

**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) Docket No. 25-EKCE-207-PRE
Apply to the Recovery in Rates of the Cost to be)
Incurred for Certain Electric Generation Facilities)
under K.S.A. 66-1239.)

KANSAS INDUSTRIAL CONSUMERS GROUP, INC. AND
THE KANSAS AGRICULTURE ASSOCIATION’S REPLY
TO EVERGY AND STAFF’S JOINT RESPONSE IN OPPOSITION

COMES NOW the Kansas Industrial Consumers Group, Inc. and the Kansas Agriculture Associations (collectively “KIC”)¹ in its Reply to the joint objection by Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (together “Evergy”) and Staff of the Kansas Corporation Commission (“Staff”) to KIC’s Motion to File as an Exhibit in this Docket, the 2025 Annual Update to the Integrated Resource Plan of Evergy Kansas Central (the “Motion”).

In support of its reply, KIC states as follows:

1. On November 6, 2024, Evergy filed a Petition in this KCC Docket pursuant to K.S.A. 66-1239(c) (the “Predetermination Statute”):

“ . . . requesting a determination of the ratemaking principles and treatment that will apply to the recovery in rates of the costs to be incurred in constructing and acquiring a stake in two new combined cycle gas-fired generating facilities and one solar facility.”²

¹ KIC includes KIC, Associated Purchasing Services, Cargill, Goodyear Tire and Rubber Company, Lawrence Paper Company, Occidental Chemical Corporation, Spirit Aerosystems, Inc. Also joining in this Post Hearing Brief is the Kansas Agriculture Group, including the Kansas Grain and Feed Association, the Kansas Agribusiness Retailers Association, and Renew Kansas Biofuels Association.

² Petition of Evergy Kansas Central, Inc., Evergy Kansas South, Inc., and Evergy Metro, Inc. for Determination of Ratemaking Principles and Treatment, p.1, KCC Docket No. 25-EKCE-207-PRE (Nov. 6, 2024).

2. K.S.A. 66-1239(c)(2), provides in relevant part:

Any utility seeking a determination of rate-making principles and treatment under subsection (c)(1) shall as a part of its filing describe how the public utility's stake in the generating facility is consistent with *the public utility's most recent preferred plan and resource acquisition strategy submitted to the commission*.³

3. On May 9, 2025, KIC filed its Motion to File as an Exhibit the “Evergy Kansas Central 2025 Annual Update Integrated Resource Plan” (“2025 IRP Update”).⁴ KIC proposed that KIC Exhibit 15 would be the “Public” version of the 2025 Annual Update Integrated Resource Plan, and KIC Exhibit No. 16 would be the “Confidential” version of the 2025 Annual Update Integrated Resource Plan.

4. On May 12, 2025, Evergy and Staff filed a joint response in opposition to KIC’s Motion, stating the language “*shall as a part of its filing*” from K.S.A. 66-1239(c)(2) is “express statutory language” that “requires EKC, in its initial filing and at the time of its filing, to describe how its proposed generation additions are consistent with the utility’s most recent preferred portfolio at that time.”⁵

5. Evergy and Staff interpretation of the statute goes well beyond the plain and unambiguous text of the statute. The Predetermination Statute simply provides as follows:

Any utility seeking a determination of rate-making principles and treatment under subsection (c)(1) shall as a part of its filing describe how the public utility's stake in the generating facility is consistent with *the public utility's most recent preferred plan and resource acquisition strategy submitted to the commission*.⁶

³ K.S.A. 1239(c)(2), as amended (emphasis added).

⁴ See generally KIC’s Motion to File as an Exhibit, Docket No. 25-EKCE-207-PRE (May 9, 2025). See also Evergy Kansas Central 2025 Annual Update Integrated Resource Plan, KCC Docket No. 24-EKCE-387-CPL (May 1, 2025) <https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202505011626148669.pdf?Id=1bcb290e-e6b0-4e5e-a318-869abd000ac5>.

⁵ Joint Objection of Evergy and Staff, ¶ 4, Docket No. 25-EKCE-207-PRE (May 12, 2025)

⁶ K.S.A. 1239(c)(2), as amended (emphasis added).

