

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

**POST HEARING BRIEF OF CITIZENS' UTILITY RATEPAYER BOARD
IN SUPPORT OF NON-UNANIMOUS STIPULATION AND AGREEMENT**

COMES NOW the Citizens' Utility Ratepayer Board ("CURB") and submits this post-hearing brief in support of the Non-Unanimous Stipulation and Agreement filed with the Commission on April 22, 2022 ("Settlement Agreement"). The Settlement Agreement stems from the Compliance Report of Evergy Kansas Metro and Evergy Kansas Central Regarding Costs Incurred during Winter Weather Event filed with the Commission on July 2, 2021.

Statement of Facts

1. In mid-February 2021, Winter Storm Uri imposed extreme and unprecedented freezing weather conditions across the U.S., resulting in record demand for natural gas and electricity ("Winter Weather Event").¹ During the Winter Weather Event, many parts of Kansas suffered thirteen straight days of freezing temperatures, with temperatures in the single digits or below zero.² Natural gas prices in the Central United States reached all-time highs, causing record wholesale electricity costs in the Southwest Power Pool ("SPP"), to which Evergy is a member, at times exceeding \$4,000 per MWh.³

¹ Notice of Filing of Staff's Report and Recommendation (January 21, 2022).

² Id.

³ Id.

2. Mindful of these weather conditions and supply constraint issues, Governor Kelly issued a State of Disaster Emergency Declaration on February 14, 2021, calling on all state agencies to take action in order to cope with the ongoing storm.⁴ The Commission issued an Emergency Order in Docket No. 21-GIMX-303-MIS (Docket 21-303), on February 15, 2021.

3. In its Emergency Order, the Commission directed all jurisdictional natural gas and electric utilities to do everything necessary to ensure that their customers and the customers of interconnected, non-jurisdictional Kansas utilities continued to receive service during Winter Storm Uri.⁵ Additionally, the Commission authorized jurisdictional natural gas and electric utilities to defer into a regulatory asset any extraordinary costs associated with meeting that duty.⁶ The Commission required the deferral accounts to be segregated by detailed cost categories and to contain sufficient information for the Commission to perform a subsequent review for prudence and reasonableness.⁷ The Emergency Order provided that the deferral is for accounting purposes only, and that ratepayer recovery would be determined in future proceedings.⁸ The Emergency Order directed each jurisdictional utility to present a plan to minimize the financial impacts of Winter Storm Uri on ratepayers over a reasonable time frame.⁹

4. This specific docket was opened and assigned to Evergy by virtue of an order issued on March 9, 2021, wherein the Commission adopted Staff's Report and Recommendation (R&R) to

⁴ *State of Emergency Proclamation*, February 14, 2021. Accessed at: <https://governor.kansas.gov/wp-content/uploads/2021/02/2-14-2021-Extreme-Weather-Disaster-Declaration-Executed.pdf>.

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

⁶ *Emergency Order*, ¶4, Docket No. 21-GIMX-303-MIS (Feb. 15, 2021).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

open company-specific investigations.¹⁰ On July 2, 2021, Evergy filed its Compliance Report of Evergy Kansas Metro and Evergy Kansas Central regarding costs incurred during the Winter Weather Event.¹¹ Evergy supported its Compliance Report with the testimony of Darrin Ives and Ronald Klote.¹²

5. The Evergy Compliance Report stated that Evergy Kansas Central had incurred \$33.7 million of extraordinary fuel costs and \$113.1 million of extraordinary purchased power costs (net of wholesale sales) during the Winter Weather Event¹³. In order to determine what amount of its fuel and purchased power costs were extraordinary and attributable to Winter Storm Uri, Evergy Kansas Central calculated a three-year historical average of its fuel and purchased power costs for the month of February using 2018 through 2020 data and comparing that average to the costs incurred in February 2021.¹⁴ In addition to the impact on fuel and purchased power costs, Evergy Kansas Central also incurred increased non-fuel operating and maintenance (O&M) expenses of \$675,495 in order to run its generation fleet in extreme conditions.¹⁵ These incremental O&M expenses included communication costs, overtime for Evergy employees and payroll taxes on the overtime costs, additional contractor costs, and additional materials.¹⁶

¹⁰ 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 (March 9, 2021).

¹¹ Compliance Report of Evergy Kansas Metro and Evergy Kansas Central Regarding Costs Incurred During Winter Weather Event (July 2, 2021).

¹² Id. Even though they were filed as part of the above-referenced compliance report, the testimony of Darrin Ives will be referred to as the Direct Testimony of Darrin Ives (July 2, 2021) and the testimony of Ronald Klote will be referred to as the Direct Testimony of Ronald Klote (July 2, 2021).

¹³ Id., p. 5.

¹⁴ Compliance Report of Evergy Kansas Metro and Evergy Kansas Central regarding the February 2021 Winter Weather Events, Docket No. 21-EKME-329-GIE, dated July 2, 2021, p 5 ("Evergy Compliance Report").

¹⁵ Id., p. 7.

¹⁶ Id., p. 7.

6. Evergy Kansas Central deferred these amounts to a regulatory asset.¹⁷ In connection with the regulatory asset, Evergy Kansas Central proposed a carrying charge equal to its weighted average cost of capital plus applicable taxes.¹⁸ It proposed to recover the costs recorded to the regulatory asset as a result of Winter Storm Uri through its Retail Energy Cost Adjustment (RECA) over a two-year period beginning in April 2022 when its next Annual Cost Adjustment (ACA) becomes effective.¹⁹ Evergy Kansas Central expected that the recovery of this regulatory asset would increase the average residential customer bill by approximately \$4.69 per month through March 2024, at which time the storm related costs would be fully recovered.²⁰

7. In its Compliance Report, Evergy also stated that Evergy Kansas Metro incurred \$8.1 million in fuel and \$39.4 million in purchased power costs in February 2021 for retail customers.²¹ These extraordinary fuel costs were calculated using the same historical three-year average methodology used by Evergy Kansas Central. Evergy Kansas Metro also incurred extraordinary non-fuel O&M expenses, and has separately tracked and recorded those expenses directly attributable to Winter Storm Uri which currently total \$458,710.²² However, Evergy Kansas Metro had off-system sales margins of \$82.2 million.²³ 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

¹⁷ Id., p. 5.

¹⁸ Id., p. 6

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Klote Direct Testimony, p 14.

²³ Id., p 6.

February, which created a net benefit for customers under the RECA.²⁴ As a result, Evergy Kansas Metro deferred the amount of this customer benefit as a regulatory liability in order to return that amount to customers.²⁵

8. In connection with the Evergy Kansas Metro regulatory liability, Evergy wanted the Commission to address, in this docket, the historically different allocation methodologies that have been used by the Kansas and Missouri Commissions.²⁶ In these regards, Evergy Kansas Metro proposed to offset the amount of the regulatory liability associated with Winter Storm Uri that will be returned to customers by \$5.7 million in order to account for the allocation concerns.²⁷

9. Evergy Kansas Metro proposed to flow the amount recorded to the regulatory liability as a result of Winter Storm Uri, less the amount necessary to correct for the allocation issue, together with a carrying charge equal to its weighted average cost of capital plus taxes, to customers through its RECA over a one-year period beginning in April 2022 when its next ACA filing will become effective.²⁸ Evergy Kansas Metro expected that the proposed return of this adjusted Winter Storm Uri regulatory liability would reduce the average residential customer bill by approximately \$9.70 per month.²⁹

10. Staff filed an R&R with respect to the Compliance Plan on January 21, 2022.³⁰ In the R&R, Staff noted that it had reviewed Evergy's cost recovery plan and found it a reasonable and appropriate method to spread out the impact of the 2021 Winter Weather Event to customers.

²⁴ Klote Direct Testimony at p 12, ll.1-10.

²⁵ *Id.*, p 12, ll. 1-12.

²⁶ Ives Direct Testimony at pp. 9-15.

²⁷ Klote Direct Testimony at p 15 ll. 12-22.

²⁸ Klote Direct Testimony at p 17, ll. 14-20.

²⁹ *Id.*, p 18.

³⁰ Notice of Filing of Staff's Report and Recommendation, dated January 21, 2022. ("Staff's R&R").

