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State Corporation Commission
of Kansas

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

In the Matter of the Application of Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. for Approval to Make Certain Changes in their Charges for Electric Service.	))))	Docket No. 25-EKCE-294-RTS

MOTION OF JOINT APPLICANTS FOR LEAVE TO FILE LEGAL ANALYSIS REGARDING STANDARDS FOR DETERMINING CAPITAL STRUCTURE

COME NOW Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (collectively referred to as "Joint Applicants" or "EKC") and submit this *Motion for Leave to File Legal Analysis Regarding Standards for Determining Capital Structure* ("Motion"). In support, EKC states as follows:

1. On January 31, 2025, concurrent with the filing of this Motion, EKC filed an application with supporting testimony seeking Commission approval to increase its retail electric rates pursuant to K.S.A. 66-117 and K.A.R. 82-1-231. In the application and testimony, EKC calculated its revenue requirement using its expected actual standalone capital structure as of the anticipated March 31, 2025, true-up date of 48.03 debt and 51.97 percent equity. EKC also requested that the true-up reflect any adjustment needed to reflect EKC's actual standalone capital structure at March 31, 2025.

2. The capital structure adopted in a rate case is a major issue representing millions of dollars in revenue requirement. It is a material factor considered by market analysts and creditors in evaluating the financial outlook and credit worthiness of a utility company. Determining a utility's capital structure in a fair manner, consistent with established legal parameters, benefits shareholders and customers alike through improved financial strength and lower costs of capital.

3. In EKC's last rate case in Docket No. 23-EKCE-775-RTS ("23-775 Docket"), the legal and policy standards for determining the appropriate capital structure to be utilized in calculating EKC's overall cost of capital - and the way such standards were applied - was a heavily contested issue. Because the case was ultimately resolved through a settlement agreement, the Commission's Order approving the settlement agreement did not resolve this dispute.

4. While the Commission has previously stated that its policy on capital structure is to "use a capital structure that will result in the lowest overall cost of capital that is representative of utility operations," application of this policy on a case-by-case basis has frequently resulted in confusion and disagreement among parties. Further, the general nature of the stated policy leaves litigants unsure what specific elements or factors will be considered relevant to their application and what evidence would be necessary to meet their burden of proof on those standards.

5. There are established guidelines and legal parameters for determining an appropriate capital structure as set out in state and federal case law and in industry reports and treatises. These standards raise legal issues and typically require legal analysis. As such, EKC believes they are better presented to the Commission in a legal memorandum as opposed to the testimony of non-lawyer witnesses. While non-lawyer witnesses frequently refer to the legal authorities, they must always do so with the qualifier that they are not attorneys. Allowing the filing of legal memorandums in the docket would provide a foundation upon which those testimonies could be more properly based, and it would assist witnesses in fully articulating their positions in testimony without inappropriately testifying to legal conclusions.

6. Under a traditional procedural schedule for a rate case, this legal analysis would only first be raised in post-hearing legal briefing, at which point the parties have already presented their testimony and evidence and the hearing has concluded. EKC is asking the Commission to

modify its traditional schedule to permit the filing of legal memorandums on this issue early in the procedural process so that the issue can be preliminarily addressed by the parties in advance of the evidentiary hearing. It will also allow the parties to more efficiently and effectively focus their prefiled testimony on addressing the standards and factors the Commission deems relevant to making a decision, especially if the Commission were to issue an Order on the matter prior to the filing of additional testimony.

7. Therefore, EKC proposes the Commission accept EKC's legal memo included with this Motion as **Attachment A**, and set a deadline for voluntary responsive analyses from other parties.[1] If the Commission were to issue an Order in advance of further filing of testimony setting out its decision on the issues addressed in the legal memorandums, it would be helpful to the parties in preparing and presenting their testimony and their case at hearing. If the Commission chooses not to issue an early Order, having the parties' legal analyses in the record would still help in addressing the issue in testimony and at hearing.

