

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

In the Matter of the Application of Evergy)
Kansas Metro, Inc., Evergy Kansas South,)
Inc., and Evergy Kansas Central, Inc. for)
Approval of its Demand-Side Management)
Portfolio Pursuant to the Kansas Energy)
Efficiency Investment Act (“KEEIA”), K.S.A.)
66-1283)

Docket No. 22-EKME-254-TAR

Post-Hearing Brief of
The Citizens’ Utility Ratepayer Board

February 6, 2023

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POST-HEARING BRIEF OF THE CITIZENS’ UTILITY RATEPAYER BOARD

COMES NOW, the Citizens’ Utility Ratepayer Board (“CURB”) and pursuant to the procedural schedule ordered by the Kansas Corporation Commission (“KCC” or “Commission”) on December 27, 2022, and submits its post-hearing brief. In support thereof, CURB states as follows:

Background

1. On December 17, 2021, Evergy Kansas Metro, Inc. (“Evergy Metro”) and Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (together referred to as “Evergy Central”) (collectively “Evergy” or the “Company”) filed an application with the Commission for approval of a slate of programs geared toward bringing energy efficiency and demand-side management (“DSM”) programs to Kansas (the “Application”), pursuant to K.S.A. 66-117 and 66-1283, otherwise known as the Kansas Energy Efficiency Investment Act (“KEEIA”).¹

2. The Application contained a portfolio of nine programs: four designed for residential customers, four for business and commercial customers, and one pilot incubator program. These programs were designed to “to leverage the optimal mix of best-practice measures and technologies, delivery strategies, and target markets to most cost-effectively deliver programs

¹ *Evergy Application*, Docket No. 22-EKME-254-TAR (December 17, 2021).

and measures to Kansas customers.”² The Application contained a Demand-Side Management Portfolio Filing (“DSM Portfolio Filing”) that detailed various aspects of the proposal in nine sections and appendices. The Application was supported by the work of eight Evergy witnesses: Charles Caisley, Kim Winslow, Tim Nelson, Kayla Messamore, John Carlson, Brian File, Natalie Gray, and Mark Foltz. As part of the overall request, Evergy requested that the Commission approve: the DSM portfolio of programs; the proposed cost recovery mechanisms to account for the throughput disincentive (“TD”) associated with the lost revenue from successful implementation of the DSM programs and the Earnings Opportunity mechanism (“EO”) to compensate for the foregone return on investments not made as a result of the implementation of DSM programs; proposed tariffs to implement the portfolio; the proposed plan that outlined the Evaluation, Measurement, and Verification (“EM&V”) Plan, and any other approval or terms deemed necessary.

3. On December 20, 2021, CURB filed its motion to intervene in the docket³ and was granted intervention on December 28, 2021.⁴

4. The following parties also filed for and were granted intervention in this docket: Atmos Energy Corporation;⁵ Black Hills Energy;⁶ Kansas Gas Services, Inc.⁷ (collectively referred to as the “Gas Companies”); Climate + Energy Project (“CEP”);⁸ Natural Resources Defense

² Direct Testimony of Charles A. Caisley, pg. 8, lns. 2-4 (December 17, 2021).

³ CURB Petition to Intervene and Motion for Protective Order and Discovery Order (December 20, 2021).

⁴ Order Granting CURB’s Petition to Intervene; Suspension Order: August 15, 2022, Protective Order; and Discovery Order (December 28, 2021).

⁵ Petition for Intervention of Atmos Energy Corporation (January 7, 2022).

⁶ Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy Petition for Intervention (January 18, 2022).

⁷ Kansas Gas Service Petition for Intervention (January 12, 2022).

⁸ Petition to Intervene of Climate + Energy Project (January 7, 2022).

Council (“NRDC”);⁹ Sierra Club and Kansas Appleseed;¹⁰ and Kansas Industrial Consumers Group, Inc. (“KIC”).¹¹

5. On April 8, 2022, Evergy filed a Notice of Temporary Suspension of Schedule to let the Commission know that the parties had reached an agreement for a two-month extension of the schedule to allow for additional time to conduct discovery and prepare testimony.¹² On April 15, 2022, the parties filed a joint motion to modify the procedural schedule in light of this request.¹³ On April 19, 2022, the Commission granted the request and adopted the modified schedule.¹⁴

6. On May 18, 2022, Evergy filed an update to its Application and DSM filing to correct errors identified through the discovery process.¹⁵ Evergy witness Brian File submitted testimony attached to that update which explained the changes made and the impacts on various test results and financial recovery models. The updated version would be the version that parties relied upon for their testimony.

7. On June 17, 2022, parties filed direct testimony in response to the Application and proposed portfolio. CURB retained the services of Synapse Energy Economics, Inc. (“Synapse”) to assist with policy formation and the filing of testimony in this docket. Synapse is a research and consulting firm that specializes in electricity and gas industry regulation, planning, and analysis. Two witnesses from Synapse, Alice Napoleon¹⁶ and Danielle Goldberg¹⁷, submitted written testimony on a timely basis. Ms. Napoleon reviewed the cost-effectiveness testing results and

⁹ National Resources Defense Council Petition for Intervention (January 10, 2022).

¹⁰ Sierra Club’s and Kansas Appleseed’s Motion to Intervene (February 15, 2022).

¹¹ Petition to Intervene of KIC Group, Inc., Assoc. Purchasing Serv., Spirit AeroSystems, Inc., Occidental Chemical Corp., and Goodyear Tire & Rubber Co. (March 15, 2022).

¹² Notice of Temporary Suspension of Schedule (April 8, 2022).

¹³ Second Joint Motion to Modify Procedural Schedule (April 15, 2022).

¹⁴ Presiding Officer Order Granting Joint Motion to Modify Procedural Schedule (April 18, 2022).

¹⁵ Evergy Application of Corrections to KEEIA Report (May 18, 2022).

¹⁶ Direct Testimony of Alice Napoleon on Behalf of CURB (June 17, 2023). (“Napoleon Direct Testimony”)

¹⁷ Direct Testimony of Danielle Goldberg on Behalf of CURB (June 17, 2023). (“Goldberg Direct Testimony”)

provided her opinion on the programs being offered by Evergy. She concluded that the programs and overall portfolio are cost-effective for residential programs. The business programs, as a whole, were cost-effective, with a limited number of exceptions to certain programs. Further, Ms. Napoleon made additional recommendations towards improvements that Evergy should consider for the future, such as related to new residential home construction.

8. In regards to TD and EO recovery mechanisms, Ms. Napoleon indicated concerns about the contentious nature of measuring such results and shortcomings related to the potential for the proposed mechanisms to fully address throughput incentive. She ultimately recommended that the parties explore the use of a decoupling mechanism to address lost revenue recovery related to energy efficiency.

9. Ms. Goldberg examined the Technical Resource Manual (“TRM”) and the methodology behind Evergy’s modeling systems that supported the Application. She indicated that modeling through DSMore is limited in transparency in that predetermined values used in the TRM were locked behind the program and are unable to be viewed by intervenors.¹⁸ She explained that a more transparent system should allow stakeholders to find documentation on how values are calculated and to see the underlying logic. She ultimately recommended that Evergy consider adopting best practices involving TRM transparency by integrating citations and references throughout worksheets. However, because Evergy does not have a historical record of applying a TRM in Kansas, Ms. Goldberg suggested that such changes occur in future DSM plans rather than to modify the current portfolio.

10. Staff filed testimony from seven witnesses. Leo Haynos submitted a review of the TRM and offered recommendations on how input data and other aspects of the programs should

¹⁸ Goldberg Direct Testimony at pg. 12, lns. 3-13.

be validated.¹⁹ He made several recommendations regarding the Commission’s role in the EM&V process with an independent auditor and highlights improvements that would allow for a more thorough review of program results and the estimation of savings, such as by applying corrections to TRM savings retroactively.²⁰

11. Justin Grady reviewed the financial recovery mechanisms and provided his recommendations for Staff.²¹ He concluded that the EO requested by Evergy in its Application was excessive and should be denied based on the higher proportion of shared net benefits compared to program expenditures. Mr. Grady discussed the parameters of Staff’s recommended EO based on the Weighted Average Cost of Equity for each of Evergy’s jurisdictions and to include performance metrics based on achieving target MWh and MW savings levels.²² In regards to carrying costs and the TD, Mr. Grady recommended that these values be recorded at Evergy’s weighted average cost of short-term debt rather than the full weighted average cost of capital.

12. Douglas Hall presented testimony on Staff’s modifications to the TD mechanisms.²³ He concluded that there was a possibility that Evergy could over-recover lost revenue relative to the benefits of the DSM program and that lost revenue recovery should be capped at Evergy’s last-approved base revenue requirement. While Mr. Hall recognized that TD was an issue while implementing DSM programs,²⁴ Staff viewed the method of utilizing the TRM to determine a measurement of energy savings to be too problematic when comparing benefits for participants to non-participants and the risk of over-recovery. Mr. Hall explained that a cap to lost

¹⁹ Direct Testimony of Leo Haynos on Behalf of the KCC (June 17, 2022). (“Haynos Direct Testimony”)

²⁰ Haynos Direct Testimony at pgs. 13-14, Ins. 15-21, 1-2.

²¹ Direct Testimony of Justin Grady on Behalf of KCC (June 17, 2022). (“Grady Direct Testimony”)

²² Grady Direct Testimony at pg. 19, Ins. 3-15.

²³ Direct Testimony of Douglas Hall on Behalf of KCC (June 17, 2022). (“Hall Direct Testimony”)

²⁴ Hall Direct Testimony at pg. 5, Ins. 15-19.

revenue based on approved revenue requirements would allow Evergy to recover what it already expected to earn from its last rate case.²⁵

13. Lisa Parcell and Jeffrey Jarman, from Wichita State University, provide testimony on behalf of Staff regarding Evergy’s customer survey and marketing plans and provided a discussion on their own survey conducted in the Fall of 2020.²⁶ Ms. Parcell calculated the estimated participation rate that Evergy expects for its programs to be around 18%, a majority of which participating through LED light bulb usage.²⁷ Mr. Jarman examined Evergy’s survey and opined that Evergy’s survey questions failed to adequately inform people about the specific programs that were eventually brought forward in the application.²⁸ He also indicated that LED light bulbs would be a popular option among ratepayers, but questioned whether that was just an inevitable outcome versus being influenced by the portfolio.

14. Lana Ellis provided testimony for Staff in regards to the Residential Hard-to-Reach Homes program.²⁹ She recommended that the Commission approve the Hard-to-Reach Homes programs and recovery of program expenses of up to a 5% of total budget cap per Commission policy.³⁰ Ms. Ellis further recommended that if budgets go beyond this cap, Evergy should be required to establish criteria for determining “effectiveness” of the programs through the EM&V plan.

15. Dr. Robert Glass provided testimony on behalf of Staff regarding cost-effectiveness testing and economic considerations of the portfolio and recommendations on approval of the

²⁵ Hall Direct Testimony at pg. 11, lns. 6-20.

²⁶ Direct Testimony of Jeffrey Jarman on Behalf of KCC (June 17, 2022) (“Jarman Direct Testimony”); Direct Testimony of Lisa Parcell on Behalf of KCC (June 17, 2022). (“Parcell Direct Testimony”)

²⁷ Parcell Direct Testimony at pg. 5, lns. 1-23.

²⁸ Jarman Direct Testimony at pg. 24, lns. 1-13.

²⁹ Direct Testimony of Lana Ellis on Behalf of KCC (June 17, 2022). (“Ellis Direct Testimony”)

³⁰ Ellis Direct Testimony at pg. 18, lns. 4-10.

proposed programs.³¹ He explained that because the Wichita State focus group survey indicated support for educational and low-income programs, Staff also made those a priority for evaluation in this docket.³² Dr. Glass reviewed the budgets and cost-effectiveness tests and recommends approval of the residential side program while offering modifications to business-side measures that had lower scores. He also raised general concerns with energy efficiency programs and the ability to accurately measure savings results and benefits.³³ He reasons that it was difficult to establish causation in changes to electric load and customer behavior. However, he did not see similar problems with demand response and education programs because those are relatively cheap and do not create competitive distortions from business programs. Dr. Glass testified that low-income programs were considered a subsidy by nature, and the impacts from those programs are typically expected and accepted.

