

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

In the Matter of the Application of Evergy)
Metro, Inc., Evergy Kansas Central, Inc., and)
Evergy Kansas South, Inc., for an Accounting) Docket No. 20-EKME-454-ACT
Authority Order Allowing the Companies to)
Record and Preserve Costs and Lost Revenues)
Related to the COVID-19 Virus.)

**REPLY OF KANSAS INDUSTRIAL CONSUMERS GROUP, INC. and KANSANS FOR
LOWER ELECTRIC RATES, INC. to the RESPONSES OF EVERGY and STAFF to the
KIC and KLER APPLICATION TO INTERVENE**

COME NOW Kansas Industrial Consumers Group, Inc. (“KIC”) and Kansans for Lower Electric Rates, Inc. (KLER) and file this Reply to the Responses filed by Staff and Evergy Metro, Inc., Evergy Kansas Central, Inc., and Evergy Kansas South, Inc. (collectively “Evergy”) to KIC’s and KLER’s Application for Intervention. In support of its Reply, KIC and KLER state as follows:

Background

1. KIC is a Kansas corporation representing the interests of large commercial and industrial customers including those served by Evergy. KLER is a Kansas corporation representing a cross section of individuals and businesses throughout the state of Kansas, with a policy focus of working for regionally competitive electric rates for all individuals and businesses located in Kansas, including those served by Evergy.

2. On May 6, 2020, Evergy filed for Commission authorization to implement an accounting authority order ("AAO") in the above-referenced docket to defer the costs and "lost revenues" associated with the COVID-19 pandemic.

3. KIC and KLER filed an Application to Intervene in the above-captioned docket on May 27, 2020.

4. Evergy filed a Response to the Application to Intervene by KIC and KLER on June 3, 2020. In its Response, Evergy states that it is not opposed to KIC’s and KLER’s intervention.¹

¹ Evergy’s Response to KIC’s and KLER’s Application to Intervene at ¶ 3 (June 3, 2020).

5. Staff also filed a Recommendation in response to KIC's and KLER's Application to Intervene. Staff provides no opinion regarding KIC's and KLER's intervention. However, Staff does not support KIC's and KLER's request for a Hearing in this matter.²

Summary

KIC and KLER take issue with the positions set forth by Evergy and Staff for the following reasons:

- a. They are inconsistent with the public policy of Kansas as it relates to the State's response to COVID-19 related economic distress that is being experienced by Kansas individuals and businesses;
- b. They are inconsistent with the terms of the Merger Order issued in May 2018 regarding the merger of Great Plains Energy, Westar Energy, and the Kansas Power & Light Company; and
- c. The matters for which an Accounting Authorization Order is sought are not sufficiently defined and in large part are likely materially made up of alleged loss revenues, which have not heretofore been authorized by the Commission.

Reply to Evergy's Response

6. KIC and KLER commend Evergy for not disconnecting service to thousands of Kansans during this unprecedented time, prior to and consistent with the Commission's Order. With that being said, there are several statements made in Evergy's Response that KIC and KLER will address.

7. Although Evergy states that it does not oppose the KIC and KLER Intervention in the above-captioned matter, Evergy takes issue with much of what is stated by KIC and KLER in their Application for Intervention.³ KIC and KLER do not agree with these positions of Evergy.⁴

8. Instead, the arguments made by Evergy in its response show exactly why granting an AAO would be unjust.

² Staff's Response & Recommendation at ¶ 5 (June 3, 2020).

³ Evergy's Response at ¶ 3.

⁴ See *id.* at ¶ 8.

Public Policy

9. Public policy of Kansas does not support any action that would increase retail electric rates in this pandemic related economic crisis. An AAO in this case, as requested by Evergy, is likely simply a rate increase based on increased current costs and alleged current revenue losses, that are to be recovered through rate increases at a later date. The sole purpose of this AAO is to accumulate costs to be recovered in retail electric rates.

