



Co. (Kroger); the U.S. Department of Defense, Holly Frontier El Dorado Refining, LLC (HollyFrontier); Walmart, Tyson Foods, Topeka Metropolitan Transit Authority, and the Kansas State Board of Regents filed a Joint Motion to Approve Non-Unanimous Stipulation and Agreement (S&A). In relevant part, the Parties to the S&A agree that Evergy will implement a three-part rate for the Residential Distributed Generation (DG) class with a demand charge of \$9.00 for the summer and of \$3.00 for the winter.<sup>7</sup>

3. On July 18, 2018, the Sierra Club, Vote Solar, and Climate and Energy Project filed their Objection to the Non-Unanimous Stipulation and Agreement,<sup>8</sup> objecting to the rate design and revenue allocation to customers with DG, proposed in the S&A, arguing that it imposes rates and charges for the Residential DG (RS-DG) class that are not cost-based; not just and reasonable; and that are unreasonably discriminatory and unduly preferential.<sup>9</sup>

4. On September 27, 2018, the Commission issued its Order Approving Non-Unanimous Stipulation and Agreement (Order), finding in relevant part, that: (1) the expert witnesses from Evergy, Staff and CURB provides substantial, competent and compelling evidence to approve the S&A's three-part rate design;<sup>10</sup> (2) the evidence demonstrates that RS-DG customers' usage patterns, rather than their use of renewable energy is the basis for paying a different rate than their non-DG counterparts;<sup>11</sup> and (3) RS-DG customers are not disadvantaged by any alleged difficulty in understanding or responding to the three-part RS-DG rate.<sup>12</sup>

5. On October 12, 2018, Sierra Club and Vote Solar filed a Petition for Reconsideration (PFR), alleging the Commission: (1) erred in finding that the S&A's revenue reduction allocation

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<sup>7</sup> Non-Unanimous Stipulation and Agreement, July 17, 2018, ¶ 46.

<sup>8</sup> Sierra Club, Vote Solar, and Climate and Energy Project's Objection to the Non-Unanimous Stipulation and Agreement and the Joint Motion to Approve the Same, July 18, 2018, ¶ 3.

<sup>9</sup> Testimony in Opposition to Non-Unanimous Stipulation and Agreement and Exhibits of Madeline Yozwiak, July 18, 2018, pp. 2-3.

<sup>10</sup> Order Approving Non-Unanimous Stipulation and Agreement, Sept. 27, 2018, ¶ 51.

<sup>11</sup> *Id.*, ¶ 58.

<sup>12</sup> *Id.*, ¶ 60.

and residential distributed generation tariff (RS-DG tariff) are supported by substantial competent evidence; (2) erred in approving a proposed RS-DG rate that violates state and federal law; and (3) erred in finding that the RS-DG rate is in the public interest.<sup>13</sup>

6. Following the Commission's denial of the Sierra Club and Vote Solar's PFR, the Sierra Club and Vote Solar appealed to the Court of Appeals. On April 12, 2019, the Court of Appeals issued an unpublished Memorandum Opinion, affirming the Commission's Order. The Court of Appeals found that: (1) while the parties presented conflicting evidence on the reasonableness of the new RS-DG rate design, there was substantial competent evidence supporting the Commission's finding that the new rate design was based on a neutral cost-based rationale,<sup>14</sup> and (2) because the rate design bears a rational relationship to Evergy's cost recovery, while not imposing a disproportionate burden on the RS-DG class, the new rate is not discriminatory simply because it imposes higher charges on the RS-DG class than they would receive under the standard residential rate.<sup>15</sup>

7. Vote Solar and the Sierra Club appealed to the Supreme Court.<sup>16</sup> On April 3, 2020, the Supreme Court reversed and remanded the Court of Appeals' decision, finding, "[t]here is no question that the RS-DG rate at issue here is not built on a time-of-use rate or a minimum bill. It is simply price discrimination. And this price discrimination undermines the policy preferences of our Legislature -- as expressed in K.S.A. 66-117d -- which has codified the goal of incentivizing renewable energy production by private parties."<sup>17</sup>

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<sup>13</sup> Sierra Club and Vote Solar's Petition for Reconsideration, Oct. 12, 2018, ¶ 1.

<sup>14</sup> *In the Matter of the Joint Application of Westar Energy, Inc. and Kansas Gas and Electric Company*, No. 120,436, 2019 WL 1575480, Apr. 12, 2019, \*6.

<sup>15</sup> *Id.*, \*9.

<sup>16</sup> Initial Comments of Climate and Energy Project, Sierra Club, and Vote Solar, Aug. 14, 2020, ¶ 3.

<sup>17</sup> *In the Matter of the Joint Application of Westar Energy, Inc. and Kansas Gas and Electric Company*, 311 Kan. 320, 330 (2020).

8. The Supreme Court opined:

We can think of several ways the Utilities could attempt to reduce or eliminate their economic “free rider” problem without creating a regime of price discrimination. For example, the Utilities could simply restructure their rates so that their fixed costs are fully recovered by the flat fee charged to each customer hooked to the grid. Alternatively, the Utilities could impose a nondiscriminatory time-of-use rate, or a sliding scale rate that decreased the per-unit price as the customer purchased a higher volume of energy—thus rewarding high volume purchasers. Of course it is beyond the scope of this opinion to predict whether these alternative price schemes would clear either the political or legal hurdles they might face. These examples simply illustrate that price discrimination is not the only way to achieve an equitable market for the sale of electricity within statutory parameters. Our decision today does not impose any restrictions on the Utilities’ and Commission’s economic judgments concerning how best to structure the generation and sale of electricity other than the restriction imposed by the Kansas Legislature in K.S.A. 66-117d.<sup>18</sup>

9. The Supreme Court reversed the judgment of the Court of Appeals and the Commission and remanded the matter back to the Commission for further proceedings consistent with its opinion.<sup>19</sup> Accordingly, on June 16, 2020, the Commission issued its Order Setting Procedural Schedule on Rate Design, reopening this Docket for further proceedings to determine an appropriate rate design for Evergy.<sup>20</sup> In its Order Setting Procedural Schedule, the Commission noted that the issue of distributed generation is not unique to Evergy, and directed all jurisdictional electrical utilities to enter their appearance in this Docket.<sup>21</sup> The Parties were instructed to file comments addressing the two options for rate design suggested by the Supreme Court: (1) restructuring rates to fully recover fixed rates by the flat fee charged to each customer hooked to the grid and (2) imposing a nondiscriminatory time-of-use rate, or a sliding scale rate that decreased the per-unit price as the customer purchased a higher volume of energy—thus rewarding high volume

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<sup>18</sup> *Id.*, at 330-331.

<sup>19</sup> *Id.*, at 331.

<sup>20</sup> Order Setting Procedural Schedule on Rate Design, June 16, 2020, ¶ 15.

