

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

Before Commissioners:                   Dwight D. Keen, Chair  
  Susan K. Duffy  
  Andrew J. French

In the Matter of Evergy Kansas Central, Inc.    )  
and Evergy Kansas South, Inc. Seeking        )  
Approval from the Commission of the Evergy    ) Docket No. 22-EKCE-020-TAR  
Energy Efficiency 2021 Filing.                    )

**ORDER GRANTING JOINT MOTION TO APPROVE STIPULATION AND  
AGREEMENT**

This matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

1.       On July 15, 2021, Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (“Evergy”) filed its Application with the Commission requesting approval of its Energy Efficiency Rider (“EER”). Evergy files an updated EER annually, in order to recover “actual program costs deferred for Commission approved Energy Efficiency programs deferred over a 12-month period ending in June of each year plus any true up amount from the prior period.”<sup>1</sup>

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

3.       On October 1, 2021, Commission Staff (“Staff”) filed their Report and Recommendation (“R&R”). During the audit of Evergy’s EER application Staff found Evergy’s expenditures to be reasonable and related to the scope and purpose of the programs.

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<sup>1</sup> Evergy Kansas Central EER Tariff, sheet 2.

4. Staff's R&R stated that in October of 2020, during a review of Evergy's Transmission Formula Rate, Staff discovered that "the account to which EER is amortized was also incorrectly included in the TFR and has been since 2010." Which resulted in a small portion of the approved EER amount being recovered from retail and transmission customers, resulting in an over-collection totaling \$1,277,601. Staff recommended that the EER recovery be reduced by this amount using the true-up adjustment to compensate for the previous over collection.<sup>2</sup>

5. On October 8, 2021, CURB filed a response to Staff's R&R which largely agreed with Staff.<sup>3</sup>

6. On October 11, 2021, Evergy filed a response to Staff's R&R. Evergy contends that it would be inappropriate to use the true-up mechanism to recover funds from beyond the prior period.<sup>4</sup>

7. On October 21, 2021, Staff filed a reply to Evergy's response. Staff's view of the tariff language was more expansive.<sup>5</sup> Arguing that the "prior period" did not just refer to the most recent EER period but rather to the entire time that the EER rider was in effect. Staff also stated that this was their first opportunity to address the over-collection after being made aware of it.

8. On November 10, 2021, Staff, CURB, and Evergy (collectively "the parties") filed a Joint Motion to Approve Unanimous Stipulation and Agreement.<sup>6</sup> The Unanimous Stipulation and Agreement (Attachment A) returns \$479,779.85 to the ratepayers in addition to the true-up

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<sup>2</sup> Notice of Filing of Staff's Report and Recommendation, pgs. 1-2 (October 1, 2021).

<sup>3</sup> CURB's response to Staff's Report and Recommendation (October 8, 2021).

<sup>4</sup> Evergy's Response to Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. to Staff's Report and Recommendation, pgs. 4-5 (October 11, 2021).

<sup>5</sup> Reply of Commission Staff to Evergy Kansas Central, Inc. and Evergy Kansas South, Inc.'s Response to Staff's Report and Recommendation (October 21, 2021).

<sup>6</sup> Joint Motion to Approve Unanimous Settlement Agreement (November 10, 2021).

calculation proposed by Evergy in its initial filing. This amount reflects the over-recovery from 2014 to the present.<sup>7</sup>

9. On February 22, 2022, Darrin Ives filed testimony in support of the Settlement on behalf of Evergy. Ives analyzed the settlement using the Commission's five-part test. Ives states that the agreement is supported by substantial and competent evidence as a whole because it represents a compromise between Evergy and Staff's initial filings.<sup>8</sup> Ives states that the settlement will result in just and reasonable rates because the rate calculation is specifically defined in the EER tariff and is slightly lower than the rate proposed by Evergy.<sup>9</sup> Ives states that the settlement is in the public interest because each party which has a disparate interest agrees on the settlement. It also avoids the time and cost of extensive litigation.<sup>10</sup>

