

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

In the Matter of the Investigation into the)
Sustainability Transformation Plan of Evergy Metro,)
Inc., Evergy Kansas Central, Inc., and Evergy South,) Docket No. 21-EKME-088-GIE
Inc. (collectively, Evergy).)

**ANSWER TO EVERGY'S MOTION
TO ENFORCE KIC'S COMPLIANCE WITH THE PROTECTIVE ORDER**

COMES NOW, the Kansas Industrial Consumers Group, Inc. ("KIC") and respectfully files its Answer to Evergy Kansas Metro, Inc. and Evergy Kansas Central, Inc.'s (collectively, "Evergy") Motion to Enforce KIC's Compliance with the Protective Order. In support thereof, KIC states the following to the State Corporation Commission of the State of Kansas ("Commission"):

I. CONDENSED BACKGROUND AND DENIAL

1. On January 28, 2021, Evergy accused KIC and its attorneys of intentionally breaching the Commission's Protective Order.¹ Likewise, Evergy accused KIC and its attorneys of abusing this proceeding's discovery processes.²

2. KIC denies all allegations of wrongdoing and condemns this unwarranted procedural attack. There is no basis for Evergy's allegations in law or fact. KIC's discussions with a reporter did not reveal confidential information. Likewise, KIC's social media posts do not contain or reference discovery materials. There is no basis for imposing any sanctions on KIC.

3. The Commission should reject Evergy's Motion, admonish Evergy's procedural assault to the highest degree, and order Evergy to publicly apologize for its unsupported charges.

¹ Motion of Evergy Metro, Inc., Evergy Kansas Central, Inc., and Evergy Kansas South, Inc. to Enforce KIC's Compliance with the Protective Order, ¶¶10, 12, 16 (Jan. 28, 2021) (Evergy Motion).

² *See id.* at ¶ 16.

II. CONFIDENTIAL MATERIALS

4. Evergy alleges KIC violated this proceeding's Protective Order by making a reporter aware a document exists containing projected rate impact by Evergy's Kansas service territories.³ **Evergy agreed to make this information public on January 14, 2021, and KIC did not discuss this docket with the reporter in question until January 26, 2021.**

5. Responding to KIC's request to make Evergy's Rate Impact by Jurisdiction power point slide public, Evergy stated the following:

Second, KIC addresses the Rate Impact by Jurisdiction power point slide presented by Evergy as follow-up to the first workshop. **Evergy will agree to make this slide public**; however, the Commission and the parties need to realize that this information is part of a forward looking forecast that is based on a number of assumptions that will likely change in the future.⁴

6. There can be no doubt the slide Evergy agreed to make public is the same document now complained of. Part of Evergy's basis for accosting KIC is a concern about publishing forecasted financial information.⁵ Evergy's January 14th agreement to make this information public caveated the information was a "forward looking forecast."⁶ Put simply, Evergy accuses KIC of violating this proceeding's Protective Order by discussing information **Evergy agreed should be considered public.**⁷ The Commission must reject Evergy's incendiary charge.

7. Even if the document were considered confidential – which it is not – KIC would not have violated this proceeding's Protective Order. **The existence of the presentation and its**

³ See Evergy Motion, ¶11. Note: While Evergy filed a public and confidential version of this motion, there is no basis or need for redacting the claim contained in paragraph 11.

⁴ Response of Evergy Kansas Metro and Evergy Kansas Central to Motion of Kansas Industrial Consumers Group to Remove Confidential Designations, ¶7 (Jan. 14, 2021) (Evergy Response).

⁵ See Evergy Motion, ¶4.

⁶ See *Id.*; See also Evergy Response, p. 4, n. 3 ("This information is subject to risks and uncertainties that could cause actual results to differ from present expectations. A description of some of the risks and uncertainties can be found in the reports that Evergy, Inc. files with the Securities and Exchange Commission.").

⁷ Evergy claims this document should be considered discovery. KIC believes a document prepared at the request of a regulatory authority and discussed in an open meeting of a Kansas political subdivision cannot be deemed "discovery."

general contents were mentioned by Commission personnel, acknowledged by Evergy in the public portion of the second STP Workshop, and filed in the docket.⁸ Accordingly, any assertion that the reporter could have only known about the existence of the document from discussions with KIC is completely unsupported.

