

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

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

In the Matter of the Application of Evergy )  
Kansas Metro, Inc., Evergy Kansas South, Inc. )  
and Evergy Kansas Central, Inc. for Approval ) Docket No. 22-EKME-254-TAR  
of its Demand-Side Management Portfolio )  
Pursuant to the Kansas Energy Efficiency )  
Investment Act (“KEEIA”), K.S.A. 66-1283. )

**ORDER ON EVERGY’S APPLICATION AND SETTLEMENT AGREEMENTS**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its pleadings and records, the Commission finds and concludes as follows:

**I. Executive Summary**

1. Nearly ten years ago, the Kansas Legislature and Governor set State policy promoting the establishment of cost-effective energy efficiency programs. At that time, it became the policy of this State to help utility customers use energy more efficiently and in a manner that sustains or enhances those customers’ incentives to use energy more efficiently. Since the enactment of this policy, the State has made little progress toward its aspirations – and has instead become known for regressive treatment of energy efficiency benefits. Kansas competes against other States in many ways, and one competition it is losing is the provision of cost-saving energy efficiency tools to utility customers. The intent of this Order is to implement the goals of our State’s highest policymakers and ensure those Kansas residents and businesses with the greatest need to control their bills have options available to do so.

## II. Background

2. On December 17, 2021, Evergy Kansas Metro, Inc. (“Evergy Kansas Metro”), Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (collectively “Evergy”) filed an application pursuant to K.S.A. 66-117 and 66-1283 for approval of its 2023-2026 Demand-Side Management (“DSM”) Portfolio and updated Energy Efficiency Rider (“EER”) in accordance with the Kansas Energy Efficiency Investment Act (“KEEIA”).<sup>1</sup> Evergy explains its proposed portfolio “will build on Evergy’s existing DSM portfolio in Kansas, using knowledge and experience gained in both its Kansas and Missouri service territories over the past 15 years”<sup>2</sup> and notes this broader portfolio is intended to focus on “improving customer participation and enhancing customer experience.”<sup>3</sup>

3. In support of its proposed portfolio of programs, Evergy’s Application includes a report entitled Evergy KEEIA 2023-2026 Demand-Side Management Portfolio Filing (“Report”), which includes proposed tariffs and ratemaking proposals for the programs. The Report is supported by affidavits from various expert witnesses. In addition to the Report, Evergy’s Application also includes the pre-filed Direct Testimony of Charles A. Caisley.<sup>4</sup>

4. Evergy’s proposed KEEIA 2023 – 2026 DSM Portfolio consists of nine programs - four residential programs and four business programs, with one pilot incubator program.<sup>5</sup> The programs are designed to meet the needs of residential and business customers across both Evergy’s Kansas service territories, and Evergy expects the programs to benefit all its customers

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<sup>1</sup> Application of Evergy Kansas Metro, Inc., Evergy Kansas South, Inc. and Evergy Kansas Central, Inc. for Approval of Demand-Side Management Program Portfolio and Recovery Mechanism, December 17, 2021 (Application).

<sup>2</sup> Application, pg. 4.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; Direct Testimony of Charles A. Caisley, December 17, 2021 (Caisley Direct).

<sup>5</sup> Application, Report, pg. 9.

in Kansas.<sup>6</sup> Further, to facilitate its proposal, Evergy requests to modify its existing Energy Efficiency Rider (EE Rider) to include “recovery of three financial components: program costs, the Throughput Disincentive (TD), and an Earnings Opportunity (EO) award.”<sup>7</sup>

5. The nine programs comprising Evergy’s proposed DSM portfolio are detailed at length in Evergy’s Report<sup>8</sup> but can be briefly summarized<sup>9</sup> as follows:

1) Whole Home Efficiency Program: This program provides rebates, discounts, and on-bill financing for HVAC and building envelope measures in single and multifamily residences. It will also provide no cost energy assessments and discounted energy savings kits.

2) Home Energy Education Program: This program helps rural and low-income customers use energy more efficiently through marketing, outreach, and education.

3) Home Demand Response Program: This program helps customers reduce their energy use during peak demand periods. It also provides opportunities for customers to receive free thermostats and water heater controllers.

4) Hard-to-Reach Homes Program: This program provides enhanced incentives, no-cost home upgrades, and no-cost energy assessments and savings kits for low-income and rural customers.

5) Whole Business Efficiency Program: This program provides both variable and fixed incentives to help business customers install efficient equipment and building envelope improvements.

6) Business Energy Education Program: This program provides tools, resources, and guidance for businesses interested in saving money on energy. The program focuses on small businesses.

7) Business Demand Response Program: This program helps business customers decrease their energy usage during periods of peak demand. Potential customers can sign up or be recruited by Evergy.

8) Hard-to-Reach Businesses Program: This program offers enhanced incentives to small businesses and non-profits.

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<sup>6</sup> Application, Caisley Direct, pg. 7.

<sup>7</sup> Application, Caisley Direct, pg. 8.

<sup>8</sup> Application, Report, pgs. 27-44.

<sup>9</sup> Direct Testimony of Alice Napoleon, pgs. 9-10 (June 17, 2022)(Napoleon Direct).

9) Pilot Incubator Program: This program creates a pathway to identify and evaluate new DSM program concepts to meet changing customer needs and integrate evolving technologies.<sup>10</sup>

6. The Citizens' Utility Ratepayer Board (CURB), Atmos Energy Corporation (Atmos), The Climate + Energy Project (CEP), Natural Resources Defense Council (NRDC), Kansas Gas Service, a Division of ONE Gas, Inc. (KGS), Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills), the Sierra Club, Kansas Appleseed, Kansas Industrial Consumers Group, Inc. (KIC), Associated Purchasing Services, Spirit Aerosystems, Inc., Occidental Chemical Corporation, and the Goodyear Tire & Rubber Company were granted full intervention. Black Hills, Atmos, and KGS are collectively referred to herein as the "Gas Utilities." CEP, NRDC, the Sierra Club and Kansas Appleseed are collectively referred to herein as the "Environmental Groups." Kansas Industrial Consumers Group, Inc., Associated Purchasing Services, Spirit AeroSystems, Inc., Occidental Chemical Corporation, and the Goodyear Tire & Rubber Company are collectively referred to herein as "KIC."

7. On June 17, 2022, Commission Staff (Staff) and Intervenors filed direct testimonies addressing Evergy's Application. Staff filed the Direct Testimonies of Leo Haynos, Justin Grady, Douglas Hall, Jeffrey Jarman, Lana Ellis, Lisa Parcell, and Robert Glass. CURB filed the Direct Testimonies of Alice Napoleon and Danielle Goldberg. Sierra Club and Kansas Appleseed jointly filed the Direct Testimony of Roger Colton. CEP filed the Direct Testimonies of James Owen and Justin B. Schott. NRDC filed the Direct Testimony of Stacy L. Sherwood. The Gas Utilities filed the Direct Testimony of Paul H. Raab.

8. On June 24, 2022, CURB filed the Cross-Answering Testimony of Alice Napoleon. CEP filed the Cross-Answering Testimony of Justin B. Schott. Sierra Club and Kansas Appleseed

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<sup>10</sup> Application, Report, pg. 43.

filed the Cross-Answering Testimony of Roger Colton. The Gas Utilities filed the Cross-Answering Testimony of Paul H. Raab.

9. On June 27, 2022, the Commission held a public hearing to receive oral public comments on Evergy's Application. The public hearing was exceptionally well attended, and a large number of attendees provided comments. Commenters were overwhelmingly supportive of expanded energy efficiency programs in Kansas, with many indicating a specific desire for a "Pay As You Save" (PAYS) program.<sup>11</sup>

10. On July 13, 2022, the Commission's Office of General Counsel filed written public comments received by the Commission's Office of Public Affairs and Consumer Protection and an accompanying memo. The memo noted the Commission had received 258 public comments on Evergy's Application. The Commission notes many of the written comments supported robust utility-funded energy efficiency programs, in general, and Evergy's Application, specifically. General themes repeated in comments were that a large scale portfolio of energy efficiency programs is long overdue in Kansas, and Evergy's portfolio should be supplemented with a PAYS program.<sup>12</sup>

11. On July 18, 2022, Evergy filed Rebuttal Testimony addressing the Direct and Cross-Answering Testimonies of Staff and Intervenors. Evergy filed the Rebuttal Testimonies of Darrin Ives, Charles Caisley, Natalie Gray, Brian File, Tim Nelson, Mark Foltz, and Kim Winslow.

12. On August 1, 2022, Evergy, Staff, CURB, and the Environmental Groups filed a Motion to Approve Non-Unanimous Partial Settlement Agreement on DSM Programs (Initial Program Settlement). The Initial Program Settlement addresses the portfolio of DSM programs

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<sup>11</sup> A recording of the public hearing in this docket can be found at: <https://www.youtube.com/watch?v=ZA5PXgXNi8I>. The public hearing recording is hereby noticed as part of the official record in this docket.

<sup>12</sup> Notice of Filing of Public Comments (July 13, 2022).

Evergy should offer under KEEIA and suggests specific modifications to the portfolio set forth in Evergy's Application. Material terms of the Initial Program Settlement are briefly summarized as follows:

- Budgets of programs reduced by as much as 28%;
- Modified savings targets aligned with settlement budgets;
- Remove certain program components from the Whole Business Efficiency and Hard-to-Reach Business programs;
- Budget guardrails and other limitations on Hard-to-Reach Homes program;
- Remove screw-in LEDs budget from Whole Home Efficiency program;
- Convert On-Bill Financing program to a PAYS tariff, subject to future Commission review and approval;
- Reduce budget for Pilot Incubator Program by 80% for years 1 and 2, with the potential to unlock additional budget in years 3 and 4;
- Staff-directed auditor will be hired for Evaluation, Measurement, and Verification (EM&V), with EM&V methodology submitted to the Commission for expedited approval; and
- Establishment of collaborative process to refine the DSM framework in Kansas.<sup>13</sup>

13. Also on August 1, 2022, Evergy, CURB, and the Environmental Groups filed a Motion to Approve Non-Unanimous Partial Settlement Agreement on Financial Recovery (Initial Financial Settlement). The Initial Financial Settlement recommends the Commission approve the financial recovery mechanisms proposed by Evergy in its Application, consistent with specific terms related to program carrying costs, the TD mechanism (also referred to herein as the Lost Revenue Adjustment Mechanism or LRAM), and Evergy's EO.<sup>14</sup>

14. On August 3, 2022, Evergy, Staff, CURB, CEP, NRDC, Sierra Club, and Kansas Appleseed each filed testimony in support of the Initial Program Settlement. Only the Gas Utilities filed testimony in opposition to the Initial Program Settlement.

