

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Joint Application of )  
Evergy Kansas Central, Inc. Evergy Kansas ) Docket No. 23-EKCE-775-RTS  
South, Inc. and Evergy Metro, Inc. for )  
Approval to Make Certain Changes in their )  
Charges for Electric Service. )

**RESPONSE OF THE CITIZENS' UTILITY RATEPAYER BOARD TO THE JOINT  
MOTION FOR APPROVAL OF PHASE-IN OF CERTAIN RATE IMPACTS**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and submits its response to the *Joint Motion for Approval of Phase-In of Certain Rate Impacts* ("Joint Motion") filed by Evergy Kansas Central and Evergy Kansas Metro (collectively, "Evergy" or "the Company") and the Staff of the Corporation Commission of the State of the Kansas ("Staff") (together "Joint Movants") on April 4, 2024. CURB supports the Joint Motion insofar as it promotes the use of gradualism in the face of rate shock. However, CURB expresses concern regarding potential retroactive ratemaking complications and makes two modifications. In support of its response, CURB states as follows:

1. On April 25, 2023, Evergy filed a Joint Application with the Kansas Corporation Commission ("Commission") for approval to make certain changes in their charges for electric service in Kansas.<sup>1</sup>
2. CURB filed a petition to intervene on April 26, 2023<sup>2</sup> and was granted the same on May 2, 2023.<sup>3</sup>
3. On November 21, 2023, the Commission approved the Joint Unanimous Settlement Agreement produced in this case to resolve all issues contained in the Joint Application.<sup>4</sup> One

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<sup>1</sup> Evergy Kansas Central Application, April 25, 2023.

<sup>2</sup> CURB Petition to Intervene and Motion for Order Assessing Cost, April 26, 2023.

<sup>3</sup> Order Designating Presiding Officer; Order Granting CURB's Petition to Intervene; Protective Order, May 2, 2023.

<sup>4</sup> Order Approving Unanimous Settlement Agreement, November 21, 2023.

provision included in this settlement agreement eliminated certain rate schedules from Evergy's tariffs regarding Off-Peak service and to move affected customers onto another rate.<sup>5</sup> This rate change took effect on December 21, 2023.

4. On April 4, 2024, Evergy and Staff filed their Joint Motion asking the Commission to authorize the phasing-in of the rate increase associated with the elimination of the Off-Peak Service Rate for customers who were experiencing rate shock as high as 300%.<sup>6</sup> The Joint Movants proposed to smooth out the rate transition over a two-year period by limiting the annual impact through bill credits. Rather than adjusting the established rate, Evergy would provide a bill credit for the customer in an amount equal to 2/3 of the rate increase the first year, then 1/3 the second year, and finally eliminate the bill credit going forward. Evergy requests permission to track this bill credit in a regulatory asset and to ask for recovery from all customer classes in its next general rate case. Evergy estimates that the annual amount of the deferral would be approximately \$1 million.

#### **CURB's Response**

5. In CURB's view, the issue before the Commission involves the application of gradualism and implementation of established rates. CURB participated extensively in this docket and the development of rates approved therein. The rate schedules at issue in this Joint Motion were developed through significant effort and resources expended by all parties. However, as a result of these new rates, a number of commercial customers have experienced significant bill

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<sup>5</sup> Unanimous Settlement Agreement, pg. 18, ¶54(g), September 29, 2023.

<sup>6</sup> Joint Motion for Approval of Phase-In of Certain Rate Impacts, pg. 2, April 4, 2024.

impacts in the three months since the elimination of the Off-Peak Service Rate. CURB supports the use of gradualism in order to mitigate the impact of new rates by allowing customers the opportunity to adjust to the changes in meaningful ways. Here, the proposal is to give affected customers two years to incrementally transition to the new rates. Given the potential impact associated with these new rates, CURB finds the timeframe in the plan to be reasonable and an effective use of gradualism to mitigate immediate bill impacts.

6. Moreover, CURB generally supports the recommendation to provide affected customers an annual bill credit over the two years, as an alternative to changing the rate altogether. The Joint Movants have proposed to continue charging the affected customers the new rates, and then offset the impact of the increase by providing a bill credit equal to a portion of the rate increase so that the customer only experiences 33% of the increase for the first year, 66% the second year, and then 100% of the increase for the third year onward. This method does not require altering the current rate structure of the tariffs, but CURB envisions the use of additional tariff language to formalize the bill credit process. CURB believes it is important that the Commission and interested parties have the opportunity to review any such language before approving this request.