8. Even so, KIC still did not reveal the document's contents. "Although the reporter did not have the specific numbers contained in the document, she was aware of its existence and of the general description of its content."⁹ The "description of the existence of a confidential document" cannot "violate the terms of the Protective Order" when the existence of the document and its general contents were discussed in the public portion of a public meeting.¹⁰

III. SOCIAL MEDIA POSTS

9. Evergy accuses KIC of abusing the discovery process by posting information obtained through discovery on social media.¹¹ **KIC has not abused the discovery process because the information posted to social media was obtained from a public source outside discovery.**

10. A "party may disseminate the identical information covered by the protective order **as long as the information is gained through means independent of the court's processes.**"¹² Evergy is aware of this precedent as they have previously cited it in responses filed in this docket.¹³

11. The referenced social media posts state Evergy will spend \$9 billion over the next five years under its Sustainability Transformation Plan ("STP").¹⁴ Afterwards, these posts state an

⁸ See, e.g., Public Discussion, STP Workshop II - 0:16:00 to 00:16:38; 00:18:35 to 00:18:50 available at <https://www.youtube.com/watch?v=HfpNyBhsmZM> (last visited Feb 3, 2020); See also Evergy Operational Efficiencies Presentation Supplemental Information (Dec. 22, 2020).

⁹ Evergy Motion, ¶11.

¹⁰ See *id.*

¹¹ See Evergy Motion, ¶¶6 – 8.

¹² *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34, 104 S. Ct. 2199, 2208, 81 L. Ed. 2d 17 (1984).

¹³ CITE

¹⁴ See Evergy Motion, Attachment A, B.

opinion regarding the rate impact of this spending.¹⁵ There are countless public press releases, newspaper articles, and investor presentations stating the STP's five-year capital budget. As such, no discovery has been inappropriately discussed in these social media posts. Likewise, social media posts referencing the voluminous nature of confidential documents do not inappropriately reveal discovery.

12. Lastly, Evergy attempts to invent a scandal by noting a lobbyist requested an attorney review a social media post.¹⁶ In full disclosure, Mr. Vincent is a registered lobbyist for, and counsel to, Kansans for Lower Electric Rates, Inc. If anything, this indicates careful attention was brought to a social media post to ensure the accuracy of its contents without revealing discovery.

IV. CONCLUSION

13. KIC has not improperly disclosed confidential information or violated this proceeding's Protective Order because the document in question: (1) is public, and (2) is not discovery because it was provided in a public meeting and filed in this docket. KIC has not abused the discovery process because KIC has not revealed any discovery through social media. Evergy's procedural attack is inappropriate and should be rejected and condemned in the strongest terms.

WHEREFORE, the Kansas Industrial Consumers Group, Inc. respectfully requests the Commission deny Evergy's Motion to Enforce KIC's Compliance with the Protective Order in its entirety.

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¹⁵ *See id.*

¹⁶ *See* Evergy Motion, ¶¶7 – 8.

Respectfully submitted,



James P. Zakoura, KS Bar #07644
Robert Elliott Vincent, KS Bar #26028
Connor A. Thompson KS Bar #28667
Smithyman & Zakoura, Chartered
750 Commerce Plaza II
7400 West 110th Street
Overland Park, KS 66210
Phone: (913) 661-9800
Fax: (913) 661-9863
Cell: (913) 701-4763
Email: robert@smizak-law.com
jim@smizak-law.com
connor@smizak-law.com

Attorneys for the Kansas Industrial
Consumers Group, Inc.

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., that he has read and is familiar with the foregoing *Answer to Evergy's Motion to Enforce KIC's Compliance with the Protective Order*, and the statements therein are true to the best of his knowledge, information, and belief.



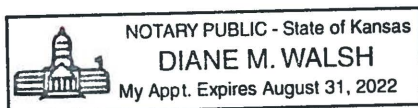
James P. Zakoura

SUBSCRIBED AND SWORN to before me this 5th day of February, 2021.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2021, the foregoing *Answer to Evergy's Motion to Enforce KIC's Compliance with the Protective Order*, was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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 RABB 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 PO BOX 889 TOPEKA, KS 66601-0889 cathy.dinges@evergy.com
ROBERT J. HACK. LEAD REGULATORY COUNSEL EVERGY METRO, INC. D/B/A EVERGY KANSAS METRO ONE KANSAS CITY PL, 1200 MAIN ST 19TH FLOOR KANSAS CITY, MO 64105 rob.hack@evergy.com	ROGER W. STEINER, CORPORATE COUNSEL EVERGY METRO, INC. D/B/A EVERGY KANSAS METRO ONE KANSAS CITY PL, 1200 MAIN ST 19TH FLOOR KANSAS CITY, MO 64105 roger.steiner@evergy.com
BRIAN G. FEDOTIN, GENERAL COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 b.fedotin@kcc.ks.gov	MICHAEL NEELEY, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 m.neeley@kcc.ks.gov

