

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Dwight D. Keen, Chair
 Susan K. Duffy
 Andrew J. French

In the Matter of the Investigation into Evergy)
Kansas Metro and Evergy Kansas Central)
Regarding the February 2021 Winter Weather) Docket No. 21-EKME-329-GIE
Events, as Contemplated by Docket No. 21-)
GIMX-303-MIS.)

ORDER APPROVING NON-UNANIMOUS STIPULATION AND AGREEMENT

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On February 15, 2021, pursuant to K.S.A. 77-536(a), the Commission issued an Emergency Order in Docket No. 21-GIMX-303-MIS (Docket 21-303), directing all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation of natural gas and electricity to interconnected, non-jurisdictional Kansas utilities.¹ Jurisdictional natural gas utilities were ordered to do everything necessary to ensure natural gas service continued to be provided to their customers in Kansas.² The Commission authorized every jurisdictional natural gas distribution utility that incurs extraordinary costs associated with ensuring their customers or the customers of interconnected Kansas utilities that are non-jurisdictional to the Commission continue to receive utility service during Winter Storm Uri to defer those costs to a regulatory asset account.³ The Commission mandated that once Winter Storm Uri ended, and after all costs have been

¹ Emergency Order, 21-GIMX-303-MIS, Feb. 15, 2021, ¶ 3.

² *Id.*

³ *Id.* ¶ 4.

accumulated and recorded, each jurisdictional utility is directed to file a compliance report in the 21-303 Docket detailing the extent of such costs incurred, and present a plan to minimize the financial impacts of this event on ratepayers over a reasonable time frame.⁴

2. On March 9, 2021, the Commission issued an Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations, which initiated this Docket.⁵

3. On July 2, 2021, Evergy Kansas Metro and Evergy Kansas Central (Evergy) filed a Compliance Report of costs incurred during Winter Storm Uri, explaining that Evergy Kansas Central incurred \$33.7 million of fuel costs and \$113.1 million of purchased power costs (net of wholesale sales) in excess of its three-year average.⁶ Evergy Kansas Central has deferred these amounts to a regulatory asset, otherwise, the entire amount would have flowed through the Retail Cost Adjustment Clause (RECA) to customers when Evergy Kansas Central begins recovery of its next Annual Cost Adjustment (ACA) beginning in April 2022.⁷ As a result, Evergy Kansas Central expects the average residential customer bill will increase by approximately \$4.69 per month through March 2024.⁸

4. Due to off-system sales margins of \$82.2 million, Evergy Kansas Metro's total energy costs and off-system sales margins for February 2021 were actually \$44.6 million less than its historical three-year average of fuel and purchased power costs and off-system sales margins for February.⁹ Thus, Evergy Kansas Metro has determined that \$5.7 million, plus

⁴ *Id.* ¶ 5.

⁵ Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations; Order on Petitions to Intervene of Bluemark Energy, LLC and CURB; Protective and Discovery Order, 21-303 Docket, March 9, 2021, ¶ 10.

⁶ Compliance Report of Evergy Kansas Metro and Evergy Kansas Central Regarding Costs Incurred During Winter Weather Event, July 2, 2021, ¶ 10.

⁷ *Id.*

⁸ *Id.*, ¶ 14.

⁹ *Id.*, ¶ 15.

carrying costs should be returned to Kansas customers through its ECA over a one-year period beginning in April 2022 when its next ACA filing will become effective.¹⁰

5. On January 21, 2022, Commission Staff (Staff) filed its Report and Recommendation (R&R), recommending approval of Evergy's cost recovery plans with a few exceptions: (1) active parties in this Docket should try to reach an agreement on the level of carrying charges, if any, that should apply to the costs Evergy incurred during Winter Storm Uri.¹¹ If an agreement cannot be reached, a hearing is warranted; (2) benefits accrued by Evergy Kansas Metro customers should be dispersed over the same two year period as expense increases are collected from Evergy Central customers; and (3) Evergy's request to retroactively change jurisdictional allocators for off-system sales should be deferred to a rate case.¹² Overall, Staff believes Evergy did a good job of preparing for, and executing, during Uri.¹³ However, Staff recommends Evergy implement the following improvements:¹⁴

- formally evaluate whether it is possible to avoid scheduling any planned maintenance outages of its baseload coal units during the winter season, so its units are available to generate electricity to meet peak winter demand, especially during extreme winter conditions such as experienced during Winter Storm Uri. Evergy should report its findings to the Commission in a compliance filing;¹⁵
- formally evaluate additional coal pile winterization techniques that allow for coal to be more readily available under all extreme weather scenarios;¹⁶

¹⁰ *Id.*, ¶¶ 14-15.

¹¹ Report and Recommendation, Jan. 19, 2022, p. 7.

¹² *Id.*, pp. 7-8.

¹³ *Id.*, p. 8.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

- formally evaluate whether accelerated de-icing techniques or system controls upgrades are available/economical in order to allow for more reliable operation of the wind turbines during icing conditions;¹⁷
- formally evaluate whether manufacture upgrades or unit retrofits are available/economical in order to increase the minimum ambient air temperature limits for its wind farms;¹⁸
- formally evaluate having onsite liquefied natural gas storage at each of its gas generating units on hand for at least two continuous days of generating capacity through the winter season. Additionally, natural gas-fired generating units that are not currently dual-fueled with fuel oil should be evaluated for retrofit to this functionality and Evergy should evaluate the feasibility of having at least seven days of fuel oil on site for continuous operation of these units;¹⁹
- continue work with local gas utilities and natural gas infrastructure providers (production, processing, transportation) to determine where critical natural gas infrastructure exists within its service territory. This infrastructure should be added to the Critical Circuit list and exempted from firm load shed events if possible;²⁰
- include wholesale customers in Load Shed Planning or as part of Load Shed drills or exercises;²¹
- improve coordination between itself and the gas distribution utilities in its area in order to minimize the effects of cold load pickup;²²

¹⁷ *Id.*, p. 9.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

- review its Critical Circuit List in December and May in order to maintain a current list of customers that may require continual service;²³
- Each fall, Evergy should advise all interruptible customers of their obligations, and Evergy should update the amount of curtailments available in a customer database;²⁴
- develop estimates of voluntary and interruptible curtailment levels based on a summer and winter peak;²⁵
- review the consequences of non-compliance with interruptible customers if unable to meet the customer load agreement;²⁶
- notify interconnected wholesale customers, industrial customers, large commercial customers, and customers enrolled in Evergy's Medical Program whenever SPP declares an EEA Level 2 event;²⁷ and
- For future severe market pricing events, Evergy should send consumers a comparative price signal when the average DA wholesale energy price exceeds the SPP IM soft-cap of \$1,000 per MWh for a single operating day.²⁸ The price signal should be updated daily and should provide consumers a basic background of the market event and pricing information to make decisions on their energy usage. Evergy should convey this information alongside Evergy's public appeals for energy conservation.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*, pp. 9-10.

²⁸ *Id.*, p. 10.