7. Although CURB supports the concept of gradualism, it is not entirely clear in the Joint Motion whether the relief requested therein will be retroactively or prospectively applied. To CURB this is an important legal question. CURB is concerned that the particular use of bill credits in this case could unnecessarily involve impermissible retroactive ratemaking and/or violate the filed-rate doctrine. CURB is concerned about the unintended consequences that may flow from

the resulting precedential value of allowing impermissible retroactive ratemaking or violation of the filed-rate doctrine.

8. The filed-rate doctrine and the proscription against retroactive ratemaking are settled legal principles in Kansas. Consider the holdings of the Kansas Supreme Court in *Boynton v. Public Service Commission of Kansas*, 135 Kan. 491 (1932). That case dealt with a 1929 reparation statute passed by the Kansas legislature. The 1929 statute allowed shippers (on railroads or other common carriers) to seek a reparation certificate upon filing a complaint with the Commission and showing that rates charged by railroad or common carrier were unjust and unreasonable. Importantly, the 1929 statute was made applicable to rates or charges made within six years of the enactment of the statute.

9. There were a number of issues addressed by the Court in the *Boynton* case. First, the Court recited the filed-rate doctrine as: A carrier can charge neither more or less than the rate fixed by the Commission in a final order. That principle is applicable here.

10. The Court also addressed two key questions concerning refunding rates paid and retroactive ratemaking. First, can the Commission provide a reparation certificate (effectively requiring a refund of a rate charged and collected) with respect to specific rates expressly ordered to be filed after hearing and final determination by the Commission? Second, can the Commission provide a reparation certificate with respect to rates perfunctorily approved but without hearing and final determination as to their reasonableness?

11. As to the first question, the Court stated:

“It seems clear that when a rate has been the subject of a deliberate inquiry in which the carriers, the shippers, and the commission’s own experts have participated, as

well as any and all other persons who cared to take a hand in it... any rate so prescribed by the commission and put into effect by the carriers may be confidently collected and retained by them as their very own, 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.”<sup>7</sup>

The pertinent rate in this case was part of the application and supported by substantial competent evidence. The Commission determined it to be lawful and reasonable upon the evidence in the record as a whole.

12. As to the second question, the Court arrived at a different conclusion. The Court stated, that since rates perfunctorily approved by the Commission are not the same as rates set by a final order issued by the Commission after hearing, the Commission can order refunds for rates collected by utilities. Yet, indisputably, the rates here were set by final order after hearing.

13. In short, the Court concluded that finality of the rate process determines whether rates can or cannot be changed retroactively. The finality of the rate change in this case is certain. As the Commission is aware, the rates in this case were established through a unanimous settlement agreement wherein a multitude of parties with conflicting interests and positions were involved. The affected customers had their interests represented by Staff and other parties to some degree in this process. All affected customers had notice of the application and reasonable opportunity to weigh in on the impact of the change in rate structure on themselves. With the Commission’s approval of the settlement agreement, parties moved forward with the understanding that customers would pay the rates contained in the tariffs, as approved.

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<sup>7</sup> *Boynton v. Public Service Commission of Kansas*, 135 Kan. 491, 11 P.2d 999, 1006 (June 4, 1932).

14. CURB believes that relief should be afforded to the customers affected by the consolidation of rates in two annual periods as set forth in the Joint Motion. However, CURB cannot concede that the rates were set perfunctorily and determined to be only interim rates to justify accounting for the time between December 21, 2023 and now. Thus, CURB suggests that the relief be granted here for two annual periods prospectively from the date of the Commission's order on the Joint Motion.

15. CURB reiterates its position that allowing such an impact upon customers as laid out in the Joint Motion, even as few as four customers, creates an adverse impact that needs to be addressed. The elimination of the Off-Peak Service rates without affording gradualism to the affected ratepayers was clearly a mistake; and that mistake should be obviated. However, CURB believes that the Commission should make it clear that prospective relief rather than retroactive relief is the correct and lawful solution in this case. In these regards, the rates have not been in effect for very long, such that significant relief can still be timely afforded to the customers prospectively as suggested herein.