<p>TERRI PEMBERTON, CHIEF LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 t.pemberton@kcc.ks.gov</p>	<p>SUSAN B. CUNNINGHAM, SVP, REGULATORY AND GOVERNMENT AFFAIRS, GENERAL COUNSEL KANSAS ELECTRIC POWER CO-OP, INC. 600 SW CORPORATE VIEW PO BOX 4877 TOPEKA, KS 66604-0877 scunningham@kepc.org</p>
<p>MARK DOLJAC, DIR RATES AND REGULATION KANSAS ELECTRIC POWER CO-OP, INC. 600 SW CORPORATE VIEW PO BOX 4877 TOPEKA, KS 66604-0877 mdoljac@kepc.org</p>	<p>REBECCA FOWLER, ATTORNEY KANSAS ELECTRIC POWER CO-OP, INC. 600 SW CORPORATE VIEW PO BOX 4877 TOPEKA, KS 66604-0877 rfowler@kepc.org</p>
<p>MARK CHESNEY, CEO & GENERAL MANAGER KANSAS POWER POOL 100 N BROADWAY STE L110 WICHITA, KS 67202 mchesney@kansaspowerpool.org</p>	<p>JAMES GING, DIRECTOR ENGINEERING SERVICES KANSAS POWER POOL 100 N BROADWAY STE L110 WICHITA, KS 67202 jging@kansaspowerpool.org</p>
<p>LARRY HOLLOWAY, ASST GEN MGR OPERATIONS KANSAS POWER POOL 100 N BROADWAY STE L110 WICHITA, KS 67202 lholloway@kansaspowerpool.org</p>	<p>ROBERT E. VINCENT, ATTORNEY AT LAW SMITHYMAN & ZAKOURA, CHTD 7400 W 110TH ST, STE 750 OVERLAND PARK, KS 66210-2362 robert@smizak-law.com</p>
<p>JAMES P. ZAKOURA, ATTORNEY AT LAW SMITHYMAN & ZAKOURA, CHTD 7400 W 110TH ST, STE 750 OVERLAND PARK, KS 66210-2362 jim@smizak-law.com</p>	<p>AMY FELLOWS CLINE, ATTORNEY TRIPLETT, WOOLF & GARRETSON, LLC 2959 N ROCK RD, STE 300 WICHITA, KS 67226 amycline@twgfirm.com</p>
<p>CONNOR A. THOMPSON, ATTORNEY AT LAW SMITHYMAN & ZAKOURA, CHTD 7400 W 110TH ST, STE 750 OVERLAND PARK, KS 66210-2362 connor@smizak-law.com</p>	<p>TIMOTHY E. MCKEE, ATTORNEY TRIPLETT, WOOLF & GARRETSON, LLC 2959 N ROCK RD, STE 300 WICHITA, KS 67226 temckee@twgfirm.com</p>

<p>BRIAN WOOD WICKHAM & WOOD, LLC 107 W 9TH ST, 2ND FLR KANSAS CITY, MO 64105 brian@wickham-wood.com</p>	<p>DOROTHY BARNETT CLIMATE & ENERGY PROJECT P.O. BOX 1858 HUTCHINSON, KS 67504-1858 barnett@climateandenergy.org</p>
<p>LYNN RETZ, EXECUTIVE DIRECTOR KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 l.retz@kcc.ks.gov</p>	<p>TERRY M. JARRETT, ATTORNEY AT LAW HEALY LAW OFFICES, LLC 514 EAST HIGH STREET, SUITE 22 JEFFERSON CITY, MO 65101 terry@healylawoffices.com</p>
<p>JOHN GARRETSON, BUSINESS MANAGER IBEW LOCAL UNION NO. 304 3906 NW 16TH STREET TOPEKA, KS 66615 johng@ibew304.org</p>	<p>HEATHER H. STARNES, ATTORNEY HEALY LAW OFFICES, LLC 12 PERDIDO CIRCLE LITTLE ROCK, AR 72211 heather@healylawoffices.com</p>
<p>ORIJIT GHOSHAL, SENIOR MANAGER REGULATORY AFFAIRS INVENERGY LLC 101 17TH STREET, SUITE 1100 DENVER, CO 80202 oghoshal@invenergyllc.com</p>	<p>TYRONE H. THOMAS, DEPUTY GENERAL COUNSEL, LEGAL INVENERGY LLC ONE SOUTH WACHER DRIVE, SUITE 1800 CHICAGO, IL 60606 tthomas@invenergy.com</p>
<p>TERESA A. WOODY KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC. 211 E. 8TH STREET, SUITE D LAWRENCE, KS 66044 twoody@kansasappleseed.org</p>	<p>TIMOTHY J. LAUGHLIN, ATTORNEY LAUGHLIN LAW OFFICE, LLC P.O. BOX 481582 KANSAS CITY, MO 64148 tlaughlin@laughlinlawofficellc.com</p>
<p>TIMOTHY S. MAIER, GENERAL MANAGER McPHERSON BOARD OF PUBLIC UTILITIES 401 W KANSAS AVE. P.O. BOX 768 McPHERSON, KS 67460 tim@mcphersonpower.com</p>	<p>WILLIAM DOWLING, VP ENGINEERING & ENERGY SUPPLY MIDWEST ENERGY, INC. 1330 CANTERBURY DRIVE P.O. BOX 898 HAYS, KS 67601-0898 bdowling@mwenergy.com</p>

