

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Joint Application of)
Evergy Kansas Central, Inc. Evergy Kansas) Docket No. 23-EKCE-775-RTS
South, Inc. and Evergy Metro, Inc. for)
Approval to Make Certain Changes in their)
Charges for Electric Service.)

CURB’S RESPONSE TO MOTION OF THE KANSAS INDUSTRIAL CONSUMERS GROUP, INC. (“KIC”) TO: (a) LIMIT THE AMOUNT OF RATE CASE EXPENSES IN THIS CASE THAT CAN BE RECOVERED FROM RETAIL RATEPAYERS OF EVERGY KANSAS METRO (“EKM”) OR IN THE ALTERNATIVE, (b) DISMISS THE APPLICATION OF EKM, WITHOUT PREJUDICE TO A LATER REILING AT THE OPTION OF EKM

COMES NOW, the Citizens’ Utility Ratepayer Board (“CURB”) and responds to the motion by the Kansas Industrial Consumers Group, Inc. (“KIC”) to limit recovery of rate case expenses from Evergy Kansas Metro (“EKM”) customers, filed on July 19, 2023. CURB supports KIC’s motion to limit the amount of rate case expense in this case that can be recovered from retail ratepayers of EKM. In addition, CURB supports KIC’s requirement that the Company produce current and estimated figures in order to increase transparency into rate case expenses. In support of its response, CURB states as follows:

Background

1. On April 25, 2023, Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (collectively referred to as “Evergy Kansas Central”) and Evergy Metro, Inc. (“Evergy Kansas Metro”) (together with Evergy Kansas Central referred to as “Evergy”) filed a Joint Application with the Kansas Corporation Commission for approval to make certain changes in their charges for electric service in Kansas.

2. Evergy’s application is the first request for a change in rates since the completion

of the merger of Westar Energy, Inc. and Great Plains Energy, Inc. and seeks to establish new rates at the end of the current rate moratorium. The rate case is supported by nineteen Evergy witnesses and covers each jurisdiction separately, effectively creating two rate cases in one docket.

3. On July 19, 2023, KIC filed a motion with the Kansas Corporation Commission (“Commission”) with a request for an order to either limit the amount of rate case expense that Evergy may include in its revenue requirement for EKM customers, or in the alternative, to dismiss the EKM portion of the docket and to place the current amount of rate case expense into a regulatory asset and recovered over three years.¹ KIC explains that when accounting for proposed depreciation and COVID-19 lost revenue adjustments, the overall rate increase associated with EKM is largely dependent on the final order on return on equity and not likely to result in a significant change to revenue requirement. Further, KIC highlights the potential of a rate reduction and concludes that the rate case expenses may overtake these reductions as they are recovered from ratepayers. KIC states that it would be unfair to ratepayers to pay for significant rate case expenses all to establish a slight change, which would result in unjust and unreasonable rates.

4. In addition to its overall request to the Commission, KIC has also asked that Evergy be ordered to disclose its current amount of rate case expense and to provide an estimate of the full amount of EKM rate case expenses in the event of a fully litigated docket. This request is prefaced by KIC’s belief that rate case expenses are likely very significant at this point in time. The disclosure of the rate case expenses that EKM will intend to seek to be recovered in this dockets adds transparency to the issue.

¹ Motion of KIC to Limit Amount of Rate Case Expenses Recovered from Retail Ratepayers of Evergy Kansas Metro or Dismiss the Application of EKM Without Prejudice, pg. 6 (July 19, 2023). (“KIC Motion”)

CURB's Response

5. At the outset, CURB supports KIC's notion that rate case expenses are a consideration of whether just and reasonable rates are being achieved and that should be monitored by the Commission. Reduction of imprudent or unreasonable rate costs from the revenue requirement saves money for ratepayers. Ensuring that rates only include prudently incurred and reasonable costs is a primary goal in rate cases. CURB agrees with KIC that ratepayers should not be burdened with excessive rate case expenses and that transparency into the issue is appropriate.

6. With respect to the limitation of rate case expense in the EKM rate case, KIC correctly notes that the Commission has established precedential guidance on this issue and that only prudently incurred costs may be included in rates. In Docket No. 10-KCPE-415-RTS ("10-415 Docket"), the Commission issued an order on rate case expenses, in which it outlined a number of factors that it relies upon to determine the reasonableness of including such costs in rates.² Such factors include the balance of interest between parties (current and future ratepayers, shareholders, and the public interest generally), overall value involved in the docket, and prudence and evidence that supports the incurring of the expenses. In that docket, the Commission held that the utility has the burden to prove that the amount of rate case expense to be passed onto ratepayers is both prudently incurred and reasonable.³ Although there is a wide range of factors that the Commission uses to arrive an appropriate rate case expense in a docket, the Commission "finds it helpful to compare the rate case expense allowed to be recovered from the ratepayers with the overall revenue requirement awarded by the utility."⁴ How this factor is affected by the reductions made to the

² Order on Rate Case Expense, Docket No. 10-KCPE-415-RTS (January 18, 2012).

³ Id. at pg. 61, ¶109.

⁴ Id. at pg. 21, ¶ 32.

revenue requirement and the likelihood that EKM will not recover the entire revenue requirement it alleges is appropriately addressed in KIC's motion. CURB will not reiterate the points that KIC has made. Suffice it to say that it is very likely that EKM will not have a significantly large revenue requirement change at the end of the case.

7. Therefore, under the factors considered by the Commission, as outlined in the 10-415 Docket, limiting rate case expense to a level commensurate with a one percent rate increase is appropriate, reasonable and it balances ratepayer interests. In his concurring opinion concerning rate case expense in the 10-415 Docket, Commissioner Sievers noted that, with one notable exception, rate case expenses allowed as a percentage of revenue requirement ranged from 0.8% to 5.9%.⁵ Without guidance from the Commission, it is foreseeable that rate case expense in the EKM rate case could well exceed this range. Thus, like KIC, CURB believes it to be appropriate to provide a reasonable limit on the amount of rate case expense that EKM ratepayers should be forced to bear relative to a comparatively small revenue requirement change.

