

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

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

In the Matter of the Joint Application of )  
Westar Energy, Inc. and Kansas Gas and )  
Electric Company for Approval to Make ) Docket No. 18-WSEE-328-RTS  
Certain Changes in their Charges for Electric )  
Services. )

**ORDER GRANTING CLARIFICATION; ORDER GRANTING THE SOLAR GROUP'S  
PETITION FOR RECONSIDERATION IN PART, AND DENYING IN PART**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, the Commission finds:

1. On February 1, 2018, Westar Energy, Inc. (Westar) and Kansas Gas and Electric Company (KG&E) (collectively Evergy)<sup>1</sup> filed a Joint Application for a rate increase of approximately \$52.6 million to cover costs prudently incurred for Evergy to continue providing reliable, efficient service at a reasonable cost to customers, all in accordance with its public service obligation.<sup>2</sup> Evergy's requested rate increase is motivated by several factors: (1) the change in the corporate tax rate implemented by the Tax Cuts and Jobs Act of 2017, which reduces Evergy's revenue requirement by \$74 million;<sup>3</sup> (2) costs associated with Evergy's investment in the Western Plains wind farm;<sup>4</sup> (3) Evergy's efforts to aggressively refinance debt since its most recent rate case, saving almost \$29 million annually in interest expense;<sup>5</sup> and (4) increased depreciation expense.<sup>6</sup>

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<sup>1</sup> Westar Energy, Inc., and Kansas Gas and Electric Company are now known as Evergy Kansas Central, Inc., and Evergy Kansas South, Inc., respectively.

<sup>2</sup> Joint Application, Feb. 1, 2018, ¶¶ 1, 5.

<sup>3</sup> *Id.*, ¶ 7.

<sup>4</sup> *Id.*, ¶ 8.

<sup>5</sup> *Id.*, ¶ 9.

<sup>6</sup> *Id.*, ¶ 10.

2. On September 27, 2018, the Commission issued its Order Approving Non-Unanimous Stipulation and Agreement (Order), finding in relevant part, that: (1) the expert witnesses from Evergy, Staff and CURB provide substantial, competent and compelling evidence to approve the S&A's three-part rate design;<sup>7</sup> (2) the evidence demonstrates that RS-DG customers' usage patterns, rather than their use of renewable energy, is the basis for paying a different rate than their non-DG counterparts;<sup>8</sup> and (3) RS-DG customers are not disadvantaged by any alleged difficulty in understanding or responding to the three-part RS-DG rate.<sup>9</sup>

3. On October 12, 2018, Sierra Club and Vote Solar filed a Petition for Reconsideration (PFR), alleging the Commission: (1) erred in finding that the S&A's revenue reduction allocation and residential distributed generation tariff (RS-DG tariff) are supported by substantial competent evidence; (2) erred in approving a proposed RS-DG rate that violates state and federal law; and (3) erred in finding that the RS-DG rate is in the public interest.<sup>10</sup>

4. Following the Commission's denial of the Sierra Club and Vote Solar's PFR, the Sierra Club and Vote Solar appealed to the Court of Appeals. On April 12, 2019, the Court of Appeals issued an unpublished Memorandum Opinion, affirming the Commission's Order. The Court of Appeals found that: (1) while the parties presented conflicting evidence on the reasonableness of the new RS-DG rate design, there was substantial competent evidence supporting the Commission's finding that the new rate design was based on a neutral cost-based rationale,<sup>11</sup> and (2) because the rate design bears a rational relationship to Evergy's cost recovery, while not imposing a disproportionate burden on the RS-DG class, the new rate is not discriminatory simply

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<sup>7</sup> Order Approving Non-Unanimous Stipulation and Agreement, Sept. 27, 2018, ¶ 51.

<sup>8</sup> *Id.*, ¶ 58.

<sup>9</sup> *Id.*, ¶ 60.

<sup>10</sup> Sierra Club and Vote Solar's Petition for Reconsideration, Oct. 12, 2018, ¶ 1.

<sup>11</sup> *In the Matter of the Joint Application of Westar Energy, Inc. and Kansas Gas and Electric Company*, No. 120,436, 2019 WL 1575480, Apr. 12, 2019, \*6.

because it imposes higher charges on the RS-DG class than they would receive under the standard residential rate.<sup>12</sup>

5. Vote Solar and the Sierra Club appealed to the Supreme Court.<sup>13</sup> On April 3, 2020, the Supreme Court reversed and remanded the Court of Appeals' decision, finding, "[t]here is no question that the RS-DG rate at issue here is not built on a time-of-use rate or a minimum bill. It is simply price discrimination. And this price discrimination undermines the policy preferences of our Legislature -- as expressed in K.S.A. 66-117d -- which has codified the goal of incentivizing renewable energy production by private parties."<sup>14</sup>