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<sup>13</sup> Motion to Approve Non-Unanimous Partial Settlement Agreement on DSM Programs, Exhibit A, pgs. 2-9 (August 1, 2022)(Initial Program Settlement).

<sup>14</sup> *Id.* at 2-3.

15. On August 3, 2022, Evergy, CURB, CEP, NRDC, Sierra Club, and Kansas Appleseed filed testimony in support of the Initial Financial Settlement. Staff and KIC<sup>15</sup> filed testimony opposing the Initial Financial Settlement.

16. On August 9-10, 2022, the Commission held an evidentiary hearing on Evergy's Application and the initial settlement agreements. The Commission received the testimonies of Charles Caisley, Kimberly Winslow, Brian File, Natalie Gray, Tim Nelson, Mark Foltz and Darren Ives on behalf of Evergy; Paul Raab on behalf of the Gas utilities; James Owen on behalf of CEP; Roger Colton on behalf of The Sierra Club and Kansas Appleseed; Stacy Sherwood on behalf of NRDC; Alice Napoleon on behalf of CURB; Greg Meyer on behalf of KIC; and Lisa Parcell; Jeffrey Jarman, Leo Haynos, Lana Ellis, Robert Glass, Doug Hall and Justin Grady on behalf of Staff. Each of the parties had an opportunity to cross-examine the witnesses and Commissioners were afforded an opportunity to question the witnesses, as well. A transcript of the live proceedings was made and is part of the official record in this docket.

17. On November 15, 2022, following a series of stays requested by Evergy, Evergy, Staff, and the Gas Utilities filed a Joint Motion for Consideration of Alternative Settlement Agreement.

18. The Non-Unanimous Alternative Settlement Agreement (Alternative Settlement) includes a 4-year budget for five programs: Business Demand Response, Home Demand Response, Residential Energy Education, Business Energy Education and Hard-to-Reach Homes. The Alternative Settlement covers both the program and financial aspects of a potential alternative KEEIA portfolio than that envisioned in the Initial Program Settlement.

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<sup>15</sup> KIC filed The Direct Testimony of Greg R. Meyer. Mr. Meyer's testimony is labelled as "Direct Testimony" and does not reference the Financial Settlement. However, the testimony solely objects to implementation of a lost revenue recovery mechanism, which is a component of the Financial Settlement.

19. On November 22, 2022, Evergy and Staff filed testimony in support of the Alternative Settlement. On December 2, 2022, CURB, Kansas Appleseed, CEP, and Sierra Club filed testimony in opposition to the Alternative Settlement. KIC was not a signatory to the Alternative Settlement but represented that it did not oppose it.<sup>16</sup>

20. On January 5, 2023, the Commission held an evidentiary hearing on the Alternative Settlement Agreement. The Commission received testimony from Darren Ives, James Owen, Roger Colton, Alice Napoleon and Justin Grady. The witnesses were available for cross-examination by the parties and Commissioners.

### **III. Findings and Conclusions**

21. As described more fully below, the Commission approves the Initial Program Settlement and Initial Financial Settlement, with certain modifications and conditions. The Commission finds that given the ratios of dollars spent to projected energy savings, the Initial Settlement is a more beneficial and impactful option for customers. The Alternative Settlement, although less costly, advances a more narrow and limited portfolio of programs that will not jumpstart much needed energy efficiency efforts in the State in furtherance of the goals set forth in KEEIA.<sup>17</sup> Because the Commission is not adopting the Alternative Settlement, the Commission

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<sup>16</sup> Joint Motion for Consideration of Alternative Settlement Agreement, pg. 3 (November 15, 2022).

<sup>17</sup> Staff represents that the reason that Staff and Evergy were able to come together to form the Alternative S&A is because the dollars involved are significantly less than what is contained in the Initial S&A. (Justin Grady's Testimony in Support of Alternative S&A, pgs. 17-19 (November 22, 2022)). While the Alternative S&A has a lower budget than the Initial S&A, it is also projected to produce significantly less energy and power savings during the four year period. Specifically, the Initial S&A is estimated to help ratepayers save 243,882 MWh of energy and 246 MW of demand compared to just 19,789 MWh and 163 MW saved with the Alternative S&A. (CURB Post-Hearing Brief, pg. 49 (Feb. 6, 2023)). This reduction in savings is attributed to both the elimination of energy efficiency programs and the reduction in participation levels. (*Id.*) Alice Napoleon estimated that the loss of programs in the Alternative S&A will result in a reduction of participation by at least one-third relative to anticipated levels for the original filing. (*Id.*)



limits its analysis to the Initial Settlement Agreements and whether they satisfy the Commission's five-factor test for adoption of settlements.

22. In the sections below, the Commission evaluates the Initial Program Settlement and Initial Financial Settlement under its established five-factor test for approval of non-unanimous settlement agreements.

23. The law generally favors compromise and settlement of disputes between parties when they enter into an agreement knowingly and in good faith to settle the dispute.<sup>18</sup> The Commission may accept a non-unanimous settlement agreement so long as it makes an independent finding, supported by substantial competent evidence in the record as a whole, that the settlement will establish just and reasonable rates.<sup>19</sup> The Commission follows a five-factor test to guide its decision as to whether a non-unanimous settlement agreement constitutes a reasonable remedy or resolution of the issues. Those factors are as follows:

- i. Whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the settlement;
- ii. Whether the settlement is supported by substantial competent evidence;
- iii. Whether the settlement conforms with applicable law;
- iv. Whether the settlement results in just and reasonable rates; and
- v. Whether the results of the settlement are in the public interest, including the interest of the customers represented by the party not consenting to the agreement.<sup>20</sup>

**A. Opposing parties were afforded an opportunity to be heard**

24. All parties, including the opposing parties, had ample opportunity to be heard on the Initial Program Settlement and Initial Financial Settlement. In addition to receiving extensive

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<sup>18</sup> See *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-42 (2001).

<sup>19</sup> *Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n*, 28 Kan. App. 2d 313, 316 (2000) (citing *Farmland Industries*, 24 Kan. App. 2d at 186-87 [1997]). See also, *Herrera-Gallegos v. H&H Delivery Service, Inc.*, 42 Kan. App. 2d 360, 360 (2009).

<sup>20</sup> See Docket No. 08-ATMG-280-RTS, Order Approving Contested Settlement Agreement pg. 5 (May 12, 2008).

pre-filed expert testimony from the parties, the Commission conducted two evidentiary hearings with opportunities for opposing parties to cross-examine witnesses. Parties were also afforded an opportunity to submit briefing on the various proposals in this docket. No party argues that this factor has not been met.

**B. The Initial Settlements are supported by substantial competent evidence**

25. Approval of the Initial Program Settlement and Initial Financial Settlement, as conditioned and modified by the Commission, is supported by substantial competent evidence. No party contends the Initial Settlements are not supported by substantial competent evidence, and to the degree this Order deviates from those agreements, it will cite the evidence relied upon. To determine whether there is substantial competent evidence, the record must contain evidence which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved.<sup>21</sup>

26. Here, the Application included a Report on Evergy's DSM portfolio filing that contained cost-effectiveness testing results and narratives behind each offering.<sup>22</sup> This report also included a residential customer survey conducted by Evergy in August 2021 that was used to develop the portfolio.<sup>23</sup> Representatives from each party filed testimony, with some parties filing cross-answering testimony to address other parties' positions on the Application. After the Initial Settlements were filed, parties submitted supporting and opposing testimony on the merits of the agreements. As noted above, the Commission also received written public comments, convened a public hearing, and received additional evidence during two evidentiary hearings. As a result of extensive proceedings and submission and testing of evidence, the Commission conclusively finds

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<sup>21</sup> *Farmland Indus., Inc. v. State Corp. Comm'n of State of Kan.*, 25 Kan. App. 2d 849, 852 (1999), quoting *Southwestern Bell Tel. Co. v. Kansas Corp. Comm'n*, 4 Kan. App. 2d 44, 46 (1979).

<sup>22</sup> Application, Report pgs. 27-44.

<sup>23</sup> Application, Report at Appendix G.

there is substantial competent evidence in the record as a whole to support approval of the Initial Settlements, as further conditioned and modified below.

### **C. The Initial Settlements Conform with Applicable Law**

27. The Kansas Legislature passed the Kansas Energy Efficiency Investment Act (KEEIA) in 2014. The legislation directly expressed Kansas' intent "to promote the implementation of cost-effective demand-side programs in Kansas" and unambiguously set a policy for the State "to value demand-side program investments equal to traditional investments in supply and delivery infrastructure as much as is practicable...."<sup>24</sup> These statutory directives and State policy guide the Commission's decision in this matter.

28. DSM programs offered by electric utilities are statutorily defined as programs "to reduce the net consumption of electricity by a retail electric customer," and "may include, but shall not be limited to: (A) Energy efficiency measures, not to include any measures to incent fuel switching for residential heating systems; (B) load management; (C) demand response; and (D) interruptible or curtailable load."<sup>25</sup>

29. In contrast to ratemaking for most traditional utility investments and activities, KEEIA expressly authorizes certain non-traditional ratemaking mechanisms to further encourage investments in DSM programs.<sup>26</sup> These mechanisms may include, among other things, capitalization of investments in and expenditures for demand-side programs, recovery of lost revenue associated with demand-side programs and allowing the public utility to retain a portion of the net benefits of a demand-side program for its shareholders.<sup>27</sup> KEEIA also gives very specific

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<sup>24</sup> K.S.A. 66-1283(b).

