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December 19, 2024

Lynn M. Retz
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

RE: Docket No. 25-EKCE-207-PRE
Petition for Reconsideration of Black Hills/Kansas Gas Utility Company, LLC

Dear Ms. Retz:

Enclosed for filing is the Petition for Reconsideration filed on behalf of Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy.

Respectfully submitted,

A handwritten signature in black ink that reads 'Doug Law'.

Douglas J. Law, KS Bar #29118
Associate General Counsel

DL:ce

cc: Service List
Rob Daniel
Nick Smith
Rami Alnajjar

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Petition of Evergy Kansas)
Central, Inc., Evergy Kansas South, Inc., and)
Evergy Metro, Inc. for Determination of the)
Ratemaking Principles and Treatment that)
Will Apply to the Recovery in Rates of the)
Cost to be Incurred for Certain Electric)
Generation Facilities under K.S.A. 66-1239.)

Docket No. 25-EKCE-207-PRE

PETITION FOR RECONSIDERATION

Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy ("Black Hills"), submits the following Petition for Reconsideration ("PFR") asking the Kansas Corporation Commission ("Commission") to reconsider its Order Denying Intervention to Black Hills filed on December 12, 2024. This PFR is filed pursuant to K.S.A. 77-529 and K.A.R. 82-1-235.

1. On November 6, 2024, Evergy Kansas Central, Inc., Evergy Kansas South, Inc., and Evergy Metro, Inc. (collectively referred to as "Evergy") filed an Application per K.S.A. 66-1239, requesting a determination of the rate-making principles and treatment that will apply to the recovery in rates of the costs to be incurred relating to, among other items, the planned construction and acquisition of two new natural gas combined cycle turbines located in Kansas. ("Predetermination Case").

2. On November 12, 2024, the Commission Staff ("Staff") sent an e-mail to all parties to Evergy's last general rate case notifying them of Evergy's filing of its Predetermination Case. The Staff's e-mail indicated that the deadline for filing intervention would be November 18, 2024. Black Hills was not a party in Evergy's last general rate case, so it did not receive the e-mail from Staff. A copy of Staff's e-mail is attached to this PFR as **Exhibit A** and is incorporated herein by reference.

3. On November 14, 2024, the Commission issued an Order setting a procedural

schedule in this matter ("Procedural Order"). The Procedural Order indicated that Evergy had shared the proposed procedural schedule with Staff and the parties to Evergy's last general rate case to obtain their input. As mentioned above, Black Hills was not a party to Evergy's last general rate case, so the proposed procedural schedule was not shared with Black Hills. The Procedural Order did not provide for a deadline for intervention in the Predetermination Case. However, the Procedural Order did include a to-be-determined scheduled public hearing (presumably after the 10-day intervention period) to allow the Commission to accept testimony from the public and the opportunity for the public to submit written comments in the Predetermination Case through April 7, 2025 (again after the 10-day intervention period).

4. The Commission received a number of interventions by the deadline included in Staff's e-mail. Not surprisingly, for the most part, those petitions to intervene were filed by parties or attorneys, who received Staff's e-mail and who were made aware of the filing of the Predetermination Case by that e-mail. For example, Atmos Energy Corporation ("Atmos Energy") and Kansas Gas Service, a division of ONE Gas, Inc. ("Kansas Gas Service"), who have filed petitions to intervene, similar to the petition to intervene submitted by Black Hills, were parties to Evergy's last rate case and therefore received Staff's e-mail and notice that the Predetermination Case had been filed by Evergy and had triggered the 10-day intervention deadline. Had Black Hills received the Staff's e-mail, like Atmos Energy and Kansas Gas Service did, it would have had actual notice of the filing of the Predetermination Case and would have been able to timely file its petition to intervene.

5. As soon as Black Hills became aware of the Predetermination Case, it filed its Petition to Intervene on December 3, 2024. As mentioned above, Black Hills did not have the

advantage of the e-mail notice that Staff provided to other parties. Nor was it part of the discussions of the procedural schedule like the other parties. Black Hills stated in its Petition to Intervene that it was concerned with what impact approval of Evergy's application would have on Black Hills' ability to continue to obtain reliable and reasonable cost natural gas supplies for its natural gas customers.

