

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

In the Matter of the Investigation into Evergy)
Kansas Metro and Evergy Kansas Central)
Regarding the February 2021 Winter Weather) Docket No. 21-EKME-329-GIE
Events, as Contemplated by Docket No. 21-)
GIMX-303-MIS.)

PETITION TO INTERVENE

COMES NOW, the Natural Gas Transportation Customer Coalition (“NGTCC” or “Coalition”) and the Kansas Industrial Consumers Group, Inc. (“KIC”), and respectfully petition the State Corporation Commission of the State of Kansas (“Commission”) for intervention in the instant matter. In addition, the NGTCC and KIC offer initial comments on key issues for the Commission to consider as it evaluates Evergy’s cost mitigation plan. In support of the Coalition’s Petition, NGTCC states the following to the Commission:

I. CONDENSED PROCEDURAL BACKGROUND

1. In February 2021, Kansas experienced extremely cold temperatures. A polar vortex, commonly referred to as Winter Storm Uri, covered much of the continental United States. This storm placed significant stress on the region’s electric and natural gas infrastructure. Wholesale prices for electricity and natural gas materially deviated from their historic levels. The midpoint price for natural gas on Southern Star Central Gas Pipeline, as reported in Standard & Poor’s Platts Gas Daily, increased from \$2.54 per MMBtu on February 1, 2021, to \$622.78 per MMBtu on February 17, 2021. Given the self-reported nature of Platts Gas Daily, it is unclear whether utilities and natural gas marketers, brokers, and suppliers actually paid these extreme prices.

2. On February 14, 2021, Governor Kelly issued a State of Disaster Emergency highlighting the dangers and potential consequences of Winter Storm Uri. On February 15, 2021,

the Commission issued an emergency order directing jurisdictional utilities to “do all things possible and necessary” to ensure utility services were provided. This order authorized jurisdictional utilities to defer extraordinary costs associated with Winter Storm Uri to a regulatory account for subsequent review.

3. The Commission opened seven utility-specific dockets to receive compliance reports and plans to minimize the financial impact of Winter Storm Uri on ratepayers. The instant matter is Evergy’s utility-specific docket.¹

II. PETITION TO INTERVENE

A. Overview of Intervenors

4. The NGTCC is an unincorporated group of natural gas transportation customers including: Kansas school districts, Kansas higher education institutions, businesses of all sizes, religious organizations, and governmental units located throughout Kansas and Missouri. Approximately 350 natural gas transportation customers located in Kansas are members of the NGTCC. Combined with Missouri transportation customers, the NGTCC’s membership exceeds 500 separate and unique entities. NGTCC members take service from all major Local Distribution Companies. Likewise, a significant number of NGTCC members take electric service from Evergy.

5. KIC is a corporation, organized and existing under the laws of the State of Kansas. KIC was incorporated in Kansas on April 13, 2005, and is active and in good standing in all respects.² KIC is organized for the purpose of representing the interests of commercial, business, industrial, not-for-profit, and education entities that purchase large volumes of electric energy and

¹ For purposes of this pleading, “Evergy” refers collectively to Evergy Kansas Central, Inc., Evergy Kansas South, Inc. (together as “Evergy Kansas Central”), and Evergy Metro, Inc. d/b/a Evergy Kansas Metro (“Evergy Kansas Metro”).

² The Secretary of State of Kansas has assigned to KIC the business identity I.D. No. 3771185

natural gas for their operations and activities. KIC routinely intervenes in Commission proceedings, files extensive testimony, participates in the settlement process, and advocates its interests during hearings. KIC represents a unique facet of the electric energy market and, derivatively, a unique segment of consumers that are dependent upon electric energy for a significant component of the State of Kansas' economy.³

B. Rationale for Intervention

6. The prices charged for natural gas during Winter Storm Uri materially impacted the NGTCC and KIC. During this period, the price charged for natural gas was over 200 times more than historic levels (a 20,000% increase). These extraordinary invoice charges were driven by reference prices contained in S&P Platts Gas Daily. NGTCC and KIC members were invoiced significant amounts for natural gas consumption. Likewise, NGTCC and KIC members may be invoiced significant amounts for electric consumption. This is because the impact of parabolic natural gas prices reverberated in wholesale electricity markets.

7. The Coalition was organized, as may be necessary and appropriate, to evaluate, verify, dispute, challenge, and resolve issues impacting Coalition members regarding their use of natural gas transportation service. Likewise, the Coalition was organized, in part, to participate in regulatory proceedings involving charges related to utility service affected by Winter Storm Uri. To that end, KIC's energy intensive members join the Coalition in the evaluation of costs Evergy incurred during Winter Storm Uri.

