

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

IN THE MATTER OF EVERGY KANSAS]
CENTRAL, INC. AND EVERGY KANSAS]
SOUTH, INC. SEEKING APPROVAL FROM] KCC DOCKET NO. 22-EKCE-020-TAR
COMMISSION OF THE EVERGY ENERGY]
EFFICIENCY RIDER 2021 FILING]

TESTIMONY IN SUPPORT OF SETTLEMENT AGREEMENT

PATRICK ORR

ON BEHALF OF

THE CITIZENS' UTILITY RATEPAYER BOARD

FEBRUARY 28, 2022

1 **I. STATEMENT OF QUALIFICATIONS**

2 **Q. Please state your name and business address.**

3 A. My name is Patrick N. Orr, and my business address is 1500 SW Arrowhead Road, Topeka,
4 Kansas 66604.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by the Kansas Citizens' Utility Ratepayer Board (CURB) as a Regulatory
7 Analyst.

8 **Q. Please summarize your professional experience in the utility industry.**

9 A. I have been employed as a rate analysis with CURB since 2019. Since beginning my
10 employment with CURB I have researched and analyzed several utility dockets filed with
11 the Kansas Corporation Commission ("KCC" or "Commission").

12 **Q. Have you previously testified in regulatory proceedings?**

13 A. Yes, I provided written testimony in KCC Docket Nos.19-SPEE-240-MIS and 21-SPEE-
14 411-RTS and oral testimony in 21-SPEE-331-GIE.

15 **Q. What is your educational and employment background?**

16 A. I have a Bachelor of Business Administration degree in Finance and Personnel
17 Management from Washburn University (1980). Prior to my employment with CURB, I
18 worked for the Kansas Department of Administration for thirty years. In that position, I
19 was responsible for preparing rates for information technology (IT) services in accordance
20 with *Circular A-87 Cost Principles for State, Local and Indian Tribal governments*.

1 **II. PURPOSE OF TESTIMONY**

2 **Q. What is the purpose of your testimony in this proceeding?**

3 A. My testimony supports the *Joint Motion to Approve Unanimous Settlement Agreement*
4 filed in Docket No. 22-EKCE-020-TAR (“Docket 22-020”) on November 10, 2021,
5 regarding the Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (“Evergy or
6 “Company”) *Energy Efficiency Rider 2021 Filing*.

7 **Q. Please provide a brief overview of this docket.**

8 A. On July 15, 2021, Evergy filed its Application with the Commission requesting
9 approval of its Energy Efficiency Rider (“EER”). Evergy files an updated EER annually,
10 in order to recover “actual program costs deferred for Commission approved Energy
11 Efficiency programs deferred over a 12-month period ending in June of each year plus any
12 true up amount from the prior period.”¹

13 Evergy’s Application seeks recovery of costs incurred in relation to Commission-
14 approved demand response and energy efficiency programs in the amount of \$4,379,725.
15 This amount includes unrecovered expenses of \$4,277,148 incurred from the period of July
16 1, 2020, through June 30, 2021, and under-recovered costs of \$102,577 incurred from the
17 prior period.²

18 On October 1, 2021, Staff filed its Report and Recommendation (R&R) evaluating
19 Evergy’s application and recommended that the Commission approve Staff’s revised
20 recovery amount of \$3,102,124 for Evergy’s annual EER filing.³ Staff’s recommended

1 Notice of Filing of Staff’s Report and Recommendation, October 1, 2021.

2 Id.

3 Id.

1 recovery amount is different than the recovery amount requested by Evergy in that Staff
2 had examined the expenditures associated with Evergy's energy efficiency programs.
3 While Staff found the proposed EER rate calculations to be reasonable and accurate, Staff
4 recommended an adjustment to the True-Up portion of Evergy's filing by taking the
5 amount amortized to the Transmission Formula Rate (TFR) multiplied by the Company's
6 Wage and Salary allocator used in the TFR for each year for the period of 2010 to 2019.
7 In these regards, Staff noted that in its review of the 2019 TFR, Staff discovered that the
8 account to which the EER is amortized is also included in the TFR. Consequently, a small
9 portion of the approved EER amount had been recovered from retail and transmission
10 customers during the period of 2010 to 2019. By adjusting the True-Up in this year's EER,
11 Staff's R&R reflected the actual EER collections to correctly reflect that the EER was
12 being double collected (in both the TFR and the EER) since 2010.⁴

13 Staff's adjustment resulted in a reduction of the EER amount of \$1,277,601. Under
14 Staff's October 1, 2021 R&R, the resulting rate of \$0.000161 would, if approved by the
15 Commission, result in a monthly charge to residential customers of approximately \$0.14.
16 When compared to last year's monthly energy efficiency charge, the average residential
17 customer would experience a decrease of approximately \$0.04 per month or \$0.41 annually
18 under the October 1, 2021 R&R⁵

19 On October 8, 2021, CURB filed a Response to Staff's R&R indicating that it
20 agreed with Staff's findings and recommendations. CURB noted various concerns that it

4 Id.

5 Id.

1 had regarding the lack of new energy efficiency programs and the need for energy
2 efficiency programs to address the needs of low-income customers.

