

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

In the Matter of Evergy Kansas Central, Inc. and)
Evergy Kansas South, Inc. Seek Approval from the) Docket No. 22-EKCE-020-TAR
Commission of the Evergy Energy Efficiency Rider)
2021 Filing)

**REPLY OF COMMISSION STAFF TO EVERGY KANSAS CENTRAL, INC. AND
EVERGY KANSAS SOUTH, INC.'S RESPONSE TO STAFF'S REPORT AND
RECOMMENDATION**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) hereby responds to Evergy Kansas Central, Inc. and Evergy Kansas South, Inc.'s (together, Evergy Kansas Central or Evergy) Response to Staff's Report and Recommendation in the instant docket.

I. Background

1. On July 15, 2021, Evergy Kansas Central filed its proposed updated Energy Efficiency Rider (EER), designed to recover costs associated with Commission-approved energy efficiency programs deferred over a twelve-month period ending in June of each year plus any true-up amount from prior periods.¹ Evergy sought recovery of costs incurred in relation to demand respond and energy efficiency programs totaling \$4,379,725; this amount included unrecovered expenses of \$4,277,148, incurred from the period of July 1, 2020, through June 30, 2021, and under-recovered costs of \$102,577 incurred from the prior period.²

2. It is R&R, Staff recommended a revised EER amount of \$3,102,124.³ Staff examined the expenditures associated with Evergy's energy efficiency programs and found the

¹ See generally Evergy Energy Efficiency Rider 2021 Filing (Application); see also Notice of Filing of Staff's Report and Recommendation, p. 1 (Oct. 1, 2021) (Staff's R&R or R&R).

² Staff's R&R, p. 2.

³ *Id.* 3.

proposed EER rate calculations were reasonable and accurate.⁴ Staff's revised amount is the result of an adjustment to the True-Up portion of Evergy's filing.⁵ In Staff's review of Evergy's 2019 Transmission Formula Rate (TFR), Staff discovered that the account to which the EER was amortized had also been included in the TFR, resulting in a small amount of the approved EER amount being recovered from retail and transmission customers.⁶ As of April 2020, Evergy began amortizing the EER amount to an account that was not included in the TFR and also made correcting entries in that month to zero out the amortization that would have been recovered in the 2020 TFR.⁷ Staff made an adjustment to the True-Up in this year's EER to correctly reflect that the EER was double collected between 2010 to 2019, resulting in a reduction of the EER amount of \$1,277,601.⁸

3. On October 8, 2021, the Citizens' Utility Ratepayer Board (CURB) filed its Response to Staff's R&R (CURB's Response), in which it expressed concern overall with energy efficiency efforts in Kansas but ultimately stated "Staff's recommendations in its R&R are reasonable and therefore are in the best interest of Evergy's residential and small commercial ratepayers."⁹ CURB was supportive of Staff's recommendations and requested the Commission adopt the same.¹⁰

4. On October 11, 2021, Evergy filed its Response to Staff's R&R (Evergy's Response), in which it disagreed with Staff's recommendation to adjust the true-up amount for the period between 2010 and 2019 where the EER was double collected.¹¹

⁴ See R&R, p. 3.

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*, pp. 3-4.

⁹ CURB's Response, p. 3.

¹⁰ *Id.*

¹¹ Evergy's Response, p. 2.

II. Summary of Evergy's Response

5. Evergy's disagreement with Staff, in part, is an issue of tariff interpretation. Evergy interprets the EER Tariff as allowing a true-up only from the immediate prior year.¹² Evergy points to language in the tariff that instructs any true-up amount "from the prior period" be included in the current year's filing.¹³ The Tariff also defines the true-up as "[t]he annual true-up amount for an Energy Efficiency Rider year, to be determined prior to filing the next EE Rider and to be applied to the subsequent EE Factor calculation."¹⁴ Evergy believes this language limits the true-up amount to only being from the prior period, leaving "no room whatsoever for other adjustments to be made."¹⁵ Evergy also posits that if the Commission allows Staff to recover for customers the amount it double-collected, it essentially will "give parties a lifetime retroactive look back option for adjustment mechanisms," resulting in a mechanism which does not allow a period to be closed out from review or adjustment.¹⁶ Further, Evergy raises the argument that, given the narrowly defined true-up provision in the EER Tariff, the adjustment proposed by Staff would constitute retroactive ratemaking.¹⁷