6. Under the rules of statutory interpretation and construction, “the intent of the legislature governs if that intent can be ascertained.”⁷ Generally, intent is ascertained by examining the language that the legislature utilized.⁸ *When the language is plain and unambiguous, statutory interpretation is not necessary.*⁹ However, if the language is not clear, then it is appropriate to “examine other evidence of legislative intent, such as legislative history, or employ additional canons of statutory construction to divine the legislature's meaning.”¹⁰

7. Here, the statutory language is clear. The Commission must review and make its decision regarding the requested generation facilities based on the “*most recent preferred plan and resource acquisition strategy submitted to the commission.*”¹¹

8. Under K.S.A. 66-101, the Commission is given “full power, authority, and jurisdiction to supervise and control the electric public utilities...doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.” While K.S.A. 66-101g provides that the Commission’s powers are to be liberally construed, those powers are to be grounded in a clear statutory mandate. The Commission does not have any implied powers beyond those expressly provided for in Kansas statutes. The Commission only has those powers granted to it by the Kansas Legislature. Therefore, any Commission action beyond the legislative power granted to it is unlawful and void.

9. Additionally, the Commission’s interpretation of a statute is not relevant as Kansas courts do not give deference to its interpretation.¹²

⁷ *Bd. of Cnty. Comm'rs of Leavenworth Cnty. v. Whitson*, 281 Kan. 678, 685 (2006).

⁸ *Id.*

⁹ *Id.* (emphasis added).

¹⁰ *Id.* (citing *State v. Robinson*, 281 Kan. 538, 2006 WL 1117686 (2006); *Board of Lincoln County Comm'rs v. Nielander*, 275 Kan. 257, 265 (2003)).

¹¹ K.S.A. 1239(c)(2), as amended (emphasis added).

¹² Kansas courts do not give deference to an agency’s interpretation of statutory language. See *Douglas v. AdAstra Information Systems*, 296 Kan. 552, 559 (2013).

10. Evergy and Staff argue that “*shall as a part of its filing*” equates to “at the time of filing.”¹³ This interpretation of the statute is incorrect and runs afoul of basic statutory interpretation principles. To allow Evergy and Staff’s interpretation to prevail would be reading something into K.S.A. 66-1239 that is not found in the plain text of the statute.¹⁴

11. The Commission cannot act beyond the legislature’s plain and unambiguous text of the statute.

12. Evergy and Staff also argue that as a matter of “due process and fair play” KIC’s Motion should be denied but ignore the fact that to afford due process and fair play to the other intervening parties is exactly why the 2025 IRP Update should be included. Evergy and Staff cannot pretend that the 2025 IRP Update based on renewed information and data does not exist - in fact, it has been filed with the Commission in KCC Docket No. 24-EKCE-387-CPL. To argue otherwise is to ignore the plain language of the statute, ignore the filing in KCC Docket No. 24-EKCE-387-CPL, and would be inequitable to the parties.

13. While Evergy and Staff contend that it would be an inconvenience for the 2025 IRP Update to be admitted into this docket because it “threaten[s] [the procedural] schedule.”¹⁵ A purported inconvenience is not justification for non-compliance with the Predetermination Statute. The burden is on Evergy to comply with the Predetermination Statute. This burden is absolute.

14. The Commission must issue an Order that is within the parameters and requirements of the statute.

15. KIC filed its Motion to introduce the 2025 IRP Update, the most recent preferred plan and resource acquisition strategy submitted to the Commission, as an exhibit.

¹³ Joint Objection of Evergy and Staff, ¶ 4, Docket No. 25-EKCE-207-PRE (May 12, 2025)

¹⁴ See generally *Matter of Westar Energy, Inc.*, 311 Kan. 320, 329-30 (2020).

¹⁵ See Joint Objection of Evergy and Staff, ¶ 4, Docket No. 25-EKCE-207-PRE (May 12, 2025)

16. The “most recent preferred plan and resource acquisition strategy submitted to the commission” is a statutory requirement to the K.S.A. 66-1239 Predetermination Statute. Therefore, the 2025 IRP Update¹⁶ is relevant to this Docket and to the Commission’s analysis for Predetermination under Kansas law.

