BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. for Approval to Make Certain Changes in their Charges for Electric Service.	))))	Docket No. 25-EKCE-294-RTS

STAFF'S ANSWER IN OPPOSITION
TO JOINT APPLICANTS' MOTION FOR LEAVE TO FILE LEGAL ANALYSIS REGARDING STANDARDS FOR DETERMINING CAPITAL STRUCTURE

COMES NOW the Staff of the State Corporation Commission of the Staff of Kansas ("Staff" and "Commission," respectively) and submits this Answer in Opposition to the Motion filed on January 31, 2025 by Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (collectively referred to as "Joint Applicants").[1] The Joint Applicants frame their request as a reasonable procedural proposal designed to afford parties the benefit of advance Commission guidance on outstanding issues regarding application of the existing policy for determining capital structure. If that framing reflects the Motion's true intent, the Commission should reject the Motion as unsupported because it makes leaps of logic to support the request for extraordinary procedural relief. But Staff is concerned that the rationale offered to support the requested procedures is mere pretext.

While the Commission's existing policy allows for a consolidated capital structure that considers the parent company, the Joint Applicants prefer a capital structure that is based on the characteristics of the operating subsidiaries on a standalone basis. Based on its preliminary review of the proposal presented in the legal memorandum attached to the Motion, Staff's specific concern

[1] Docket No. 25-KCPE-294-RTS, *Joint Applicants' Motion for Leave to File Legal Analysis Regarding Standards for Determining Capital Structure* (January 31, 2025) (referred to herein as the "Motion").

is that the Joint Applicants are attempting to subvert the traditional process that has been used in numerous rate cases by limiting scrutiny of their proposal via the expedited and truncated procedures proposed in the Motion.[2] That proposal threatens parties' due process rights and undermines bedrock principles of administrative law and utility law.

In support of its request that the Commission reject the Motion, Staff states as follows:

I. EXECUTIVE SUMMARY

1. The Commission's determination of a utility's capital structure has material impact on the utility's cost of service and, in turn, on the reasonableness and affordability of the rates customers are required to pay for electric distribution service.[3] In their last rate case in Docket No. 23-EKCE-775-RTS, capital structure accounted for approximately $27.8 million of the cost of service, and Staff expects the value of this issue to be comparable in the instant docket.[4]

2. The Commission's longstanding policy is to adopt a "capital structure that will result in the lowest overall cost of capital that is representative of utility operations."[5] Under the Commission's traditional approach to rate cases, the Commission will issue an order applying that policy and establishing the Joint Applicants' capital structure after parties submitted prefiled testimony on issues, participated in an evidentiary hearing, and engaged in post-hearing briefing of legal issues.

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[2] Staff's Answer in Opposition addresses the procedural request for relief in the Joint Applicants' Motion. Any discussion of the substantive arguments in the legal memorandum is limited to addressing the areas where the rationale the Joint Applicants provide for their procedural proposal overlap with elements of the substantive proposal.

[3] *See, e.g.*, *Moundridge Tel. Co. v. Kan. Corp. Comm'n*, No. 114,064, 2015 WL 7693784 at *15 (Kan. Ct. App. 2015) (hereinafter "*Moundridge*") ("[T]he capital structure of a company significantly impacts on its revenue requirement."); Motion at 1 ("The capital structure adopted in a rate case is a major issue representing millions of dollars in revenue requirement.").

[4] *See* Docket No. 25-EKCE-294-RTS, Direct Testimony of Darren R. Ives at 27:12-14 (January 31, 2025) (hereinafter referred to as "Ives Direct").

[5] *See, e.g.*, Docket No. 16-KCPE-593-ACQ, Order at 41-42, ¶ 90 (footnote and citations omitted) (April 19, 2017) (reaffirming the Commission's policy regarding capital structure determinations).

