorized under the LEDR Tariff and any subsequent changes to said discounts to aid in the development of the biennial status reports to the legislature.

## **BACKGROUND**

On June 1, 2020, Senate Substitute for House Bill No. 2585 (“HB 2585”) was approved by Governor Kelly, and went into effect on July 1, 2020. The bill gives the Kansas Corporation Commission (“KCC”) authority to approve special contract rates outside of a general rate proceeding, and to implement economic development rate schedules for new and expanded facilities of industrial and commercial customers.

On February 22, 2021, Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (“Evergy Kansas Central”) and Evergy Metro, Inc. (“Evergy Metro”) submitted for approval a Limited Large Customer Economic Development Discount Rider (Schedule LEDR) (“LEDR Tariff”) to comply with HB 2585. The LEDR Tariff sets out the conditions under which industrial and commercial customers may qualify for an economic development rate schedule, and to which facilities and services the rate schedule is applicable.

## **ANALYSIS**

The LEDR Tariff (Attachment A) addresses and complies with Section 2 of HB 2585 (Attachment B), which is comprised of eight subparagraphs. The language in the body of the Evergy Kansas Central and Evergy Metro versions of the tariff are identical, so Staff treats these versions as a single tariff for the purpose of analysis. Staff will examine each paragraph of HB 2585 in order and compare it to the tariff language to ensure compliance with the entirety of Section 2 of HB 2585.

### **Subparagraph (a)**

Section 2(a) establishes that the Commission is authorized to “implement economic development rate schedules that provide discounts from otherwise applicable standard rates for electric service for new or expanded facilities of industrial or commercial customers that are not in the business of selling or providing goods or services directly to the general public.”<sup>1</sup> This language is carried over to the LEDR Tariff under Purpose.<sup>2</sup> Three conditions are established to determine eligibility for discounts.

First, a customer shall “[h]ave incentives from one or more local, regional, state or federal economic development agencies to locate such new or expanded facilities in the electric public utility’s certified service territory”.<sup>3</sup> This condition is repeated verbatim in the LEDR Tariff under Availability Section 3.<sup>4</sup>

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<sup>1</sup> Senate Substitute for House Bill No. 2585 (“HB 2585”), p. 2.

<sup>2</sup> Limited Large Customer Economic Development Discount Rider Schedule LEDR (“LEDR Tariff”), p. 1.

<sup>3</sup> HB 2585, p. 2.

<sup>4</sup> LEDR Tariff, p. 2.

Second, customers shall “qualify for service under the electric public utility’s non-residential and non-lighting rate schedules for such new and expanded facility”.<sup>5</sup> This condition is stated in the LEDR Tariff under Availability Section 4.<sup>6</sup>

Third, customers shall “not receive the discount together with service provided by the electric public utility pursuant to any other special contract agreements.”<sup>7</sup> This condition is restated under Availability Section 5.<sup>8</sup>

**Subparagraph (b)**

Section 2(b) lays out two sets of requirements for new or expanded facilities of which customers must meet one in order to qualify for discounted rates.

**Subparagraph (b)(1)**

The first set described in Section 2(b)(1) requires “peak demand that is reasonably projected to be at least 200 kilowatts within two years of the date the customer first receives service under the discounted rate and is not the result of shifting existing demand from other facilities of the customer in the electric public utility’s certified service territory...”<sup>9</sup> This language is mirrored under Availability Section 1 of the LEDR Tariff.

Further, the new or expanded facilities should have “an annual load factor that is reasonably projected to equal or exceed the electric public utility’s annual system load factor within two years of the date the customer first receives service under the discounted rate”, or else warrant a discounted rate based on any of the following factors: the number of permanent full-time jobs created, the percentage increase in existing full-time jobs, the level of capital investment, additional off-peak usage, curtailable or interruptible load, new industry or technology, or competition with existing industrial customers.<sup>10</sup> This language appears in the LEDR Tariff under Availability Sections 1(a) and 1(b).<sup>11</sup>

**Subparagraph (b)(2)**

The second set of requirements described in Section 2(b)(2) call for “a peak demand that is reasonably projected to be at least 300 kilowatts within two years of the date the customer first receives service under the discounted rate and is not the result of shifting existing demand from other facilities of the customer in the electric public utility’s certified service territory”.<sup>12</sup> This is addressed in Availability Section 2 of the LEDR Tariff.<sup>13</sup>

Additionally, within two years of first receiving service under the discounted rate, the annual load factor should be reasonably projected to be at least 55%. Once achieved, the customer must

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<sup>5</sup> HB 2585, pp. 2-3.

<sup>6</sup> LEDR Tariff, p. 2.

<sup>7</sup> HB 2585, p. 3.

<sup>8</sup> LEDR Tariff, p. 2.