Staff also reviewed the fuel and purchased power costs incurred by Evergy, and did not encounter an instance where Evergy acted imprudently or inappropriately during the event.³¹ Staff found the plan reasonable and recommended approval of the plan with some exceptions:

- A. Staff recommended that the active parties in this Docket should confer and attempt to arrive at an agreement on the level of carrying charges, if any, that should apply to the costs Evergy incurred during this Event.
- B. Staff recommended that the benefit that accrues to Evergy Kansas Metro customers be dispersed over the same two year period that Winter Weather Event costs are collected from Evergy Kansas Central customers.
- C. Staff recommended that the Commission deny Evergy's request to retroactively change the jurisdictional allocators that are used to split out off-system sales margins between the states of Kansas and Missouri for Evergy Kansas Metro.³²
- D. Staff also made various recommendations concerning Evergy's operational procedures during the Winter Weather Event to improve performance during extreme weather situations.³³

11. On January 31, 2022, CURB filed its response to Staff's R&R.³⁴ Therein, CURB agreed with Staff's conclusion that the amounts to be recovered from Evergy Kansas Central sales customers are just and reasonable under the particular circumstances.³⁵ CURB also supported

³¹ Staff's R&R, p. 1.

³² Id., p. 80.

³³ Id., pp. 84-120.

³⁴ Response of Citizens' Utility Ratepayer Board to Staff's R&R, Docket No. 21-EKME-329-GIE (January 31, 2022)

³⁵ Id., p. 8.

Staff's recommendations for operational changes as set forth in the R&R.³⁶ However, CURB's response to Staff's R&R raised several issues regarding the Compliance Filing:

- a. CURB desired to engage with Evergy on the length of time for the recovery and for lower carrying charges on the amounts.
- b. CURB urged that before this matter is fully resolved, 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.
- c. CURB suggested the importance of a commitment from Evergy to work with CURB towards legislative authorization for low-income assistance tariffs in Kansas.³⁷

12. The parties met and discussed settlement in this matter on March 23, 2022, pursuant to the procedural schedule issued by the Commission.³⁸ The Settlement Agreement was borne out of those settlement discussions. It was signed by Evergy, CURB, KEPCo and Staff (together, "signatories").³⁹ The Kansas Industrial Consumers Group, Inc. ("KIC"), and the entities participating in this Docket through KIC (collectively, KIC); the Natural Gas Transportation Customer Coalition ("NGTCC"), and the entities participating in this Docket through NGTCC (collectively, NGTCC); Unified School District #259, Sedgwick County, Kansas ("Wichita Public

³⁶ Id.

³⁷ Id., p. 8.

³⁸ Patrick Orr, Testimony in Support of Non-Unanimous Settlement Agreement, p. 16, ll. 1-6 (April 29, 2022).

³⁹ Joint Motion for Approval of Non-Unanimous Stipulation and Agreement, Docket No. 21-EKME-329-GIE (April 22, 2022).

Schools"); and Coffeyville Resources Refining & Marketing, LLC ("Coffeyville") oppose the Settlement Agreement.⁴⁰

13. The Settlement Agreement principally addresses recovery from ratepayers of the costs related to the Winter Weather Event for Evergy Kansas Central, as well as the amount of offsetting benefits from off-system sales for Evergy Kansas Metro ("extraordinary Winter Weather Event costs").⁴¹ The treatment of ratepayers under both utilities is substantially similar. Starting with Evergy Kansas Central, the signatory parties acknowledge that Evergy Kansas Central's methodology of calculating its costs associated with the Winter Weather Event were appropriate and should be used to determine Evergy Kansas Central's final amount of extraordinary costs to be deferred to a regulatory asset account after all SPP resettlements have been completed.⁴² The signatories agree that Evergy Kansas Central shall recover the regulatory asset through its RECA over a two-year period, along with the implementation of its ACA that will be filed in March 2023 and will become effective in April 2023.⁴³ The signatory parties further agree that the regulatory asset shall bear interest at the annual rate of 1.00% beginning at the time the regulatory asset account began to accrue through March 2023 when Evergy Kansas Central begins to recover the regulatory asset from ratepayers. Once recovery through the RECA begins, there will be no carrying charge applied to unrecovered costs.⁴⁴

⁴⁰ Written Objection to the Non-Unanimous Settlement Agreement Filed on April 22, 2022 (hereinafter, "Written Objection"), Docket No. 21-EKME-329-GIE (April 22, 2022). The parties joining in this pleading will together be referred to herein as ("Opponents").

⁴¹ Joint Motion for Approval of Non-Unanimous Stipulation and Agreement, Docket No. 21-EKME-329-GIE (April 22, 2022).

⁴² Non-Unanimous Stipulation and Agreement attached to Joint Motion for Approval of Non-Unanimous Stipulation and Agreement, (hereinafter "Non-Unanimous Stipulation and Agreement"), Docket No. 21-EKME-329-GIE, pp. 7-10 (April 22, 2022).

⁴³ Non-Unanimous Stipulation and Agreement, p. 7 (April 22, 2022).

⁴⁴ *Id.*, p. 8.

14. Regarding Evergy Kansas Metro, the signatories acknowledge that Evergy Kansas Metro's methodology of calculating its costs associated with the Winter Weather Event and the offsetting benefits from off-system sales is appropriate and should be used to determine Evergy Kansas Metro's final amount to be deferred to a regulatory liability account after all SPP resettlements have been completed. That methodology was substantially similar to the methodology described above for Evergy Kansas Central. The signatory parties further agreed that Evergy Kansas Metro shall apply carrying charges to the calculation of the regulatory liability account at the annual rate of 1.00% beginning at the time the regulatory liability account began to accrue through March 2023 when Evergy Kansas Metro begins to return the regulatory liability to customers.⁴⁵ The signatories agreed that Evergy Kansas Metro shall return the regulatory liability over a one-year period starting with the implementation of its ACA that will become effective in April 2023.⁴⁶

15. As to the allocation issue, the signatories agree that Evergy Kansas Metro should not offset the regulatory liability to be returned to its ratepayers with any under-recovery caused by the difference in allocation methodologies used by Kansas and Missouri.⁴⁷ Instead, the signatories agree to defer the amounts associated with the allocation issue (as of February 28, 2022) into a regulatory asset relative to that issue, to be considered for recovery in Evergy Kansas Metro's upcoming 2023 rate case. However, the signatories agreed to meet and attempt to resolve the issue along with the Missouri Public Service Commission Staff.⁴⁸

⁴⁵ Id., p. 9.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id., pp. 9-10.

16. Furthermore, Evergy agrees to work with CURB concerning notices pertaining to the resolution of this issue as regarding residential and small commercial ratepayers.⁴⁹ Further, Evergy agreed to work with CURB on statutory language which would allow low-income rate assistance.⁵⁰ The signatories agreed to the operation-related recommendations that Staff made in its R&R, except four of them that are outlined in the Settlement Agreement.⁵¹

17. On April 29, 2022, the Opponents filed a Written Objection to the Non-Unanimous Settlement Agreement Filed on April 22, 2022.⁵² In that pleading, they allege that the Non-Unanimous Settlement Agreement is unjust and unreasonable because it does not “provide that payment of extraordinary costs will be made by those customer rate classes that caused the extraordinary rate costs to be incurred and benefitted from those extraordinary costs, during the period of February 12 - 16, 2021.”⁵³

18. Darrin Ives,⁵⁴ Justin Grady,⁵⁵ and Patrick Orr⁵⁶ have filed testimony in support of the Settlement Agreement. Mike Gorman has filed testimony in opposition.⁵⁷ This docket was heard on May 11, 2022, before the Commission.

⁴⁹ Id. p. 13.

⁵⁰ Id.

⁵¹ Id., pp. 10-13.

⁵² Written Objection, Docket No. 21-EMME-329-GIE (April 29, 2022).

⁵³ Id., p. 2.

⁵⁴ Darrin R. Ives, Testimony in Support of Settlement, Docket No. 21-EKME-329-GIE (April 29, 2022).

⁵⁵ Justin T. Grady, Testimony in Support of Settlement Agreement, Docket No. 21-EKME-329-GIE (April 29, 2022).

⁵⁶ Patrick Orr, Testimony in Support of Non-Unanimous Settlement Agreement, Docket No. 21-EKME-329-GIE (April 29, 2022).

⁵⁷ Michael P. Gorman, Testimony and Exhibits in Opposition to Non-Unanimous Settlement Agreement, Docket No. 21-EKME-329-GIE (April 29, 2022).

Statement of Issues

19. The Commission has historically considered five factors in determining whether to approve or disapprove a non-unanimous settlement agreement.⁵⁸ The Opponents dispute one of those factors, namely whether the Settlement Agreement's contemplated use of the RECA to recover extraordinary Winter Weather Event costs will result in just and reasonable rates. In connection with use of the RECA, whether the public interest is met by the Settlement Agreement and whether substantial competent evidence supports the Settlement Agreement are additional factors that are pertinent. Therefore, CURB will address these three factors in the following issues:

- A. Does the Settlement Agreement result in unlawful or unreasonable rates because it provides that the extraordinary Winter Weather Event costs shall be recovered through the RECA versus the mechanism proposed by the Opponents?
- B. Does recovery of the extraordinary Winter Weather Event costs through the RECA satisfy the public interest in this docket?
- C. Does substantial competent evidence support recovery of the extraordinary Winter Weather Event costs through the RECA when considered against the record as a whole?