3. The Joint Applicants' Motion purports to identify a reasonable solution to a three-part problem that has arisen at the confluence of the implementation of the Commission's longstanding capital structure policy and its traditional procedural schedule for rate cases. According to the Joint Applicants: (1) case-by-case application of the Commission's longstanding policy on capital structure has resulted in "confusion and disagreement among parties[;]"[6] (2) to resolve the outstanding confusion and disagreement, the Commission will need to consider "legal analysis" that is "better presented to the Commission in a legal memorandum as opposed to the testimony of non-lawyer witnesses[;]"[7] and (3) "[u]nder the traditional procedural schedule for a rate case," parties present their legal analyses after submitting prefiled testimony and participating in an evidentiary hearing.[8] The Joint Applicants contend that the logical solution to these problems is a modification to the traditional procedural schedule for rate cases that would allow parties to present their respective legal analyses at an early stage of the proceeding with the goal of receiving "an Order providing advance guidance" before parties submit prefiled testimony and participate in evidentiary hearings.[9] Specifically, the Joint Applicants propose an expedited paper-hearing process on capital structure policy that would culminate with the issuance of a merits determination by April 30, 2025.[10]"

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[6] Motion at 2, ¶ 4. The Joint Applicants contend that the "general nature of the stated policy" adds to this confusion and disagreement because it "general nature of the stated policy leaves litigants unsure what specific elements or factors will be considered relevant to their application and what evidence would be necessary to meet their burden of proof on those standards." *Id*.

[7] *Id*., ¶ 5.

[8] *Id*. at 2, ¶ 6.

[9] *Id*. at 3-4, ¶ 6; *see also id*. Motion at 3, ¶ 6 (addressing these legal issues before testimony is filed would "allow the parties to more efficiently and effectively focus their prefiled testimony").

[10] *Id*., Attachment B. Under the procedural schedule that was proposed on February 5, 2025, the next round of testimony would be filed on June 6, 2025. Docket No. 25-EKCE-294-RTS, *Joint Motion for Establishing Procedural Schedule* at 2 (February 6, 2025).

4. The step-by-step logic the Joint Applicants use to present the problem statement and proposed solution may have superficial appeal. But the logic chain fails when subjected to scrutiny. Each of the "problems" on which the Joint Applicants relies to demonstrate the need for their requested procedural relief are either false premises or a *non sequitur*.

- There is no "confusion" regarding application of the Commission's existing policy. Staff and the Commission have consistently applied that policy, and the Commission's application of its policy has been affirmed by reviewing courts. *See* Section II.A, *infra*.
- Any "disagreement" involves the Joint Applicants' challenge to the existing policy itself, which is not a question of application. Addressing the Joint Applicants' disagreement through the extraordinary procedures proposed in the Motion creates material due process concerns and threatens bedrock principles of administrative law and utility law. See Section II.B, *infra*.
- Evaluating capital structure does not involve consideration of analysis that is uniquely "legal" in nature. Rather, as the Joint Applicants demonstrate themselves, evaluating capital structure involves consideration of mixed questions of law, policy, and fact. *See* Section II.C, *infra*.

5. Further, despite the Joint Applicants' claim that the proposed procedures are based on a practice used by Staff in the past, their proposal is unprecedented and extraordinary. *See* Section II.D, *infra*.

6. In addition to the Joint Applicants' failure to demonstrate a legitimate need for the extraordinary procedures they propose, the proposed process gives rise to material concerns that can be avoided by adherence to the traditional procedural schedule for rate cases. Consequently, the Commission should reject the Motion.