10. On February 28, 2022, Patrick Orr filed Testimony in Support of the Settlement Agreement on behalf of CURB. Orr analyzed the settlement agreement using the Commission's five-part test and recommended that the Commission approve the settlement.<sup>11</sup> Orr argues that the agreement will result in just and reasonable rates as it will cost residential customers \$0.2773 annually.<sup>12</sup> Orr states that the agreement is supported by substantial and competent evidence because both CURB and Evergy filed testimony in support.<sup>13</sup> Further, that the settlement is in the public interest because the Energy Efficiency rider provides benefits to all customers and the settlement avoids costly and time consuming litigation.<sup>14</sup> When CURB originally intervened in the docket they were interested in meaningful energy efficiency measures that would provide benefits

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<sup>7</sup> Justin Grady, Testimony in Support of Settlement, pg.10 (February 28, 2022).

<sup>8</sup> Darrin R. Ives, Testimony in Support of Settlement pg. 6 (February 22, 2022).

<sup>9</sup> Darrin R. Ives, Testimony in Support of Settlement pg. 6 (February 22, 2022).

<sup>10</sup> Darrin R. Ives, Testimony in Support of Settlement pgs. 6-7 (February 22, 2022).

<sup>11</sup> Patrick Orr, Testimony in Support of Settlement, pgs. 8-11 (February 28, 2022).

<sup>12</sup> Patrick Orr, Testimony in Support of Settlement, pg. 8 (February 28, 2022).

<sup>13</sup> Patrick Orr, Testimony in Support of Settlement, pg. 9 (February 28, 2022).

<sup>14</sup> Patrick Orr, Testimony in Support of Settlement, pg. 9 (February 28, 2022).

all ratepayers, especially low income ratepayers. While this settlement does not directly address those concerns, CURB is satisfied that they are being addressed in Docket No. 22-EKME-254-TAR.

11. On February 28, 2022, Justin Grady filed testimony in support of the settlement on behalf of Staff. Grady recommended that the Commission accept the settlement as a reasonable resolution of the issues in the docket. Grady testified that the agreement is in the public interest because it protects ratepayer from “high prices, discriminatory prices and/or unreliable service.”<sup>15</sup>

12. Kansas favors compromising and settling disputes when the agreement is entered into intelligently and in good faith.<sup>16</sup>

13. Although several witnesses evaluated the settlement using the Commission’s five-part test, because the settlement is unanimous, it will be evaluated using the Commission’s three-part test which determines whether the settlement: (1) is supported by substantial competent evidence in the record as a whole, (2) will establish just and reasonable rates, and (3) is in the public interest.<sup>17</sup> The five-part test which is normally used for non-unanimous settlements encompasses the three-part test but also evaluates whether there was an opportunity for opposing parties to be heard on their reasons for opposing the agreement, and the agreement conforms with applicable law.<sup>18</sup>

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<sup>15</sup> Justin Grady, Testimony in Support of Settlement, pg.11 (February 28, 2022).

<sup>16</sup> See *Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994) (citing cases).

<sup>17</sup> See, Docket 21-BHCG-418-RTS, Order Approving Unanimous Settlement Agreement, pgs.6-7 (December 30, 2021).

<sup>18</sup> See, *Order on KCP&L's Application for Rate Change*, Docket No. 15-KCPE-116-RTS, Sept. 10, 2015, The five factor test was developed for non-unanimous settlements. Because this settlement is unanimous, the commission will only apply the three factor test.

**THE AGREEMENT IS SUPPORTED BY SUBSTANTIAL AND COMPETENT  
EVIDENCE IN THE RECORD AS A WHOLE**

16. All items agreed to and included within the Settlement Agreement are supported by substantial competent evidence in the record as a whole. Specifically, testimony in support of the Settlement was filed by Justin Grady on behalf of Staff, Darrin Ives on behalf of Evergy, and Patrick Orr on behalf of CURB.

17. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.<sup>19</sup> Whether another trier of fact could have reached a different conclusion given the same facts is irrelevant; a Commission decision lacks substantial competent evidence when the Commission's determination "is so wide of the mark as to be outside the realm of fair debate."<sup>20</sup>

18. Having reviewed the record as a whole, the Commission finds the Settlement Agreement is supported by substantial competent evidence.