16. James Owen provided testimony on behalf of CEP.³⁴ He discussed his background and experience with energy efficiency with his work in Missouri and its energy efficiency programs from the ratepayers' perspective. Mr. Owen described the success Missouri utilities have achieved through implementation of robust energy efficiency programs and the energy savings associated with their programs.³⁵ He attributed Missouri's rise in the American Council for Energy-Efficient Economy ("ACEEE") scorecard to the innovations of programs by its public utilities.³⁶ Mr. Owen examined the importance of evaluating low-income households and offered recommendations on how to implement programs aimed at assisting that group of customers. As part of his recommendations, he suggested that the Company adopt the Pay As You Save ®

³¹ Direct Testimony of Robert Glass on Behalf of KCC (June 17, 2022). ("Glass Direct Testimony")

³² Glass Direct Testimony at pg. 39, lns. 3-8.

³³ *Id.* at pg. 89-90.

³⁴ Direct Testimony of James Owen on Behalf of Climate + Energy Project (June 17, 2022). ("Owen Direct Testimony")

³⁵ *Id.* at pg. 6-8.

³⁶ Owen Direct Testimony at pg. 8, lns. 8-13.

(“PAYS®”) system as a modification to Evergy’s proposed on-bill financing program and included an example tariff used in Missouri as Attachment JO-2.³⁷

17. Justin Schott also provided direct testimony on behalf of CEP.³⁸ He reviewed Evergy’s Hard-to-Reach programs and suggested that those programs be expanded to a wide demographic and that more funding should be provided to that area. Mr. Schott also recommended that data tracking be enhanced to track factors regarding energy burden and savings in order to improve offerings in the future.³⁹

18. Roger Colton submitted direct testimony on behalf of Sierra Club and Kansas Appleseed⁴⁰ His testimony was focused on the need for ratepayer-funded low-income programs and the ways to identify and target such groups. Mr. Colton recommended that as part of the EM&V process that Evergy begin to collect and share data related to low-income customers, such as number of disconnections and arrearages and number of final bills. He further recommended that Evergy consider incorporating programs aimed at helping customers who are having trouble paying bills or were otherwise experiencing high energy burden.⁴¹

19. Stacy Sherwood submitted testimony on behalf of NRDC.⁴² She recommended that the DSM portfolio should introduce a program to target multifamily and income qualified homes in addition to the Hard-to-Reach Homes programs. She also recommended that the EO be based on a performance metric rather than spending levels.⁴³

³⁷ *Id.* at pg. 19, lns. 6-16.

³⁸ Direct Testimony of Justin B. Schott on Behalf of Climate + Energy Project (June 17, 2022). (“Schott Direct Testimony”)

³⁹ Schott Direct Testimony at pg. 26, lns. 13-16.

⁴⁰ Testimony of Roger Colton on Behalf of Sierra Club and Kansas Appleseed (June 17, 2022). (“Colton Direct Testimony”)

⁴¹ Colton Direct Testimony at pg. 77, lns. 6-23.

⁴² Testimony of Stacy L. Sherwood on Behalf of Natural Resources Defense Council (June 17, 2022). (“Sherwood Direct Testimony”)

⁴³ Sherwood Direct Testimony at pg. 24, lns. 17-23.

20. Paul Raab submitted direct testimony on behalf of the Gas Companies.⁴⁴ He recited the history of energy efficiency dockets in Kansas and the natural gas utilities' involvement in regards to ensuring that programs do not result in fuel switching and the monitoring of incentives. Mr. Raab identified several components of the DSM portfolio that raised concerns of fuel switching in the business programs and recommended rejection of those components. Mr. Raab also critiqued the use of higher efficiency electrical appliances and the risk that higher energy usage would be the end result of implementation of the portfolio.

21. On June 24, 2022, CURB⁴⁵ and the Gas Companies⁴⁶ filed cross-answering testimony. Ms. Napoleon indicated support for Mr. Hall's proposed change to the TD mechanism, while indicating that an alternative mechanism such as decoupling be the ultimate goal. Further, she responded to Mr. Raab's direct testimony regarding the comparative efficiency of gas and electric appliances and resulting energy usage levels.

22. Mr. Raab's testimony indicated support for the various recommendations to modify the EM&V process and TRM modeling transparency and opposed the recommendation to include new residential constructions as part of the DSM portfolio.

23. On July 13, 2022, the Office of Public Affairs and Consumer Protections with the KCC filed its report that compiled the written comments received from the public.⁴⁷

24. On July 18, 2022, Evergy witnesses submitted rebuttal testimony to address the recommendations and conclusions submitted through direct and cross-answering testimony.

⁴⁴ Direct Testimony of Paul H. Raab on Behalf of Atmos Energy Corp. Black Hills and Kansas Gas Service (June 17, 2022). ("Raab Direct Testimony")

⁴⁵ Cross-Answering Testimony of Alice Napoleon on Behalf of CURB (June 24, 2022). ("Napoleon Cross-Answering Testimony")

⁴⁶ Cross-Answering Testimony of Paul H. Raab on Behalf of Atmos Energy Corporation, Black Hills and Kansas Gas Service (June 24, 2022). ("Raab Cross-Answering Testimony")

⁴⁷ Notice of Filing of Public Comments (July 13, 2022).

25. During the week of July 29, 2022, parties convened to discuss potential settlement of the issues in this docket. In light of the settlement discussions, Staff submitted a motion to extend the due date for a settlement agreement to August 1, 2022 and accompanying testimony to August 3, 2022. The Presiding Officer granted the extension on July 29, 2022.⁴⁸

26. On August 1, 2022, CURB, Staff, Evergy, CEP, NRDC, Sierra Club and Kansas Appleseed submitted a two-part non-unanimous settlement agreement (“Initial S&A”). Part 1 recommended approval of a set of modified DSM programs and budget (“Programs Agreement”).⁴⁹ Part 2 supported the financial recovery proposal for carrying costs, TD, and EO mechanisms (“Financial Agreement”)⁵⁰. All of the above parties signed the Programs Agreement. All parties to the Programs Agreement, excluding Staff, signed onto the Financial Agreement. Staff is opposed to the Financial Agreement and the Gas Companies are opposed to both the Programs and Financial Agreements.

27. On August 3, 2022, parties submitted testimony indicating their support or opposition to the Programs Agreement and Financial Agreement. CURB witness Alice Napoleon discussed CURB’s support for the Initial S&A.⁵¹ She indicated that the Initial S&A obtained several concessions from the Company and created safeguards for ratepayers to minimize the risk of over-recovery by Evergy. Furthermore, she testified in support of the established collaborative process agreed to by the signatories to work on developing the EM&V process and to work towards alternative recovery mechanisms, like decoupling, before the end of the four-year program cycle. Ms. Napoleon indicated that the Initial S&A, while not a perfected program, would provide a

⁴⁸ Presiding Officer Order Granting Motion for Extension of Time (July 29, 2022).

⁴⁹ Evergy Motion to Approve Non-Unanimous Partial Settlement Agreement on DSM Programs (August 1, 2022). (“Programs Agreement”)

⁵⁰ Evergy Motion to Approve Non-Unanimous Partial Settlement Agreement on Financial Recovery (August 2, 2022). (“Financial Agreement”)

⁵¹ Testimony in Support of Settlement Agreements by Alice Napoleon on Behalf of CURB (August 3, 2022). (“Alice Supporting Testimony”)

robust start for Kansas to begin implementing and studying energy efficiency on a bigger scale than it has in the past. She testified that this framework would allow Kansas to incorporate energy efficiency into its energy solutions as many other states around the country has.

28. Mr. Owen provided CEP's support for the Initial S&A.⁵² He indicated that, although his direct testimony did not touch on financial recovery, his experience and opinion was that it was imperative for Kansas to start somewhere with energy efficiency. In addition, Mr. Owen emphasized the benefit of including a PAYS® program into the Initial S&A and to provide additional budget for low-income homes. He also expressed confidence in the collaborative process and working with Evergy to evaluate other methods to support energy efficiency that aligns with the policy objectives of Kansas.

29. Ms. Sherwood with NRDC provided testimony in support of the Lost Revenue Adjustment Mechanism ("LRAM") that was presented in the Financial Agreement.⁵³ She concluded that the benefits associated with the DSM portfolio in the Programs Agreement will be enjoyed by all ratepayers, whether they participate or not. The use of an LRAM will be supplemented by a rigorous EM&V process to ensure that the proper level of savings are reflected.

30. Mr. Colton with Sierra Club and Kansas Appleseed also provided testimony indicating that the Initial S&A would provide a step forward in Kansas in recognizing the role that energy efficiency investments should play in providing affordable and reliable electric service.⁵⁴ He recognized the investments for low-income residents as an important aspect of the agreements. Further, he cited to ACEEE and the use of stakeholder group participation in energy efficiency

⁵² Testimony of James Owen on Behalf of Climate + Energy Project in Support of Partial Non-Unanimous Settlement Agreement on DSM Programs (August 3, 2022); Testimony of James Owen on Behalf of Climate + Energy Project in Support of Partial Non-Unanimous Settlement Agreement on Financial Recovery (August 3, 2022).

⁵³ Settlement Testimony of Stacy Sherwood on Behalf of Natural Resources Defense Council (August 3, 2022).

⁵⁴ Testimony of Roger Colton in Support of Non-Unanimous Partial Settlements on Behalf of Sierra Club and Kansas Appleseed Center for Law and Justice, Inc. (August 3, 2022).

planning as a best practice to address equity concerns and to support data reporting requirements in the EM&V process. In regards to the EO, Mr. Colton was supportive of the agreement calling for a review of outcome metrics rather than percentage of spent budget to determine the incentive awards. While Mr. Colton indicated that there is room for improvement with lost revenue recovery, he concluded that being able to move forward with energy efficiency at this time was important and that the collaborative process alleviates concerns regarding the mechanisms in the future.

31. Darrin Ives with Evergy provided testimony that the Company supports the Initial S&A.⁵⁵ He explained the changes to the program offerings and how the financial recovery mechanisms are consistent with the goals of KEEIA, as well as commenting on Staff's opposition to the Financial Agreement. Mr. Ives referred to Staff's reliance on prior Commission dockets and the obstacles to implementing energy efficiency programs in Kansas. He highlighted Staff's general distrust with measuring savings for DSM programs and the concerns with the TRM. He reasoned that if such results cannot be trusted, then there would be no basis for the Commission to ever approve DSM programs. Mr. Ives also called into question Staff's comfort with using the measured savings to complete cost-effectiveness tests, pointing out that Staff balked at the same data when used for lost revenue recovery calculations.

32. Mr. Raab provided testimony in opposition to the Initial S&A for the Gas Companies.⁵⁶ He focused his arguments on the language of KEEIA that defined demand response programs as ones that reduce the net consumption of electricity by the customer. He requested that the Program Agreement be modified to include a "like-for-like" replacement requirement to avoid natural gas appliances from being swapped out for electric appliances. Mr. Raab stated that by

⁵⁵ Testimony in Support of Settlements on Behalf of Evergy (August 3, 2022). ("Ives Supporting Testimony")

⁵⁶ Paul Raab's Testimony in Opposition to Nonunanimous Partial Settlement on Behalf of Atmos Energy, Black Hills Energy and Kansas Gas Service (August 3, 2022). ("Raab Opposition Testimony")

being able to incentivize that kind of switch, the customer would ultimately be using more electricity than they would without the replacement, thus violating KEEIA.

33. Dr. Glass provided Staff's support for the Programs Agreement.⁵⁷ He reviewed the Commissions standards for approving non-unanimous settlement agreements. He concluded that the Programs Agreement was the product of fair negotiations by all parties and presented a reasonable resolution of the issues regarding budget and program design.

34. Mr. Grady submitted testimony in opposition to the Financial Agreement for Staff.⁵⁸ He concluded that the TD and EO mechanisms were too rich in terms of incentive levels and the potential for over-recovery of lost revenue. He indicated a distrust of the LRAM and suggests that the Commission reject the mechanism in favor of the mechanism that Mr. Hall's direct testimony proposed. Mr. Grady added a modification to the cap at approved revenue requirement levels to be adjusted for directly identifiable increases in the revenue requirement associated with external factors such as customer growth, electric vehicle penetration, or economic development. Under this proposal, Evergy would have to prove that those base revenue adjustments were reasonable, necessary, and prudent during the TD recovery proceedings. Further, Mr. Grady recommended that the EO be adjusted from 18% of savings to a lower percentage of DSM spend.

35. From August 9-10, 2022, the Commission held an evidentiary hearing on the Initial S&A.⁵⁹

⁵⁷ Settlement Testimony of Robert Glass on Behalf of KCC (August 4, 2022).

⁵⁸ Testimony in Opposition to Non-Unanimous Settlement Agreement of Justin Grady on Behalf of KCC (August 3, 2022). ("Grady Opposition Testimony")

⁵⁹ Cited to as "Tr. Pt. 1" and "Tr. Pt. 2."