8. For the Commission's consideration, EKC has included as **Attachment B** a suggested schedule for filing the memorandums requested in this Motion, and a date for a Commission Order to be issued in advance of the prefiling of further testimony, if the Commission is so inclined.

WHEREFORE, EKC submits its *Motion for Leave to File Legal Analysis Regarding Standards for Determining Capital Structure* and requests the Commission issue an Order granting EKC's Motion and allowing voluntary responsive analyses from other parties, and if the

[1] EKC has structured its request in accordance with how Staff has previously presented a similar request. See "In the Matter of the Application of Kansas City Power & Light Company to Make Certain Changes in Its Charges for Electric Service, *Commission Staff's Motion for Leave to file Legal Analysis Regarding KCP&L's Economic Relief Pilot Program,* Docket No. 15-KCPE-116-RTS, filed April 16, 2015.

Commission is so inclined, issue an Order providing advance guidance to the parties for the reasons set forth above.

Respectfully submitted,

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ATTACHMENT A

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. For Approval to Make Certain Changes in Their Charges for Electric Service Pursuant to K.S.A. 66-117.	)))))	Docket No. 25-EKCE-294-RTS

MEMORANDUM REGARDING SUBSIDIARY UTILITY
CAPITAL STRUCTURE DETERMINATIONS

COME NOW Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (collectively "EKC" or the "Company"), by and through counsel, and submit this memorandum to the Kansas Corporation Commission ("Commission" or "KCC") for the purpose of providing an overview of the legal standards, finance theory, and ratemaking principles applicable to regulatory capital structure determinations for subsidiary operating utilities. Additionally, the Company proposes a capital structure evidentiary framework designed to guide the parties in discovery and the preparation and presentation of evidence in support of their respective capital structure proposals. The Company's proposal is structured around the so-called "Standalone Approach," the generally accepted method across North America for determining the regulatory capital structure of a utility operating company owned by a holding company.

Finally, EKC proposes a schedule for allowing responsive memorandums from all parties. It also includes a date for a Commission Order to be issued on these issues in advance of the prefiling of further testimony, if the Commission is so inclined.[1]

[1] See *Motion of Joint Applicants for Leave to File Legal Analysis Regarding Standards for Determining Capital Structure*, filed with this Memorandum on January 31, 2025.

ATTACHMENT A

I. The Standalone Approach

The Standalone Approach is grounded in the principle that a subsidiary operating utility should be treated as an independent legal entity and that its regulatory capital structure should be representative of the capital structure that actually backs utility operations. Dr. Roger A. Morin, a leading scholar in the field of regulatory finance, describes the Standalone Approach as follows:

> [T]he subsidiary is viewed as an independent operating company, and its cost of equity is inferred as the cost of equity of comparable risk firms. The methodology rests on the basic premise that the required return on an investment depends on its risk, rather than on the parent's financing costs [.] *** The equity return reflects the risk to which the equity capital is exposed and the opportunity return foregone by the company's shareholders in investments of similar risk. The identity of the shareholders is immaterial in determining the equity return.

Roger A. Morin, PhD, Regulatory Finance: Utilities' Cost of Capital (1994), p. 472 (emphasis added).

The Standalone Approach is consistent with the Commission's longstanding capital structure policy articulated in Docket No. 16-KCPE-593-ACQ, where the Commission "reaffirmed its commitment to use a capital structure that will result in the lowest overall cost of capital that is representative of utility operations."[2] The Standalone Approach also is consistent with the financial merger conditions approved by the Commission in Docket No. 18-KCPE-095-MER, which require the cost of service and rates of Evergy, Inc.'s operating utility companies to be set "commensurate with financial and business risks attendant to their individual regulated utility operations."[3] These merger conditions also require the operating utility companies (1) to maintain separate capital structures to finance the respective activities and operations of each

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[2] Order, *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and Westar Energy, Inc., for Approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Incorporated*, Docket No. 16-KCPE-593-ACQ (April 19, 2017), pp. 41-42 (emphasis added).

