

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the Matter of the Application of Evergy)
Kansas South, Inc. for Approval of the Energy) Docket No. 24-EKSE-689-CON
Supply Agreement Between Evergy Kansas)
South. and CVR Refining CVL, LLC.)

ORDER APPROVING SPECIAL CONTRACT

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its pleadings and records, the Commission makes the following findings:

I. PROCEDURAL BACKGROUND

1. On May 1, 2024, Evergy Kansas South, Inc. d/b/a Evergy Kansas Central (“Evergy Kansas Central” or “Evergy”) and CVR Refining CVL, LLC (“CVR”) (together, “Joint Applicants”) filed a Joint Application with the Commission requesting approval of a five-year Energy Supply Agreement (“Special Contract” or “Contract”) executed by the Joint Applicants for the sale of energy by Evergy to CVR.¹

2. Evergy further requests approval from the Commission to defer for recovery in its next general rate case as a regulatory asset the difference between the base rate revenue it will receive from CVR under the Special Contract and the base rate revenue it would have received from CVR had the Special Contract not been executed.²

¹ Joint Application, p. 1 (May 1, 2024).

² *Id.*

3. The Joint Applicants asserted the Special Contract was in line with the Commission's standards of approval of special contracts as articulated in the Commission's Final Order in Docket No. 01-GIME-813-GIE ("Docket 01-813")³ because it will provide a cost benefit to Evergy's remaining core customers and because it ensures CVR pays rates greater than the incremental variable cost to serve CVR, resulting in an overall contribution from CVR to Evergy's fixed costs.⁴ Evergy asserted that contribution is a benefit to core customers, and therefore, it is reasonable to defer the lost revenue that results from implementation of the Special Contract to a regulatory asset and to recover that lost revenue from the remaining core customers in Evergy's next general rate case.⁵

4. The Commission granted intervention to the Citizens' Utility Ratepayer Board ("CURB") on May 14, 2024.⁶

5. On October 17, 2024, Commission Staff filed a Report and Recommendation, ("R&R") recommending the Commission approve the Joint Applicant's Special Contract.⁷

6. On October 24, 2024, CURB filed a Response to Staff's R&R, including its own analysis of the Commission's standards of approval for special contracts.⁸ Although it cautioned that, as the number of special contracts grow, so does the amount of discounted fixed costs that other utility customers bear, CURB agreed that Evergy has met the requirements set forth in Docket 01-813.⁹

³ See Order Regarding the Filing Requirements and Procedures for the Review and Treatment of Special Contracts, p. 2, Docket 01-813 (Oct. 3, 2001) ("01-813 Order").

⁴ Joint Application, p. 2.

⁵ See *id.*

⁶ Order Granting CURB's Petition to Intervene; Protective and Discovery Order (May 14, 2024).

⁷ Notice of Filing of Staff's Report and Recommendation (Oct. 17, 2024) ("Staff's R&R" or "R&R").

⁸ CURB's Response to Staff's Report and Recommendation, pp. 3-5 (Oct. 24, 2024) ("CURB Response").

⁹ See *id.*, p. 5.

II. JURISDICTION AND LEGAL STANDARDS

7. The Commission holds full power, authority, and jurisdiction to regulate Evergy Kansas Central and an electric public utility doing business in Kansas and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.¹⁰ The Commission is empowered to require all electric public utilities to establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such public utilities.¹¹

8. No public utility governed by the Commission shall make effective any changed rate, joint rate, toll, charge, or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of a such public utility without filing the same with the Commission at least thirty days prior to the proposed effective date of such change.¹² In accordance with the Commission's authority pursuant to K.S.A. 66-117(c), the Commission suspended resolution of this matter until December 27, 2024, to allow Staff adequate time to analyze the Joint Application and the proposed Special Contract.¹³

9. In its Final Order in the 01-813 Docket, the Commission concluded there should be a standard process for reviewing special contracts to ensure certainty, consistency, and predictability regarding such contracts.¹⁴ Special contracts will be reviewed on a case-by-case basis.¹⁵ In order to be approved, the utility must show that the special contract provides a cost benefit to the remaining core customers.¹⁶ The utility is to provide a narrative explanation of why

¹⁰ See K.S.A. 66-101.

¹¹ See K.S.A. 66-101b.

¹² See K.S.A. 66-117(a). Evergy filed its Application on May 1, 2024, and requested an effective date of November 1, 2024.

¹³ Suspension Order: December 27, 2024 (May 7, 2024).

¹⁴ 01-813 Order, p. 2.

¹⁵ See 01-813 Order, p. 2.