6. On October 13, 2020, Evergy filed its new proposed rate design, with a monthly residential grid access charge (GAC) of \$3.00 per kW of installed DG capacity, applicable to all residential customers.<sup>15</sup> The monthly GAC is based on a customer's installed DG capacity.<sup>16</sup> Customers with higher DG capacity would pay more than customers with smaller DG capacity.<sup>17</sup> Non-DG customers would have a monthly grid access charge of zero.<sup>18</sup> If approved, Evergy would no longer offer service under the grandfathered DG rates or the three-part residential DG demand rate and all remaining customers served under those rates would be moved to the Residential Standard DG rate.<sup>19</sup>

7. To eliminate the subsidy that DG customers receive, Evergy believes the GAC would have to be set at \$6.50 per kW of installed DG capacity.<sup>20</sup> But to limit the impact on DG customers and consistent with gradualism, Evergy is only seeking to recover 50% of that amount through the

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<sup>12</sup> *Id.*, \*9.

<sup>13</sup> Initial Comments of Climate and Energy Project, Sierra Club, and Vote Solar, Aug. 14, 2020, ¶ 3.

<sup>14</sup> *In the Matter of the Joint Application of Westar Energy, Inc. and Kansas Gas and Electric Company*, 311 Kan. 320, 330 (2020).

<sup>15</sup> Direct Testimony of Bradley D. Lutz, Oct. 13, 2020, p. 7.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, p. 9.

<sup>20</sup> *Id.*, p. 8.

GAC.<sup>21</sup> Evergy estimates the GAC would produce \$205,491.60 of revenue,<sup>22</sup> and on average, would cost DG customers \$20.56 per month or \$246.69 per year.<sup>23</sup>

8. As an alternative to the GAC, Evergy proposes a monthly minimum bill of \$35 for all residential customers.<sup>24</sup> Similar to the GAC, a \$35 minimum monthly bill is only about 50% of the approximately \$77 a month in costs to serve customers, and Evergy realizes it is unreasonable to set the minimum bill at the total cost level.<sup>25</sup> If approved, the minimum bill would produce revenues not contemplated in Evergy's last general rate proceeding.<sup>26</sup> Therefore, Evergy proposes those new incremental revenues be placed in a deferral account and fully considered in its next general rate case.<sup>27</sup> Because a minimum monthly bill would likely disproportionately impact residential accounts not associated with a household, such as out buildings, garages, and farm-related uses and unoccupied rental homes and apartments, Evergy prefers the grid access charge to a minimum monthly bill.<sup>28</sup>

9. On November 5, 2020, the Commission held a public hearing. Due to the COVID-19 pandemic, the hearing was conducted via Zoom. The Commission also established a public comment period, which ran from October 15, 2020 through December 21, 2020.<sup>29</sup> The Commission's Public Affairs and Consumer Protection (PACP) received 1,084 comments.<sup>30</sup> The overwhelming number of public comments opposed both of Evergy's rate design proposals.

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*, p. 10.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, p. 11.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*, p. 12

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*, p. 14.

<sup>29</sup> Order Setting Public Hearing and Establishing Public Comment Period, Oct. 15, 2020, ¶ 7.

<sup>30</sup> Notice of Filing of Public Comments, Dec. 30, 2020.

10. The Commission held a two-day evidentiary hearing beginning December 16, 2020. Evergy; Staff, CURB; Pioneer; Liberty Empire; KIC; the KEC Group;<sup>31</sup> and Solar Group<sup>32</sup> appeared by counsel and each party submitted pre-filed testimony. The Commission heard live testimony from a total of 7 witnesses, including 2 on behalf of Evergy, and one each on behalf of Pioneer; the KEC Group; CURB; the Solar Group; and Staff. The parties had the opportunity to cross-examine the witnesses at the evidentiary hearing as well as the opportunity to redirect their own witnesses. Following the evidentiary hearing, all of the parties submitted post-hearing briefs.

11. On February 25, 2021, the Commission issued an Order rejecting Evergy's proposed GAC and monthly minimum bill proposal. The Commission also denied the Solar Group's<sup>33</sup> request to refund demand charges collected under the RS-DG rate.<sup>34</sup>

12. On March 12, 2021, Evergy; Southern Pioneer Electric Company and Pioneer Electric Cooperative, Inc. (Pioneer); Liberty-Empire; and the KEC Group (the Electric Companies) filed a Petition for Reconsideration and Clarification. The Electric Companies seek clarification that: (1) it is acceptable to propose different rates for "different services" as well as "additional services," and those services are not limited to only export service, and (2) incremental costs are not the only acceptable method for supporting rates on different or additional services proposed to address the subsidy flowing from non-DG to DG customers.<sup>35</sup>

13. Also on March 12, 2021, the Solar Group filed a Petition for Reconsideration on two points: (1) refunds are not discretionary, and are required by law to give effect to the Supreme

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<sup>31</sup> Kansas Electric Cooperatives, Inc., Midwest Energy, Inc., Sunflower Electric Power Corp., and Kansas Electric Power Cooperative, Inc.