[3] *See Order Approving Merger,* Docket No. 18-KCPE-095-MER, Attachment A, p. 12.

entity; (2) to maintain separate debt; (3) to use reasonable and prudent investment grade capital structures; (4) to conduct business as separate legal entities and hold all their assets in their own legal entity name; (5) to maintain separate issuer (*i.e.*, corporate credit ratings) and separate issue ratings for debt that is publicly placed; and (6) not to be adversely impacted on an overall basis as a result of the 2018 merger.[4]

The Standalone Approach holds that a subsidiary operating utility is entitled to have its rates computed based on the actual cost of capital under its own capital structure, without attribution of its parent's capital costs, unless there is a factual basis, supported by substantial evidence, to justify disregarding the company's actual capital structure. *See South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n*, 594 So. 2d 357, 366 (La. 1992) (holding commission acted arbitrarily, capriciously and unreasonably by disregarding the utility's actual capital structure and using a hypothetical capital structure without first finding the company's actual capital structure was unreasonable or imprudent); *Transcon. Gas Pipe Line Corp.,* Opinion No. 414, 80 FERC ¶ 61,157, at 61,664 (1997) (stating that "a utility should be regulated on the basis of its being an independent entity; that is, a utility should be considered as nearly as possible on its own merits and not on those of its affiliates"); *Boise Water Corp. v. Idaho Pub. Util. Comm'n,* 97 Idaho 832, 555 P.2d 163 (1976) (instructing that the commission must accept the actual capital structure of the applicant utility unless it finds, on the basis of substantial evidence, that the structure is unreasonably constructed); *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. Pub. Utilities Comm'n*, 193 Colo. 421, 425, 567 P.2d 377, 379 (1977) (holding actual capital structure of the applicant utility should be used unless it "so unreasonably and substantially" varies "from usual practice as to impose

[4] *See id.* at pp. 8-10.

an unfair burden on the consumer"); *Mystic Valley Gas Co. v. Dep't of Pub. Utilities*, 359 Mass. 420, 429, 269 N.E.2d 233 (1971) (stating that a regulated company is "entitled to earnings sufficient to meet its actual interest obligations upon existing debt as its structure actually had developed and upon anticipated new debt capital").

Notably, the Standalone Approach has been endorsed by the National Association of Regulatory Utility Commissioners (NARUC). Following are relevant passages from a recent NARUC-sponsored publication.

> The capital structure is typically measured at the corporate level at which the utility actually interfaces with the capital markets. Some utilities participate directly in the capital market and have a capital structure disciplined by the capital markets. <u>Actual capital structure ratios are generally used for a utility that has market-traded stock and/or debt directly issued to investors</u>.

National Association of Regulatory Utility Commissioners, *A Cost of Capital and Capital Markets Primer for Utility Regulators*, April 2020, p. 10 (emphasis added).

> [U]tility management must be permitted latitude, discretion, and flexibility in managing capital structure ratios. Since there is no practical methodology to pinpoint theoretically optimal capital structure ratios, targeted ratios can only be broadly conceptualized. Appropriate ratios may shift over time as capital market conditions or business risk characteristics change. Additionally, the timing of upcoming issuances and maturities may influence the capital structure ratios because both the size and frequency of issuances are affected by the relative cost-effectiveness of various issuance increments.
>
> <u>Given these practical considerations, capital structure ratios cannot be deemed to be inappropriate unless the ratios greatly diverge from sound industry practice and cause a lack of financial flexibility that may lead to higher overall costs.</u>

Id. at p. 11 (emphasis added).

Consistent with NARUC guidance and with the Standalone Approach, the actual capital structure ratios of a subsidiary operating utility should serve as the basis for its regulatory capital structure in the vast majority of cases. However, there are limited instances where a commission

might consider disregarding the actual capital structure of the subsidiary utility if there is a substantial evidentiary basis for such extraordinary regulatory relief. *See, e.g., Peoples Natural Gas Div. of Northern Natural Gas Co. v Public Utilities Com.*, 193 Colo 421, 567 P2d 377 (1977) (observing that it is within the power of the commission to "pierce the capital structure" of a utility and impute a capital structure for ratemaking purposes that is "reflective of the capitalization actually backing the utility").