Respectfully submitted,

/s/ James P. Zakoura

James P. Zakoura, KS 07644
Lee M. Smithyman, KS 09391
Daniel J. Buller, KS 25002
Sarah C. Otto, KS 27954
Molly E. Morgan, KS 29683
FOULSTON SIEFKIN LLP
7500 College Boulevard, Suite 1400
Overland Park, KS 66210-4041
Telephone: 913-253-2142
Email: jzakoura@foulston.com
lsmithyman@foulston.com
dbuller@foulston.com
sotto@foulston.com
mmorgan@foulston.com

Attorneys for Intervenor

¹⁶ See K.S.A. 1239(c)(2), as amended.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May 2025, the above and foregoing was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER
BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
joseph.astrab@ks.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
todd.love@ks.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER
BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
della.smith@ks.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
shonda.rabb@ks.gov

JUSTIN GRADY, CHIEF OF REVENUE
REQUIREMENTS, COST OF SERVICE
& FINANCE
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
justin.grady@ks.gov

CATHRYN J. DINGES, SR. DIRECTOR &
REGULATORY AFFAIRS COUNSEL
EVERGY KANSAS CENTRAL, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
cathy.dinges@evergy.com

BRIAN G. FEDOTIN, GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
brian.fedotin@ks.gov

GLENDA CAFER, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY
800 SW JACKSON, STE 1310
TOPEKA, KS 66612
gcafer@morrislaing.com

J.T. KLAUS, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N ROCK RD STE 300
WICHITA, KS 67226
jtklaus@twgfirm.com

KACEY S MAYES, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N ROCK RD STE 300
WICHITA, KS 67226
ksmayes@twgfirm.com

TREVOR WOHLFORD, ATTORNEY
MORRIS LAING EVANS BROCK &
KENNEDY
800 SW JACKSON, SUITE 1310
TOPEKA, KS 66612-1216
twohlford@morrislaing.com

WILL B. WOHLFORD, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY,
CHTD
300 N MEAD, STE 200
WICHITA, KS 67202-2745
wwohlford@morrislaing.com

CARLY MASENTHIN, LITIGATION
COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
carly.masenthin@ks.gov

PATRICK HURLEY, CHIEF LITIGATION
COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
patrick.hurley@ks.gov

VALERIE SMITH, ADMINISTRATIVE
ASSISTANT
MORRIS LAING EVANS BROCK &
KENNEDY
800 SW JACKSON
SUITE 1310
TOPEKA, KS 66612-1216
vsmith@morrislaing.com

RITA LOWE, PARALEGAL
MORRIS LAING EVANS BROCK & KENNEDY
CHTD
300 N MEAD STE 200
WICHITA, KS 67202-2745
rlowe@morrislaing.com

DANIEL J BULLER, ATTORNEY
FOULSTON SIEFKIN LLP
7500 COLLEGE BOULEVARD, STE 1400
OVERLAND PARK, KS 66201-4041
dbuller@foulston.com

SARAH C OTTO
FOULSTON SIEFKIN LLP
7500 COLLEGE BOULEVARD, STE 1400
OVERLAND PARK, KS 66201-4041
sotto@foulston.com

LEE M SMITHYMAN, ATTORNEY
FOULSTON SIEFKIN LLP
7500 COLLEGE BOULEVARD, STE 1400
OVERLAND PARK, KS 66201-4041
lsmithyman@foulston.com

JAMES P ZAKOURA, ATTORNEY
FOULSTON SIEFKIN LLP
7500 COLLEGE BOULEVARD, STE 1400
OVERLAND PARK, KS 66201-4041
jzakoura@foulston.com

MOLLY E. MORGAN
FOULSTON SIEFKIN LLP
1551 N. WATERFRONT PARKWAY, SUITE
100
WICHITA, KS 67206
mmorgan@foulston.com

