

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Joint Application of )  
Westar Energy, Inc. and Kansas Gas and ) Docket No. 18-WSEE-328-RTS  
Electric Company for Approval to Make )  
Certain Changes in their Charges for Electric )  
Services. )

**REPLY COMMENTS OF THE CITIZENS' UTILITY RATEPAYER BOARD ON  
EVERGY CENTRAL'S RATE DESIGN**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and, pursuant to the schedule set forth in *Order Setting Procedural Schedule on Rate Design* issued by the State Corporation Commission of the State of Kansas ("Commission") in this docket on June 16, 2020, submits its reply comments regarding the issues on rate design for residential Distributed Generation ("DG") customers for Evergy Central.

**I. Background**

1. The Commission re-opened this docket for further proceedings on Evergy Central's rate design for DG customers after the Kansas Supreme Court found that the approved three-part rate design resulted in price discrimination in violation of Kansas law. On August 14, 2020, a number of intervenors, including CURB, filed initial comments regarding various alternative rate design proposals to modify Evergy's rate design.<sup>1</sup>

2. In the reply comments that follow, CURB responds to certain positions sponsored by the other intervenors in their respective initial comments.

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<sup>1</sup> Initial Comments were filed by, or on behalf of, the following parties: 1) the Staff of the State Corporation Commission of the State of Kansas ("Staff"); 2) CURB; 3) Evergy; 4) The Empire District Electric Company ("Empire"); 5) Southern Pioneer Electric Company and Pioneer Electric Cooperative, Inc. (collectively "Southern Pioneer"); 6) Climate & Energy Project, Sierra Club, and Vote Solar (collectively "Renewable Advocates"); 7) United School District #259; and 8) Kansas Electric Cooperatives, Inc., Midwest Energy, Inc., Sunflower Electric Power Corp., and Kansas Electric Power Cooperative, Inc. (collectively "Co-ops").

## II. Evergy's Initial Comments

3. Evergy states that the goal of this proceeding is to develop an alternative rate design that addresses the subsidy that exists in favor of DG customers. To that end, Evergy believes that any of the options proposed will inevitably have to increase the revenue collected from DG customers.<sup>2</sup> CURB believes that implementing a new kind of rate design at this time without additional study and data may result in rates that fail to adequately address the cross-subsidy issue and potentially open the door to future litigation. Increasing fixed cost recovery for the utility should not be a zero-sum goal, but rather should take into account all residential customers' interests.

4. Evergy analyzes the Kansas Supreme Court's suggestion to use rates that fully collect the utility's fixed costs through a flat fee for all customers. Instead of reviewing straight fixed variable ("SFV") pricing like other parties, Evergy discusses the pros and cons of using a minimum bill structure and implementing a Grid Access Charge ("GAC") to enhance fixed costs recovery. Evergy points out that a minimum bill does not necessarily result in a full recovery of fixed costs, but rather is a step in the right direction. CURB agrees that minimum bills may not produce significant benefits for ratepayers or utilities.

5. CURB believes that adding a GAC for the DG class is not an appropriate rate design to implement at this time because more customer data and education will be required to develop and roll out the new charge. Evergy defines the GAC as a charge that is based on the size of a customer's installed DG capacity, expressed in dollars per kilowatt of capacity.<sup>3</sup> In order to

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<sup>2</sup> Evergy's Comments Regarding Rate Design for Customers with DG, pg. 5, ¶10. August 14, 2020. ("Evergy's Initial Comments").

<sup>3</sup> Evergy's Initial Comments, pg. 7, ¶15.

calculate an appropriate charge for each DG customer, Evergy will have to collect data on each customer's DG system and its capacity. Although this method may promote equity among larger and smaller DG customers, Evergy expresses concerns over the risk of inaccurate charges associated with undocumented changes in a customer's installed capacity. Evergy would have to develop some type of reporting mechanism to require customers to provide updates for changes in DG capacity. This is likely to cause tension between the utility and customers who are unwilling to self-report. This conflict should not be viewed lightly as some customers who switch to self-generation are doing so to reduce their dependence on the utility.

6. A GAC also introduces another economic factor into the decision to install DG capacity, one that decreases the financial value of a DG system. Customer education over this kind of charge will need to be extensive and ongoing to mitigate these impacts and promote acceptance of the new charge. DG customers have expressed displeasure over a new charge specific to them in the three-part rate. It is reasonable to assume that a charge like the GAC will receive similar responses as it is only specific to the DG class. In light of the limited time between now and the end of Evergy's rate moratorium and possible legislative action, CURB does not believe it would be wise to begin this undertaking at the risk of having circumstances change dramatically before implementation, interrupting any progress made.