**THE AGREEMENT WILL RESULT IN JUST AND REASONABLE RATES**

19. Witnesses, Justin Grady, Patrick Orr and Darrin Ives all testified that the settlement would result in just and reasonable rates. Specifically, Patrick Orr quantified that the EER would cost each customer approximately \$0.27 per year. Given the importance of the EER program, the Commission finds this settlement will result in just and reasonable rates.

**THE AGREEMENT IS IN THE PUBLIC INTEREST**

20. The Commission notes that each party has a duty to protect the interests it represents. Evergy has a duty to protect its shareholders' interests and has certain obligations to its

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<sup>19</sup> *Farmland Indus., Inc. v. Kansas Corp. Comm'n.*, 25 Kan.App.2d 849, 852 (1999).

<sup>20</sup> *Id.* at 851, 856.

customers under Kansas law. CURB represents the interests of residential and small commercial customers. And Staff represents the public interest generally.

21. While the Commission would have preferred that the entire \$1,277,601 over-collection be returned to the ratepayers, or not be collected in the first place, the Settlement returns eight years' worth of over-collected revenue to the ratepayers and avoids costly and time consuming litigation.<sup>21</sup> The difference between the settlement and the full refund originally sought by Staff amounts to \$0.05 per month for a typical customer.<sup>22</sup> The legal question of whether the Commission can lawfully order a full retroactive refund of the above amount is highly uncertain. Given this uncertainty and, therefore, a likelihood of protracted litigation, a voluntary compromise among the parties is a reasonable and desirable outcome for the customers and the public interest.

22. Based on the above, the Commission finds the Agreement is supported by substantial competent evidence in the record as a whole, results in just and reasonable rates, and is in the public interest. The Commission approves the Settlement Agreement.

**THEREFORE, THE COMMISSION ORDERS:**

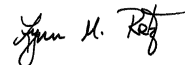
- A. The Joint Motion to Approve Unanimous Settlement Agreement is granted.
- B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>23</sup>

**BY THE COMMISSION IT IS SO ORDERED.**

Keen, Chair; Duffy, Commissioner (Dissenting); French, Commissioner

Dated: 03/10/2022

DGC



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Lynn M. Retz  
Executive Director

<sup>21</sup> Justin Grady, Testimony in Support of Settlement, pg. 7 (February 28, 2022).

<sup>22</sup> Justin Grady, Testimony in Support of Settlement, pg. 9 (February 28, 2022).

<sup>23</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

Dissent by Commissioner Susan Duffy:

This Commission is charged with creating rates that are both just and reasonable. During an audit, Staff discovered that Evergy had been amortizing the EER expense through an account that was also included in its Transmission Formula Rate (TFR) and was in essence double collecting a small amount every year since 2010 for a total of about \$1.2 million dollars. This represents money that by any reasonable interpretation belongs to the ratepayers, and any settlement that does not result in a full refund cannot be called just or reasonable.

As Staff indicated, Evergy has known about this issue for at least a year and made no effort to draw the Commission's attention to it. I find this disappointing.

I would reject any outcome that does not result in full compensation for Kansas ratepayers.

For these reasons, I respectfully dissent.

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of Evergy Kansas Central, Inc. and )  
Evergy Kansas South, Inc. Seek Approval from ) Docket No. 22-EKCE-020-TAR  
the Commission of the Evergy Energy Efficiency )  
Rider 2021 Filing )

**UNANIMOUS STIPULATION AND AGREEMENT**

As a result of discussions between Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (together as “Evergy” or “Evergy Kansas Central”), the Staff of the Kansas Corporation Commission (“Staff”), and the Citizens' Utility Ratepayer Board (“CURB”) (collectively, “the Parties”), the Parties hereto submit to the Kansas Corporation Commission (Commission) for its consideration and approval, the following Unanimous Stipulation and Agreement (“Agreement”):

**I. BACKGROUND**

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

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

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<sup>1</sup> Evergy Kansas Central EER Tariff, sheet 2.