¹⁶ *Id.*

the special contract is necessary and of why the price and other terms of the special contract are just and reasonable.¹⁷ The utility is to provide specific information on the customer's operations and needs, information on the effect of the contract on the utility's system over the term of the contract, a detailed cost analysis of the proposed contract, and a statement of the benefits from the contract to the utility and its other customers.¹⁸

10. The Commission also provided a non-exhaustive list of guidance items for CURB and Staff to consider when reviewing special contracts, such as load characteristics of the customer and length of the special contract.¹⁹

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In its R&R, Staff evaluated the Joint Application according to the framework provided in Docket 01-813, synthesizing the framework into three questions:

- a. Is the special contract necessary?
- b. Does the special contract result in operational and/or economic benefits for Evergy and its customers?
- c. Will the special contract result in just and reasonable rates?²⁰

12. Staff believes the Special Contract is necessary to prevent CVR from building a co-generation plant to bypass Evergy's system.²¹ Staff has determined that keeping CVR as a consumer on Evergy's system provides value to CVR, Evergy, and Evergy's other users.²² CVR hired an engineering firm to perform a study on the costs to build a cogeneration plant to determine if it could feasibly bypass Evergy's system.²³ The study showed there could be potential savings to CVR in the future from building a co-generation plant.²⁴ Staff considered the study to represent

¹⁷ See 01-813 Order, p. 3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Staff's R&R, p. 2.

²¹ *Id.*, p. 4.

²² *Id.*, pp. 2-3.

²³ See *id.*

²⁴ See *id.*, p. 3.

a credible bypass threat. The Commission agrees a credible threat exists for CVR to bypass Evergy's system. The Commission finds the Special Contract is necessary to incentivize CVR to remain on Evergy's system and to retain the value provided by CVR's inclusion therein.

13. Staff believes the Special Contract results in operational benefits to Evergy and will also have significant economic benefits to Evergy and its customers.²⁵ Staff concluded that CVR is covering its variable cost to serve, and it is contributing meaningfully towards fixed costs.²⁶ This contribution towards fixed costs benefits all customers on the Evergy system, because these are the fixed costs that would otherwise have to be paid by all other customers if CVR decided to bypass the Evergy system all together.²⁷

14. CVR has also agreed to a minimum bill during the term of the Special Contract, which Staff considered to provide significant protection for Evergy and its non-contract customers.²⁸ Staff asserted the minimum bill will contribute meaningfully towards the costs of maintaining available capacity to serve CVR, even if Evergy never supplied CVR a single kWh during the term of the contract.²⁹

15. The Commission is mindful of CURB's comments regarding the impact of special contracts on non-contract utility customers. The Commission agrees that the existence of the minimum bill provisions of the Special Contract significantly de-risk CVR's contribution towards fixed costs, to the benefit of Evergy's core customers.³⁰ The Commission finds that there will be operational as well as economic benefits for Evergy and its existing customers as a result of the

²⁵ See R&R, p. 3.

²⁶ See *id.*

²⁷ See *id.*

²⁸ See *id.*, p. 4.

²⁹ *Id.*

³⁰ *Id.*

Special Contract, and concludes the existence of this Special Contract is more beneficial to Evergy's remaining customers than if CVR were to bypass the Evergy system all together.

16. Staff contends that the CVR special contract will result in just and reasonable rates for CVR and Evergy's remaining core customers.³¹ First, the Special Contract is necessary to incentivize CVR to remain on Evergy's system.³² Second, the CVR contract is priced to exceed variable cost and contribute meaningfully to fixed costs that would otherwise be paid by other customers if CVR were to leave the system.³³ And finally, due to the significant minimum bill protections in the contract, these benefits are largely guaranteed to Evergy and its customers during the term of the Special Contract.³⁴ As stated herein, the Commission finds the Special Contract will result in just and reasonable rates for CVR and Evergy's remaining core customers.

17. The Commission concludes the CVR Special Contract should be approved. The Commission agrees that the Special Contract fulfills the framework set forth in Docket 01-813 because: 1) the CVR Special Contract is necessary to incentivize CVR to remain on the system; 2) the Special Contract is priced to exceed variable cost and contribute meaningfully to fixed costs that would otherwise be paid by other customers in the event CVR left Evergy's system; and 3) the Special Contract contains significant minimum bill protections.

THEREFORE, THE COMMISSION ORDERS:

A. Evergy and CVR's Special Contract is hereby approved.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).³⁵

³¹ Staff's R&R, p. 4.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner (recusing); Kuether, Commissioner

10/31/2024

Dated: _____



Lynn M. Retz
Executive Director

CRM

CERTIFICATE OF SERVICE

24-EKSE-689-CON

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 10/31/2024.

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

BRETT W. BERRY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
brett.berry@ks.gov

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

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

MADISEN HANE, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
madisen.hane@ks.gov

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

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

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

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
david.nickel@ks.gov

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

CERTIFICATE OF SERVICE

24-EKSE-689-CON

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

/S/ KCC Docket Room
KCC Docket Room