<sup>25</sup> K.S.A. 66-1283(a)(3).

<sup>26</sup> K.S.A. 66-1283(d)(1).

<sup>27</sup> K.S.A. 66-1283(d)(1).

ratemaking guidance to achieve the statute's goals. This guidance directs the Commission to provide timely cost recovery, ensure an electric public utility's financial incentives are aligned with helping its customers use energy more efficiently and in a manner that sustains or enhances such customers' incentives to use energy more efficiently, and provide timely earnings opportunities for public utilities associated with cost-effective, measurable and verifiable demand-side program savings.<sup>28</sup>

30. There is apparent broad consensus on the record that the Initial Settlements comply with the requirements of KEEIA, including agreement among the parties that the DSM programs described under those settlements are expected to be cost effective. Only one party contends the Initial Settlements do not comply with Kansas law, and only on very narrow grounds. The Gas Utilities claim the "Business Comfort" portion of the Whole Business Efficiency and Hard-to-Reach Business program offerings in the Initial Program Settlement is inconsistent with the provisions of KEEIA and past KCC guidance. Gas Utilities contend the programs must "include either a like-for-like appliance replacement restriction or an up-front calculation requirement and affidavit that assures the appliance replacements funded by the subsidized rebate will result in a reduction in the net consumption of electricity by the participating business customer."<sup>29</sup> Put more simply, the Gas Utilities contend these program components are inconsistent with KEEIA because they do not prohibit consumer "fuel-switching" and may not result in a net consumption of electricity.

31. The Commission disagrees with the Gas Utilities' interpretation of KEEIA, and does not find the subject business program measures to be unlawful. However, as described more fully below, the Commission finds ratepayer funds should not be used for the Business Comfort

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<sup>28</sup> K.S.A. 66-1283.

<sup>29</sup> Post Hearing Brief of the Gas Utilities, pg. 5 (February 6, 2023).

portion of Evergy's KEEIA programs when appliance replacements are not like-for-like. Thus, the Gas Utilities' concern is moot. Therefore the Commission finds that the Initial Settlements conform with applicable law.

**D. The Initial Settlements Result in Just and Reasonable Rates and Promote the Public Interest of the State of Kansas**

32. Because the questions of just and reasonable rates and the public interest are inextricably intertwined in this proceeding, the Commission will address both in this section.

33. As an initial matter, it does not appear any party contests a finding that the Initial Program Settlement will result in just and reasonable rates and is in the public interest. The parties cite abundant record evidence on the programs and measures in the Initial Program Settlement to show that they pass benefit-cost testing sufficient to satisfy Commission standards and KEEIA requirements.<sup>30</sup> In fact, no party contends the programs will not be cost-beneficial.

34. KEEIA gives the Commission full discretion to establish appropriate benefit-cost tests to use when evaluating energy efficiency programs.<sup>31</sup> In Docket No. 16-KCPE-446-TAR ("16-446 Docket"), the Commission reaffirmed a prior interpretation of KEEIA's policy objectives from Docket No. 08-GIMX-442-GIV regarding the types of benefit-costs tests it would utilize.<sup>32</sup> These policy objectives included reducing or postponing future construction of generation and the mitigation of customer bill increases.

35. The Commission examines the Participant Cost Test (PCT), Ratepayer Impact Measure Test (RIM), Program Administrator Test (PAC), and Total Resource Cost Test (TRC), with the TRC and RIM results having primary emphasis in light of the stated policy objectives.<sup>33</sup>

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<sup>30</sup> Evergy Initial Post-Hearing Brief, pg. 20 (Feb. 6, 2023), Staff's Closing Brief, pg. 9 (Feb. 6, 2023), CURB Post-Hearing Brief, pgs. 23-24 (Feb. 6, 2023).

<sup>31</sup> K.S.A. 66-1283(c)(1)(D).

<sup>32</sup> Docket No. 16-KCPE-446-TAR, Final Order, pg. 35 (June 22, 2017).

<sup>33</sup> *Id.*

While there are no established limits for program implementation, the Commission has indicated that programs with TRC results below 1.0 or RIM results below 0.7 are unlikely to be approved.<sup>34</sup> Programs with low RIM results could still be approved with consideration of other factors, such as performance on other tests and effect on policy goals.<sup>35</sup>

36. Here, there is substantial competent evidence that the programs in the Initial Program Settlement pass cost-effectiveness review. First, the original Application indicated that the programs selected for this filing received TRC scores above 1.0 and RIM score above 0.7.<sup>36</sup> Staff also performed an analysis of the cost-effectiveness of the programs. While Staff identified several specific concerns regarding the cost-effectiveness of certain program components, these were remedied to Staff's satisfaction in the Initial Program Settlement.<sup>37</sup> In briefing, no party contended the Programs will not be cost-effective.

37. Evergy estimates the bill impact from its original proposal to be 1% to 2%.<sup>38</sup> The record does not contain an estimated bill impact for the Initial Settlements, but the Initial Settlements represent a material reduction to many of Evergy's proposed program budgets; therefore, the Commission presumes the settlement will have a total bill impact of less than 1-2%. More important than the initial cost of implementing DSM programs, however, is the record evidence indicating customer savings over the long term.<sup>39</sup> Analysis by Evergy and Staff show the portfolio will produce lower overall costs in the long run.<sup>40</sup>

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<sup>34</sup> *Id.* at pgs. 3-4.

<sup>35</sup> Glass, Direct Testimony, pg. 34 (June 17, 2022).

<sup>36</sup> Application, pg. 46, DSM Portfolio Filing at Table 7.

<sup>37</sup> Settlement Testimony of Robert H. Glass, pgs. 2-3 (April 4, 2022); Motion to Approve Non-Unanimous Partial Settlement Agreement on DSM Programs, Exhibit A, pgs. 3-4, Section (B)(a) and (c) (August 1, 2022).

<sup>38</sup> *See* Evergy DSM Portfolio Filing at pgs. 11-13, Figure 5 & 6.

<sup>39</sup> Tr. pg. 86-87 lines 23-1 (Jan 5, 2023).

<sup>40</sup> Staff's Closing Brief, Exhibits F and G (February 6, 2023).

38. The Commission’s view of “just and reasonable rates” and “the public interest” is broader than immediate bill impacts. The Commission must evaluate not just the cost of programs, but also what customers are receiving for that cost. Here, customers are gaining access to programs that allow them to better control their energy usage and their bills. As noted above, the Commission received substantial feedback from the public that they want access to these types of programs. While there is ample evidence that the system as a whole will benefit from the KEEIA portfolio, the Commission is also compelled to provide opportunities for low and fixed income customers to control their bills. In the Commission’s view, programs serving these communities make rates more just and reasonable for all. The continued absence of energy efficiency tools for these communities contributes to less just and reasonable rates.

39. The Evaluation, Measurement, and Verification (EM&V) process in the Initial Program Settlement, and as enhanced below, will allow stakeholders and the Commission the means to thoroughly vet the results of implementation and ensure a collaborative approach is utilized. Staff will have the option to hire its own auditor to assist in the review, and any EM&V methodology must first be approved by the Commission.<sup>41</sup> The EM&V process outlined in the Initial Program Settlement will allow parties to generate data to improve programs, and more importantly, to support claims, if any, of excessive costs to ratepayers. The limited four year nature of the Initial Settlements means that the Commission will ultimately have a say in whether these programs and accompanying cost recovery mechanisms continue.

40. While there is broad agreement the Initial Program Settlement will result in just and reasonable rates and promote the public interest, there is disagreement about whether the Initial Financial Settlement also meets these standards. Staff contends two specific aspects of the Initial

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<sup>41</sup> Motion to Approve Non-Unanimous Partial Settlement, Exhibit A, Section (C)(a)(i)-(v), pgs. 7-8 (August 1, 2022).

Financial Settlement, the EO and the TD Mechanism, are either not in the public interest or do not “contribute to just and reasonable rates.”<sup>42</sup> KIC also submitted testimony supporting the Staff position on lost revenue recovery (the TD mechanism).

41. Staff opposes the Initial Financial Settlement as presented and recommends changes. First, Staff argues the proposed EO found in the initial financial settlement, allowing Evergy to retain 18% of net benefits, is excessive.<sup>43</sup> Staff recommends a different form of EO, based on a percentage of spend instead of a retention of net benefits, equal to the weighted average equity return currently authorized for both Evergy utilities in their last base rate cases.<sup>44</sup>

42. The Commission observes Staff’s mechanism, a percentage return based on program spend, would shift the EO from an incentive mechanism to a compensation mechanism. While the Commission understands Staff’s desire to use this more traditional ratemaking approach – and reasoning that it will help value demand side investments equally to traditional invests – the Commission does not agree with utilizing a “percent of spend” approach at this time. First, simply utilizing the same compensation approach for demand and supply side investments, particularly when one option has virtually no existing track record or infrastructure, does not guarantee those investments will be valued equivalently by customers or utility management. For example, the potential for long term demand destruction or foregone future investment could certainly devalue DSM investments from a utility perspective, even if the utility receives the same short term compensation. In these situations, KEEIA rightly recognizes the need for innovative financial recovery approaches.

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<sup>42</sup> Staff’s Closing Brief, pgs. 15-24 (Feb. 6, 2023).

<sup>43</sup> Direct Testimony of Justin T. Grady, pg. 3 (June 17, 2022); Testimony in Opposition to Non-Unanimous Settlement Agreement of Justin T. Grady, pg. 18 (August 3, 2022).

<sup>44</sup> Staff’s Closing Brief, pg. 17 (Feb. 6, 2023).