6. No objections to Black Hills' request to intervene out of time were filed in this docket.

7. On December 12, 2024, the Commission issued an Order denying Black Hills' Petition to Intervene. The sole reason given by the Commission for denying the petition was due to it not being filed within the 10-day statutory deadline contained in K.S.A. 66-1239 (d)(3). Black Hills is asking the Commission to reconsider its decision and to use its discretion to allow Black Hills to participate in the docket.

8. K.S.A. 66-1239 (d) (3) does require that petitions to intervene in predetermination cases be submitted within 10 days of the filing. However, the statute does not state that petitions to intervene after the 10-days are automatically denied. The statute does not state the Commission automatically loses its discretion to grant a petition to intervene that was filed out of time when there are legitimate reasons as to why the petition to intervene was not filed within 10 days after the predetermination case was filed. The Commission's strict reading of the statute that it is precluded from ever using its discretion to grant intervention out of time, even in a situation like the present where due process rights are clearly violated, should be reconsidered. The Commission should not be so quick to give up its discretion. The Commission's own regulations relating to petitions to intervene allow it discretion to grant petitions to intervene out of time when a showing is made that such would promote justice and not impair the conduct of the proceedings. K.A.R. 82-1-225 (b) provides the Commission discretion to grant intervention "at any time upon determination that the

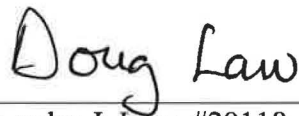
intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings." The 10-day period given to file a petition to intervene was likely included in the statute by the Legislature because of the expedited schedule contemplated by the statute. It is unlikely that the Legislature was mandating the Commission lose all discretion to grant a petition to intervene that was filed out of time if such would assure justice and not interfere with the rest of the schedule set in the case.

9. Failure of the Commission to use its discretion in granting Black Hills' Petition to Intervene out of time results in a violation of an important requirement of due process: adequate notice of administrative proceedings. *Suburban Medical Center v. Olathe Community Hospital*, 226 Kan. 320, 330-331, 597 P.2d 654 (1979). Obviously, this is what Staff was concerned about when it sent its e-mail to the parties in Evergy's last rate case to notify them that the Predetermination Case had been filed and those parties had 10-days to file their petitions to intervene. The Staff wanted to make sure that parties that might be impacted by the filing had adequate notice of the filing of the Predetermination Case and thus elected to send the e-mail to parties that intervened in Evergy's last rate case. Staff used reasonable efforts to assure adequate notice of the filing of the Predetermination Case. However, Black Hills and its customers should not lose the ability to participate in this case to assure their interests are protected because they were not intervenors in Evergy's last rate case and therefore received "different" notice than other parties in this docket. The Commission should use its discretion in granting Black Hills' Petition to Intervene out of time in order to cure and otherwise avoid what is a clear violation of due process. Some parties were given adequate notice of the filing of the Predetermination Case in time to intervene within the 10-day requirement by receiving the e-mail from Staff, while other parties, like Black Hills, were given no

such notice. It is an unreasonable interpretation of the legislation passed by the Kansas Legislature to suggest the Legislature was removing the Commission's discretion to grant intervention out of time, even if such meant that some parties' due process rights could be violated.

10. In addition to the need to grant Black Hills' Petition to Intervene out of time in order to avoid due process violations, there are other reasons for the Commission to use its discretion and grant the intervention. The procedural schedule will not be interrupted by Black Hills' intervention and Black Hills agrees to abide by said schedule. Providing Black Hills the opportunity to participate in the proceeding to assure it and its natural gas sales customers will not be negatively impacted by the approval of the requests being made in this case will promote the public interest and protect other utility customers from any unattended consequences. No objections were filed to Black Hills's Petition to Intervene in this case. The Commission's procedural schedule allows the public to provide testimony at a public hearing and to submit written comments without having to file a petition to intervene within the 10-day filing requirement.

WHEREFORE, for the reasons set forth herein, Black Hills respectfully requests that its Petition for Reconsideration be granted and an order approving its Petition to Intervene be issued by the Commission.



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Attorney for Black Hills/Kansas Gas Utility Company,
LLC, d/b/a Black Hills Energy

VERIFICATION

STATE OF NEBRASKA, COUNTY OF LANCASTER, ss:

Douglas J. Law, of lawful age, being first duly sworn on oath, deposes and says he is the attorney for Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy, above named; that he has read the above and foregoing Petition for Reconsideration; and the statements contained therein are true.