Because the other two factors considered by the Commission in connection with non-unanimous settlement agreements are not disputed here, discussion of them will be relegated to Appendix A. In addition, the Opponents do not appear to dispute the Settlement Agreement with respect to Evergy Kansas Metro. However, the discussion herein concerning the five factors applies to Evergy Kansas Metro as well as Evergy Kansas Central. For ease of reference, "Evergy" herein shall include both Evergy Kansas Central and Evergy Kansas Metro, collectively.

⁵⁸)The Commission examines the following five factors:

- 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 will result in just and reasonable rates;
- d. Whether the settlement conforms to applicable law; and
- e. Whether the results of the settlement are in the public interest.

Order Approving Contested Settlement Agreement, Docket No. 08-ATMG-280-RTS (May 12, 2008).

Arguments and Authorities

A. The Settlement Agreement does not result in unlawful or unreasonable rates by providing for the recovery of extraordinary Winter Weather Event costs through the RECA versus the mechanism proposed by the Opponents.

20. As shown in the three subsections below, the Settlement Agreement does not result in unlawful or unreasonable rates by providing for the recovery of extraordinary Winter Weather Event costs through the RECA versus the mechanism proposed by the Opponents. First, the RECA is a reasonable means by which Evergy can recover extraordinary costs and distribute net benefits arising out of Winter Storm Uri. Second, the Opponents' proposal to allocate extraordinary Winter Weather Event costs incurred by Evergy Kansas Central by actual kWh usage among classes from February 12 through February 16, 2021, is unreasonable. Third, Kansas law indicates that the RECA should be used to recover fuel costs and distribute net benefits (in the case of Evergy Kansas Metro), associated with Winter Storm Uri.

a) The RECA is a reasonable means by which Evergy can recover extraordinary Winter Weather Event costs.

21. As noted by Staff witness Justin Grady, the reasonableness standard governs whether the Commission should approve the RECA for Evergy to deal with extraordinary Winter Weather Event costs (recovery of costs with Evergy Kansas Central and payment of net benefits with Evergy Kansas Metro).⁵⁹ In these regards, it is important to note that the reasonableness standard requires only that a rational basis supports the proposed use of the RECA. The reasonableness standard does not require that use of the RECA is the best method of recovery or

⁵⁹ Transcript of Proceedings, p 246, ll. 1-19, Docket No. 21-EKME-329-GIE (May 11, 2022).

even a preferred method of recovery. It only requires that use of the RECA is reasonable under the circumstances.

22. CURB believes that use of the RECA by Evergy to deal with the extraordinary Winter Weather Event costs meets the reasonableness standard. The RECA is the established tariff in this case. Moreover, all Evergy ratepayers had notice of this tariff with respect to Winter Storm Uri. The RECA treats all ratepayers fairly in consideration of the fact that conservation efforts took place among all classes but every class had customers that were unable or unwilling to conserve. These and other aspects showing the reasonableness of the RECA are discussed below.

23. The RECA is the established tariff in this case. It is intended to be used to recover fuel costs and purchased power costs.⁶⁰ In this case, the extraordinary Winter Weather Event costs, except related and minimal operations and maintenance costs, are fuel costs and purchased power costs.⁶¹ Therefore, the RECA is the permissible method for Evergy to recover the extraordinary Winter Weather Event costs. Importantly, all Evergy ratepayers had notice that the RECA was applicable with respect to the extraordinary Winter Weather Event costs in this docket and could govern themselves accordingly. Tariffs have the force and effect of law.

24. There is no provision in the RECA that provides for an exception to its application. The RECA tariff specifies that it applies “To all bills rendered by Company (Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. Company) for utility service, permitting recovery of fuel cost.”⁶² In fact, CURB is unaware of any time Evergy has lawfully been disallowed recovery

⁶⁰ Order on Petitions for Reconsideration and Clarification, Docket No. 05-WSEE-981-RTS, ¶ 9 (February 13, 2006).

⁶¹ Darrin R. Ives, Testimony in Support of Settlement, Docket No. 21-EKME-329-GIE, p. 15, ll. 12-16 (April 29, 2022).

⁶² Schedule RECA, Sheet 1, Docket No. 20-EKCE-377-TAR (May 15, 2020).

of fuel costs through the RECA. There is nothing in the RECA that suggests that it is not applicable in times of constraint. Therefore, to order Evergy to recover extraordinary Winter Weather Event costs by any means other than the RECA would be to create an exception where none exists.

25. The RECA is a practical way to allow Evergy to recover changes in fuel costs, especially in times when fuel prices are volatile. Prior to the reestablishment of the RECA in Docket No. 05-WSEE-981-TAR, the Commission had allowed Evergy Kansas Central (then Westar) to base its fuel costs on the latest forecasts of what those costs would be for the coming three years.⁶³ However, the Commission noted that when fuel prices are volatile, ratepayers could pay rates in excess of current costs. Moreover, the Commission noted that the only way to bring current rates back in line with current costs would be through expensive rate cases which are assessed to and paid by ratepayers.⁶⁴ Essentially, the RECA contemplates that changes in fuel costs, calculated on a quarterly basis and cumulatively balanced on an annual basis, shall be charged prospectively to all ratepayers on the basis of their use. In short, the RECA was purposefully designed to deal with volatile fuel prices and purchased power costs.

26. Indeed, the Commission has employed the RECA for over the past 15 years as a reasonable method of recovery of Evergy's fuel costs. In these regards, the RECA has been used consistently, notwithstanding the fact price volatility could result in some ratepayers paying more than the actual costs of the fuel that they caused Evergy to incur, and some ratepayers paying less. For example, in the height of summer, some residential customers could use more electricity to cool their homes, perhaps spiking fuel costs as a result of the increased demand. Nonetheless, fuel

⁶³ Order on Petitions for Reconsideration and Clarification, Docket No. 05-WSEE-981-RTS, ¶ 11 (February 13, 2006).

⁶⁴ *Id.*

costs through the RECA are charged prospectively with the result that cost recovery may not follow actual fuel use. As noted by Mr. Grady during the hearing, “The normal course of business is just to socialize these [fuel] costs through the RECA.”⁶⁵

27. In fact, in Docket No. 22-EKCE-447-ACA (22-447 Docket), Evergy proposes to recover approximately \$171.7 million in fuel costs and power purchase adjustments through the RECA. All of the parties in this docket agreed to allow Evergy to recover these extraordinary fuel costs and purchase power adjustments through the RECA. Thus, with Commission approval, the RECA will be used to recover very large fuel costs. It bears noting that these costs will be socialized in the same manner as the RECA has always provided. No party proposes to require that a cost-of-service study be conducted and that costs be allocated among classes with respect to the 22-447 Docket. It is hard to understand why recovering costs in the 22-447 Docket is reasonable, but recovery of extraordinary Winter Weather Event costs is unreasonable.

28. From a legal standpoint, the RECA is the only fuel cost recovery method for which notice was provided to ratepayers in this docket. Staff Witness Justin Grady noted the lack of notice provided to ratepayers that the Commission could require Evergy to bill fuel costs using a special allocation methodology.⁶⁶ The RECA has been used for several years to recover fuel costs. Customers who believed that the Commission would be consistent in utilizing the RECA to recover extraordinary Winter Weather Event costs may rightly wonder why they were not notified of a different manner of recovery that would significantly increase their costs prior to incurring the costs in the first place. The lack of notice could be devastating to low-income ratepayers.

⁶⁵ Transcript of Proceedings, p 249, ll. 1-3. Docket No. 21-EKME-329-GIE (May 11, 2022).

⁶⁶ Transcript of Proceedings, p 256, ll. 10-23. Docket No. 21-EKME-329-GIE (May 11, 2022).

29. It is also important to note Evergy's ability to reach residential and small commercial ratepayers immediately prior to and during Winter Storm Uri significantly differed from the methods that were available for industrial ratepayers. In the case of the latter, Evergy had specific company agents who reached out to the individual industrial ratepayers to work with them on reducing kWh usage.⁶⁷ This detailed and personalized contact was not possible for residential and small commercial ratepayers.⁶⁸ Evergy did its best to reach these customers through media releases and social media.⁶⁹ However, the breadth and severity of Winter Storm Uri on the Evergy system would not have been readily apparent to residential consumers, and it would be unfair to penalize residential customers retroactively in light of the relative way in which information about the need for conservation during the Winter Weather Event was provided to them.