<sup>21</sup> *Id.*, ¶ 16.

purchasers.<sup>22</sup> The Parties were also directed to propose other alternative rate designs consistent with K.S.A. 66-117d.<sup>23</sup> After reviewing the comments from the parties, Evergy was directed to file its proposed rate design with supporting testimony by October 13, 2020.<sup>24</sup>

10. On August 14, 2020, initial comments were filed by KIC; USD #259; Evergy; Liberty Empire; Southern Pioneer Electric Company and Pioneer Electric Cooperative, Inc. (Pioneer); Climate & Energy Project, the Sierra Club, and Vote Solar (Solar Group); Kansas Electric Cooperatives, Inc., Midwest Energy, Inc., Sunflower Electric Power Corp., and Kansas Electric Power Cooperative, Inc. (KEC Group); CURB; and Staff.

11. In its initial comments, KIC explained the scope of the remanded proceedings should be limited to determining an appropriate rate design for Evergy's residential customer classes.<sup>25</sup> KIC noted the issue of rate design for residential customers does not impact how costs are allocated to its members or how its member's rates are designed.<sup>26</sup> USD #259 agreed with KIC on the limited scope of the remand, and opined that it is not necessary to set aside the non-unanimous settlement agreement reached in 2018, or restructure rates for all classes of service such as large industrial, schools, medium and small commercial, etc.<sup>27</sup>

12. Liberty Empire advocated for allowing utilities to recover all or most of their fixed costs through a monthly customer charge, rather than through a volumetric rate, which would eliminate the need for a separate rate for DG customers.<sup>28</sup>

13. Pioneer explained the Supreme Court holding that K.S.A. 66-117d prohibits using a customer's DG status as the basis for charging a higher rate to a DG customer for the same service,

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<sup>22</sup> *Id.*, ¶ 17.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, ¶ 18.

<sup>25</sup> Initial Comments of the Kansas Industrial Consumers Group, Inc. Regarding Rate Design, Aug. 14, 2020, ¶ 7.

<sup>26</sup> *Id.*, ¶ 15.

<sup>27</sup> Comments of Unified School District #259 (Hereinafter USD 259) Regarding the Issue of Rate Design Following Remand from the Kansas Supreme Court, Aug. 14, 2020, ¶ 4.

<sup>28</sup> Comments of the Empire District Electric Company, Aug. 14, 2020, ¶ 1.

but that K.S.A. 66-117d does not bar charging a different rate to a renewable DG customer on another basis, such as for a different, distinct service.<sup>29</sup> Since residential DG customers are allowed to export electricity they produce but do not use onto the utility's electric grid; the utility is serving as a battery for the customer; this export service differs from the service non-DG customers are taking when they buy electricity from the utility.<sup>30</sup> Since the Supreme Court did not prohibit a rate structure that charges based upon the nature of the service and not the customers' DG status, charging a higher rate to residential DG customers is not price discrimination under K.S.A. 66-117d.<sup>31</sup> The KEC Group's comments echo those of Pioneer. KEC claims the Supreme Court's decision is limited to residential customers with renewable DG, and that it does not prohibit rate structures with different rates for different services because that does not constitute price discrimination under K.S.A. 66-117d.<sup>32</sup>

14. CURB advocates a legislative solution.<sup>33</sup> In the interim, CURB suggests: (1) canceling the Residential Standard Distributed Generation tariff, (2) moving all the DG customers back to Residential Standard Service, and (3) allowing Evergy Central to track any identifiable undercollections of fixed costs from DG customers in a regulatory asset for recovery in its next general rate case.<sup>34</sup> Similarly, the Solar Group recommend transferring DG customers to the same standard service rate as general residential ratepayers and reverting to the RS-DG rate previously approved in the 15-WSEE-115-RTS Docket.<sup>35</sup> Additionally, the Solar Group believes Evergy

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<sup>29</sup> Verified Initial Comments of Southern Pioneer Electric Company and Pioneer Electric Cooperative, Inc., Aug. 14, 2020, ¶ 11.

<sup>30</sup> *Id.*, ¶ 16.

<sup>31</sup> *Id.*, ¶¶ 12-13.

<sup>32</sup> Joint Initial Comments on Rate Design Options from Kansas Electric Cooperatives, Inc., Midwest Energy, Inc., Sunflower Electric Power Corp., and Kansas Electric Power Cooperative, Inc., Aug. 14, 2020, ¶ 12.

<sup>33</sup> Initial Comments of the Citizens' Utility Ratepayer Board on Evergy Central's Rate Design, Aug. 14, 2020, ¶ 18.

<sup>34</sup> *Id.*, ¶ 36.

<sup>35</sup> The 15-WSEE-115-RTS Docket is Westar's previous general rate case. Initial Comments of Climate and Energy Project, Sierra Club, and Vote Solar, Aug. 14, 2020, ¶ 38.

should be ordered to refund RS-DG customers for the higher bills that they paid under the unlawful RS-DG rate.<sup>36</sup>

15. Staff's comments focused on explaining the Supreme Court's rejection of the three-part rate design and analyzing the possible rate designs mentioned in the Court's decision.<sup>37</sup> Evergy explained the Kansas Supreme Court acknowledged and reaffirmed the Commission's conclusions regarding the subsidy that currently exists in favor of RS-DG customers and gave specific examples – minimum bill rates or time-of-use (TOU) rates – as options that would be acceptable under its interpretation of the relevant statutes, therefore Evergy intends to develop an alternative to the three-part rate that addresses, or begins to address, the subsidy issue.<sup>38</sup> In addition to evaluating the pros and cons of the options mentioned by the Supreme Court,<sup>39</sup> Evergy analyzed imposing a non-discriminatory TOU rate to be coupled with either a minimum bill or grid access fee.

16. On September 10, 2020, reply comments were filed by Pioneer; the KEC Group; KIC; Evergy; CURB; Climate & Energy Project, the Solar Group; and Staff.

17. On October 13, 2020, Evergy filed its new proposed rate design, with a monthly residential grid access charge (GAC) of \$3.00 per kW of installed DG capacity, applicable to all residential customers.<sup>40</sup> The monthly GAC is based on a customer's installed DG capacity.<sup>41</sup> Customers with higher DG capacity would pay more than customers with smaller DG capacity.<sup>42</sup> Non-DG customers would have a monthly grid access charge of zero.<sup>43</sup> If approved, Evergy would no longer offer service under the grandfathered DG rates or the three-part residential DG demand

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<sup>36</sup> *Id.*

<sup>37</sup> Verified Initial Comments of Commission Staff, Aug. 14, 2020, ¶ 2.

<sup>38</sup> Comments of Evergy Kansas Central, Inc., Evergy Kansas South, Inc., and Evergy Metro, Inc. Regarding Rate Design for Customers with Distributed Generation, Aug. 14, 2020, ¶ 8.

<sup>39</sup> *Id.*, ¶ 12.

