

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

In the Matter of the Investigation into the)
Agreement Between Evergy and Elliott) Docket No. 20-EKME-514-GIE
Management to Consider a Modified)
Standalone Plan or Merger Transaction.)

**PETITION TO INTERVENE OF THE KANSAS INDUSTRIAL CONSUMERS GROUP,
INC., AND RESPONSE TO COMMISSION STAFF AND EVERGY'S JOINT MOTION
FOR REVISIONS TO PROCEDURE FOR DOCKET**

COMES NOW, the Kansas Industrial Consumers Group, Inc. (“KIC”) and respectfully files this Petition to Intervene and Response to Commission Staff (“Staff”) and Evergy’s¹ Joint Motion for Revisions to Procedure for Docket.² In support of KIC’s Petition and Response, KIC states the following to the State Corporation Commission of the State of Kansas (“Commission”):

I. CONDENSED PROCEDURAL BACKGROUND

1. On June 11, 2020, Staff petitioned the Commission to open a general investigation into an agreement between Evergy’s Board of Directors and Elliott Management.³ Staff outlined concerns regarding Elliott’s proposed value-generation paths,⁴ provided an extensive list of items for Evergy to respond to,⁵ and proposed a procedural framework for responsive comments.⁶

2. On June 18, 2020, the Commission issued its Order Opening General Investigation.⁷ The Commission agreed a transparent process regarding Evergy’s evaluation of

¹ Comprised of Evergy Kansas Metro, Inc., Evergy Kansas Central, Inc., and Evergy Kansas South, Inc., collectively referred to in this pleading as “Evergy.”

² Joint Motion for Revisions to Procedure for Docket (Jun. 22, 2020) (Joint Motion).

³ Comprised of Elliott Associates, L.P., Elliott International, L.P., and affiliates, collectively referred to in this pleading as “Elliott.”

⁴ *See, e.g.*, Petition of Commission Staff for Order Initiating Investigation, Attached Report and Recommendation, p. 2 (R&R) (“Staff is very concerned that Elliott’s focus on increasing shareholder value will place Evergy’s customers at a risk of paying higher rates or receiving lower quality service in order to support an increase in shareholder value.”).

⁵ *See* R&R at pp. 43 – 47.

⁶ *See id.* at p. 47.

⁷ The Secretary of State of Kansas has assigned to KIC the business identity I.D. No. 3771185.

Elliott's proposed paths (e.g., standalone or merger) was crucial,⁸ and adopted Staff's recommendation in its entirety.⁹

3. On June 22, 2020, Staff and Evergy filed a Joint Motion to revise this investigation's procedural framework. Staff and Evergy requested the Commission modify timelines associated with Evergy's reporting requirements,¹⁰ and establish heightened confidentiality protections.¹¹

II. PETITION TO INTERVENE

4. KIC is a corporation, organized and existing under the laws of the state of Kansas. KIC was incorporated in Kansas on April 13, 2005, and is active and in good standing in all respects. KIC is organized for the purpose of representing the interests of commercial, business, industrial, not-for-profit, and educational entities that purchase large volumes of electric energy and natural gas for their operations and activities. KIC routinely intervenes in Commission proceedings, files extensive testimony, participates in the settlement process, and advocates its interests during hearings.

5. Investigations, generally, are governed by the Kansas Administrative Procedure Act unless the Commission orders otherwise.¹² K.S.A. 77-521 requires petitions for intervention be granted if: (1) it is in the interests of justice, (2) if the intervention will not impair the orderly and prompt conduct of the proceedings, and (3) if the party has stated facts demonstrating its legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding.¹³ Likewise, the Commission has broad discretion to grant a petition for intervention

⁸ See Order Opening General Investigation, ¶4 (Jun. 18, 2020) (Order).

⁹ See *id.* at ¶7.

¹⁰ See Joint Motion, ¶¶ 8 – 10.

¹¹ See *id.* at ¶¶ 11 – 12.

