

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the Matter of the Joint Application of)
Evergy Kansas Central, Inc., Evergy Kansas)
South, Inc., and Evergy Metro, Inc. for) Docket No. 23-EKCE-775-RTS
Approval to Make Certain Changes in their)
Charges for Electric Service.)

**ORDER APPROVING JOINT MOTION FOR APPROVAL OF PHASE-IN OF
CERTAIN RATE IMPACTS AND SETTLEMENT AGREEMENT**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On April 25, 2023, Evergy Kansas Central, Inc., Evergy Kansas South, Inc., (collectively Evergy Central) and Evergy Metro, Inc. (Evergy Metro) filed a Joint Application to make certain changes in its charges for electric service, including a proposal to eliminate the Off-Peak Service Rate for Evergy Central customers and transition the four customers that were previously taking service on that rate to the Large General Service (LGS) and Medium General Service (MGS) classes.¹

2. On September 29, 2023, the Parties² filed a Joint Motion for Approval of Unanimous Settlement Agreement.

¹ Joint Motion for Approval of Phase-In of Certain Rate Impacts, Apr. 4, 2024, ¶ 1.

² Commission Staff (Staff), Evergy, the Citizens' Utility Ratepayer Board (CURB), AARP; Kansas Chamber of Commerce and Industry, Inc., Wichita Regional Chamber of Commerce, Climate + Energy Project, Natural Resources Defense Council, the United States Department of Defense, Kansas Industrial Consumers Group, Lawrence Paper Company, Spirit AeroSystems, Inc., Occidental Chemical Corporation, Goodyear Tire & Rubber Company, Associated Purchasing Services Corporation, United School District #259 Sedgwick County, Kansas, Johnson County Community College, USD 233 Olathe School District, USD 512 Shawnee Mission School District, USD 232 DeSoto School District, USD 229 - the Blue Valley School District, and CVR Refining CVL, LLC.

3. On November 21, 2023, the Commission approved the Unanimous Settlement Agreement, which in relevant part, eliminated Evergy Central's Off-Peak Service Rate and transitioned customers on that old rate to the LGS and MGS rates, effective December 21, 2023.³

4. On April 4, 2024, Commission Staff (Staff) and Evergy filed a Joint Motion for Approval of Phase-In of Certain Rate Impacts, explaining that several customers who were transitioned from Evergy Central's Off-Peak Service Rate to the LGS and MGS rates are experiencing significant bill impacts, including one customer that may face an increase of over 300% annually as a result of the transition.⁴ Therefore, Staff and Evergy propose to provide bill credits to the customers that were moved off of the cancelled Off-Peak Service Rate, which would limit the amount of the increase they are paying to 1/3 of the full annualized rate increase the first year, 2/3 of the full annualized rate increase the second year, and the full annualized rate increase starting in the third year.⁵ The lost revenue would be treated as a regulatory asset to be recovered in Evergy's next rate case.⁶ Evergy estimates that the annual amount of the deferral will be approximately \$1 million.⁷

5. On April 9, 2024, Scrap Management Industries d/b/a Midwest Scrap Management (Midwest Scrap) filed a Petition for Intervention, claiming that: (1) after being transferred to LGS rates, its annual rates will increase 400%,⁸ and (2) under the Joint Motion for Approval of Phase-In of Certain Rate Impacts, Midwest Scrap's rate increase would be phased-in over 3 years, but not reduced.⁹

³ See Unanimous Settlement, Sept. 29, 2023, ¶ 54(g), attached as Attachment 1 to Order Approving Unanimous Settlement Agreement, Nov. 21, 2023.

⁴ Joint Motion for Approval of Phase-In of Certain Rate Impacts, ¶ 3.

⁵ *Id.*, ¶ 5.

⁶ *Id.*, ¶ 6.

⁷ *Id.*

⁸ Petition for Intervention of Scrap Management Industries (DBA Midwest Scrap Management, Inc.), Apr. 9, 2024, ¶ 14.

⁹ *Id.*, ¶ 19.

6. On April 15, 2024, the Citizens Utility Ratepayer Board (CURB)¹⁰ filed its Response to the Joint Motion for Approval of Phase-In of Certain Rate Impacts, expressing general support for the recommendation to provide affected customers an annual bill credit over the two years, rather than changing the rate altogether.¹¹ CURB also recommended that Evergy only be permitted to recover the costs of the bill credits from just the rate classes under which these affected customers take service (LGS and MGS, not residential customers).¹²

7. On May 7, 2024, Evergy replied to CURB's Response, agreeing to CURB's request that the deferred cost should only be recovered from the Commercial and Industrial classes, and not from residential customers.¹³