<sup>40</sup> Direct Testimony of Bradley D. Lutz, Oct. 13, 2020, p. 7.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

rate and all remaining customers served under those rates would be moved to the Residential Standard DG rate.<sup>44</sup>

18. To eliminate the subsidy that DG customers receive, Evergy believes the GAC would have to be set at \$6.50 per kW of installed DG capacity.<sup>45</sup> But to limit the impact on DG customers and consistent with gradualism, Evergy is only seeking to recover 50% of that amount through the GAC.<sup>46</sup> Evergy estimates the GAC would produce \$205,491.60 of revenue,<sup>47</sup> and on average, would cost DG customers \$20.56 per month or \$246.69 per year.<sup>48</sup>

19. As an alternative to the GAC, Evergy proposes a monthly minimum bill of \$35 for all residential customers.<sup>49</sup> Similar to the GAC, a \$35 minimum monthly bill is only about 50% of the approximately \$77 a month in costs to serve customers, and Evergy realizes it is unreasonable to set the minimum bill at the total cost level.<sup>50</sup> If approved, the minimum bill would produce revenues not contemplated in Evergy's last general rate proceeding.<sup>51</sup> Therefore, Evergy proposes those new incremental revenues be placed in a deferral account and fully considered in its next general rate case.<sup>52</sup> Because a minimum monthly bill would likely disproportionately impact residential accounts not associated with a household, such as out buildings, garages, and farm-related uses and unoccupied rental homes and apartments, Evergy prefers the grid access charge to a minimum monthly bill.<sup>53</sup>

20. On November 5, 2020, the Commission held a public hearing. Due to the COVID-19 pandemic, the hearing was conducted via Zoom. The Commission also established a public

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<sup>44</sup> *Id.*, p. 9.

<sup>45</sup> *Id.*, p. 8.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*, p. 10.

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

<sup>49</sup> *Id.*, p. 11.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*, p. 12.

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

<sup>53</sup> *Id.*, p. 14.

comment period, which ran from October 15, 2020 through December 21, 2020.<sup>54</sup> The Commission's Public Affairs and Consumer Protection received 1,084 comments.<sup>55</sup> The overwhelming number of public comments oppose both of Evergy's rate design proposals.

21. On November 13, 2020, testimony in response to Evergy's proposed rate design was received from Dr. Robert H. Glass, PhD. on behalf of Staff; Brian Kalcic on behalf of CURB; and Rick Gilliam on behalf of the Solar Group.

22. Glass testifies there is overwhelming evidence of a subsidy to DG customers.<sup>56</sup> He explains that given the similarities between the Evergy's newly proposed grid access charge and the demand charge rejected by the Supreme Court, Staff thinks adopting a grid access charge could lead to further litigation.<sup>57</sup> Glass also questions whether standby service to DG customers is a separate service from providing electricity to non-DG customers under the Supreme Court's Opinion. Dr. Glass noted that although the Kansas Supreme Court was vague on that issue, it is his opinion that, from a technical perspective, capacity is a separate service provided by an electric utility.<sup>58</sup>

23. Staff believes a minimum monthly bill is nondiscriminatory because it applies to all customers.<sup>59</sup> But Staff is concerned that some residential customers who reside in smaller dwellings would be unintentionally harmed by a \$35 minimum bill.<sup>60</sup> Therefore, Staff proposes different minimum bills for three Residential groups: (1) customers with houses, (2) customers with apartments, and (3) customers that live in trailer courts.<sup>61</sup> But Staff lacks the data to recommend an appropriate amount for a minimum bill for each subclass.<sup>62</sup>

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<sup>54</sup> Order Setting Public Hearing and Establishing Public Comment Period, Oct. 15, 2020, ¶ 7.

<sup>55</sup> Notice of Filing of Public Comments, Dec. 30, 2020.

<sup>56</sup> Responsive Testimony of Robert H. Glass, Nov. 13, 2021, p. 5.

<sup>57</sup> *Id.*, p. 6.

<sup>58</sup> *Id.*, p. 9.

<sup>59</sup> *Id.*, p. 10.

<sup>60</sup> *Id.*

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

<sup>62</sup> *Id.*

24. CURB's witness Kalcic testimony recommends: (1) adopting CURB's interim rate design, which essentially reinstates the two-part rates approved in the 15-115 Docket, (2) allowing Evergy to track foregone revenues in a regulatory asset for potential recovery in its next rate case, and (3) rejecting Evergy's proposed rate design.<sup>63</sup> Kalcic does not offer an opinion on whether the grid access charge would violate K.S.A. 66-117d.<sup>64</sup> CURB opposes a minimum bill, because: (1) all residential customers who use less electricity than the class average would face higher bills;<sup>65</sup> (2) it would adversely affect those customers least able to pay higher bills;<sup>66</sup> and (3) customers using less energy than the class average would also lose any incentive to conserve energy.<sup>67</sup>

25. The Solar Group's witness Gilliam opposes Evergy's proposed rate design and instead proposes requiring Evergy to either: (1) eliminate the DG customer class and transfer all customers back to the standard residential service (RS) class, or (2) impose the same rates and charges on DG customers as the RS rate.<sup>68</sup> He also argues the Commission should order Evergy to refund RS-DG customers for the higher bills that they paid under the unlawful RS-DG rate, with interest determined at the Company's authorized weighted average cost of capital.<sup>69</sup>

26. Gilliam claims that while the Court mentions "free-riders" three times, it made clear that was the Utilities' characterization, not the Court's.<sup>70</sup> Based on his belief that Evergy's witness misunderstands the Court's decision, Gilliam claims that applying a zero grid access charge to non-DG customers, does not change the fact that DG customers would pay a higher price for their electric

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<sup>63</sup> Direct Testimony on Remand by Brian Kalcic, Nov. 13, 2020, p. 2.

<sup>64</sup> *Id.*, p. 4.

<sup>65</sup> *Id.*, p. 8.

<sup>66</sup> *Id.*

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

<sup>68</sup> Testimony and Attachments of Rick Gilliam on Behalf of Climate and Energy Project, Sierra Club, and Vote Solar in Response to Westar's Proposed Rate Designs, Nov. 13, 2020, p. 3.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*, p. 5.

service, which the Kansas Supreme Court found violates 66-117d.<sup>71</sup> Gilliam disputes Evergy's contention that DG customers receive different service than non-DG customers.<sup>72</sup>

27. Gilliam also opposes a monthly minimum bill, as regressive, noting that even Evergy concedes that its minimum bill proposal "will raise the monthly bills for low use customers."<sup>73</sup> He argues that based on Evergy's unsubstantiated claim that a subset of its 833 DG customers are not paying their "fair share" of fixed costs, Evergy intends to increase the electricity bills of nearly 200,000 non-DG customers.<sup>74</sup> Gilliam also believes a minimum monthly bill would violate KSA 66-1266(b)(1) because DG customers would be billed more than "for the net electricity supplied by the utility."<sup>75</sup>

28. On November 23, 2020, the Commission received cross-answering testimony from Douglas S. Shepherd on behalf of the KEC Group; Kalcic on behalf of CURB; Gilliam on behalf of the Solar Group; and Richard Macke on behalf of Pioneer.

