BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. Seek Approval from the Commission of the Evergy Energy Efficiency Rider 2021 Filing	))))	22-EKCE-020-TAR

RESPONSE OF EVERGY KANSAS CENTRAL, INC. AND EVERGY KANSAS SOUTH, INC. TO STAFF'S REPORT AND RECOMMENDATION

COME NOW Every Kansas Central, Inc. and Evergy Kansas South, Inc. (together as "Evergy Kansas Central" or "Evergy") and file this Response to Staff's Report and Recommendation. In support of its Response, Evergy states as follows:

1. On July 15, 2021, Evergy filed its Application with the Commission requesting approval of its Energy Efficiency Rider ("EER"). Evergy files an updated EER annually, in order to recover "actual program costs deferred for Commission approved Energy Efficiency programs deferred over a 12-month period ending in June of each year plus any true up amount from the prior period."[1]

2. Evergy's Application sought recovery of costs incurred in relation to Commission-approved demand response and energy efficiency programs in the amount of $4,379,725. This amount includes unrecovered expenses of $4,277,148 incurred from the period of July 1, 2020, through June 30, 2021, and under-recovered costs of $102,577 incurred from the prior period.

3. Staff reviewed Evergy's filing and found no errors in Evergy's calculations or the requested amounts. Staff did, however, recommend that an adjustment be made to the true-up

[1] Evergy Kansas Central EER Tariff, sheet 2, attached hereto. It is interesting that when Staff refers to this language from the EER tariff in its R&R, Staff adds an "s" to the words prior period, referring to a true-up from "prior periods" instead of the language from the Tariff which says the true-up is only related to the "prior period."

portion of the EER. Staff argued that Evergy recovered a small percentage of its EER costs through its transmission formula rate ("TFR") from 2010 to 2019 and that the true-up for this EER period should be utilized to correct for the amount of EER costs Evergy recovered through its TFR during that time period (a total amount of $1,277,601). Evergy disagrees with Staff's recommendation to adjust the true-up amount because it is wholly inconsistent with the language of the EER Tariff.

4. The method of calculating Evergy's annual EER is specifically defined by the EER Tariff. The EER Tariff states:

> The initial EE factor will be calculated to recover actual program costs deferred for Commission approved Energy Efficiency programs deferred over a 12-month period ending in June of each year **plus any true up amount from the prior period** divided by the total applicable kWh as follows:
>
> EE factor = EE costs + True / kWh
>
> Where:
>
> EE costs = The actual costs associated with Commission approved Energy Efficiency programs. These costs are recorded in separate sub-accounts of Account 182.3 Other Regulatory Assets for each approved Energy Efficiency or Demand Response Program and for demand response credits provided to customers under approved Demand Response Programs.
>
> **True = The annual true-up amount for an Energy Efficiency Rider year, to be determined prior to filing the next EE Rider and to be applied to the subsequent EE Factor calculation. The true-up will be the difference between the approved recovery amount and the actual recovery amount during the time the EE Factor was in effect.**
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> kWh = The estimated kilowatt-hours for the period this EE factor will be applied to customers' monthly bills.[2]

5. This language makes it very clear that the true-up amount is "from the prior period" and is to be determined for a given EER year prior to filing the next EER and is to be applied to

[2] *Id.* (emphasis added).

the EE Factor for the subsequent year. The true-up amount is limited to the difference between the "approved recovery amount" and the "actual recovery amount" during the prior EE year. In other words, the Tariff indicates that to calculate the true-up amount, you must look at how much the Commission authorized Evergy to recover through its EER in the prior year and how much it actually recovered, and the true-up amount is the difference between those two numbers. This definition leaves no room whatsoever for other adjustments to be made. Staff's position in this case, if adopted by the Commission, would in essence give parties a lifetime retroactive look back option for adjustment mechanisms. There would never be a period considered closed out from review or adjustment. This is clearly not consistent with the language of the EER Tariff, is not how adjustment mechanisms have operated in front of this Commission and would be wholly inappropriate treatment under an adjustment mechanism such as Evergy's EER.

6. If a party believes recovery of any portion of the EER amount is inappropriate, it should raise those concerns at the time the annual EER filing is made seeking recovery of those costs. Once the Commission approves recovery of the EER in an annual docket, that order becomes final and any attempt to adjust it after the fact would constitute retroactive ratemaking. Sometimes, a true-up provision in a tariff can offer a way around the prohibition against retroactive ratemaking. However, in this instance, the EER Tariff's true-up provision is very narrowly defined and does not permit adjustments related to energy efficiency costs incurred and recovered at any time other than the single year prior to the filing.

7. In 2019, a wholesale customer questioned Evergy's recovery of energy efficiency costs through its TFR through the informal challenge process provided for under the FERC-approved TFR protocols. In order to resolve that informal challenge, Evergy agreed to adjust its TFR so that no energy efficiency costs would flow through it on a prospective basis. That

resolution – a prospective adjustment removing energy efficiency costs from the TFR – was accepted by the parties and the challenge periods for prior TFR years have passed without any additional challenge on the issue. In other words, the time period for a party to challenge recovery of these costs through the TFR has passed. Evergy has adjusted the method it uses to account for energy efficiency costs so that those costs do not flow through the TFR beginning in 2020. As a result, no energy efficiency costs were recovered through the TFR during the time period that is relevant to the EER filing pending with the Commission, which is July 2020 through June 2021. The issue with respect to the TFR was resolved pursuant to the FERC-approved protocols for the TFR. Staff's attempt to make an adjustment related to costs allegedly inappropriately recovered in the TFR in those prior years in this state EER proceeding is a collateral attack on the FERC-approved TFR and related tariff provisions.

8. It is clearly appropriate for Evergy to recover all of its Commission-approved energy efficiency costs through the EER, as this was the intent when the Commission approved the implementation of the rider based on the tariff language stating that all energy efficiency costs associated with Commission-approved programs should be included in the EE factor. Staff does not suggest that such recovery through the EER is inappropriate. Instead, Staff expresses concern that some of those costs were also recovered through the TFR. However, any issue with whether energy efficiency costs should have been picked up in the TFR should have been handled in the annual TFR process for the years in question and with the Federal Energy Regulatory Commission, not by suggesting disallowance of prudently-incurred and Commission-approved costs that are clearly appropriate for recovery from retail customers.

9. Staff's proposed adjustment to the true-up calculation for this EER filing is inappropriate and inconsistent with the language of the EER Tariff. It is also a collateral attack on

Evergy's FERC-approved TFR to attempt to address an issue related to recovery of energy efficiency costs through the TFR – an issue that was addressed and resolved to the parties' satisfaction in the challenge process defined by the TFR protocols – in this EER docket before the Kansas Commission. Therefore, Staff's proposed adjustment should be denied and Evergy's EER filing should be approved as filed.

Respectfully submitted,

/s/ Cathryn Dinges

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VERIFICATION

STATE OF KANSAS)
) ss
COUNTY OF SHAWNEE)

The undersigned, Cathryn Dinges, upon oath first duly sworn, states that she is Senior Director and Regulatory Affairs Counsel for Evergy Kansas Central, Inc. and Evergy Kansas South, Inc., that she has reviewed the foregoing pleading, that she is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of her knowledge and belief.

Cathryn Dinges

Cathryn Dinges

Subscribed and sworn to before me this 11 th day of October 2021.

Leslie R. Wines

Notary Public

My appointment expires:
May 30, 2022

NOTARY PUBLIC - State of Kansas
LESLIE R. WINES
My Appt. Exp. 5/30/22

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2021, the foregoing **Response** was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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