7. Additionally, in light of the Kansas Supreme Court's ruling, a new charge that is specific to DG customers may result in future litigation, which risks having to re-start this process. As indicated below, other utilities draw a distinction between "basic" electric service and different services that are only available to DG customers. CURB is not intending to pre-judge the legal arguments made by other parties. Rather, CURB hopes to elucidate potential positions that could

bring this case back in front of the courts. CURB is unaware of any references to a GAC in the Kansas Supreme Court's opinion. From CURB's perspective, the Court's silence on this kind of rate design or any kind of charge based on the unique needs of DG customers does not necessarily translate into compliance with K.S.A. 66-117d. The demand charge in the three-part rate drew ire largely from its unilateral application to DG customers. In regards to Evergy's GAC proposal, the GAC differs from the demand charge in that the GAC is based on individual DG capacity, rather than a flat charge. However, even if a DG customer has only one kW of DG capacity, that customer is still paying a higher charge for services than a non-DG customer, like the demand charge. CURB believes that this comparison carries the potential for disagreement among the parties and running afoul of 66-117d.

8. CURB's recommendation to move DG customers to the two-part residential rate and to allow Evergy to create a regulatory asset for uncollected fixed costs associated with the DG class is the superior solution because it creates a way to enhance fixed cost recovery and promotes harmony among the parties and residential class. This option does not require substantial individualized data or calculations of new rates. Utilities will be able to seek recovery of fixed costs shortfalls and use the time before the next rate case to further refine a long-term rate design for DG customers. DG customers would no longer be subject to the demand charge under CURB's proposal, which complies with the Supreme Court's order. CURB acknowledges that this option is not meant to be a long-term solution, however, the issues presented and parties affected by this docket can be served best by a solution that does not require significant disruption from the status quo and gives parties the opportunity to work together in the event that the legal and political landscapes change.

9. Evergy recognizes Time of Use (“TOU”) rates as a potential solution to the subsidy issue if it is correctly priced and used in conjunction with other means of fixed cost recovery. Implicit in Evergy’s review of TOU rates is the reality that it will require additional study of energy prices and load behavior to create rates that adequately recover costs. CURB believes that such a study is better suited for a rate case. While multiple charges and rates may mitigate the subsidy, adding other cost recovery mechanisms may compound the problems with those mechanisms, as discussed by the parties. In any event, the level of preparation and coordination that will be needed to implement a successful TOU program will be extensive and unavailable to address problems in the short term.

10. Finally, Evergy proposes a new kind of rate design that proposes a strict “buy all, sell all” practice for DG customers. In this proposal, DG customers will take service under the standard two-part residential rate for all their consumption. A separate price structure is established for the sale of power from the DG customer to the utility. Pricing can be done any number of ways, such as simply using the wholesale market rate for energy. As Evergy notes, creating a “buy all, sell all” structure would require changes to the Kansas Net Metering and Easy Connect Act. This observation alone makes this approach unlikely to resolve the pending rate design issues in a timely manner. If such a rate structure shows promise after diligent study, a separate docket could be opened to explore implementation in the future.

### **III. Staff’s Initial Comments**

11. Staff discusses the pros and cons of the three alternative rate structures provided by the Kansas Supreme Court in the context of the issues associated with DG on the grid. The Staff succinctly states that the purpose of DG is to reduce a customer’s purchase of energy from

the utility by self-producing their own energy.<sup>4</sup> Regardless of a customer's reasons for wanting to reduce their energy consumption, the end result is that DG customers fail to pay for their share of fixed costs and non-DG customers end up bearing those costs. Staff interprets the remand on Energy Central's rate design as one that requires identical charges for DG and non-DG customers.

12. Staff states that SFV pricing can enhance fixed cost recovery, but risks increasing resentment among residential class members. Staff echoes CURB's belief that most residential customers dislike higher fixed charges. As CURB noted in its initial comments, high fixed charges tend to disproportionately impact low-income residents and undermine energy conservation efforts. Staff explains that equity and efficiency considerations would require the residential class to be broken down into subclasses to better align costs and charges.<sup>5</sup> Various distinguishing factors among the residential class, such as high-energy users, would require their own classification to adequately estimate the charge. CURB agrees with Staff's position that this would add to customer confusion and create greater resentment among the different subclasses. Ignoring this consideration unfairly tips the balance in favor of the utilities' interest.