II. ANSWER IN OPPOSITION TO THE MOTION

7. Though the Commission's rate-making determinations must "balance[ ] … investor and the consumer interests,"[11] the Commission enjoys broad discretion in selecting the method of

[11] *Moundridge*, 2015 WL 7693784 at *26 (noting the Kansas Supreme Court's approval of the criteria articulated by the United States Supreme Court) (citing *Kan. Gas & Elec. Co. v. Kan. Corp. Comm'n.,* 239 Kan. 483,

determining a utility's capital structure in light of those interests.[12] In exercising that discretion on the specific issue of the appropriate capital structure, the Commission has established a longstanding policy of adopting a "capital structure that will result in the lowest overall cost of capital that is representative of utility operations."[13] Staff has consistently applied the Commission's longstanding policy when evaluating utility's capital structure proposals.[14] And that policy has been affirmed by the Kansas Court of Appeals.[15]

8. On its face, the Joint Applicants' Motion does not appear to take issue with the Commission's longstanding capital structure policy itself.[16] Rather, the Joint Applicants present their issues in the context of how the policy is applied. They contend that (i) "application of this policy on a case-by-case basis has frequently resulted in confusion and disagreement among parties[,]"[17] and (ii) "the general nature of the stated policy leaves litigants unsure what specific elements or factors will be considered relevant to their application and what evidence would be

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495, 720 P.2d 1063 (1986) (hereinafter "*KG&E*") & *Fed. Power Comm'n v. Hope Gas Co.*, 320 U.S. 591, 603 (1944) (hereinafter "*Hope*")).

[12] The Legislature vested the Commission with "broad discretion in many aspects of determining rates for regulated utilities in light of the complex issues it addresses." *Moundridge*, 2015 WL 7693784 at *13; *see also KG&E,* 239 Kan. at 495 ("[T]he [Commission], of necessity, must be afforded a wide discretion in the methodology to be utilized in approaching the complex problems involved."). This discretion extends to the determination of a utility's capital structure. *See Moundridge*, 2015 WL 7693784 at *13 (citing *Aquila, Inc. v. Kan. Corp. Comm'n,* No. 94,326, 2005 WL 1719705 at *3 (Kan.App.2005) (unpublished opinion) (hereinafter "*Aquila*").

[13] *See, e.g.*, Docket No. 16-KCPE-593-ACQ, Order at 41-42, ¶ 90 (footnote and citations omitted) (April 19, 2017) (reaffirming the Commission's policy regarding capital structure determinations).

[14] See Docket No. 23-EKCE-775-RTS, Direct Testimony of Adam H. Gatewood at 24:12-25:1 (August 29, 2023) ("Staff is committed to applying the Commission's established policy" of adopting a capital structure that will result in "the lowest overall cost of capital that is representative of utility operations.").

[15] *See, e.g.*, *Moundridge*, 2015 WL 7693784 at *15; *Aquila*, 2005 WL 1719705 at *3; *Wheat State Tel. Co. v. Kan. Corp. Comm'n*, No. 91,640, 2004 WL 895534 at *9 (Kan. Ct. App. Apr. 23, 2004).

[16] *See* Docket No. 25-EKCE-294-RTS, Joint Application at 4 (discussing "the Commission's policy of applying the lowest overall cost of capital that is representative of utility operations"); *see also* Ives Direct at 25:17-19 (discussing "the Commission's stated policy of employing a capital structure that will result in the lowest overall cost of capital that is representative of utility operations") (emphases and footnote omitted); Docket No. 25-EKCE-294-RTS, Direct Testimony of Geoffrey T. Ley at 28:12-13 (January 31, 2025) (hereinafter "Ley Direct") (discussing "the Commission's longstanding capital structure policy").

[17] Motion at 2, ¶ 4.

necessary to meet their burden of proof on those standards."[18] The Joint Applicants' Motion asks the Commission to provide guidance to the parties to resolve these issues, but they also take issue with the traditional process that would be used to facilitate the Commission's provision of such guidance. According to the Joint Applicants, the underlying issues are "legal issues" that "are better presented to the Commission in a legal memorandum as opposed to the testimony of non-lawyer witnesses."[19] Given the legal nature of these issues, additional problems arise.