30. The Opponents essentially argue that the RECA is unreasonable because it does not allocate Winter Storm Uri costs in the case of Evergy Kansas Central on the basis of which classes caused those costs to be incurred.⁷⁰ Ignoring the fact that the RECA, as it is purposefully and lawfully structured, is not designed to retroactively allocate costs on the basis of past kWh usage, if the Opponents' argument is sustained, then net benefits arising from Evergy Kansas Metro should also be allocated in a similar fashion, although how to accomplish the same is uncertain. To attempt to bypass the RECA in this case will require considerable work and hearings to afford due process, with the result that it may not be any fairer to individual ratepayers that chose to conserve in each class than the use of the RECA as contemplated by Kansas law. In short, the

⁶⁷ Transcript of Proceedings, pp. 99, ll. 8 – p. 100, ll. 23. Docket No. 21-EKME-329-GIE (May 11, 2022).

⁶⁸ Transcript of Proceedings, pp. 99, ll. 8-20. Docket No. 21-EKME-329-GIE (May 11, 2022).

⁶⁹ Id.

⁷⁰ Written Objection, Docket No. 21-EMME-329-GIE (April 29, 2022).

RECA is contemplated as the practical and fair way of dealing with changes in fuel costs, such as those associated with Winter Storm Uri.

31. CURB is aware that with advanced meter infrastructure in the Evergy system today, the Commission could desire to revamp the RECA to spread costs on the basis of cost causation throughout Evergy's service territory. However, CURB suggests that this change should only occur, if at all, after an investigation is conducted to determine the costs and effects of such a change. It is foreseeable that such a change could result in larger than normal unrecovered arrearages and other unintended consequences such as low-income customers turning off their heat as a last resort to mitigate bill impacts, leading to damage and perhaps death during periods of extraordinary weather. Without a study and formal and systematic change to the RECA, after notice and hearing, a change in the method of cost recovery from the RECA to some other system would lead to uncertainty. More importantly, to make that change retroactively in this docket because some parties assert that it should not apply under the circumstances would result in ratepayers not knowing when the next time that the RECA will be disregarded. It is important to reiterate that, while the RECA has never been perfect, it has been long since approved by the Commission as a fair and stable way for Evergy to recover volatile fuel costs. Recovery of fuel costs consistently through the RECA, including this docket, provides stability to ratepayers.

32. Moreover, if the Commission simply decides to ignore the applicable tariff in this docket, the uncertainty with respect to how fuel costs will be recovered in the midst of the next huge winter storm (or in the midst of the next prolonged heat wave) may have unintended consequences. With such uncertainty, ratepayers will not know how Kwh usage will be handled by the Commission. CURB believes that if the Commission desires to revisit RECA as the method

to deal with fuel costs, any change should be prospectively made for all events and after cautious study to avoid unintended consequences and after low-income rate relief is in place.

33. The Opponents also seem to imply that the Commission’s Emergency Order and the Governors’ Declaration of Emergency envisioned cost-based allocation of Winter Storm Uri costs.⁷¹ However, as noted by Carly Masenthin for the Staff, there is no reasonable basis for the Opponents’ assertion. As she stated, “the implication in the opposing parties’ filed statement that Governor Kelly and the Commissioners somehow guaranteed or promised benefit outside of general lower cost is simply untrue.”⁷²

34. In CURB’s view, the main thrust of the Commission’s Emergency Order was to ensure reliability throughout Evergy’s system. All customer classes contributed to this important goal and everyone benefited from system reliability. When rolling outages occurred, they occurred throughout all rate classes.⁷³ No one class materially benefited more than the others from the fact that Evergy’s system remained operational throughout the Winter Storm. Thus, system reliability is a reasonable basis for broader allocation of Winter Storm Uri costs.

35. The RECA is also reasonable in that it works like pricing mechanisms in the competitive marketplace. As the RECA is structured, all ratepayers have the opportunity to adjust their usage in light of energy prices after the extraordinary Winter Weather event costs are added. This is similar to how pricing works in the competitive sector. For example, if transportation costs increase the costs of producing a product sold in the marketplace beyond the cost included in the price, the producer increases their price prospectively to make up for the shortfall (the producer

⁷¹ Id.

⁷² Transcript of Proceedings, p. 67, ll. 10 -14, Docket No. 21-EKME-329-GIE (May 11, 2022).

⁷³ Transcript of Proceedings, p. 95, l. 22 – p. 96, l. 3, Docket No. 21-EKME-329-GIE (May 11, 2022).

does not go back to its customers and ask for more money on the products already purchased). Thereafter, consumers adjust their purchases based upon the new costs. In this respect, the RECA adequately provides a price signal to ratepayers when fuel prices are high. The Commission has found this aspect of RECA to be significant with respect to price signals and conservation.⁷⁴

36. As testified to by Staff Witness Justin Grady, this case is different than the Winter Storm Uri cases for gas utilities.⁷⁵ The impact of storm costs upon Evergy is low relative to the gas utilities. Spreading Winter Storm Uri costs through the RECA will result in the lower costs to recover extraordinary Winter Weather Event costs.⁷⁶ As Mr. Grady noted, Evergy's costs do not have the materiality and magnitude experienced in other cases.⁷⁷ Therefore, in his opinion, the RECA is a reasonable way to recover these extraordinary costs from all Evergy ratepayers.⁷⁸ Moreover, the RECA treats all ratepayers equally, which reasonably contemplates the emergency circumstances and responses during the Winter Weather Event.⁷⁹ Given system reliability afforded to all ratepayers' conservation efforts, it is fair and reasonable.

b) Allocating extraordinary Winter Weather Event costs among various rate classes on the basis of use during the period from February 12 through February 16, 2021 would result in unreasonable rates.

37. The Opponents of the Settlement Agreement argue that the Commission should allocate the extraordinary Winter Weather Event costs upon the basis of class kWh consumption

⁷⁴ Order on Petitions for Reconsideration and Clarification, Docket No. 05-WSEE-981-RTS, ¶ 12 (February 13, 2006).

⁷⁵ Justin T. Grady, Testimony in Support of Settlement Agreement, p. 27, l. 11 – p. 28, l. 9. Docket No. 21-EKME-329-GIE (April 29, 2022).

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Transcript of Proceedings, p. 266, l. 3- p. 267, l. 9, Docket No. 21-EKME-329-GIE (May 11, 2022).

during the period from February 12 through February 16, 2021.⁸⁰ They suggest that this period is the most appropriate period to base cost-causation largely on the assertion that Evergy defined Winter Storm Uri “as a major coast to coast storm that spread snowfall and damaging ice from the northwest into the South, Midwest, and Northeast, from February 12 through 16, 2021.”⁸¹ They suggest that demands on the system were higher during that period than it was through the rest of the winter event period from February 9 through February 20, 2021 which was designated by SPP as the Winter Storm Event.⁸²

38. The basis urged by the Opponents of the Settlement Agreement ignores facts that show the unreasonableness of their proposal. Residential class electric usage during the period from February 12 through February 16, 2021 was clearly not the cause of the high energy prices incurred by Evergy throughout Winter Storm Uri. Staff’s R&R goes into elaborate detail as to the causes of high energy prices throughout the SPP region.⁸³ It details the freezing weather conditions that limited supply, the price spikes that occurred in the natural gas market, Evergy’s supply mix, among several other factors.⁸⁴ What is notoriously missing from Staff’s assessment of the causes of the high energy prices incurred by Evergy throughout the entire month of February is a finding that it was caused by residential demand during the period of February 12 through February 16, 2021.

⁸⁰ Michael P. Gorman, Testimony and Exhibits in Opposition to Non-Unanimous Settlement Agreement, p. 4, ll. 7-9, Docket No. 21-EKME-329-GIE (April 29, 2022).

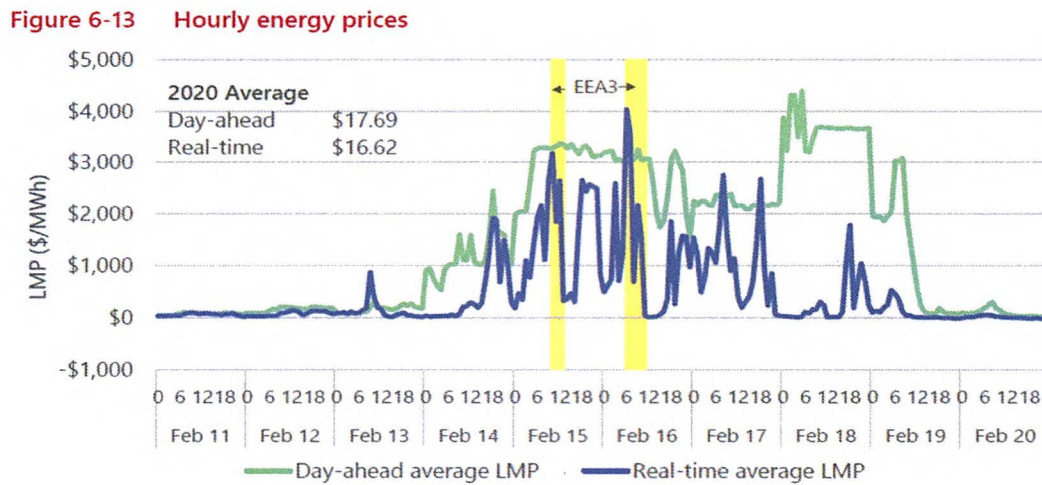
⁸¹ Transcript of Proceedings, pp. 198, l. 16 – p. 199, l. 2; p. 215, ol. 19 – p. 216, l. 5. Docket No. 21-EKME-329-GIE (May 11, 2022).

