

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

**RESPONSE OF THE CITIZENS' UTILITY RATEPAYER BOARD
TO STAFF'S REPORT AND RECOMMENDATION**

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and submits its Response to the Report and Recommendation, filed by Kansas Corporation Commission Staff (“Staff”) with the Kansas Corporation Commission (KCC or “Commission”) in the above-captioned docket on May 20, 2024. CURB is not opposed to approval of the proposed Energy Supply Agreement (“ESA”) and the Memorandum of Understanding (“MOU”) based on the analyses from Staff. However, CURB urges Evergy to continue to evaluate and lawfully implement programs to help low-income ratepayers, who are the most inelastic of Kansas customers. In support thereof, CURB states as follows:

Background

1. On September 12, 2023, Evergy Kansas South, Inc. (“Evergy” or “Company”) and Occidental Chemical Corporation (“Oxy”) filed a Joint Application with the KCC requesting approval of an extension and new terms for a special contract regarding discounted rates for electric service in Kansas.¹ Oxy currently takes service from Evergy under an ESA that was approved in 2018. In essence, the rates that Oxy pays under the ESA are based on energy usage with a declining block structure in summer months and declining prices for three usages blocks in

¹ Application for Evergy Kansas South, Inc. (Sept. 12, 2023).

winter months.² Oxy also pays all applicable surcharges and changes to retail rates on a pro rata basis under the ESA and participates in Evergy’s Energy Efficiency Demand Response Program (“EEDR”), which allows Evergy to interrupt service to customers during certain conditions in exchange for a financial benefit.

2. While the proposed ESA rates and structures are not substantially different from the current agreement, Oxy will cease operation of its cogeneration unit, which is reflected through an increase in minimum bill amounts and load requirements.³ In total, \$620,000 in additional revenue is being contemplated by the proposed ESA.

3. In addition to the extension of the ESA, Evergy and Oxy submit the MOU to account for changes being done to the substations that serve Oxy. Evergy intends to decommission one substation as soon as all load (including load from Oxy) can be moved to another substation.⁴ Oxy agrees to help facilitate this move, by making its own capital investments. However, if additional expenses become necessary to accomplish this transition, then Evergy and Oxy agree to discuss how to allocate those additional expenses, and each reserves the right to bring the issue before the Commission for resolution if parties cannot agree to an allocation.

4. Evergy witness Jason Klindt, provides testimony in support of the proposed ESA. In addition to discussing the above changes, Mr. Klindt explains how the ESA will provide a benefit to the remaining core Evergy customers. The proposal seeks to maintain the benefits of the current ESA, such as contribution to fixed costs and a resource for interruptible service. He utilizes Staff’s Cost Analysis previously used in Docket No. 13-KG&E-451-CON to determine whether

² Direct Testimony of Jason Klindt, pg. 5, lns. 5-15. (Sept. 12, 2023). (“Klindt Direct Testimony”)

³ Id. at pgs. 2-3.

⁴ Memorandum of Understanding, Exhibit B (Sept. 1, 2023).

the proposed ESA results in a rate that exceeds variable costs and contributes to fixed costs. He concludes that the average rate per kWh exceeds the fixed cost floor required by Staff.⁵

5. On September 26, 2023, the Commission granted CURB intervention in the docket.⁶

6. On May 20, 2024, Staff filed its Report and Recommendation (“R&R”), which included a review of the ESA and recommended approval without modifications.⁷ In reviewing the ESA, Staff utilized the framework established in Docket No. 01-GIME-813-GIE (“01-813 Docket”), which dealt with approval of special service contracts. In the 01-813 Docket, the Commission indicated that these kinds of contracts should not be prohibited based on the potential benefits for all customers.⁸ The framework in the 01-813 Docket requires that the utility demonstrate that a special contract is necessary and to explain why the price and other terms are just and reasonable.⁹

7. In its R&R, Staff condenses the analysis required from the 01-813 Docket into answering whether a) the contract is necessary; b) the contract results in operational and/or economic benefits for Evergy and its customers; and c) the contract results in just and reasonable rates. Unlike prior dockets examining the ESA with Oxy, the present docket does not provide testimony from Oxy itself regarding the necessity of the ESA. As a result, Staff refers back to testimony in previous Evergy-Oxy ESA dockets regarding the potential that Oxy would reduce or outright cease operations in Kansas without the rates from the ESA.¹⁰ Because of Oxy’s substantial

5 Klindt Direct Testimony at pg. 6, Ins. 4-11.

6 Order Designating Presiding Officer; Granting CURB’s Petition to Intervene; Protective and Discovery Order (Sept. 26, 2023).