II. Deviations from Standalone Approach

In the less common scenario where there is sufficient evidence in the record to justify deviating from the Standalone Approach, commissions typically substitute the operating utility's actual capital structure with a "consolidated" or "hypothetical" capital structure.

A. Consolidated Capital Structures

Consideration of consolidated capital structure data may be warranted in cases where corporate affiliates are financed as an integrated whole based on systemwide financing objectives or where there is evidence that capital structures have been manipulated to increase returns for equity investors. *See* Morin at 474-75. However, imputing a consolidated capital structure is appropriate "only in special cases, while the 'independent company' [Standalone] approach is both consistently and universally appropriate." Richard H. Pettway and Bradford D. Jordan, *Diversification, Double Leverage, and the Cost of Capital*, Journal of Financial Research, Vol. VI, No.4 (Winter 1983). Factors typically considered in determining whether to deviate from the Standalone Approach and look through to the parent company's capital structure are distilled in David C. Parnell's *The Cost of Capital - A Practitioner's Guide* (2010 ed.) ("CRRA Guide").[5] The

[5] The CRRA Guide was prepared for the Society of Utility and Regulatory Financial Analysis ("SURFA") and provided as the study guide to candidates for SURFA's Certified Rate of Return Certification Examination.

CRRA Guide lists four factors that should be considered in the analysis: (1) whether the subsidiary utility obtains all its capital from its parent; (2) whether the parent guarantees any of the securities issued by the subsidiary; (3) whether the subsidiary's capital structure is independent of its parent's capital structure; and (4) whether the parent is diversified into nonutility operations. CRRA Guide at 46.

In similar fashion, the Federal Energy Regulatory Commission (FERC) has adopted a three-part test to determine whether to deviate from the Standalone Approach. Under this test, the actual capital structure of the rate applicant is used when (1) the utility issues its own non-guaranteed debt, (2) has its own bond rating, and (3) has an equity ratio within the historical range approved by the Commission. *Transcontinental Gas Pipe Line Corp*. ("*Transco"*), Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,413-15, reh'g denied, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), petition for review denied sub nom. *N.C. Utils. Comm'n v. FERC*, D.C. Cir. Case No. 99-1037 (Feb. 7, 2000) (per curiam); *accord Kentucky West Virginia Gas Company*, 2 FERC ¶ 61,139 at 61,325-28 (1978). This three-part test was developed to examine whether a regulated entity's "financing is controlled by another entity, such as a corporate parent," *Transco*, 84 FERC at 61,412-13, and is "designed to establish a company as an independent financing entity." *Enbridge Pipelines LLC*, 139 FERC ¶ 63,015, at P 231 (2012). A utility that satisfies this test has made a prima facie showing of financial risk separation between itself and the parent company. *See Ass'n of Bus. Advocating Tariff Equity Coalition v. Midcontinent Indep. Sys. Operator, Inc.* 156 FERC ¶ 61,060, at P 29 (2016). The courts have upheld this policy. See *Missouri Pub. Serv. Comm'n v. Federal Energy Reg Comm'n*, 215 F.3d 1, 342 U.S. App. DC. 1 (D.C. Cir. June 27, 2000).