36. Prior to post-hearing briefs being filed, on August 23, 2022, Evergy filed a motion to stay the proceedings in order to engage in additional negotiations with Staff.⁶⁰

37. On September 15, 2022, Evergy provided an update to the Commission regarding these additional negotiations and requested another extension on the stay.⁶¹

38. On September 29, 2022, Evergy submitted a second update to the discussions and asked for another extension.⁶² Sierra Club and Kansas Appleseed opposed this second extension, and asked the Commission to deny it and to return to a post-hearing briefing schedule.⁶³

39. On October 28, 2022, Evergy requested a third extension of time to finalize documents related to the settlement discussions.⁶⁴ On October 31, 2022, Staff submitted a request to extend the stay until November 15, 2022, in order to try and get the other stakeholders together to discuss a new proposed agreement.⁶⁵

40. On November 15, 2022, Staff, Evergy, and the Gas Companies submitted a second settlement agreement to resolve the issues in this docket and to implement a different version of the DSM portfolio (“Alternative S&A”).⁶⁶ This agreement established a portfolio of five programs: Business Demand Response, Home Demand Response, Residential Energy Education, Business Energy Education and Hard-to-Reach Homes, with a significantly reduced program budget compared to the Initial S&A. The Alternative S&A adopted a LRAM similar to the Initial S&A with a few changes regarding measurement of lost revenue for installed measures. The EO

⁶⁰ Evergy’s Motion to Stay Docket (August 23, 2022).

⁶¹ Evergy Update on Post-Hearing Discussions (September 15, 2022).

⁶² Second Update on Post-Hearing Discussions (September 29, 2022).

⁶³ Opposition of Sierra Club and Kansas Appleseed to Further Extension Sought by KCC Staff and Evergy (September 30, 2022).

⁶⁴ Evergy Motion for Extension of Time (October 28, 2022).

⁶⁵ KCC Motion to Extend Stay (October 31, 2022).

⁶⁶ Evergy Joint Motion for Consideration of Alternative Settlement Agreement (November 15, 2022).

mechanism was based on a sliding scale of performance metrics for demand response and Hard-to-Reach Homes.

41. On November 22, 2022, Mr. Ives presented testimony in support of the Alternative S&A.⁶⁷ He indicated that while the majority of energy efficiency programs were eliminated in the portfolio, the resulting budget decrease and reduced projected lost revenue levels allowed Staff and Evergy to agree on an LRAM and set of demand response programs. Evergy still supported for the Initial S&A and explained that the Alternative S&A was another option for the Commission to consider for energy efficiency in Kansas.

42. Mr. Grady provided Staff's support for the Alternative S&A.⁶⁸ He attributed Staff's support for the new agreement on the basis that the budget and resulting lost revenue and incentive levels were now low enough for Staff to be comfortable to support an LRAM. Further, the adjustments to the EM&V and removal of the need to measure savings from energy efficiency programs added to Staff's support for the new agreement. However, Mr. Grady indicated that this agreement was an alternative option to the Initial S&A and that Staff still supported the Programs Agreement.

43. Ms. Napoleon submitted testimony on behalf of CURB in opposition to the Alternative S&A.⁶⁹ She concluded that the Alternative S&A fell short of establishing a robust foundation for energy efficiency in Kansas versus the Initial S&A. She analyzed both the budget and comparative energy and demand savings and indicated that the Alternative S&A was significantly below the Initial S&A in terms of savings. She testified that this would also put

⁶⁷ Testimony of Darrin R. Ives in Support of Non-Unanimous Alternative KEEIA Settlement Agreement (November 22, 2022). ("Ives Alternative Testimony")

⁶⁸ Justin Grady's Testimony in Support of Alternative Settlement Agreement (November 22, 2022). ("Grady Alternative Testimony")

⁶⁹ Testimony in Opposition to Alternative Settlement Agreement of Alice Napoleon on Behalf of CURB (December 2, 2022). ("Napoleon Opposition Testimony")

Evergy well behind its goals for DSM contained in its Integrated Resource Plan (“IRP”), which described Evergy’s future plans for resource generation and acquisition for Kansas. She stated that failing to implement a larger program will put Kansas much further behind peers and hinder development of energy efficiency.

44. Mr. Owen submitted testimony in opposition to the Alternative S&A for CEP.⁷⁰ He commented on the Alternative S&A’s removal of the PAYS® program and the impact on low-income ratepayers. He also critiqued the lack of data collection and reporting terms framework in the Alternative S&A that was present in the Initial S&A. In regards to financial recovery, Mr. Owens reiterated the need for a financial mechanism to incentivize utilities to pursue energy efficiency investments. He concluded that the Alternative S&A would not provide a sufficient precedent for financial recovery, discouraging additional investment in energy efficiency in the future.

45. Mr. Colton provided testimony on behalf of Sierra Club and Kansas Appleseed in opposition to the Alternative S&A.⁷¹ He expressed similar concerns as Ms. Napoleon and Mr. Owen regarding the lack of progress that the Alternative S&A would make on improving Kansas’ energy efficiency profile. He provided an in-depth analysis of the allocation of budget for Hard-to-Reach Homes and found that less will be spent on weatherization under the Alternative S&A compared to the Initial S&A. He also shared Mr. Owen’s concerns regarding the lack of reporting requirements in the Alternative S&A.

⁷⁰ Testimony of James Owen on Behalf of Climate + Energy Project in Opposition of Non-Unanimous Alternative Settlement Agreement (December 2, 2022).

⁷¹ Testimony of Roger Colton on Behalf of Sierra Club and Kansas Appleseed in Opposition to the Alternative Settlement Agreement (December 2, 2022).

46. On January 5, 2022, the Commission held a second evidentiary hearing in order to hear live testimony on the Alternative S&A.⁷²

Applicable Laws and Precedent

47. The disposition of any kind of proceeding before the Commission must be reasonable and not so wide of the mark as to be outside the realm of fair debate, or is not otherwise unreasonable, arbitrary, or capricious and prejudicial to the parties.⁷³ The Commission has broad authority over public utilities to ensure that utility rates are just and reasonable, and that the rates maintain and support reasonably sufficient and efficient service.⁷⁴ The Commission may accept a nonunanimous settlement agreement provided that an independent finding is made, supported by substantial evidence in the record as a whole, and that the settlement agreement will establish just and reasonable rates.⁷⁵ Independent findings by the Commission do not need to be rendered in minute detail. Rather, the findings must be specific enough to allow judicial review of the reasonableness of the order.⁷⁶

48. To that end, approved rates should fall within a “zone of reasonableness” after the application of a balancing test in which the interests of the utility and the ratepayers are evaluated.⁷⁷ Specifically, there are three sets of competing interests that the Commission should consider: 1) the utility’s investors and its ratepayers; 2) present and future ratepayers; and 3) the public interest. When evaluating these competing interests, the Commission may consider matters of policy in establishing a “just and reasonable” rate. An order is generally considered reasonable if it is based

⁷² Cited as “Second Evidentiary Hearing.”

⁷³ Zinke & Trumbo, Ltd. v. State Corp. Com’n of Kan., 242 Kan. 470, 475 (1988).

⁷⁴ K.S.A. 66-101b.

⁷⁵ Citizens’ Utility Ratepayer Bd. v. State Corp. Com’n of State of Kansas, 28 Kan.App.2d 313, 316 (2000).

⁷⁶ Zinke & Trumbo, Ltd. v. State Corp. Com’n of State of Kan., 242 Kan. 470, 475 (1988) (interpreting K.A.R. 82-1-232(3)).

⁷⁷ Power Com’n v. Hope Gas Co., 320 U.S. 591, 603, (1944); Farmland Industries, Inc. v. State Corp. Com’n of Kansas, 24 Kan.App.2d 172, 195 (1997).

on substantial competent evidence.⁷⁸ This use of policy considerations invites a certain level of subjective evaluation and decision making. As a result, a court will not set aside an order of the Commission merely on the grounds that it would have arrived at a different conclusion.⁷⁹

49. While the Commission is not limited in the kind of policies it may consider in approving a just and reasonable rate, it is important to take note of Kansas' current policy towards demand-side management and energy efficiency. KEEIA, as codified in K.S.A. 66-1283, provides general guidelines and standards for approving energy efficiency programs:

- a. It is the goal of the state to promote the implementation of cost-effective demand-side programs in Kansas;⁸⁰
- b. Kansas policy is to value demand-side program investments equal to traditional investments in supply and delivery infrastructure as much as is practicable;⁸¹
- c. No utility is required to offer, implement or continue demand-side programs. Both the utilities and Commission have independent authority to accept or reject any proposed establishment, continuation or modification of a demand-side program, portfolio of programs, or associated cost-recovery mechanisms.⁸²
- d. No program or mechanism can take effect until both the utility and Commission approve of such items. If the utility rejects modifications to a program or portfolio of programs approved by the Commission (including modifications to cost-recovery mechanisms), the utility cannot be forced to implement the program.⁸³

⁷⁸ Jones v. Kansas Gas and Electric Co., 222 Kan. 390, 397 (1977).

⁷⁹ Midwest Gas Users Ass'n v. State Corp. Commission, 3 Kan.App.2d 376, 381 (1979).

⁸⁰ K.S.A. 66-1283(b).

⁸¹ *Id.*

⁸² K.S.A. 66-1283(c)(1)(B).

⁸³ K.S.A. 66-1283(c)(1)(C).

- e. To achieve the goals of KEEIA, the Commission must: 1. Provide timely cost recovery for electric public utilities; 2. Ensure that the financial incentives for an electric public utility are aligned with helping that utility's customers use energy more efficiently and in a manner that sustains or enhances such customers' incentives to use energy more efficiently; 3. Provide timely earning opportunities for public utilities associated with cost-effective, measurable, and verifiable demand-side program savings; 4. Provide oversight and approval for utility-specific settlements and tariff provisions; and 5. Provide independent evaluation of demand-side programs.⁸⁴

50. The Commission has historically approved nonunanimous settlement agreements so long as the agreement will establish just and reasonable rates.⁸⁵ In making such findings, the Commission has developed a set of five factors for reviewing nonunanimous agreements:

- a. Whether each party had an opportunity to be heard on reasons for opposing the settlement;
- b. Whether the settlement is supported by substantial competent evidence in the record as a whole;
- c. Whether the settlement will result in just and reasonable rates;
- d. Whether the settlement conforms to applicable law; and
- e. Whether the results of the settlement are in the public interest.⁸⁶

51. This docket is unique in that there are two separate sets of settlement agreements before the Commission. The parties have asked that the Commission weigh the evidence and

⁸⁴ K.S.A. 66-1283(e)(1)-(5).

⁸⁵ *Farmland Industries, Inc. v. State Corp. Com'n of Kansas*, 24 Kan.App.2d 172, 187 (Kan. App. 1997).

⁸⁶ Order Approving Contested Settlement Agreement, Docket No. 08-ATMG-280-RTS (May 12, 2008).

determine which would be the most reasonable option for Kansas in the area of energy efficiency.⁸⁷ The Commission directed parties to illustrate the differences between the competing settlement agreements ahead of the second evidentiary hearing in this docket.⁸⁸ Throughout this brief, CURB will identify areas where the Initial S&A satisfies the five factors in a way that is superior to the Alternative S&A. Specifically, CURB believes that the record supports a finding that the Initial S&A satisfies all five factors for approval and that the Initial S&A better promotes the goals of KEEIA and the public interest when compared to the Alternative S&A.

Analyses and Arguments

I. Opportunity for Opposition to Be Heard.

A. Opponents to the Initial S&A had the opportunity to be heard.

52. Staff and the Gas Companies have had sufficient opportunities to be heard throughout this docket on their opposition to the Initial S&A. Prior to the filing of direct intervenor testimony, Staff, CURB, and other intervenors requested an Order from the Commission to modify the existing procedural schedule to allow for additional discovery and investigation into Evergy's initial application.⁸⁹ This additional investigation included several live workshops with the Company and intervenors. Throughout the summer of 2022, witnesses for Staff and the Gas Companies indicated detailed concerns with Evergy's initial application through direct and cross-answering testimony.

53. Beginning the week of July 26, 2022, the parties participated in extensive settlement negotiations prior to the filing of the Initial S&A and supporting and opposing testimony. Through these negotiations, all parties were present and able to voice their position on

⁸⁷ Joint Update Report and Proposed Procedural Schedule, pg. 3-4, ¶¶7a-f (November 15, 2022).

⁸⁸ Presiding Officer Order on Joint Motion for Procedural Schedule, pg. 2, ¶5 (November 17, 2022).