8. On May 9, 2024, the Commission granted Midwest Scrap's Petition for Intervention.

9. On September 27, 2024, Evergy, Staff, and Midwest Scrap filed a proposed Settlement Agreement. As of September 27, 2024, Midwest Scrap still owed \$432,625 to Evergy.¹⁴ Under the proposed settlement, Midwest Scrap will pay the remaining \$432,625 in installments to settle its outstanding bill for Jan. – Apr. 2024.¹⁵ These installment payments will be in addition to Midwest Scrap's regular monthly bills based on its monthly usage.¹⁶ In return, Evergy is writing off \$223,778 or approximately 28% of the amounts it invoiced to Midwest Scrap.¹⁷ Additionally, beginning September 27, 2024, Midwest Scrap will be placed on the MGS

¹⁰ CURB was granted intervention on May 2, 2023, and was a signatory to the Unanimous Settlement Agreement filed September 29, 2023.

¹¹ Response of the Citizens' Utility Ratepayer Board to the Joint Motion for Approval of Phase-In of Certain Rate Impacts, Apr. 15, 2024, ¶ 6.

¹² *Id.*, ¶ 20.

¹³ Evergy's Reply to Citizens' Utility Ratepayer Board's Response to the Joint Motion for Approval of Phase-In of Certain Rate Impacts, May 7, 2024, ¶ 8.

¹⁴ Settlement Agreement, Sept. 27, 2024, ¶ 2.

¹⁵ *Id.*, ¶ 3.

¹⁶ *Id.*

¹⁷ *Id.*, fn. 1.

tariff with an Off-Peak Rider.¹⁸ If Midwest Scrap's usage exceeds the thresholds of the MGS tariff, it will immediately be placed on the LGS tariff with an Off-Peak Rider without any additional notice or opportunity to cure.¹⁹

10. While CURB is not a signatory to the Settlement Agreement, it does not oppose the Settlement Agreement.²⁰

11. Besides Midwest Scrap, three other customers experienced rate shock when the Off-Peak Service rate was eliminated, and they were moved to either the LGS or MGS classes.²¹ The Settlement Agreement only applies to Midwest Scrap. Paragraph 5 of the Joint Motion for Approval of Phase-In of Certain Rate Impacts applies to the other three impacted customers. Paragraph 5 provides bill credits to those customers to limit their rate increase to 1/3 of the full annualized rate increase the first year, 2/3 of the full annualized rate increase the second year, and the full annualized rate increase starting in the third year.²² The bill credit provided to implement this phase-in will be adjusted annually on December 21.²³

12. Both the Joint Motion for Approval of Phase-In of Certain Rate Impacts and the Settlement Agreement are unopposed. The Commission addresses the Joint Motion first.

13. The Unanimous Settlement Agreement approved November 21, 2023, had the unintended consequence of producing significant rate impacts on four customers, previously taking service on the Off-Peak Service Rate. Rate increases of over 300% annually are inconsistent with the Commission's prior endorsement of the concept of gradualism and are not in the public interest. Accordingly, the Commission agrees that steps should be taken to phase-in the transition

¹⁸ *Id.*, ¶ 4.

¹⁹ *Id.*

²⁰ Settlement Agreement, p. 1.

²¹ See Joint Motion for Approval of Phase-In of Certain Rate Impacts, ¶ 1.

²² *Id.*, ¶ 5.

²³ *Id.*

from the Off-Peak Service Rate to the LGS and MGS rates over a three-year period. Evergy's commitment to only recover the resulting deferred cost from the Commercial and Industrial classes, instead of residential customers protects residential customers. Thus, the Commission finds the Joint Motion for Approval of Phase-In of Certain Rate Impacts is in the public interest. The Commission approves the Joint Motion for Approval of Phase-In of Certain Rate Impacts.

14. Essentially, the Settlement Agreement carves Midwest Scrap out of the Motion for Approval of Phase-In of Certain Rate Impacts.²⁴

15. 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.²⁵ Pursuant to K.A.R. 82-1-230a, the Settlement Agreement is considered a "unanimous settlement agreement." Therefore, there is no need to apply the five-factor test.²⁶ When approving a settlement, the Commission must make an independent finding that the settlement is supported by substantial competent evidence in the record as a whole, establishes just and reasonable rates, and is in the public interest.²⁷

16. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.²⁸ Whether another trier of fact could have reached a different conclusion given the same facts is irrelevant; a court can only find that a Commission decision is not supported by substantial competent evidence when the evidence shows "the [Commission's] determination is so wide of the mark as to be outside the realm of fair debate."²⁹ Here, the undisputed evidence is after the

²⁴ Settlement Agreement, ¶ 5.

²⁵ *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-42 (2001).

²⁶ See Order Approving Contested Settlement Agreement, Docket No. 08-ATMG-280-RTS, May 12, 2008, ¶¶ 9-10.

