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

In the Matter of the Application of Evergy Kansas South, Inc. and for Approval of the Energy Supply Agreement between Evergy Kansas South, Inc. and Occidental Chemical Corporation.	))))	Docket No. 24-EKSE-249-CON

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION (PUBLIC)

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby submits its Report and Recommendation (R&R), dated May 20, 2024, recommending the Commission approve the Joint Application, filed September 12, 2023, by Evergy Kansas South, Inc., d/b/a/ Evergy Kansas Central (Evergy) and Occidental Chemical Corporation (Oxy) requesting approval of a renewed Energy Supply Agreement (Contract or Special Contract) between Oxy and Evergy.

WHEREFORE, Staff respectfully submits its Report & Recommendation for Commission consideration.

Respectfully Submitted,

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REDACTED REPORT AND RECOMMENDATION
UTILITIES DIVISION

Confidential Information Denoted by **[redacted]**

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

FROM: Justin Grady, Chief of Revenue Requirements, Cost of Service and Finance
Jeff McClanahan, Director of Utilities

DATE: May 20, 2024

SUBJECT: Docket No. 24-EKSE-249-CON – In the Matter of the Application of Evergy Kansas South, Inc. and for Approval of the Energy Supply Agreement between Evergy Kansas South, Inc. and Occidental Chemical Corporation.

EXECUTIVE SUMMARY:

On September 12, 2023, Evergy Kansas South, Inc., d/b/a/ Evergy Kansas Central (Evergy) and Occidental Chemical Corporation (Oxy) filed a Joint Application requesting Commission approval of a renewed Energy Supply Agreement (Contract or Special Contract) between Oxy and Evergy. The Joint Application also requests approval of a Memorandum of Understanding (MOU) between Evergy and Oxy pertaining to certain actions that both Evergy and Oxy have agreed to take in order to move Oxy's service to the Waco Substation from the Vulcan Substation. The MOU describes what the parties have jointly agreed to pertaining to this substation move, and the ramifications to each if the actions do not occur within the specified timeframes.

The Commission subsequently suspended the Joint Application for 240 days pursuant to K.S.A. 66-117, originally making a Commission Order in this proceeding due by May 9, 2024. The Commission then extended this deadline to June 30, 2024, in recognition of the agreement made by the Joint Applicants in Docket No. 23-EKCE-802-CON to extend the expiration of Oxy's existing Special Contract through June 30, 2024.[1] If approved, the new Special Contract will take effect the first day of the month following Commission approval, and will last for five years.

[1] *See* Order Acknowledging Extension of Time, November 6, 2023. https://estar.kcc.ks.gov/estar/ViewFile.aspx/24-EKSE-249-CON.pdf?Id=5e41023c-49e8-4f5a-8ab5-ed257588ea2e

The Joint Application is supported by the Direct Testimony of Jason Klindt, Senior Director of External Affairs for Evergy. Mr. Klindt describes that the rates contained in the Special Contract are being increased from the rates established in the last Special Contract, approved by the Commission on November 20, 2018, in Docket No. 18-KG&E-303-CON (18-303 Docket). Mr. Klindt explains that the Joint Applicants have agreed to made revisions to the Special Contract that were designed to remove the ability of Oxy to rely on its Cogeneration (Co-gen) unit to meet its minimum load requirements, thereby reducing the total interuptibility of the Oxy load by 15MW. There are also revisions to the Contract to increase Oxy's minimum required load to 20MW during winter months of December through March. This is the load amount that Evergy is required to provide during curtailment episodes, and it serves to reduce the amount of Oxy's load that is curtailable under the Energy Efficiency Demand Response Rider (EEDR). Mr. Klindt describes that these two changes increase Oxy's annual Contract rate revenue by approximately $620,000, which represents $540,000 from the loss of the Co-gen capacity and $80,000 from the minimum load increase during winter months. Mr. Klindt then testifies in support of approval of the Special Contract according to the evaluation framework outlined by the Commission in Docket No. 01-GIME-813-GIE (01-813 Docket). Finally, Mr. Klindt testifies that the Special Contract exceeds the minimum contribution to fixed costs threshold that has previously been advocated by Staff in special contract dockets before the Commission.

Staff has reviewed the Joint Application, and recommends that the Commission approve the renewal of this Special Contract without conditions. Staff's recommendation is based on our analysis of the Contract which finds that it is necessary, and that it benefits Evergy's non-contract customers. This benefit comes in the form of Contract rate revenue that exceeds the variable costs allocated to Oxy as a result of its usage, as well as the ability of Evergy to call on Oxy to interrupt as much as 90MW of load with as little as ten minutes' notice. In addition, the minimum bill provisions of the Contract, in the form of a minimum monthly bill, provides substantial minimum benefits to Evergy's core non-contract customers as discussed in more detail below.