6. On January 31, 2022, the Citizens' Utility Ratepayer Board (CURB)²⁹ filed its Response to Staff's R&R.³⁰ CURB does not believe there is any evidence of any imprudence by Evergy in responding to Winter Storm Uri.³¹ CURB supports all of Staff's recommendations and agrees with Staff that the amounts to be recovered from Evergy's sales customers are just and reasonable.³² However, CURB wants to engage with Evergy on the length of time for recovery and carrying charges on those amounts as it believes Evergy should lower the carrying cost accumulating on the balance of Winter Storm Uri costs from the Weighted Average Cost of Capital (WACC) as other natural gas utilities have done in their Winter Weather dockets.³³ CURB suggests: (1) Evergy should improve the dissemination of educational information to consumers about the need and benefits of conservation efforts during extreme weather conditions;³⁴ (2) Evergy should work with Staff to plan for prioritized curtailment of services during emergencies;³⁵ (3) the Commission should hold a public hearing to inform Evergy customers about Evergy's efforts to maintain service during Uri;³⁶ and (4) Evergy should commit to work with CURB in the legislature for low-income assistance tariffs.³⁷

7. On March 25, 2022, Staff, CURB, Evergy, Kansas Electric Power Cooperative, Inc. (KEPCo),³⁸ Coffeyville Resources Refining & Marketing, LLC (CVR),³⁹ Natural Gas Transportation Customer Coalition (NGTCC),⁴⁰ Kansas Industrial Consumers Group, Inc.

²⁹ CURB was granted intervention on March 9, 2021.

³⁰ Response of Citizens' Utility Ratepayer Board to Staff's Report and Recommendation, July 31, 2021,

³¹ *Id.*, ¶ 13.

³² *Id.*

³³ *Id.*

³⁴ *Id.*, ¶ 20.

³⁵ *Id.*

³⁶ *Id.*, ¶ 13.

³⁷ *Id.*

³⁸ KEPCo was granted intervention on May 25, 2021.

³⁹ CVR was granted intervention on Sept. 2, 2021.

⁴⁰ NGTCC was granted intervention on Aug. 26, 2021.

(KIC),⁴¹ and United School District #259 (USD 259)⁴² advised the Commission that Evergy Kansas Central withdrew its request⁴³ to waive the provisions of its RECA tariff related to the calculation of the ACA factor and recover a portion of the under-recovered amount beginning on April 1, 2022, and to defer the remainder of the under-recovered amount as a regulatory asset for future recovery, with carrying costs.⁴⁴ As a result, the full amount of the under-recovery for 2021 will flow through as part of the ACA factor effective April 1, 2022.⁴⁵

8. On April 8, 2022, Evergy filed its Response to Staff's R&R, noting settlement discussions are ongoing and expressing optimism that the parties will be able to reach an agreement⁴⁶ and restating the positions advanced in its initial Compliance Filing and reserving the right to supplement or adjust those positions if necessary.⁴⁷

9. On April 22, 2022, Staff, CURB, Evergy, and KEPCo filed a Joint Motion to Approve Non-Unanimous Stipulation and Agreement (Non-Unanimous Settlement). The Non-Unanimous Settlement is attached to this Order as Attachment A. As part of the Non-Unanimous Settlement, the Parties agree that:

- Evergy Kansas Central's method of calculating the costs related to Winter Storm Uri to be deferred to a regulatory asset was appropriate;⁴⁸
- Evergy Kansas Central should apply carrying charges of 1.00% to the calculation of the Winter Storm Uri regulatory asset from the time the regulatory asset began to accrue through March 2023 when Evergy Kansas Central begins to recover the regulatory asset

⁴¹ KIC was granted intervention on Aug. 16, 2021.

⁴² USD 259 was granted intervention on Sept. 2, 2021.

⁴³ The requested waiver was filed in the 22-EKCE-447-ACA Docket.

⁴⁴ Notice of Agreement of the Parties, Mar. 25, 2022, ¶ 3.

⁴⁵ *Id.*, ¶ 4.

⁴⁶ Response to Staff Report and Recommendation, Apr. 8, 2022, ¶ 5.

⁴⁷ *Id.*, ¶ 8.

⁴⁸ Non-Unanimous Stipulation and Agreement, Apr. 22, 2022, ¶ 16.

from customers. No additional carrying charges will be applied after Evergy Kansas Central begins to recover the regulatory asset from customers;⁴⁹

- Evergy Kansas Central should recover the Winter Storm Uri regulatory asset through its RECA over a two-year period effective April 2023;⁵⁰
- If Evergy Kansas Central receives any payments as a result of subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., those payments will be passed on to its customers through its RECA;⁵¹
- Evergy Kansas Metro should return the amount deferred to the regulatory liability as a result of Winter Storm Uri over a one-year period, beginning with the implementation of its ACA effective April 2023;⁵² and
- In addition to improvements Evergy has already implemented, Evergy will implement all operations-related recommendations made by Staff in its Report and Recommendation, other than Staff Recommendations #6, #10, #12, and #15.⁵³

10. On April 29, 2022, KIC, NGTCC, USD 259, and CVR (collectively the Opponents) filed their written objection to the Non-Unanimous Stipulation and Agreement, claiming that under the Non-Unanimous Settlement Agreement, the extraordinary costs would be paid by customer rate classes that did not cause those extraordinary costs to be incurred, or fully benefit from those extraordinary costs.⁵⁴

⁴⁹ *Id.*, ¶ 17.

⁵⁰ *Id.*, ¶ 18.

⁵¹ *Id.*, ¶ 19.

⁵² *Id.*, ¶ 22.

⁵³ *Id.*, ¶ 26.

⁵⁴ Written Objection to the Non-Unanimous Settlement Agreement Filed on April 22, 2022, Apr. 29, 2022, pp. 2-3.

11. On April 29, 2022, Patrick Orr of CURB, Darrin Ives of Evergy, and Justin Grady of Staff filed testimony in support of the settlement; and Michael Gorman filed testimony opposing the settlement on behalf of KIC, NGTCC, and USD 259.

12. Orr testified that in CURB's view, Evergy complied with the Commission's Emergency Order to maintain efficient and sufficient service⁵⁵ and by creating and maintaining regulatory asset and regulatory liability accounts, resulting in a payment method to recover costs at a reasonable pace for both the utility and its customers.⁵⁶ Orr believes the settlement results in just and reasonable rates because the resulting approximately \$2.80 per month being collected from the average Evergy Kansas Central ratepayer over a two-year period seems reasonable, given the fact that customers of Evergy Kansas Central did not suffer any extended outages during the Winter Weather Event and avoided any severe damages.⁵⁷

13. Ives explains Evergy Kansas Central relies more on natural gas generation in its generation mix, which was adversely impacted by both the availability and price of natural gas,⁵⁸ whereas Evergy Kansas Metro was able to offset its higher fuel and purchased power costs with increased off-system sales driven by its larger percentage of non-natural gas generation mix.⁵⁹ Ives testifies that the Non-Unanimous Settlement will result in just and reasonable rates for Evergy Kansas Central customers because by recovering the regulatory asset through the RECA, customers will pay a set per Kwh rate based on their actual usage and is consistent with the method that these costs would have been recovered from customers absent the Commission order requiring deferral of Winter Storm Uri costs.⁶⁰ Ives claims that the two year amortization period

⁵⁵ Testimony in Support of Non-Unanimous Settlement Agreement of Patrick Orr, Apr. 28, 2022, p. 13.

⁵⁶ *Id.*, pp. 19-20.

⁵⁷ *Id.*, p. 24.

⁵⁸ Testimony in Support of Non-Unanimous Settlement Agreement of Darrin R. Ives, Apr. 28, 2022, p. 4.