<sup>9</sup> HB 2585, p. 3.

<sup>10</sup> HB 2585, p. 3.

<sup>11</sup> LEDR Tariff, p. 1.

<sup>12</sup> HB 2585, p.3.

<sup>13</sup> LEDR Tariff, p. 2.

“maintain the peak demand and load factor for the remaining duration of the discounted rate.”<sup>14</sup> These conditions are mirrored under Availability Sections 2(a) and 2(b) of the LEDR Tariff.<sup>15</sup>

### **Subparagraph (c)**

Section 2(c) of HB 2585 places limits on the amount and duration of authorized discounted rates. Discounts are calculated by reducing charges applicable to the new or expanded facility by a fixed percentage for each year of service and are to last no more than five years. For customers that qualify under HB 2585 Section 2(b)(1), the annual discount percentage may be between 5% and 30%, with an average not to exceed 20%. For customers that qualify under HB 2585 2(b)(2), the annual discount percentage may be between 20% and 50%, with an average not to exceed 40%.<sup>16</sup> This language is mirrored under Calculation of Discount in the LEDR Tariff.<sup>17</sup> The five year duration of the discount is also noted under Applicability Section 7 in the LEDR Tariff.<sup>18</sup>

### **Subparagraphs (d) and (e)**

Sections 2(d) and 2(e) of HB 2585 describe the process by which utilities will recover the difference in revenue between the discounted rate and standard rate schedule.<sup>19</sup> The language of these subparagraphs is included under the Ratemaking section in the LEDR Tariff.<sup>20</sup> While the contents of these paragraphs do not have a direct effect on the availability of or qualifications for discounted rate schedules, Staff appreciates that its inclusion in the tariff provides some degree of transparency to the public.

### **Subparagraph (f)**

Section 2(f) of HB 2585 states that discounted rates authorized under Section 2 shall not apply to other special contract rates, whether they are approved under Section 1 or placed in effect prior to the passage of HB 2585.<sup>21</sup> The LEDR Tariff addresses this under Availability Section 5.<sup>22</sup>

### **Subparagraph (g)**

Section 2(g) of HB 2585 lays out the required contents of reports from the Commission to the legislature regarding discounts of tariffed rates.<sup>23</sup> The contents of this section are not included in the LEDR Tariff. However, the contents of this section have no effect on the availability of or qualifications for discounted rate schedules. Therefore, Staff concludes that it is reasonable that the contents of Section 2(g) of HB 2585 are not included in the LEDR Tariff.

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<sup>14</sup> HB 2585, p. 3.

<sup>15</sup> LEDR Tariff, p. 2.

<sup>16</sup> HB 2585, p. 3.

<sup>17</sup> LEDR Tariff, p. 3.

<sup>18</sup> LEDR Tariff, p. 3.

<sup>19</sup> HB 2585, p. 3-4.

<sup>20</sup> LEDR Tariff, p. 4.

<sup>21</sup> HB 2585, p. 4.

<sup>22</sup> LEDR Tariff, p. 2.

<sup>23</sup> HB 2585, p. 4.

### **Subparagraph (h)**

Section 2(h) of HB 2585 defines three terms used throughout Section 2: “electric public utility”, “expanded facility”, and “new facility”.<sup>24</sup> The term “electric public utility” is defined in K.S.A. 66-101a, and is not included in the LEDR Tariff. For the purposes of the tariff, Evergy Kansas Central and Evergy Metro, themselves electric public utilities, replace this term with “Company” throughout the LEDR Tariff. The meaning and intent are clear to Staff, and further, this is consistent with the language in other of Evergy Kansas Central’s and Evergy Metro’s tariffs. Thus, Staff concludes that it is reasonable that the definition for “electric public utility” is not included in the LEDR Tariff.

The other two terms, “expanded facility” and “new facility”, are defined in the LEDR Tariff under Definitions.<sup>25</sup> While these definitions are taken almost verbatim from HB 2585, Staff recommends some minor adjustments to bring them closer to the original language (additions bolded and deletions struck-through for emphasis), as follows:

“Expanded facility” means a separately metered facility of the Customer, unless the Company determines the additional costs of separately metering **of such a** facility would exceed the associated benefits or that it would be difficult or impractical to install or read the meter, that has not received service in the ~~electric~~ Company’s certified service territory in the previous 12 months; and

“New facility” means a building of the Customer that has not received electric service in the ~~electric~~-Company’s certified service territory in the previous 12 months.

### **LEDR Tariff Applicability**

The majority of the language in the Applicability section of the LEDR Tariff is not taken directly from HB 2585. Staff will examine the language section by section.