Doug Law
Douglas J. Law

SUBSCRIBED AND SWORN to before me this 18th day of December, 2024.

Tracy L. Moore
Notary Public

Appointment/Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via electronic mail this 19th day of December, 2024, addressed to:

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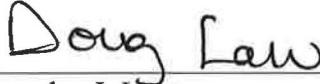
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Douglas J. Law

From: Carly Masenthin [KCC] <Carly.Masenthin@ks.gov>
Sent: Tuesday, November 12, 2024 12:46 PM
To: James Flaherty <JFlaherty@andersonbyrd.com>; shelly.bass@atmosenergy.com; Joseph Astrab [CURB] <Joseph.Astrab@ks.gov>; Todd Love [CURB] <Todd.Love@ks.gov>; David Nickel [CURB] <David.Nickel@ks.gov>; Shonda Rabb [CURB] <Shonda.Rabb@ks.gov>; Della Smith [CURB] <Della.Smith@ks.gov>; barnett@climateandenergy.org; mmbuhrig@cvrenergy.com; jtg@duncanallen.com; Cathy Dinges <Cathy.Dinges@evergy.com>; Darrin Ives <darrin.ives@evergy.com>; ronald.klote@evergy.com; Leslie Wines <Leslie.Wines@evergy.com>; david@fheconsultants.net; Buller, Daniel <dbuller@foulston.com>; Otto, Sarah <SOtto@foulston.com>; Lee Smithyman <lsmithyman@foulston.com>; cthompson@foulston.com; Watson, C. Edward <cewatson@foulston.com>; Zakoura, James <JZakoura@foulston.com>; john@johncoffman.net; robert.vincent@onegas.com; Glenda Cafer <gcafer@morrising.com>; Valerie Smith <vsmith@morrising.com>; Trevor Wohlford <twohlford@morrising.com>; rowe@morrising.com; Will Wohlford <WWOHLFORD@morrising.com>; agupta@nrdc.org; Tim Opitz <tim.opitz@opitzlawfirm.com>; pdavis@pauldavislawfirm.com; Frank Caro <FCaro@Polsinelli.com>; Jared Jevons <jjevons@polsinelli.com>; Tim Laughlin <tlaughlin@longrobinson.com>; trey@tituslawkc.com; rob@tituslawkc.com; dscasey@twgfirm.com; ksmayes@twgfirm.com; Timothy McKee <temckee@twgfirm.com>; john.j.mcnutt.civ@army.mil; dlawrence@usd259.net; kevin.k.lachance.civ@army.mil
Cc: Justin Grady [KCC] <Justin.Grady@ks.gov>; Chad Unrein [KCC] <Chad.Unrein@ks.gov>; Paul Owings [KCC] <Paul.Owings@ks.gov>; Patrick Hurley [KCC] <Patrick.Hurley@ks.gov>; Ashlyn Hefley [KCC] <Ashlyn.Hefley@ks.gov>
Subject: Notice of Intervention Deadline Re: Evergy Predetermination, Docket No. 25-EKCE-207-PRE

Good afternoon,

You are receiving this message because you are on the service list in Docket No. 23-EKCE-775-RTS, Evergy's last general rate case before the Kansas Corporation Commission.

On November 6, 2024, Evergy filed an Application for a predetermination of the ratemaking principles and treatment that would apply to the recovery of costs incurred in constructing and acquiring a stake in two new combined cycle gas-fired generating facilities and one solar facility. Notice of Evergy's intent to file this Application was filed in the 23-775 Docket on October 6, 2024.

The Predetermination Docket No. is 25-EKCE-207-PRE.

Pursuant to K.S.A. 66-1239(d)(3), any application for intervention in a predetermination proceeding must be submitted **no later than ten (10) days after the filing of the Application.**

This email is a courtesy notice that the deadline for intervention is **Monday, November 18, 2024**. The ten-day mark fell on Saturday, November 16. When a deadline falls on a Saturday, Sunday, or legal holiday, K.S.A. 77-503(c) instructs that the deadline shall move to the next day that is not a Saturday, Sunday, or legal holiday, which in this case is Monday, November 18.

Thank you,

Carly R. Masenthin
Senior Litigation Counsel

Please note new email address: Carly.Masenthin@ks.gov



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Kansas Corporation Commission
1500 S.W. Arrowhead Road
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EXHIBIT A