29. Shepherd testifies: (1) CURB's recommendation further delays resolution on the underlying issue of a rate design;<sup>76</sup> (2) contrary to Gilliam's testimony, all customers are subject to the grid access charge, and even though some customers would pay zero under the charge, it would be nondiscriminatory;<sup>77</sup> (3) the Legislature has relied on a zero charge model before, citing the Kansas Retailers' Sales Tax;<sup>78</sup> and (4) DG and non-DG customers exhibit different energy flow characteristics and are not receiving the same service.<sup>79</sup> Ultimately, Shepherd concludes Evergy's proposal for a grid access fee is non-discriminatory because the Supreme Court Order only prohibits

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<sup>71</sup> *Id.*, p. 7.

<sup>72</sup> *Id.*, pp. 10-12.

<sup>73</sup> *Id.*, p. 19.

<sup>74</sup> *Id.*, p. 22.

<sup>75</sup> *Id.*, p. 24.

<sup>76</sup> Cross-Answering Testimony of Douglas S. Shepherd, Nov.23, 2020, p. 5.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*, p. 6.

<sup>79</sup> *Id.*, p. 7.

a higher charge for the same service, and DG customers take a different service than non-DG customers.<sup>80</sup>

30. Kalcic's cross-answering testimony is limited to responding to Staff's advocacy of a minimum monthly bill. Kalcic disputes Staff's opinion that a minimum bill could be tailored to implied usage levels and opines that a tiered minimum bill based on type of residential dwelling, would do little to alleviate the attendant bill impacts.<sup>81</sup>

31. While agreeing with Staff that there is no difference between applying Evergy's proposed GAC to only DG customers and applying a zero charge to non-DG customers and that, as proposed, the minimum bill will disproportionately impact low use customers, Gilliam disagrees that DG customers are being subsidized.<sup>82</sup> Gilliam agrees with CURB that both the GAC and the minimum bill should be rejected and deferral treatment for some measure of revenue over or under-recovery is appropriate.<sup>83</sup> But unlike CURB's proposal to allow deferral of the difference between rates approved by the Commission in this remand and what Evergy would have collected under the GAC, Gilliam believes any deferral should be based on the revenue requirement and billing determinants approved in 2018.<sup>84</sup>

32. Macke urges the Commission to find that a charge like Evergy's proposed GAC is permissible, even if it adopts a different rate design for Evergy in this Docket.<sup>85</sup> He believes that if a utility can identify the distinct services provided to DG residential customers and support how they differ from the services provided to non-DG residential customers, the Commission can approve a rate structure that impact DG residential customers differently than non-DG residential customers.<sup>86</sup>

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<sup>80</sup> *Id.*, p. 16.

<sup>81</sup> Cross-Answering Testimony on Remand of Brian Kalcic, Nov. 23, 2020, p. 4.

<sup>82</sup> Cross Answering Testimony of Rick Gilliam on Behalf of Climate and Energy Project, Sierra Club, and Vote Solar in Response to Corporation Commission Staff and the Citizens' Utility Ratepayer Board, Nov. 23, 2020, p. 1.

<sup>83</sup> *Id.*, p. 2.

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

<sup>85</sup> Prefiled Cross-Answering Testimony of Richard J. Macke, Nov. 23, 2020, pp. 5-6.

<sup>86</sup> *Id.*, p. 6.

Here, Macke asserts that Gilliam recognizes there is standby, supplemental, and partial requirements service.<sup>87</sup> Those three services are different from the services received by non-DG customers.<sup>88</sup>

33. Macke claims utilities throughout the country have separate and unique rate tariffs like standby rates, designed to provide *additional* service to customers with DG.<sup>89</sup> Specifically, he cites K.S.A. 66-1238, which requires customers to pay a one-time interconnection charge for connecting their customer-owned generation to the utility's system, as a charge that impacts DG differently than non-DG customers because non-DG customers do not take this interconnection service.<sup>90</sup> Macke argues "stand-by" or similar charges are permissible because they are not based on a customer's status as a renewable DG customer, but on the different service the customer requires and receives.<sup>91</sup> He explains that a DG customer does not require different service, because a DG customer could disconnect from the grid, and surrender the ability to export unused energy instantaneously.<sup>92</sup> While Macke has not analyzed Evergy's proposed minimum bill rate, he believes generally minimum bills are a legitimate rate design option.<sup>93</sup>

34. On December 4, 2020, Dr. Ahmad Faruqui and Brad Lutz filed rebuttal testimony on behalf of Evergy. Faruqui's testimony asserts DG customers receive a different type of service than non-DG customers because in addition to importing power from the grid, DG customers also export power to the grid.<sup>94</sup> DG customers import electricity from the grid at certain times and export it at other times, which is a crucial distinction between DG and non-DG customers.<sup>95</sup> He notes other jurisdictions have implemented alternative rate designs for DG customers in recognition of the cross-

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<sup>87</sup> *Id.*, p. 8.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*, p. 9.

<sup>90</sup> *Id.*, p. 11.

<sup>91</sup> *Id.*, p. 13.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*, p. 17.

<sup>94</sup> Rebuttal Testimony on Remand of Ahmad Faruqui, Dec. 4, 2020, p. 2.

<sup>95</sup> *Id.*, p. 9.

subsidy that exists between DG and non-DG customers.<sup>96</sup> Lutz testifies he understands Dr. Glass's concern with a minimum monthly bill's financial impact on low income or economically challenged customers who currently have small monthly bills, and that Evergy could override the Minimum Bill for customers: (1) receiving Low Income Home Energy Assistance Program (LIHEAP) funds or similar bill payment assistance.<sup>97</sup> In support of the grid access charge, Lutz advises that in Docket No. 16-GIME-403-GIE (403 Docket), the generic docket on rate design for DG customers, the Commission concluded that "DG customers should be uniquely identified within the ratemaking process because of their potentially significant different usage characteristics."<sup>98</sup> Lutz faults CURB for overstating the impact of the minimum bill and acting as if Evergy was proposing a \$77 minimum monthly bill.<sup>99</sup>

35. Lutz rebuts Gilliam's suggestion that the Commission should require Evergy to refund DG customers, plus interest who were billed under the RS-DG rate, by explaining Evergy billed customers under Commission-approved rates.<sup>100</sup> Furthermore, Lutz advises since many DG customers have had their rates grandfathered, determining refunds will be complex.<sup>101</sup> Adding to the complexity of determining a refund, not all customers paid higher bills, some customers saved money under the RS-DG rate.<sup>102</sup> Those DG customers that saved money under the RS-DG rate may owe money if a refund is ordered.

36. The Commission held a two-day evidentiary hearing beginning December 16, 2020. Evergy; Staff, CURB; Pioneer; Liberty Empire; KIC; the KEC Group; and Solar Group appeared by counsel and each party submitted prefiled testimony. The Commission heard live testimony from a

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<sup>96</sup> *Id.*, p. 5.

<sup>97</sup> Rebuttal Testimony on Remand of Bradley D. Lutz, Dec. 4, 2020, pp. 6-7.