43. The Commission believes an incentive mechanism allowing Evergy to retain a percentage of net energy savings is more consistent with KEEIA's directive to "ensure that the financial incentives for an electric public utility are aligned with helping such utility's customers use energy more efficiently and in a manner that sustains or enhances such customers' incentives to use energy more efficiently."<sup>45</sup> With an incentive EO, as proposed in the Initial Financial Settlement, Evergy is only able to access its EO when customers experience energy savings. If customers realize zero benefits (or even benefits materially less than targeted), Evergy receives zero earnings. Evergy can only unlock earnings by producing customer savings. The structure and magnitude of Evergy's EO should be revisited at the conclusion of every program cycle. As programs mature and evolve, it may be appropriate to substantially modify the EO.

44. The Commission is more sympathetic to Staff's contention that the EO level of 18% is excessive. As described more fully below, the Commission modifies the Initial Financial Settlement to adjust the proposed 18% retention of net benefits EO downward to 15%.

45. Staff also contends Evergy's proposed LRAM (or TD mechanism) contained in the Initial Financial Settlement is deeply flawed because it could allow Evergy to recover more revenue than was authorized in the most recent rate case.<sup>46</sup> Staff witness Douglas Hall comprehensively presented Staff's concerns regarding Evergy's proposed LRAM and recommended that Evergy's lost revenue be capped at Evergy's last-approved base revenue requirement.<sup>47</sup> Staff witness Grady later modified Staff's recovery cap recommendation to account for identifiable revenue requirement increases in between rate cases.<sup>48</sup> In addition to the criticism

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<sup>45</sup> K.S.A. 66-1283(e)(2).

<sup>46</sup> Testimony in Opposition to Non-Unanimous Settlement Agreement of Justin T. Grady, pgs. 4-5 (August 3, 2022)(Grady Initial Financial Settlement Testimony).

<sup>47</sup> Direct Testimony of Douglas W. Hall, pgs. 9-11 (June 17, 2022).

<sup>48</sup> Testimony in Opposition to Non-Unanimous Settlement Agreement of Justin T. Grady, pgs. 22-23 (August 3, 2022).

above, Staff emphasized the following past Commission criticisms of an LRAM mechanism: “1) it placed too much weight on accurate evaluation of program impacts; 2) it increased the potential for expensive, time-consuming litigation; 3) it forced the Commission to rely on outside firms to evaluate the methodology; and 4) it failed to measure free ridership in evaluating the impact of energy efficiency programs.”<sup>49</sup>

46. The parties supporting the Initial Financial Settlement vigorously disagree with Staff’s view of the LRAM and past Commission commentary on such mechanisms. Evergy directly argues Staff’s recommendations would not allow the utility to recover the lost revenue associated with DSM programs.<sup>50</sup> Evergy also contends there are technical flaws within both Staff’s proposed modifications to the LRAM.<sup>51</sup> Most notably, Evergy criticizes the “one-sided” treatment of cost recovery, as proposed by Staff witness Hall:

Mr. Hall recommends utilizing all benefits from DSM programs to offset any other increase in cost of service, virtually all of which would be completely unrelated to operation and execution of the DSM programs. His one-sided proposal inappropriately offsets the loss of kWh sales from DSM programs with any growth in sales Evergy may otherwise experience due to other factors and efforts. Mr. Hall’s proposal is especially egregious because it does so without consideration of any increased costs the Company may have experienced in the same time frame, including costs incurred to capture the sales growth in other areas. Additionally, Mr. Hall fails to explain how his estimate of weather-normalized non-fuel revenue would be prepared. The deficiencies in Mr. Hall’s limited decoupling proposal are significant and, if implemented, would not provide sufficient TD recovery for Evergy to be kept whole in promoting EE under the intent of the KEEIA statute. It guarantees that Evergy would receive all of the costs of the programs, but no assurance that it would recover the costs. This would be a significant indication that, once again, Evergy should not move forward with DSM programs in Kansas.<sup>52</sup>

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<sup>49</sup> Staff’s Closing Brief, pg. 19 (Feb. 6, 2023).

<sup>50</sup> Evergy Initial Post-Hearing Brief, pg. 12 (February 6, 2023); Evergy Reply Brief pgs. 10-11 (February 27, 2023).

<sup>51</sup> Evergy Initial Post-Hearing Brief, pgs. 9-10 (February 6, 2023).

<sup>52</sup> *Id.* at 9.

47. Evergy further notes the primary source material relied on by Staff to criticize LRAMs ultimately recommends their adoption because they can bring parties to the table where decoupling is not feasible and can serve as “first-step policy solution” while other cost-recovery mechanisms are developed.<sup>53</sup> Finally, Evergy also addressed past Commission concerns about LRAM mechanisms, which Staff cited prominently. Evergy urges that energy and demand savings can be reliably measured, citing its experience in Missouri and technological advances since the prior Commission Order.<sup>54</sup>

48. Other signatories to the Financial Settlement also supported adoption of the LRAM without Staff’s modifications. CURB witness Alice Napoleon offered the following observation about the pros and cons of the Financial Settlement:

In discussing the history of energy efficiency in Kansas with CURB, it is apparent that much time, effort, and resources have been expended at each opportunity to implement more expansive plans. I agree with CURB and other parties that energy efficiency is long overdue for a bigger role in meeting the energy needs of Evergy ratepayers. While this form of financial recovery may be larger than provided in some other states, the alternative with the status quo is even less palatable as the world works to shift away from more “traditional” generation sources.<sup>55</sup>

49. The Environmental Intervenors empathized with Staff’s resistance to the LRAM but contended Staff’s position ignores provisions of KEEIA expressly allowing such mechanisms.<sup>56</sup> And NRDC witness Stacey Sherwood offered specific advice on why the proposed LRAM is acceptable in this case,

LRAMs serve as a commonly used tool to incentivize energy efficiency in states where energy efficiency is not mandatory. When limitations are put in place, such as the proposed measure life cap and resetting of the LRAM with each rate case, the impact of recovery mechanism on ratepayers is limited. Furthermore, the

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<sup>53</sup> Evergy Initial Post-Hearing Brief, pg. 11 (February 6, 2023); Grady Testimony Opposing Initial Financial Settlement, Ex. JTG-2, pg. vi (August 3, 2023).

<sup>54</sup> Ives, Testimony in Support of Non-Unanimous Alternative KEEIA Settlement Agreement, pgs. 7-9, 20-21 (November 22, 2022).

<sup>55</sup> Alice Napoleon, Testimony in Support of Settlement Agreements, pgs. 17-18 (August 3, 2022).

<sup>56</sup> Environmental Intervenors’ Joint Post-Hearing Brief in Support of Initial Non-Unanimous Partial Settlement Agreements, and in Opposition to Alternative Non-Unanimous Settlement Agreement, pg. 18 (February 6, 2023).

settlement's proposed rigorous evaluation, measurement, and verification ("EM&V") process, based upon well-established EM&V processes elsewhere in the country, will ensure the proper level of savings is reflected as part of the LRAM.<sup>57</sup>

50. The Commission finds the position of the parties supporting the Financial Settlement convincing. Staff raises legitimate ratemaking concerns, and the Commission would likely not consider "EOs" and "LRAMs" in a traditional ratemaking context. But accounting for the costs and savings of energy efficiency is not a traditional ratemaking context. KEEIA recognizes this fact and expressly authorizes non-traditional ratemaking mechanisms to better align customer and utility interests. The Commission finds these ratemaking methods are necessary to begin implementing KEEIA programs at scale in Kansas. That said, the Commission does recognize the drawbacks and challenges of an LRAM, and believes additional guardrails are necessary to protect customers. As set forth below, the Commission conditions approval of the Initial Financial Settlement on ultimate approval of robust EM&V, beyond what is described in the Settlement. The Commission also recognizes extensive record evidence indicating LRAMs should be considered a "first step" to better financial recovery mechanisms and expects Evergy, Staff, and other stakeholders to continually review and improve the mechanisms deployed in our State.

51. With the downward modification of the EO, a requirement of a more robust EM&V, and other safeguards for the LRAM provided in the Settlement, the Commission is satisfied both the Initial Program Settlement and the Initial Financial Settlement will result in just and reasonable rates and promote the public interest.

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<sup>57</sup> Settlement Testimony of Stacy L. Sherwood, pg. 2 (August 3, 2022).

## **IV. Conditions and Modifications**

### **A. Downward Modification of EO**

52. Staff states that Evergy's proposed EO of 18% of net benefits would be among the highest authorized in the country.<sup>58</sup> As noted above, Staff suggested implementing a "percent of spend" EO rather than recommending a specific percentage under a retention of benefits framework. Although CURB ultimately became a signatory to the Financial Settlement, its witness, Alice Napoleon, initially suggested a range of 5-15% for the EO would be more reasonable than the 18% figure proposed in Evergy's Application and, ultimately, the Initial Financial Settlement.<sup>59</sup>

53. Evergy argues that simply reviewing EOs between states is not an apples-to-apples comparison given the inherent differences in the programs between the states.<sup>60</sup> For example, in Missouri, Ameren has an EO of between 4.9 and 6.2% of net benefits, but that same EO could just as accurately be described as 23% of program spend.<sup>61</sup>

54. The Commission finds there is very little evidence to support Evergy's proposed 18% of net benefits EO except Evergy's own testimony that this is its preferred incentive level. While the Commission is aware no two state energy efficiency portfolios and recovery mechanisms are completely alike, and there is limited value in direct comparisons, the Commission is persuaded an 18% EO would be among the highest in the country and exceed the incentive necessary to achieve savings. The Commission modifies the Evergy EO from 18% to 15%. In the Commission's view, an EO of 15% is more reasonable in comparison with other states, while still providing a very material incentive for Evergy to achieve savings for customers. While 15% is still

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<sup>58</sup> Staff's Closing Brief, pg. 17 (February 6, 2023).

<sup>59</sup> Direct Testimony of Alice Napoleon, pgs. 7-8 (June 17, 2022).