JAMES GING, DIRECTOR ENGINEERING
SERVICES
KANSAS POWER POOL
100 N BROADWAY STE L110
WICHITA, KS 67202
jging@kpp.agency

COLIN HANSEN, CEO/GENERAL
MANAGER
KANSAS POWER POOL
100 N BROADWAY STE L110
WICHITA, KS 67202
chansen@kpp.agency

JOHN J. McNUTT, General Attorney
U.S. ARMY LEGAL SERVICES AGENCY
REGULATORY LAW OFFICE
9275 GUNSTON RD., STE. 1300
FORT BELVOIR, VA 22060-5546
john.j.mcnutt.civ@army.mil

TIMOTHY E. McKEE, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N ROCK RD STE 300
WICHITA, KS 67226
temckee@twgfirm.com

PATRICK PARKE, CEO
MIDWEST ENERGY, INC.
1330 CANTERBURY RD
PO BOX 898
HAYS, KS 67601-0898
patparke@mwenergy.com

ANNE E. CALLENBACH, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
acallenbach@polsinelli.com

JARED R. JEVONS, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
jjevons@polsinelli.com

LARRY HOLLOWAY, ASST GEN MGR
OPERATIONS
KANSAS POWER POOL
100 N BROADWAY STE L110
WICHITA, KS 67202
lholloway@kpp.agency

KEVIN K. LACHANCE, CONTRACT LAW
ATTORNEY
UNITED STATES DEPARTMENT OF DEFENSE
ADMIN & CIVIL LAW DIVISION
OFFICE OF STAFF JUDGE ADVOCATE
FORT RILEY, KS 66442
kevin.k.lachance.civ@army.mil

DAN LAWRENCE, GENERAL COUNSEL
UNIFIED SCHOOL DISTRICT 259
903 S EDGEMOOR RM 113
WICHITA, KS 67218
dlawrence@usd259.net

AARON ROME, VP OF ENERGY SUPPLY
MIDWEST ENERGY, INC.
1330 CANTERBURY DRIVE
PO BOX 898
HAYS, KS 67601-0898
arome@mwenergy.com

FRANK A. CARO, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
fcaro@polsinelli.com

PEGGY A. TRENT, CHIEF COUNTY
COUNSELOR
THE BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY
111 S. CHERRY STE 3200
OLATHE, KS 66061
peg.trent@jocogov.org

JAMES G. FLAHERTY
ANDERSON & BYRD, LLP
216 S. HICKORY, P.O. BOX 17
OTTAWA, KS 66067
jflaherty@andersonbyrd.com

ROBERT R. TITUS
TITUS LAW FIRM, LLC
7304 W 130TH ST., SUITE 190
OVERLAND PARK, KS 66213
rob@tituslawkc.com

CONSTANCE CHAN, SENIOR CATEGORY
MANAGER - ELECTRICITY & BUSINESS
TRAVEL
HF SINCLAIR EL DORADO REFINING
LLC
2323 VICTORY AVE. STE 1400
DALLAS, TX 75219
constance.chan@hfsinclair.com

GREG WRIGHT
PRIORITY POWER MGT.
12512 AUGUSTA DR
KANSAS CITY, KS 66109
gwright@prioritypower.com

RANDALL F. LARKIN, ATTORNEY
CITY OF LAWRENCE
PO BOX 708
LAWRENCE, KS 66044
rlarkin@lawrenceks.org

KATHY RICHARDSON, SUSTAINABILITY
DIRECTOR
CITY OF LAWRENCE
PO BOX 708
LAWRENCE, KS 66044
krichardson@lawrenceks.org

SHELLY M. BASS, ASSOCIATE GENERAL
COUNSEL
ATMOS ENERGY CORPORATION
5430 LBJ FREEWAY, 1800 THREE LINCOLN
CENTRE
DALLAS, TX 75240
shelly.bass@atmosenergy.com

KATHLEEN R. OCANAS, DIVISION VP OF
RATES & REGULATORY AFFAIRS
ATMOS ENERGY CORPORATION
25090 W. 110TH TER
OLATHE, KS 66061
kathleen.ocanas@atmosenergy.com

JON LINDSEY, CORPORATE COUNSEL
HF SINCLAIR EL DORADO REFINING LLC
550 E. SOUTH TEMPLE
SALT LAKE CITY, UT 84102
jon.lindsey@hfsinclair.com