9. "Under a traditional procedural schedule for a rate case, this legal analysis would only first be raised in post-hearing legal briefing at which point the parties have already presented their testimony and evidence and the hearing has concluded."[20] According to the Joint Applicants, parties would benefit from "advance guidance" from the Commission.[21] Consequently, they "ask[ ] the Commission to modify its traditional schedule to permit the filing of legal memorandums on this issue early in the procedural process[.]"[22] Under the Joint Applicants' proposal, the Commission would issue an order by April 30, 2025.[23]

10. As demonstrated below, the Joint Applicants fail to demonstrate any legitimate basis for the extraordinary procedures they request. In addition to being unnecessary, the extraordinary procedures the Joint Applicants propose give rise to material due process concerns

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18 *Id*.

19 *Id*., ¶ 5.

20 *Id*., ¶ 6.

21 *Id*. at 3-4; *see id*. at 2, ¶ 5 (claiming that "[a]llowing the filing of legal memorandums in the docket would provide a foundation upon which those testimonies could be more properly based, and it would assist witnesses in fully articulating their positions in testimony without inappropriately testifying to legal conclusions."); *id*. at 3, ¶ 6 (claiming that a process that results in advance guidance would "allow the parties to more efficiently and effectively focus their prefiled testimony on addressing the standards and factors the Commission deems relevant to making a decision"); *see also* Joint Application at 8 (asking the Commission to "issue an Order prior to the further filing of testimony that clearly sets out the standard that will be applied in this case").

22 *Id*. at 2-3, ¶ 6.

23 *Id*., Attachment B.

and threatens bedrock principles of administrative law and utility law. Consequently, the Commission should deny the Motion.

A. There is No "Confusion" Regarding Application of the Commission's Existing Standard.

11. The Joint Applicants' arguments are not sufficient to warrant the extraordinary procedures they request. First, the Joint Applicants fail to support their claim that application of the Commission's policy on a case-by-case basis has resulted in "confusion." If this claim were true, Staff would expect the Joint Applicants to provide examples or citations that demonstrate areas of confusion. But the Joint Applicants provide none.

12. The Joint Applicants do not demonstrate any actual confusion because there is none. Indeed, Staff consistently states and applies the policy of applying the lowest overall cost of capital that is representative of utility operations. For example, in the Joint Applicants most recent rate case (Docket No. 23-EKCE-775-RTS), Staff Witness Gatewood testified that "Staff is committed to applying the Commission's established policy" of adopting a capital structure that will result in "the lowest overall cost of capital that is representative of utility operations."[24] Evergy accused Mr. Gatewood of "ignor[ing] the second part of this standard—that the capital structure applied must be 'representative of utility operations.'"[25] But that accusation lacks merit. The record in Docket No. 23-EKCE-775-RTS demonstrates that it was the Joint Applicants that ignored Mr. Gatewood's analysis of: (1) the operating utilities' reliance on the parent company for debt and equity financing; (2) the parent company's reliance on cashflow from the operating subsidiaries to fund interest payments on debts; and (3) the parent company's reliance on cashflow

[24] Docket No. 23-EKCE-775-RTS, Direct Testimony of Adam H. Gatewood at 24:12-25:1 (August 29, 2023) (citation omitted).

[25] Docket No. 23-EKCE-775-RTS, Rebuttal Testimony of Darrin R. Ives at 6:16-18 (September 18, 2023) (citation omitted).

from the operating subsidiaries to fund dividend payments to shareholders.[26] While the Joint Applicants may disagree with the result of Staff's analysis, it is not reasonable to recast their disagreement as "confusion" that should be addressed through extraordinary procedures.

13. Based on the foregoing, the Commission should find that the Joint Applicants' arguments about purported "confusion" are not a sufficient basis for adopting the extraordinary procedures proposed in the Motion.

B. Any "Disagreement" with the Existing Policy Involves the Joint Applicants' Challenge to that Policy Itself and, Therefore, Is Not a Matter of Application that Can Be Clarified.

