

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

In the Matter of the Application of Evergy)
Metro, Inc., Evergy Kansas Central, Inc., and)
Evergy Kansas South, Inc., for an Accounting) Docket No. 20-EKME-454-ACT
Authority Order Allowing the Companies to)
Record and Preserve Costs and Lost Revenues)
Related to the COVID-19 Virus.)

**APPLICATION FOR INTERVENTION OF
KANSAS INDUSTRIAL CONSUMERS GROUP, INC. and KANSANS FOR
LOWER ELECTRIC RATES, INC.**

COMES NOW the Kansas Industrial Consumers Group, Inc. (KIC) and Kansans For Lower Electric Rates, Inc. (KLER), and for their Application for Intervention in this case, state and allege as follows:

1. KIC is a Kansas corporation representing the interests of large commercial and industrial customers including those served by Evergy Metro and Evergy Central Kansas (collectively, “Evergy.”) KLER is a Kansas corporation representing a cross section of individuals and businesses throughout the state of Kansas, with a policy focus of working for regionally competitive electric rates for all individuals and businesses located in Kansas including those served by Evergy.

2. Evergy filed for Commission authorization to implement an accounting authority order (“AAO”) in the above-referenced docket to defer the costs and “lost revenues” associated with the COVID-19 pandemic. Essentially, Evergy contends that it should be entirely insulated by Kansas retail electric ratepayers from any costs or “lost revenues” associated with the COVID-19 pandemic. Given this position, Evergy requests that the Commission issue an AAO

to permit Evergy to be “economically made whole” at ratepayer expense, from the effects of the COVID-19 pandemic.

3. Several federal programs provide for companies and individuals, the opportunity for qualified entities to seek and receive grants and loans for economic losses of various types that may be related to the COVID-19 pandemic. KIC and KLER have no objection and would in fact encourage Evergy to seek federal grants and loans for which it may qualify, to recover economic damages that it has allegedly incurred related to the COVID-19 pandemic.

4. In addition, federal law may provide material opportunities for utilities to: (a) accelerate net operating losses and reduce their federal tax obligations;¹ (b) implement other lawful tax reduction mechanisms to reduce their federal tax obligations; and (c) receive credits of various types - - all with the intent of the federal government to minimize economic loss to utilities, and to increase the cash flow of utility companies.

5. First, KIC and KLER allege that these federal programs have exclusively addressed this issue of economic harm related to the COVID-19 pandemic, and that the KCC may not lawfully order ratepayers to “make economically whole,” Evergy from COVID-19 related economic losses.

6. Second, KIC and KLER do not support and state and allege herein that Kansas law, as implemented by the KCC, does not provide for recovery from retail ratepayers of “economic losses” and other alleged costs related to the COVID-19 pandemic.

¹ For corporate taxpayers, the allowance of a Net Operating Loss (“NOL”) carryback to pre-2018 tax years allows losses to be deducted against income taxable up to the 35% top marginal tax rate in effect pre-Tax Cuts and Jobs Act of 2017. Accordingly, every \$100 of NOL that can be carried back to a pre-2018 tax year may generate a tax refund of \$35 as opposed to a \$21 cash tax value when utilized in tax year 2018 or later. Thus, pre-2018 refunds may increase the value of each NOL utilized by 67% due to the higher rate of tax applicable to the income shielded by the NOL. Corporations in immediate need of capital should consider the potential value of refund claims that may now be available.

7. KIC and KLER oppose the issuance of an Accounting Authority Order. As stated above, any economic recovery of Evergy is governed by its entitlement under federal law, to COVID-19 pandemic related relief.

8. While the Kansas Commission has in some instances allowed for the deferral of costs associated with an extraordinary event, the Commission has typically rejected any request for “lost revenues” as Evergy now seeks. KIC and KLER allege that the proposed AAO is in direct contravention of Kansas state policy to not unnecessarily increase the retail electric rates of more than one million retail electric ratepayers in Kansas.

9. The Missouri Public Service Commission specifically denied claims of “lost revenues” made by a regulated utility in the setting of a natural disaster. For instance, while allowing Missouri Gas Energy, (MGE) to defer incremental costs, the Missouri Commission rejected MGE’s request to defer alleged “lost revenues” associated with the Joplin tornado.

In support of recording ungenerated revenue on a deferred basis, the Company urges the Commission to look only at whether the tornado was extraordinary. Staff and OPC argue that the AAO sought would not only allow the recording of an item, it would create the item recorded. Staff and OPC are correct.

Actual expenditures exist in the past, present, or future and represent an exchange of value that the Company must record. Ordinarily, the Company records them currently and, if they are extraordinary, the Company must record them in Account 182.3.

The Company’s claim is different. Ungenerated revenue never has existed, never does exist, and never will exist. Revenue not generated, from service not provided, represents no exchange of value. There is neither revenue nor cost to record, in the current period nor in any other.

10. KIC and KLER’s intervention will serve the public interest by assisting the record for the Commission’s decision in this case.

11. At this time, Spirit AeroSystems and Associated Purchasing Services Corp. (an affiliate of the Kansas Hospital Association and the Missouri Hospital Association) join with,

and seek Intervention through KIC, and the Lawrence Paper Company joins with and seeks Intervention through KLER. These companies are and represent direct retail electric customers of Evergy.

12. Correspondence or communications regarding this application, including service of all notices and orders of this Commission, should be addressed to:

James P. Zakoura
SMITHYMAN & ZAKOURA, CHARTERED
750 Commerce Plaza II Bldg
7400 West 110th St.
Overland Park, KS 66210-2362
Telephone: (913) 661-9800
Email: jim@smizak-law.com

WHEREFORE, KIC and KLER respectfully request a Hearing on the Application of Evergy, and that the Commission issue its order granting their Application for Intervention and that they be made a party hereto with all rights to participate in this matter.

Respectfully submitted,



James P. Zakoura, KS Bar #07644
Smithyman & Zakoura, Chartered
750 Commerce Plaza II
7400 West 110th St.
Overland Park, KS 66210
Phone: (913) 661-9800, Ext. 119
Fax: (913) 661-9863
Email: jim@smizak-law.com

**Attorney for Kansas Industrial Consumers
Group, Inc. (KIC) and Kansans for Lower
Electric Rates, Inc. (KLER)**

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

James P. Zakoura, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., and Kansans for Lower Electric Rates, Inc. that he has read and is familiar with the foregoing *Petition to Intervene of Kansas Industrial Consumers Group, Inc., and Kansans for Lower Electric Rates, Inc.*, and the statements therein are true to the best of his knowledge, information, and belief.



James P. Zakoura

SUBSCRIBED AND SWORN to before me this 27th day of May 2020.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), the 27th day of May 2020, to the parties below:

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
j.astrab@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.nickel@curb.kansas.gov

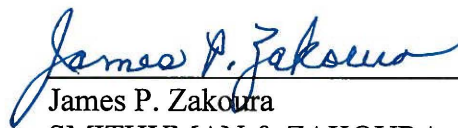
SHONDA RAGG
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.smith@curb.kansas.gov

CATHRYN J. DINGES, CORPORATE
COUNSEL
EVERGY KANSAS CENTRAL, INC.
818 S. KANSAS AVE.
P.O. BOX 889
TOPEKA, KS 66601-0889
cathy.dinges@evergy.com

COLE BAILEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.bailey@kcc.ks.gov

TERRI PEMBERTON, CHIEF LITIGATION
COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.pemberton@kcc.ks.gov



James P. Zakoura
SMITHYMAN & ZAKOURA, CHARTERED