

**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. )

**NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION (PUBLIC)**

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and files its Report and Recommendation ("R&R") regarding the Joint Application of Evergy Kansas South, Inc., d/b/a/ Evergy Kansas Central ("Evergy") and CVR Refining CVL, LLC ("CVR") for approval of a Special Contract.

Staff has reviewed the Application. Staff believes the Special Contract will result in just and reasonable rates for CVR and Evergy's remaining core customers because: 1) the Special Contract is necessary to incentivize CVR to remain on the system; 2) the Special Contract is priced to exceed variable cost and contribute meaningfully to fixed costs that would otherwise be paid by other customers in the event CVR left Evergy's system; and 3) the Special Contract contains significant minimum bill protections. Staff recommends that the Commission approve the Special Contract.

Certain portions of this Report and Recommendation which include confidential commercial information have been redacted in accordance with K.S.A 66-1220a.

WHEREFORE, Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and reasonable.

Respectfully submitted,  
/s/ Carly R. Masenthin  
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Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Annie Kuether, Commissioner

Laura Kelly, Governor

**REPORT AND RECOMMENDATION  
UTILITIES DIVISION  
CONFIDENTIAL VERSION**

**\*\*Confidential Information Denoted by Asterisks\*\***

**TO:** Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Annie Kuether, Commissioner

**FROM:** Kristina Luke-Fry, Managing Auditor  
Justin Prentiss, Senior Rate Analyst  
Justin Grady, Deputy Director of Utilities  
Jeff McClanahan, Director of Utilities

**DATE:** October 7, 2024

**SUBJECT:** Docket No. 24-EKSE-689-CON: In the Matter of the Application of Evergy Kansas South, Inc. for Approval of the Energy Supply Agreement Between Evergy Kansas South. and CVR Refining CVL, LLC.

**EXECUTIVE SUMMARY:**

On May 1, 2024, Evergy Kansas South, Inc., d/b/a/ Evergy Kansas Central (Evergy) and CVR Refining CVL, LLC (CVR) filed a Joint Application requesting Commission approval of an Energy Supply Agreement (Special Contract or Contract) between CVR and Evergy.<sup>1</sup> CVR and Evergy desire for the Special Contract, if approved, to take effect on or before November 1, 2024. If approved, the Special Contract will take effect the first day of the month following Commission approval and last for five years.

The Joint Application is supported by the Direct Testimony of Jason Klindt, Senior Director of External Affairs for Evergy, and Mark Pytosh, Executive Vice President of Corporate Services for CVR. Mr. Klindt testifies in support of approval of the Special Contract according to the evaluation framework outlined by the Commission in Docket No. 01-GIME-813-GIE (01-813 Docket) and that the Special Contract exceeds the minimum contribution to fixed costs threshold that has previously been advocated by Staff in special contract dockets before the Commission. Mr. Pytosh describes CVR's operations and CVR's perspective about the Contract.

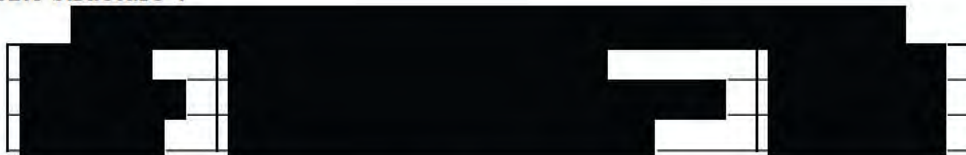
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<sup>1</sup> See Joint Application, May 1, 2024.

Staff has reviewed the Joint Application and recommends that the Commission approve the Special Contract. Staff's recommendation is based on our analysis of the Contract which finds that it is necessary and benefits Evergy's non-contract customers. This benefit comes in the form of Contract rate revenue that exceeds the variable costs allocated to CVR as a result of its usage, as well as retaining CVR on Evergy's system. In addition, the minimum monthly bill, before taxes, shall be [REDACTED] which benefits Evergy's core non-contract customers.

**BACKGROUND:**

On May 1, 2024, Evergy and CVR filed a Joint Application requesting Commission approval of a Special Contract between CVR and Evergy. CVR and Evergy desire for the Special Contract, if approved, to take effect on or before November 1, 2024. The special contract contains the following rate structure<sup>2</sup>:

A large rectangular area of the document is completely redacted with a solid black box. Within this redacted area, there are several small white rectangular boxes that appear to be remnants of a table or grid structure, possibly representing a rate schedule or financial data.

The Commission established a framework for the review of special contracts in its October 3, 2011, Order in the 01-813 Docket. In that Docket, the Commission found “there is substantial support...to demonstrate that these contracts may benefit both ratepayers and shareholders, and that they should not be prohibited.”<sup>3</sup> Additionally, the Commission found, “in order to be approved, the utility must show that the special contract provides a cost benefit to the remaining core customers.”<sup>4</sup> The Commission required the utility to provide information on the necessity of the contract, and why the price and other terms of the contract are just and reasonable.<sup>5</sup> The utility is also required to provide information specific to the customer's operations and needs, how the existence of the contract affects the utility's system, a detailed cost analysis of the proposed contract, and a statement of the benefits from the contract to the utility and its other customers.<sup>6</sup>

**ANALYSIS:**

Staff evaluated the Joint Application according to the framework provided in the 01-813 Docket, which can be synthesized into three central questions:

1. Is the special contract necessary?
2. Does the special contract result in operational and/or economic benefits for Evergy and its customers?
3. Will the special contract result in just and reasonable rates?

*1. Necessity of the Special Contract*

The necessity of the CVR Special Contract has not previously been evaluated by the Commission or Commission Staff. During Staff's review of this Special Contract, Staff has determined that

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<sup>2</sup> See Joint Application, May 1, 2024.