²⁷ *Citizens' Util. Ratepayer Bd. v. Kansas Corp. Comm'n*, 28 Kan. App. 2d 313, 316 (2000), *rev denied* March 20, 2001.

²⁸ *Farmland Indus., Inc. v. Kansas Corp. Comm'n*, 25 Kan.App.2d 849, 852 (1999).

²⁹ *Id.* at 851.

Off-Peak Service Rate was eliminated, it became apparent that customers previously taking service under that rate, including Midwest Scrap, experienced substantial and unexpected increases in their monthly bills. The Joint Movants Signatories agree the Settlement Agreement represents a negotiated settlement that fully resolves the issues raised in this proceeding.³⁰ Having reviewed the record as a whole, the Commission finds the Settlement Agreement is supported by substantial competent evidence.

17. Every electric public utility in Kansas is required to provide reasonably efficient and sufficient service and establish just and reasonable rates.³¹ Here, the Parties agree the rate increases resulting from the elimination of the Off-Peak Service Rate were inconsistent with the principle of gradualism and produced unreasonably large rate increases. Under the proposed Settlement Agreement, Evergy agreed to write off \$223,778 of bills to Midwest Scrap to mitigate any rate shock. As a write off, Evergy shareholders, rather than ratepayers are responsible for the mitigation. Any rate impact to customers other than Midwest Scrap should be *de minimis*. Thus, the Commission finds approval of the Settlement Agreement will result in just and reasonable rates for Midwest Scrap, Evergy, and its other customers.

18. The Commission finds that approval of the Settlement Agreement is in the public interest because it resolves all remaining issues in this Docket, and mitigates the rate shock caused by eliminating the Off-Peak Service Rate, all while protecting residential customers from any costs associated with mitigating the rate shock to Midwest Scrap..

19. After a careful review and consideration of the evidence in the record, the Commission finds that the attached Settlement Agreement is supported by substantial, competent

³⁰ Joint Motion for Approval of Phase-In of Certain Rate Impacts, ¶ 6.

³¹ K.S.A. 66-101b.

evidence in the record as a whole, will result in just and reasonable rates, and is in the public interest. The Commission approves the Settlement Agreement in its entirety.

THEREFORE, THE COMMISSION ORDERS:

A. The Joint Motion for Approval of Phase-In of Certain Rate Impacts is approved in its entirety. The approved phase-in applies to the other 3 customers affected when the Off-Peak Service Rate was eliminated.

B. The Settlement Agreement is approved in its entirety. The terms of the attached Settlement Agreement are incorporated into this Order. The Settlement Agreement applies to Midwest Scrap.

C. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.³²

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 10/24/2024



Lynn M. Retz
Executive Director

BGF

³² K.S.A. 66-118b; K.S.A. 77-529(a)(1).

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

In the Matter of the Joint Application of)
Evergy Kansas Central, Inc., Evergy Kansas)
South, Inc., and Evergy Metro, Inc. for) Docket No. 23-EKCE-775-RTS
Approval to Make Certain Changes in their)
Charges for Electric Service)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") entered into of this 27th day of September, 2024 between the following parties: Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (collectively referred to as "Evergy Kansas Central" or "EKC") and Evergy Metro, Inc. ("Evergy Kansas Metro" or "EKM") (together with Evergy Kansas Central referred to as "Evergy"); Scrap Management Industries, d/b/a Midwest Scrap Management, Inc. ("MSM"); and the Kansas Corporation Commission Staff ("Staff")(collectively "the Parties"). Citizens Utility Rate-Payer Board ("CURB") is not a signatory to this Settlement Agreement, but it does not oppose the Settlement.

RECITALS

WHEREAS, On April 25, 2023, Evergy filed a Joint Application requesting authorization to make certain changes to its charges for electric service in Kansas ("Rate Application"), which in part proposed to eliminate the Off-Peak Service Rate for EKC customers and transition customers taking service on that rate to the Large General Service ("LGS") and Medium General Service ("MGS") classes, depending on their usage characteristics, and to allow them to participate in the new Off-Peak Rider that provides benefits for off peak usage; and

WHEREAS, the parties to the Rate Application proceeding submitted a Unanimous Settlement Agreement to the Commission for approval on September 29, 2023, and the Commission issued an

Order approving the Settlement Agreement on November 21, 2023; and

WHEREAS, the elimination of the EKC Off-Peak Service Rate was provided for in the Settlement Agreement and customers on that old rate, including MSM, were transitioned to the LGS and MGS rates, together with the new Off-Peak Rider, as of the effective date of the rate change, which was December 21, 2023; and