8. This is particularly appropriate since this case will involve an allocation of attorneys' fees between ratepayers in EKM and ratepayers in Evergy Kansas Central ("EKC"). In these regards, it is important to note that Evergy filed for rate increases for both EKC and EKM in one docket. CURB understands that there are some common issues that may be best addressed together. However, there are a number of very complicated issues that primarily or solely concern EKC. Moreover, the size of the proposed rate increase for EKC is substantially greater than for EKM. As KIC notes in its motion, EKM initially sought a net rate increase of \$14.2 million. In comparison, EKC initially sought a net rate increase of \$204.5 Million, approximately 14 times

⁵ Id., Concurring Opinion, pg. 7.

higher. Moreover, the proposed rate increase for EKC is approximately five times higher than that proposed for EKM. Given these dynamics, KIC's suggestion that the rate expenses to be collected from EKM ratepayers be limited to those commensurate with a 1% increase in rates is logical and compelling. It is also consistent with the decision of the Commission in the 10-415 Docket. Therefore, CURB supports the same.

9. Other states also recognize the fairness involved in limiting rate case expenses in rate cases. In these regards, consider the states' efforts that are outlined in an article entitled, "States challenge utility costs backed by 'fleet of lawyers.'"⁶ As this article discusses, several states are aware that rate case costs can be a very significant cost to ratepayers. As it has recognized in prior KCC dockets, CURB recognizes that the amount of rate case expense incurred by utilities in rate cases often dwarfs the rate case expense incurred by the KCC staff and CURB such that limiting rate case expense incurred by utilities is fair and levels the playing field. In short, CURB believes that rate case expenses to be collected from ratepayers should be subject to reasonable limits, a position shared by other utility consumer advocates.

10. KIC's prediction that rate case expenses will be in the millions⁷ is not outside the realm of possibility. KIC's request to inquire into the current rate case expense now rather than waiting until the conclusion of the docket makes sense to CURB. Approved rate case expenses will be included in the revenue requirement just like any other item used to provide electric service. Granting KIC's request to receive current and estimated remaining expenses will increase transparency into the potential rate impact of this case and be beneficial for all parties.

⁶ Plautz, Jason, E&E News by Politico, "States challenge utility costs backed by 'fleet of lawyers,'" April 23, 2023, located at www.eenews.net/articles/states-challenge-utility-costs-backed-by-fleet-of-lawyers.

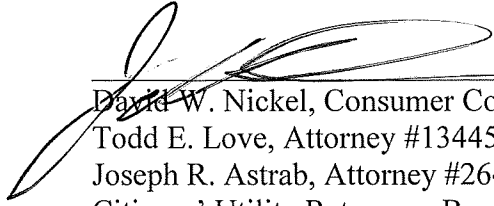
⁷ KIC Motion at pg. 5, ¶26.

Furthermore, comparing estimates with actual rate case expenses is a consideration in determining inclusion in rates.

11. CURB recognizes that KIC's proactive approach to this issue is novel. However, CURB perceives to be in the public interest for the Commission, at this time and prior to the incurrence of high rate case expenses, to provide guidance to Evergy that rate case expenses will be limited in this matter. Doing so allows Evergy the opportunity to keep future rate case costs at a level commensurate with the issues and the scope of the proposed increase for EKM. Such a signal may obviate an expensive proceeding to determine attorneys' fees at the end of this rate case. By supporting KIC's motion, CURB is not conceding that attorneys' fees that are merely commensurate with the proposed rate increase for EKM should be approved without scrutiny. As outlined above, EKM still has the burden of proving the prudence of its attorneys' fees. Moreover, because CURB supports the limitation of attorneys' fees in this case, it is not necessary to address the alternative relief proposed by KIC.

WHEREFORE, CURB respectfully requests the Commission grant KIC's request to order Evergy to produce current and estimated future rate case expenses, that the Commission limit attorneys' fees that will be paid by EKM ratepayers in this case to a level commensurate with a one percent increase in rates, and that the Commission issue any other order that the Commission deems appropriate.

Respectfully submitted,



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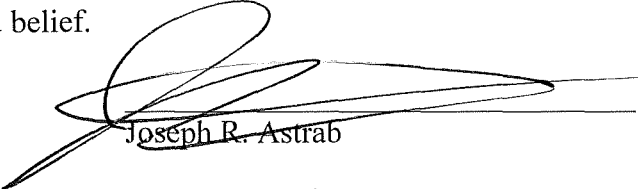
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VERIFICATION

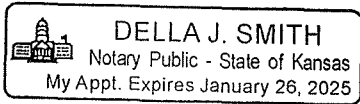
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COUNTY OF SHAWNEE)

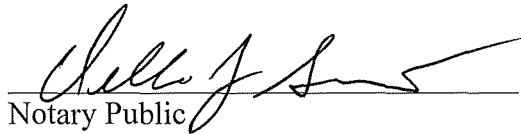
I, Joseph R. Astrab, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



Joseph R. Astrab

SUBSCRIBED AND SWORN to before me this 28th day of July, 2023.


DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires January 26, 2025



Notary Public

My Commission expires: 01-26-2025.

CERTIFICATE OF SERVICE

23-EKCE-775-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 28th day of July, 2023, to the following:

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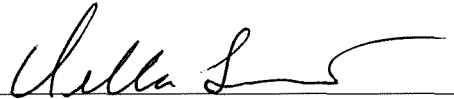
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