3 On October 11, 2021, Evergy filed a Response to Staff's R&R indicating that it
4 disagreed with Staff's recommendation to adjust the true-up amount because Evergy
5 believed that recommendation was inconsistent with the language of the EER Tariff.
6 Evergy contended that Staff's interpretation essentially gives parties a lifetime retroactive
7 look back option for adjustment mechanisms.⁶

8 On November 10, 2021, Staff filed its reply to Evergy's response stating that the
9 Parties have worked to address the issues in this docket and have reached agreement on all
10 issues in the docket, and filed the Unanimous Stipulation and Agreement ("Stipulation")
11 with the Commission for approval.⁷

12 On February 22, 2022, Darren R. Ives, on behalf of Evergy, filed *Testimony in*
13 *Support of Settlement*. Mr. Ives emphasized that the Parties held informal settlement
14 discussions in an attempt to resolve the disputed issues before the Commission in this
15 docket and to avoid the expense and time that would have been involved with further
16 litigation. The Parties were able to resolve the disputed issues and reached an agreement.⁸
17 Mr. Ives addressed the five factors that the Commission evaluates in determining whether
18 a settlement agreement should be approved by the Commission. In particular, Mr. Ives
19 stated that the Settlement Agreement results in just and reasonable rates.⁹

6 Reply of Staff to Evergy's Response to Staff's Report and Recommendation, October 21, 2021.

7 Id.

8 Testimony in Support of Settlement of Darren R. Ives on Behalf of Evergy KS Central February 22, 2022.

9 Id.

1 CURB would like to point out that the amount arrived at by the parties was the
2 culmination of discussions and negotiations among the participating parties regarding the
3 amounts in question. In particular, CURB notes the small impact involved in the
4 adjustment at issue. Therefore, CURB agrees with the other parties that a negotiated
5 settlement avoids the substantial litigation costs involved should the matter go to hearing
6 and involve a possible appeal.

7 **Q. Please outline the key terms of the Settlement Agreement.**

8 A. There are three parts to the Settlement Agreement.

9 1. The Parties agree that Evergy will return to customers, through the true-up
10 component of the EER rider that is to be effective through October 31, 2022, an amount of
11 \$479,779.85 in addition to the true-up calculation proposed by Evergy in its initial filing,
12 to address Staff's recommendation regarding recovery of energy efficiency costs through
13 Evergy's TFR. The EER rate for the rate period through October 31, 2022, is updated to
14 include this settlement.¹⁰

15 2. The Parties agree that Evergy's willingness to enter into this settlement does not
16 impact in any way Evergy's ability to maintain its position in the future that there should
17 not be an open-ended retroactive look back option for adjustment mechanisms and that
18 adjustment mechanisms should be administered in a manner that allows for finality of rate
19 matters before the Commission.¹¹
20

10 Joint Motion to Approve Unanimous Settlement Agreement, November 10, 2021.

11 Id.

1 3. Furthermore, the Parties understand, acknowledge, and agree that in entering into
2 this Agreement, they are not admitting or acknowledging the merit or lack of merit of any
3 of the issues raised by or against any of them, but instead, they are entering into this
4 Agreement to avoid future litigation costs and risks and to resolve all outstanding issues
5 among them as to the calculation of the true-up for the EER in the above-captioned
6 docket.¹²

7 **Q. Please explain the differences between the adjustments made in Staff's R&R filed on**
8 **October 10, 2021, and those in the November 10, 2021 Settlement Agreement.**

9 A. The following table shows the variance between Staff's original R&R filed on October 10,
10 2021, and their revised R&R filed on November 10, 2021. The difference reflects that
11 Staff's original R&R calculated the over-recovery from the inception of the EER through
12 2019 versus the revised R&R that calculated the over-recovery for years 2014 through
13 2019.