⁵⁹ *Id.*

⁶⁰ *Id.*, p. 15.

is also reasonable because it ensures that the costs will be recovered from customers as close to the time the costs were actually occurred while reducing concerns about intergenerational inequities and preventing the possibility of pancaking with any future extraordinary events.⁶¹ By reducing the carrying charges from the weighted average cost of capital authorized in the Emergency Order to 1.00%, Ives testifies the Non-Unanimous Settlement saves customers approximately \$32.2 million in interest.⁶²

14. Ives states by allowing the costs incurred as a result of Winter Storm Uri to flow through the RECA all at once with the ACA filed in March 2022, the Non-Unanimous Settlement spreads the recovery of those costs from Evergy Kansas Central customers over a two-year period beginning with the ACA filed in March 2023.⁶³ Spreading the recovery of costs over two years reduces the impact of the recovery of prudently incurred costs to about \$2.82 per month for residential customers, well below that of Southern Pioneer or Black Hills.⁶⁴ Ives explains that under the Non-Unanimous Settlement, Evergy Kansas Metro will receive refunds over one year through the RECA, ensuring that customers receive the benefits as soon as possible.⁶⁵ Lastly, Ives testified the Non-Unanimous Settlement will prevent time-consuming and expensive litigation process, saving all parties and the Commission time and cost of an extensive evidentiary hearing.⁶⁶

15. Grady testifies that based on its review, Staff believes Evergy's financial plan is reasonable and balanced and will appropriately minimize the financial effects to retail customers of the extraordinary fuel and purchased power costs Evergy incurred during Winter Storm Uri,

⁶¹ *Id.*, pp. 15-16.

⁶² *Id.*, p. 16.

⁶³ *Id.*, p. 18.

⁶⁴ *Id.*

⁶⁵ *Id.*, p. 17.

⁶⁶ *Id.*, p. 19.

while allowing Evergy to recover minimal carrying costs.⁶⁷ Grady explained under the best publicly available estimates, an average Evergy Central residential customer will see an approximately \$2.82/month increase for two years,⁶⁸ while the average residential customer of Evergy Metro will receive approximately \$6.60 per month.⁶⁹ The Non-Unanimous Settlement limits carrying costs to 1%, which reduces carrying charges from \$24,613,853 in Evergy's original plan to \$2,465,333, a \$22,148,520 savings, representing a 90% cut in carrying costs.⁷⁰ Grady testifies that by deferring the costs to Evergy Kansas Central customers for two years, which significantly smooths out the bill impact associated with these extraordinary costs, the Non-Unanimous Settlement will result in just and reasonable rates.⁷¹

16. Gorman argues recovery of costs based on projected sales for the ACA recovery period does not reasonably assign the extraordinary costs to the customers that caused Evergy Kansas Central to incur these extraordinary costs.⁷² Specifically, he claims the settlement's proposed ACA uniform cost recovery will unjustifiably shift costs to customers that avoided the extreme costs by curtailing or reducing kWh consumption, and away from the actual customer classes that increased kWh load, and caused the extraordinary costs to be incurred.⁷³ Gorman contends the schools and other customers that followed the Commission's directive to conserve electricity are being penalized through an arbitrary and non-cost based allocation of extraordinary costs.⁷⁴ However, Gorman recognizes residential customers largely could not

⁶⁷ Testimony in Support of Non-Unanimous Settlement Agreement of Justin T. Grady, Apr. 28, 2022, p. 5.

⁶⁸ *Id.*, p. 6.

⁶⁹ *Id.*

⁷⁰ *Id.*, p. 8.

⁷¹ *Id.*, p. 24.

⁷² Testimony and Exhibits in Opposition to Non-Unanimous Settlement Agreement of Michael Gorman, Apr. 29, 2022, p. 3.

⁷³ *Id.*

⁷⁴ *Id.*, p. 8.

curtail consumption during the Uri Winter Storm Event due to health and safety considerations.⁷⁵ To mitigate the increased costs to residential customers,⁷⁶ Gorman offers two options: (1) recognize that increased sales to the residential class during Uri created an extraordinary increase to non-fuel revenue collection, which could be used as a credit to residential customers against the costs from Uri;⁷⁷ and (2) increase the amortization period to 3 years.⁷⁸ Gorman notes the Commission approved a 3 year amortization schedule in the Southern Pioneer Winter Weather Docket.⁷⁹

17. On May 11, 2022, the Commission held a hearing on the Non-Unanimous Stipulation and Agreement. All of the parties appeared by counsel. The Commission heard live testimony from a total of 4 witnesses: Darrin Ives on behalf of Evergy, Michael Gorman on behalf of NGTCC/KIC/USD 259, Patrick Orr on behalf of CURB, and Justin Grady on behalf of Staff.⁸⁰ The parties had the opportunity to cross-examine opposing witnesses as well as the opportunity to redirect their own witnesses. Following the evidentiary hearing, Evergy; CURB; Staff; CVR; and KIC, NGTCC, USD 259 submitted post-hearing briefs.

18. The law generally favors the good faith settlement of disputed issues,⁸¹ however, the Commission must make an independent finding that approval of the Non-Unanimous Settlement is supported by substantial competent evidence in the record as a whole, will result in just and reasonable rates, and is in the public interest.⁸² The Commission has established a five-factor test to evaluate proposed settlement agreements. These factors are:

⁷⁵ *Id.*, p. 10.

⁷⁶ *Id.*, p. 14.

⁷⁷ *Id.*, pp. 14-15.

⁷⁸ *Id.*, p. 15.

⁷⁹ *Id.*, p. 18.

⁸⁰ Transcript of Hearing on Non-Unanimous Settlement, May 11, 2022 (Tr.), pp. 4-5.

⁸¹ See *Krantz v. University of Kansas*, 271 Kan. 234, 241-242, 21 P.3d 561, 567 (2001).

⁸² See *Citizens' Utility Ratepayer Board v. State Corp. Comm'n*, 28 Kan.App.2d 313, 316, 16 P.3d 319, 16 P.3d 319, 323-34 (2000).

- a. Whether each party had an opportunity to be heard on reasons for opposing the settlement;
- b. Whether the settlement is supported by substantial competent evidence in the record as a whole;
- c. Whether the settlement conforms to applicable law;
- d. Whether the settlement will result in just and reasonable rates;
- e. Whether the results of the settlement are in the public interest.⁸³

The Commission will consider each of these factors in deciding whether to approve the Non-Uniform Settlement Agreement.

19. KIC/NGTCC, USD 259, and CVR oppose the Non-Uniform Settlement. As opponents of the Non-Uniform Settlement, they were provided the opportunity to file testimony opposing the settlement, present witnesses at the hearing advocating against the settlement, cross-examine witnesses at the hearing who advocated for the settlement, and file post-hearing briefs that do not allege that they were denied an opportunity to be heard on their reasons for opposing the settlement.

20. The Parties do not dispute the amount of the extraordinary costs incurred by Evergy as a result of Winter Storm Uri or the prudence and necessity of incurring those costs. The dispute is limited to how to allocate those costs among Evergy's customers. KIC/NGTCC, USD 259, and CVR believe the residential customer class should bear a larger percentage of the costs than what the Non-Uniform Settlement allocates to them. Thus, the Commission now turns its attention to whether there is substantial competent evidence to support the Non-Uniform Settlement's allocation of extraordinary costs among the customer classes.

⁸³See Order Approving Contested Settlement Agreement, Docket No. 08-ATMG-280-RTS, May 12, 2008, ¶¶ 9-10.

Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.⁸⁴

21. CVR contends the Settling Parties have not offered substantial competent evidence that the proposed rates are just, reasonable, or fair.⁸⁵ Instead, CVR claims the Non-Uniform Settlement imposes rates that are unreasonably discriminatory and preferential because they do not align with actual use of electricity during Winter Storm Uri.⁸⁶ CVR relies on Gorman's pre-filed testimony, where he argues:

The proposed recovery of the Uri Winter Storm Event costs based on projected sales for the ACA recovery period does not reasonably assign the extraordinary and non-recurring Uri Winter Storm Event costs to the customers that cause Evergy Kansas Central to incur these extraordinary costs.

The Non-Uniform Agreement proposed ACA uniform cost recovery will unjustifiably shift Uri Winter Storm Event costs to customers that avoided the extreme costs during the URI Winter Event by curtailing or reducing kWh consumption, and away from the actual customer classes that increased kWh load, and caused the extraordinary costs to be incurred. The Non-Uniform Agreement's proposed uniform kWh allocation also disregards the system benefits created by the customers that were able to curtail or reduce consumption during the Uri Winter Storm Event. Customers that are able to reduce or curtail load supported the system emergency conditions by providing greater assurance that the Company would be able to avoid outages in delivering needed power to customers for health and safety purposes. As such, load curtailment both reduced extraordinary costs and protected at-risk customers.

In sum, the customers that reduced consumption helped to reduce extraordinary costs, and support system reliability. The Non-Uniform Agreement will over-allocate costs to these same customers that created the system and service area benefits.⁸⁷

⁸⁴ *Farmland Indus., Inc. v. Kansas Corp. Comm'n.*, 25 Kan.App.2d 849, 852 (1999).

⁸⁵ Post-Hearing Brief of Coffeyville Resources Refining & Marketing, LLC (CVR Post-Hearing Brief), May 27, 2022, p. 5.

⁸⁶ *Id.*

⁸⁷ *Id.*, citing Testimony and Exhibits in Opposition to Non-Uniform Settlement Agreement of Michael P. Gorman, May 9, 2022, pp. 3-4.

22. Gorman's argument is premised on calls for conservation being met by "some rate classes."⁸⁸ However, during the hearing Gorman acknowledged that within each customer class, some individuals made efforts to conserve, while other individuals did not.⁸⁹ Similarly, Gorman admitted that his analysis looked at usage by class, not by customer.⁹⁰ Gorman is not aware that anyone examined usage on a per customer basis.⁹¹ Thus, there is no evidence to suggest reallocation on a class-wide basis would only reward customers who curtailed their energy usage. While KIC, NGTCC, and USD 259 argue they are simply seeking application of the best evidence in this case of cost causation / cost assignment,⁹² they seemingly ignore Gorman's testimony that there is nothing in the record examining causation on a per customer basis.

23. Evergy contends if rewarding conservation efforts is the goal, the alternative suggested by the Opponents would have the opposite impact.⁹³ While some of the customers in the Industrial & Large Power (ILP), Large General Service (LGS) and Special contract classes may have reduced usage, numerous others did not,⁹⁴ including several of the customers participating through KIC, who declined to reduce their usage when asked, or in the amount requested.⁹⁵ And one special contract customer reduced its usage less than it was obligated to do under its special contract.⁹⁶ Yet, under the reallocation proposed by Gorman, that special contract customer would be rewarded. Additionally, some usage reduction by larger industrial

⁸⁸ KIC, NGTCC, and USD #259 Post-Hearing Brief in Opposition of the Non-Unanimous Settlement Agreement (Industrial's Post Hearing Brief), May 27, 2022, ¶ 16, *citing* Revised Confidential Testimony in Opposition of Settlement Agreement of Michael P. Gorman, pp. 12-13.

⁸⁹ Tr., pp. 204-05.

⁹⁰ *Id.*, p. 205.

⁹¹ *Id.*

⁹² Industrial's Post-Hearing Brief, ¶ 24.

⁹³ Initial Brief of Evergy Kansas Central, Inc., Evergy Kansas South, Inc. and Evergy Metro, Inc. (Evergy Post-Hearing Brief), May 27, 2022, p. 15.

⁹⁴ Tr., pp. 186-87.

⁹⁵ Evergy Post-Hearing Brief, p. 18.

⁹⁶ Tr., p. 134.

customers was attributable to natural gas curtailments, rather than conservation.⁹⁷ Thus, to reward those customers for using less electricity, when the curtailments were involuntary is unwarranted. Customers that were able to conserve already benefitted by lower volumetric charges.⁹⁸

24. Gorman used a five-day timeframe (February 12-16, 2021) to assign costs based on customer consumption. Evergy, Staff, and CURB testified that Gorman's timeframe is too limited to accurately reflect the impact or duration of the extraordinary weather event and related costs. Staff argues that not only were there supply constraints and demand pressure throughout February, but the highest priced gas days were February 17 and 18, 2022.⁹⁹ Both Staff and CURB contend Gorman's timeframe is skewed in favor of the Opponents. Staff believes it unreasonably allocates costs to residential customers because the five days it covers, includes a weekend and federal holiday when many people are at home and industrial and commercial enterprises are generally running at a lesser capacity, and further compounds the impact of the pandemic, which caused many people to work from home.¹⁰⁰ CURB questions why the relevant timeframe should begin on February 12, two days before the Governor's emergency declaration urging conservation was issued, and three days before the Commission's emergency order.¹⁰¹ CURB notes it does not seem unfair to assess costs on the residential class for failing to conserve, before residential customers were advised to conserve energy to avoid system instability.¹⁰² The Commission agrees with these observations of Staff and CURB.

⁹⁷ *Id.*, p. 207.

⁹⁸ *Id.*, p. 128.

⁹⁹ Staff's Post-Hearing Brief, May 27, 2022, ¶ 58.

¹⁰⁰ *Id.*, ¶ 59.

¹⁰¹ Post Hearing Brief of Citizens' Utility Ratepayer Board in Support of Non-Unanimous Stipulation and Agreement (CURB Post-Hearing Brief), May 27, 2022, ¶ 40.

¹⁰² *Id.*

25. Contrary to CVR's assertions, the Commission finds the Settling Parties have presented substantial competent evidence that the Non-Unanimous Settlement imposes just, reasonable, and fair rates. Thus, the Commission finds the Non-Unanimous Settlement is supported by substantial competent evidence.

26. The Opponents of the Non-Unanimous Settlement Agreement also argue the Non-Unanimous Settlement is inconsistent with applicable law, claiming it is contrary to *Jones v. Kansas Gas & Electric Co.*, 222 Kan. 390 (1977). *Jones* provides "one class of customers shall not be burdened with costs created by another class."¹⁰³ In *Jones*, many delinquent customers paid their bills before any collection costs accrued, but were forced to pay the same as the more recalcitrant customer pays.¹⁰⁴ The Kansas Supreme Court held the late charge must be reasonably related to the purpose to be achieved; and if the purpose is to recover collection costs the utility must collect from the class of consumers creating the costs.¹⁰⁵ The late payer who causes the utility to incur collection costs should be charged more than the late payer who does not cause collection costs.¹⁰⁶

27. The Commission concludes *Jones* is easily distinguishable from the present Docket. Unlike in *Jones*, where the costs were attributable to delinquent bills, some of which were so late as to be referred to collections,¹⁰⁷ here all of the costs are attributable to Winter Storm Uri. KIC, NGTCC, and USD 259 acknowledge that Winter Storm Uri caused bitter cold and rolling blackouts throughout the State, resulting in energy prices spiking to unprecedented levels, and causing unprecedented financial harm throughout Kansas.¹⁰⁸ All Evergy customers,

¹⁰³ *Jones v. Kansas Gas & Electric Co.*, 222 Kan. 390, 401 (1977).