⁸² Transcript of Proceedings, pp. 216, ll. 5-16.. Docket No. 21-EKME-329-GIE (May 11, 2022).

⁸³ Staff’s R&R, pp. 10-77.

⁸⁴ Id.

39. The Opponents' theory does not correspond with the energy prices suffered by Evergy during Winter Storm Uri. In these regards, it is telling to examine the chart of energy prices that is contained in Staff's R&R in connection with the Opponents' theory. The pertinent chart is pictured below:



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This chart shows that hourly energy prices remained relatively low during the period from February 12 through February 13. Energy prices began to spike on February 14 and continued to spike through February 19, 2021. It is difficult to comprehend how demand during the period from February 12 through February 14 resulted in the price spikes during February 17 through February 19, 2021. There is nothing in the Opponents' testimony that adequately explains why they should not be responsible for their share of high fuel prices beyond those incurred from February 12 through February 16, 2021.

40. The Opponents' theory also ignores the fact that the Governor's Declaration of Emergency did not occur until February 14, 2021, and the Commission did not issue its Emergency

⁸⁵ Staff's R&R, p 55.

Order until February 15, 2021. Prior to those governmental issuances, residential consumers would not likely have had notice of the need to conserve energy in order to maintain reliability during Winter Storm Uri. Despite the Opponents' emphasis on these declarations, it does not seem fair to assess costs upon the residential class when it had no Commission notice prior to February 15, 2021, that it should conserve energy to avoid system instability.

41. In addition, the period from February 12 through February 16, 2021, is marked by a weekend followed by a national holiday. Evergy Exhibit 1 shows that the industrial class typically uses less energy on weekends than on workdays. As many residential consumers were home during the weekend and the national holiday, rather than at work or at school, it is not surprising that their usage was relatively high. Essentially, the Opponents' suggested period of time upon which to allocate extraordinary Winter Weather Event costs is the highest use period for residential consumers and the lowest for the industrial class. Essentially, the Opponents' position unfairly and arbitrarily ignores usage of the industrial class throughout the entirety of Winter Storm Uri.

42. That is significant in view of the manner in which Evergy Kansas Central calculated extraordinary Winter Weather Event costs. Evergy calculated a three-year historical average of its fuel and purchased power costs for February using 2018 through 2020 and deducted that average from the costs incurred in February 2021.⁸⁶ That approach is reasonable given the fact that one cannot attribute the extraordinary Winter Weather Event costs of \$119 million to the incremental usage that occurred during the event.⁸⁷ Rather, included in the \$119 million figure are costs

⁸⁶ Compliance Report of Evergy Kansas Metro and Evergy Kansas Central Regarding Costs Incurred During Winter Weather Event, p. 5 (July 2, 2021).

⁸⁷ Transcript of Proceedings, pp. 126, l. 15 – p. 127, l. 7. Docket No. 21-EKME-329-GIE (May 11, 2022).

associated with normal usage that was more costly because of market conditions.⁸⁸ Thus, those that had higher and lower usage during Winter Storm Uri have had their bills impacted already by volumetric differences.⁸⁹ The Opponents' proposal to allocate costs simply upon the basis of class usage during the period from February 12 through February 16, 2021, is unreasonable in view of Energy's calculation of extraordinary Winter Weather Event costs.

43. Yet, at the same time, the Opponents suggest that it would be proper to exclude the use of certain special contract customers from the allocation of extraordinary Winter Weather Event costs.⁹⁰ To exclude usage of these special contract customers would result in assigning costs to residential class that they did not incur. If this is truly an event that calls for single-issue ratemaking to assign fuel costs based on actual usage, then it does not seem fair to exclude ratepayers that caused cost to be incurred during the event, regardless of a pre-existing arrangement.

44. It is also important to note that not every single member of any class curtailed or conserved energy during Winter Storm Uri, although all classes contributed to conservation efforts. In fact, within the industrial class there were customers that either were unable or unwilling to curtail energy during Winter Storm Uri.⁹¹ Some of them did not curtail to the extent that their contract called for.⁹² Importantly, under the allocation proposed by the Opponents, these customers will receive a lower energy bill even though they did not curtail energy during Winter Storm Uri.⁹³

⁸⁸ Id.

⁸⁹ Transcript of Proceedings, p. 128, ll. 6-14, Docket No. 21-EKME-329-GIE (May 11, 2022).

⁹⁰ Transcript of Proceedings, p. 219 l. 18, - p. 220 l. 5, Docket No. 21-EKME-329-GIE (May 11, 2022).

⁹¹ Transcript of Proceedings, p. 186, l. 22 – p. 187, l. 7. Docket No. 21-EKME-329-GIE (May 11, 2022)

⁹²; Transcript of Proceedings, p. 132, l. 24 – p. 134, l. 10, Docket No. 21-EKME-329-GIE (May 11, 2022).

⁹³ Transcript of Proceedings, p. 134, l. 11 – p. 135 l. 18, Docket No. 21-EKME-329-GIE (May 11, 2022).

45. The allocation proposed by the Opponents will result in additional time to calculate and review and, additionally, would invalidate the Settlement Agreement which may result in loss of the favorable interest rate currently offered by Evergy under the Settlement Agreement.⁹⁴ It will also require additional costs to implement a new rider.⁹⁵ These costs will be incurred by ratepayers. Moreover, the presence of an additional rider on customer's bills could lead to confusion. In short, the allocation proposed by the Opponents, at a minimum, will result in additional costs and possible confusion to be suffered by customers, just to arrive at a methodology that may not fairly allocate the extraordinary Winter Weather Event costs among all customers.

c) Kansas law suggests the use of RECA for the recovery of fuel costs in this docket.

46. When the RECA is applicable, Kansas law suggests that the Commission cannot create another recovery mechanism. Kansas case law and statutes indicate that deviation from the RECA in this case would violate the filed rate doctrine. In Kansas, the filed rate doctrine is codified in K.S.A. 66-109. Under this statute, utilities cannot “charge, demand, collect or receive a greater or less compensation ... than is specified in the printed schedules or classifications” required by the Commission.⁹⁶ The filed rate doctrine prohibits agencies from *retroactively* substituting a new rate, even if the prior approved rate was unreasonably high or low.⁹⁷

47. In this case, the RECA is the applicable filed rate and it is requested by Evergy to be used to recover extraordinary Winter Weather Event costs. Even if the Commission determines that there may be a fairer way to allocate costs, CURB suggests that in this case the RECA should

⁹⁴ Transcript of Proceedings, p. 137, l. 3 – p 138 l. 5, Docket No. 21-EKME-329-GIE (May 11, 2022).

⁹⁵ Transcript of Proceedings, p. 169, l. 14 – p 170 l. 11, Docket No. 21-EKME-329-GIE (May 11, 2022).

⁹⁶ *SWKI-Seward Southwest Inc., v. Kansas Corporation Commission*, 408 P.3d 1006 (2018)

⁹⁷ *Id.*

be followed. As discussed earlier, the RECA is a reasonable means by which Evergy can recover extraordinary Winter Weather Event costs. As indicated above, it is applicable to all fuel costs with no exception.

48. *Kansas Gas and Electric Co., v. State Corporation Commission of the State of Kansas*⁹⁸ is instructive on this point. In that case, Wolf Creek began a refueling outage scheduled to last 49 days, but which actually lasted 101 days. Subsequent thereto, another unscheduled outage occurred on January 21, 1988, and lasted another 26 days. The Commission began a general investigation into excess energy costs incurred during the 1987–1988 extended outages at Wolf Creek, ordering KG&E to show cause to why KG&E should be allowed to retain \$6,415,582 of excess costs charged to Kansas ratepayers during the unscheduled outage periods. After a hearing, the Commission found imprudence and mismanagement during the 1987–1988 outages in question and ordered KG&E to refund the excess costs pursuant to KCC Staff’s calculation of refund rather than relying on KG&E’s RECA to determine the refund. The KCC Staff based its calculation on actual fuel mix data collected over a three-year period rather than the RECA.