6. Evergy also disagrees with Staff's recommendation because it asserts it resolved the double-collection of the EER rider from TFR customers through the informal challenge process provided for under FERC-approved TFR protocols.¹⁸ To resolve an informal challenge brought by a wholesale customer based on the double-collection, Evergy adjusted its TFR so that no energy

¹² Evergy's Response, p. 2.

¹³ *See id.* *See also* Attachment A, Evergy Kansas Central Energy Efficiency Rider, Sheet 2 (effective Oct. 27, 2020) (EER Tariff).

¹⁴ *Id.*

¹⁵ Evergy's Response, p. 2.

¹⁶ *See id.*, p. 3.

¹⁷ *See id.*

¹⁸ *See id.*

efficiency costs would flow through on a prospective basis.¹⁹ Evergy states that the parties accepted this resolution, that the time-period for a party to further challenge recovery of these costs through the TFR has passed, and that Staff’s recommendation to adjust the true-up is a “collateral attack” on the FERC-approved TRF and related tariff provisions.²⁰

III. Staff’s Reply

7. Staff does not believe the tariff language should be construed as narrowly as Evergy suggests; in fact, from Staff’s perspective the tariff does allow for the adjustment recommended in its R&R. The definition of the true-up as contained in the EER Tariff is as follows: “The true-up will be the difference between the approved recovery amount and the actual recovery amount during the time the EE factor was in effect.”²¹ Staff interprets “during the time the EE factor was in effect” to mean not just during the time the most recent EE factor was in effect, but the time from which the EE factor first was established and approved by the Commission.

8. Evergy interprets the language “from the prior period,” contained in the Energy Efficiency Rider Amount Calculation portion of the Tariff, as meaning the prior 12-month period. Staff agrees there is mention of a “12-month period” when referring to the period for which to assess the actual costs incurred by Evergy from maintaining its energy efficiency programs;²² however, in reference to the true-up, the tariff states that “any true up amount from the prior period,” shall be used.²³ Unlike when referring to the energy efficiency program costs, when referring to the true-up portion of the calculation, the tariff does not specify that the “prior period” refers to the prior 12-month period. Staff interprets the lack of specificity before “prior period” to

¹⁹ See Evergy’s Response, p. 2.

²⁰ See *id.*, p. 4.

²¹ EER Tariff, Sheet 2.

²² See *id.*

²³ See *id.*

mean there is meant to be a level of flexibility with the true-up provision that would allow Staff to make adjustments farther back than the preceding 12-months.

9. Evergy attempts to argue that Staff has lost its ability to correct its error because too much time has passed. Evergy states in its Response that “[i]f a party believes recovery of any portion of the EER amount is inappropriate, it should raise those concerns at the time the annual EER filing is made seeking recovery of those costs.”²⁴ As discussed in Staff’s R&R, Evergy has known about this error since at least Docket No. 21-EKCE-025-TAR, the docket filing which calculated the EER rate for last year, and made no attempt to reflect the double-collection.²⁵ Staff would again point out that it only became aware of the double-collection in October of 2020, after the prior year’s EER Tariff had already been approved.²⁶ Evergy did not account for the over-collection in Docket No. 21-025, or in any prior EER docket since the over-collection began, and it continues to resist Staff’s efforts to refund those over-recovered costs through the current EER filing. Given that this EER filing is Staff’s first opportunity to review since being made aware of the error, Staff believes this is in fact the most appropriate docket in which to raise its concerns.