JAMES OWEN, COUNSEL
RENEW MISSOURI ADVOCATES
915 E ASH STREET
COLUMBIA, MO 65201
james@renewmo.org

BRANDON McGUIRE, ASST. CITY MANAGER
CITY OF LAWRENCE
PO BOX 708
LAWRENCE, KS 66044
bmcguire@lawrenceks.org

TONI WHEELER, DIRECTOR, LEGAL
SERVICES DEPT.
CITY OF LAWRENCE
CITY HALL
6 EAST SIXTH ST
LAWRENCE, KS 66044
twheeler@lawrenceks.org

DOROTHY BARNETT
CLIMATE & ENERGY PROJECT
PO BOX 1858
HUTCHINSON, KS 67504-1858
barnett@climateandenergy.org

C. EDWARD WATSON, ATTORNEY
FOULSTON SIEFKIN LLP
1551 N WATERFRONT PKWY STE 100
WICHITA, KS 67206-4466
cewatson@foulston.com

NICOLE MERS, ATTORNEY
RENEW MISSOURI ADVOCATES
501 FAY STREET
COLUMBIA, MO 65201
nicole@renewmo.org

ROBERT E. VINCENT, MANAGING
ATTORNEY
KANSAS GAS SERVICE, A DIVISION OF
ONE GAS, INC.
7421 W. 129TH STREET
OVERLAND PARK, KS 66213
robert.vincent@onegas.com

TERRI J PEMBERTON, GENERAL
COUNSEL
KANSAS MUNICIPAL ENERGY AGENCY
6300 W 95TH ST
OVERLAND PARK, KS 66212-1431
pemberton@kmea.com

ALISSA GREENWALD, ATTORNEY
KEYES & FOX LLP
1580 LINCOLN STREET STE 1105
DENVER, CO 80203
agreenwald@keyesfox.com

LESLIE WINES, SR. EXEC. ADMIN. ASST.
EVERGY KANSAS CENTRAL, INC
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
leslie.wines@evergy.com

KEVIN M FOWLER, COUNSEL
FRIEDEN & FORBES, LLP
1414 SW ASHWORTH PLACE STE 201
TOPEKA, KS 66604
kfowler@fflawllp.com

LORNA EATON, MANAGER OF RATES AND
REGULATORY AFFAIRS
KANSAS GAS SERVICE, A DIVISION OF ONE
GAS, INC.
7421 W 129TH STREET
OVERLAND PARK, KS 66213
lorna.eaton@onegas.com
invoices@onegas.com

PAUL MAHLBERG, GENERAL MANAGER
KANSAS MUNICIPAL ENERGY AGENCY
6300 W 95TH ST
OVERLAND PARK, KS 66212-1431
mahlberg@kmea.com

DARREN PRINCE, MANAGER, REGULATORY
& RATES
KANSAS MUNICIPAL ENERGY AGENCY
6300 W 95TH ST
OVERLAND PARK, KS 66212-1431
prince@kmea.com

JASON KEYES, PARTNER
KEYES & FOX LLP
580 CALIFORNIA ST 12TH FLOOR
SAN FRANCISCO, CA 94104
jkeyes@keyesfox.com

DAN BRUER, EXECUTIVE DIRECTOR
NEW ENERGY ECONOMICS
1390 YELLOW PINE AVE
BOULDER, CO 80305
dan.bruer@newenergyeconomics.org

TIMOTHY J LAUGHLIN, ATTORNEY
SCHOONOVER & MORIARTY, LLC
130 N. CHERRY STREET, STE 300
OLATHE, KS 66061
tlaughlin@schoonoverlawfirm.com

TIM OPITZ
OPITZ LAW FIRM, LLC
308 E. HIGH STREET
SUITE B101
JEFFERSON CITY, MO 65101
tim.opitz@opitzlawfirm.com

ASHOK GUPTA, EXPERT
NATIONAL RESOURCES DEFENSE COUNCIL
20 N WACKER DRIVE SUITE 1600
CHICAGO, IL 60606
agupta@nrdc.org

James P. Zakoura

James P. Zakoura, KS 07644
FOULSTON SIEFKIN LLP

Attorneys for Intervenors