13. CURB also agrees with Staff's position on multiple declining block rates. Staff views this alternative rate design as inadequate to address the DG subsidy because the rate design fails to increase fixed cost recovery from customers who have zero net usage, but still put a demand on the grid. Multiple block rates do not incentivize DG customers to increase usage, regardless of the price of energy, and thus fail to overcome the inherent purpose of DG to reduce energy consumption from the utility.

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4 Verified Initial Comments of Commission Staff, pg. 4, ¶ 10, 18-WSEE-328-RTS (August 14, 2020). ("Staff's Initial Comments").

5 Staff's Initial Comments, pg. 10, ¶25.

14. Staff's analysis of TOU rates examines pricing considerations and problems associated with the proposal. TOU rates price energy depending on the time of day as it relates to the utility's peak and off-peak hours. Staff explains that DG customers can place excess generation onto the utility's grid for later use at no cost. Staff identifies a potential issue with these concepts in that it is unclear by statute how to price energy generated at different times of the day and how to classify this excess generation by DG customers. CURB interprets this concern as one that may require a legislative fix. This represents another problematic timing issue for implementing this kind of rate structure for DG customers.

#### **IV. Empire's Initial Comments**

15. Empire acknowledges that addressing the core effect of one class of customers subsidizing another class can be difficult outside of a rate case where system costs can be properly be reviewed and allocated.<sup>6</sup> CURB agrees that the free ridership issue associated with DG is best addressed within a rate case. In its initial comments, Empire states that the DG subsidy in this docket can be solved by the Commission amending the Commission's underlying general rate design policy that requires electric utilities to recovery most of their fixed costs through volumetric charges instead of the monthly customer charge.<sup>7</sup> Empire explains that DG customers' typical load factor changes because the customers are offsetting their typical consumption with self-generation. Empire's proposal aims to disrupt the source of the subsidy by allowing all utilities to fully collect fixed costs in a higher fixed charge for all customers. CURB would

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<sup>6</sup> Comments of the Empire District Electric Company, 18-WSEE-328-RTS, Pg. 3, ¶3 (August 14, 2020). ("Empire's Initial Comments").

<sup>7</sup> Empire's Initial Comments, pg. 1-2, ¶1.

reiterate that such an approach is unduly one-sided as it would shift all the risk associated with fixed cost recovery away from utilities.

16. The Commission's current policy on fixed cost recovery reflects a cornerstone of the regulatory compact. The purpose of regulatory oversight of a natural monopoly is to be a surrogate for market competition. Many businesses utilize volumetric pricing in order to recover their own fixed costs. Market competition helps control this pricing by encouraging operating innovation and efficiencies to reduce fixed costs and overall prices. Consumers typically consider pricing when choosing what goods to purchase from which business. Without this kind of pressure on utilities, decisions to drive up fixed costs with increased capital expenditures will only be evaluated for reasonableness by the Commission, and not on the risk of under-collection from sales by the utility. CURB would be opposed to a dramatic shift in Commission policy for all utilities in a docket that should be focused on addressing Evergy Central's rate design problems. A utility may instead choose to pursue an individual docket to separate its own fixed costs from volumetric pricing at a later time. If the Commission were to consider this option for this docket or any utility, CURB would highly recommend that the Commission review the affected utility's return on equity and adjust it to reflect this decrease in risk for fixed cost recovery.

#### **V. Renewable Advocates' Initial Comments**

17. CURB has no particular objection to the arguments advanced by the Renewable Advocates in their initial comments. CURB agrees with the Renewable Advocates' analysis of SFV pricing and the disparate impacts on low-income ratepayers. Although CURB does not endorse TOU rates in its initial comments, CURB echoes the Renewable Advocates' comments



regarding the amount of study that should be done to craft appropriate rates in the structure. CURB also agrees with the Renewable Advocates' review of declining block rates.

18. The Renewable Advocates propose several alternative rate designs that follow a two-part schedule. Their "Smart Rate Design" would have a lower monthly customer charge that covers no more than the cost to connect the customer to the grid, capped at \$10. The remainder of the cost would be collected on a volumetric basis in one of several ways. The volumetric rate proposals would require additional study and collaboration amongst the parties to settle on rates that help recover the utility's costs without overburdening the various customer classes. CURB has previously supported setting customer charges based only on the costs to connect the customer to the grid and the administrative costs in maintaining an account. The proposal has not gained much traction with the utilities or the Commission. It is likely that this proposal would also be a contentious point for this alternative rate design.