<sup>98</sup> *Id.*, pp. 9-10.

<sup>99</sup> *Id.*, p. 10.

<sup>100</sup> *Id.*, p. 16.

<sup>101</sup> *Id.*, p. 17.

<sup>102</sup> *Id.*

total of 7 witnesses, including 2 on behalf of Evergy, and one each on behalf of Pioneer; the KEC Group; CURB; the Solar Group; and Staff. The parties had the opportunity to cross-examine the witnesses at the evidentiary hearing as well as the opportunity to redirect their own witnesses. Following the evidentiary hearing, all of the parties submitted post-hearing briefs.

37. On January 11, 2021, the Commission received post-hearing briefs from Pioneer; Liberty Empire; Evergy; the KEC Group; the Solar Group; KIC; CURB; and Staff.

38. At the outset, the Commission notes the unanimity among the parties that the scope of this remand is limited to Evergy Kansas Central, Inc. and Evergy Kansas South, Inc.'s residential class. The Commission agrees. The narrow issue before the Commission is whether to approve the rate design Evergy proposed on October 13, 2020.

### **GRID ACCESS CHARGE**

39. The Supreme Court faulted Evergy's RS-DG rate design which would have DG customers pay more for their electricity than other customers, in violation of K.S.A. 66-117d.<sup>103</sup> K.S.A. 66-117d prohibits utilities from charging DG customers a higher price than non-DG customers for the same service.<sup>104</sup> The Supreme Court rejected Evergy's proposed rate design because it did not reflect an added service justifying a higher charge to DG customers.<sup>105</sup> Since the RS-DG rate at issue here is not built on a time-of-use rate or a minimum bill, the Supreme Court found it was discriminatory.<sup>106</sup> By using a customer's DG status as the basis for charging more for the same goods and services than the Utilities charge to non-DG customers, the proposed RS-DG rate design was deemed to violate K.S.A. 66-117d by the Supreme Court.<sup>107</sup> The Supreme Court

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<sup>103</sup> *In the Matter of the Joint Application of Westar Energy, Inc. and Kansas Gas & Elec., Co.*, 311 Kan. 320, 327 (2020).

<sup>104</sup> *Id.*, at 328-329.

<sup>105</sup> *Id.*, at 330.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*, at 331.

remanded the rate design issue to the Commission for further proceedings consistent with its opinion.<sup>108</sup> While the Court's instructions were less than precise, the Commission interprets it to task the Commission with determining whether a rate design that results in DG customers facing higher charges than non-DG customers is justified by an added service.

40. Evergy acknowledges that under its proposed grid access charge, DG customers will pay a grid access charge of \$3.00 per kW of installed DG capacity, while the GAC for non-DG customers will be zero.<sup>109</sup> Therefore, under the GAC, DG customers will be subject to a charge that non-DG customers are not. The Commission must determine whether that discrepancy is justified by an added service.

41. The parties differ on whether DG customers are receiving an added or different service from non-DG customers. Evergy,<sup>110</sup> Pioneer,<sup>111</sup> the KEC Group,<sup>112</sup> and Staff<sup>113</sup> believe DG customers receive additional service by virtue of exporting electricity back to the system. The Solar Group does not consider that a separate service.<sup>114</sup> CURB, Liberty-Empire, and KIC do not address whether the DG customers are receiving different service. Pioneer claims the following services are only available to DG customers:

- Backup power during an unplanned customer generator outage;
- Maintenance power during scheduled service for routine maintenance and repairs;

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<sup>108</sup> *Id.*

<sup>109</sup> Direct Testimony of Bradley D. Lutz, p. 7.

<sup>110</sup> Initial Brief on Remand of Evergy Kansas Central, Inc., Evergy Kansas South, Inc., and Evergy Metro, Inc., Jan. 11, 2021, pp. 2-3.

<sup>111</sup> Post-Hearing Brief of Southern Pioneer Electric Company and Pioneer Electric Cooperative, Inc., Jan. 11, 2021, p. 10.

<sup>112</sup> Post-Hearing Brief of the KEC Group, Jan. 11, 2021, pp. 5-6.

<sup>113</sup> Post-Hearing Brief of Commission Staff, Jan. 11, 2021, ¶ 49.

<sup>114</sup> Post-Hearing Brief of Climate and Energy Project, Sierra Club and Vote Solar (Solar Group Post Hearing Brief), Jan. 11, 2021, p. 8.

- Supplemental power for customers whose onsite generation under normal operation does not meet all of their energy needs, typically provided under the full requirements tariff for the customer's rate class;
- Economic replacement power when it costs less than onsite generation;
- Delivery associated with these energy services;
- Export service where the customer sells its excess generated power to the utility or other purchasers, and
- "Storage" service where the DG customer can net-out the excess power it generates at one time with the power it needs at a different time which is in excess of what it generates.<sup>115</sup>

42. Similarly, Evergy explains RS-DG customers use the grid in a completely different way than RS customers because RS-DG customers are partial requirements customers who significantly reduce their energy purchases from the utility by self-generating and sometimes actually putting power back onto the grid, unlike non-DG customers who only draw power from the grid.<sup>116</sup> The KEC Group states the ability to export excess generation to the utility's system and virtually "store" its excess generation as credits are distinct services to DG customers and are not services provided to or utilized by non-DG customers.<sup>117</sup>

43. The Solar Group claims the Supreme Court decided that DG customers receive the same service as non-DG customers.<sup>118</sup> Even if the DG customers received separate service, the Solar Group asserts that those different services cannot justify the specific grid access charge proposed by Evergy.<sup>119</sup> The Solar Group reasons that the Supreme Court held a different charge for DG

<sup>115</sup> Pioneer Post-Hearing Brief, p. 10.

<sup>116</sup> Evergy Post-Hearing Brief, pp. 2-3.

<sup>117</sup> KEC Post-Hearing Brief, p. 6.

<sup>118</sup> Solar Group Post-Hearing Brief, p. 6.

<sup>119</sup> *Id.*, p. 9.

customers must not only be based on a different service, but must be based on the cost of providing that different service, and argue that the proposed grid access charge is neither imposed on a discrete service sold only to DG customers, nor based on the cost of any discrete service.<sup>120</sup> Instead, they claim the GAC is based on the size of a customer's DG equipment, not on how much electricity the customer exports.<sup>121</sup> Accordingly, the Solar Group believes the grid access charge suffers from the same defects as the RS-DG three part rate, and is not justified.<sup>122</sup>

44. While Staff agrees that residential DG customers use the utility's system differently because they are able to interact with the grid in a two-way manner,<sup>123</sup> Staff expresses concerns that Evergy's GAC does not effectively target the costs of providing those differing services.<sup>124</sup> Specifically, Staff notes that Evergy's proposed GAC is not designed to recover export costs, and therefore, despite the justification that it is based upon the different services provided to the DG customers, in reality, Evergy's proposed GAC does not actually recover the costs of those differing services.<sup>125</sup>

45. The Commission agrees with Staff and the Solar Group regarding structural deficiencies of the proposed GAC. Evidence suggests that DG residential customers are receiving an additional service to those provided to non-DG residential customers, chiefly the ability to export excess generation back onto Evergy's system. However, the Commission finds Evergy's proposed GAC does not adequately identify or specifically recover the cost of that additional service. As Dr. Glass testified, a permissible and non-discriminatory grid access charge should be based upon identifiable costs that distinguish the services provided to DG residential customers from the services

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Staff Post-Hearing Brief, ¶ 49.