16. CURB is also concerned about future application of this methodology, for example, the potential for future customers citing to this approach to mitigate negotiated rates and pass those costs onto other ratepayers, coupled with the potential retroactive aspect of reconsidering charges that have already been billed and revenue already collected. All customers, including residential and small commercial ratepayers, may be subject to new costs and expenses that they were not expected to bear at the conclusion of the rate case. While the Commission could simply rule that this case is considered isolated and non-precedential, if future applicants claim similar energy

burdens arising from a tariff, and the Commission treats the cases differently, the allegation of an arbitrary and capricious decision in these future cases would arise.

17. In short, retroactive ratemaking in this docket is unnecessary and legally must be avoided. Retroactive rates undermine the stability of ratemaking, in contravention to one of the rationales posited for the prohibition of retroactive ratemaking and the filed-rate doctrine: Certainty of rates for the consumer. If the Commission was to justify retroactive ratemaking in this case on the basis of mistaken impact, then such justification opens wide the door for others to ask for retroactive relief on the same basis in future cases; and the Commission may not be able to distinguish these future cases from the present one. Thus, this resolution here could result in a significant number of potential cases that call for retroactive ratemaking. This potential outcome is particularly troublesome where the refund of rates will be paid by all other rate classes, especially as in this docket, when the rates were established by a unanimous settlement agreement.

18. CURB is also concerned that the mistake in this docket occurred notwithstanding the involvement of several parties and an evidentiary hearing. The Commission and utility stakeholders have seen cases where ratepayers can be significantly affected, particularly when rate structures are consolidated or eliminated. Indeed, determining the impact on customers upon the basis of averages or number of customers affected may miss the significant harm that some customers could suffer. While gradualism may help to avoid significant and adverse impacts caused by changes in rates, it would be best to determine to use gradualism before the rates go into effect, rather than after the rates become effective and customers are inadvertently affected. CURB is not casting any blame in this case. CURB is simply observing that all parties, including CURB,

need to proceed with the utmost caution and with sufficient information in cases where rate structure consolidation or tariff elimination is proposed in order to avoid the result that is being addressed here.

19. To summarize, CURB recommends that the plan be implemented prospectively in order to balance the interests of all customer classes. Affected customers will still obtain relief through a prospective two-year phase-in, but retroactive ratemaking and violation of the filed-rate doctrine will be avoided. To CURB, this is a reasonable compromise to avoid impropriety.

20. Further, CURB recommends that the Company be allowed to only recover the deferred costs from the LGS and MGS classes of the affected customers rather than from all customer classes, after an examination in the next general rate case. As previously mentioned, the new rates are the rates that the Company and customers would rely on being charged and collected. CURB believes that it is appropriate to limit any recovery of the bill credits to just the rate classes under which these affected customers take service. Had the issue been apparent during the rate case, CURB believes that it would have been appropriately accounted for like the other rate classes. The rates established for each class take into account all the relevant factors and characteristics that go into serving the customers. These customers were moved to these specific classes because the customers share characteristics that qualifies them to be in the class. Therefore, the bill credits should only be recovered from the LGS and MGS classes rather than from all customer classes.

### **Conclusion**

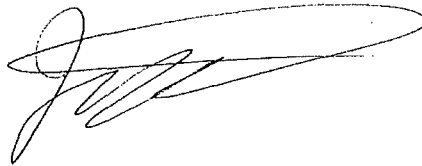
21. CURB supports the general intent of the Joint Motion and recommends that the Commission approve the plan to reduce the bill impact on the affected customers after having the



opportunity to review a proposed tariff sheet governing the same. CURB recommends two modifications to the Joint Movant's proposal: 1) that the Commission grant the relief requested in the Joint Motion prospectively commencing from the date of the order on the Joint Motion and 2) that the Commission determine now that any authorized recovery of the regulatory asset be limited to the LGS and MGS classes where the affected customers are currently taking service.

WHEREFORE, CURB respectfully requests the Commission grant the Joint Motion with CURB's modifications and to grant any other further relief that the Commission deems appropriate.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

23-EKCE-775-RTS

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