⁸⁹ See Notion of Temporary Suspension of Schedule (April 8, 2022); Second Joint Motion to Modify Procedural Schedule (April 15, 2022).

Evergy's application. Due to the thorough negotiation efforts, the parties requested additional time to file a settlement agreement to allow for more discussions. The Company made numerous concessions regarding program offerings, budgets, and cost recovery. However, a unanimous consensus could not be reached with Staff regarding the financial recovery portion nor with the Gas Companies regarding the programs. Each of these parties were able to file testimony in opposition to the Initial S&A specific to their particular positions.

54. From August 9-10, 2022, the Commission received live testimony and asked questions during the live evidentiary hearing. All parties had the opportunity to present witnesses and to answer Commissioner questions. Further, parties were able to cross-examine witnesses on their respective positions.

55. Prior to post-hearing briefs being due, Staff and Evergy asked to suspend the procedural schedule in order to engage in secondary negotiations to resolve outstanding issues. These negotiations lasted from the end of August 2022 until the Alternative S&A was filed on November 15, 2022, even over the objections of some parties.⁹⁰

56. The opportunity to engage in additional negotiations and ultimately file a second settlement agreement in a docket is a highly unusual circumstance, but one that strongly supports a finding that parties have been able to fully voice their opposition to the Initial S&A. Therefore, there have been sufficient opportunities for parties opposing the Initial S&A to be heard in this docket.

⁹⁰ See Opposition of Sierra Club and Kansas Appleseed to Further Extension Sought by KCC Staff and Evergy (September 30, 2022).

II. Substantial Competent Evidence

A. Implementation of the programs and measures contained in the Program Agreement is supported by substantial competent evidence.

57. The record contains substantial competent evidence to support the implementation of the energy efficiency programs in the Initial S&A as discussed in the Programs Agreement. To determine whether there is substantial competent evidence, the record must contain evidence which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved.⁹¹ Here, the Application included a report on Evergy's DSM portfolio filing that contained cost-effectiveness testing results and narratives behind each offering. This report also included a residential customer survey conducted by Evergy in August 2021 that was used to develop the portfolio.⁹² CURB and other stakeholder groups submitted dozens of discovery requests and held numerous workshops with Evergy in order to gain a better understanding of the portfolio prior to even filing direct testimony. Representatives from each party followed up with cross-answering testimony to weigh in on other parties' suggested improvements to the application. After the Initial S&A was filed, parties submitted supporting and opposing testimony on the merits of the agreement. From August 9 through 10, 2022, the Commission took live testimony during the evidentiary hearing on whether to approve the Initial S&A.

58. The record contains evidence on the programs and measures in the Programs Agreement to show that they pass benefit-cost testing sufficient to satisfy Commission standards and KEEIA requirements. KEEIA gives the Commission full discretion to establish appropriate benefit-cost tests to use when evaluating energy efficiency programs.⁹³ In the 16-KCPE-446-TAR

⁹¹ Jones at 397.

⁹² DSM Portfolio Report at Appendix G.

⁹³ K.S.A. 66-1283(c)(1)(D).

docket (“16-446 Docket”), the Commission reaffirmed a prior interpretation of KEEIA’s policy objectives from Docket No. 08-GIMX-442-GIV regarding the types of benefit-costs tests it would utilize.⁹⁴ These policy objectives included reducing or postponing future construction of generation and the mitigation of customer bill increases. The Commission examines the Participant Cost Test (PCT), Ratepayer Impact Measure Test (RIM), Program Administrator Test (PAC), and Total Resource Cost Test (TRC), with the TRC and RIM results having primary emphasis in light of the stated policy objectives.⁹⁵ While there are no established limits for program implementation, the Commission has indicated that programs with TRC results below 1.0 or RIM results below .07 were unlikely to be approved.⁹⁶ Programs with low RIM results could still be approved with consideration of other factors, such as performance on other tests and effect on policy goals.⁹⁷

59. Here, there is substantial competent evidence that the programs in the Initial S&A pass cost-effectiveness review. First, the original application indicated that the programs selected for this filing received TRC scores above 1.0 and RIM score above .07.⁹⁸ Staff also performed an analysis of the cost-effectiveness of the programs and identified concerns regarding the Home Comfort component and rebates at the point-of-sale for LED bulbs.⁹⁹ Further, Staff had concerns regarding the cost-effectiveness of the Whole Business Efficiency programs, specifically Business Comfort across both of Evergy’s jurisdictions.¹⁰⁰ To address these concerns, the Initial S&A removed the LED bulbs rebate from the Whole Home Efficiency program and the budget of the

⁹⁴ Final Order, Docket No. 16-KCPE-446-GIV at pg. 35, ¶¶96.

⁹⁵ *Id.*

⁹⁶ *Id.* at pg. 4, ¶¶19-20.

⁹⁷ Glass Direct Testimony at pg. 34, lns. 10-18.

⁹⁸ Evergy Application at pg. 46, DSM Portfolio Filing at Table 7.

⁹⁹ Glass Direct Testimony at pg. 51, lns. 7-19.

¹⁰⁰ Glass Direct Testimony at pg. 68, Table 33.

Business Comfort component, but retained some budget for a Business Comfort measure on Evergy's ability to modify the program to obtain a higher cost-effectiveness result.¹⁰¹

60. Evergy's initial application contains proposed tariff sheets that correspond with the programs and measures in the portfolio.¹⁰² The Programs Agreement adopts the vast majority of the proposed programs and provides modifications to programs, including a procedure to develop and approve the PAYS® system for on-bill financing. Mr. Owen's direct testimony contained the terms for PAYS® used in Missouri and the Initial S&A provided additional terms for on-bill financing that should be adopted for the Kansas version of this program.¹⁰³ Therefore, the programs in the Initial S&A are supported by substantial competent evidence.

III. The Initial S&A Complies with Applicable Law

A. The terms of the Initial S&A complies with KEEIA requirements for approval and advances important policy considerations.

61. The provisions of the Initial S&A complies with the terms of KEEIA and applicable Kansas law. In the case of an electric utility, KEEIA defines "demand-side program" to mean any program conducted by a utility to reduce the net consumption of electricity by a retail electric customer.¹⁰⁴ Such programs can include energy efficiency measures (not including measures to incent fuel switching for residential heating systems), load management, demand response, and interruptible or curtailable load.¹⁰⁵ "Energy Efficiency" refers to measures that reduce the amount of energy required to achieve a given end use.¹⁰⁶ As part of the decision-making process for approving a program, the Commission must determine the appropriate test for evaluating the cost-

¹⁰¹ Initial S&A at Exhibit A, pgs. 3-4, Section (B)(a) and (c).

¹⁰² See DSM Portfolio Report at Appendix B.

¹⁰³ See Owen Direct Testimony at Exhibit JO-2; Programs Agreement at pg. 5, Section (B)(d)(iv).

¹⁰⁴ K.S.A. 66-1283(a)(3)(A).

¹⁰⁵ K.S.A. 66-1283(a)(3).

¹⁰⁶ K.S.A. 66-1283(a)(4).

effectiveness of the demand-side program.¹⁰⁷ Programs that target low-income customers or general education campaigns do not need to meet a cost-effectiveness test, as long as the Commission determines that the program or campaign is in the public interest and is supported by a reasonable budget in the context of the overall budget. Programs found not to be cost-effective is not by itself a reason to disallow cost recovery. Rather such programs can be modified to address deficiencies or terminated after such a finding.¹⁰⁸

62. Under KEEIA, the Commission shall allow recovery of the reasonable and prudent costs associated with delivering Commission-approved demand-side programs, so long as the program: results in energy or demand savings; and is beneficial to customers in the customer class for which the programs were implemented, whether or not the program is utilized by all customers in such class.¹⁰⁹ The law further provides examples of the types of cost recovery mechanisms, such as an LRAM, decoupling, and allowing the utility to retain a portion of the net benefits of a demand-side program for its shareholders.¹¹⁰

63. Here, the terms of the Programs Agreement comply with KEEIA's definitions of demand-side programs and energy efficiency programs. The parties modified the programs and measures contained in Evergy's initial application to focus on measures for all ratepayers that meet the definitions in KEEIA. The Whole Home Efficiency Program and Whole Business Efficiency and Hard-to-Reach Business Programs provides for financial access and assistance to residential and business ratepayers to take advantage of high-efficiency products and in-depth home reports.

¹⁰⁷ K.S.A. 66-1283(c)(1)(D).

¹⁰⁸ K.S.A. 66-1283(c)(2).

¹⁰⁹ K.S.A. 66-1283(c)(2).

¹¹⁰ K.S.A. 66-1283(d)(1).

The end goal of such programs is to incentivize behavior changes and upgrades that result in more efficient end use of electricity and improved conservation results.¹¹¹

64. The Programs Agreement also includes implementation of the PAYS® system that Missouri has used for years, which will provide ratepayers access to appliances that will more efficiently use energy. The Demand Response programs are designed to provide both appliances and thermostats to allow customers to better monitor usage during lower cost hours and to participate in demand response events throughout the year.¹¹² In regards to customer education, the Programs Agreement contemplates a budget for both Residential and Business Energy Education programs that does not exceed 5% of the total portfolio budget cost. This figure falls in line with Commission policy followed in the 16-446 Docket and the Commission’s determination of what constitutes a “reasonable budget” under KEEIA.¹¹³ Further, the Whole Business Comfort and Enhanced Business Comfort will be held in reserve for Years 1 and 2 in such a way that if they can be redesigned to pass a benefit-cost test, then Evergy can request to have these measures added back into the Business programs in Years 3 and 4.¹¹⁴ This attention to benefit-cost measurements complies with Section (c)(2) of KEEIA and exercises the option to modify programs that are not considered cost-effective. Therefore, the record contains sufficient competent evidence to support the Initial S&A.

B. The Gas Companies’ interpretation of KEEIA is unreasonable and would nullify any attempts at implementing energy efficiency programs.

65. The Initial S&A does not violate KEEIA or fuel switching requirements, contrary to arguments in the opposition testimony by the Gas Companies witness, Paul Raab. KEEIA

¹¹¹ DSM Portfolio Filing at pg. 29.

¹¹² DSM Portfolio Filing at pg. 33.

¹¹³ Final Order, Docket No. 16-KCPE-446-TAR, pg. 48, ¶121.

¹¹⁴ Programs Agreement at pg. 3, Section (B)(ii).

defines “demand-side program” as one that results in the reduction of the net consumption of electricity by the participating retail customer. Mr. Raab cites to Section (B)(a)(ii) and states that remaining Business Comfort component regarding HVAC replacement would be in violation of KEEIA without a “like-for-like” requirement.¹¹⁵ He takes issue with the notion that the Business Comfort program allows Evergy to offer rebates for a business customer to replace a current natural gas furnace with an electric heat pump and how that will actually increase, rather than reduce, net consumption of electricity.¹¹⁶

66. Mr. Raab’s application of Commission precedent and the KEEIA statute disregards Ms. Napoleon’s evaluation of heat pump efficiency and reductions in energy use, and also produces a result that would render any and all demand-side programs ineligible. First, in her cross-answering testimony, Ms. Napoleon refers to Mr. Raab’s initial contention from his direct testimony that increased consumption of electricity necessarily implies increased use of the fossil fuel needed to produce that electricity and that more fossil fuel energy is required to provide a Btu of electrical energy at the point of usage, like a home, than to provide a Btu of the fossil fuel energy at the same point of usage.¹¹⁷ Ms. Napoleon explains that Mr. Raab’s view of energy usage fails to consider the higher efficiency of end-use equipment. She described differences in energy use in the appliances due to the comparative efficiency of electric heat pumps versus gas furnaces and the inclusion of renewable generation in Evergy’s system to offset fossil fuel utilization.¹¹⁸ Her conclusions indicate that electric heat pumps will use less energy than gas appliances and satisfies the requirements of KEEIA.

¹¹⁵ Raab Opposition Testimony at pg. 3, lns. 4-8.

¹¹⁶ *Id.* at pg. 4, lns. 1-10.

¹¹⁷ Napoleon Cross-Answering Testimony at pg. 3, lns. 3-10; Raab Direct Testimony at pgs. 18-19.

¹¹⁸ Napoleon Cross-Answering Testimony at pgs. 3-5.