<sup>124</sup> *Id.*, ¶ 51.

<sup>125</sup> *Id.*

provided to non-DG residential customers, most prominently including the distinct and distinguishable costs of exporting electricity onto Evergy's distribution system.<sup>126</sup> However, as proposed, Evergy's GAC is not based upon the costs associated with such energy exporting events.<sup>127</sup> Glass posits if it were, it would satisfy the Supreme Court's test.<sup>128</sup>

46. Instead of identifying the additional exporting service and calculating the incremental costs associated with that service, Evergy's GAC approach simply estimates the amount of the subsidy that would accrue from DG residential customer rates identical to non-DG residential customer rates and divides that amount in half to calculate its proposed GAC.<sup>129</sup> In other words, Evergy uses the costs of standard residential service to calculate its proposed GAC. By utilizing this approach, Glass believes, and the Commission concurs, such a proposed grid access charge is, aside from its name, too similar to the demand charge found to be discriminatory and in contravention of the Supreme Court's interpretation of K.S.A. 66-117d.<sup>130</sup>

47. Based on the Commission's concern that Evergy's proposed GAC does not actually recover the costs of specifically identifiable and different services, like exporting, the Commission denies Evergy's proposed grid access charge.

48. Certain parties to this Docket have urged the Commission to provide guidance on the issue of residential distributed generation rates, in light of the Supreme Court's decision. This Order's denial of Evergy's proposed GAC should not be viewed as a blanket rejection of the grid access charge concept. The Commission acknowledges that exporting electricity back onto the grid may constitute a separate, additional service received by DG customers. Had Evergy demonstrated its proposed GAC was based on the incremental costs of an additional exporting service, rather than

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<sup>126</sup> Transcript (Tr.), Vol. II, p. 183.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

simply a more generalized attempt to eliminate the subsidy to DG residential customers,<sup>131</sup> the Commission would have given serious consideration to the GAC.

### MINIMUM MONTHLY BILL

49. Evergy proposes to implement a minimum bill for all residential customers of \$35 per month if the Commission does not approve the GAC.<sup>132</sup> Evergy believes the minimum bill design provides “a degree of mitigation” of the “economic free rider problem” by ensuring recovery of some revenue from all residential customers, and by applying to all residential customers would satisfy the antidiscrimination provision of K.S.A. 66-117d.<sup>133</sup> Furthermore, Evergy acknowledges the minimum bill proposal does not address the cost shift from RS-DG customers to RS customers as directly as their proposed grid access charge.<sup>134</sup>

50. None of the parties appear to claim that the proposed minimum monthly bill would violate K.S.A. 66-117d.<sup>135</sup> In invalidating the DG-RS rates, the Supreme Court opined, “K.S.A. 66-1265(e) authorizes the Utilities to apply alternative rate structures to DG customers. Examples of such rate structures given in the statute are ‘time-of-use rates’ or ‘minimum bills.’”<sup>136</sup> Therefore, the Supreme Court appears to acknowledge the legality of a minimum bill. Even the Solar Group believes the minimum bill, “while not discriminatory, is terrible policy.”<sup>137</sup> The Solar Group also asserts Evergy’s proposed minimum bill cannot apply to DG customers because it conflicts with the net metering statute.<sup>138</sup>

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<sup>131</sup> Staff Post-Hearing Brief, ¶ 51.

<sup>132</sup> Lutz Direct, p. 11.

<sup>133</sup> *Id.*, p. 12.

<sup>134</sup> Evergy Post Hearing Brief, p. 23.

<sup>135</sup> See Staff Post Hearing Brief, ¶ 56.

<sup>136</sup> *In the Matter of the Joint Application of Westar Energy, Inc. and Kansas Gas & Elec., Co.*, 311 Kan. at 330.

<sup>137</sup> Tr., Vol. I, p. 47.

<sup>138</sup> Solar Group Post-Hearing Brief, p. 26.

51. While the Solar Group is alone in their belief that the proposed minimum bill would violate the net metering statute, it is joined by Staff and CURB, who believe that while a minimum bill is not discriminatory, it is bad policy. Staff<sup>139</sup> and CURB<sup>140</sup> take issue with the proposed minimum monthly bill, claiming it is regressive and will disproportionately impact low-income customers.

52. Both Staff and Evergy note that low-income customers are not necessarily low-use customers (usage less than 278 kWh per month).<sup>141</sup> On behalf of Evergy, Dr. Faruqui testified that low income does not equate to low usage.<sup>142</sup> He explained many low-income customer's bills exceed \$35 per month because they often have larger families, inefficient, poorly-insulated homes, and inefficient appliances.<sup>143</sup>

53. Evergy pledges to assist low-income customers by exempting customers receiving LIHEAP funds or other similar bill payment assistance from the minimum monthly bill.<sup>144</sup> Evergy also suggests it could authorize its customer service representatives to override the minimum bill for a specific time period if requested by a customer who provides support for their need for financial relief.<sup>145</sup> CURB expresses concerns over the administrative burdens created by allowing customer service representatives to override individual bills.<sup>146</sup> CURB and the Solar Group believe this will require a significant effort to educate customers that such relief programs are available.<sup>147</sup> The Solar Group questions the effectiveness of Evergy's proposed relief mechanisms because not only do they

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<sup>139</sup> Staff Post Hearing Brief, ¶ 59.

<sup>140</sup> CURB Post Hearing Brief, ¶ 41.

<sup>141</sup> Staff Post Hearing Brief ¶ 59.

<sup>142</sup> Tr., Vol. I, p. 274.

<sup>143</sup> *Id.*

<sup>144</sup> Evergy Post Hearing Brief, p. 30.

<sup>145</sup> *Id.*

<sup>146</sup> CURB Post Hearing Brief, ¶ 42.

<sup>147</sup> *Id.*; Solar Group Post Hearing Brief, p. 25-26.

require low-income customers to know about the program and proactively seek individual relief, but also because any relief would be determined by a customer service representative.<sup>148</sup>

54. The Commission shares CURB's and the Solar Group's concerns that customers may not realize they are eligible for relief from the minimum monthly bill and questions whether the expense of the education program will outweigh any subsidy reduction benefits of the minimum monthly bill concept. More importantly, the Commission believes allowing customer service representatives to override individual bills gives too much discretion to individual customer service representatives and is likely to produce inconsistent results. There is a real danger that a customer's relief is partially dependent on which customer service representative answers the customer's phone call. Therefore, the Commission does not believe allowing customer service representatives to override individual monthly minimum bills is an adequate remedy to assist low-income customers. The Commission remains concerned that a \$35 monthly minimum bill would disproportionately hurt low-income consumers.