³ KCC Consolidated Docket Nos. 08-ANGG-295-CCN and 08-TKOG-314-COC, Order Granting SWKIA's Petition to Intervene and Motion to Consolidate Dockets, ¶¶ 8-12 (Feb. 27, 2008). In its Order, the Commission granted intervention to an incorporated entity in good standing representing "a unique facet of the natural gas market and, derivatively, a unique segment of consumers for natural gas who are dependent upon gas service for a significant component of the economy of southwest Kansas. . ."

8. The NGTCC and KIC represent unique facets of Evergy customers – namely commercial and industrial customers. As such, NGTCC and KIC represent a unique segment of consumers who depend on Evergy’s facilities for their electricity needs. No other entity represents NGTCC and KIC members individually. Given the scope of members the NGTCC and KIC represent, a significant component of the State of Kansas’ economy is represented through the NGTCC and KIC. Essentially every industry group operating in Kansas is represented through the NGTCC and KIC’s membership. Given the breadth of the NGTCC and KIC’s membership and lack of current representation, it is in the public interest for the NGTCC and KIC to intervene and participate in the instant matter.

9. The NGTCC and KIC respectfully request the Commission grant their intervention in this matter. The NGTCC and KIC respectfully request the Commission permit their full participation in all aspects of this docket, including but not limited to the rights to serve relevant discovery, present witness testimony and other evidence, file briefs, motions, and other documents, as appropriate, and fully participate in any hearing.

A. Mandatory Intervention

10. Investigations, generally, are governed by the Kansas Administrative Procedure Act unless the Commission orders otherwise.⁴ K.S.A. 77-521 requires petitions for intervention be granted if: (1) it is in the interests of justice, (2) if the intervention will not impair the orderly and prompt conduct of the proceedings, and (3) if the party has stated facts demonstrating its legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding.⁵ The NGTCC and KIC’s intervention in the instant matter is in the interests of justice,

⁴ See K.S.A. 66-101d (Hearings in general investigations initiated by Commission subject to Kansas Administrative Procedure Act unless good cause exists to order otherwise).

⁵ See K.S.A. 77-521(a).

will not impair the orderly and prompt conduct of the proceedings, and is supported by the NGTCC and KIC's demonstrated potential for its legal interests to be affected by the proceeding.

11. The NGTCC and KIC's intervention is in the interest of justice because no other party represents the NGTCC or KIC's interests.⁶ Regarding the Coalition's membership, a significant amount of NGTCC members are medium and large businesses who are not represented by Kansas' statutorily designated intervenor (i.e., the Citizens' Utility Ratepayer Board). Not only are the Coalition's interests unique to commercial customers, but the Coalition's interests also encompass significant portions of the Kansas economy. The NGTCC's membership includes hundreds of business entities, schools, governmental entities, religious institutions, not-for-profit service organizations, foundations, and others. Additionally, the NGTCC and KIC's participation in this investigation is in the interest of justice because it will allow the record to become more fully established. The Commission's decisions "involve complex problems of policy, accounting, economics, and other special knowledge."⁷ The NGTCC and KIC's participation in the instant matter, combined with their unique and unrepresented interests, will aid the Commission in resolving the complex problems before it. The NGTCC and KIC will be able to assist the Commission's evaluation of costs associated with wholesale electricity and natural gas prices. The NGTCC and KIC have significant amounts of operational knowledge regarding natural gas marketers, brokers, and suppliers' operations during Winter Storm Uri. This knowledge will be instrumental in assisting the Commission's evaluation of Evergy's plan to minimize the financial impact of Winter Storm Uri over ratepayers.

⁶ Even if the Coalition's interests overlap with those of another party, representation of the Coalition's interests would be inadequate given the unique characteristics of the Coalition's membership.

⁷ *Kansas Indus. Consumers Grp., Inc. v. State Corp. Comm'n of State of Kan.*, 36 Kan. App. 2d 83, 87, 138 P.3d 338, 344 (2006).

12. The NGTCC and KIC's intervention will not impair the orderly and prompt conduct of these proceedings. In fact, the NGTCC and KIC's representation of multiple classes of Evergy customers through one active participant could greatly enhance the orderly and prompt conduct of the Commission's business.

13. The NGTCC and KIC have demonstrated facts showing their rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding. Any decision stemming from the Commission's evaluation of Evergy's costs related to Winter Storm Uri has the potential to materially affect the NGTCC and KIC's members. The costs Evergy incurred to operate their generation fleet during Winter Storm Uri are directly traceable to wholesale natural gas prices during the same time. The Commission's evaluation of Evergy's costs in this proceeding will influence how costs are evaluated in concurrent Commission investigations. Likewise, the Commission's evaluation of Winter Storm Uri-related costs may impact outside litigation NGTCC members are currently engaged in. It is reasonable to conclude any determinations involving Evergy's plan to mitigate Winter Storm Uri's effects will substantially affect the NGTCC and KIC's legal rights, duties, privileges, immunities, or other legal interests. Moreover, any Commission decision on Evergy's Winter Storm Uri cost mitigation plan will impact the rates and terms of service applicable to the NGTCC and KIC's members, and whether such are lawful, just, and reasonable.