Under Section 1, Evergy Kansas Central and Evergy Metro reserve the right to install metering equipment, and to determine whether the load of an expanded facility will be separately metered or sub-metered. Further, historical usage will be used to determine what portion of a customer’s load qualifies for a discounted rate schedule if separate metering or sub-metering is not feasible.

The definition of expanded facility as presented in Section 2 of HB 2585 provides that the electric public utility may make the determination of feasibility, and does not explicitly state how qualifying load shall be measured in such an instance. Staff reasons that using historical data is a sensible solution, and is a solution used in other tariffs where metered data is not directly or immediately available.

Section 2 effectively states that discounts authorized under the LEDR Tariff apply only to the load used to qualify for a discounted rate schedule. If demand is not metered separately, Evergy Kansas Central and Evergy Metro will determine the incremental demand. Staff believes this follows from

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<sup>24</sup> HB 2585, p. 4

<sup>25</sup> LEDR Tariff, p. 3-4.

Section 1; if separate metering equipment is not installed, then historical data is an adequate substitute for meter data.

Section 3 states that customer demand existing at the time that the customer begins receiving discounted rates do not qualify as demand as specified in Section 2 of HB 2585 and under Availability in the LEDR Tariff. This is consistent with the language of HB 2585, as any existing demand could constitute load shifting. Therefore, Staff believes the condition set forth in Section 3 to be reasonable.

Section 4 states that discounted service begins when the meter is permanently set. However, in the event that the meter is installed before operation at the facility begins, or if qualifying service is not being separately metered, then the customer must notify Evergy Kansas Central or Evergy Metro when operation begins. The conditions set forth in this section are consistent with Section 3.

Section 5 sets a condition for existing facilities preventing discounted rates from applying to service being delivered to the customer prior to taking service under the LEDR Tariff. Similar to Section 3 and consistent with HB 2585, this prohibits load shifting in order to qualify for a discounted rate schedule.

Section 6 states that any customer qualifying under Availability Section 1(b) or HB 2585 Section 2(b)(1)(B) must provide sufficient evidence for qualifying prior to receiving a discounted rate. Staff believes that it is necessary to do due diligence in determining what constitutes economic development for the purposes of providing incentives such as a discounted rate.

Section 7 reiterates that discounted rate schedules are available for five years, the limit set forth in HB 2585, unless otherwise terminated. While HB 2585 does not make any direct reference to conditions for termination of discounted rates, language in the bill makes clear that qualifications must be met on a continual basis; for example, Section 2(b) begins (emphasis added), “The discount authorized by this section shall **only** be applicable to new facilities or expanded facilities that have...”.<sup>26</sup> The Termination section of the LEDR Tariff states that failure to comply with all of the conditions of the tariff will end service under discounted rates. Staff believes that HB 2585 and LEDR Tariff are consistent in this respect.

Staff finds no contradictions internally with the LEDR Tariff, nor between it and HB 2585. The tariff language is plain and clear, and covers the entirety of Section 2 of HB 2585. Based on these reasons, Staff recommends approval of the LEDR Tariff with edits to the Definitions section.

### **Compliance Reports**

Subparagraph (g) of HB 2585 requires a biennial report from the Commission to the legislature regarding any discounts from tariffed rates.<sup>27</sup> In order to aid with the development of this report, Staff recommends that the Commission require that confidential compliance filings be made in the instant docket whenever a new customer receives a discount or when said discount changes. These

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<sup>26</sup> HB 2585, pp. 2-3.

<sup>27</sup> HB 2585, p. 4.

filings would be available to any interveners in the instant docket. The instant docket would also serve as a vehicle for any further requests for information, such as but not limited to changes in aggregate load, amount of subsidy, and rate impact.

More specifically, Staff requests the following information for each new discount:

- (1) Data and information used to qualify a customer for a discount under the LEDR tariff.
- (2) Effective date of and percentage amount of the discount.

Staff also requests the following information be filed every twelve months after a new discount is implemented, or upon termination of an existing discount:

- (1) Any recent or upcoming change in discount (including termination of a discount), as well as any data or other reasoning used to justify said change.
- (2) Annual load information, including change in load from the prior year.
- (3) Amount of subsidy since last filing.

### **RECOMMENDATION**

Because Evergy Kansas Central's and Evergy Metro's LEDR Tariff covers the entirety of the contents of and is consistent with the language of HB 2585, Staff recommends approval of the LEDR Tariff with edits to the Definitions section. Staff also recommends that the Commission require a compliance filing for each discount authorized under the LEDR Tariff and any subsequent changes to said discounts to aid in the development of the biennial status reports to the legislature.



## CERTIFICATE OF SERVICE

21-EKCE-318-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was served via electronic service this 19th day of March, 2021, to the following:

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**CERTIFICATE OF SERVICE**

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Ann Murphy