7 Notice of Filing of Staff’s Report and Recommendation (May 20, 2024). (“Staff’s R&R”)

8 Order Regarding the Filing Requirements and Procedures for the Review and Special Treatment of Special Contracts, Docket No. 01-GIME-813-GIE, pg. 2, ¶4 (July 30, 2001).

9 Id. at pg. 3, ¶7.

10 Staff R&R at pg. 4.

reliance upon electricity for its operations, Oxy stated that it is especially sensitive to price differentials between states in determining where to allocate its business. In previous dockets, Oxy has indicated that without a discount to its electric rates, Oxy would reexamine how much business it would perform in Kansas. In the R&R in the present docket, Staff acknowledges the differences in rates between Kansas and other states where Oxy operates, based upon data collected through the discovery process. Staff concludes that the threat of reduced or eliminated operations is not an empty one and that the ESA is necessary to maintain Oxy's level of operations in Kansas.

8. In regards to operational and economic benefits, Staff finds that the rates under the ESA should exceed the variable and capacity costs to serve Oxy and contribute to fixed costs for the system. Staff provides context in its analysis with a reference to changes at the Southwest Power Pool ("SPP") to the Resource Accreditation requirements and Capacity Reserve Margins.¹¹ Notably, Staff points out that the ability to interrupt Oxy's load will be beneficial in light of tighter reserve margins for utilities and potential for significant load growth in Kansas in the future. Staff concludes that all of Evergy's customers could be worse off without the ESA if Oxy leaves or drastically reduces its operations.

9. Staff concludes that the proposed ESA will result in just and reasonable rates because Oxy will still contribute to fixed costs in a meaningful way and that customers would be better off with Oxy remaining on the system. Combined with the other customer protections such as increases to the minimum bill, Staff finds that the ESA satisfies the Commission's framework on special contracts and recommended approval as filed.

¹¹ Staff R&R at pg. 5.

CURB's Response

10. CURB has evaluated the Joint Application and Staff's R&R from the perspective of residential and small commercial retail ratepayers. Further, CURB has reviewed the prior dockets dealing with previous iterations of the Evergy-Oxy ESA, as well as the related legislative and Commission policy on special contracts and economic development. Overall, CURB notes that there is significant legislative support for policies that provide special contracts and tariffs to promote the development of new economic opportunities and retention of large commercial and industrial customers. The consensus among Kansas policymakers appears to be that discounted electric rates for such customers are a useful tool to attract new industries and maintain sources of economic growth and jobs in Kansas. Conceptually, CURB understands this goal, but warns that an overly-liberal approach to rewarding large customers with rates below their cost of service can lead to discriminatory pricing without adequate justification.

11. In this case, CURB finds that there is evidence in the record that underlies Staff's analysis and calculations to justify providing the discounts that Oxy receives for doing business in Kansas. As such, CURB is not opposed to the approval of the ESA in this particular case. However, CURB believes that the benefits associated with Oxy's load are diminished in light of capacity requirement concerns and the heightened efforts to bring new industry to Kansas.

12. While CURB is not advocating for a revamping of the Energy Efficiency Demand Response Program Rider ("EEDR") in this docket, the history of how the Company has utilized Oxy's curtailable load does not appear to be producing the kinds of benefits associated with curtailment. The provisions of the EEDR which provide discounted rates to Oxy in exchange for counting interruptible load for resource planning purposes should be implemented by Evergy to its fullest potential to realize benefits for all ratepayers.

13. Evergy did not submit an Evaluation, Measurement, and Verification Analysis (“EM&V”) for the EEDR as part of its Application in the present docket, but in 2018, the Company provided an EM&V for the EEDR in support of the ESA being proposed at the time. In the Company’s calculation of EEDR benefits in 2018, it presumed two demand response events per year.¹² Further, Staff’s R&R in the present docket highlights the value of having the ability to curtail Oxy’s load during emergencies. However, according to the Company’s response to CURB’s Discovery Requests 10 and 11 attached to this document, the Company has never utilized the mandatory curtailment provisions in the EEDR to curtail Oxy’s load. During Winter Storm Uri in 2021, Evergy attempted to get Oxy to shed load under the EEDR, but Oxy responded that it was experiencing power failures and worried about damaging its equipment were it to comply with Evergy’s request. While Oxy did eventually shed load to maintain minimum plant protection levels, it was done voluntarily rather than under the EEDR and less than Evergy’s requested reduction.