14. Moreover, the NGTCC and KIC's members will be bound by Commission orders in this proceeding and may be adversely affected thereby. For the reasons stated above, the NGTCC and KIC assert they have met the mandatory intervention standards set forth in K.S.A 77-521(a) and should be granted intervention in the instant matter.

B. Permissive Intervention

15. The Commission has broad discretion to grant a petition for intervention when the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.⁸ As demonstrated above, the NGTCC and KIC's participation in this docket are in the interest of justice and will not impair the orderly and prompt conduct of the proceedings. As such, the NGTCC and KIC assert they have met the permissive intervention standards set forth in K.S.A. 77-521(b) and should be granted intervention in the instant matter.

C. Commission Prerequisite

16. Historically, the Commission has required entities participating through a collective identify themselves.⁹ For purposes of this Petition, the following entities are representative of those entities located throughout Kansas participating through the NGTCC and KIC in the instant matter:

- a. 178 school districts located throughout Kansas who utilize the Kansas Joint Utility Management Program ("KJUMP") for natural gas transportation service offered by the Kansas Association of School Boards ("KASB");
- b. Associated Purchasing Services Corporation, the group purchasing organization of the member medical facilities of the Kansas Hospital Association, located throughout Kansas;
- c. The Archdiocese of Kansas City in Kansas and certain member parishes and schools;
- d. Associated Wholesale Grocers, Inc.;
- e. Henke Manufacturing Corporation;
- f. Chance Rides Manufacturing, Inc.;
- g. Femco, Inc.; and

⁸ See K.S.A. 77-521(b).

⁹ See Docket No. 18-WSEE-328-RTS, Order Granting Intervention to Kansas Industrial Consumers Group, Inc., ¶¶ 8 – 11 (Mar. 20, 2018).

h. Penny's Concrete, Inc.

17. The NGTCC and KIC hereby provide notice these entities have elected, will participate, and will be represented in this matter by counsel through the NGTCC and KIC. As discussed above, the aforementioned entities are customers of Evergy, and their interests are not adequately represented by any other party in this matter. The NGTCC and KIC will notify the Commission as additional entities opt to participate through their respective group's intervention.

III. Key Issue for Consideration: Utility Coordination

18. During Winter Storm Uri, the Commission directed "all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation of natural gas and electricity to interconnected, non-jurisdictional Kansas utilities."¹⁰ The NGTCC and KIC believe the Commission has the authority to ensure electric and natural gas utilities work together to protect Kansans from future natural gas price disruptions, and this proceeding offers the opportunity to explore this collaborative framework.

19. As Kansas and the nation retire coal generation units and rely more on variable, renewable energy resources, gas-fired generation is sure to be dispatched more frequently. While renewable generation availability can be forecasted to a degree, gas-fired generation will be needed to fill the gaps during (mostly) unplanned critical times when renewable resources are not able to meet load.

20. During the Commission's July 8, 2021, Business Meeting, the Commission stressed the State's sole focus must not be limited to finding a fair and equitable way to assign the increased and very high costs that were incurred in February 2021. Rather, the State must work to identify

¹⁰ Emergency Order, Docket No. 21-GIMX-303-MIS, ¶3 (Jun. 15, 2021).

the root cause of the problem that created the supply, delivery, and pricing crisis of February 2021. Only then, can the State focus its efforts on finding and implementing solutions to prevent these problems from arising in the future.

21. In a very real and material sense, the increase in fuel and purchased power costs experienced by Evergy, and which may pass through to Kansas ratepayers, are not the fault of either Evergy or Kansas ratepayers. Instead, these problems are the result of a flaw in the economic dispatch protocols of the Southwest Power Pool (“SPP”). SPP’s resource adequacy process left supply shortages and increased costs for not only Evergy and Kansas ratepayers, but for all utilities and ratepayers in SPP’s footprint.

22. Natural gas electric generation is required to be the dispatchable bridge to step into the breach on short notice – or no notice at all - to make sure that sufficient electric power is produced to meet demand as it may change at any moment. In the SPP economic dispatch protocol, Evergy and other owners of natural gas generation facilities must keep their plants at the ready to operate during extreme weather conditions, and to acquire fuel at times when it is most in demand and most scarce, and at the highest prices. Now is a time for reflection – our reliance on economic dispatch models for all scenarios greatly contributed to our own problem. Still, we have the ability to address and solve this problem.