WHEREAS, after elimination of the Off-Peak Service Rate, it became apparent that certain customers previously taking service under pursuant to that tariff experienced substantial and unexpected increases in their monthly bills; and

WHEREAS, in response to those increases, Evergy and Staff filed a Joint Motion for Approval of Phase-In of Certain Rate Impacts in the captioned docket, proposing a methodology for phasing in of the increased rates to affected customers; and

WHEREAS, MSM sought to intervene and oppose such implementation of those phase-in methodologies, and asserting various arguments and legal position, which are set forth more fully in MSM's filings in the referenced docket, wherein MSM sought to dispute the elimination of the Off-Peak Service Rate and the phase-in remedies proposed by Evergy and Staff; and

WHEREAS, the Parties now mutually desire to resolve their respective disputes as to the disputes and issues asserted herein.

TERMS

NOW THEREFORE, the Parties agree, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, as follows:

1. MSM and Evergy agree to fully settle the outstanding amounts owed by MSM to Evergy for January 2024 through April 2024 with total payment by MSM in the total amount of

\$578,235,¹ which is comprised of the following amounts due related to the following months:

January 2024 – \$142,837
February 2024 – \$147,126
March 2024 – \$145,348
April 2024 - \$142,924

Timing of such payment will be as described in paragraphs 2 and 3 below.

2. As of the date of this Agreement, MSM has paid \$145,610 of said \$578,235, leaving a total amount due and payable of \$432,625.

3. MSM agrees to pay Evergy the remaining amount of \$432,625 by way of an installment payment plan consisting of 36 equal monthly installment payments in the amount of \$12,017.36 each beginning with the customer's bill due date for the September 2024 bill and ending at the customer's bill due date for the September 2027 bill. These installment payments will be made in addition to MSM's regular monthly bills based on its monthly usage during this period.

4. Beginning at the date of this Agreement, MSM shall be billed according to the Medium General Services tariff with Off-Peak Rider. If MSM's usage exceeds the thresholds of the Medium General Services tariff, MSM will immediately be placed on the Large General Services tariff with Off Peak Rider without any additional notice or opportunity to cure, other than what is provided in Evergy's applicable approved tariffs.

5. The phase-in of the rate change resulting from Docket No. 23-EKCE-775-RTS initially proposed by Evergy and Staff in their joint pleading on April 4, 2024, will not be implemented in relation to MSM.

¹ Evergy's billings to MSM during January through April of 2024 totaled \$802,013, and therefore, the agreement includes a write off \$223,778 or approximately 28% of the amounts invoiced to MSM for these months.

6. This settlement resolves and compromises all disputes and claims regarding the provision of electrical services by Evergy to MSM between January 2024 through April 2024 and regarding all matters at issue in Docket No. 23-EKCE-775-RTS, including but not limited to claims related to the Agreement for Electric Service and any amendments thereto. The Parties understand, acknowledge, and agree that this Agreement does not constitute an admission of liability or fault on the part of any of the Parties, or any acknowledgment of the merit or lack of merit of any claims asserted by or against any of them. This Settlement represents a negotiated settlement that fully resolves the issues raised in this proceeding. The Signatory Parties represent that the terms of this Settlement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Signatory Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Settlement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide to not approve this Settlement in the instant proceeding. If the Commission accepts this Settlement Agreement in its entirety and incorporates the same into a formal order without material modification, the Signatory Parties shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.

7. For the purposes of this paragraph, Evergy and MSM are referred to collectively as "the Releasing Parties". The Releasing Parties hereby agree as follows:

- a. Except as otherwise set forth herein, all controversies, claims, debts, demands, actions, causes of action, rights, suits, proceedings, judgments, damages and liabilities whatsoever of every type and nature, whether known or unknown,

contingent or liquidated, asserted or unasserted, existing in law or equity, that each one has, or may have, against the other with respect to the above-described dispute and existing at the date of this Agreement (“the Released Claims”) are forever satisfied, discharged, settled, and released;

b. In consideration of the mutual covenants set forth herein, the Parties covenant for themselves, and their respective legal representatives, agents, stockholders, directors, members, employees, representatives, successors and assigns, to refrain from making any claim or demand, or to commence, cause or to permit to be prosecuted, any action in law or suit in equity against one another with respect to the Released Claims; and

c. Except as otherwise set forth herein, the Parties expressly agree that this Agreement may be treated as a defense to any action or proceeding that may be brought by the Releasing Parties against one another related to the Released Claims, and shall be a complete bar to the commencement or prosecution of any action or proceeding whatsoever against such action or proceeding with respect to the Released Claims.

~ • ~ Signatures on Following Pages ~ • ~

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing **Settlement Agreement** was electronically served this 27th day of September 2024 to:

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23-EKCE-775-RTS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 10/24/2024.

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