14. The Joint Applicants fail to support their claim that application of the Commission's policy on a case-by-case basis has resulted in "disagreement" among the parties that should be resolved through the requested procedures. Disagreement certainly exists. As demonstrated in the discussion in Section II.A, *supra*, regarding the Joint Applicants' response to Staff Witness Gatewood's capital structure analysis in Docket No. 23-EKCE-775-RTS, it is not accurate to characterize that disagreement as centering on application of the Commission's existing policy. Rather, despite framing the Motion in terms of a request for procedures that will allow the Commission to clarify its existing policy,[27] the reality is that the Joint Applicants do not agree with that policy. They disagree with it because it can result in adoption of a consolidated capital structure instead of their preferred standalone capital structure—indeed, that was precisely what Mr. Gatewood's analysis recommended in Docket No. 23-EKCE-775-RTS.[28]

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[26] Docket No. 23-EKCE-775-RTS, Direct Testimony of Adam H. Gatewood at 36:26-41:3 (August 29, 2023).

[27] The Joint Applicants claim that, under their proposal, "[c]apital structure proposals by all parties shall be consistent with the Commission's commitment to use a capital structure that will result in the lowest overall cost of capital that is representative of utility operations." Motion, Attachment B at 14, ¶ 1.

[28] *See* Motion, Attachment A at 1-2 (explaining that the Joint Applicants' "proposal is structured around the so-called 'Standalone Approach'" whereby an operating utility is "treated as an independent legal entity" for purposes of establishing its capital structure").

15. They are proposing a new standard that would replace the existing policy with the Joint Applicants' preferred "Standalone Approach." Though Staff is not opining on the merits of the Standalone Approach at this time, it has concerns with the Standalone Approach as presented by the Joint Applicants. Specifically, under the evidentiary framework the Joint Applicants present, it is not clear that the Standalone Approach will result in the lowest cost of capital consistent that is representative of utility operations. Rather, the Joint Applicants appear to be proposing to enshrine the Standalone Approach under a rebuttable presumption. That policy shift would be subject to a rebuttal presumption that appears to shift the burden of proof from the Joint Applicants to Staff and customers.[29] Compounding the harm that results from that shift, the Joint Applicants proposal seems to impose a heightened standard on Staff and customers. Under the proposal, Staff and customers could not rebut the presumption by demonstrating that the Standalone Approach does not result in just and reasonable rates. Instead, Staff and customers would have to demonstrate that that a standalone capital structure is "imprudent" or the result of "intentional manipulation of corporate capitalization to defeat public convenience or accomplish a wrongful purpose on the shareholders' behalf."[30] While Staff would likely oppose the Joint Applicants' substantive proposal on the merits as unjustified and unreasonable, there is simply no basis for reviewing that proposal that gives rise to these concerns through a truncated and expedited briefing procedure like that proposed in the Motion.

16. Staff is also concerned that the truncated process the Joint Applicants propose contravenes and undermines bedrock principles of administrative law and public utility law. Of particular relevance, the Joint Applicants' proposal: (1) limits the Commission's discretion and

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[29] *See* Motion, Attachment A at 14-15, ¶¶ 4-5 (proposing a "rebuttable presumption" whereby the Standalone Approach would be the default standard).

[30] *Id*., Attachment A at 15, ¶ 5.

binds the Commission to a specific methodology in contravention of Supreme Court and Kansas precedent;[31] (2) is so prescriptive and inflexible that it threatens the Commission's ability to fulfill its obligations to engage in reasoned decisionmaking[32] and balance investor and the consumer interests in light of the circumstances of a specific case;[33] (3) would use an expedited and truncated process to achieve a substantive change in policy without providing Staff and intervenors an opportunity to submit responsive testimony or address the issue at an evidentiary hearing;[34] (4) would achieve a general change in Commission policy in an adjudicative proceeding involving electric utilities without providing local distribution companies and their customers an opportunity to be meaningfully heard regarding the proposed change; (5) would threaten to deprive potential intervenors—who may not submit a timely motion to intervene until after the proposed procedures have commenced—of due process rights, notice, and a meaningful opportunity to be heard; and (6) violates the general prohibition against single-issue ratemaking.[35]