<sup>60</sup> Evergy's Initial Post-Hearing Brief, pgs. 14-15 (February 6, 2023).

<sup>61</sup> *Id.*

on the high end of Napoleon’s recommendation set forth in Direct Testimony, the Commission is attempting to balance interests and give effect to the intent of the settling parties who all agreed on an even larger incentive. The Commission makes no changes to the incentive matrix proposed by Staff and included in the Initial Financial Settlement, which it recognizes can alter the EO depending on the achievement of savings in comparison to targeted amounts.

### **B. Approval Conditioned on Approval of EM&V Approach**

55. The Initial Program Settlement sets forth the following term regarding EM&V of Evergy’s programs: “Agree EM&V methodology will be submitted to the Commission for expedited approval.”<sup>62</sup> There is no discussion of methodology or assurances that the approach will satisfy this Commission. The Commission believes robust EM&V, using modern technological approaches, is vital to the success and continued public support for energy efficiency programs in Kansas.<sup>63</sup> As stated in Exhibit JTG-2, which was a guiding source of information on LRAM mechanisms, and the subject of much debate and discussion during this proceeding, “[E]valuation techniques continue to improve and evolve as new technologies open the door for real-time analysis of certain program types. Embracing these technological innovations may simplify and streamline EM&V processes.”<sup>64</sup> The Commission observes EM&V results will impact future benefit-cost analyses, calculation of lost revenue, Evergy’s earnings opportunity, and will influence the utility’s incentives to implement the programs in a manner that maximizes real-world savings. As discussed above, the need for accurate savings measurements to feed into recovery

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<sup>62</sup> Initial Program Settlement, pg. 7.

<sup>63</sup> The Commission discussed its concerns regarding measurement of savings with Evergy witnesses Ives and Nelson at the Evidentiary Hearing on the Alternative Settlement. Tr. pgs. 78-85, 111 (January 5, 2023).

<sup>64</sup> Grady Testimony Opposing Initial Financial Settlement, Ex. JTG-2, pg. 19 (August 3, 2023).

mechanisms is a concern for many parties. Thus, it is inappropriate to wholly defer this key aspect and segregate it from overall portfolio approval.

56. The Commission finds and concludes approval of the Initial Settlement is conditioned upon Commission approval of a robust and modern EM&V methodology. The Commission agrees with the settlement term allowing such methodology to be submitted for expedited approval. To guide the parties in developing an EM&V approach, the Commission gives the following guidance. The Commission expresses a strong preference for “measured savings,” as opposed to “deemed savings” approaches. And more specifically, meter-based data should be used in every instance where it is feasible and cost-effective.<sup>65</sup>

57. The Evergy utilities have invested substantial capital in advanced metering infrastructure within their service territories. These so-called “smart meters” have now been included in customer rates for many years. The Commission views the enhanced data made available by this metering infrastructure as a primary benefit of the investment, and the evaluation and targeting of energy efficiency programs is an obvious use-case for the data. In fact, Evergy witness Ives agreed at hearing that EM&V could be enhanced through the use of smart meter data<sup>66</sup> and noted “[Evergy is] looking every day on how we can better utilize that big data that’s unlocked by those meters that customers are paying for to improve the efficiency or effectiveness of service.”<sup>67</sup> In written testimony, Ives also pushed back on criticisms of the LRAM, noting EM&V “has advanced significantly since the 16-446 Order with use of interval data to further validate and

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<sup>65</sup> The Commission takes official notice of, and directs the parties’ attention to, a recent Order of the California Public Utilities Commission (CPUC) wherein the CPUC lists benefits of meter-based measurement and sets a framework for a utility to justify an exception to the use of such methods based on feasibility or cost-effectiveness. Application of Pacific Gas and Electric Company for Approval of 2024-2031 Energy Efficiency Business Plan and 2024-2027 Portfolio Plan, Application 22-02-005, DECISION AUTHORIZING ENERGY EFFICIENCY PORTFOLIOS FOR 2024-2027 AND BUSINESS PLANS FOR 2024-2031. <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M512/K907/512907396.PDF>.

<sup>66</sup> Tr. pg. 83 (January 5, 2023).

<sup>67</sup> *Id.* at 84.

measure program savings.”<sup>68</sup> The Commission expects the EM&V approach Evergy proposes in response to this condition should ensure transparency, give the Commission high confidence in savings calculations, and incentivize the utility to implement its programs in a manner that maximizes real-world savings and overall value to the system.

### **C. Approval Conditioned on No Direct Ratepayer Funding of Fuel-Switching Measures**

58. As discussed above, the Commission disapproves of customer funding of Business Comfort measures when appliance replacements are not “like-for-like.” While KEEIA does not expressly forbid fuel-switching measures in a business setting, the Commission does not believe such measures are appropriately funded under the auspices of a KEEIA program at this time. While switching from natural gas heating to an electric heat pump *may* be more energy efficient,<sup>69</sup> fuel-switching decisions are often more complex. The Commission believes a consumer’s choice of heating systems can include considerations such as performance, cost, environmental impact, and many other items – in addition to efficiency. A policy on fuel-switching is best addressed through legislative direction or a more robust and specific Commission investigation. Thus, shoehorning fuel-switching measures into customer-funded energy efficiency programs, when the efficiency benefits of those measures are unknown at best, seems an overextension of KEEIA’s intended purposes. None of the above concerns apply when an appliance replacement is like-for-like. The Commission certainly encourages Evergy and its customers to locate and replace outdated, inefficient electric heating systems with modern systems.

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<sup>68</sup> Testimony of Darrin R. Ives, Testimony in Support of Non-Unanimous Partial Settlement Agreement – KEEIA Programs and in Support of Non-Unanimous Partial Settlement Agreement – Financial Recovery, pg. 6 (August 3, 2022).

<sup>69</sup> The Commission has received piecemeal and conflicting evidence on this point. The record evidence is not robust enough to conclusively find such actions are energy efficient or cost-effective.



59. The Commission notes the Inflation Reduction Act (IRA) contains provisions for electrification programs, and Staff’s briefing cites certain funding opportunities for commercial applications.<sup>70</sup> Should IRA funding become available, the Commission encourages Evergy to explore the possibility of federal funding for its Business Comfort measures or to collaborate and support other recipients of such federal funding. The use of Evergy’s KEEIA framework to utilize other, non-ratepayer funding sources will not be considered a violation of this condition.

#### **D. Approval Conditioned on Report Regarding Federal Funding Guidance**

60. As discussed in this proceeding,<sup>71</sup> federal funding opportunities may exist for energy efficiency programs implemented in the coming months and years. While such funding opportunities were more conjectural in nature during the evidentiary hearings in this proceeding, new federal guidance may now be available to inform Commission action. Depending on the federal guidance, some federal funding may be available to increase program budgets at no additional ratepayer cost or displace ratepayer funding of proposed budgeted amounts. Prior to implementation of programs, and within 60 days of this Order, Evergy and Staff shall confer and report to the Commission on any developments regarding federal funding opportunities and whether such developments warrant modification of this Order. The Commission may modify program parameters and budgets based on Evergy and Staff’s report. The Commission notes the following commitment contained in Evergy’s briefing:

“[U]tility programs are by nature ‘but for’ in the way they are designed to confirm a customer would not have taken that specific action without utility motivation. Therefore, utility programs would ensure Evergy engages with customers related to their purchase and motivations to upgrade, utilizing its EM&V for evaluation of motivations and removing savings found to be motivated purely outside of Evergy’s influence of education, and incentives. As stated by Mr. Ives, the purpose

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<sup>70</sup> Staff’s Closing Brief, pgs. 36-38 (February 6, 2023).

<sup>71</sup> *Id.*; Evergy Initial Post-Hearing Brief, pgs. 29-31 (summarizing discussion of federal funding opportunities in the official record) (February 6, 2023).

of the utility programs is to be complimentary – not duplicative or competitive – to whatever finalized programs and funding results.”<sup>72</sup>

The Commission expects implementation and EM&V of Evergy’s programs to adhere to these principles.

**E. Approval Conditioned on Modification of the Initial Program Settlement to Clarify the Commission Retains Full Jurisdiction to Consider a Future PAYS Program**

61. Section B.d.ii. of the Initial Program Settlement states “Commission will review *and approve* PAYS® tariff with financing plan.” (Emphasis added.) The Commission recognizes a PAYS program is an important component of the Settlement and received strong support in public comments. The Commission fully intends to give effect to the Settlement and make a PAYS program available to customers. However, the Commission will not commit to approve a PAYS tariff sight unseen, as the settlement term appears to indicate, without reviewing details and subjecting the filing to scrutiny by affected parties. The subject term shall be modified to read: “A PAYS® tariff with financing plan will be submitted to the Commission for review and approval.”

**F. Workshop Update**

62. At least 12 months prior to any application to renew or extend KEEIA, Evergy will provide the Commission with a workshop update detailing the effectiveness of its current KEEIA programs and changes expected in the subsequent application. This update should, at a minimum include updated calculations of savings by customers in terms of money and energy saved; bill impacts per customer; participation levels and lessons learned.

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<sup>72</sup> Evergy Initial Post-Hearing Brief, pgs. 29-30 (February 6, 2023).

### **G. Updated Implementation Timeline**

63. Given the extended nature of this docket, Evergy recommended the Commission approve a new timeline where the tariffs would be effective 30 to 60 days after the Commission Order and Evergy uses the remainder of 2023 to build the implementation infrastructure and begin a deliberate ramp up of market engagement as the programs are launched.<sup>73</sup> Evergy offers to work with Staff on timing and implementation.<sup>74</sup> Given the above conditions of approval and modifications to the Initial Settlements, the Commission finds an updated development and implementation timeline including PAYS and delayed tariff effective dates are warranted. Evergy is ordered to collaborate with Staff and file an updated timeline for implementation, including new proposed effective tariff dates, as soon as feasible.