<sup>3</sup> Order Regarding the Filing Requirements and Procedures for the Review and Treatment of Special Contracts, p. 2 (Oct. 3, 2001) (01-813 Order).

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*, p. 3.

<sup>6</sup> See *id.*

keeping CVR as a consumer on Evergy's system provides value to CVR, Evergy, and Evergy's other users. While CVR does not have a co-generation unit right now, the Company hired an engineering firm to perform a study as to the costs to build a co-generation plant. The costs to build the co-generation unit would be offset by the potential savings in approximately [REDACTED]. Staff considers this study to be comprehensive and highly professional, and it represents a bona fide and credible bypass threat for CVR.

## *2. Operational and Economic Benefits of the Special Contract*

The Special Contract provides significant operational benefits to Evergy. In order to evaluate the economic benefits of the special contract to Evergy and its other customers, Evergy performed an analysis of the degree to which the special contract exceeded variable cost, and therefore contributed to the remaining fixed costs on the system. Evergy witness Jason Klindt discusses this analysis on page six of his testimony and states that the contract exceeds the variable cost floor by "more than 52%,"<sup>7</sup> which is significantly higher than Staff's previously communicated threshold of 15% contribution to fixed costs.<sup>8</sup>

Staff requested the details of this cost benefit analysis in Staff Data Request No. 9. In response to this data request, Evergy provided the details of how it calculated that the CVR contract was exceeding marginal cost by nearly 52%. Using the rates that were in effect at the time, Evergy calculated that the CVR contract was providing base rate revenue of [REDACTED]. Because this exceeds Evergy's estimated variable cost to serve CVR of [REDACTED], Evergy concludes that the CVR contract is contributing [REDACTED] of contract revenue towards fixed cost recovery. This contribution towards fixed costs benefits all customers on the Evergy system, because these are the fixed costs that would otherwise have to be paid by all other customers if CVR decided to bypass the Evergy system all together.

Staff performed a variable cost analysis as well. Staff used the results of their Class Cost of Service study as filed in the 23-775 Docket to evaluate variable cost per kWh to serve CVR, which we determined to be [REDACTED] at test year usage levels. Staff then compared that variable cost to the per kWh revenue that CVR would pay coming out of Evergy's recent rate case (the rates that will continue to be charged if the Commission approves this Special Contract). This analysis found that CVR's Special Contract would generate revenue of [REDACTED] or [REDACTED] more than the variable cost to serve CVR. This is a contribution margin of [REDACTED] well above Staff's previously communicated 15% floor. Based on this analysis, Staff concludes that CVR is covering its variable cost to serve, and it is contributing meaningfully towards fixed costs. Accordingly, the existence of this special contract is more beneficial to Evergy's remaining customers than if CVR were to bypass the Evergy system all together.

### *2a Evaluation of Minimum Bill Provisions of Special Contract*

The Special Contract contains a significant protection for Evergy and its non-contract customers pertaining to the minimum revenue that must be generated by the Contract. Section 5.3 of the

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<sup>7</sup> See Attachment to Joint Application, Direct Testimony of Jason Klindt on Behalf of Evergy Kansas South, Inc., p. 6 (May 1, 2024).

<sup>8</sup> See Direct Testimony of Darrin L. Prince, p. 10, Docket No. 18-KG&E-303-CON (Aug. 15, 2018).

Contract specifies that CVR's minimum monthly bill shall be [REDACTED] during the term of the agreement.

The minimum bill provisions of CVR's special contract provide significant guaranteed benefits to Evergy's remaining core customers. [REDACTED] a month equates to [REDACTED] a year or [REDACTED]. This minimum bill contributes meaningfully towards the capacity costs of maintaining available capacity to serve CVR, even if Evergy never supplied CVR a single kWh during the term of the contract.

The existence of these minimum bill provisions of the special contract significantly de-risk CVR's contribution towards fixed costs, to the benefit of Evergy's core customers.

### *3. Just and Reasonableness Review*

The question of whether the special contract results in just and reasonable rates depends in large part on the first two factors previously evaluated. If a special contract is not necessary, then it is very unlikely that contract would result in just and reasonable rates, because the contract customer would be getting a discounted electric rate to the detriment of the remaining core customers. It would not be just and reasonable for non-contract customers to pay higher rates than would otherwise be the case without the special contract.

Likewise, if the special contract does not convey operational or economic benefits on Evergy and its customers, then the special contract is unlikely to result in just and reasonable rates.

In this case, Staff contends that the CVR Special Contract is necessary to incentivize CVR to remain on the system instead of building its own co-gen operations in order to bypass the Evergy system. Additionally, the CVR special contract is priced to exceed variable cost and contribute meaningfully to fixed costs that would otherwise be paid by other customers if CVR were to leave the system. Due to the significant minimum bill protections in the contract, these benefits are largely guaranteed to Evergy and its customers during the term of the special contract. For all of the above reasons, Staff contends that the CVR special contract will result in just and reasonable rates for CVR and Evergy's remaining core customers.

### **RECOMMENDATION:**

Staff's analysis has shown that the CVR special contract will result in just and reasonable rates for CVR and Evergy's remaining core customers because: 1) the CVR Special Contract is necessary to incentivize CVR to remain on the system; 2) the special contract is priced to exceed variable cost and contribute meaningfully to fixed costs that would otherwise be paid by other customers in the event CVR left Evergy's system; and 3) the contract contains significant minimum bill protections. Staff recommends that the Commission approve the CVR Special Contract.

## CERTIFICATE OF SERVICE

24-EKSE-689-CON

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's R&R was served via electronic service this 17th day of October, 2024, to the following:

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**CERTIFICATE OF SERVICE**

24-EKSE-689-CON

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