17. It would be patently unreasonable to consider a policy change under an extraordinary process that gives rise to such fundamental concerns. This conclusion is particularly appropriate where, as here, the traditional procedural schedule for rate cases provides the Joint

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[31] *See Fed. Power Comm'n v. Natural Gas Pipeline Co.*, 315 U. S. 575, 586 (1942) ("The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances."); *Moundridge*, 2015 WL 7693784 at *13 (the "Commission is not bound to use any particular formula").

[32] *Home Telephone Co. v. Kan. Corp. Comm'n,* 31 Kan.App.2d 1002, 1012, 76 P.3d 1071 (2003), *rev. denied*, 277 Kan. 923 (2004).

[33] *Moundridge*, 2015 WL 7693784 at *26 (noting the Kansas Supreme Court's approval of the criteria articulated by the United States Supreme Court) (citing *KG&E,* 239 Kan. at 495 & *Hope*, 320 U.S. at 603).

[34] *See Farmland Indust., Inc. v. Kan. Corp. Comm'n*, 25 Kan. App. 2 (Kan. Ct. App. 1999) (affirming that "'[t]he right to the cross-examination of witnesses in quasi-judicial or adjudicatory proceedings is one of fundamental importance and is generally, if not universally, recognized as an important requirement of due process.'") (quoting *Adams v. Marshall*, 212 Kan. 595, 599-600 (1973)).

[35] *See Citizens' Util. Ratepayer Bd. v. Kan. Corp. Comm'n*, 47 Kan. App. 2. 1112 (2012) (discussing the general prohibition against single-issue ratemaking).

Applicants a full opportunity to challenge the Commission's existing policy and pursue their alternative proposal.

18. Given the rationale stated above, the Commission should reject the Motion and allow the Joint Applicants to pursue their disagreement with the Commission's existing policy through the traditional procedural schedule for rate cases.

C. The Joint Applicants' Own Conduct Belies Their Claims About the Need to Present "Legal Analysis" Through Expedited Briefing Procedures.

19. Staff acknowledges that application of the Commission's capital structure policy involves legal analysis. But the Joint Applicants overstate the extent to which the determination of capital structure involves consideration of legal analyses. Like most rate-case issues the Commission addresses, the determination of a utility's capital structure involves the consideration of mixed issues of law, fact, and policy. It is not a pure, legal analysis. Indeed, in the Joint Applicants' most recent rate case, Staff Witness Gatewood testified that he was "not an attorney" and, as such, was "not offering legal analyses or conclusions."[36] Significantly, however, Mr. Gatewood explained that determining the appropriate capital structure involves overlapping questions of law, policy, and fact.

> [M]y responsibilities as a financial analyst require that I understand court opinions and Commission orders so that I can apply rules, precedent, and policies to the facts of the cases I am analyzing. Also, the analyses I sponsor are part of Staff's inter-disciplinary evaluation of overlapping issues of law, economics, accounting, finance, ratemaking, and policy. Any testimony I provide on legal principles or those areas of overlap are based on my experience and perspective as a financial analyst.[37]

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36 Docket No. 23-EKCE-775-RTS, Direct Testimony of Adam H. Gatewood at 4:4 (August 29, 2023).

37 *Id*. at 4:5-10.