14. If Evergy is unable to reliably call upon customers for curtailment during one of the worst weather-related emergency events in Kansas history, when will Evergy effectively utilize curtailment provisions of the EEDR? In those regards, the benefits of the EEDR appear to be limited to on-paper value for capacity reserve requirements. Because of this factor, CURB’s support for the EEDR is limited to that consideration. The reality is that the operational demands for an interruptible customer on the system who is never interrupted differ little compared to other high-use customers who are not on an interruptible tariff, yet the interruptible customer receives a financial benefit all year round. The EEDR contemplates an economic value for curtailment that the customer receives if services are actually interrupted. During periods of supply constraints or

¹² Westar Energy, Inc. Evaluation, Measurement, and Verification Analysis January 2018, Docket No. 18-KG&E-303-CON, Table 1 (Jan. 16, 2018).

high energy prices, Evergy should be diligent about getting customers to comply with requests and understanding when limitations to curtailment can arise before making those requests.

15. CURB can sympathize with Evergy's attempts to curtail large industrial customers and the conflicting interests with maintaining operations. Having realistic expectations about the level a customer can be curtailed can prevent miscommunications during emergency situations. Further, Evergy and Oxy are sophisticated enough entities to be able to appropriately coordinate curtailment events throughout the year that allow Evergy to realize the benefits under the EEDR without gravely jeopardizing business operations and equipment. CURB can envision predetermined arrangements to curtail service during less severe times than Winter Storm Uri to mitigate high demand or prices during summer months and ensure that the EEDR is providing benefits beyond resource planning. Evergy should explore such possibilities and work towards meaningful utilization of the EEDR in the future.

16. Over the last several years, Kansas has made strides in leveraging its public utilities and tax policies to entice large industrial customers to move operations to the state. Evergy anticipates significant growth in load as a result of new economic activity in Kansas.¹³ Once operational, the Panasonic battery manufacturing plant near De Soto, Kansas is projected to be one of the largest consumers of electricity in the state.¹⁴ Evergy acknowledged the challenges that such an addition will impose on the system in its most recent rate case.¹⁵ These particular challenges are amplified by SPP's upcoming changes to the Capacity Reserve Margin and accreditation of generation capacity, which require utilities to maintain a sufficient level of generation capacity at

13 Direct Testimony of Kayla Messamore, Docket No. 23-EKCE-775-RTS, pg. 6, Ins. 5-15 (April 25, 2023). ("Messamore Direct Testimony 23-775")

14 "Panasonic Plant will requires so much power, Evergy will seek rate hike in Kansas," Shoreman, J. and Bernard, K. *The Kansas City Star* (July 20, 2023). Accessed at: <https://www.kansascity.com/news/politics-government/article277462213.html>.

15 Direct Testimony of David Campbell, Docket No. 23-EKCE-775-RTS, pg. 22, Ins. 7-19 (April 25, 2023).

various times during the year. Evergy concluded that it will have to make significant changes to resource planning to account for both SPP changes and economic development.¹⁶

17. In light of these challenges, CURB questions the practical effect of conceding significantly discounted rates, at the expense of other ratepayers, in order to retain existing large industrial customers, like Oxy, based on threats to leave the system. It is clear that Evergy may face operational difficulties and incur significant capital expenditures trying to accommodate exponential load growth and capacity requirements in the coming years. CURB fears that these new and existing high-load customers could seek out similar treatment and contracts for rates that do not contribute to fixed costs at the same level as compared to service under Evergy's regular tariffs. The expanding gap in fixed cost contributions in conjunction with the rise in overall fixed costs gives CURB consternation regarding how that difference will be made up by the remaining customers, especially low-income residents and small businesses who have to grapple with larger percentages of their income going towards the cost of living.

18. While CURB acknowledges that Kansas policymakers do not desire to turn away significant economic activity in Kansas, there appears to be a rising tension between this economic growth and regulatory concerns with adding capacity to accommodate that growth. In the middle of this conflict are the ratepayers that CURB represents. These customers are the ones who work in the factories and live in Kansas communities. Individually, they do not command the same kind of leverage to leave the system that large industrial customers do. Residential and small commercial ratepayers are unable to take advantage of these types of contracts or take service under interruptible tariffs. That situation is exacerbated by the fact that these customers are part of a captive base upon which any costs can be shifted to. They cannot easily leave the state in search

¹⁶ See Messamore Direct Testimony 23-775.