BACKGROUND:

On September 12, 2023, Evergy and Oxy filed a Joint Application requesting Commission approval of a Special Contract between Oxy and Evergy. If approved, the Contract will go into effect the first day of the month following Commission approval, and will last for 5 years. This Contract replaces the one approved by the Commission in the 18-303 Docket in November of 2018. While the Contract structure and rates established in the 18-303 Docket are not changing dramatically, Evergy and Oxy did negotiate several changes pertaining to Evergy's ability to call on Oxy to curtail its load. Those changes are as follows:

- All references to Oxy's Cogeneration plant (Co-gen) have been removed from the special contract. This includes the entirety of Section 4.4, 4.5, 4.6, and 11.4.
- Section 4.7 has been revised to remove the reference to Interruptible Block 2, which was the 15MW of additional interruptible capacity previously supported by Oxy's Co-gen unit.
- Section 4.7 has also been revised to increase the minimum contract load (load that is not interruptible) to 20 MW during the winter months of December to March.
- The Rates in Section 5.1 have been increased to reflect the 15MW reduction of year round interuptibility from previously provided by Oxy's Co-gen unit, and the 5MW reduction of interuptibility during winter months.
- The loss of 15 MW of interuptibility is valued at $3/kW, similar to the Interruptible Service Rider tariff, and the increase of winter minimum load to 20 MW from 15 MW was valued at $4/kW. These rate changes amount to $620,000 in additional annual revenue from Oxy.
- The minimum bill in Section 5.3 has been increased from **[redacted]** per month to **[redacted]** per month.

In addition to these changes, the Contract rates did increase pursuant to the Settlement Agreement approved by the Commission in Docket No. 23-EKCE-775-RTS (23-775 Docket). The rates Oxy will pay under the contract are currently[2]:

[redacted]--Table is Confidential **[redacted]**

[redacted]

The Commission established a framework for the review of special contracts in its October 3, 2011, Order in the 01-813 Docket. In that Docket, the Commission found "there is substantial support…to demonstrate that these contracts may benefit both ratepayers and shareholders, and that they should not be prohibited." Additionally, the Commission found, "in order to be approved,

[2] These rates were derived by increasing the Oxy rates that resulted from the 23-775 Docket by the same rate amounts described on pages 2 and 3 of the Direct Testimony of Mr. Klindt. Staff's rates produce an increase of $620,000 in annual contract revenue compared to the rates approved in the 23-775 Docket.

the utility must show that the special contract provides a cost benefit to the remaining core customers." The Commission required the utility to provide information on the necessity of the contract, and why the price and other terms of the contract are just and reasonable. The utility is also required to provide information specific to the customer's operations and needs, how the existence of the contract effects the utility's system, a detailed cost analysis of the proposed contract, and a statement of the benefits from the contract to the utility and its other customers.

ANALYSIS:

Staff evaluated the Joint Application according to the framework provided in the 01-813 Docket, which can be synthesized into three central questions:

1. Is the special contract necessary?
2. Does the special contract result in operational and/or economic benefits for Evergy and its customers?
3. Will the special contract result in just and reasonable rates?

1. Necessity of the Special Contract

The necessity of the Oxy Special Contract has been evaluated by the Commission in several previous Dockets, including: 13-KG&E-451-CON, 17-KG&E-352-CON, and the 18-303 Docket. Oxy has made it clear in these previous dockets, as well through the Direct Testimony of Brenda Harris filed in the instant docket, that Oxy's Special Contract is necessary for Evergy to retain Oxy as a customer on the Evergy system.[3] Ms. Harris explains at page 6 of her Direct Testimony that Oxy's Wichita facilities require large volumes of electricity for its chlorine production processes, explaining that electricity is Oxy's largest cost input. Additionally, Ms. Harris explains that Oxy faces a distinct rate disadvantage at its Wichita facility compared to the electricity rates it pays at its plants in other states. Additional detail was provided in response to CURB Data Request No. 15 and Staff Data Request No. 7 which quantified this rate differential at **[redacted]** below the rate Oxy pays at its chlorine plants in Louisiana in 2023.[4] Ms. Harris states on page six of her Direct testimony:

> Absent approval of the Agreement, OxyChem's Wichita facilities will be at a distinct rate disadvantage, compared to its plants'—and its competitors' plants—in other states. In such a scenario, OxyChem would be forced to reexamine its level of ongoing operations at the Wichita facilities.

[3] *See* Direct Testimony of Brenda Harris, Docket no. 24-EKSE-249-CON, November 7, 2023, pages 4-6.
[4] *See* Response to Staff Data Request No. 7 (Attached).

Staff does not take Ms. Harris' testimony as an empty threat. The record has been well established in both the instant proceeding and previous Commission dockets that Oxy needs to have competitively priced electricity for its chlorine plant to remain a viable Evergy customer in the Wichita area. Nothing Staff has examined in the instant docket gives any indication that Oxy's Special Contract is any less necessary now than each time the Commission previously approved it.