¹⁰⁴ *Id.*, 401-02.

¹⁰⁵ *Id.*, 402.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*, 401-02.

¹⁰⁸ Industrial's Post-Hearing Brief, ¶ 11.

in all customer classes, were impacted by Uri. Unlike *Jones*, which involves penalties for delinquent bills, the present Docket involves extraordinary costs incurred to maintain the integrity of the entire electric system and to prevent a cascading collapse that would have been catastrophic for every customer class.¹⁰⁹ Therefore, it makes sense to spread the costs across the classes. The Commission finds the Non-Unanimous Settlement does not burden one class of customers with costs created by another class.

28. Under the Non-Unanimous Settlement, Evergy Kansas Central deferred the extraordinary costs resulting from Winter Storm Uri to a regulatory asset to be recovered through its Retail Energy Cost Adjustment (RECA).¹¹⁰ Due to Evergy Kansas Metro's off-system sales margins of \$82.2 million, Evergy Kansas Metro's average residential customer bill will be reduced by approximately \$6.60 per month through the RECA.¹¹¹ As Evergy explains, the RECA was designed to handle under- and over-recoveries of fuel and purchased power costs, and thus is the best tool to use to handle the under-recovery of costs from Evergy Kansas Central customers and the over-recovery of costs from Evergy Kansas Metro customers.¹¹² Staff and CURB agree. Staff opines using the existing RECA mechanism is the most efficient and reasonable method for collecting Winter Storm Uri costs and distributing Winter Storm Uri revenues.¹¹³ Because the RECA has been recognized as an established regulatory framework addressing fluctuating fuel and power costs as adjusted for actual costs,¹¹⁴ and it may result in lower bills to customers,¹¹⁵ Staff believes the RECA is the appropriate mechanism to handle the costs resulting from Winter Storm Uri. Similarly, CURB believes the RECA is a reasonable

¹⁰⁹ Tr., p. 127.

¹¹⁰ Testimony in Support of Non-Unanimous Settlement Agreement of Justin T. Grady (Grady Testimony in Support of Settlement), p. 6.

¹¹¹ CURB Post-Hearing Brief, ¶¶ 7, 9.

¹¹² Evergy Post-Hearing Brief, p. 2.

¹¹³ Staff Post Hearing Brief, ¶ 48.

¹¹⁴ See *Kansas Industrial Consumers Group, Inc. v. Kansas Corp. Comm'n*, 36 Kan. App. 2d 83, 93-94 (2006).

¹¹⁵ Staff Post-Hearing Brief, ¶ 48.

means to recover extraordinary costs and distribute net benefits arising out of Winter Storm Uri.¹¹⁶ CURB explains the RECA is the established tariff and intended to recover fuel and purchase power costs,¹¹⁷ and also treats all ratepayers fairly in consideration of the inconsistent conservation efforts among all classes.¹¹⁸ CURB also notes the RECA tariff applies to “all bills rendered by Company for utility service, permitting recovery of fuel cost” without exception.¹¹⁹

29. The Commission finds using the RECA to handle the under-recovery of costs from Evergy Kansas Central customers and the over-recovery of costs from Evergy Kansas Metro customers is appropriate and conforms to applicable law.

30. The Commission finds the Non-Unanimous Settlement results in just and reasonable rates. Grady explains the Non-Unanimous Settlement does not change rates immediately, but sets forth a plan for Evergy to recover the extraordinary costs associated with Winter Storm Uri beginning in April 2023.¹²⁰ Under the Non-Unanimous Settlement, the average Evergy Central customer’s monthly bill is expected to increase by \$2.82 for two years beginning in April 2023, while the average Evergy Metro customer’s monthly bill will see a \$6.60 credit for one year.¹²¹ The estimated \$2.82 monthly increase is significantly lower than the monthly increases approved for customers of other utilities.¹²² Furthermore, CURB characterizes the 1% carrying cost as the lowest rate of any of the utilities and believes the Non-Unanimous Settlement produces the lowest rate impact from Winter Storm Uri’s extraordinary costs among the impacted utilities.¹²³ Not only is the 1% carrying cost rate lower than Evergy’s

¹¹⁶ CURB Post-Hearing Brief, ¶ 20.

¹¹⁷ *Id.*, ¶ 23.

¹¹⁸ *Id.*, ¶ 22.

¹¹⁹ *Id.*, ¶ 24.

¹²⁰ Grady Testimony in Support of Settlement, p. 24.

¹²¹ Staff Post-Hearing Brief, ¶ 45.

¹²² Tr., p. 25.

¹²³ Tr., p. 42.

current cost of capital,¹²⁴ but apparently it is also a lower rate than what Evergy is currently paying on some of its commercial paper.¹²⁵ As Grady explained, lowering the carrying charge from the 8.3239% (its Weighted Average Cost of Capital) for Evergy Kansas Central contained in its original financial plan to 1% results in a \$22,148,520 (90%) reduction of carrying charges.¹²⁶ Thus, the carrying charge rate agreed to in the Non-Unanimous Settlement is extremely favorable to ratepayers.¹²⁷

31. Staff believes the Non-Unanimous Settlement strikes the proper balance between the interests of Evergy's investors and the ratepayers.¹²⁸ The Non-Unanimous Settlement Agreement allows Evergy's investors to recover the fuel and purchased power costs that even the Opponents of the Settlement agree are reasonable and prudent expenses that were necessary to provide vital and likely life-saving utility service during the most extreme winter weather event in decades.¹²⁹ At the same time, the Non-Unanimous Settlement Agreement produces the most affordable customer plan to pay Winter Storm Uri costs (with the lowest carrying charge) of any other utility to come before the Commission in the aftermath of Winter Storm Uri.¹³⁰ The Commission finds the Non-Unanimous Settlement produces just and reasonable rates.

32. The Opponents claim the Non-Unanimous Settlement is not in the public interest because: (1) it unjustly and unreasonably shifts costs from customers responsible for incurring those costs to other customers,¹³¹ (2) may incentivize future bad behavior,¹³² and (3) fails to

¹²⁴ Tr., pp. 266-67.

¹²⁵ Tr., p. 232.

¹²⁶ Grady Testimony in Support of Settlement, p. 8.

¹²⁷ See Staff Post-Hearing Brief, ¶ 46.

¹²⁸ *Id.*, ¶ 44.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ CVR Post-Hearing Brief, p. 11.

¹³² *Id.*, p. 13.

reward conservation efforts.¹³³ The Commission has already rejected all of those arguments above. However, the Commission reiterates the unique nature of Winter Storm Uri and the extraordinary costs it produced. As the Opponents of the Non-Unanimous Settlement acknowledge Winter Storm Uri caused unprecedented financial harm throughout Kansas. Likewise, the evidence demonstrates that some customers in all rate classes conserved electricity.¹³⁴ Customers across all rate classes assisted in avoiding a system-wide failure, like Texas experienced. Additionally, the alternative proposed by the Opponents would be more costly and less efficient. Gorman's proposal would require Evergy to place a separate line item on each customer's bill. Ives testified that could take upwards of 6-9 months to add an individualized separate line item charge.¹³⁵ Plus, before developing a new charge, additional proceedings would be necessary to determine how to bill special contract customers that do not pay the RECA.¹³⁶ Such a delay could result in additional interest charges,¹³⁷ costing customers even more money.