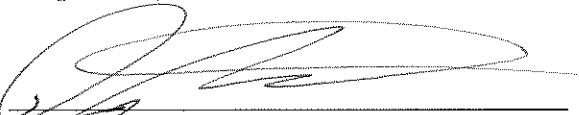
of cheaper rates or negotiate personal discounts. This is front and center of CURB's limited support for these kinds of special contracts. It is also why CURB consistently advocates for low-income rates and programs before both the Commission and the Kansas Legislature. To CURB, it is the people of Kansas that make the state a destination for new business. Without these customers, factories would be without workers and products would not be consumed. It confounds CURB that special rates for industrial customers can be formed on the basis of policy, but there is little appetite to do the same for individual customers. CURB does not believe it is in the best interest of Kansas to continue impacting the quality of life of its residents in order to convince in-state operations to remain in-state and out-of-state business to move operations without similar relief for ratepayers. CURB hopes to encourage continued engagement with utilities and stakeholders to establish programs that provide help for the most vulnerable of ratepayers.

Conclusion

19. CURB is not opposed to approval of the ESA and MOU as recommended by Staff. The contribution of some fixed costs is preferable to the loss of that load and the indirect impacts of a large industrial customer dramatically altering its operations in Kansas. On the other side, CURB believes it is important to be mindful of significant economic development and the impacts associated with supporting new load, both in terms of costs and effects on all ratepayers. CURB is hopeful that when the next time the ESA is up for review, Kansas policy and programs that promote a focus on low-income bill assistance will have a firm presence in ratemaking decisions.

WHEREFORE, CURB submits its response to Staff's R&R and the Joint Application and asks the Commission to issue any and all orders as deemed appropriate.

Respectfully submitted,



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Evergy Kansas South
Case Name: 2023 Approval of the Evergy Supply Agreement between Evergy Kansas South &
Occidental Chemical Corp
Case Number: 24-EKSE-249-CON

Requestor Love Todd -
Response Provided November 27, 2023

Question:CURB-10

Since 2009, how many times has Westar/EKC utilized the EEDR to curtail Oxy?
Please provide a list of each curtailment event. For each event, include: the date,
the reason for the curtailment event, and the amount of the Event Payment provided
to Oxy.

RESPONSE: (do not edit or delete this line or anything above this)

Confidentiality: PUBLIC

Statement: This response is Public. No Confidential Statement is needed.

Response:

We only have records back to 2014 when the SPP became the balancing authority. Since then, I
am not aware of a time that the EEDR has been used by Oxy.

Information provided by: Jason Klindt

Attachment(s):

Verification:



I have read the Information Request and answer thereto and find answer to be true, accurate, full and complete, and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request(s).

Signature /s/ *Brad Lutz*
Director Regulatory Affairs



Evergy Kansas South
Case Name: 2023 Approval of the Evergy Supply Agreement between Evergy Kansas South &
Occidental Chemical Corp
Case Number: 24-EKSE-249-CON

Requestor Love Todd -
Response Provided November 27, 2023

Question:CURB-11

Since 2009, how many times has Westar/EKC experienced a System Condition during which Oxy could have been curtailed through the EEDR, but Oxy was not curtailed? For each event, please provide the date and the reason Oxy was not curtailed.

RESPONSE: (do not edit or delete this line or anything above this)

Confidentiality: PUBLIC

Statement: This response is Public. No Confidential Statement is needed.

Response:

We only have records back to 2014 when the SPP became the balancing authority. I am unaware of events prior to that.

In February of 2021, the Southwest Power Pool experienced emergency conditions which ultimately lead to unplanned outages. Evergy reached out to Oxy for a 30MW load shed under EEDR. However, Oxy had been taken offline by a power outage and was just bringing the plant back online. It was concerned about the risk of its equipment freezing up because of the sub-zero temperatures. The prior contract did not envision a winter curtailment when designed. Oxy voluntarily did cut between 10-15 MWs by running their machines at minimum power but it was not under the EEDR.

Information provided by: Jason Klindt

Attachment(s):



Verification:

I have read the Information Request and answer thereto and find answer to be true, accurate, full and complete, and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request(s).

Signature /s/ *Brad Lutz*
Director Regulatory Affairs

CERTIFICATE OF SERVICE

24-EKSE-249-CON

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 30th day of May, 2024, to the following:

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