67. Mr. Raab switches gears in his opposition testimony to imply that any measure that increases net consumption of electricity should not be allowed under KEEIA. Mr. Raab relies on the language in the 16-446 Docket¹¹⁹ that indicates that a like-for-like replacement is consistent with the conditions and limitations placed upon demand-side programs by KEEIA. This caveat is couched in the notion that the plain language of KEEIA allows programs that incent the use of higher efficiency appliances are consistent so long as the appliance results in a net reduction of electricity by the customer. Although courts will not resort to canons of statutory construction or legislative history for a statute whose language is plain and unambiguous, the court must still consider various provisions of an act *in pari materia* to reconcile and bring those provisions into workable harmony, if possible.¹²⁰ In other words, all relevant parts of a statute are considered together.

68. Mr. Raab argues that if an electric heat pump used in a business will result in the customer using more electricity than before, then that whole program would not be acceptable under KEEIA. He provides an example of a customer using the programs to replace several appliances, some that involve fuel switching and some that do not, and that this would mask fuel switching behavior.¹²¹ He concludes that a like-for-like requirement will assure a net reduction in electricity consumption. However, assurance of this result would make KEEIA completely unworkable. For example, in a discussion between Chair Keen and Dr. Glass, Dr. Glass discussed the problems with measuring savings associated with measures that are not specific to fuel source. He explained that some customers, particularly low-income customers, are already reducing electricity consumption to save on bills, and that by replacing their appliance with a higher

¹¹⁹ Final Order, Docket No. 16-KCPE-446-TAR, pg. 41, ¶107.

¹²⁰ Roe v. Phillips County Hospital, 522 P.3d 277 (KS SC January 6, 2023) (Interpreting Kansas Open Records Act (KORA)); Bruce v. Kelly, 316 Kan. 218, 224 (2022).

¹²¹ Raab Opposition Testimony at pg. 5, lns 3-10.

efficiency one, it could result in that customer choosing to use more energy to be more comfortable compared to when a less-efficiency appliance was installed.¹²²

69. One example of this in the business setting would be a business owner deciding to utilize more space in their business that was previously shut off due to heating and cooling cost concerns. By switching to a more efficient appliance, the incremental cost to comfortably use those rooms may now be acceptable to the business owner, and thus result in more usage. Under Mr. Raab's application of the statute, this potential "rebound" effect described by Dr. Glass would necessarily lead to KEEIA violations by resulting in increased electricity usage, and thus no energy efficiency program, especially for low-income customers and people in the above example, could be allowed in Kansas because the potential to use more electricity is present for any customer who replaces a lower efficiency appliance with a higher efficiency one. That potential would render any kind of program in violation of KEEIA, not just those contained in the Initial S&A. This would certainly run up against KEEIA's goal to promote implementation of cost-effective demand-side programs and such a result is not the intent of the law. Insofar as KEEIA already specifies restrictions against incenting fuel switching for residential heating systems, the harmonious application of the rest of the law cannot be accomplished under Mr. Raab's interpretation for business customers. To restrict programs on the basis that each customer must use less electricity would produce an absurd result under KEEIA, considering the focus on low-income customers in the law. The like-for-like requirement, while consistent with KEEIA, is not the sole means of compliance for business programs. Ms. Napoleon's analysis of heat pumps in her Cross-Answering testimony takes into consideration the reduction of energy for a given end use, as found in the definition of "energy efficiency" in K.S.A. 66-1283(a)(4) without having to account for the

¹²² Tr. Pt. 2 at pgs. 133-134, lns. 5-25, 1-23.

myriad of subjective customer behavior changes. Therefore, a like-for-like requirement should not be mandatory under KEEIA for business programs or the Initial S&A.

IV. The Initial S&A Will Result in Just and Reasonable Rates

A. The monthly bill impacts are within a zone of reasonableness for approval in light of the estimated bill increase compared to estimated energy and demand savings.

70. The Commission should view the satisfaction of this factor not only in terms of bill impacts for ratepayers compared to the potential benefits, but also by how the recovery mechanism incentivizes Evergy to implement energy efficiency programs. Kansas can only hope to achieve just and reasonable rates for energy efficiency programs through study and experience with actual implementation of programs and different cost recovery mechanisms through the Initial S&A. The Commission has interpreted KEEIA's mandate that demand-side program investments be valued equal to traditional investments in supply side and delivery infrastructure as much as is practicable to include consideration of a return of and a return on such investments.¹²³ The cost component of energy efficiency has been compared to three legs of a stool: program cost, an earnings opportunity, and the compensation of lost revenue associated with implementation of energy efficiency.¹²⁴ Dr. Glass from Staff summarizes the earnings requirement when comparing it to traditional investments for Evergy's shareholders,

But it really comes down to Evergy. They need a return. They need incentive to do these programs. Just getting lost revenue isn't enough. They need incentive to do the programs. But the incentive is, the energy efficiency programs are not providing assets for the rate for these shareholders. Shareholders only get assets when something is built, not when something isn't built. So there is that opportunity cost. And the trade-off that the shareholders are having to make is between an 18 percent return on some sort of net benefit calculation and what they would get with a new natural gas-fired generation plant. Well, the new natural gas-fired generation plant will be depreciated over 30, 35 years, something like that. And they'll get all of that back, plus they'll earn a return on it. So there is a lot to

¹²³ Final Order, Docket No. 16-KCPE-446-TAR, pg. 34, ¶95.

¹²⁴ Tr. Pt. 1 at pgs. 155-156, lns. 15-25, 1-7.

get back from that. But I don't think you could ever say they're going to get 18 percent in four years off a generation plant.¹²⁵

71. Without these three legs of cost recovery for energy efficiency, a utility is not likely to be incentivized to implement energy efficiency programs in Kansas. There is no mandatory renewable portfolio standard, nor any enforcement mechanism under KEEIA to replace a TD or EO. Rather, energy efficiency must be valued the same as traditional supply-side investment as much as practicable. To Evergy, it is a decision that comes down to whether the Company is better off financially by implementing energy efficiency or not.

72. The Initial S&A's estimated bill impact of 1% to 2%¹²⁶ is reasonable for the implementation of energy efficiency programs. The summaries for budgets and costs, including lost revenue and earnings opportunities, are attached to each part of the Initial S&A.¹²⁷ As part of the negotiations, the Initial S&A adopted Mr. Grady's EO matrix as laid out in his Direct Testimony.¹²⁸ Since KEEIA was enacted in 2014, Kansas utilities have not implemented large-scale programs that have gone through a rigorous EM&V review. The EM&V process in the Initial S&A will allow stakeholders and the Commission the means to thoroughly vet the results of implementation and ensure that a collaborative approach is utilized. Staff will be able to have their own auditor to assist in the review and any EM&V methodology must first be approved by the Commission.¹²⁹ Initial TRM savings will be applied retroactively and trued up based on program year 1 evaluations. The following years will have TRM changes applied proactively, unless the changes result in greater than 15% variance at the component level. Mr. Ives summarizes the

¹²⁵ Tr. Pt. 2 at pgs. 135-136, lns. 19-25, 1-12. (pgs. 406-07 of Full Transcript).

¹²⁶ See Evergy DSM Portfolio Filing at pgs. 11-13, Figure 5 & 6.

¹²⁷ Programs Agreement at Attachment 1; Financial Agreement at Attachment 1.

¹²⁸ Grady Direct Testimony at pgs. 12-14.

¹²⁹ Programs Agreement at pg. 7, Section (C)(a)(i)-(v).

effectiveness of the EM&V process proposed in the Initial S&A to address changes and how they are applied to ratepayers:

[T]here are a couple steps to that process in the way that the settlement agreement is set forward in Kansas. The first year is all based on actual results from the EM&V. So we will go out, conduct the EM&V and adjust the first year results for that. Then the modifications that are needed to the TRM and the deemed savings will be put in place based on those first year results. And the deemed savings will be utilized going forward and, ultimately, adjusted for actual values, once the EM&Vs are conducted. So there is a process along the way to utilize the results of the EM&V evaluation and make appropriate adjustments to the actuals.¹³⁰

73. During the first evidentiary hearing, Commissioners and Staff indicated a great deal of reluctance to trust the collaborative process nor trust that Evergy will keep an open mind towards alternative recovery mechanisms, like decoupling. Mr. Colton with Kansas Appleseed sums it up well when he responds to Commissioner French's question that the potential to walk away from a discussion is always present, but that good faith collaboration can succeed.¹³¹ CURB believes that, although KEEIA allows a utility to opt out of energy efficiency offerings, choosing to continue to reject proposed energy efficiency programs is not a way for the Commission to bring about change. Furthermore, implementing a barebones portfolio such as the Alternative S&A will not provide the Commission and stakeholders with information that can be used to illustrate the impacts of this power imbalance. Simply claiming that a program is too rich because the percentage of savings allowed is higher than other states is not the same as actually measuring costs incurred and observing bill impacts produced from a thorough review of implemented programs. This provision recognized the difficulty in accurately measuring results of any given measure with the fact that this will be the first time that Kansas has implemented a robust portfolio of programs. CURB has never claimed the Initial S&A is a perfect solution to Kansas' energy efficiency needs, but rather

¹³⁰ Tr. Pt. 1 at pg. 157, lns. 12-24.

¹³¹ Tr. Pt. 1 at pg. 267, lns. 7-24.

an important first step at building a foundation from which stakeholders can contribute to refining and improving. It is through this process that rates attributed to utility-ran energy efficiency programs can reach a fair balance between ratepayer and utility interests in this unique field.

74. In his testimony in support of the Initial S&A, Mr. Ives highlights a cause of the stall in program implementation for Kansas when he points to the previous Commission policy and a general distrust of the accuracy of savings from DSM programs.¹³² The EM&V process outlined in the Initial S&A will allow parties to generate data to improve programs, and more importantly, to support claims, if any, of excessive costs to ratepayers. This data is crucial to begin taking needed steps to change policy and legislation to ensure that Kansas makes progress towards fostering an environment for cost-effective programs and just and reasonable rates. Such data can only be gained from implementing the terms of the Initial S&A, not the Alternative S&A. The Commission should not be so quick to dismiss a commitment to work towards alternative cost recovery mechanisms while Kansas has continued to languish behind other states in energy efficiency.

75. The LRAMs presented in both the Initial S&A and Alternative S&A are similar in function, but differ in dollars collected from ratepayers. Staff's criticisms of the Initial S&A's EO and TD recovery are speculative regarding the Company's intent for treating avoided cost savings. During the Initial S&A live hearing, Mr. Grady discussed how the projected 82% of avoided costs savings may not all end up flowing through to customers due to Evergy's recent trend of capital expenditure planning.¹³³ Upon cross-examination by Ms. Cafer, Mr. Grady discussed what appears to be a fundamental distrust of the use of savings associated with DSM investments. Growing capital expenditure levels over the years led Mr. Grady to believe that such savings are going to

¹³² Ives Supporting Testimony at pgs. 5-7.

¹³³ Tr. Pt 2 at pgs. 149-158 (pg. 420-429 of Full Transcript).

be put back into more capital expenditures, which the customer is ultimately responsible for paying in rates approved by the Commission. The Commission should not be swayed by the potential that Evergy will shuffle money around after the fact. The Commission is still able to review capital expenditures and to make decisions on whether cost recovery will be allowed, especially for excess capacity.¹³⁴

76. Staff's dismissal of the collaborative process to discuss moving to decoupling is not a valid criticism of the Initial S&A. The ACEEE report attached to both Mr. Grady's testimony in opposition to the Financial Agreement and to Evergy's Application acknowledges the use of an LRAM as a temporary measure until alternative recovery mechanisms, such as decoupling, can be developed.¹³⁵ The Programs Agreement specifically contemplates this transitional period and creates a commitment to pursue such changes through a collaborative process. However, Staff is leery of this approach. Mr. Grady refers to Missouri's use of the LRAM over the past decade and presumes that the LRAM is Evergy's preferred recovery mechanism.¹³⁶ Staff appears to have significant trust issues with this approach when Mr. Grady says, "If the settlement agreement said that this LRAM will only be used for four years and we will, we will have a different mechanism and we will, you know, only consider this a short-term mechanism, then we would probably have to reassess our degree of opposition to the settlement agreement. But that's not what it says."¹³⁷ At a high level, such a distinction in the terms that would have earned Staff's support illustrates a negative view of collaboration and undermines good-faith negotiating. Along with the concern that Evergy will simply reinvest savings from the EO into additional capital expenditures, Staff

¹³⁴ See K.S.A. 66-128(c).

¹³⁵ Tr. Pt. 2 at pgs. 159-164 (pgs. 430-435 of Full Transcript).

¹³⁶ Tr. Pt. 2 at pg. 164, lns. 7-12. (pg. 435 of Full Transcript).

¹³⁷ Tr. Pt. 2 at pg. 164, lns. 12-18. (pg. 435 of Full Transcript).

does not feel that the collaborative process goes far enough to guarantee changes to lost revenue recovery.

