

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

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

**EVERGY’S RESPONSE TO PETITION FOR INTERVENTION OF SCRAP  
MANAGEMENT INDUSTRIES, D/B/A MIDWEST SCRAP MANAGEMENT, INC.**

COME NOW Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (collectively referred to as “Evergy Kansas Central” or “EKC”) and Evergy Metro, Inc. (“Evergy Kansas Metro” or “EKM”) (together with Evergy Kansas Central referred to as “Evergy”) and state the following in response to Scrap Management Industries, d/b/a Midwest Scrap Management, Inc.’s (“MSM”) Petition for Intervention:

1. The captioned docket (“the 2023 Rate Docket”) was initiated by Evergy on April 25, 2023, wherein Evergy filed a Joint Application requesting authorization to make certain changes for electric service in Kansas pursuant to K.S.A. 66-117 and K.A.R. 82-1-231.

2. Per the Commission’s Order Setting Procedural Schedule issued May 18, 2023, Notice of the application, proposed rate changes, public hearing and public comment period was sent to all customers, by bill insert for customers receiving bills by mail, and by email for those customers who received electronic billing. The Commission allowed the filing of written comments from the public and held three public hearings on July 11, 13 and 27 of 2023. The public hearing in Wichita, MSM’s service territory, occurred on July 27, 2023.

3. More than 20 entities representing private businesses, governmental entities, and other groups intervened in the 2023 Rate Docket after the application was filed. MSM did not

intervene or participate, although MSM's counsel did actively participate in the 2023 Rate Docket and represented multiple intervenors in the proceeding.

4. On September 29, 2023, the parties submitted a Joint Motion for Approval of Unanimous Settlement Agreement resolving all disputes in the 2023 Rate Docket, and submitting a unanimous settlement for approval by the Commission.

5. On November 21, 2023, the Commission filed an Order Approving Unanimous Settlement Agreement ("the Order"). That Order became a Final Order on December 21, 2023, as no appeal was taken by the 30-day statutory deadline. Evergy's revised rates went into effect on approximately January 1, 2024.

6. MSM is a retail ratepayer and customer of Evergy, specifically EKC, and had previously received service from Evergy pursuant to the Off-Peak Service Rate Schedule ("WKOPS").

7. The Unanimous Settlement Agreement eliminated the WKOPS, which was approved by the Commission in the Order.

8. On April 4, 2024, Evergy and Commission Staff ("Staff") filed a Joint Motion for Approval of Phase-In of Certain Rate Impacts ("Joint Motion") in order to phase-in the transition from the Off-Peak Service Rate to the LGS and MGS rates over a three-year period so as to smooth out the impacts for customers previously taking service on the Off-Peak Service Rates, which would include MSM.

9. In its Petition to Intervene, MSM does not state what specific relief it is requesting upon intervention into this docket. However, MSM makes the following statements, indicating that, if allowed to intervene, MSM may intend to attack the portion of the Commission's November 21, 2023 Final Order that eliminates the WKOPS:

“The WKOPS Rate Schedule had been approved by the KCC in multiple KCC Dockets and found by the Commission in those Dockets to be just and reasonable - - since at least June of 2017, and most recently approved by the Commission and found to be just and reasonable in KCC Docket No. 21-EKME-050-RTS, on January 1, 2021.” (MSM Petition, ¶ 6.)

“At no time was the WKOPS Rate Schedule ever determined by the KCC to no longer be in the public interest, or no longer be just and reasonable.” (MSM Petition, ¶ 7.)

“The proposal of Joint Movants does not propose any rate reduction from the 435% rate increase to be collected from MSM, but rather a 3-year phase-in of the 435% rate increase.” (MSM Petition, ¶ 19.)

10. Subject to the caveats below, Evergy does not generally oppose intervention by MSM to participate in this Docket, and it recognizes MSM’s interest in the issues addressed in the Joint Motion.

11. Evergy, however, does oppose intervention by MSM to the extent MSM seeks to challenge the Order Approving the Unanimous Settlement, or to challenge Evergy’s Tariffs filed pursuant to such Order.

12. Pursuant to the filed-rate doctrine, once a rate schedule is on file, utilities are forbidden from charging or collecting rates different from those set forth in the filed rate schedules, and from retroactively charging and substituting different rates for those set forth in the filed rates. *SWKI-Seward West Central, Inc. v. Kansas Corporation Commission*, 2022 WL 1052231, at \* 10 (Kan. Ct. App. 2022)(citing *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571 (1981); see also K.S.A. § 66-109 (codifying the filed-rate doctrine). The Order Approving Unanimous Settlement constitutes a Final Order and Evergy’s Tariffs filed pursuant to the Order constitute final filed rates,

which are governed by the filed-rate doctrine. Evergy cannot depart from those rates, nor can it retroactively change the rates charged to MSM or any other customer.

13. The filed-rate doctrine applies even if the customer in question is unaware of the applicable rate. *SWKI*, at \* 11 (quoting *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 120 (1990)). Therefore, MSM cannot avoid the application of the filed-rate doctrine and effectively challenge the rates established by the Commission's Order Approving Unanimous Settlement by alleging it was unaware of the change to eliminate the WKOPS.

14. MSM could have intervened in the Docket prior to the approval of the Unanimous Settlement by the Commission, but it did not do so. The Commission's Order Approving Unanimous Settlement is now final, and not subject to direct review on appeal.

15. To the extent MSM seeks to intervene to challenge or attack the Order Approving Unanimous Settlement or Evergy's filed rates, including but not limited to challenging the elimination of the WKOPS, such a challenge would be akin to an impermissible collateral attack on the Commission's final Order, and must not be permitted. *See State ex rel. Bremby v. Thorson*, 42 Kan. App. 2d 188, 194 (2009) (holding that a party "could not collateral attack the final agency order" in a separate proceeding after the order became final and unappealable).

16. To the extent MSM seeks to intervene to comment on and be involved in the process of formulating and adopting the gradual phase-in of the cancellation of the WKOPS as set forth in the Joint Motion, that is an appropriate purpose for intervention and Evergy has no objection to MSM's intervention for that purpose. However, to the extent MSM seeks to intervene in order to challenge or attack all or any portion of the Order Approving Unanimous Settlement or Evergy's approved rates pursuant thereto, such purpose is improper as it would violate the filed-rate doctrine and would constitute an impermissible collateral attack on the Commission's final Order.

WHEREFORE, should the Commission be inclined to grant MSM's intervention, Evergy states that it has no objection as long as MSM's intervention is restricted to participating in the formulation of the phase-in process, and that as a condition of its intervention, MSM be prevented from challenging or attacking all or any portion of the Order Approving Unanimous Settlement or Evergy's filed rates.

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**CERTIFICATE OF SERVICE**

23-EKCE-775-RTS

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