33. The evidence before the Commission suggests that, under the circumstances, the Non-Unanimous Settlement represents the lowest interest rate and the lowest customer impact of all Kansas utilities for Winter Storm Uri related costs. Accordingly, the Commission believes it is in the public interest to approve the Non-Unanimous Settlement in its entirety. Regarding Evergy's agreement to explore adding an estimate of interruptible load for the winter season, the Commission directs Evergy to share the results with Staff.

¹³³ Industrial's Post-Hearing Brief, ¶ 32.

¹³⁴ Tr., pp. 204-05.

¹³⁵ Tr., p. 169.

¹³⁶ Tr., pp. 250, 253-54.

¹³⁷ Tr., p. 251.

THEREFORE, THE COMMISSION ORDERS:

- A. The Non-Unanimous Stipulation and Agreement is approved.
- B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹³⁸

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 06/23/2022 _____



Lynn M. Retz
Executive Director

BGF

¹³⁸K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Investigation into Evergy)	
Kansas Metro and Evergy Kansas Central)	
regarding the February 2021 Winter Weather)	Docket No. 21-EKME-329-GIE
Events, as Contemplated by Docket No. 21-)	
GIMX-303-MIS)	

NON-UNANIMOUS STIPULATION AND AGREEMENT

As a result of discussions between Staff of the State Corporation Commission of the State of Kansas (Staff), Evergy Kansas Central, Inc., Evergy Kansas South, Inc. (together as “Evergy Kansas Central”), Evergy Metro, Inc. (“Evergy Kansas Metro”) (collectively as “Evergy”), Citizens’ Utility Ratepayer Board (CURB), Kansas Electric Power Cooperative, Inc. (“KEPCo”) (referred to collectively as the “Parties”), the Parties hereto submit to the Kansas Corporation Commission (Commission) for its consideration and approval, the following Non-Unanimous Stipulation and Agreement (Agreement):

I. WINTER STORM URI BACKGROUND

1. Winter Storm Uri was a major coast-to-coast storm that spread snowfall and damaging ice from the Northwest into the South, Midwest, and Northeast February 12-16, 2021 (“Winter Storm Uri” or “Cold Weather Event”). The storm was followed by the coldest temperatures in decades in the south-central states. The outbreak of cold air migrated in early February 2021 from the North Pole to southern Canada and the north central United States, often referred to as a “polar vortex.” As a result, cold temperatures, wind chills and snow began to arrive in North Dakota, traveling through Kansas and other Midwestern states, ultimately hitting Texas and portions of the Gulf Coast.

2. To prepare for this event, Southwest Power Pool, Inc. ("SPP") declared a period of conservative operations for its 14-state balancing authority area at midnight on February 9, 2021. Evergy is a member of SPP, a regional transmission organization ("RTO") mandated by the Federal Energy Regulatory Commission ("FERC") to ensure the reliable supply of power, as well as adequate transmission infrastructure and competitive wholesale electricity prices. Between February 14 and 16, 2021, the SPP issued a series of Energy Emergency Alert ("EEA") declarations, ranging from Level 1 up to Level 3, and issued two separate directives to member utilities requiring controlled interruptions of service to curtail electricity use.

3. From Evergy's perspective, Winter Storm Uri led to derates/outages of multiple generating resources throughout the winter weather event. With resources limited and increased demand due to the extreme low temperatures, higher cost resources were committed to cover the shortfall of more economic baseload and wind resources. In addition, the gas market experienced abnormally high prices and availability challenges due to supply and pipeline issues. In turn, Day Ahead demand was purchased during peak periods at the cost of the most uneconomical resources offered. Mr. Ives discusses these impacts in greater detail in his Direct Testimony.

4. As a result, Evergy incurred extraordinary fuel and purchased power costs directly attributable to Winter Storm Uri. Evergy Kansas Central relies more on natural gas generation in its generation mix, which was adversely impacted by both the availability and price of natural gas. Evergy Kansas Metro, on the other hand, incurred higher fuel and purchased power costs but was able to offset those with increased off-system sales driven by its larger percentage of non-natural gas generation mix in excess of load volumes.

5. In addition to the impact on fuel and purchased power costs, Evergy also incurred increased non-fuel operating and maintenance (“O&M”) expenses in order to continue to operate its generation fleet in extreme conditions. These increased O&M expenses included communication costs, overtime for Evergy employees and payroll taxes on the overtime costs, additional contractor costs, and additional materials, as discussed by Mr. Ives.

6. On February 14, 2021, Governor Kelly issued a State of Disaster Emergency due to wind chill warnings and stress on utility and natural gas providers, noting that the current subzero temperatures are causing increased energy demand, natural gas supply constraints throughout Kansas, and utilities are currently experiencing wholesale natural gas price increase from 10 to 100 times higher than normal. As a result the Commission exercised its jurisdiction pursuant to K.S.A. 77-536(a) to “protect the public from immediate danger to health, safety, and welfare” and on February 15, 2021, issued an Emergency Order in Docket No. 21-GIMX-303-MIS directing all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation of natural gas and electricity to interconnected, non-jurisdictional Kansas utilities.

7. In that Emergency Order, the Commission also authorized

every jurisdictional electric and natural gas distribution utility that incurs extraordinary costs associated with ensuring that their customers or the customers of interconnected Kansas utilities that are non-jurisdictional to the Commission continue to receive utility service during this unprecedented cold weather event to defer those costs to a regulatory asset account. Such costs include but are not limited to the cost of procuring and transporting natural gas supplies for jurisdictional utility customers, costs associated with jurisdictional utilities coordinating and assisting non-jurisdictional utilities with the transportation of gas supplies, and any other reasonable costs necessary to ensure stability and reliability of natural gas and electricity service. These deferred costs may also include

carrying costs at the utility's weighted average cost of capital. All deferred costs shall be segregated by detailed cost category and shall contain enough detail for the Commission to perform a subsequent review for prudence and reasonableness. This deferral is for accounting purposes only. Any decisions related to ratepayer recovery will be addressed in future proceedings.

Each utility bears the burden of proof that the costs described in paragraph 4: (1) would not have been incurred but for the 2021 Winter Weather Event, and (2) are just, reasonable, and necessary to provide utility services during this extraordinary event. Once this 2021 Winter Weather Event is over, and after all costs have been accumulated and recorded, each jurisdictional utility is directed to file a compliance report in this Docket detailing the extent of such costs incurred, and present a plan to minimize the financial impacts of this event on ratepayers over a reasonable time frame.¹

8. On March 9, 2021, the Commission issued an order in Docket No. 21-GIMX-303-MIS adopting Staff's recommendation to open a series of company-specific dockets to allow: (1) the utilities to file financial impact plans, and (2) Staff to tailor its investigation to match each utility's unique circumstances. This order resulted in the creation of the above captioned docket for Evergy. The Commission directed "each utility to file its plan to minimize the financial effects of this cold weather event into its company-specific investigation docket."²

9. On July 2, 2021, Evergy filed its Compliance Report in the above-captioned docket with its plan for Evergy Kansas Central to recover its regulatory asset related to Winter Storm Uri and for Evergy Kansas Metro to return the regulatory liability associated with Winter Storm Uri to customers.

¹ Emergency Order, Docket No. 21-GIMX-303-MIS, ¶¶ 4-5 (Feb. 15, 2021).

² Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations; Order on Petitions to Intervene of Bluemark Energy, LLC and CURB; Protective and Discovery Order, Docket No. 21-GIMX-303-MIS, ¶ 10 (March 9, 2021).

10. On January 21, 2022, Staff filed its Report and Recommendation (“R&R”) evaluating Evergy’s proposed cost recovery compliance plan. Staff generally found that Evergy’s plan was reasonable and should be approved by the Commission, with three exceptions: (1) the active parties should confer and attempt to arrive at an agreement on the level of carrying charges to apply to the costs Evergy incurred during the cold weather event; (2) the regulatory liability should be returned to Evergy Kansas Metro customers over two years instead of the one year proposed by Evergy; and (3) the Commission should wait until a rate case to address the allocation issue raised by Evergy in its compliance filing. Staff also made several operations-related recommendations that it believes Evergy should implement in the future.

11. On January 31, 2022, CURB filed its response to Staff’s R&R, indicating that it agreed with Staff’s recommendations but wished to discuss the recovery period for Evergy Kansas Central’s regulatory asset and the appropriate level of carrying charge to be applied and that it believes the Commission should hold a public hearing to inform Evergy customers about the efforts that Evergy successfully undertook to maintain service throughout its service territories.

II. EVERGY KANSAS CENTRAL RECA UNDER-RECOVERY BACKGROUND

12. On March 14, 2022, in Docket No. 22-EKCE-447-ACA (“447 Docket”), Evergy Kansas Central filed a Request for Waiver of RECA Tariff Provisions. In that request for Waiver, Evergy Kansas Central explained that it would be filing its Annual Correction Adjustment (“ACA”) under its Retail Energy Cost Adjustment (“RECA”) tariff and that the RECA tariff provides for it to file its ACA on an annual basis on or before March 20 in order to determine the amount of costs recovered under the RECA during the previous calendar year and the amount of costs actually incurred for fuel and wholesale purchased power during that calendar year. Evergy Kansas Central

sets the amount of fuel and purchased power costs to be recovered through the RECA on a quarterly basis by estimating costs about two months in advance of actual fuel purchases. The RECA rate is adjusted quarterly based on those cost estimates. As part of the ACA filing, Evergy Kansas Central calculates the amount it either over- or under-recovered during the previous calendar year and that amount – the ACA factor – is added to or subtracted from the RECA rate beginning April 1 through March 31 of the following year. Evergy Kansas Central requested a waiver of the provisions of its RECA tariff related to the calculation of the ACA factor that would allow it to recover only a portion of the under-recovered amount beginning on April 1, 2022, and to defer the remainder of the under-recovered amount as a regulatory asset for future recovery, with carrying costs. Evergy Kansas Central requested that it be permitted to determine the proper method, timeframe and level of carrying costs for recovery of this regulatory asset as part of the ongoing proceeding in the above-captioned docket, in conjunction with determination of the appropriate recovery method for its Winter Storm Uri costs.

13. On March 18, 2022, Evergy Kansas Central filed its ACA filing in the 447 Docket, proposing recovery of the under-recovered RECA costs from 2021 in a manner consistent with its Request for Waiver.

14. On March 23, 2022, the Parties began settlement discussions in the above-captioned docket. As a result of those discussions, the Parties agreed that Evergy Kansas Central should withdraw its Request for Waiver, such that the full amount of the under-recovery for 2021 would flow through as part of the ACA factor effective April 1, 2022. The Parties agreed that Evergy Kansas Central would file a notice of withdrawal in the 447 Docket and indicate in that filing that the Parties are all in support of the withdrawal. The Parties signed a written Notice of Agreement

documenting this agreement that was filed in the above-captioned docket on March 25, 2022, and Evergy filed its notice of withdrawal in the 447 Docket on that same day.

15. The Parties continued settlement discussions after their initial meeting on March 23, 2022 and were able to reach the following agreement.

III. TERMS OF STIPULATION AND AGREEMENT

A. Evergy Kansas Central

16. The Parties agree that Evergy Kansas Central's method of calculating the amount of costs related to Winter Storm Uri to be deferred to a regulatory asset – calculating a three-year historical average of its fuel and purchased power costs for February using 2018 thru 2020 and comparing that average to the costs incurred in February 2021 and calculating the extraordinary non-fuel O&M expenses attributable to Winter Storm Uri – was appropriate. The Parties agree that Evergy Kansas Central should use this method to determine the final amount of costs to be deferred to the regulatory asset after all resettlements by the Southwest Power Pool, Inc. ("SPP") have been completed.

17. The Parties agree that Evergy Kansas Central should apply carrying charges to the calculation of the Winter Storm Uri regulatory asset in the amount of 1.00% beginning at the time the regulatory asset began to accrue through March 2023 when Evergy Kansas Central begins to recover the regulatory asset from customers. No additional carrying charges will be applied after Evergy Kansas Central begins to recover the regulatory asset from customers.

18. The Parties agree that Evergy Kansas Central should recover the Winter Storm Uri regulatory asset through its RECA over a two-year period beginning with the implementation of its ACA that will be filed in March 2023 and will become effective in April 2023.

19. If Evergy Kansas Central receives or recovers any payments as a result of any subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from Winter Storm Uri, it shall pass those payments on to its customers through its RECA, even if those payments may be received or recovered after the expiration of the two-year recovery period for the regulatory asset.

20. As was indicated in the Notice of Agreement filed on March 25, 2022 in the above-captioned docket, the Parties agreed that the Request for Waiver in the 447 Docket should be withdrawn in good faith and in order to allow the ACA process to operate as designed and without waiver. Evergy Kansas Central complied with this portion of the agreement when it filed to withdraw its waiver request in the 447 Docket on March 25, 2022. By making this agreement regarding the waiver, the Parties also agreed that the results of the application of the ACA process will not be utilized to disparage Evergy Kansas Central in any public discussion of the impacts of the higher and volatile fuel and purchased power costs experienced by Evergy Kansas Central in serving customers in 2021.

B. Evergy Kansas Metro

21. The Parties agree that Evergy Kansas Metro's method of calculating the amount of costs related to Winter Storm Uri and amount of offsetting benefits from off-system sales to be deferred to a regulatory liability – calculating a three-year historical average of its fuel and purchased power costs for February using 2018 thru 2020 and comparing that average to the costs incurred in February 2021 and calculating the extraordinary non-fuel O&M expenses attributable to Winter Storm Uri – was appropriate. The Parties agree that Evergy Kansas Metro should use this

method to determine the final amount of costs to be deferred to the regulatory liability after all resettlements by the Southwest Power Pool, Inc. ("SPP") have been completed.

22. The Parties agree that Evergy Kansas Metro should return the amount deferred to the regulatory liability as a result of Winter Storm Uri over a one-year period, beginning with the implementation of its ACA that will be filed in March 2023 and will become effective in April 2023.

23. The Parties agree that Evergy Kansas Metro should apply carrying charges to the calculation of the regulatory liability in the amount of 1.00% beginning at the time the regulatory liability began to accrue through March 2023 when Evergy Kansas Metro begins to return the regulatory liability to customers. No additional carrying charges will be applied after Evergy Kansas Metro begins to return the regulatory liability to customers.

24. If Evergy Kansas Metro receives or recovers any payments as a result of any subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from Winter Storm Uri, it shall pass those payments on to its customers through its RECA, even if those payments may be received or recovered after the expiration of the one-year period for return of the regulatory liability to customers.