77. Such a hostile approach to negotiation is not likely to develop meaningful changes that benefit ratepayers in the area of energy efficiency. KEEIA gives the utility great leverage in the implementation of demand side programs and energy efficiency. In fact, KEEIA does not require the utility to provide a particular justification or criterion in order to reject a modification to a demand-side program or portfolio of programs approved by the Commission.¹³⁸ CURB recognizes this difference in negotiating powers, but does not share in Staff's view of Evergy's intentions. CURB believes that the parties and Evergy made great strides in developing the Initial S&A, especially in terms of reducing overall budget and costs to ratepayers. More importantly, the Initial S&A represents a commitment by Evergy to work with stakeholders to build upon the programs and offerings for ratepayers into the future. Evergy could have very well chosen not to negotiate away from its filed position and there would have been nothing the Commission or stakeholders could do to force them to implement programs under KEEIA.

78. Staff's concerns with potential over-recovery and lack of guarantee towards implementing decoupling are not an absolute bar to approval of the Initial S&A. The Alternative S&A's ability to flout a smaller portion of lost revenue recovery is not the advantage over the Initial S&A that Staff makes it out to be. Even though KEEIA gives Evergy the ability to terminate a program or portfolio, the Commission may also modify or terminate the same. Indeed, both the utility and Commission must approve of a program or cost recovery mechanism before it is implemented. CURB and other stakeholders are keen to Staff's concerns and will most likely report to the Commission if a group feels that Evergy has not participated in the collaborative

¹³⁸ See K.S.A. 66-1283(c)(1)(B).

process in good faith or that the LRAM has failed in its intended purpose. The benefit to the Initial S&A is that parties can attempt to make progress on those issues and move forward with robust programs where the Alternative S&A assumes the worst and refuses to take such steps. If the Commission is dissatisfied with any aspect of the portfolio after implementation, the Commission can choose to modify or terminate those programs. The Company may then accept or reject those decisions, but the result will be a full record of the decision-making process from which to learn and use later.

79. Evergy has already taken steps to show its dedication to working with parties. The Programs Agreement called for Evergy to collaborate with intervenors on statutory language that will enable low-income rate assistance.¹³⁹ Even though the Initial S&A has not been approved, Evergy has already made contact with CURB to put forth a bill with the Kansas Legislature to allow for the creation of low-income rate assistance in the current session.¹⁴⁰ Even though this collaboration may not be directly attributed to approval of the Initial S&A, CURB believes that it is recent proof of the ability of parties to work together and to see a project through.

80. If Kansas has to wait on the perfect conditions in order for Staff to approve an expansive portfolio of energy efficiency programs like in Missouri, then Kansas will continue to fall behind the rest of the country on energy efficiency. Staff's reliance on Missouri's use of an LRAM should not persuade this Commission to be skeptical of the collaborative process. Although the programs may be similar in design, Kansas is not the same as Missouri, and the long-term results there do not mean that Kansas will face the same outcome. The limited nature of the Initial S&A means that the Commission will ultimately have a say in whether these programs and accompanying recovery mechanism will continue. If, after four years, the terms of the Initial S&A

¹³⁹ Programs Agreement at pg. 9, Section (B)(d).

¹⁴⁰ See HB 2156 (2023).

are not providing as much benefit as estimated or are costing ratepayers more than the Commission is comfortable with, then the Commission can order the Company to modify or stop offering the programs. However, the Initial S&A, not the Alternative S&A, contemplates a process to gather as much data and experience as possible to reduce the likelihood that energy efficiency stops dead in its tracks after four years.

81. Implementation of the Alternative S&A only serves to keep Kansas complacent with meager steps in energy efficiency. The reason that Staff and Evergy were able to come together to form the Alternative S&A is because the dollars involved are significantly less than what is contained in the Initial S&A.¹⁴¹ Staff does not appear to have shifted in its interpretation of Commission precedent, nor changed its stance regarding TD and EO. The reason this reduction in dollars was accomplished was through elimination of the majority of programs, including PAYS®, from the agreement to minimize lost revenue impacts.¹⁴² While this course of action did bring Evergy and Staff into an agreement, it only serves to maintain the current tension between those parties regarding more expansive energy efficiency programs. If Evergy chooses to bring a broader portfolio before the Commission again, the same obstacles to approving such a portfolio will reemerge and prevent further progress. The Initial S&A, with its coalition of supporters, presents a reasonable path forward to break this cycle and to provide valuable data to re-examine the conditions that have stalled energy efficiency efforts in Kansas for so many years. Therefore, the Initial S&A will produce just and reasonable rates relative to the benefits that can be gained from implementation of the programs and refinement of the EM&V process.

¹⁴¹ Grady Support of Alternative S&A Testimony at pgs. 17-19.

¹⁴² Ives Support of Alternative S&A Testimony at pg. 18, lns. 1-16.

B. The Initial S&A provides sufficient safeguards for rates that fall within the zone of reasonableness.

82. CURB views Evergy's willingness to alter its programs and budgets from the original application and to include safeguards as a sign of genuine interest in working with stakeholders to develop energy efficiency programs that benefit ratepayers without unjustly enriching shareholders. The Financial Agreement adopts a number of changes to financial recovery that makes CURB comfortable with the costs incurred to implement the Initial S&A and to begin the process of developing robust energy efficiency programs in Kansas. First, carrying costs are calculated with an average of 12 months short-term debt and 6 months long-term debt. This reflects the logistical realities of the time it takes to perform the EM&V after investments are made. Second, the TD and EO aligns the interests of the utility and ratepayers. Ratepayers who do not participate in the programs may see a modest increase on their bill of a few dollars, while participants should see a decrease based on reduced personal usage. The utility is able to recover costs and earn a "return" on those investments like with supply-side investments. Third, consideration of lost revenue from an installed measure lapses four years after installation. This is important because it not only limits the "unearned" revenue that is recovered by ratepayers, but it also cuts down on the perceived difficulties in calculating lost revenue for the lifespan of the measure.

83. The Collaborative Process contained in the Initial S&A will ensure that Evergy continues working to improve the EM&V process and to protect ratepayers from unwarranted cost increases. Ms. Goldberg for CURB made several recommendations regarding Evergy's TRM and the calculations of cost-effectiveness once programs have been established and Evergy has more experience with running them in Kansas. She makes these recommendations for future consideration so that Evergy will be able to appropriately capture all the costs and benefits that go

into implementing energy efficiency programs.¹⁴³ She points out the interrelationship between different kinds of measures that could lead consumers into taking other steps to add complementary measures as part of improvements to energy efficiency. The programs contained in the Initial S&A take advantage of this phenomenon by offering a myriad of products and rebates for the consumer to choose from, rather than being tied down to one option, like the Alternative S&A. As a result of her recommendations, the Initial S&A adopted a number of provisions that are aimed at improving the benefit-cost analysis framework and to make further recommendations to the Commission regarding modeling transparency with the TRM.¹⁴⁴

84. The budget and recovery mechanism under the Initial S&A are reasonable in light of the benefits available for ratepayers and the electrical system. No party is contesting the results of the benefit-cost tests to a degree that would render the programs not cost-effective. . No party contests the actual budgets associated with the programs, only the amounts that Evergy earns as compensation for spending money on the programs and the lost revenue associated with the reduced sale of electricity. In regards to the EO, Staff relies upon the testimony of Ms. Napoleon and the ICF survey attached to CURB DR-30 to compare the EO approach of 18% of net benefits in the Initial S&A to levels in other states.¹⁴⁵ While Staff, CURB, and other stakeholders identified Evergy's EO level as among the highest in the country, that fact alone does not justify why it should be an absolute bar to implementing the Initial S&A outside of Staff's discomfort with that result.

85. The Initial S&A's proposed EO mechanism is not materially higher than those found in other states. During the first evidentiary hearing, Commissioner Duffy questioned Mr.

¹⁴³ Goldberg Direct Testimony at pgs. 5-6, Ins. 1-20, 1-9.

¹⁴⁴ Programs Agreement at Exhibit A, Section (B) Collaborative Process.

¹⁴⁵ Grady Opposition Testimony at pgs. 14-15.

Ives about the EO mechanism and the comparison to other states as being the highest in the country.¹⁴⁶ Mr. Ives disagreed with that conclusion and referred to the ACEEE report to explain that an “apples-to-apples” comparison of dollars awarded under different LRAMs cannot be done due to differences in regulatory structures and true-up timelines and nuances in submitted spending and savings data.¹⁴⁷ Mr. Ives used the example of Ameren in Missouri to illustrate that the formula Ameren used resulted in an EO that equates to approximately 23 percent of program spend.¹⁴⁸ He makes a finer point to say that the EO and TD are not considered the same as the costs to implement and run the program. Rather, the TD and EO make up a recovery of the lost revenue and return on investment that is foregone as a result of the success of DSM programs in order to value such investments at the same level as supply-side ones as KEEIA requires.¹⁴⁹

86. No party, including Staff, articulates *why* the EO and TD of the Initial S&A is unbearably high enough to be outside the zone of reasonableness. Ms. Napoleon, in her direct testimony, recommended a top-end range of 15% in order to be in line with other states.¹⁵⁰ CURB ultimately joined the settled position of 18% for the EO in order to take advantage of the opportunity presented by Evergy to work with stakeholders to create a robust foundation for energy efficiency that is not currently present in Kansas, including introduction of a PAYS® system. Stakeholders view the Initial S&A as a means to provide residential and small commercial ratepayers with some avenue of relief from high energy bills and consumption where none exist. Indeed, when looking at the myriad of other rate increases approved by the Commission, they appeared to be enacted in order to maintain reliable service that customers expect or to recover

¹⁴⁶ Tr. Pt. 1 at pg. 173, lns. 21-24.

¹⁴⁷ *Id.* at pg. 174, lns. 1-18.

¹⁴⁸ *Id.* at pg. 175, lns. 1-10.

¹⁴⁹ Tr. Pt. 1 at pgs. 175-176, lns. 11-25, 15-25.

¹⁵⁰ Napoleon Direct Testimony at pg. 7, lns. 20-22.

fuel costs for services already rendered or to promote “economic development” through discounts for a limited number of large industrial customers. Yet, with an application that is largely aimed towards creating value for residential and small commercial ratepayers, Staff has decided to become the keeper of the purse and weary of Evergy’s intentions.

87. Ms. Napoleon acknowledged CURB’s pragmatic view of energy efficiency and the benefits that can be unlocked for ratepayers and the Company, alike. Staff’s long-term view for the net present value of the programs in the Initial S&A and energy efficiency in general does not comport with the economic realities around the country. It is no secret that Kansas is trying to focus on achieving regional rate competitiveness, as shown by the legislative study on rates in 2020.¹⁵¹ The states with which Kansas finds itself competing on this front (Missouri, Oklahoma, and Colorado) have extensive histories with energy efficiency programs ran by utilities. Yet, somehow, those states are able to compete and even perform better than Kansas on electric rates, despite Kansas not having energy efficiency programs in rates. Staff does not make the case that a projected 1% to 2% rate increase will push regional rate competitiveness out of Kansas’ reach indefinitely. In light of the benefits attributed to robust energy efficiency programs and the potential to gain valuable information regarding implementation in Kansas, the Initial S&A will result in just and reasonable rates.

C. Staff’s modified financial recovery mechanism for the Initial S&A would result in Evergy withdrawing its application.

88. Evergy has indicated that if the Commission were to modify the recovery mechanism, as recommended by Staff, in the Initial S&A, then Evergy would not move forward with energy efficiency at this time. While CURB certainly appreciated Staff’s creative thinking

¹⁵¹ See Kansas Electric Rate Study by London Economics International and AECOM, accessed at <https://kcc.ks.gov/electric/kansas-electric-rate-study>.

and reliance upon CURB's witnesses for its position, CURB does not believe that crafting a middle ground approach with Staff's recommendation is the right path forward. When questioned about whether Evergy would move forward with energy efficiency if the Commission adopted the Programs Agreement, but modified the financial recovery to adopt Staff's modified LRAM, Mr. Ives responded as follows:

A. [N]o, we would not. I think I have put that in both written and live testimony previously. And, you know, I think that would not provide adequate or balanced recovery in mitigation of the disincentive. I think you stated it well in your opening as to how to think about the disincentive. But not being able to mitigate that with an effective throughput disincentive recovery mechanism wouldn't, wouldn't allow us to proceed. And there's a couple reasons for that. I mean, your example is very simple. Right. We are better off as an organization not adopting programs if it's going to create financial harm. That's the simplest approach and measure. The second thing to think about, and we've talked about this in other contexts, we have programs in Missouri, right across the state line. Putting a financial mechanism in place that is detrimental in Kansas while we are utilizing an effective and appropriate mechanism in Missouri is not going to bode well for us, organizationally, either. We need to have balanced, appropriate, adequate recovery and mitigation of disincentives in both states to advance energy efficiency in both states.