B. Hypothetical Capital Structures

Hypothetical capital structures may be imposed when "[t]he utility's capital structure is deemed to be substantially different from the typical or 'proper' utility capital structure" or when "[t]he utility is funded as part of a diversified organization whose overall capital structure reflects its diversified nature rather than its utility operations only." *See* David C. Parnell, *The Cost of Capital – A Practitioner's Guide* (2010 ed.), p. 47; Charles F. Phillips, Jr., *The Regulation of Public Utilities – Theory and Practice* (1993), p. 391. Professor Bonbright, however, cautions that a hypothetical capital structure should be used only in cases where actual capital structures are "clearly unsound" or "extravagantly conservative," reasoning that using hypothetical capitalization ratios "substitutes an estimate of what the capital cost would be under nonexisting conditions for what it actually is or will soon be under prevailing conditions." *See* James C. Bonbright, *Principles of Public Utility Rates* (New York: Columbia University Press, 1961), 243-44; *see also Entergy Ark., Inc. v. Arkansas Pub. Serv. Comm'n,* 104 Ark. App. 147, 165, 289 S.W.3d 513 (2008) (approving use of hypothetical capital structure when applicant's debt-to-equity ratio was equity-heavy and significantly different from the ratios of comparable companies); *High Island Offshore Sys.*, 110 FERC ¶ 61,043 at P 143 (holding a hypothetical capital structure may be used "if the capital structure of the entity obtaining the financing is anomalous").

The use of hypothetical capital structures was examined in *Kansas Indus. Consumers [KIC] v. State Corp. Comm'n*, 30 Kan. App. 2d 332, 340, 42 P.3d 110, 116 (2002). In that case, the Kansas Court of Appeals affirmed the Commission's decision to adopt a Staff-recommended hypothetical capital structure after finding the decision was supported by substantial competent evidence. At the outset, the court observed that the appellant, KIC, "seemed to recognize the capital structure issue was being determined in the 'extraordinarily unusual circumstance' of a

public utility with no equity and significant debt unrelated to its electric operations." 30 Kan. App. 2d at 332. In affirming the Commission's decision, the court noted that the Commission had concluded "Staff's recommendation was reasonable and valid and was directly related to the actual conditions and operations of the utility." *Id.* at 336. (emphasis added). Turning to the record evidence, the Court noted that "Staff's capital structure was based on a cash flow analysis that attempted to ascertain the debt and equity associated with the utility rather than [its corporate affiliate]." *Id.* at 340 (emphasis added). The Court went on to explain that the hypothetical capital structure adopted by the Commission "was set up to ensure that the debt-equity balance most closely resembled that directly associated solely with the electric business" and did not increase the burden on ratepayers beyond what was reasonably attributable to the regulated utility. *Id.* (emphasis added).

Here it is important to note that in the *KIC* case, the Court of Appeals was presented with an "extraordinarily unusual circumstance" that justified the imputation of a hypothetical capital structure. Nevertheless, the court's opinion is replete with language that aligns squarely with the Standalone Approach, namely that (1) regulatory capital structures should be measured at the corporate level at which the utility actually interfaces with the capital markets; (2) capital structures should be representative of actual utility operations; and (3) hypothetical capital structures may be imputed only when they are supported by substantial competent evidence.[6]

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[6] This is consistent with prior cases where the Commission imputed a hypothetical or consolidated capital structure to an operating utility. See *Moundridge Telephone Co., Inc. v. Kansas Corp. Com'n*, 361 P.3d. 523 (Kan. Ct. App. 2015) (unpublished) (affirming Commission decision to use a hypothetical structure of 60% equity and 40% debt when regulated utility's actual capital structure of 95.34% equity and 4.66% debt was deemed unreasonable and outside the norm of other similarly situated utilities); *Aquila, Inc. v. State Corp. Com'n of Kansas*, 115 P.3d 794 (Kan. Ct. App. 2005) (affirming Commission decision to apply Aquila's aggregated capital structure after finding Aquila's Kansas operating division did not have its own books, did not borrow money independently, did not issue its own stock, and had been negatively impacted by Aquila's unregulated businesses); *Wheat State Telephone Co. v. State Corp. Com'n of Kansas*, (affirming Commission's