10. Evergy is correct in stating that COVID-19 is an extraordinary event.⁵ COVID-19 has impacted nearly every Kansan and Kansas business in a negative manner. Evidence of this impact exists in reports that Kansas tax revenues were down 51.4% in April.⁶ Throughout the country, nearly half of commercial retail rents went unpaid in April and May.⁷ Additionally, Evergy itself has nearly 190,000 residential customers in payment arrears.⁸ While so many individuals and businesses are suffering losses from the economic impacts of COVID-19, it is not the public policy of Kansas that these same individuals and businesses that have suffered economic losses should be asked to add to those economic losses by compensating Evergy for its additional COVID-19 incurred costs and lost revenues.

The Merger Order

11. Separately, the Commission, in its May 24, 2018 Merger Order, included a provision requiring a rate moratorium for Evergy base rates through 2023.⁹

12. The Merger Order defines an extraordinary event to mean the following:

Certain extraordinary events affecting the Company's Kansas and/or Missouri electric operations may occur from time to time, which: (1) are beyond the control of the utility, such as an act of nature, and (2) may affect the utility's ability to meet the service metrics proposed. Upon the occurrence of an extraordinary event as that term is further defined below, the affected utility, KCP&L and/or Westar, shall document the event and its impact on the utility's customer operation or distribution operation performance, as applicable.

⁵ *Id.* at ¶ 5.

⁶ Kansas Dept. of Revenue, *Kansas is on target with revised estimates; down 51.4% compared to last April*, (May 1, 2020), available at <https://www.ksrevenue.org/press/2020/pr05012020.html>.

⁷ Heather Long, *The next big problem for the economy: Businesses can't pay their rent*, Washington Post, June 4, 2020, available at <https://www.washingtonpost.com/business/2020/06/03/next-big-problem-businesses-cant-or-wont-pay-their-rent-its-setting-off-dangerous-chain-reaction/>.

⁸ *In re Evergy's Application for Approval of COVID-19 Related Customer Programs.*, Docket No. 20-EKME-484-MIS, Order, ¶ 15 (June 2, 2020).

⁹ *In the Matter of the Application of Great Plain Energy, Inc., Kansas City Power & Light Co., and Westar Energy, Inc.*, Docket No. 18-KCPE-095-MER, Order at Attachment A-1, ¶ 32(i) (May 24, 2018).

The term "extraordinary event" means an event beyond the control of the utility, which shall include acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of government and people, acts, orders, laws or regulations of government authority, civil disturbances, explosions, breakage or accident to machinery or lines of pipe or electric supply lines, major events causing electric service interruptions, other than those caused by the utility's negligence, the necessity for making repairs or alterations to machinery, equipment or lines of pipe, freezing of lines of pipe or electric supply lines, which could not have been prevented by the utility's use of standard and customary industry practice, partial or entire failure of supply of natural gas or fuel which could not have been prevented by the utility's use of standard and customary industry practice, acts of independent and unaffiliated third parties which damage or interfere with the kind herein enumerated or otherwise beyond the control of the utility. If, using standard and customary industry practice, the utility could have avoided the extraordinary event, then the impact of such event will be considered in the measurement of the performance of the utility.¹⁰

An "extraordinary event," does not provide Evergy with an exception to the base rate moratorium to recover increased costs related to the base rate moratorium. Instead, the occurrence of an extraordinary event provides a defense or exception to Evergy's obligations as they relate to customer operation and distribution operation performance.

"Extraordinary events" are not included in any other provision of the Merger Order. Accordingly, pursuant to the terms of the Merger Order, Evergy should be allowed to document impacts on the utility's customer operation or service distribution operation performance, after alleging an extraordinary event has occurred. However, Evergy is not permitted to accumulate and recover costs related to extraordinary events that occur during the rate moratorium period.