55. In addition to disproportionately impacting low- and fixed-income customers, the Solar Group criticizes the minimum monthly bill for undermining price signals to reduce usage.<sup>149</sup> CURB shares the Solar Group's concern that a minimum monthly bill sends the wrong price signals to ratepayers interested in energy conservation.<sup>150</sup> But CURB's and the Solar Group's greater concern is that Evergy has indicated it does not intend to cap the minimum bill at \$35, and anticipates increasing the minimum bill in the future in an attempt to capture more of the \$77 per month it costs to serve customers.<sup>151</sup> The Solar Group characterizes Evergy's proposed \$35 minimum monthly bill as a first, gradual step towards a \$77 per month bill.<sup>152</sup> Lutz testified that Evergy views it as "an

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<sup>148</sup> *Id.*

<sup>149</sup> Solar Group Post Hearing Brief, p. 24.

<sup>150</sup> CURB Post Hearing Brief, ¶ 45.

<sup>151</sup> CURB Post Hearing Brief, ¶ 44; The Solar Group Post Hearing Brief, p. 23.

<sup>152</sup> *Id.*

appropriate point for us to start.”<sup>153</sup> While Evergy is unwilling to commit to capping the minimum monthly bill,<sup>154</sup> it argues that its refusal to commit to never seeking to increase the minimum bill should not prevent Evergy from implementing its proposed \$35 minimum bill.<sup>155</sup> Evergy reminds the Commission that its current proposal is to implement a \$35 minimum bill, and that it would have to return to the Commission for approval of any increase to the \$35 minimum bill.<sup>156</sup> Likewise, Dr. Glass testified that Staff would need a lot of persuasion before it would be willing to accept a minimum monthly bill above \$35.<sup>157</sup> The Commission shares CURB’s and the Solar Group’s concern that a minimum bill sends undesirable price signals, a drawback that will be exacerbated if the minimum bill is increased in the future.

56. Staff suggests the minimum bill is not likely to affect a large amount of customers, regardless of income.<sup>158</sup> Staff reasons only a customer who uses less than 278 kWh per month would be impacted by the minimum monthly bill, and Evergy’s average residential customer consumes about 853.5 kWh of energy per month.<sup>159</sup> As a result, Evergy estimates that almost 88 percent of customers will not see any change in their bills under the minimum bill.<sup>160</sup> Of the 12% that will see a bill increase with the minimum bill, 91.5 percent of those affected would see an annual bill increase of \$10 or less.<sup>161</sup>

57. The limited impact of the proposed minimum bill is a two-edged sword for Evergy. On one hand, it would likely not harm many customers. But based on the limited financial impact on the Company, the Commission questions the need for or value of the minimum monthly bill.

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<sup>153</sup> Tr., Vol. I, p. 158.

<sup>154</sup> *Id.*, Vol. I, pp. 158-59.

<sup>155</sup> Evergy Post Hearing Brief, p. 31.

<sup>156</sup> *Id.*

<sup>157</sup> Tr., Vol. II, p. 217.

<sup>158</sup> Staff Post Hearing Brief ¶ 60.

<sup>159</sup> *Id.*

<sup>160</sup> Faruqui Rebuttal, p. 20.

<sup>161</sup> *Id.*, p. 21.

58. Currently, Evergy is approaching 1,100 DG customers on its system.<sup>162</sup> While that number changes daily, the number of DG customers only grows by a handful a month.<sup>163</sup> To put that number in perspective, at the time of the Company's last rate proceeding in 2018, it had 611,452 residential customers.<sup>164</sup> Dr. Glass believes the minimum monthly bill would have a de minimis effect, especially with the relief provisions to assist low-income customers.<sup>165</sup> Lutz's admission that revenue generated by a \$35 minimum monthly bill may not be material, and does not impact Evergy's investment risk,<sup>166</sup> appears to confirm Glass's belief. While Glass credits Evergy with being proactive,<sup>167</sup> he considers it only a short-term, stop gap measure.<sup>168</sup> Glass views the minimum monthly bill as an inelegant, sledgehammer approach to a problem and expressed optimism that Evergy would develop something better.<sup>169</sup>

59. Pursuant to K.S.A. 66-101b, every electric public utility is required to furnish reasonably efficient and sufficient service at just and reasonable rates. While Evergy's minimum bill proposal is clearly non-discriminatory for DG customers compared to non-DG customers, and lawful, the Commission finds it is overly regressive and an unnecessarily disruptive solution based on the scale of the issue it purports to address. Therefore, the Commission rejects the proposed \$35 minimum monthly bill as unjust and unreasonable.

60. In the 403 Docket, the Commission determined DG customers should be uniquely identified within the ratemaking process to properly recognize the cost and quantifiable benefits of DG.<sup>170</sup> Accordingly, the Commission determines the RS-DG rate class will remain a separate class

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<sup>162</sup> Tr., Vol. I, p. 153.

<sup>163</sup> *Id.*

<sup>164</sup> Lutz Direct, p. 10.

<sup>165</sup> Tr., Vol. II, p. 184.

<sup>166</sup> Tr. Vol. I, p. 206. Dr. Glass also testified there would be no revenue impact to Evergy if the minimum bill is not implemented as a stopgap measure, *Id.*, Vol. II, p. 243.

<sup>167</sup> *Id.*, pp. 184-85.

<sup>168</sup> *Id.*, p. 216.

<sup>169</sup> *Id.*, p. 252.

<sup>170</sup> Final Order, Docket No. 16-GIME-403-GIE, ¶ 20.

for tracking purposes, and the RS-DG tariff will mirror the two-part rate design of the standard residential tariff so residential DG customers will be charged the identical rates as standard residential customers. Preserving the RS-DG tariff will allow Evergy to track the class for future ratemaking purposes, while billing residential DG customers under the identical two-part rate structure as residential non-DG customers. The Commission encourages Evergy to explore modern rate designs that may address the subsidization issue more holistically in future rate cases. The Commission also encourages all stakeholders to explore legislative changes to modernize Kansas's net metering laws and other statutes.

### REFUND

61. The Solar Group argues Kansas law requires the Commission to order a refund of revenue collected under a rate deemed unlawful by the courts.<sup>171</sup> The Solar Group relies on *Kansas Pipeline Partnership v. Kansas Corp. Comm'n*, 24 Kan. App. 2d 42, 55 (1997), for the proposition that when an appellate court reverses an illegal rate, money collected under that rate must be returned.<sup>172</sup> Accordingly, the Solar Group asserts that a refund of demand charges collected under the RS-DG rate is necessary to give the Supreme Court's decision effect.<sup>173</sup>

62. *Kansas Pipeline* is easily distinguishable on the facts. *Kansas Pipeline* consists of two appeals to the Court of Appeals. In the first appeal, the Court of Appeals found the Commission erred in permitting a utility to add to its rate base or recover costs which it did not incur, but instead were incurred by a previous unrelated entity and were not later acquired by the entity seeking recovery of such costs.<sup>174</sup> The matter was remanded back to the Commission with directions, "[i]n the event the KCC finds that the market entry costs and carrying costs were acquired by the Joint

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<sup>171</sup> Solar Group Post Hearing Brief, p. 27.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*, p. 28.

