

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application of Evergy )  
Kansas South, Inc. for Approval of the Energy )  
Supply Agreement Between Evergy Kansas ) DOCKET NO. 24-EKSE-689-CON  
South and CVR Refining CVL, LLC. )

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

Comes now the Citizens' Utility Ratepayer Board ("CURB") and responds to the Report and Recommendation ("R&R") which was filed by the Kansas Corporation Commission ("KCC" or "Commission") Staff on October 17, 2024.

**Background**

1. On May 1, 2024, Evergy Kansas South, Inc., d/b/a Evergy Kansas Central ("Evergy") and CVR Refining CVL, LLC ("CVR") (together, "Applicants") filed a Joint Application ("Application") requesting Commission approval of an Energy Supply Agreement between Evergy and CVR ("ESA").<sup>1</sup>

2. CVR operates a petroleum refinery in Coffeyville, Kansas. CVR is one of the largest customers on the Evergy Kansas South system.<sup>2</sup> CVR takes service at 12.47 kV distribution voltage under the Industrial and Large Power Service ("ILP") tariff.

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<sup>1</sup> Joint Application (May 1, 2024) ("Joint Application").

<sup>2</sup> "[CVR] is the third largest customer based on energy sales and second largest customer based on revenues on the Evergy Kansas South system." — Direct Testimony of Jason Klindt on behalf of Evergy Kansas South, Inc., p. 3. (Apr 30, 2024) ("Klindt Direct").

3. The Applicants claim CVR's operations in Evergy's service territory are at a price disadvantage compared to CVR's operations served by the City of Coffeyville and other locations outside of Kansas.<sup>3</sup> Furthermore, they claim CVR is at a disadvantage compared to its competitors also served by Evergy who have special contracts.<sup>4</sup>

4. The five primary terms of the ESA are as follows: 1) five-year term; 2) agreed upon base energy rates, with three declining blocks; 3) CVR will be charged all applicable surcharges and riders; 4) the ESA base rates may change as a result of a general base rate change approved by the Commission, consistent with the overall percentage increase or decrease allocated to the ILP customer class; and 5) CVR is obligated to pay a minimum monthly bill.<sup>5</sup> Many specific details of the ESA are confidential.

5. On May 14, 2024, the Commission granted CURB's intervention in this docket.<sup>6</sup>

6. On October 17, 2024, KCC Staff filed its R&R evaluating the Application.<sup>7</sup> Staff's analysis is consistent with the Commission's Order in Docket No. 01-GIME-813-GIE ("01-813 Docket"), issued on October 3, 2001. KCC Staff's analysis of the ESA focused on three conditions:

- a) Is the special contract necessary?
- b) Does the special contract result in operational and/or economic benefits for Evergy and its customers? and
- c) Will the special contract result in just and reasonable rates?<sup>8</sup>

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<sup>3</sup> Joint Application, ¶3.

<sup>4</sup> Klindt Direct, p. 3.

<sup>5</sup> See Joint Application, Exhibit A: Energy Supply Agreement Between Evergy Kansas South, Inc. and CVR Refining CVL, LLC.

<sup>6</sup> Order Granting CURB's Petition to Intervene; Protective and Discovery Order (May 14, 2024).

<sup>7</sup> Report and Recommendation (October 17, 2024) ("R&R").

<sup>8</sup> R&R, p. 2.

7. In its R&R, KCC Staff recommends that the Commission approve the ESA, concluding: 1) The ESA is necessary to incentivize CVR to remain on Evergy's system instead of bypassing Evergy's system by building a co-generation plant. 2) Under the ESA, CVR will still cover its variable cost to serve and contribute meaningfully towards fixed costs. Additionally, the minimum bill provisions of the ESA guarantee CVR will contribute meaningfully toward capacity costs. 3) Because conditions 1 and 2 are satisfied, the ESA will result in just and reasonable rates for CVR and Evergy's remaining core customers.<sup>9</sup>

#### **CURB's Response**

8. CURB has reviewed the Application, testimony of the Applicants, discovery materials, and KCC Staff's R&R.

9. Although CURB genuinely appreciates the thoughtful analysis of the Application that Staff provided in this docket, CURB's analysis starts with its review of the specific elements to be proven in a special contract filing, as established in the 01-813 Docket. Essentially, the utility must prove that the special contract is necessary and that the price and other terms of the special contract are just and reasonable.<sup>10</sup> These two broad elements are discussed in Staff's R&R, as noted above. Specifically, the Commission requires the utility to provide the following information:

When filing the contract with the Commission, the utility must also file all documents and information that support the contract. The utility is to provide a narrative explanation of why the special contract is necessary and of why the price and other terms of the special contract are just and reasonable. The utility is to provide specific information on the customer's operations and needs, information

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<sup>9</sup> See R&R pp. 2-4.