The AAO is Overly Broad

13. Evergy acknowledges in its Application for an AAO that there "is not substantial precedent with the Commission for deferral of lost revenues."¹¹ More accurately, there is no precedent that KIC and KLER are aware of that allow for deferral of lost revenues and it should not be allowed here.

14. Another particularly troubling aspect of Evergy's request is that the extraordinary costs and lost revenues Evergy wishes to account for have not been quantified. At the very least,

¹⁰ *In the Matter of the Application of Great Plain Energy, Inc., Kansas City Power & Light Co., and Westar Energy, Inc.*, Docket No. 18-KCPE-095-MER, Order at Attachment A-4, at 2 (May 24, 2018) (emphasis added).

¹¹ Evergy's Application for Accounting Authority Order Related to COVID-19 Costs and Financial Impacts, at ¶ 17.

Evergy should provide a quantification of all costs and lost revenues for March, April, and May 2020. Additionally, all cost and revenue categories should be clearly defined, and each should be quantified.

15. Retail ratepayers in Kansas should not be subject to an accounting order for which there is no estimate of the amount thereof, which may transfer into rate increases. Retail ratepayers currently have no way of knowing if these costs and lost revenues total \$3 million or \$300 million dollars. Additionally, the AAO is far to open ended. The AAO Evergy requests could allow for costs and lost revenues to be accounted for and recovered from ratepayers for many years because there is no predicting how COVID-19 will continue to impact Kansas individuals and businesses.

16. KIC and KLER have submitted information requests asking for this exact information to be quantified and categorized by Evergy in this matter to address the concerns previously mentioned. Similar requests have been submitted to Evergy in Missouri by the Staff of the Public Service Commission and a group of industrial intervenors. By asking for substantially the same information in this matter, KIC and KLER have tried to ensure that the work will be reduced for Evergy to provide answers to these information requests.

17. For these and additional reasons, KIC and KLER argue that Kansas public policy, provisions of the Merger Order, and concerns about the overly broad nature of the AAO request should preclude Evergy from raising rates for customers through an AAO.

Reply to Staff

18. KIC and KLER ask that a hearing be scheduled in this matter for a date after the information requests have been answered. This will allow for all parties involved to present evidence to the Commission regarding whether Evergy's request that an AAO should be granted.

19. Staff points out that other states have allowed for an accounting order. While this might be true, Evergy and Kansas are uniquely situated. There is a rate moratorium in place that directly speaks to extraordinary events, which should be considered here, and Kansas public policy does not provide for electric rate increases during a time of economic distress for the state. Accordingly, the Commission should not simply grant an AAO because other states are doing so. Other states granting accounting orders is not justification for doing it in Kansas.

Conclusion

WHEREFORE, KIC and KLER respectfully ask that the Commission enter an Order granting KIC's and KLER's unopposed Application to Intervene, schedule a full hearing on the matter for a date after discovery is complete, and that KIC and KLER be made a party hereto with all rights to participate in this matter.

Respectfully submitted,



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**Attorney for Kansas Industrial Consumers
Group, Inc. (KIC) and Kansans for Lower
Electric Rates, Inc. (KLER)**

VERIFICATION


STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

James P. Zakoura, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., and Kansans for Lower Electric Rates, Inc. that he has read and is familiar with the foregoing *Reply of Kansas Industrial Consumers Group, Inc. and Kansans for Lower Electric Rates, Inc. to the Responses of Evergy and Staff to the KIC and KLER Application to Intervene*, and the statements therein are true to the best of his knowledge, information, and belief.



James P. Zakoura

SUBSCRIBED AND SWORN to before me this 5th day of June, 2020.



Notary Public

My Appointment Expires:

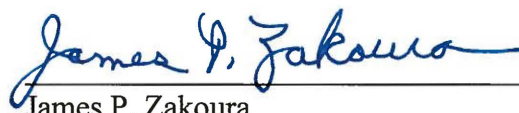


CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by electronic mail (when available) or regular U.S. Mail (unless otherwise noted), the 5th day of June, 2020, to the parties below:

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