¹² See K.S.A. 66-101d (Hearings in general investigations initiated by Commission subject to Kansas Administrative Procedure Act unless good cause exists to order otherwise.).

¹³ See K.S.A. 77-521(a).

when the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.¹⁴

6. KIC represents a unique facet of the electric energy market and, derivatively, a unique segment of consumers that are dependent upon electric energy for a significant component of the economy of the state of Kansas, including large volume consumers of electric energy.¹⁵

7. The representation of KIC's interests in this proceeding by other existing parties is or may be inadequate. KIC will be bound by Commission Orders in this proceeding and may be adversely affected thereby. Granting KIC intervention and full party status in this docket is in the interest of justice and will not impair the orderly and proper conduct of this proceeding. In fact, KIC's representation of multiple large-volume user interests through one active participant could greatly enhance the orderly and prompt conduct of the Commission's business. Any decision regarding Elliott's proposals has the potential to materially affect KIC – particularly ensuring the rates and terms of service available to KIC remain just and reasonable. After all, KIC's members are located in Evergy's certificated service territory. As such, KIC's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by this proceeding.

8. As a condition to KIC intervention, the Commission has previously required identification of entities participating through KIC.¹⁶ Therefore, KIC provides notice the following entities will be participating through KIC in this proceeding: Associated Purchasing Services Corp. KIC expects multiple Evergy customers will intervene and actively participate in

¹⁴ See K.S.A. 77-521(b).

¹⁵ KCC Consolidated Docket Nos. 08-ANGG-295-CCN and 08-TKOG-314-COC, Order Granting SWKIA's Petition to Intervene and Motion to Consolidate Dockets, ¶¶ 8-12 (Feb. 27, 2008). In its Order, the Commission granted intervention to an incorporated entity in good standing representing "a unique facet of the natural gas market and, derivatively, a unique segment of consumers for natural gas who are dependent upon gas service for a significant component of the economy of southwest Kansas...."

¹⁶ See Docket No. 18-WSEE-328-RTS, Order Granting Intervention to Kansas Industrial Consumers Group, Inc., ¶¶ 8 – 11 (Mar. 20, 2018).

this proceeding through KIC. KIC will notify the Commission as additional entities opt to participate through its intervention.

9. KIC respectfully requests the Commission grant KIC's intervention without limitation in this matter and permit KIC to fully participate in all aspects of this Docket, including but not limited to the rights to serve relevant discovery, present witness testimony and other evidence, file briefs, motions, and other documents, as appropriate, and fully participate in any hearing.

III. RESPONSE TO STAFF AND EVERGY'S JOINT MOTION

10. Staff and Evergy jointly request the Commission modify this investigation's reporting timelines and confidentiality provisions.

11. Requesting to modify this docket's procedural framework one week after it was adopted, without input from any other stakeholder, is premature. The record in this proceeding indicates this investigation will be informational and transparent.¹⁷ However, no party, not even the State's statutorily authorized intervenor,¹⁸ was able to participate in discussions regarding timeline modification. The Commission should reject the proposed procedural revisions and instead allow interested parties an opportunity to intervene and collaboratively develop a procedural framework with Staff and Evergy.

12. Regarding heightened confidentiality protections, the requested confidentiality limitations are too narrow, exclusionary, and arbitrary. Limiting the review of relevant materials

¹⁷ "Rather, this investigation is informational in nature, will allow all parties to be informed of Evergy's decision [to pursue Elliott's proposed paths], and will allow Evergy to be informed of the Commission's and all stakeholders concerns regarding its decision." R&R, p. 2; "Because of the extensive obstacles facing Elliott's plan to increase shareholder value, Staff asserts that Evergy's Board of Directors Strategic Review and Operations Committee's evaluation of the Modified Standalone Plan and Merger Transaction should not only be transparent, but fully explained to the Commission and stakeholders." R&R, p. 43.