23. In a dramatic break from the long tradition of each utility operating independently, the Commission ordered the utilities, in its Order dated February 15, 2021, to work together - to cooperate with each other in their operations - for the good of all Kansans. There are isolated instances of voluntary cooperation - for example, mutual assistance agreements - but not in recent memory has this kind of cooperation been ordered by the Commission. Kansas ratepayers have benefited from this Commission policy, and an extension of this ordered cooperation can largely

or perhaps entirely solve the problem of less than optimal winter time electric operations and high price spikes in natural gas prices.

24. The first part of the solution is for the Commission to order jurisdictional utilities operating natural gas-powered electric generation facilities forecast how often these facilities will operate in December through February of each year. Ideally, this forecast will provide a day-by-day analysis of forecasted unit commitments. These plants are in the rate base of each electric utility, and it is reasonable for the Commission to require utilities to forecast how often these plants will be committed. The goal of this first step is to forecast how often, and for how long, natural gas generation will be utilized in winter months.

25. Second, the Commission should order jurisdictional electric utilities to buy natural gas at first of month prices (“FOM”) for its forecasted generation needs in December, January, and February. Ensuring natural gas generation has procured the fuel needed to run establishes a pattern of fuel security. Building up stores of fuel on a routine basis ensures natural gas electric generation will have the resource necessary to operate when called on, and will not be subject to scarcity pricing (or other pricing disruptions).

26. Third, the Commission should order the electric utility to buy 10% to 20% more natural gas than is needed for forecasted operations in December, January, and February at FOM prices. Purchasing more gas than forecasted gives electric utilities the flexibility to meet their forecasted commitments, while at the same time remaining flexible to operate on short notice when called. To the extent that this natural gas is not consumed by an electric utility, the Commission should order that such unused natural gas be sold to jurisdictional natural gas companies for storage injections. During these winter months, natural gas utilities rely on storage to meet their customers’ needs. Providing natural gas utilities with additional injections should be welcomed. Of course,

these sales would be at cost, and deemed to be prudent as both the first purchase and as appropriate, as storage fill natural gas.

27. In short, step one determines how often a natural gas unit is expected to run. Step two purchases the fuel necessary to meet that forecast. Step three resells unused natural gas to other Kansas utilities during a time the commodity is in demand. Electric utilities secure the fuel they need to run natural gas generation. Natural gas utilities secure additional amounts of storage fill natural gas if electric units do not run. Kansas ratepayers benefit from having multiple utilities coordinate gas purchasing efforts, with a common goal of ensuring adequate supplies at reasonable prices. Ultimately, this coordination ensures Kansas' electric and natural gas public utilities can reliably meet their statutory obligations in times of scarcity pricing.

28. This Commission ordered cooperation between electric and natural gas jurisdictional utilities. Now, more than ever, coordination between Kansas electric and natural gas public utilities is needed when it comes to fuel security. Winter Storm Uri was a pivotal moment the Commission must seize on to prevent Kansans from being exposed to unconscionable scarcity pricing. While we cannot predict when the next crippling polar vortex will hit Kansas, we know relying on spot prices for natural gas can have disastrous effects. No one benefits if electric and natural gas utilities clamor for every available MMBtu to meet their obligations during disasters. Moreover, Winter Storm Uri has destroyed any notion of historical price ceilings for natural gas. The Commission should expect wild price variations to exist in natural gas spot markets for years as opportunistic marketers, suppliers, and brokers seek to maximize their profits at the expense of our utilities and ratepayers. As coal facilities are retired or reduce operations, natural gas will play a larger and larger role in meeting winter demand. At the same time the competition for natural gas as both a needed heating fuel and as a needed power fuel for electric generation will drive

demand. In extreme cold weather, this demand will only create new price spikes. The Kansas Corporation Commission has the regulatory tools and the resolve to address the problem of electric and natural gas supply security while also minimizing price spikes in natural gas that are so harmful to both electric and natural gas ratepayers in Kansas.

WHEREFORE, for the reasons stated above, the NGTCC and KIC respectfully requests the Commission grant this Petition to Intervene, allow parties to collaboratively explore solutions to natural gas sourcing, and any other relief the Commission deems just and reasonable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2021, the foregoing Petition to Intervene, was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

James P. Zakoura, being duly sworn upon his oath, deposes and states that he is the Attorney for the Natural Gas Transportation Customer Coalition, that he has read and is familiar with the foregoing *Petition to Intervene* and that the statements therein are true to the best of his knowledge, information, and belief.



James P. Zakoura

SUBSCRIBED AND SWORN to before me this 14th day of July, 2021.



Notary Public

My Appointment Expires: 04/23/2025