10. Evergy also asserts that once the Commission issues an order approving an EER Tariff in an annual docket, “that order becomes final and any attempt to adjust it after the fact would constitute retroactive ratemaking.”²⁷ Staff completely disagrees that correcting for Evergy’s error would constitute retroactive ratemaking because the tariff provides a mechanism to true-up for actual costs. It remains Staff’s position that if there is an error that impacted the prior year’s True Up calculation, and thus EER (and those of years past, for that matter), then it is entirely

²⁴ Evergy Response, p. 3.

²⁵ *See id.*

²⁶ *See* Staff’s R&R, p. 3.

²⁷ *Id.*

within the Commission's authority to correct for that error whether the correction increases or decreases customer bills. Staff is not asking the Commission to create a new rate; it is requesting the Commission enforce the true up provisions of the existing tariff in order to correct an error made by Evergy and not discovered by Staff until last year. Correcting this error, as proposed by Staff, is not retroactive ratemaking because it is consistent with the wording and the intent of the tariff and is therefore well within the Commission's authority.

11. Commission precedent supports Staff's position. Staff has previously recommended adjustments reaching back beyond a prior 12-month period and received approval of such from the Commission. Such an instance occurred in several of Westar's, now Evergy Kansas Central, Environmental Costs Recovery Rider (ECRR) Tariff filings.²⁸ For example, the Report and Recommendation filed by Staff on April 23, 2009 recommended several years of adjustments be made in the calculation of the true-up.²⁹ The Commission approved these adjustments in its May 29, 2009 *Order Approving Revisions to Westar's ECRR Surcharge Tariff as Recommended by Staff*.³⁰ The same occurred in the 2010 ECRR filing; Attachment B to Staff's R&R in that instance again lists adjustments going back several years in the true-up portion of Staff's calculations.³¹ A review of the various Staff R&Rs in this docket shows that the true-up provision was often used to make adjustments that traced back beyond the prior 12-month period. In Docket No. 07-WSEE-838-TAR (07-838 Docket), the Commission approved agreements reached between Westar and Staff regarding various ad valorem surcharge issues.³² One such

²⁸ See generally Docket No. 09-WSEE-737-TAR (09-737 Docket).

²⁹ See *Memorandum and Recommendations of Commission Staff*, Attachment B, "Revenue True-Up," 09-737 Docket (2009 ECRR R&R).

³⁰ 09-737 Docket.

³¹ See *Notice of Filing of Staff's Report and Recommendation*, Attachment B, "Revenue True-Up," 09-737 Docket (Apr. 30, 2010) (2010 ECRR R&R).

³² See generally *Order*, 07-838 Docket (Feb. 27, 2007) (07-838 Order).

agreement was that the true-up mechanism would be used to correct an over-collection of property taxes for a period going up to five years prior to the negotiation.³³ The above examples show that using the true-up provision to make a multi-year adjustment is not a deviation from Commission precedent, but an extension.

12. Finally, Staff is not attempting to “collaterally attack” the FERC-approved TFR Tariff or otherwise affect the resolution reached under FERC’s informal challenge protocols. Even if Evergy has reached a resolution with regard to the TFR, the instant docket concerns the EER. Through its proposed adjustment, Staff is “reflecting the actual EER collections to accurately reflect that the EER was being double collected”³⁴ and ultimately is attempting to ensure customers subject to the EER Rider do not overpay due to this error.

WHEREFORE, Staff requests the Commission approve its revisions to the true-up provision of Evergy’s EER Rider as set forth in Staff’s R&R, and for any other relief the Commission deems just and reasonable.

Respectfully submitted,

/s/ Carly R. Masenthin

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³³ See *id.*, pp. 3-4.

³⁴ See Staff’s R&R, p. 3.