¹⁸ See K.S.A. 66-1223(b); See also Order, p. 8, Ordering Clause (C) (Designating CURB, among others, may file responsive comments).

to Staff (until a decision is announced) is arbitrary. K.S.A. 66-1220a is the confidentiality statute that applies to the Commission, Staff, and intervenors. As such, any confidentiality obligation or duty imposed on Staff is likewise imposed on intervenors.

13. K.S.A. 66-1220a(a)(4) allows the Commission to consider alternative discovery processes, and the Commission routinely cites this subparagraph when issuing protective orders.¹⁹ As part of that process, the Commission establishes a confidentiality framework. Provided an intervenor complies with the terms of the Commission's confidentiality framework, an intervenor is afforded the same degree of flexibility for reviewing confidential discovery as any other party (e.g., Staff). Creating a confidentiality framework that excludes other parties from crucial discovery, without any further explanation why, is arbitrary. This is true even though Staff is afforded special discovery privileges (e.g., accelerated timelines for others to respond to Staff's discovery).²⁰ Special privileges afforded to Staff are rooted in Kansas regulations, which underwent a public adoption process with oversight from the Kansas Legislature.²¹ Therefore, the request to limit review of confidential materials to Staff (until two weeks after public announcement of a decision)²² should be rejected.

14. KIC is committed to working collaboratively with Staff, Evergy, and any other interested party to address Evergy's confidentiality concerns. In the 16-KCPE-593-ACQ Docket ("16-593 Docket") the Commission endorsed an agreement reached between Great Plains Energy and the Kansas Board of Public Utilities that permitted supervised on-site review of sensitive

¹⁹ See Order Designating Prehearing Officer, Suspension Order, Protective Order, Discovery Order, and Order Granting Intervention to The Citizens' Utility Ratepayer Board, Docket No. 18-WSEE-328-RTS, ¶8 (Feb. 8, 2018).
²⁰ See K.A.R. 82-1-234a(b), *as modified by* Order Granting Petition for Reconsideration of Discovery Order, p. 6, Ordering Clauses B and C (November 10, 2016).
²¹ See the Kansas Rules and Regulations Filing Act, K.S.A. 77-415 through K.S.A. 77-438.
²² See Joint Motion, ¶12.

documents, and specific identification of documents wished to be copied.²³ If alternative arrangements were made for review of “highly” sensitive and confidential documents in the 16-593 Docket, surely the same accommodation can be made for like-materials in this investigation. The Commission should permit Staff, Evergy, and other interested parties to collaborate on alternative arrangements for reviewing sensitive or confidential documents.

WHEREFORE, the Kansas Industrial Consumers Group, Inc., respectfully requests the Commission: (1) grant its Petition to Intervene, (2) deny Staff and Evergy’s Joint Motion for Revisions to Procedure for Docket, (3) permit interested parties to coordinate on a revised procedural framework, (4) permit interested parties to collaborate on alternative arrangements for reviewing sensitive or confidential documents, and (5) for any other such relief the Commission deems just and reasonable.

Respectfully submitted,

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²³ See Prehearing Officer Order Granting Motion to Compel, Docket No. 16-KCPE-593-ACQ, ¶5 (Nov. 30, 2016). See *id.* at p. 6, Ordering Clauses (A) and (B).

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

Robert Elliott Vincent, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., that he has read and is familiar with the foregoing *Petition to Intervene of The Kansas Industrial Consumers Group, Inc., and Response to Commission Staff and Evergy's Joint Motion for Revisions to Procedure for Docket*, and the statements therein are true to the best of his knowledge, information, and belief.



Robert Elliott Vincent

SUBSCRIBED AND SWORN to before me this 24th day of June, 2020.



Notary Public

My Appointment Expires:

08-31-2022



CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2020, the foregoing *Petition to Intervene of The Kansas Industrial Consumers Group, Inc., and Response to Commission Staff and Evergy's Joint Motion for Revisions to Procedure for Docket* was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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