In that same proceeding, the Joint Applicants also recognized that analysis of capital structure is not a purely legal analysis. In fact, in responding to Staff Witness Gatewood's testimony on capital structure, Mr. Ives emphasized that "*the facts of the case absolutely matter*."[38]

20. Further belying the claim about the need for expedited briefing procedures, the Joint Applicants' witnesses sponsor testimony in this proceeding that opines on the same legal precedent and authorities discussed in the legal memorandum the Joint Applicants attached to their Motion.[39] The Joint Applicants' ability to sponsor testimony on capital structure in this proceeding, without the benefit of the advance guidance and briefing procedures they seek in the Motion, demonstrates that the procedures requested in the Motion are not needed. Moreover, that testimony demonstrates that cost of capital is not an issue that can be considered in isolation.[40]

21. For the above stated reasons, the Commission should find that the purported need to consider legal analysis is not sufficient to justify the extraordinary procedures proposed in the Motion.

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[38] Docket No. 23-EKCE-775-RTS, Rebuttal Testimony of Darrin R. Ives at 6:18-19 (September 18, 2023) (emphasis in original).

[39] *See* Ives Direct at 33-36 (discussing *Hope*, 320 U.S. 591; *Bluefield Waterworks & Improvement Co., v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923); *Danisco Ingredients USA, Inc. v. Kan. City Power & Light Co.*, 267 Kan. 760, 773 (1999); *Moundridge*, 2015 WL 7693784 at *38; *High Island Offshore Sys., L.L.C.*, 110 FERC, ¶ 61,043 at P 134; *Enbridge Pipelines (KPC)*, 100 FERC ¶ 61,260 at P 173 (2002); *Michigan Gas Storage Co.*, 87 FERC ¶ 61,038 at pp. 61,157-61 (1999); *Transcon. Gas Pipe Line Corp.*, Opinion No. 414, 80 FERC ¶ 61,157 at p. 61,664 (1997), *order on reh'g*, Opinion No. 414-A, 84 FERC ¶ 61,084 at p. 61,415 (1997) (subsequent history deleted for brevity); *Ass'n of Bus. Advocating Tariff Equity Coalition v. Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,060 at P 29 (2016)).

[40] The Motion and testimony sponsored by Joint Applicants' witnesses address the specific interrelationships among the components of the cost of capital and the capital structure as well as the capital structure's general relationship to the cost of service as a whole. *See* Docket No. 25-EKCE-294-RTS, Direct Testimony of Ann Bulkley at 53:12-14 (January 31, 2025) ("The capital structure and the return on debt and equity are not severable[.] … It is important to recognize that the changes in 14 the capital structure will affect the cost rates of the components of the capital structure."); *see also id*. at 54:1-2 ("The investor required return on equity will also change as the capitalization of a 2 company changes."); Ley Direct at 6:5-7 ("To be considered fair and reasonable, [the Joint Applicants'] revenue requirement must be based on a capital structure that represents the source of funds used to finance the operation of the utility"); Motion at 1, ¶ 2 ("The capital structure adopted in a rate case is a major issue representing millions of dollars in revenue requirement.").

D. Contrary to the Joint Applicants' Claim, the Requested Procedures are Unprecedented and Extraordinary.

22. In further support of their proposal, the Joint Applicants claim that they structured the request for modified procedures "in accordance with how Staff has previously presented a similar request."[41] The Joint Applicants are correct that Staff requested a modification to the traditional procedural schedule for rate cases to submit a legal analysis at an earlier stage of the proceeding than would be typical. But the parallels end there. To the extent Staff's prior proposal is relevant at all, it supports rejection of the Motion.

23. Docket No. 15-KCPE-116-RTS involved review of Kansas City Power & Light Company's ("KCP&L") general rate case that was filed on January 2, 2015. KCP&L's application raised issues that are typical of general rate cases, e.g., cost of capital, etc. However, it also included a discrete proposal for approval of an Economic Relief Pilot Program ("ERPP"), which was a "customer program" that was intended to provide relief to low-income customers. Specifically, the ERPP proposal provided a fixed credit on the bills of low-income customers. KCP&L proposed to recover half of the program's costs from customers as a charitable contribution" under K.S.A. 66-101f while shareholders would absorb the other half. In support of its cost recovery proposal, the applicant sponsored testimony that relied on a legal conclusion a member of Staff purportedly reached in a prior proceeding regarding the propriety of recovering the costs of an ERPP program as a charitable contribution under K.S.A. 66-101f. KCP&L presented that legal conclusion in testimony and did not present a modified procedural schedule to get an advance ruling on its legal position.[42]

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[41] *See* Motion at 3 n.1, ¶ 7 (citing Docket No. 15-KCPE-116-RTS, Staff Motion for Leave to File Legal Analysis Regarding KCP&L's Economic Relief Pilot Program (April 16, 2015)).