25. The Parties agree that Evergy Kansas Metro should not offset the regulatory liability to be returned to customers with the under-recovery caused by the historically different allocation methodologies that have been used by the Kansas and Missouri Commissions. However, the Parties agree that Evergy Kansas Metro should be permitted to defer as a regulatory asset that amount of that under-recovery that is attributable to Kansas customers, approximately \$4.7 million at February 28, 2022, to be considered for recovery from customers in Evergy Kansas Metro's upcoming 2023 general rate case. The Parties also agree that they will work together in good faith,

in advance of Evergy Metro's 2023 general rate case, to evaluate methods for reasonably aligning allocation factors utilized by Evergy Metro across the Kansas and Missouri jurisdictions to more appropriately match cost recovery to cost incurrence, including but not limited to meetings between Evergy Metro, Kansas Staff, Missouri Public Service Commission Staff, and CURB.

C. Staff's Operations-Related Recommendations

26. Evergy has conducted an extensive internal review related to the cold weather event and, as a result, has already implemented a number of improvements, many highlighted by KCC Staff, designed to proactively help Evergy deal with any similar event in the future. The Parties agree that Evergy will implement all of the operations-related recommendations made by Staff in its Report and Recommendation except for the recommendations listed below:

- i. *Staff #6 Evergy should formally evaluate having onsite liquefied natural gas storage at each of its gas generating units on hand for at least two continuous days of generating capacity through the winter season. Additionally, natural gas-fired generating units that are not currently dual-fueled with fuel oil should be evaluated for retrofit to this functionality and Evergy should evaluate the feasibility of having at least seven days of fuel oil on site for continuous operation of these units. If this recommendation proves costly or impractical, Staff would recommend at least three days capacity on-site, with firm contracts for fuel oil delivery during an event.*

27. Parts of this recommendation were identified through Evergy's internal event analysis process following the winter storm Uri.

28. Regarding the liquified natural gas (LNG): Evergy has done some preliminary high-level assessments regarding the potential usage of LNG. Due to LNG being an emergent technology, the usage of LNG as a backup fuel source is not feasible at this time for the following reasons:

- The high costs associated with the resource itself, transportation, infrastructure upgrades, and storage.
- The instability of the fuel source due to LNG boil off.

- An assessment would require potentially extensive costs for consulting expertise to fully evaluate the cost benefit and requisite investment to accommodate this recommendation.

29. Regarding the dual-fuel assessment: Evergy is in the process of assessing dual-fuel capabilities for each natural gas-fired generating unit. Evergy has fifteen units that are currently fuel oil capable.

30. Evergy is assessing an additional thirteen gas-fired generating units to determine the feasibility of converting the additional units to dual fuel. Evergy will file the results of this assessment when complete, including a high-level cost estimate of the cost of conversion, in a compliance filing with the Commission.

31. Regarding the seven days of fuel oil onsite assessment: Evergy has assessed and is planning to implement 4.4-to-6-day fuel storage onsite at each location (days are calculated based upon maximum daily burn rates). Where currently feasible, inventory levels have already been increased. Where current onsite storage capability does not provide for such an increase, the construction of additional storage capabilities is under evaluation. Evergy will file the results of this evaluation, when complete, in a compliance filing with the Commission. Evergy has multiple oil suppliers, including new suppliers who were onboarded during the February 2021 event. The number of pre-established available suppliers - who can deliver to the various Evergy stations - helps ensure that deliveries are available as needed. If one supplier is unable to deliver, there are other options to obtain the needed supply.

- ii. ***Staff #10 Evergy should review its Critical Circuit List in December and May in order to maintain a current list of customers that may require continual service.***

32. This recommendation was previously identified through Evergy's internal event analysis process following winter storm Uri. Evergy has updated the definition of Essential

Services for the purposes of emergency load shedding which includes critical loads essential to health and safety. Evergy updated the critical circuit list based on the updated definition. Furthermore, Evergy implemented an annual review of the critical circuit list to be conducted concurrently with the NERC required annual review of the UFLS circuit list, typically conducted in November of each calendar year. Evergy implemented change procedures for information sharing between Evergy's customer facing employees and the operations to implement processes to incorporate critical load changes in a timely manner. Additionally, Evergy will communicate with the retail and wholesale customers of the requirement to inform Evergy if the customers' need to be on the critical circuit list changes. The requirement to inform will allow Evergy to make necessary ad hoc changes in between annual reviews. Due to the static nature of the critical circuit list, an annual review and process changes that have been implemented are sufficient.

iii. Staff #12 Evergy should develop estimates of voluntary and interruptible curtailment levels based on a summer and winter peak.

33. Evergy currently maintains and updates a customer database that totals the interruptible load for the summer season. Evergy will explore adding an estimate of interruptible load for the winter season based on the potential to identify differences in interruptible load between the seasons.

34. Evergy has not yet identified an effective way of measuring voluntary load curtailments or a benefit to operations during an extreme weather event. There is no existing requirement or process to calculate the estimated voluntary curtailment. The voluntary estimate would vary greatly based on natural gas price and availability, time of day, and season.

- iv. *Staff #15 For future severe market pricing events, Evergy should send consumers a comparative price signal when the average DA wholesale energy price exceeds the SPP IM soft-cap of \$1,000 per MWh for a single operating day. The price signal should be updated daily and include recent wholesale energy pricing before the market event. The price signal should provide consumers a basic background of the market event and pricing information to make decisions on their energy usage. Evergy should convey this information alongside Evergy's public appeals for energy conservation.*

35. During winter storm Uri, Evergy was focused on getting critical messages regarding energy conservation, grid status and safety to customers. At the same time, Evergy's communications team worked to correct messaging and clear up confusion about bill volatility because of news headlines from other areas. In such an event, it is critical to keep messages focused and clear so that customers can take actions, first, that maintain their personal safety, and second, that help alleviate stress on the power grid. Market pricing information is unfamiliar to most customers, and introduction of it in a time of crisis may cause confusion and could lead customers to make decisions like reducing personal use to unsafe levels that have unintended consequences.

D. General Provisions

36. Evergy agrees that it will provide Staff and CURB the opportunity to participate in discussions about provision of notice regarding the resolution of the above-captioned docket to residential and small general service customers.

37. Evergy agrees that it will work with CURB regarding statutory language that would enable low-income rate assistance.

IV. MISCELLANEOUS PROVISIONS

38. Nothing in this Stipulation and Agreement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation.

39. The Parties will jointly request the Commission issue an Order approving this Agreement.

40. This Agreement represents a negotiated settlement that fully resolves all of the issues in this docket among the Parties. The Parties represent that the terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, the Parties shall be bound by its terms and the Commission's Order incorporating its terms as to all issues addressed herein and in accordance with the terms thereof, and will not appeal the Commission's Order on these issues.

41. The provisions of this Agreement have resulted from negotiations among the Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, the Agreement shall be voidable and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in such event, this Agreement shall be considered privileged and not admissible in evidence or made a part of the record in any proceeding.

IN WITNESS WHEREOF, the Parties have executed and approved this Unanimous Stipulation and Agreement, effective as of the 22nd day of April 2022, by subscribing their signatures below.

/s/ Carly R. Masenthin

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CERTIFICATE OF SERVICE

21-EKME-329-GIE

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CERTIFICATE OF SERVICE

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/S/ DeeAnn Shupe

DeeAnn Shupe