89. Mr. Ives' point is that if a recovery mechanism does not remove the disincentive associated with offering energy efficiency programs, then the utility is better off not offering the programs. Under KEEIA, the utility is allowed to not offer such programs. Without some other motivation to the utility to reduce its own sales and revenue like the TD, then energy efficiency does not get off the ground. In regards to the EO, if a policy consideration of KEEIA is to reduce or mitigate the need of investments in supply-side resources that a utility would otherwise make to meet demand, then there has to be consideration of the return on the investment that shareholders expect with such investments. Mr. Ives describes it as "the reasons why you can make a demand side investment appear equivalent to a supply side investment as much as practicable."¹⁵² The EO

¹⁵² Second Hearing Tr. at pg. 62, lns. 15-18.

replaces the traditional return on equity experienced by regular investments into infrastructure. So even though the utility has no investment in generation infrastructure to add to rate base through energy efficiency, the EO provides the “incentive” to pursue such measures and to view them as equivalent to other investments. The Initial S&A is not designed to swell utility profit. Rather, it is intended to mitigate the disincentive between rate cases of asking customers to use less of a product while providing benefits to those same customers.

D. The Alternative S&A and resulting rates do not incentivize the implementation of energy efficiency programs as contemplated by KEEIA.

90. The Alternative S&A’s narrow focus on reducing the amount of lost revenue recovered from ratepayers does not foster an environment to increase offerings at a just and reasonable rate. The Alternative S&A eliminates a majority of the energy efficiency programs in order to get a scaled down cost-recovery figure using a similar LRAM as the Initial S&A. This was done as a compromise between the competing interpretations of Staff and Evergy regarding the degree of cost-recovery Evergy should be entitled to for not investing in infrastructure. The problem with this approach is that it does not leave room to expand on the types of programs. When asked by Commissioner French why PAYS® was not included in the Alternative S&A, Mr. Ives simply responded that “it’s not compatible with our ability to reach agreement with Staff on throughput disincentive.”¹⁵³ This black-and-white view of which programs can be approved in Kansas is concerning to CURB. Energy savings are what drive bill reductions for customers and those savings come from cost-effective programs like those in the Initial S&A. However, the rationale that supports the Alternative S&A does not allow for such programs to be put forward by the utility because such programs will generate too much throughput disincentive for Staff to be comfortable to allow. It is unclear to CURB how this stalemate would be resolved under the

¹⁵³ Second Hearing Tr. at pgs. 72-73, ln. 25, 1.

Alternative S&A, meaning that Kansas will continue to lack cost-effective programs for an indeterminate future. This appears to run counter to KEEIA's goals of promoting energy efficiency programs in Kansas.

91. Without significant energy savings, the Alternative S&A will raise rates by relying upon volatile energy market prices. Mr. Ives explains how the lack of energy savings from energy efficiency can drive up costs for customers:

If you don't have adequate energy, then you certainly are placing more reliance on SPP current market than you otherwise would. And we've seen energy can be volatile. As natural gas prices move, it moves the energy markets and puts more pressure on customer bills, if the energy increases. So I think when you consider building, I think you consider both the need for energy and the need for capacity in a build.¹⁵⁴

92. The energy that Evergy draws from the market has to be offset by energy generated and put back onto the market. Otherwise, this will create bill volatility for customers. By implementing energy efficiency programs and producing significant energy savings, timing decisions for building new generation can be made in light of the downward pressure on the need for energy. The Alternative S&A does not produce significant energy savings and would do little to disrupt such volatility. The only other option at that point would be to invest in more generation which will ultimately be recovered from ratepayers. Therefore, the Alternative S&A would not result in just and reasonable rates.

V. The Initial S&A Is In the Public Interest

93. CURB interprets the "public interest" to encompass a view of external costs and benefits that go beyond an opinion on "unnecessarily high prices, discriminatory prices and/or unreliable service."¹⁵⁵ The "Order Approving Contested Settlement Agreement" in the Docket No.

¹⁵⁴ Second Hearing Tr. at pg. 74, lns. 4-12.

¹⁵⁵ Grady Alternative Testimony at pgs. 19-20, lns. 20-23, 1-14.

08-ATMG-280-RTS which established the five factor test for approving settlements is a good example of the use of different policy considerations that the Commission should evaluate beyond customer bills. In that Order, after finding that the nonunanimous settlement agreement and established rates satisfied the other four factors, the Commission examined the effects of the settlement agreement provisions as it pertained to all the parties beyond simply setting rates.¹⁵⁶ The Commission reasoned that the findings and conclusions of the other factors are relevant to measuring the public interest. As part of that analysis, the Commission highlighted provisions of the settlement agreement that reduced litigation risks and procedural hurdles, promoted collaboration and transparency on complex issues and the ability to defer certain issues to future dockets and discussions, and the gaining of new information and data.¹⁵⁷ This interpretation of public interest allows for a holistic view of the totality of the circumstances and a meaningful comparison between the Initial S&A and Alternative S&A.

A. The Initial S&A is supported by a coalition of stakeholders that represent a broad range of ratepayer interests.

94. The Initial S&A has the support of groups that represent a wide range of ratepayer interests. Here, the Programs Agreement is supported by Evergy, Staff, CURB, CEP, NRDC, Sierra Club and Kansas Appleseed. These groups not only represent the utility's interests, but also the wide gamut of ratepayer interests, such as the provision of efficient and sufficient service, low-income residents concerns, and considerations about conservation and environmental issues. All these stakeholders had some impact on the development of the provisions in the Programs and Financial Agreements based on their testimony and positions in order to give Kansas a good start at implementing energy efficiency. These parties relied on experts in the field of energy efficiency

¹⁵⁶ Order Approving Contested Settlement Agreement, Docket No. 16-KCPE-446-TAR at pg. 15-18, ¶¶ 24-31.

¹⁵⁷ *Id.* at ¶30.

and feel strongly about the benefits available to their respective constituents. While none of these groups want ratepayers to feel overburdened by increases to monthly bills, they threw their support behind the Initial S&A because of the immense benefits that are available to participants and non-participants alike.

95. Further, all parties to the Financial Agreement recognize that the work will not be over once the Initial S&A is approved. The provisions of the agreements call for further collaborative efforts to refine and improve the programs. Stakeholders will continue to remain involved with Evergy's planning and implementation of energy efficiency to ensure that a proper balance is reached between utility compensation and ratepayers' ability to experience savings through energy efficiency efforts. The parties have waited too long and expended much time and effort to reach a comprehensive agreement like the Initial S&A to simply walk away when the work ramps up. Each signatory to the Initial S&A, including Staff, believe that the programs are in the best interest of Kansas to incorporate this least-cost resource into energy solutions.

96. Meanwhile, the Alternative S&A is being supported by Evergy, Staff, and the Gas Companies. Evergy and Staff have reached a consensus by virtue of limiting lost revenue recovery considerations via removing the very programs aimed at reducing energy consumption. The Gas Companies view the Initial S&A as an infringement upon their own business and supported the smaller programs. While ratepayers would pay less under the Alternative S&A, they also will be unable to enjoy the benefits associated with the programs in the Initial S&A, including PAYS®. If the response to the public comments is any indication, the loss of PAYS® is a serious one.¹⁵⁸

97. Both Staff and Evergy may be able to claim the Alternative S&A as a step forward for DSM in Kansas, but that does not abrade the lingering policy issues that have prevented a

¹⁵⁸ See Notice of Filing of Public Comments (July 13, 2022).

robust portfolio of programs, similar to those that are implemented in Missouri, from coming to Kansas. Unless those conflicts are resolved, it does Kansas no good to put forward energy efficiency programs. As explained above, the Alternative S&A does not provide the Commission or stakeholders with sufficient information and experience it can use to resolve the difference in opinion that Staff and Evergy have on the matter of cost recovery.

B. The Initial S&A will allow stakeholders to get to the root cause of the conflict between Staff and the utility regarding energy efficiency.

98. Staff's insistence on a recovery mechanism that only it endorses is not consistent with the balanced collaboration envisioned by KEEIA. KEEIA contemplates that public utilities will implement energy efficiency programs, and that the Commission's role to evaluate cost-effectiveness and success of programs, and recovery of costs. As previously stated, the utility has the ability to opt out of implementing programs after a Commission order. Instead of finding solutions to address this difference in negotiating powers to pave a path forward for energy efficiency, Staff would rather take a hardline approach because it believes that the utility must accept a smaller incentive than what the utility wants.¹⁵⁹ It is important to note that Staff does not say that ratepayers are unable to afford a 1% to 2% increase. Staff's issue with the Initial S&A hinges on the notion that the TD and EO incentives are higher than other states and that commitments to establishing new financial recovery mechanisms are not guaranteed by Evergy. There is certainly no consensus that the TD and EO are inappropriate. But those arguments aside, Staff simply misses the point of approving cost-effective energy efficiency, which is the avoidance of higher energy and capacity costs than the relatively low costs of implementing cost-effective energy efficiency measures. In short, because parties agree that the pertinent energy efficiency programs (in the Programs Agreement) are cost-effective, no party can logically dispute that the

¹⁵⁹ Tr. Pt. 2 at pg. 204, lns. 1-11 (pg. 475 of Full Transcript).

1% to 2% increase represents a smaller increase for ratepayers than they would incur if supply-side energy is not avoided by these energy efficiency measures.

99. Boiled down, Staff's issue is with how KEEIA is written and the leeway it grants utilities in moving forward with such programs. By all means, energy efficiency is not required in Kansas, rather it is a goal. Any utility company could disregard the calls to action from KEEIA and maintain normal operations without any repercussions. Utilities can continue to retain increases in revenue due to changes in energy use that have no bearing on energy efficiency. Now, theoretically, the Commission or Staff could withhold approval of new capital expenditures or issue lower rates of return in other cases unless progress is made on energy efficiency. But this brinkmanship is likely to come under legal challenges from the utility and result in even more contentious litigation. The Commission and Staff could be complacent with the limited progress that Kansas makes in energy efficiency and maintain business-as-usual with traditional ratemaking and resource planning without energy efficiency. To CURB, both results should be unacceptable for regulators and ratepayers in light of KEEIA's mandates.

100. If KEEIA's treatment of energy efficiency programs is truly the culprit of this stalemate, then research and experienced-based data is the most effective way to bring change to this power dynamic. At its core, Staff's testimony against the Financial Agreement and concerns about over-recovery are speculative regarding the potential of Evergy to over-recover. However, without actually implementing programs and subjecting the portfolio to rigorous evaluation as contemplated in the Initial S&A, the Commission and other decision-makers will never truly know whether Evergy's approach to energy efficiency is untenable. Without measuring actual results from ratepayer participation and energy savings, one cannot effectively advocate for changes to KEEIA or any energy efficiency offerings for the benefit of ratepayers. Staff remains too high-

centered on its distrust of Evergy's commitment to a collaborative process and the request to be compensated for energy it does not sell and investments that it does not make. Staff would rather present options that represent a mere consolation for energy efficiency than take the opportunity to advance energy efficiency and reap the benefits, in both savings and information. From CURB's perspective, Kansas cannot hope to incorporate energy efficiency into its energy solutions without this kind of practical experience and data.

C. The Alternative S&A is a meager consolation to a robust energy efficiency foundation in Kansas and fails to make meaningful contributions to Kansas' energy needs.

101. The Alternative S&A's limited program offerings for ratepayers presents a stunted approach to energy savings and ratepayer bill relief. In her testimony in opposition to the Alternative S&A, Ms. Napoleon discussed the differences between the two sets of agreements. While the Alternative S&A has a lower budget than the Initial S&A, it is also projected to produce significantly less energy and power savings during the four year period. Specifically, the Initial S&A is estimated to help ratepayers save 243,882 MWh of energy and 246 MW of demand compared to just 19,789 MWh and 163 MW with the Alternative S&A. This reduction in savings is attributed to both the elimination of energy efficiency programs and the reduction in participation levels. Ms. Napoleon estimated that the loss of programs in the Alternative S&A will result in a reduction of participation by at least one third relative to anticipated levels for the original filing.