<sup>10</sup> Order, ¶7, Docket No. 01-GIME-813-GIE, (Oct. 3, 2001).

on the effect of the contract on the utility's system over the term of the contract, a detailed cost analysis of the proposed contract, and a statement of the benefits from the contract to the utility and its other customers. Costs to provide the contracted service should be identified, and at a minimum separated into generation, transmission and distribution components. Failure to file all of this information with the contract will be grounds for dismissing the contract without consideration.<sup>11</sup>

10. With respect to how the special contract would affect the utility's core customers, the Commission outlined a non-exclusive list of factors to be considered, as follows:

- the load characteristics of the customer;
- the presence of an ECA or other risk management tool;
- the nature of the discount – what component(s) of the service are being discounted;
- benefits such as curtailment provisions, or use of system at non-peak times;
- the length of the special contract;
- information regarding the pricing terms of the contract; and
- the existing capacity of the utility.<sup>12</sup>

11. It is important to note that the Commission outlined these factors in order to provide a standard process for reviewing special contracts, resulting in greater certainty, consistency, and predictability regarding these contracts.<sup>13</sup> Therefore, for certainty, consistency and predictability, it is important that these specific elements be met in all special contract cases. In this case, CURB believes the Applicants have met these specific elements through witness testimony and responses to data requests, all of which are record evidence.

12. Indeed, Evergy witness Jason Klindt explains that this special contract is necessary “because it provides the incentives needed to keep CVR as a large, viable customer on our electric system....”<sup>14</sup> He also testifies that the price and other terms of the special contract are reasonable,

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<sup>11</sup> Id.

<sup>12</sup> Id., ¶8.

<sup>13</sup> Id., ¶6.

<sup>14</sup> Klindt Direct, p. 6.

by pointing out that the average rate per kWh under the special contract exceeds the variable cost floor by nearly 52%, and that the tiered pricing structure of the special contract encourages increased usage along with the possibility that CVR may locate future expansions in Evergy's service territory.<sup>15</sup> Moreover, Mr. Klindt acknowledges the Commission's consideration of the seven factors pertaining to the effect of the special contract upon core customers. He lists all of these factors and discusses them in his testimony.<sup>16</sup> CVR witness Mark Pytosh also describes the operations of CVR and addresses the need for the special contract, including the term of the contract, as well as discussing the benefits of the contract in his direct testimony.<sup>17</sup> In short, CURB believes that the applicants have met the requirements set forth in the 01-813 Docket.

13. However, as CURB has indicated in its comments in the 01-813 Docket (and subsequent special contract dockets), as well as its comments before the Kansas legislative utility committees, CURB has policy concerns regarding discounting rates below the cost of service through special contracts for certain large commercial and industrial customers. Special contract discounts offered to a subset of retail electric consumers permit these customers to avoid paying for their full cost of service, contrary to what is generally considered to be the backbone of utility rate design. Discounts for large commercial and industrial customers apply differential pricing based upon price elasticity and other points of leverage.

14. Importantly, at the heart of the request for the special contract in this case is the lack of competitive rates in the Evergy service territory. As stated by CVR witness Mark Pytosh, "CVR Refining and Evergy are requesting approval of this Agreement to address the price

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<sup>15</sup> Klindt Direct, pp. 5-6.

<sup>16</sup> Klindt Direct, pp. 4-6.

<sup>17</sup> Direct Testimony of Mark Pytosh, Executive Vice President of CVR Energy, Inc. on Behalf of CVR Refining CVL, LLC, pp. 3-10. (Apr 30, 2024) ("Pytosh Direct").

disadvantage for electric service CVR Refining is experiencing at its Coffeyville operations compared to its operations in other areas outside of Kansas and its competitor's operations in Kansas.”<sup>18</sup> Evergy witness Jason Klindt echoes this point: “The contract is necessary because it provides the incentives needed to keep CVR as a large, viable customer on our electric system and as a viable business in Kansas. The proposed contract will continue to help address the electric cost disadvantages that CVR has indicated it is experiencing.”<sup>19</sup>

15. These testimonies are strong evidence that the special contract is necessary because Evergy's rates are not competitive with rates of other utilities that could serve CVR. Significantly, the number of special contracts offered to specific large commercial and industrial customers by Evergy is growing. As the number of special contracts grows, so grows the amount of discounted fixed costs that other utility customers are bearing.