#### **THEREFORE, THE COMMISSION ORDERS:**

- A. The Initial Program Settlement and Initial Financial Settlement, as modified above, are approved, subject to the conditions set forth above.
- B. Evergy shall collaborate with Staff and file an updated timeline for implementation.
- C. Any party may file for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>75</sup>

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

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

Dated: 09/01/2023



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Lynn M. Retz  
Executive Director

DGC

<sup>73</sup> Evergy Initial Post-Hearing Brief, pg. 45 (Feb. 6, 2023).

<sup>74</sup> *Id.*

<sup>75</sup> K.S.A. 77-503(c), K.S.A. 77-531(b).

## **DISSENTING OPINION**

### **Overview of KEEIA Settlement Options**

Pursuant to the Kansas Energy Efficiency Investment Act (KEEIA), K.S.A. 66-1283, on December 17, 2021, Evergy Kansas Metro, Inc., Evergy Kansas South, Inc. and Evergy Kansas Central, Inc. (collectively “Evergy”) filed an application seeking approval of its proposed Demand-Side Management Portfolio (“DSM” or “DSM Portfolio” or “DSM Programs”). Initial settlement negotiations for this Portfolio resulted in two separate partial, Non-Unanimous Settlement Agreements. These initial settlement agreements include a Non-Unanimous Partial Settlement Agreement – KEEIA Programs, which address the DSM Portfolio offered by Evergy under KEEIA, and a Non-Unanimous Partial Settlement Agreement – Financial Recovery, which addresses Evergy’s financial recovery including Throughput Disincentive (TPD) and an Earnings Opportunity (EO) (both initial settlements are collectively the “Initial Settlements”). Today, the Commission approved and adopted these two separate Initial Settlements with some modest modifications.

Implementing truly cost-effective energy efficiency programs is an important component of energy demand-side management in Kansas. However, to most effectively accomplish this objective, I support approving the Non-Unanimous Alternative Settlement Agreement of November 15, 2022, proposed by Commission Staff (“Staff”), Evergy, Kansas Gas Service, Atmos Energy, and Black Hills Energy (“Alternative Settlement”). The Alternative Settlement implements five of the nine energy efficiency programs initially sought by Evergy and produces a robust cost-effective energy efficiency program that provides approximately \$45 million of

Demand-Side Programs in Kansas over a four year period.<sup>1</sup> Generally, the major difference between the Initial Settlements and the Alternative Settlement is the scope and cost of the programs. As Evergy noted, “[t]he root of the difference is the financial recovery mechanism.”<sup>2</sup> Given Staff’s opposition to the financial recovery mechanism in the Initial Settlements, the parties negotiated an Alternative Settlement, with a reduced energy efficiency portfolio. In keeping with the stated goal of KEEIA to promote cost effective Demand-Side Programs, the Alternative Settlement is far more cost effective and practical for Kansas ratepayers than the Initial Settlements.

### **Benefits to Ratepayers under the Alternative Settlement**

As Staff testified, the Alternative Settlement implements a Demand-Side Program for less than half the incentive level of the Initial Settlements, and more efficiently utilizes ratepayer dollars.<sup>3</sup> Evergy has indicated its willingness to adopt the Alternative Settlement’s approach to energy efficiency and DSM Programs, in lieu of the Initial Settlements. I concur with the Staff’s characterization of the Alternative Settlement as representing “a viable path forward for Demand-Side Program implementation in Kansas *at a fraction of the original cost to ratepayers* compared to Evergy’s original Application or the Non-Unanimous Financial Settlement.”<sup>4</sup> (emphasis added). The Alternative Settlement is focused and centered upon the most consequential energy efficiency programs: Demand Response, Education and Low Income programs. Cost-effective Demand Response Programs create value for utilities and their customers, and are increasingly

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<sup>1</sup> Testimony in Support of Alternative Settlement Agreement Prepared by Justin T. Grady (Grady Supporting Testimony), Nov. 22, 2022, p. 5.

<sup>2</sup> Testimony of Darrin R. Ives in Support of Non-Unanimous Alternative KEEIA Settlement Agreement, Nov. 22, 2022, p. 5.

<sup>3</sup> Grady Supporting Testimony, p. 5.

<sup>4</sup> *Id.*

acknowledged and used to support grid reliability within the Southwest Power Pool (SPP) and throughout the United States.<sup>5</sup>

### **Accountability to Ratepayers and the Regulator**

In addition to providing substantial cost savings to ratepayers, the Alternative Settlement also contains more rigorous and exacting Evaluation Measurement and Verification (EM&V) auditing standards and methodologies to more precisely measure, evaluate and assess the actual lost revenue to Evergy from implementing the Demand-Side Programs.<sup>6</sup> Specifically, to enable greater ratepayer cost savings, the Alternative Settlement’s more rigorous EM&V process relies on site-specific data to determine energy savings enabled by the Demand-Side Program.<sup>7</sup> This audit and verification process allows the Commission to adopt Demand-Side Programs, while simultaneously permitting an ongoing evaluation process that accounts for impacts generated by the federal Inflation Reduction Act of 2022 (“IRA”).<sup>8</sup> This process would focus on the recovery of reasonable and prudent costs, and permit a more limited earnings opportunity for Evergy. While the Commission conditions its approval of the Initial Settlements on approval of a “robust and modern EM&V methodology”, it fails to offer sufficient detail to alleviate concerns that such EM&V methodologies are less rigorous than those in the Alternative Settlement.

### **IRA Impact on State DSM and Energy Efficiency Programs -- A Ratepayer-Cost Timing Dilemma**

The overall costs to Kansas ratepayers associated with the Initial Settlements approved by the Commission are unnecessarily excessive especially in light of the authorized and anticipated

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, pp. 17-18.

<sup>7</sup> *Id.*

<sup>8</sup> PL 117-169, 136 STAT 1818 (Aug. 16, 2022).

federal funds available to advance many energy efficiency goals under the IRA. The IRA is the largest investment in energy and climate initiative in American history, addresses many areas of energy efficiency and includes a number of consumer home energy rebate programs, tax credits for energy efficient measures and augmented loan and grant programs.<sup>9</sup>

Within its energy efficiency measures, the IRA establishes numerous and expansive new programs including:

- Point-of-sale rebates for whole-home energy retrofits and high-efficiency electric appliances.<sup>10</sup>
- Under the High-Efficiency Home Electric Rebate program, rebates for converting low- and moderate income households to expanded electric use.<sup>11</sup>
- Rebates for up to \$14,000 per household for electrification upgrades for heat pump HVAC systems and water heaters, electric cooking appliances, heat pump clothes dryers and upgraded circuit panels, insulation and wiring.<sup>12</sup>
- Under the Home Energy Performance-Based, Whole-House Rebates programs, rebates for supporting energy saving retrofits at qualifying properties.<sup>13</sup>
- Congress authorized \$9 billion for two major rebate programs, which will be distributed through grants to State Energy Offices.<sup>14</sup>

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<sup>9</sup> Staff's Closing Brief, Feb. 6, 2023, ¶ 77.

<sup>10</sup> PL 117-169, 136 STAT 2037-2038 § 50122.

<sup>11</sup> PL 117-169, 136 STAT 2038 § 50122(c).

<sup>12</sup> *Id.*

<sup>13</sup> PL 117-169, 136 STAT 2034 § 50121.

<sup>14</sup> PL 117-169, 136 STAT 2034 *et seq.* §§ 50121-50122.

- Congress also authorized \$1.5 billion in competitive grants for tree planting and other activities to reduce urban heat challenges.<sup>15</sup>
- Congress also extended and modified energy efficiency tax credits for residential energy properties.<sup>16</sup>
- The IRA tax credits cover several efficiency measures, including the property improvements, windows, doors, heat pumps, heat pump water heaters, and building envelope components.<sup>17</sup> There is an associated credit for home energy audits.<sup>18</sup>
- Tax credits were also modified and extended for solar, and qualified battery storage.<sup>19</sup>
- There is also a tax credit for energy efficient commercial buildings that applies to energy savings achieved with retrofits.<sup>20</sup>
- Building contractors may obtain a tax credit for constructing new energy efficient homes.<sup>21</sup>
- To compliment these programs, the U.S. Department of Energy loan authority was increased by \$100 million.<sup>22</sup>

Many of these federal programs will overlap or exceed measures being sought by Evergy in this Docket.<sup>23</sup> Adopting the more limited scope and cost-effective Alternative Settlement would

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<sup>15</sup> PL 117-169, 136 STAT 2026 §23003.

<sup>16</sup> PL 117-169, 136 STAT 1942 §13301.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> PL 117-169, 136 STAT 1946 §13302.

<sup>20</sup> PL 117-169, 136 STAT 1947 §13303.

<sup>21</sup> PL 117-169, 136 STAT 1952 §13304.

<sup>22</sup> PL 117-169, 136 Stat. 2042 ¶50141 *et seq.*

<sup>23</sup> Staff's Closing Brief, ¶ 77.



permit the initiation of five significant and focused demand-side programs (i.e. Home and Business Demand Response, Hard-to-Reach Homes and Home and Business Energy Education) while providing the Commission with time to more fully evaluate and assess the impact of the IRA.<sup>24</sup> In view of the concerns raised at the evidentiary hearing regarding the duplication and overlapping nature of energy efficiency programs under the IRA and those proposed for Kansas implementation under the Initial Settlements, as well as the potential for IRA program competition with similar or analogous State energy efficiency programs, the Alternative Settlement provides a more deliberative pathway to further study and assess the scope and impact of the IRA.<sup>25</sup>

At this time, it is premature to adopt the expensive programs encompassed within the Initial Settlements and thereby cause Kansas ratepayers to incur substantial and potentially unnecessary or duplicative costs through Evergy's energy efficiency programs before having an opportunity to fully comprehend and implement the scope and breadth of the array of federal IRA funding options available for similar programs. This conclusion is bolstered and supported when the Kansas-specific impact of just two of the IRA energy efficiency rebate programs are analyzed in detail:

- The Home Energy Performance-Based, Whole House Rebate (IRA 50121 State Energy Offices), also known as Hope for Homes or HOMES rebate, provides \$4.3 billion for State Energy Offices to offer as rebates for energy efficiency improvements. *The Kansas allocation for this IRA rebate program is \$52,971,870.*
- High-Efficiency Electric Home Rebate Program (IRA 50122 State Energy Offices) provides \$4.275 billion for State Energy Offices to offer rebates for electric

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<sup>24</sup> See *id.*, ¶ 78.