2. Operational and Economic Benefits of the Special Contract

The Contract provides significant operational benefits to Evergy, including the ability to call on Oxy to curtail 85 to 90MW of load during times of system stress with as little as 10 minutes notice. This allows Evergy to rely on this load curtailment as controllable and dispatchable Demand Response for purposes of its Resource Accreditation requirements at SPP.[5] The interuptibility of Oxy's load will be increasingly important as Capacity Reserve Margins within the Southwest Power Pool (SPP) are becoming increasingly tight, and Evergy's service territory is expected to experience significant load growth in the years ahead.

In order to evaluate the economic benefits of the Special Contract to Evergy and its other customers, Evergy performed an analysis of the degree to which the Oxy Special Contract exceeded variable cost, and therefore contributed to the remaining fixed costs on the system. Mr. Klindt discusses this analysis on page six of his testimony, and he states that the Contract exceeds Staff's previously communicated threshold of 15% contribution to fixed costs, by "more than 20%."

Staff requested the details of this cost benefit analysis in Staff Data Request No. 6. In response to this data request, Evergy provided the details of how it calculated that the Oxy Contract was exceeding marginal cost by over 20%. Using the rates that were in effect at the time, Evergy calculated that the Oxy Contract was providing base rate revenue of **[redacted]**. Because this exceeds Evergy's estimated variable cost to serve Oxy of **[redacted]**, Evergy concludes that the Oxy Contract is contributing **[redacted]** of Contract revenue towards fixed cost recovery. 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 Oxy decided to reduce its load dramatically or leave the Evergy system all together.

Staff performed a variable cost analysis as well. We used the results of our Class Cost of Service study as filed in the 23-775 Docket to evaluate variable cost per kWh to serve Oxy, which we

[5] *See* SPP's June 2023 Resource Adequacy Report
https://www.spp.org/documents/69529/2023%20spp%20june%20resource%20adequacy%20report.pdf

determined to be **[redacted]**, or **[redacted]** at test year usage levels. We then compared that variable cost to the per kWh revenue that Oxy would pay coming out of Evergy's recent rate case (as adjusted by the increases in the revised contract rates being presented for Commission approves). This analysis found that Oxy's Special Contract would generate revenue of approximately **[redacted]**, or **[redacted]** more than the variable cost to serve Oxy. This is a contribution margin of **[redacted]**, which is above Staff's previously communicated 15% floor. Based on this analysis, Staff concludes that Oxy is covering its variable cost to serve, and it is contributing meaningfully towards fixed costs. Accordingly, the existence of this Special Contract is more beneficial to Evergy's remaining customers than if Oxy were to leave the Evergy system all together.

2a Evaluation of Minimum Bill Provisions of Special Contract

The Oxy Special Contract contains a significant protection for Evergy and its non-contract customers pertaining to the minimum revenue that must be generated by the Contract. Section 5.3 of the Contract specifies that Oxy's minimum monthly bill shall be **[redacted]** during the term of the agreement, which is an increase of **[redacted]** per month.

The minimum bill provision of Oxy's Special Contract provides significant guaranteed benefits to Evergy's remaining core customers. **[redacted]** a month equates to **[redacted]** a year, or **[redacted]** for the Contract capacity requirement of 120 MW. This minimum bill contributes meaningfully towards the capacity costs of maintaining available capacity to serve Oxy, even if Evergy never supplied Oxy a single kWh during the term of the Contract.

The existence of this minimum bill provision of the Special Contract significantly de-risks Oxy's contribution towards fixed costs, to the benefit of Evergy's core customers.

3. Just and Reasonableness Review

The question of whether the special contract results in just and reasonable rates depends in large part on the first two factors previously evaluated. If a special contract is not necessary, then it is very unlikely that contract would result in just and reasonable rates, because the contract customer would be getting a discounted electric rate to the detriment of the remaining core customers. It would not be just and reasonable for non-contract customers to pay higher rates than would otherwise be the case without the special contract.

Likewise, if the special contract does not convey operational or economic benefits on Evergy and its customers, then the special contract is unlikely to result in just and reasonable rates.

In this case, Staff contends that the Oxy Special Contract is necessary to incentivize Oxy to remain on the system instead of the alternative of shifting its load to other plants or leaving the Evergy system all together. Additionally, the Oxy Special Contract is priced to exceed variable cost and contribute meaningfully to fixed costs that would otherwise be paid by other customers if Oxy were to leave the system. Due to the significant minimum bill protection in the Contract, these benefits are largely guaranteed to Evergy and its customers during the term of the Special Contract. For all of the above reasons, Staff contends that the Oxy Special Contract will result in just and reasonable rates for Oxy and Evergy's remaining core customers.

RECOMMENDATION:

Staff recommends that the Commission approve the updated Oxy Special Contract, as updated to reflect the rates that resulted from the 23-775 Docket, as described in the Background Section above.

The Response to Staff Data Request No. 7 is Confidential in its Entirety.

CERTIFICATE OF SERVICE

24-EKSE-249-CON

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing (Public) was served via electronic service this 20th day of May, 2024, to the following:

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