16. CURB is not raising this issue to create any impediment to the Commission granting the application. CURB acknowledges that the application in this docket is governed by Kansas statutes and the 01-813 Docket. Rather, CURB is concerned that if Kansas does not address the problem of energy affordability, special contracts may be normalized. Thus, CURB has no objection to the special contract in this docket but wants to emphasize its desire that the Commission continue its efforts in appropriate dockets to keep utility rates as low as legally possible.

17. Frankly, special discounts effectively hide the problem of uneconomic or unaffordable utility rates. They grease the squeaky wheel, while rates increase for all other

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<sup>18</sup> Pytosh Direct, p. 7.

<sup>19</sup> Klindt Direct, p. 6.

ratepayers. In CURB's view, the emphasis needs to be on keeping utility rates competitive and affordable for all ratepayers. This docket reveals the dilemma that uncompetitive rates pose for the KCC and its Staff. If the special contract and discounted rates are not allowed, then the large customer may leave the Evergy territory or reduce consumption, leaving higher fixed costs for remaining customers. On the other hand, if the special contract and discounted rates are approved, a share of the fixed costs is left to be paid by remaining customers. It is a choice between two negative outcomes relative to the status quo.

18. CURB recognizes that substantial work has been done by the Commission, utilities, and stakeholders to reduce utility rates in Kansas. CURB is appreciative of that work. CURB urges the Commission to recognize the incredibly high priority on the issue that is required, in view of the potential for load growth and other adverse energy-related conditions now facing Kansas. CURB believes that there can be a win-win solution if all parties genuinely collaborate in good faith to resolve the challenges that are forthcoming. Moreover, the plight of low-income ratepayers must be addressed now, as it continues to grow into a larger and larger problem.

19. Finally, CURB is troubled by the following statement in support of the Application by Evergy witness Jason Klindt who states that one of the reasons Evergy decided to enter into the proposed ESA is: "CVR believes it is at a competitive disadvantage compared to its competitors also served by Evergy who have special contracts."<sup>20</sup> This indicates that Evergy, a monopolistic utility service provider, is causing disruption within external competitive industries by implementing preferential pricing through special contracts, of which the individual financial details should be highly confidential. When evaluating special contracts, CURB urges the

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<sup>20</sup> Klindt Direct, p. 3.

Commission to assign minimal weight to balancing external “competitive disadvantage” relative to the criteria of necessity and system-wide benefit. Discounting rates for one utility customer without reducing overall costs merely redirects the disadvantage to other utility customers.

20. Policy concerns aside, CURB agrees with KCC Staff that the Commission's Order in the 01-813 Docket governs this application, and CURB believes the Applicants have adhered to the guidelines established in that docket regarding the provision of documentation and information supporting the contract. CURB does not dispute that CVR’s option to build a co-generation plant presents a potential bypass threat.<sup>21</sup> CURB also does not dispute KCC Staff’s analysis regarding CVR’s contributions toward fixed and variable cost recovery.<sup>22</sup>

21. KCC Staff’s analysis here is consistent with past analyses of utility special contracts which have been approved by the Commission. Therefore, CURB does not oppose the Application.

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<sup>21</sup> See R&R, pp. 2–3 §1.

<sup>22</sup> See R&R, p. 3 §2.

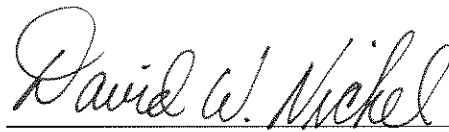


**Conclusion**

While CURB certainly has broad policy concerns regarding special contracts generally, CURB does not dispute the analysis presented in KCC Staff's R&R.

WHEREFORE, CURB does not oppose the Application.

Respectfully submitted,



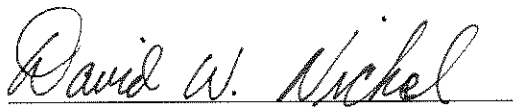
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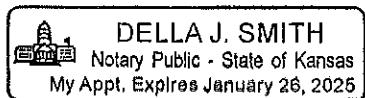
**VERIFICATION**

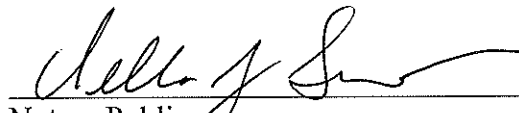
STATE OF KANSAS )  
 ) ss:  
COUNTY OF SHAWNEE )

I, David W. Nickel, 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 under the pains and penalties of perjury.

  
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David W. Nickel

SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of October, 2024.



  
\_\_\_\_\_  
Notary Public

My Commission expires: 01-26-2025.

**CERTIFICATE OF SERVICE**

24-EKSE-689-CON

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 24<sup>th</sup> day of October, 2024, to the following:

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