III. Capital Structure and Fair Rate of Return

The "fair rate of return" concept is founded on the principle that a regulated utility is entitled to charge rates that allow it to recover its full cost of service, including the cost of securing necessary capital to meet its obligations to investors and compete on reasonable terms for capital to fund its service requirements. Indeed, "the cost to the utility of the capital required to construct, equip, and operate its plant should measure the rate of return which the Constitution guarantees the opportunity to earn." *Missouri ex rel. Southwestern Bell Tel. Co.,* 262 U.S. 276, 306 (1923) (Brandeis, J., with Holmes, J. joining in concurrence); *see also Moundridge Tel. Co. v. Kansas Corp. Comm'n*, 361 P.3d. 523, 2015 WL 7693784 at *15 (Kan. Ct. App. 2015) (holding a "public utility is entitled to earn a return on its "rate base, or its investment in the plant and property used and required to be used in supplying the regulated service") (internal citations omitted). Consistent with federal precedent, the Kansas Supreme Court has instructed that the Commission is to balance the public need for adequate, efficient, and reasonable service with the utility's need for sufficient revenue to meet the cost of furnishing service and to earn a reasonable profit. *Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co*., 267 Kan. 760, 773 (1999).

The United States Supreme Court laid down the test for setting just and reasonable rates by way of a fair and reasonable rate of return in *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 391(1944). Together, those cases hold that allowed rates of return must meet three criteria: The return must be (1) commensurate with returns on investments having corresponding risks (the "comparable investment" standard); (2) sufficient to assure confidence in

use of the parent company's capital structure when all the utility's debt was on parent company's books, giving the regulated utility company a 100% to 0% equity-to-debt ratio).

the utility's financial integrity (the "financial integrity" standard); and (3) sufficient to maintain the utility's creditworthiness and ability to attract capital on reasonable terms (the "capital attraction" standard). *See also Permian Basin Rate Cases*, 390 U.S. 747 (1968) (stressing the requirement that a regulatory agency's rate order should "reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed"). Additionally, the fair-return analysis requires consideration of the conditions facing the utility, which may change over time depending on opportunities for investment, the money market and business conditions. *Bluefield*, 262 U.S. at 692.

The linchpin of the *Bluefield-Hope* test is the "comparable investment" standard, which recognizes that a fair return is ultimately determined by the competitive capital markets and that capital deployment is driven by opportunity cost. As a practical matter, if a company's stockholders are able to earn a return comparable to returns available from alternative investments with corresponding risk, the company should be able to maintain its financial integrity and attract equity capital.

A utility's allowed rate of return is determined by applying the utility company's authorized return on equity (ROE) and embedded cost of debt to its authorized capital structure. What constitutes a fair return depends in part on the utility's capital structure. Thus, a critical component of establishing just and reasonable rates is determining the appropriate capital structure. *See Moundridge Tel. Co. v. Kansas Corp. Comm'n*, 361 P.3d 523 (Kan. Ct. App. 2015) (noting that because rate of return is a multiplier, a utility's capital structure significantly impacts the company's revenue requirement).

The Standalone Approach is in keeping with *Bluefield* and *Hope,* which hold that the utility—not the parent company—is entitled to earn a fair and reasonable rate of return on the

capital it employs. As the Fifth Circuit Court of Appeals has observed: "When the Commission establishes a fair rate of return on the clearly distinct utility operations as a whole, it has acted justly and reasonably both toward the investor who should expect to receive a return based on that known utility investment, and toward the rate payer whose payments must generate such return." *El Paso Nat. Gas Co. v. Fed. Power Comm'n*, 449 F.2d 1245, 1250-51 (5th Cir. 1971) (*citing Hope*, 320 U.S. at 603 (1944).

By contrast, the imputation of a capital structure based on counterfactual assumptions or reasons unrelated to the financing costs of utility operations cannot be reconciled with *Bluefield* and *Hope*. Although fair-return determinations should not be constrained to the mechanical application of a single formula or combination of formulas, "the ratemaking agency has a duty to ensure that the method of selecting appropriate rates of return [is] reasonably related to the method of calculating the rate base." *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1527 (D.C. Cir. 1984) (*citing FPC v. Hope Natural Gas Co.,* 320 U.S. at 605).