49. KG&E appealed, asserting that the RECA was the applicable tariff and the Commission had no authority to disregard it. The appeal was heard by the Kansas Court of Appeals. The Court stated that “a refund, if warranted, should have been calculated under existing tariffs.”⁹⁹ It held that the Commission could not deviate from the RECA on the basis that the Commission determined the weighted three-year average more accurately reflected KG&E’s actual fuel mix than the alternative fuel mix ratio in the RECA.

⁹⁸ *Kansas Gas and Electric Co., v. State Corporation Commission of the State of Kansas*, 14 Kan. App. 527, 794 P. 2d 1165 (1990).

⁹⁹ *Id.*, p. 537.

50. In this case, Evergy has proposed to recover extraordinary Winter Weather Event costs through the applicable tariff. The Opponents hope to entice the Commission to ignore that tariff in favor of a different allocation plan. According to Evergy Witness Ives, the Opponents' plan poses benefits to themselves.¹⁰⁰ When the Commission views the relative benefits of each proposal, CURB urges the Commission to follow the Kansas filed rate doctrine and approve of the Settlement Agreement's contemplated use of the RECA.

51. Additionally, to follow the Opponents' proposal would subject Kansas ratepayers to retroactive rates. In addition to its statutory basis, retroactive ratemaking has a constitutional basis. In other words, ratepayers have a vested right in the application of rates until they are prospectively changed pursuant to Kansas law. As the Kansas Supreme Court stated in *State, ex rel, Boynton v. Public Service Commission*:

“[W]hen a rate has been the subject of a deliberate inquiry in which the carriers, the shippers and the commission's own experts have participated, ... any rate so prescribed by the commission and put into effect by the carriers may be confidently collected and retained by them ..., without misgiving that at some future time a further hearing of the commission may be had and more evidence taken and a different conclusion reached, and those rates condemned as unreasonable.... Such a method of regulating public utilities has none of the earmarks of due process of law nor the simplest notions of justice...”¹⁰¹

Ratepayers have the right to insist upon continuity of rates until they are changed prospectively.

52. CURB believes that the Commission took particular note of the concerns of Staff witness Justin Grady in these regards. Mr. Grady testified about his concern that the residential

¹⁰⁰ Transcript of Proceedings, p. 108, ll. 4-9, Docket No. 21-EKME-329-GIE (May 11, 2022).

¹⁰¹ *Kansas Gas & Elec. Co., 14 Kan. App. 2d at 533 (quoting State ex rel. Boynton v. Public Serv. Comm'n, 135 Kan. 491, 504, 11 P.2d 999 [1932])*.

class did not receive any type of notice that the Commission intended to look at any cost allocation method other than the applicable tariff.¹⁰² CURB believes it is fair to state that, not only are constitutional rights involved, but fairness dictates that residential ratepayers be given prospective notice that their actions will result in a different allocation so that they can respond accordingly.

B. The results of the Settlement Agreement are in the public interest.

53. CURB believes that the public interest in this docket was expressed by the Commission in its Emergency Order. Recognizing the danger associated with Winter Storm Uri, the Commission required jurisdictional utilities to do what was necessary to ensure that utility service was maintained throughout Kansas during the Winter Weather Event. In addition, the Commission ordered utilities to defer costs into a regulatory account and provide a plan to minimize costs “over a reasonable period of time.” The Commission also issued a press release, calling on Kansans to do their best to conserve. Essentially, the Commission was calling on all Kansans to do what they could for the common good, principally maintaining utility service reliability.

54. One telling aspect of the Commission’s Emergency Order is its requirement for utilities to ensure that non-jurisdictional customers were protected during Winter Storm Uri. In particular, the Commission required jurisdictional utilities to take steps to ensure that customers of interconnected, non-jurisdictional Kansas utilities continued to receive service during Winter Storm Uri.¹⁰³ This aspect of the Commission’s Emergency Order demonstrates the Commission’s recognition of the need to socialize the response to Winter Storm Uri, ensuring that all Kansans

¹⁰² Transcript of Proceedings, p. 256, ll. 10 - 23, Docket No. 21-EKME-329-GIE (May 11, 2022).

¹⁰³ See *Emergency Order*, ¶1, Docket No. 21-GIMX-303-MIS (Feb. 15, 2021).

were wholly served. As Commissioner Duffy stated in the Commission Open Meeting when the Emergency Order was adopted, “We’re all in this together.”¹⁰⁴

55. In short, it is clear to CURB that the Commission’s Emergency Order called upon Kansans to do what they could to serve the common good. In a nutshell, that is the public interest in this docket. It is service for the common good that raises the American ideal to its highest platitude. Service for the good of others is interwoven into the fabric of good citizenship.

56. Americans, and in particular, Kansans are called to act in selfless ways as citizens. It is not in the public interest to act only in self-interest in cases of emergency. In CURB’s view, that aspect of American mores underlays the Commission’s Emergency Order and its call to action for utilities and all ratepayers. The Commission called for conservation, not on the basis of cost-causer/cost-payer, but to ensure reliability through the storm; and the reliability that resulted benefited all classes.

57. Thus, the common good in this particular docket is the continued reliability of utility service. It was clearly the highest priority of the Commission, as it should have been. If utility service had been discontinued, damage to property was a certainty and death of fellow Kansans a likelihood. System cost, while important, was secondary. And in those regards, the Commission did not ask utilities to allocate costs among customers based upon usage; it asked for utilities to attempt to minimize the bill impact to consumers by spreading costs over a reasonable period. Evergy did what the Commission asked it to do.

¹⁰⁴ Notice of Filing of YouTube Site and Transcript of the Special Meeting of the Kansas Corporation Commission Dated February 15, 2021, p. 12. (SD: 45:20).

58. The Settlement Agreement satisfies the public interest as it is contained in this matter. There is no dispute that Evergy performed well, albeit not perfectly, in meeting the Commission's order to ensure that utility service was maintained throughout Kansas during Winter Storm Uri. It deferred its costs in doing so and Staff and CURB have found those costs to be prudent. Most significantly, Evergy has spread the pertinent costs over a reasonable period, and agreed to carry these costs at an interest rate well below its costs of capital. The rate impact on Evergy's customers is the least impactful of any Kansas utility. Importantly, Evergy has agreed to carry Winter Storm Uri costs for two years at no additional carrying charge. That agreement shows sacrifice for the common good, but also provides a significant benefit to Kansas ratepayers from all classes.

59. With respect to recovery of the extraordinary Winter Weather Event costs through the RECA, it is vital that the Commission recognize that it is the method suggested by Evergy and found reasonable by Staff, CURB and KEPCo. The RECA need not be the best method of recovery, it only needs to be a reasonable method of recovery. Moreover, it is important to note that the low carrying costs that are included in the Settlement Agreement are interdependent with the RECA. To lose one may be to lose the other. Those low rates are in the public interest.

60. As shown above, the RECA is a reasonable method to recover extraordinary Winter Weather Event costs. It is the applicable tariff. The Commission asked Evergy to file a plan that minimized costs for ratepayers over a reasonable period. Evergy did as it was asked. It is requesting to use the applicable tariff to do so. There was no notice in the Commission's Emergency Order that extraordinary Winter Weather Event costs would be paid on a cost-causer basis.

61. While it does socialize costs, fuel costs in Kansas have been socialized through the RECA for over a decade. Socialization of fuel costs is entirely appropriate in view of the fact that the Commission recognized the need for a socialized approach to the oncoming danger of Winter Storm Uri. The Commission called upon Kansans to do what they could to help maintain reliability, not out of self-interest, but for the common good. Reliability was indeed maintained during Winter Storm Uri, and that is an appropriate basis for spreading costs broadly.

62. Socialization for reliability is not uncommon in utility regulations. Costs necessary to restore damage from tornadoes, floods or other broad storms are customarily socialized. Tree trimming and other preventive maintenance costs are spread among all ratepayers. To CURB's knowledge, the Commission does not require only towns or neighborhoods struck by natural disasters (including high winds) to pay exclusively for restoration of their service. Socializing costs associated with maintaining reliability through Winter Storm Uri, recognized as a natural disaster, should not be viewed as an outlier.

63. In this case, socialization may help low-income customers to be able to pay their bills. In CURB's view, the common good requires all of us to be mindful of the plight of those who are energy burdened. Industrial, commercial and other ratepayers can spread costs, including utility costs, to their own customers through prospective product pricing. Residential ratepayers, specifically low- and fixed-income, are less elastic in absorbing costs or accessing additional financial resources to bridge such gaps. Low-income ratepayers are sometimes forced to sacrifice food, medicine and other necessities to pay their bills. However, from a more practical standpoint, higher bills for low-income residents could lead to higher arrearages, raising costs for all ratepayers through socialized bad debt expenses.