<sup>25</sup> See Transcript of Proceedings held Jan. 5, 2023, pp. 76, 149-150 and 172.

appliances. An additional \$225 million is available to Tribes for the same purpose.

These rebate amounts are specifically targeted to low-income households. *The*

*Kansas allocation for this IRA rebate program is \$52,663,910.*

*The total IRA allocation for Kansas across these two programs is \$105,653,780.* These two rebates are in addition to the numerous energy efficiency tax credits and other rebate programs available to Kansas ratepayers under the IRA.

Importantly, the Initial Settlements were negotiated in July 2022, and filed with the Commission on August 1, 2022, prior to Congressional enactment of the IRA and all of its energy efficiency largess. In contrast, the Alternative Settlement, filed November 15, 2022, was negotiated with full knowledge of the enactment and terms of the IRA. While the Commission Order acknowledges that “federal funding opportunities” may exist and directs Evergy and Staff to report these opportunities to the Commission within 60 days of this Order, the Order fails to: (1) directly analyze the impact of the IRA on the Initial Settlements, (2) evaluate the effects or consequences of the IRA on energy efficiency or DSM Programs generally, or (3) evaluate the effect of the IRA on the implementation costs of the Initial Settlements versus the more cost-effective Alternative Settlement. By approving the Initial Settlements without specifically analyzing the impact of the IRA, the Commission is ignoring the substantial and diverse energy efficiency benefits provided by the IRA in conjunction with the Alternative Settlement. In combination, the IRA and the Alternative Settlement produce an effective, less costly and more manageable outcome for ratepayers than the Initial Settlements. Furthermore, in approving the Initial Settlements, the Commission assumes that the IRA benefits are inadequate and must be supplemented by overly expansive and expensive incentives to Evergy at Kansas ratepayer expense.

**Compensating Evergy for the “Incentive Costs” of EO and  
TD – Incentivizing Cost Efficient Spend vs. Overcompensation**

Two important facets of the Financial Recovery Agreement portion of the Initial Settlements approved by the Commission provide unnecessary, excessive and flawed revenue benefits to Evergy shareholders at the expense of Evergy ratepayers. In sum, the Initial Settlements provide Evergy with an excessive Earnings Opportunity and a seriously flawed Throughput Disincentive mechanism.

**Earnings Opportunity**

KEEIA requires that the Commission provide timely Earnings Opportunity (“EO”) for public utilities associated with cost effective, measurable, and verifiable DSM program savings.<sup>26</sup> EO is the authorized profit margin for utility’s shareholders to compensate them for any lost profits from the implementation of DSM programs. The EO is ultimately paid for through utility rates, so the higher the EO, the higher the rates paid by Kansas ratepayers. The EO proposal contained in the Initial Settlements is grossly excessive compared to the EO allowed in other states and the EO that a Kansas regulated utility receives by investing in traditional infrastructure.<sup>27</sup>

Evergy’s requested EO would allow it to retain 18% of Net Benefits associated with the DSM Portfolio -- this equates to between \$18.1 million and \$22.07 million of incentives for Evergy shareholders over four years.<sup>28</sup> Evergy contends that this amount is within the range of what has been approved in other jurisdictions across the country.<sup>29</sup> However, this assertion is contradicted by Evergy’s response to CURB Data Request No. 30 – a spreadsheet that demonstrates that

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<sup>26</sup> K.S.A. 66-1283(e)(3).

<sup>27</sup> Testimony in Opposition to Non-Unanimous Settlement Agreement prepared by Justin T. Grady (Grady Opposition Testimony), Aug. 3, 2022, p. 6.

<sup>28</sup> *Id.*

<sup>29</sup> Evergy Response to CURB-31.

Evergy's requested EO of 18% of Net Benefits is an outlier when compared to other earnings/incentive measures approved across the country,<sup>30</sup> and is so grossly excessive it would be among the highest EOs in the country.<sup>31</sup> Today's Commission Order approves an Evergy EO of 15% of Net Benefits. Kansas ratepayers should not be compelled to pay close to the highest EO in the country in exchange for access to Evergy's DSM Portfolio. In comparison, the EO contained in the Alternative Settlement is much more balanced and reasonable and results in an EO percentage of spend of 7.83% for Evergy Kansas Central (EKC) and 7.45% for Evergy Kansas Metro (EKM).<sup>32</sup>

KEEIA clearly states that the Commission shall value DSM program investments equal to traditional investments in supply and delivery infrastructure, as much as practicable.<sup>33</sup> In this regard, Staff recommended Evergy receive an EO based on 5.7787% of spend for EKM and 6.0316% of spend for EKC, each of which are equal to the weighted average equity return currently authorized for Evergy in its last base rate case.<sup>34</sup> These Staff modifications reduce the EO incentive to \$7 to \$8 million for Evergy, which would provide earnings levels for Evergy shareholders that are equivalent to investments in supply side utility infrastructure, are consistent with the provisions of KEEIA and consistent with the incentive levels provided in other states – i.e. a reasonable price for Kansans to pay for DSM programs.<sup>35</sup> The EO parameters under the Alternative Settlement also capture a performance based ratemaking concept that rewards Evergy for the efficiency of its spend, allowing Evergy to retain 25% of the benefits, with 75% accruing to customers if a demand-

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<sup>30</sup> Grady Opposition Testimony, pp. 16-17.

<sup>31</sup> *Id.*, pp. 17-18.

<sup>32</sup> *Id.*, p. 18.

<sup>33</sup> K.S.A. 66-1283(b).

<sup>34</sup> Grady Opposition Testimony, p. 7.

<sup>35</sup> *Id.*, p. 7.

side program can accomplish its goals within its original budget. None of these incentives are available to ratepayers under the Initial Settlements.

### **Throughput Disincentive (TD)**

Throughput Disincentive (“TD”) is the concept that utilities do not have an incentive to implement DSM programs which conserve electricity and reduce the amount of revenue to the utility. Accordingly, utility shareholders lack incentive to support DSM programs. However, the KEEIA statute provides several mechanisms available to address TD and mitigate the inherent conflict of interest that exists between a utility’s shareholders and DSM programs. One such mechanism is the Lost Revenue Adjustment Mechanism (“LRAM” or “Lost Revenue”).<sup>36</sup> Lost Revenue compensates a utility for revenue lost as a result of the implementation of DSM programs.

Historically, the Commission has repeatedly found LRAMs, such as those contained in the Initial Settlements, to be flawed — most recently in its Final Order in Docket No. 16-KCPE-446-TAR (“16-446 Docket”).<sup>37</sup> In that Docket, the Commission stated that the LRAM had four serious flaws: 1) it placed too much weight on accurate evaluation of program impacts; 2) it increased the potential for expensive, time-consuming litigation; 3) it forced the Commission to rely on outside firms to evaluate the methodology; and 4) it failed to measure free ridership in evaluating the impact of energy efficiency programs.<sup>38</sup> The Commission then reiterated it had previously expressed concerns regarding lost margin recovery and the record in the 16-446 Docket failed to persuasively address those concerns.<sup>39</sup> The TD implemented through the Initial Settlements approved by the Commission in this Order also fails to address these prior Commission concerns.

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<sup>36</sup> K.S.A. 66-1283(d)(1).

<sup>37</sup> Grady Opposition Testimony, p. 5.

<sup>38</sup> Final Order, ¶ 116, 16-446 Docket (Jun. 22, 2017).

<sup>39</sup> *Id.*

While the concept of Lost Revenue in general is not per se abusive, an LRAM that allows for potential overestimation of the actual amount of kWhs that will be “lost” by implementing the DSM programs in the Initial Settlements is per se abusive. Ratepayers should not be expected to pay the utility for such Lost Revenue, and the overestimation of that Lost Revenue directly correlates to more ratepayer dollars being directed and required to unnecessarily compensate the utility. At a minimum, the Commission should have placed a cap on Evergy’s LRAM at the level of the last Commission-approved base revenue requirement, as adjusted for directly identifiable increases in their revenue requirement associated with customer growth, EV penetration, and/or economic development,<sup>40</sup> and removed the estimate of variable Operations and Maintenance (“O&M”) expenses from Evergy’s margin rates.<sup>41</sup> The failure of the Initial Settlements to implement and require these ratepayer protective measures makes the TD requested by Evergy and provided for in the Initial Settlements inherently and seriously flawed.

The TD mechanism as contained in the Initial Settlements is a Lost Revenue mechanism that is seriously flawed in several respects. For example, it explicitly allows Evergy to recover more revenue from customers, between rate cases, than the Commission authorized recovery in Evergy’s last base rate case.<sup>42</sup> The TD in the Initial Settlements *allows Evergy to charge customers for estimated Lost Revenue associated with its DSM Portfolio, even if it does not lose any actual net revenue. This would occur when the estimated “lost” revenue is not, in fact, lost but rather compensated for by revenue growth in other areas*, such as electric vehicle growth, large industrial companies entering the EKC footprint (such as the forthcoming Panasonic plant<sup>43</sup>), increased

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<sup>40</sup> *Id.*, p. 21.

<sup>41</sup> *Id.*, p. 12.

<sup>42</sup> Grady Opposition Testimony, p. 5.