A utility's rate of return, measured by its cost of capital, must be based on the risk to which the capital is exposed and the opportunity cost of that capital, not on the financing costs of the parent. An unwarranted deviation from the Standalone Approach arbitrarily skews the utility's cost of capital, resulting in an allowed rate of return that is not commensurate with financial and business risks attendant to the company's individual utility operations.

IV. Capital Structure and Corporate Veil-Piercing Principles

A core tenet of corporate law is that separate corporations are to be treated as distinct legal entities. Fletcher Cyclopedia of the Law of Corporations, Vol. 1, §43 (2006). This tenet holds true even when the subsidiary company has financial, operational, and managerial relationships with its corporate parent. *See Doughty v. CSX Transp., Inc.*, 258 Kan. 493, 905 P.2d 106 (1995). "In the

parent/subsidiary context, a court will not pierce the corporate veil merely because the parent and subsidiary issued consolidated financial statements or because the parent provided financing to the subsidiary." Fletcher, Vol. 1, §4. Indeed, it is widely accepted that separate corporations may operate with integrated resources in pursuit of a single business purpose. *Id*.

However, where it is apparent that the relationship between parent and subsidiary is so intimate, the parent's control over the subsidiary so dominating, and the business and assets of the two companies so mingled that the recognition of distinct entities would result in an injustice to third persons, courts will look through the legal fiction of separate entities and treat them as justice requires. *Ice Corp. v. Hamilton Sundstrand Inc.*, 444 F. Supp. 2d 1165, 1169 (D. Kan. 2006); *see also Sw. Bell Tel. Co. v. State Corp. Comm'n,* 192 Kan. 39, 40, 386 P.2d 515, 520 (1963) (finding KCC did not violate rule against disregarding separate corporate entities in a rate investigation where parent holding company elected to file a joint income tax return consolidating the income and expenses of itself and its subsidiary operating companies); *Farmland Industries, Inc. v. State Corp. Com'n of Kansas,* 24 Kan. App. 2d 172, 943 P.2d 470 (1997) (recognizing presumption of corporate separateness but affirming KCC's use of integrated approach to operating costs based on evidence of integrated operations and cross-subsidization).

A standard test for analyzing corporate veil-piercing issues calls for consideration of (1) whether the corporation is controlled by another to the extent it is independent in form only and (2) whether the corporation is used as a subterfuge to defeat public convenience, justify wrong, or perpetrate a fraud. Fletcher, Vol. 1, § 41.30; *see also Pipeline Productions, Inc. v. Madison Companies, LLC*, 428 F. Supp. 3d 591, 601 (D. Kan. 2019) (holding alter ego doctrine applies when the controlled corporation is but a "business conduit" for its controlling corporation). Under Kansas veil-piercing law, before the corporate veil can be pierced, there must be evidence of

misuse of the corporate form "to accomplish wrongful purpose on shareholder's behalf." *ColtTech, LLC v. JLL Partners, Inc.*, 538 F. Supp. 2d 1355, 1358 (D. Kan. 2008).

Still, "each case involving disregard of the corporate entity must rest upon its special facts," and the "power to pierce the corporate veil is to be exercised reluctantly and cautiously." *Speed King Mfg. Co. v. Krehbiel*, 722 P.2d 592 (Kan. Ct. App. 1986); *EST Inc. v. Royal-Grow Prods*., LLC, 526 F. Supp. 3d 943, 953 (D. Kan. 2021) (directing that the alter ego doctrine should be invoked "in only the rarest cases ***"); *W&W Steel, LLC v. BSC Steel, Inc.*, 944 F. Supp. 2d 1066, 1072-74 (D. Kan. 2013) (recognizing that "use of the alter ego doctrine to pierce the corporate veil is to be exercised reluctantly and cautiously").