102. This reduction in ratepayer participation through the Alternative S&A affects a number of factors regarding building a viable path forward for energy efficiency in Kansas. First, the focus on demand response will present fewer opportunities for ratepayers to modify behavior and control their bill. In its original application, Evergy values DSM programs based on ability to

“target incremental MW” and “controllability.” For example, Residential DR receives a lower “system-wide” value for avoided costs because it historically has not been targeted to ensure it is offsetting an incremental MW and is not directly controllable (i.e. it can only be done during curtailment events and not guaranteed to offset a potential overload).

103. Staff’s focus and reliance on demand-side management for the majority of ratepayers falls short of advancing energy efficiency in Kansas. Staff’s testimony in support of the Alternative S&A describes demand response as a reliable way to reduce peak demand. However, such a view disregards the success that other jurisdictions, like Missouri, has had with the types of programs contained in the Initial S&A. Commissioner Duffy highlighted this point in her discussion with Mr. Ives during the second evidentiary hearing. Mr. Ives explained that Evergy relied up on its own experiences in Missouri and research from around the industry to create the portfolio of programs that it presented.¹⁶⁰ It is likely that future efforts to implement new energy efficiency programs after the Alternative S&A will rely on similar research and result in programs like those already contained in the Initial S&A.

104. It is concerning to CURB that the Alternative S&A does not contemplate Kansas’ plans for future use of this least-cost resource. Mr. Grady acknowledged as much when he was unable to articulate next steps for energy efficiency in Kansas during the second evidentiary hearing regarding the Alternative S&A.¹⁶¹ One of the many benefits to the Initial S&A involves the opportunity to observe the implementation of programs and participation by ratepayers. The four-year program cycle will show whether Evergy’s research has truly selected the programs that work in Kansas or if other options need to be explored. Delaying such progress now to potentially end up with the same programs as contemplated by the Initial S&A today does not serve the public

¹⁶⁰ Second Hearing Tr. at. pg. 89, lns. 12-23.

¹⁶¹ Second Hearing Tr. at. pgs. 196-199.

interest and loses out on valuable information that could be used to improve the offerings. The Alternative S&A contemplates a meager change to the status quo and maintains complacency with limited energy efficiency programs since the time KEEIA was made into law.

105. Second, despite Staff's contention that demand response is a tried-and-true means to reduce demand in the Alternative S&A, limiting the number of participants for energy efficiency-focused programs is unpopular and could create a negative perception of utility-ran programs. Per the focus group research done by Wichita State University ("WSU Survey"), participants in the survey considered caps on the number of program participants was unfair when they would be charged for a program that they themselves did not have access to.¹⁶² While all ratepayers could try demand response programs, only those considered low-income could take advantage of energy efficiency programs. The survey showed that customers want to be able to bridge the gap between investing in new appliances and to learn more about ideas to improve their home comfort levels. This further bolsters the value of the Initial S&A programs because of the variety of education materials and financial assistance opportunities available for all customers to choose from. However, establishing financial guidelines to participate while charging all customers for the program under the Alternative S&A may alienate ratepayers who are on the fence about taking first steps to improve energy efficiency efforts.

106. The advantage of the Initial S&A over the Alternative S&A on this front is the fact that all ratepayers will be paying for the programs in both agreements, but that the Initial S&A offers more opportunities for customers to participate and enjoy benefits from that bill increase. The Alternative S&A's delay of large-scale energy efficiency programs for all ratepayers will fail

¹⁶² Residential attitudes toward utility-sponsored energy efficiency programs in Kansas. Jeffrey W. Jarman and Lisa M. Parcell, Pg. 11 (Published October 2020). Accessed at: https://kcc.ks.gov/images/PDFs/kansas-energyoffice/Wichita_State_Work_Study.pdf.

to generate sufficient interest for additional energy efficiency products and services to start building a robust system of commercial business support and ratepayer benefits, as described by Ms. Napoleon. She discussed the importance of building an “energy efficiency infrastructure” of workers and businesses to support a ramp up of DSM efforts after a program cycle ends.¹⁶³ If Kansas hopes to reach the degree of energy efficiency found in other states, delaying a robust start to building these networks and getting ratepayers interested in participation is not in the public interest.

D. The Alternative S&A fails to make meaningful progress on Evergy’s resource generation portfolio as contained in its Integrated Resource Plans (“IRP”).

107. The limited demand and energy savings that will come from the Alternative S&A will put Evergy and Kansas further behind on plans to incorporate DSM into its future generation portfolio. In its IRP updates, Evergy has included a significant amount of DSM resources as part of the plan to meet the energy need of Kansas. Utilizing a least-cost resource like DSM to offset the need to invest in expensive generation infrastructure has been a major theme of Evergy’s resource planning. In Evergy’s 2021 IRP update, its preferred portfolio for resource generation contemplates certain levels of DSM to be incorporated into its Alternative Resource Plans.¹⁶⁴ The narratives that accompanied these preferred portfolios indicated an assumption on Evergy’s part that it would begin the process of implementing DSM efforts by 2021. The Application in this docket most likely represented the beginning of those efforts. This is particularly important to take note because should Evergy not make meaningful progress on incorporating DSM into its resource acquisition, it will need to find other ways to meet demand. The alternative to simply reducing the amount of energy that customers use is more supply side resources through the building of new

¹⁶³ Napoleon Opposition Testimony at pg. 15, lns. 12-17.

¹⁶⁴ Evergy Kansas Central and Evergy Metro 2021 Integrated Resource Plan May 2021, Docket No. 19-KCPE-096-CPL, pgs. 164-165, Tables 119, 120, 121 (May 28, 2021).

generation infrastructure and cost recovery through traditional ratemaking. Ms. Napoleon reviewed Evergy's most recent IRP filing and compared the results of the Initial S&A and Alternative S&A. Ms. Napoleon's testimony in opposition to the Alternative S&A illustrates the disparity between the cumulative energy savings of both agreements compared to the IRP projections.¹⁶⁵

108. As shown in Figure 1 of Ms. Napoleon's opposition testimony, the Initial S&A represents approximately 33% of IRP DSM savings on a cumulative basis. Meanwhile, the Alternative S&A is expected to achieve only 2.7% of levels contemplated by the IRP. While both fall short of goals Evergy has laid out in the IRP, the concerns highlighted above regarding the lack of a clear path forward for energy efficiency are exacerbated under the Alternative S&A. Ms. Napoleon explained that without greater DSM investment, Evergy could be forced to make suboptimal, and potentially uneconomic choices that are inconsistent with its preferred portfolio, such as additional capital expenditure in generation to meet increasing demand.¹⁶⁶

E. Opponents to the Initial S&A fail to explain how additional capital expenditures are a better use of scarce ratepayer funds compared to investments in energy efficiency.

109. Staff does not refute that the Programs Agreement can provide long-term savings for customers. However, delaying the implementation of those programs until Staff and Evergy can both get comfortable with a lost revenue recovery mechanisms underlying those programs will only serve to put Kansas further behind these projections in the IRP. Evergy is already expecting to face increases to generation need as a result of the Southwest Power Pool's ("SPP") decision to increase the reserve capacity margin. In August 2022, SPP announced that it will be raising the planning reserve margin requirements from 12% of forecasted Net Peak Demand and accredited

¹⁶⁵ Napoleon Opposition Testimony at pg. 10, Figure 1.

¹⁶⁶ *Id.* at pg. 10, lns. 10-16.

firm capacity to 15% and redefine how SPP accredits generation based on historical performance.¹⁶⁷ This change is coming on the heels of Evergy's plans to make massive investments into renewable generation, which does not have as much accredited firm capacity as traditional fuel sources.¹⁶⁸ In the meantime, if electric load growth occurs because of external factors (like electric vehicle proliferation or population growth) without similar reductions to current demand and load levels, Evergy will likely have to re-evaluate its preferred portfolio to meet generation needs. With benefit-cost ratios over 1.0, it is difficult to understand how investing in traditional generation resources is a better use of funds compared to investing in energy efficiency. The Initial S&A represents a more viable option to head off these looming changes now compared to the Alternative S&A.

F. Implementing the Initial S&A now will provide the Commission and stakeholders with information to engage with legislators and utilities on future programs.

110. Unless a utility can put forth an entirely different portfolio of programs to implement in Kansas, it is likely that this Commission will end up considering approval of programs like those already in the Initial S&A. CURB believes that the time period between now and such an outcome is much better spent implementing the Initial S&A and subjecting the results to the collaborative EM&V process in order to study DSM on a larger scale. Missouri has been able to do so for the last decade with a group of over 250,000 participants.¹⁶⁹ The data there has been used to advance ratepayer interests and to adequately incentivize Evergy to continue offering these programs in Missouri. The EM&V process outlined in the Initial S&A and the issues outlined

¹⁶⁷ Stakeholder Report August 2022: a quarterly note from SPP's Officer Team, SPP, (August 2022). Accessed at: <https://www.spp.org/newsroom/stakeholder-report/>. On August 18, 2022, the KCC working group representative to SPP presented this information during its quarterly report to the Commission.

¹⁶⁸ See Evergy Kansas Central and Evergy Metro 2021 Integrated Resource Plan May 2021, Docket No. 19-KCPE-096-CPL, at pgs. 91-93.

¹⁶⁹ Second Hearing Tr. at pgs. 90-91, Ins. 15-25, 1-4.

by Ms. Goldberg's direct testimony will allow regulators to monitor the balance between ratepayer benefits and utility enrichment. If this balance swings too far in favor of the utility and ratepayers are being overburdened by the programs, the Commission is able to recommend modifications that Evergy is free either to accept or reject and thereby terminate the program in question. The end result there is that the programs and cost recovery falls more in line with a fair balance or that the utility ends the programs and ratepayers are no longer paying for something that does not benefit them. At the end of that path, regulators and stakeholders will have gained considerable knowledge in regards to what does and does not work for Kansas.

111. From there, more discussions about how to improve the energy efficiency landscape can be had. During the second evidentiary hearing, Commissioners broached the topic regarding the ACEEE scorecard and the factors that went into it.¹⁷⁰ In this interaction, Mr. Ives indicates that while Evergy's programs will not push Kansas' scorecard rating from the bottom of states in terms of energy efficiency to the top, it will start moving the needle on broader discussions that Kansas decision makers will have to have to improve Kansas' use of energy efficiency. To CURB, something needs to change in order to have broader discussions about topics like building code updates and the Initial S&A provides a robust start to identifying the benefits of wide-scale energy efficiency investments to jumpstart those conversations.

Conclusion

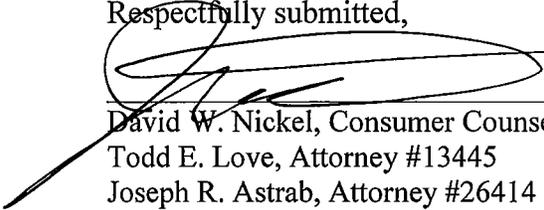
112. If Kansas wants to start taking advantage of energy and demand savings and the resulting customer benefits associated with energy efficiency programs, the Initial S&A will provide a better foundation for it compared to the Alternative S&A. The Initial S&A was created by a wide coalition of stakeholders and Evergy and supported by a vast and detailed record. It will

¹⁷⁰ Second Hearing Tr. at pg. 92-94.

produce just and reasonable rates in terms of the programs being offered to customers, but also by incentivizing Evergy to continue expanding upon and refining its portfolio of programs and cost-recovery mechanisms. The collaborative framework surrounding the EM&V process will bring many diverse parties to the table and result in thorough discussions and review of the portfolio's implementation. The data and experience that will be gained from such a process will provide regulators and stakeholders the ability to address shortcomings and to move past the obstacles that have prevented Kansas from implementing energy efficiency like its neighbors. Further, the Initial S&A will create a foundation to engage and educate ratepayers on a variety of different options to incorporate energy efficiency into their homes and businesses which will vastly outpace the progress that the Alternative S&A could bring. By using the Initial S&A as a starting point to develop and understand energy efficiency in Kansas beyond what is currently available, the Commission will be able to implement the policy considerations and goals of KEEIA.

WHEREFORE, CURB respectfully submits its post-hearing brief for consideration and asks that the Commission approve both parts of the Initial S&A as presented by the signatories and to reject the Alternative S&A and make any and all other findings it deems appropriate.

Respectfully submitted,



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VERIFICATION

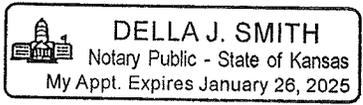
STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

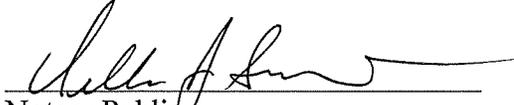
I, Joseph R. Astrab, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge,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



Joseph R. Astrab

SUBSCRIBED AND SWORN to before me this 6th day of February, 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

22-EKME-254-TAR

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