64. The public interest is also met by consistently following the applicable tariff. Tariffs function as the rules that ratepayers and the utilities are expected to follow and rely upon for the provision of utility services and to prevent ad hoc changes to what the customer pays for services already rendered. For that reason, Kansas applies the filed rate doctrine and provides constitutional protection from retroactive ratemaking. If the Commission allows an exception to the applicable tariff in this case, consumers will justly wonder when the next exception may occur, regardless of whether the Commission warns certain ratepayers to expect an exception for the next time. Even in the best circumstances, reduced confidence in the ratemaking process undermines the value that consumers receive by allowing a regulated monopoly to replace a competitive market for a necessary public service.

65. The evidence shows that the public interest is met by the Settlement Agreement since it recognizes the adequacy of service provided by Evergy during Winter Storm Uri at just and reasonable rates. The Agreement promotes the public interest since it proposes a reasonable manner for Evergy to recover fuel costs associated with Winter Storm Uri over a reasonable time period. For the reasons set forth above, CURB believes the Settlement Agreement meets the public interest.

C. The Settlement Agreement is supported by substantial competent evidence.

66. Substantial competent evidence is that evidence “which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved.” As will be shown below, the testimony of the several witnesses constitutes substantial competent evidence in light of the record as a whole that would justify the Commission’s approval of the Settlement Agreement.

67. The evidence in the record as a whole supports a determination that Evergy prudently incurred the extraordinary Winter Weather Event costs. The Commission has defined “prudence” as “how reasonable persons, with the skill and knowledge attributed to reasonable utility managers, should have been expected to cope with the circumstances and problems.”¹⁰⁵ Prudence does not require perfection.

68. CURB witness Patrick Orr testified that Winter Storm Uri brought rare and extreme circumstances that Evergy had to encounter to provide continuous service to its customer.¹⁰⁶ Staff’s R&R, attached to the testimony of Justin Grady in support of the Settlement Agreement details the severity and length of Winter Storm Uri and its effect upon utilities in the SPP, including Evergy.¹⁰⁷ The testimony of Darrin Ives, which was attached to the Compliance Report, further details how Winter Storm Uri affected Evergy’s ability to maintain service throughout the storm and how the storm resulted in increased fuel and purchased power costs.¹⁰⁸ Ronald Klote testified as to the method by which Evergy calculated the extraordinary Winter Weather Event costs and the method by which Evergy initially proposed to recover those costs from the ratepayers.

69. The record contains both Staff’s R&R and CURB’s response to Staff’s R&R, both of which conclude that Evergy performed well in light of Winter Storm Uri to maintain service in Kansas and that the costs incurred in so performing were not imprudent. Staff’s R&R and CURB’s response to Staff’s R&R both raised questions concerning the interest rate at which the extraordinary Winter Weather Event costs would be carried by Evergy until recovered, along with

¹⁰⁵ See *Kansas Gas and Electric Co. v. State Corporation Commission of the State of Kansas*, 14 Kan. App. 2d 527, 539, 794 P. 2d 1165 (1990).

¹⁰⁶ Patrick Orr, Testimony in Support of Settlement Agreement, p. 2, l. 13 – p. 3, l. 2. (April 29, 2022).

¹⁰⁷ Staff’s R&R, pp. 14-17.

¹⁰⁸ Ives Direct Testimony at p. 8, l. 12 – p. 8, l. 15.

a number of operational aspects¹⁰⁹ which were resolved through settlement. However, both Staff's R&R and CURB's response thereto supported Evergy's proposal to recover the extraordinary Winter Weather Event costs through the RECA.¹¹⁰

70. In addition, the Settlement Agreement as a whole is supported by substantial competent evidence. Three witnesses support all aspects of the Settlement Agreement: Darrin Ives¹¹¹, Justin Grady,¹¹² and Patrick Orr.¹¹³ In addition, Darrin Ives and Ronald Klote provided testimony over various aspects of the Compliance Report as it was filed with the Commission on July 2, 2021.¹¹⁴

71. Evidence supports the key elements of the Settlement Agreement. Darrin Ives testified to the propriety of the interest rate of 1.00% at which the extraordinary Winter Weather Event costs would be carried by Evergy until they began to be recovered through the RECA.¹¹⁵ Mr. Ives also testified that if Evergy receives or recovers any payment by way of profit disgorgement, such amounts would be returned to ratepayers through the RECA.¹¹⁶ Both Mr. Ives and Mr. Grady testified that the RECA is the appropriate mechanism by which the extraordinary Winter Weather Event costs would be recovered.¹¹⁷ For example, Mr. Ives testified that recovery through the RECA is consistent with the methodology used by Evergy to calculate the

¹⁰⁹ Staff's R&R, p. 7; pp. 84-118; CURB Response, pp. 7-8, p. 11, p. 13.

¹¹⁰ Staff's R&R, p. 79; CURB Response, p. 13.

¹¹¹ Direct Testimony of Darrin Ives (April 29, 2022).

¹¹² Justin T. Grady. Testimony in Support of Settlement Agreement (April 29, 2022).

¹¹³ Patrick N. Orr, Testimony in Support of Settlement Agreement (April 29, 2022).

¹¹⁴ See Direct Testimonies of Darrin Ives and Ronald Klote, attached to the Compliance Report (July 2, 2021).

¹¹⁵ Darrin R. Ives, Testimony in Support of Settlement, Docket No. 21-EKME-329-GIE, p. 16, ll. 7-22 (April 29, 2022).

¹¹⁶ Darrin R. Ives, Testimony in Support of Settlement, p. 17, ll. 12-14 (April 29, 2022)

¹¹⁷ Darrin R. Ives, Testimony in Support of Settlement, p. 15, ll. 9-22 (April 29, 2022); Justin T. Grady. Testimony in Support of Settlement Agreement, p. 27, l. 11 - p. 28, l. 9. (April 29, 2022).

extraordinary Winter Weather Event costs.¹¹⁸ Mr. Grady testified that use of the RECA to recover the extraordinary Winter Weather Event costs from ratepayers is appropriate because it avoids delay and additional administrative costs relative to the low magnitude and impact of the extraordinary Winter Weather Event costs upon Evergy ratepayers.¹¹⁹ The combined testimonies of Patrick Orr, Darrin Ives and Justin Grady support the recovery period of two years for Evergy Kansas Central and one year refund period for Evergy Kansas Metro.¹²⁰

72. Patrick Orr¹²¹, Darrin Ives¹²² and Justin Grady¹²³ all testified that the parties to this proceeding were given adequate opportunity to be heard on their opposition to the Settlement Agreement, that the Settlement Agreement is supported by substantial and competent evidence and will result in reasonable rates. These witnesses also testified that the Settlement Agreement is in the public interest. In short, these witnesses provided testimony showing that the five factors considered by the Commission in approving non-unanimous settlement agreements are met.¹²⁴

73. The evidence in the record is substantial in light of the record as a whole. In these regards, CURB notes that the Opponents' sole witness, Mr. Gorman, testified that he believed that the RECA should not be used to recover the extraordinary Winter Weather Event costs, that these costs should be allocated among customer classes upon the basis of usage during the period from

¹¹⁸ Darrin R. Ives, Testimony in Support of Settlement, Docket No. 21-EKME-329-GIE (April 29, 2022), p. 15, ll. 17-22

¹¹⁹ Justin T. Grady. Testimony in Support of Settlement Agreement, p. 27, l. 11 - p. 28, l. 9 (April 29, 2022).

¹²⁰ Justin T. Grady. Testimony in Support of Settlement Agreement, p. 24, l. 16 – p. 25, l. 3 (April 29, 2022); Patrick N. Orr, Testimony in Support of Settlement Agreement, p. 19, l. 15 – p. 20, l. 5. (April 29, 2022), Darrin R. Ives, Testimony in Support of Settlement, Docket No. 21-EKME-329-GIE, p. 15, l. 22 – p. 16, l. 2. (April 29, 2022).

¹²¹ Patrick N. Orr, Testimony in Support of Settlement Agreement, p. 20, l. 16 – p. 21, l. 7 (April 29, 2022).

¹²² Darrin R. Ives, Testimony in Support of Settlement, p. 14, ll. 15-22 (April 29, 2022).

¹²³ Justin T. Grady. Testimony in Support of Settlement Agreement, p. 22, l. 7 – p. 23, l. 4 (April 29, 2022).

¹²⁴ Justin T. Grady. Testimony in Support of Settlement Agreement, p. 29, l. 22 – p. 31, l. 6 (April 29, 2022); Patrick N. Orr, Testimony in Support of Settlement Agreement, p. 19, l. 15 – p. 20, l. 5. (April 29, 2022), Darrin R. Ives, Testimony in Support of Settlement, , p. 18, l. 6 – p. 20, l. 3 (April 29, 2022).

February 12 through February 16, 2021, that the recovery period should be three years versus two, and that the residential class should be reimbursed for increased revenues during Winter Storm Uri.¹²⁵ Mr. Gorman does not appear to take issue with the prudence of Evergy's efforts to maintain service during Winter Storm Uri.