[42] *See generally* Docket No. 16-KCPE-116-RTS, Direct Testimony of Darrin R. Ives at 42:4-48:21 (January 2, 2015).

24. During its preliminary review of the application, Staff concluded that KCP&L erred in classifying the 50% of program costs that were to be recovered from customers as a charitable contribution. Staff also reached the threshold legal conclusion that the cost recovery proposal under the discrete ERPP program created an impermissible cross subsidy in violation of Kansas law. Staff presented its legal analysis three and half months after the application was filed and weeks before intervenor and Staff testimony was due.[43] When Staff presented its legal analysis, it stated expressly that it was not asking the Commission to make an advance ruling on the legality of the ERPP.[44] In light of Staff's legal conclusion, the applicant withdrew the discrete ERPP proposal.[45] The Commission granted KCP&L's request to withdraw the discrete ERPP issue from the general rate case and, therefore, denied Staff's procedural proposal as moot.[46]

25. The circumstances described in the preceding paragraph do not support granting the Joint Applicants' Motion. As demonstrated in Section II.C, *supra*, cost of capital is not a novel, discrete issue such as a customer program that can be easily severed from the rest of the application. To the contrary, capital structure is an integral component of the cost of service that cannot be considered in isolation. In addition, capital structure involves mixed questions of law, policy, and fact that are not comparable to a threshold legal analysis that is potentially dispositive of an entire issue. Further, Staff's proposal in Docket No. 15-KCPE-116-RTS raised none of the due process concerns, logistical issues, and practical issues that are identified and discussed above.

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43 *See* Docket No. 16-KCPE-116-RTS, *Staff's Motion for Leave to File Legal Analysis Regarding Economic Relief Pilot Program* (April 16, 2015).

44 *See id*. at 1 ("Staff is not requesting that the Commission rule on the legality of the ERPP at this time.").

45 *See* Docket No. 16-KCPE-116-RTS, *KCP&L's Response to Staff's Motion for Leave to File Legal Analysis Regarding KCP&L's Economic Relief Pilot Program and Motion to Withdraw the Issue from this Docket* (April 27, 2015).

46 Docket No. 16-KCPE-116-RTS, Order Regarding KCP&L's Economic Relief Pilot Program at ¶ 9 (May 5, 2015).

26. In sum, the Joint Applicants take issue with the Commission's policy for determining a utility's capital structure. They disagree with the existing policy because it can result in use of a consolidated capital structure in contravention of the Joint Applicants' preference for a standalone capital structure for operating utilities. The Joint Applicants ask the Commission to adjudicate this issue through extraordinary procedures that have never been adopted. Approving such an extraordinary procedural proposal is only appropriate where the circumstances clearly demonstrate that traditional procedures are not sufficient. Rather than make that showing, the Joint Applicants rely on unsupported assumptions that require leaps of logic in order to get to the conclusion that extraordinary procedures are necessary and appropriate. For these reasons, the Commission should reject the Motion.

III. PRAYER FOR RELIEF

WHEREFORE, the Staff of the State Corporation Commission of the Staff of Kansas respectfully asks the Commission to reject the Joint Applicants' January 31, 2025, Motion for Leave to File Legal Analysis Regarding Standards for Determining Capital Structure and evaluate the appropriate capital structure under the traditional procedures for evaluating rate cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

25-EKCE-294-RTS

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Answer in Opposition was served via electronic service this 10th day of February, 2025, to the following:

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