The legal principles discussed above are reflected in the Standalone Approach as they presume the separateness of independent corporations and require that corporate entities be treated as distinct standalone companies unless there is case-specific proof that the companies have abandoned their corporate separateness to defeat public convenience or work an injustice. *See Amoco Chemicals Corp. v. Bach*, 222 Kan. 589, 567 P.2d 1337, 1341 (1977); *see also Blalock v. SRKBS Hotel, LLC*, 2023 WL 2734226, *3-4 (D. Kan. 2023) (addressing veil-piercing based on allegations of intentional manipulation of corporate capitalization).

V. Proposed Capital Structure Evidentiary Framework

A clear standard, adopted and evenly applied, serves the best interests of customers, shareholders, investors, creditors, the Commission, and parties to KCC rate proceedings. In furtherance of achieving these benefits, the Company recommends that the Commission adopt the following framework for determining the regulatory capital structure of EKC in this proceeding:

ATTACHMENT A

1. Capital structure proposals by all parties shall be consistent with the Commission's commitment to use a capital structure that will result in the lowest overall cost of capital that is representative of utility operations.[7]

2. Capital structure proposals by all parties shall be consistent with the 2018 merger condition requiring the cost of service and rates of Evergy, Inc.'s operating utility companies be set commensurate with financial and business risks attendant to each company's individual regulated utility operations.[8]

3. Capital structure proposals by all parties shall be supported by substantial competent evidence based on the record taken as whole and shall not be based solely upon theoretical concepts or speculation.

4. EKC's actual capital structure will be used as the basis for determining its regulatory capital structure if the Company shows that:

   a) EKC issues its own non-guaranteed debt, has its own bond rating, and has an equity ratio consistent with the average equity capital ratio for companies with commensurate risks as EKC and against which ECK competes for capital; and

   b) the 2018 merger and post-merger operations of Evergy, Inc. and its non-EKC and non-Evergy Metro affiliates have not resulted in capital cost increases for EKC.[9]

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[7] *See* footnote 1.

[8] *See* footnote 2.

[9] *See id.* at p. 13, stating: "The burden of proof that any increase to the cost of capital is not a result of the Merger shall be borne by KCP&L or Westar. *** The provisions of this section are intended to recognize the Commission's authority to consider, in appropriate proceedings, whether this Merger or the post-Merger operations of Holdco or its non-KCP&L and non-Westar affiliates have resulted in capital cost increases for KCP&L or Westar. *** Nothing in this condition shall restrict the Commission from disallowing such capital cost increases from recovery in KCP&L or Westar's rates."

5. To overcome the presumption that the actual standalone capital structure of EKC should be used, a party must present substantial competent evidence demonstrating that EKC's actual capital structure is imprudent or inconsistent with industry norms, or that there has been intentional manipulation of corporate capitalization to defeat public convenience or accomplish a wrongful purpose on the shareholders' behalf.

Respectfully submitted,

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Will B. Wohlford (#21773)
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ATTACHMENT B

Suggested Schedule for Filing Legal Memorandums and Order on Memorandums:

EKC's Legal Memorandum Filed	January 31, 2025
Staff and Intervenors File Legal Memorandums	February 28, 2025
EKC Files Response	March 14, 2025
Commission Order	April 30, 2025

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

VERIFICATION

I, Glenda Cafer, verify under penalty of perjury that I have caused the foregoing pleading to be prepared; that I have read and reviewed the same; and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

/s/Glenda Cafer

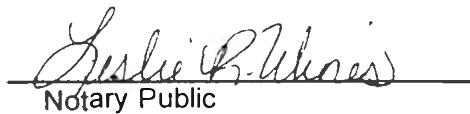
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

VERIFICATION

The undersigned, Cathryn Dinges, upon oath first duly sworn, states that she is Senior Director and Regulatory Affairs Counsel for Evergy Kansas Central, Inc. and Evergy Kansas South, Inc., that she has reviewed the foregoing pleading, that she is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of her knowledge and belief.

Cathryn J. Dinges

Subscribed and sworn to before me this 31st day of January, 2025.



Notary Public

My Appointment Expires: May 30, 2026