<p>PATRICK PARKE, CEO MIDWEST ENERGY, INC. 1330 CANTERBURY RD. P.O. BOX 898 HAYS, KS 67601-0898 patparke@mwenergy.com</p>	<p>ANNE E. CALLENBACH, ATTORNEY POL SINELLI PC 900 W. 48TH PLACE, STE 900 KANSAS CITY, MO 64112 acallenbach@polsinelli.com</p>
<p>FRANK A. CARO, ATTORNEY POL SINELLI PC 900 W. 48TH PLACE, STE 900 KANSAS CITY, MO 64112 fcaro@polsinelli.com</p>	<p>ANDREW O. SCHULTE, ATTORNEY POL SINELLI PC 900 W. 48TH PLACE, STE 900 KANSAS CITY, MO 64112 aschulte@polsinelli.com</p>
<p>SUNIL BECTOR, ATTORNEY SIERRA CLUB 2101 WEBSTER, SUITE 1300 OAKLAND, CA 94312-3011 sunil.bector@sierraclub.org</p>	<p>THOMAS J. CONNORS ATTORNEY AT LAW TITUS LAW FIRM, LLC 6600 W. 95TH ST., STE. 200 OVERLAND PARK, KS 66212 tommy@tituslawkc.com</p>
<p>THOMAS R. POWELL, GENERAL COUNSEL UNIFIED SCHOOL DISTRICT 259 201 N WATER ST RM 405 WICHITA, KS 67202-1292 tpowell@usd259.net</p>	<p>KIMBERLY B. FRANK, COUNSEL K & L GATES, LLP 1601 K STREET NW WASHINGTON, DC 20006 kimberly.frank@klgates.com</p>
<p>ASHOK GUPTA, EXPERT NATIONAL RESOURCES DEFENSE COUNCIL 20 N WACKER DRIVE, SUITE 1600 CHICAGO, IL 60606 agupta@nrdc.org</p>	<p>BRIAN NOLAND IBEW LOCAL 304, KANSAS CITY, MO 117 W. 20TH ST., STE 201 KANSAS CITY, MO 64108 noland.brian@gmail.com</p>
<p>ERNEST KUTZLEY, KS ADVOCACY DIRECTOR AARP 6220 SW 29TH ST., SUITE 300 TOPEKA, KS 66614 ekutzley@aarp.org</p>	<p>ASHLEY M. BOND DUNCAN & ALLEN 1730 RHODE ISLAND AVENUE NW, SUITE 700 WASHINGTON, DC 20036-3155 amb@duncanallen.com</p>
<p>GREGG D. OTTINGER DUNCAN & ALLEN 1730 RHODE ISLAND AVENUE NW, SUITE 700 WASHINGTON, DC 20036-3155 gdo@duncanallen.com</p>	<p>JOHN B. COFFMAN ATTORNEY AT LAW 871 TUXEDO BLVD. ST. LOUIS, MO 63119 john@johncoffman.net</p>

<p>SUSAN ALIG, ASSISTANT COUNSEL KANSAS CITY KANSAS BOARD OF PUBLIC UTILITIES 701 N. 7TH STREET, SUITE 961 KANSAS CITY, KS 66202 salig@wycokck.org</p>	<p>ANGELA LAWSON, DEPUTY CHIEF COUNSEL KANSAS CITY KANSAS BOARD OF PUBLIC UTILITIES 540 MINNESOTA AVE. KANSAS CITY, KS 66101-2930 alawson@bpu.com</p>
<p>PAUL T. DAVIS PAUL DAVIS LAW FIRM, LLC 932 MASSACHUSETTS ST., SUITE 301 LAWRENCE, KS 66044 pdavis@pauldavislawfirm.com</p>	