74. Importantly, the prefiled and live testimony of Mr. Ives and Mr. Grady show that the testimony offered by the Opponents is outweighed by the evidence in support of the Settlement Agreement. Mr. Ives testified that Mr. Gorman's approach to allocating the extraordinary Winter Weather Event costs to various classes is simplistic.¹²⁶ It does not correspond with the manner in which Evergy calculated the extraordinary Winter Weather Event costs and thereby does not attribute all extraordinary Winter Weather Event costs to Evergy ratepayers.¹²⁷ Mr. Gorman's approach would require an undue amount of time and expense to administer, relative to the magnitude of the impact upon ratepayers.¹²⁸ Evergy's approach to recovery of extraordinary Winter Weather Event costs does not show any favoritism toward any rate class.¹²⁹ Mr. Gorman's statement that residential customers caused Winter Storm Uri costs is overstated, in that prices are set through the SPP on a 14-state regional basis.¹³⁰ Moreover, socializing extraordinary Winter Weather Event costs through the RECA treats all ratepayers the same, recognizing that all customer classes contributed to conservation without scrutinizing each individual customer's

¹²⁵ Michael P. Gorman, Testimony and Exhibits in Opposition to Non-Unanimous Settlement Agreement, Docket No. 21-EKME-329-GIE (April 29, 2022), p. 2, ll. 12-13; p. 4, ll. 7 – 15; p. 14, l. 19 – p. 15, l. 9.

¹²⁶ Transcript of Proceedings, p. 106, ll. 1 – 5; p. 126, l. 15 – p. 127, l. 7, Docket No. 21-EKME-329-GIE (May 11, 2022).

¹²⁷ Transcript of Proceedings, p. 129, ll. 7- 24, Docket No. 21-EKME-329-GIE (May 11, 2022).

¹²⁸ Transcript of Proceedings, p. 169, l. 14 – p. 170, l. 11; p. 247, ll. 4-19; Docket No. 21-EKME-329-GIE (May 11, 2022); Justin T. Grady. Testimony in Support of Settlement Agreement, p. 27, l. 11 – p. 28, l. 9 (April 29, 2022).

¹²⁹ Transcript of Proceedings, p. 107, ll. 12-18 , Docket No. 21-EKME-329-GIE (May 11, 2022).

¹³⁰ Transcript of Proceedings, p. 265, ll. 3-20, Docket No. 21-EKME-329-GIE (May 11, 2022).

efforts or circumstances.¹³¹ Evergy's ability to reach the residential class was significantly different than for larger customers with respect to notice of the need to conserve energy during Winter Storm Uri.¹³²

75. If the Commission decides to reject the Settlement Agreement in favor of the Opponents' methodology, then fairness and equity considerations necessarily invite an analysis into the reasons behind such usage characteristics when determining usage by each class. For example, the Commission would likely take into account each industrial customer's degree of and failure to curtail, both per contractual obligations and otherwise, and the schools' decisions to close down due to bad weather. Such an analysis may likely demonstrate a link between such actions and the rise in residential energy consumption during the Winter Weather Event. This analysis may also likely lead to a significant amount of litigation and investigation as parties who represent those classes advocate for special consideration of their constituents' plight. As a result, CURB is highly concerned that adoption of the Opponents' proposal could result in an allocation method that unduly favors one particular class over another. As stated above, such delay or adjustment to the Settlement Agreement risks losing the benefits associated with a carrying charge significantly below Evergy's weighted average cost of capital. The public interest is not likely served through such a disruption of this significant reduction to the overall extraordinary Winter Weather Event costs.

76. In short, the evidence in the record as a whole supports the proposition that use of the RECA to recover extraordinary Winter Weather Event costs over a two-year period is

¹³¹ Transcript of Proceedings, p. 140, l. 3- p. 141, l. 9; p. 186, l. 12 – p. 187, l. 7, Docket No. 21-EKME-329-GIE (May 11, 2022).

¹³² Transcript of Proceedings, p. 99, ll. 8- 24, Docket No. 21-EKME-329-GIE (May 11, 2022).

reasonable. It also shows that the position of the Opponents, is lacking in key respects. Needless complexity is one. In these regards, the evidence shows that if profit disgorgement occurs, the excess profits can be returned through the RECA – even if it is years (and it likely may be years) after the Winter Weather Event when profit disgorgement occurs.¹³³ If the Opponents’ proposal is accepted, it would not be fair to return profit disgorgement through the RECA when costs have already been recovered through class allocation.

Conclusion

77. As shown above, the evidence in the record when considered as a whole shows that the Settlement Agreement is in the public interest and will result in just and reasonable rates. Evergy’s recovery of extraordinary Winter Weather Event costs through the RECA treats all ratepayers equally. It takes into account that conservation efforts were taken by every rate class, not just a few. The RECA is the applicable tariff and allows the recovery of extraordinary Winter Weather Event costs without undue complexity. As Mr. Grady aptly stated, the RECA is appropriate recovery mechanism given the relative materiality and magnitude of Evergy’s extraordinary Winter Weather Event costs.

78. More importantly, the RECA is part of an interdependent Non-unanimous Settlement Agreement. It is included with the lowest carrying charge of any Kansas utility dealing

¹³³ Darrin R. Ives, Testimony in Support of Settlement, , p. 10, l. 20 – p. 11, l. 2 (April 29, 2022).

with Winter Storm Uri. CURB believes the Non-unanimous Settlement Agreement, as a whole, is reasonable and urges the Commission to approve the same.

Respectfully submitted,



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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, David W. Nickel, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



David W. Nickel

SUBSCRIBED AND SWORN to before me this 26th day of May, 2022.





Notary Public

My Commission expires: 01-26-2025.

APPENDIX “A”

There does not appear to be any material dispute as to the following factors which pertain to approval of non-unanimous settlement agreements by the Commission. Therefore, CURB believed it would help the focus and continuity of the arguments to move discussion of these two factors to this Appendix.

D. Each party has had an opportunity to be heard on reasons for opposing the non-deferred issues in the Agreement.

1. All parties have had adequate time and opportunity to understand the focus of this docket and the issues and evidence that pertain to it. The Commission opened this docket on March 9, 2021, and has promptly granted intervention to each party who sought to intervene in this docket, the last of which was done in September 2021.¹³⁴ Evergy filed the Compliance Report in this docket on July 2, 2021, along with the testimony of Darrin Ives and Ronald Klote. Over 10 months have elapsed since that filing. The Commission’s March 9, 2021 Order provided customary discovery procedures, including the normal procedure by which confidential information is handled pursuant to K.S.A. 66-1220a. The Commission issued an Order Setting Procedural Schedule, conforming to Kansas law, on March 3, 2022. Staff filed its R&R on January 21, 2022 and all parties had the opportunity to respond per regular practice. Parties in this docket went further and formally submitted a procedural schedule to allow other parties to respond and file testimony. All parties had an opportunity to file written testimony addressing the issues. The

¹³⁴ Order Granting Intervention to Coffeyville Resources and USD #259, Docket No. 21-EKME-329-GIE (September 2, 2021).

Commission heard that evidence on May 11, 2022. The parties then agreed to add a post-hearing briefing schedule to further develop arguments and positions.

2. Thus, the Commission has provided a full and fair hearing for all intervening parties. The parties have had a reasonable opportunity to be heard in opposition of Settlement Agreement.

E. The Settlement Agreement conforms to applicable law.

3. Well-settled Kansas law permits the Commission to approve a non-unanimous settlement agreement if it is fair, just and reasonable and supported by evidence in the record.¹³⁵ As discussed in the body of the brief, the RECA is the established tariff to handle recovery of fuel costs and was in effect when these fuel costs were incurred in February 2021 and substantial and competent evidence supports the Settlement Agreement, including its being fair, just and reasonable. Therefore, CURB believes that the Settlement Agreement conforms to applicable law.

¹³⁵ See *Mobil Moundridge Telephone Company, Inc., v. Kansas Corporation Commission*, 36 P.3d 523 (Table) Unpublished Opinion *Oil Corp. v. FPC*, 417 U.S. 283, 314, 94 S.Ct. 2328, 2348–49, 41 L.Ed.2d 72 (1974); *Farmland Industries, Inc. v. Kansas Corporation Comm'n*, 24 Kan.App.2d 172, 943 P.2d 470 (1997).

CERTIFICATE OF SERVICE

21-EKME-329-GIE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 27th day of May, 2022, to the following:

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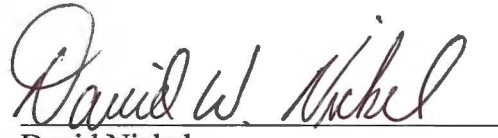
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