3. Staff reviewed Evergy's filing and filed its Report and Recommendation on October 1, 2021. In its R&R, Staff indicated that it found no errors in Evergy's calculations or the requested amounts. Staff did, however, recommend that an adjustment be made to the true-up portion of the EER. Staff argued that Evergy recovered a small percentage of its EER costs through its transmission formula rate ("TFR") from 2010 to 2019 and that the true-up for this EER period should be utilized to correct for the amount of EER costs Evergy recovered through its TFR during that time period (a total amount of \$1,277,601).

4. On October 8, 2021, CURB filed a Response to Staff's R&R indicating that it agreed with Staff's findings and recommendations.

5. On October 11, 2021, Evergy filed a Response to Staff's R&R indicating that it disagreed with Staff's recommendation to adjust the true-up amount because Evergy believes that recommendation was inconsistent with the language of the EER Tariff.

6. On October 21, 2021, Staff filed a Reply in support of its R&R, arguing that its proposed adjustment was appropriate.

7. Subsequent to these filings, the Parties held informal settlement discussions in an attempt to resolve the disputed issues before the Commission in this docket and avoid the expense and time that would have been involved with further litigation. The Parties were able to resolve the disputed issues and reached an agreement, as outlined below.

**II. TERMS OF STIPULATION AND AGREEMENT**

8. The Parties agree that Evergy will return to customers through the true-up component of the EER rider that is to be effective through October 31, 2022, an amount of \$479,779.85 in addition to the true-up calculation proposed by Evergy in its initial filing, to address Staff's

recommendation regarding recovery of energy efficiency costs through Evergy's TFR. The EER rate for the rate period through October 31, 2022, updated to include this settlement, is reflected in Exhibit A, attached hereto.

9. The Parties agree that Evergy's willingness to enter into this settlement does not impact in any way Evergy's ability to maintain its position in the future that there should not be an open-ended retroactive look back option for adjustment mechanisms and that adjustment mechanisms should be administered in a manner that allows for finality of rate matters before the Commission.

10. Furthermore, the Parties understand, acknowledge, and agree that in entering into this Agreement, they are not admitting or acknowledging the merit or lack of merit of any of the issues raised by or against any of them, but instead, they are entering into this Agreement to avoid future litigation costs and risks and to resolve all outstanding issues among them as to the calculation of the true-up for the EER in the above-captioned docket.

11. Nothing in this Stipulation and Agreement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation.

12. The Parties will jointly request the Commission issue an Order approving this Agreement.

13. This Agreement represents a negotiated settlement that fully resolves all of the issues in this docket among the Parties. The Parties represent that the terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement (a)

in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, the Parties shall be bound by its terms and the Commission's Order incorporating its terms as to all issues addressed herein and in accordance with the terms thereof, and will not appeal the Commission's Order on these issues.

14. The provisions of this Agreement have resulted from negotiations among the Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, the Agreement shall be voidable and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in such event, this Agreement shall be considered privileged and not admissible in evidence or made a part of the record in any proceeding.

IN WITNESS WHEREOF, the Parties have executed and approved this Unanimous Stipulation and Agreement, effective as of the 10<sup>th</sup> day of November 2021, by subscribing their signatures below.

*/s/ Carly R. Masenthin*

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*/s/ Todd E. Love*

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*/s/ Cathryn J. Dinges*

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**Nov-21**  
**Evergy Kansas Central**  
**Energy Efficiency and Demand Response Expenditures**  
**Applicable Energy Sales used for Development of Billing Rate**  
**SETTLEMENT**

	For the period Dec 2021 through Oct 2022
Total retail energy sales (kWh)	18,005,211,922
Less Lighting energy sales	<u>101,717,670</u>
Total retail less lighting	<u><u>17,903,494,252</u></u>
	Expenses
	July 2020 to June 2021
(Over) /Under recovery	\$ 102,577
Settlement from Previous Years	\$ (479,780)
Program expenses	\$ 4,277,148
Total EER amount	<u><u>\$ 3,899,945</u></u>
Charge per kWh	<u><u>\$ 0.000218</u></u>

## CERTIFICATE OF SERVICE

22-EKCE-020-TAR

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 03/10/2022.

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**CERTIFICATE OF SERVICE**

22-EKCE-020-TAR

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/S/ DeeAnn Shupe

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DeeAnn Shupe