<sup>174</sup> *Kansas Pipeline Partnership v. Kansas Corp. Comm'n*, 24 Kan. App. 2d 42, 45 (1997).

Applicants, the KCC should restore its earlier orders authorizing recovery of those costs.”<sup>175</sup> On remand, the Commission found that the Joint Applicants did not incur or acquire the market entry costs at issue.<sup>176</sup> As a result, original rates authorized by the Commission and collected by the Joint Applicants were illegal, and the Commission ordered the Joint Applicants to refund to their customers that portion of any rates collected which represented the inclusion of the disallowed market entry costs in the rate base.<sup>177</sup>

63. Unlike *Kansas Pipeline*, the Supreme Court’s remand order did not include any directions regarding refunds. Instead, the Supreme Court’s opinion simply remanded the matter to the Commission for further proceedings consistent with this opinion.<sup>178</sup> On remand, in *Kansas Pipeline*, the Commission determined that the rate initially allowed was unlawful because it included the market entry costs as a part of the rate base, and ordered the Joint Applicants to refund to their customers that part of the rate collected as market entry costs.<sup>179</sup> The Joint Applicants appealed the refund, arguing it was unlawful, unauthorized, not permitted, and retroactive rate making.<sup>180</sup> The Joint Applicants’ appeal was denied, and the Court of Appeals found the Commission’s order granting a refund was valid and lawful.<sup>181</sup>

64. In *Kansas Pipeline*, the issue on appeal was whether a refund ordered by the Commission was lawful, not whether the Commission was required to order a refund. In a subsequent decision, the Court of Appeals explained, “[t]he issues involved here are the kinds traditionally left to bodies such as the KCC. Inherent in the decision were questions concerning the significance of the “windfall” on the public and the cost (which would eventually be borne by the

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<sup>175</sup> *Id.*

<sup>176</sup> *Id.*, at 46.

<sup>177</sup> *Id.*

<sup>178</sup> *In the Matter of the Joint Application of Westar Energy, Inc. and Kansas Gas & Elec., Co.*, 311 Kan. 320 at 331.

<sup>179</sup> *Kansas Pipeline Partnership v. Kansas Corp. Comm’n*, 24 Kan. App. 2d 42 at 55.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

public) ... Absent a showing that the KCC acted inappropriately in arriving at the interpretation it did, the court will defer to its presumed expertise.”<sup>182</sup> Similarly, the Court of Appeals has also recognized that a utility’s obligation to make refunds might differ if the overcharges were collected based on a Commission order allowing the rate increase, and there is no claim Evergy collected amounts that exceeded what, at the time, had been found to be lawful by the Commission.<sup>183</sup> Accordingly, the Commission concludes *Kansas Pipeline* is inapplicable.

65. The Commission believes awarding refunds would be unwarranted under the circumstances. First, Evergy was operating under a rate design approved by both the Commission and the Court of Appeals. In finding the rate design discriminatory, the Supreme Court declined to order a refund. Second, since many customers have been moved to extend the application of rate grandfathering, determination of a refund will be complex.<sup>184</sup> Lastly, and most importantly, a refund would harm some DG customers.<sup>185</sup> Some DG customer benefitted under the RS-DG rate and elected to remain under that rate.<sup>186</sup> Those DG customers would be harmed by a refund, as they would owe money to Evergy, if the Commission put everyone back on the standard residential rate.<sup>187</sup> As Evergy explained, if the Commission *were to* retroactively impose refunds, the impact of being served under the RS-DG rate, whether positive or negative, should be determined and the customer bill adjusted accordingly.<sup>188</sup> Furthermore, there is no evidence Evergy collected charges in excess of its costs or received any windfall, whatsoever, associated with the RS-DG rates. For these reasons, the Commission denies the Solar Group’s request to refund customers who were billed under the RS-DG rate.

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<sup>182</sup> *Auten v. Kansas Corp. Comm’n*, 27 Kan.App.2d 252, 256 (2000).

<sup>183</sup> *Farmland Indus. Inc. v. Kansas Corp. Comm’n*, 29 Kan.App.2d 1031, 1041 (2001).

<sup>184</sup> Lutz Rebuttal, p 17.

<sup>185</sup> Tr., Vol. I, 108.

<sup>186</sup> Lutz Rebuttal, p. 17.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

**THEREFORE, THE COMMISSION ORDERS:**

- A. Evergy's proposed grid access charge is rejected.
- B. Evergy's proposed \$35 minimum monthly bill is rejected.
- C. The RS-DG rate class will remain a separate class for tracking purposes, and the RS-DG tariff will mirror the two-part rate design of the standard residential tariff and residential DG customers will be charged the identical rates as standard residential customers. CURB's recommendation to create a regulatory asset if Evergy undercollects fixed costs when moving back to the 2-part rate for DG customers is denied.
- D. Evergy has 30 days from the issuance of this Order to implement the new rate design for DG customers.
- E. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>189</sup>

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

French, Chairperson; Keen, Commissioner (Concurring Opinion); Duffy, Commissioner

Dated: 02/25/2021



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Lynn M. Retz  
Executive Director

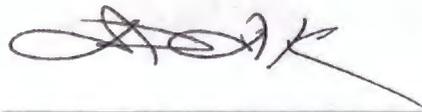
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<sup>189</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

**Concurring Opinion**

I concur and join in approving and adopting this Order. Paragraph 48 of the Order provides general guidance on the Commission's prospective consideration of residential distributed generation rates. In anticipation of future rate proceedings, it may be helpful to provide more direct guidance regarding DG residential rates by specifically noting and highlighting a thoughtful, important and relevant approach to grid access charges contained within the record of these proceedings.

In addressing grid access charges that would comply with the Supreme Court Opinion, Richard Macke, on behalf of Pioneer, recommends that the Commission require electric utilities seeking to enact rates that impact DG residential customers differently than non-DG residential customers to: 1) identify the distinct services that DG residential customers will be receiving and 2) provide evidence to support how those services are different from or in addition to the services provided to non-DG residential customers. (Tr. Vol. I, p. 29) Macke suggests that if the Commission finds the utility has met its threshold burden of establishing the services as different or additional, the Commission could then determine on a case-by-case basis whether the rate should be approved as just and reasonable. (Pioneer Post-Hearing Brief, p. 16) Macke's forthright approach has merit, especially if coupled with the requirement that the proposed DG residential rate structure be designed to recover the actual costs of providing those distinguishable and different services.



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Dwight D. Keen, Commissioner

**CERTIFICATE OF SERVICE**

18-WSEE-328-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 02/25/2021.

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18-WSEE-328-RTS

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