19. CURB is pleased to see that the Renewable Advocates have also recommended that the Commission transfers DG customers to the same two-part rate as non-DG residential customers. Because this docket is going to affect residential ratepayers only, it is important to note that the various consumer advocacy groups in this docket support this option. The addition of the regulatory asset, as recommended by CURB, helps promote the utility's position on recovering fixed costs. In regards to the Renewable Advocates' recommendation that Evergy should refund the amounts paid under the three-part rate, CURB would suggest that the parties come together to discuss this issue. In the event that a refund is required, the utility would likely be allowed to retroactively track those amounts into the regulatory asset for potential recovery.

## **VI. Southern Pioneer's and the Co-ops' Initial Comments**

20. CURB views Southern Pioneer's and the Co-ops initial comments to cover substantially the same positions and will address those shared positions as one. Unique comments will be identified by their respective parties and filings. First, CURB has no issues with Southern Pioneer and the Co-ops reading of the Supreme Court's ruling to be applied only to residential customers who self-generate using renewable resources. However, their legal analysis concludes that unique charges assigned to DG customer, such as standby power and putting energy onto the grid, are not considered discriminatory under 66-117d because those charges are not for the same services that non-DG customers receive. Their position goes a step further in analysis from Evergy's GAC proposal. CURB does not wish to try and litigate these positions at this time. As mentioned above, CURB is highlighting these arguments to indicate potential conflict and the risk of repeating the appeal process.

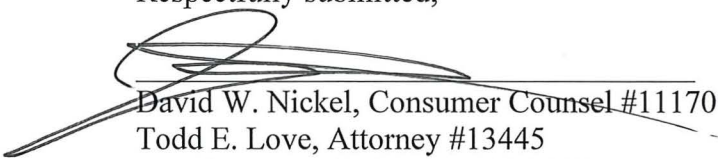
21. Standby service is typically taken by larger commercial and industrial customers who have some self-generation capability, but still rely on power from the utility in the event of an outage or insufficient generation. These customers pay a charge that reflects the cost of the facilities that a utility requires to be able to meet the customers' demand when it is needed. DG customers are similar to these standby customers in that DG customers rely on the utility to provide energy when the customer's self-generation cannot meet personal demand. This excess customer demand that is served by the utility is similar to the demand of a customer with aggressive energy conservation behavior. This customer may significantly lower consumption by simply never using electricity during certain periods, thereby creating a similar subsidy issue like DG customers. However, this customer does not need to pay an extra charge to "fall back" on the

utility for energy needs. The courts have yet to determine what types of services are considered the “same.” The language in 66-117d does not use the word “same” when it refers to services, rather it is “any service” that cannot be discriminatorily priced. Although the Kansas Supreme Court refers to “same” services as well, this distinction may leave room for an aggrieved party to challenge a new charge for DG customers. CURB appreciates the illustrative value provided by Southern Pioneer with its analysis of different rate designs on its service jurisdiction. CURB again emphasizes that this docket and related orders should remain specific to Evergy Central and its DG rate design dilemma. Each utility has its own characteristics and distinct population that should be evaluated separately. The various rate design alternatives discussed in this docket may look very different for each utility.

## **VII. Conclusion**

22. CURB believes that its suggestion to place all DG customers onto the two-part standard residential rate in conjunction with a regulatory asset provide the utility and all stakeholders the additional time to study long term solutions ahead of Evergy’s next rate case. CURB would encourage Evergy to meet with the various stakeholders while Evergy prepares its new rate design proposal. CURB is hopeful that the parties will be able to collaborate on a solution so as to reduce the likelihood of opposition and litigation.

Respectfully submitted,



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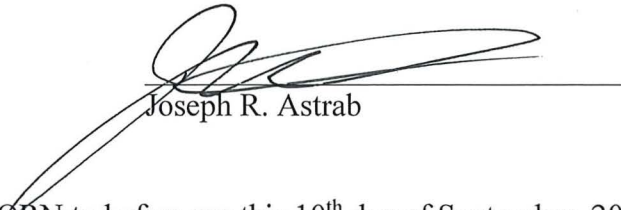
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**VERIFICATION**

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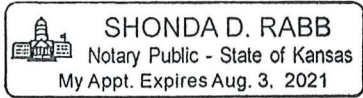
I, Joseph R. Astrab, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

  
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Joseph R. Astrab

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of September, 2020.

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

My Commission expires: 8-3-2021



**CERTIFICATE OF SERVICE**

18-WSEE-328-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 10<sup>th</sup> day of September, 2020, to the following:

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