ATTACHMENT “A”

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THE STATE CORPORATION COMMISSION OF KANSAS

EVERGY KANSAS CENTRAL, INC., & EVERGY KANSAS SOUTH, INC., d.b.a. EVERGY KANSAS CENTRAL

SCHEDULE EER

(Name of Issuing Utility)

Replacing Schedule EER Sheet 1

EVERGY KANSAS CENTRAL RATE AREA

(Territory to which schedule is applicable)

which was filed October 8, 2019

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 1 of 2 Sheets

ENERGY EFFICIENCY RIDER

APPLICABLE

This Energy Efficiency Rider shall be applicable to all retail rate schedules of Evergy Kansas Central and Evergy Kansas South with the exception of Security Area Lighting Service, Street Lighting and Traffic Signal rate schedules.

PURPOSE


This Energy Efficiency Rider is filed in compliance with the Commission's Order in Docket No. 08-GIMX-441-GIV and is designed to recover costs associated with Commission approved Energy Efficiency and Demand Response Programs deferred but not recovered. This Rider will be effective with the first billing cycle of November 2020 through the last billing cycle in October 2021. Evergy Kansas Central will file a new Energy Efficiency Rider for Commission approval in July 2021.

BASIS FOR CHARGE

Energy Efficiency incremental program costs will be recovered using an Energy Efficiency (EE) factor applied to each applicable customer's bill. The EE factor will be applied to each applicable customer's energy usage by multiplying the kilowatt-hours (kWh) of electricity billed by the EE factor. The charge associated with this Energy Efficiency Rider will be identified and shown as a separate line on the applicable customer's monthly billings.

Issued _____
Month Day Year

Effective October 27 2020
Month Day Year

By 
Darrin Ives, Vice President

21-EKCE-025-TAR
Approved **KLF**
Kansas Corporation Commission
September 22, 2020
/s/ Lynn Retz

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THE STATE CORPORATION COMMISSION OF KANSAS

EVERGY KANSAS CENTRAL, INC., & EVERGY KANSAS SOUTH, INC., d.b.a. EVERGY KANSAS CENTRAL

SCHEDULE EER

(Name of Issuing Utility)

Replacing Schedule EER Sheet 2

 EVERGY KANSAS CENTRAL RATE AREA

(Territory to which schedule is applicable)

which was filed October 8, 2019

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 2 of 2 Sheets

ENERGY EFFICIENCY RIDER

ENERGY EFFICIENCY RIDER AMOUNT CALCULATION

The initial EE factor will be calculated to recover actual program costs deferred for Commission approved Energy Efficiency programs deferred over a 12-month period ending in June of each year plus any true up amount from the prior period divided by the total applicable kWh as follows:

$$EE \text{ factor} = EE \text{ costs} + \text{True} / \text{kWh}$$

Where:

EE costs = The actual costs associated with Commission approved Energy Efficiency programs. These costs are recorded in separate sub-accounts of Account 182.3 Other Regulatory Assets for each approved Energy Efficiency or Demand Response Program and for demand response credits provided to customers under approved Demand Response Programs.

True = The annual true-up amount for an Energy Efficiency Rider year, to be determined prior to filing the next EE Rider and to be applied to the subsequent EE Factor calculation. The true-up will be the difference between the approved recovery amount and the actual recovery amount during the time the EE Factor was in effect.

kWh = The estimated kilowatt-hours for the period this EE factor will be applied to customers' monthly bills.

EE FACTOR


\$0.000199 / kWh effective for the billing months of November 2020 through October 2021.

DEFINITIONS AND CONDITIONS

1. All provisions of this Rider are subject to changes made by order of the regulatory authority having jurisdiction.

Issued _____
Month Day Year

Effective October 27 2020
Month Day Year

By 
Darrin Ives, Vice President

21-EKCE-025-TAR
Approved **KLF**
Kansas Corporation Commission
September 22, 2020
/s/ Lynn Retz

CERTIFICATE OF SERVICE

22-EKCE-020-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing reply was sent by electronic mail this 21st day of October, 2021, to the following:

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22-EKCE-020-TAR

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* Denotes those receiving the Confidential version