<sup>32</sup> Climate & Energy Project, the Sierra Club, and Vote Solar.

<sup>33</sup> Climate & Energy Project, the Sierra Club, and Vote Solar.

<sup>34</sup> Order, Feb. 25, 2021, ¶ 65.

<sup>35</sup> Petition for Reconsideration and Clarification (Electric Co. PFC), Mar. 12, 2021, ¶ 2.

Court's decision; and (2) preserving the separate RS-DG classification inadvertently denies customers with generation from participating in optional, alternative rate offerings.<sup>36</sup>

14. On March 18, 2021, Evergy responded to the Solar Group's PFR. On the refund issue, Evergy did not take a position, other than to indicate that it would comply with the Commission's order on the issue, but noted the Commission's denial of refunds was well-supported and within the Commission's discretion.<sup>37</sup> Therefore, Evergy concluded the Commission should deny the Solar Group's request for reconsideration regarding refunds.<sup>38</sup> In response to the Solar Group's concern that preserving the separate RS-DG classification inadvertently denies customers with generation from participating in optional, alternative rate offerings, Evergy stated it would make the necessary changes to its tariffs to make sure the optional rates other than the Time of Use (TOU) pilot are available to RS-DG customers when it makes its compliance filing to comply with the Commission's Order.<sup>39</sup>

15. On March 22, 2021, the Solar Group filed its Response to the Electric Companies' Petition for Clarification, noting that because the Electric Companies do not argue the Commission made any mistake of law or fact, their Petition for Clarification should be denied.<sup>40</sup> The Solar Group argues there is no distinction between "different services" and "additional services" and any attempt to create such a distinction could circumvent K.S.A. 66-117d's prohibition on additional charges for "the same service" by unbundling the services provided to non-DG customers and labeling the unbundled services something else when provided to DG customers.<sup>41</sup> The Solar Group considers

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<sup>36</sup> Petition for Reconsideration of Climate + Energy Project, Sierra Club, and Vote Solar (Solar Group PFR), Mar. 12, 2021, ¶ 1.

<sup>37</sup> Response of Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. to Petition for Reconsideration of Climate + Energy Project, Sierra Club and Vote Solar, Mar. 18, 2021, ¶ 3.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*, ¶ 2.

<sup>40</sup> Climate + Energy Project's, Sierra Club's, and Vote Solar's Response to Joint Petitioners' Petition for Reconsideration and Clarification, Mar. 22, 2021, ¶ 4.

<sup>41</sup> *Id.*, ¶¶ 5-6.

the Electric Companies' Petition for Clarification as an attempt to fundamentally change the Commission's interpretation of law and allow utilities to impose additional charges on DG customers by applying different terminology to characterize a subset of full requirements service as a different service, even if not "additional" to the service non-DG customers receive.<sup>42</sup>

### **ELECTRIC COMPANIES' PETITION FOR CLARIFICATION**

16. The first point that the Electric Companies seek clarification on is if they can propose different rates for "different services" as well as "additional services," and whether those services are limited to export service. Generally, the Commission agrees differential rates can be justified by different service types. However, the Commission interprets the Supreme Court's Opinion as finding residential distributed generation customers do not receive a different basic service from standard residential customers; both standard residential and residential DG customers receive electricity from the utility, despite the evidence of those customers' unique usage characteristics. In that limited context, it appears to the Commission only an *added service* – such as exporting – will justify an added fee for only distributed generation customers such as the proposed grid access charge. The Commission emphasizes the limited nature of this finding, which only applies to residential distributed generation customers. Other services, beyond exporting, may support added fees to residential DG customers. However, the exporting service was referenced in the Order because it was the only distinct service identified in the record that standard residential customers do not receive and would, therefore, likely survive review by the Supreme Court. The Commission's Order does not preclude a utility from identifying other distinct services received by residential DG customers that may justify an added charge.

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<sup>42</sup> *Id.*, ¶ 12.

17. The second point of clarification sought by the Electric Companies is whether incremental costs are the only acceptable methodology for supporting rates on different or additional services proposed to address the subsidy flowing from non-DG to DG customers. The Commission did not intend the term “incremental costs” to be synonymous with “marginal costs.” Instead, the Commission meant that additional costs of providing a different service coupled with the existing fixed costs reasonably and appropriately assigned to that additional service would be the proper methodology for supporting rates on different or additional services. The Commission clarifies that the usual cost of service principles used to allocate costs (common, joint, and direct) associated with providing the additional service will apply. Thus, only the embedded costs (common, joint, and direct) assigned to the export service should be charged to DG customers in addition to the embedded costs assigned to the customer, demand, and energy components that are charged to both classes. The Commission emphasizes the limited nature of this finding, which does not preclude utilities from proposing different, more modern rate structures to address any subsidy flowing to residential DG customers in a non-discriminatory fashion.