<sup>43</sup> Panasonic Energy Co., Ltd. has recently announced plans to build one of the largest electric vehicle battery manufacturing facilities of its kind in the United States in Kansas. *See* Kansas Lands \$4B, 4,000-Job Panasonic

customer growth or usage, abnormal weather, or any other factor which allows for increased revenue between rate cases.<sup>44</sup> In addition, Evergy's margin rates (used to calculate Lost Revenue in the TD) were based on the assumption that all of Evergy's non-fuel costs were fixed between rate cases. This is a patently unreasonable assumption given that some costs within Evergy's cost structure customarily vary as sales increase or decrease – for example, the differing levels of variable Operating and Maintenance expenses at power plants.<sup>45</sup>

In contrast, the Lost Revenue/TD mechanism contained within the Alternative Settlement is just 16.5% of the amount contained in the Initial Settlements as approved in the Commission's Order in this Docket. Additionally, the Alternative Settlement's more rigorous EM&V approach will more accurately track the actual lost revenue associated with the implementation of these demand-side programs. There are no assurances that the Commission's modifications to EM&V will mirror the rigorous EM&V approach of the Alternative Settlement. The Alternative Settlement's combination of enhanced confidence with the more rigorous EM&V process to measure the TD, plus the 84.5% reduction in the magnitude of the TD, and the 80.7% reduction in EO from the Initial Settlements could have collectively provided greater accountability and substantial cost-effective savings for ratepayers.<sup>46</sup>

### **Ratepayer Cost Savings Summary**

In sum, the Alternative Settlement would result in significantly lower rate impacts to ratepayers, with program costs 63% lower than the Initial Settlements.<sup>47</sup> The combined ratepayer share of or impact from these "incentive costs" under the Alternative Settlement would have been

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Energy Electric Vehicle Battery Plant (Jul. 13, 2022), Kansas Lands \$4B, 4,000-Job Panasonic Energy Electric Vehicle Battery Plant - Governor of the State of Kansas. The plant will be served by Evergy.

<sup>44</sup> See Grady Opposition Testimony, p. 5.

<sup>45</sup> *Id.*, p. 12.

<sup>46</sup> Grady Alternative Testimony, pp. 13-14

<sup>47</sup> *Id.*

half the amount of these costs as authorized by the Initial Settlements<sup>48</sup> -- a substantial long-term savings opportunity for ratepayers under the Alternative Settlement.

### Conclusion

Generally, the public interest is served when ratepayers are protected from unnecessary costs, discriminatory prices and/or unreliable service. In this regard, the Alternative Settlement, to which Evergy is also a signatory, better advances the public interest by:

- Implementing viable, cost efficient Demand-Side Programs in Kansas;
- Not burdening ratepayers with costly energy efficiency programs that overlap numerous federal programs under the IRA;
- Significantly limiting the costs to Kansas ratepayers associated with Evergy's EO and TD/Lost Revenue financial "incentive costs" authorized under KEEIA for utilities offering an energy efficiency DSM portfolio;
- Providing assurance of greater DSM Program accountability through more rigorous EM&V auditing methodologies and standards;
- Focusing on the most cost-effective areas of energy efficiency (i.e. Education, Demand Response, and Low Income programs); and
- Reducing Evergy's DSM Program implementation costs allowed in the Initial Settlement, thereby resulting in just and reasonable rates.

In sum, the Alternative Settlement represents a timely and reasonable resolution of the issues in this Docket, provides a viable path to advance Demand-Side Programs in Kansas, assists in the creation of just and reasonable rates, is in the public interest and is fully supported by

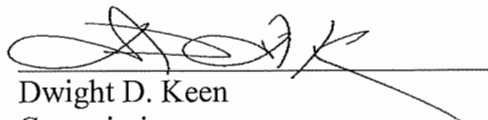
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<sup>48</sup>*Id.*



substantial competent evidence in the record. For these reasons, I believe that adopting the Alternative Settlement would provide a far more cost effective and manageable result for ratepayers than the Initial Settlement Agreements approved by the Commission.

Accordingly, I respectfully dissent from the Commission's Order.



Dwight D. Keen  
Commissioner

## CERTIFICATE OF SERVICE

22-EKME-254-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 09/01/2023.

JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 S HICKORY  
PO BOX 17  
OTTAWA, KS 66067  
jflaherty@andersonbyrd.com

DOUGLAS LAW, ASSOCIATE GENERAL COUNSEL  
BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC  
D/B/A BLACK HILLS ENERGY  
2287 COLLEGE ROAD  
COUNCIL BLUFFS, IA 51503  
douglas.law@blackhillscorp.com

JOSEPH R. ASTRAB, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
j.astrab@curb.kansas.gov

TODD E. LOVE, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
d.nickel@curb.kansas.gov

SHONDA RABB  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
s.rabb@curb.kansas.gov

DELLA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
d.smith@curb.kansas.gov

DOROTHY BARNETT  
CLIMATE & ENERGY PROJECT  
PO BOX 1858  
HUTCHINSON, KS 67504-1858  
barnett@climateandenergy.org

CATHRYN J. DINGES, SR DIRECTOR & REGULATORY  
AFFAIRS COUNSEL  
EVERGY KANSAS CENTRAL, INC  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
cathy.dinges@evergy.com

LESLIE WINES, ADMINISTRATIVE ASSISTANT SR.  
EVERGY KANSAS SOUTH, INC.  
D/B/A EVERGY KANSAS CENTRAL  
818 S KANSAS AVENUE  
PO BOX 889  
TOPEKA, KS 66601-0889  
leslie.wines@evergy.com

## CERTIFICATE OF SERVICE

22-EKME-254-TAR

MATT DORITY, DIRECTOR REGULATORY AFFAIRS  
EVERGY METRO, INC  
D/B/A EVERGY KANSAS METRO  
ONE KANSAS CITY PL 1200 MAIN ST (64105)  
PO BOX 418679  
KANSAS CITY, MO 64141-9679  
matthew.dority@evergy.com

MARK FOLTZ  
EVERGY METRO, INC  
D/B/A EVERGY KANSAS METRO  
One Kansas City Place  
1200 Main St., 19th Floor  
Kansas City, MO 64105  
mark.foltz@evergy.com

DARRIN R. IVES, V.P. REGULATORY AFFAIRS  
EVERGY METRO, INC  
D/B/A EVERGY KANSAS METRO  
One Kansas City Place  
1200 Main St., 19th Floor  
Kansas City, MO 64105  
darrin.ives@evergy.com

KIM WINSLOW  
EVERGY METRO, INC  
D/B/A EVERGY KANSAS METRO  
One Kansas City Place  
1200 Main St., 19th Floor  
Kansas City, MO 64105  
kimberly.winslow@evergy.com

JAMES P ZAKOURA, ATTORNEY  
FOULSTON SIEFKIN LLP  
7500 COLLEGE BOULEVARD, STE 1400  
OVERLAND PARK, KS 66201-4041  
jzakoura@foulston.com

DAVID COHEN, ASSISTANT GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
d.cohen@kcc.ks.gov

BRIAN FILE  
EVERGY METRO, INC  
D/B/A EVERGY KANSAS METRO  
One Kansas City Place  
1200 Main St., 19th Floor  
Kansas City, MO 64105  
brian.file@evergy.com

DARREN IVES, VP - REGULATORY AFFAIRS  
EVERGY METRO, INC  
D/B/A EVERGY KANSAS METRO  
One Kansas City Place  
1200 Main St., 19th Floor  
Kansas City, MO 64105  
darren.ives@evergy.com

TIM NELSON  
EVERGY METRO, INC  
D/B/A EVERGY KANSAS METRO  
One Kansas City Place  
1200 Main St., 19th Floor  
Kansas City, MO 64105  
tim.nelson@evergy.com

CONNOR A THOMPSON, ATTORNEY  
FOULSTON SIEFKIN LLP  
7500 COLLEGE BOULEVARD, STE 1400  
OVERLAND PARK, KS 66201-4041  
cthompson@foulston.com

TERESA A. WOODY  
KANSAS APPLESEED CENTER FOR LAW AND JUSTICE,  
INC.  
211 E. 8th Street  
Suite D  
Lawrence, KS 66044  
twoody@kansasappleseed.org

BRIAN G. FEDOTIN, GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
b.fedotin@kcc.ks.gov

## CERTIFICATE OF SERVICE

22-EKME-254-TAR

WALKER HENDRIX, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
w.hendrix@kcc.ks.gov

CARLY MASENTHIN, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
c.masenthin@kcc.ks.gov

ROBERT E. VINCENT, MANAGING ATTORNEY  
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.  
7421 W. 129TH STREET  
OVERLAND PARK, KS 66213  
robert.vincent@onegas.com

LESLIE WINES, ADMINISTRATIVE ASSISTANT SR.  
KCP&L AND WESTAR, EVERGY COMPANIES  
818 S KANSAS AVENUE  
PO BOX 889  
TOPEKA, KS 66601-0889  
leslie.wines@evergy.com

GLENDA CAFER, ATTORNEY  
MORRIS LAING EVANS BROCK & KENNEDY  
800 SW JACKSON  
SUITE 1310  
TOPEKA, KS 66612-1216  
gcafer@morrislaing.com

ASHOK GUPTA, EXPERT  
NATIONAL RESOURCES DEFENSE COUNCIL  
20 N WACKER DRIVE SUITE 1600  
CHICAGO, IL 60606  
agupta@nrdc.org

TIMOTHY J LAUGHLIN, ATTORNEY  
SCHOONOVER & MORIARTY, LLC  
130 N. CHERRY STREET, STE 300  
OLATHE, KS 66061  
tlaughlin@schoonoverlawfirm.com

SUNIL BECTOR, ATTORNEY  
SIERRA CLUB  
2101 WEBSTER, SUITE 1300  
OAKLAND, CA 94312-3011  
sunil.bector@sierraclub.org

JUSTIN T. SOMELOFSKE  
SIERRA CLUB  
50 F Street NW, Eighth Street  
Washington, DC 20001  
justin.somelofske@sierraclub.org

ROBERT R. TITUS, ATTORNEY AT LAW  
TITUS LAW FIRM, LLC  
6600 W. 95th Street  
Suite 200  
Overland Park, KS 66212  
rob@tituslawkc.com

/S/ KCC Docket Room  
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