#### **SOLAR GROUP’S PETITION FOR RECONSIDERATION**

18. The Solar Group seeks reconsideration of the Commission’s decision to deny refunds of revenue collected under the RS-DG rate rejected by the Supreme Court. The Commission found awarding refunds would be unwarranted under the circumstances because, namely, the Supreme Court declined to order a refund; determining a refund will be complex since many customers have been moved to extend the application of rate grandfathering; and most importantly, a symmetrical refund would harm some DG customers.<sup>43</sup> In its Petition, the Solar Group provides substantial legal analysis and argument to support its contention that DG customers are entitled to refunds of certain

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<sup>43</sup> Order, ¶ 65.



amounts collected by Evergy under its unlawful demand charge. In its Response to the Solar Group's Petition for Reconsideration, Evergy notes its support for the Commission's initial decision, but emphasizes it has not taken a position on whether refunds should be issued. Upon further review of the legal authority cited by the Solar Group, the Commission is persuaded DG customers are entitled to refunds and, thus, grants reconsideration on that issue.

19. While the Commission generally favors symmetry in refunds, here, due to the voluntary nature of the RS-DG rate, where some customers elected to be grandfathered, and only a de minimis number of customers benefitted from the RS-DG rates, the Commission orders Evergy to only refund – not collect – the difference in revenue collected under the RS-DG rate and the standard residential rate. As detailed<sup>1</sup> in the Commission's prior order, some DG customers benefitted from being under the RS-DG rate and might reasonably be asked to repay these financial benefits to Evergy if the Commission approved a symmetrical refund approach. However, Evergy has never requested to "re-bill" these customers and recover additional revenue. Further, since there is no evidence in the record to show which DG customers would have elected to stay on the RS-DG rates if permitted, there is no basis to require DG customers who benefitted from the illegal rate to repay those benefits. This finding is unique to the facts and circumstances of this Docket and has no precedential value.

20. The Solar Group also seeks reconsideration of the Commission's decision to preserve the separate RS-DG classification, which it claims inadvertently denies DG customers from participating in optional, alternative rate offerings.<sup>44</sup> In its Response to the Solar Group's Petition for Reconsideration, Evergy pledged to make the necessary changes to its tariffs to make sure the optional rates other than the Time of Use (TOU) pilot are available to RS-DG customers when it

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<sup>44</sup> Order, ¶ 65.

makes its compliance filing to comply with the Commission's Order.<sup>45</sup> Evergy notes the TOU pilot was intentionally not made available to net metered customers "because of the complexities that come with administering a TOU rate in conjunction with net metering."<sup>46</sup> The Commission finds Evergy's offer to be an acceptable resolution that will result in just and reasonable rates.

**THEREFORE, THE COMMISSION ORDERS:**

A. In response to the Electric Companies' Petition for Reconsideration and Clarification, the Commission provided clarification that only an *added service* – such as exporting – will justify an added fee such as the proposed grid access charge, but the Commission's Order does not preclude a utility from identifying other distinct services received by residential DG customers that may justify an added charge. Furthermore, only the embedded costs (common, joint, and direct) assigned to the export service should be charged to DG customers in addition to the embedded costs assigned to the customer, demand, and energy components that are charged to both classes.

B. The Solar Group's Petition for Reconsideration is granted in part, and denied in part. The Commission directs Evergy to refund the difference in revenue collected under the RS-DG rate and the standard residential rate to impacted RS-DG customers. Since Evergy has agreed to make the optional rates other than the Time of Use (TOU) pilot available to RS-DG customers, the Commission denies the Solar Group's request for reconsideration of the Commission's decision to preserve the separate RS-DG classification.

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<sup>45</sup> Response of Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. to Petition for Reconsideration of Climate + Energy Project, Sierra Club and Vote Solar, ¶ 2.


<sup>46</sup> *Id.*, ¶ 2.

C. This Order constitutes final agency action.<sup>47</sup> Any request for review of this action shall be in accordance with K.S.A. 77-607 and K.S.A. 77-613. Lynn M. Retz, Executive Director, is designated by the Commission to receive service of a petition for judicial review.<sup>48</sup>

**BY THE COMMISSION IT IS SO ORDERED.**

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 04/08/2021  
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Lynn M. Retz  
Executive Director

BGF

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<sup>47</sup> K.S.A. 77-607(b)(1).

<sup>48</sup> K.S.A. 77-613(e).

## CERTIFICATE OF SERVICE

18-WSEE-328-RTS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 04/08/2021.

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