12 Id.

1

Variance in Amount of Over-Recovery

Year	Total EER Recovery	Wages & Salary Factor in TCR	Basis for 10-1-2021 Staff R&R Amount of Over-Recovery	Basis for 11-10-2021 Staff Revised R&R Amount of Over-Recovery
2010	463,251	0.043935	20,353	
2011	4,073,230	0.047805	194,721	
2012	6,161,981	0.044663	275,213	
2013	6,714,854	0.045799	307,534	
2014	5,655,541	0.04561	257,949	257,949
2015	1,485,617	0.044093	65,505	65,505
2016	1,061,552	0.043443	46,117	46,117
2017	840,519	0.044429	37,343	37,343
2018	814,808	0.046334	37,753	37,753
2019	769,500	0.045627	35,110	35,110
			\$1,277,598	\$479,777

2

3 **Q. Please explain the revenue impact on customers arising from these differences.**

4 A. Please refer to the following table to explain the per kWh charge.

5

Customer Revenue Impact

Category	10-1-2021 Amount	11-10-2021 Amount
Total Retail Energy Sales	18,005,211,922	18,005,211,922
Less Lighting Energy Sales	101,717,670	101,717,670
Total Retail less Lighting	17,903,494,252	17,903,494,252
Calculation of Total EER Costs		
Program Expenses	4,277,148	4,277,148
Add(Over)/Under Recovery	102,577	102,577
Less Settlement from Previous Years	(1,277,598)	(479,780)
Total to Recover	\$3,102,124	\$3,899,945
Cost Per kWh	\$0.000173	\$0.000218

6

1 As illustrated in the tables above, the variance between the charges per kWh is less than
2 .01 of 1 cent per kWh. As a practical matter, the Settlement Agreement avoids litigation
3 costs that could significantly impact these ratepayer savings.

4 **Q. What criteria does the Commission generally consider when reviewing settlement**
5 **agreements?**

6 A. The Commission has accepted settlement agreements if the following five criteria are met:
7 1) The agreement conforms with applicable law; 2) there was an opportunity for opposing
8 parties to be heard on their reasons for opposition to the agreement; 3) the agreement is
9 supported by substantial competent evidence; 4) the agreement results in just and
10 reasonable rates or charges; and 5) the results of the agreement are in the public interest.¹³

11 However, in dockets with proposed unanimous settlement agreements, such as this
12 Agreement, the Commission has approved settlement agreements on the basis of just the
13 last three criteria.

14 **Q. Does CURB support the Unanimous Settlement Agreement?**

15 A. Yes, CURB believes the recommendations made by Staff in its R&R meets the pertinent
16 criteria for Commission approval of a unanimous settlement agreement. Therefore, CURB
17 supports Staff's revised recommendations for the following reasons:

18 1. The agreement results in just and reasonable rates. The resulting rate of \$0.000218
19 would, if approved, result in a charge to residential customers of approximately \$0.0231
20 monthly or \$0.2773 annually.

13 See *Order Approving Contested Settlement Agreement*, ¶11, Docket No. 08-ATMG-280-RTS (May 12, 2012).

1 2. The agreement is supported by substantial and competent evidence. The agreement
2 is supported by Staff's October 1, 2021, R&R and its November 10, 2021, revised R&R.
3 Further, the agreement is supported by Mr. Ives' testimony that I referenced before, as well
4 as my testimony and, I suspect, the testimony of Staff.

5 3. The agreement is in the public interest. The energy efficiency rates, if approved,
6 will provide benefits to all customers. There is a wide range of representation among the
7 parties: the Company; CURB, representing residential and small commercial customers,
8 and KCC Staff, representing all interests including the public. In principle, CURB believes
9 that it is in the public interest to negate the double collection found by Staff in this docket,
10 while reserving the parties' ability to espouse their positions on the legal issues in later
11 dockets. However, from a practical standpoint, the settlement agreement provides a fair
12 compromise among the competing positions and interests represented by the parties
13 without the need for extended litigation and resource use. As I stated earlier, the Settlement
14 Agreement avoids the potential litigation costs that could significantly impact the ratepayer
15 savings brought about by the Settlement Agreement. Avoidance of those potential costs,
16 in view of the rate impact of the adjustments proposed by Staff, is an important aspect of
17 the public interest in this docket.

1 **Q. Have CURB's concerns about energy efficiency efforts in Kansas been addressed?**

2 A. As noted in its response dated October 8, 2021, CURB had three primary concerns. While
3 these were not specifically addressed in the Settlement Agreement, CURB notes that
4 progress is being made on these three concerns. I will address CURB's three concerns
5 below.

6 1. CURB stated that Kansas appears to be behind the curve on cost-effective energy
7 efficiency measures. CURB is hopeful that Kansas utilities will bring meaningful energy
8 efficiency applications to the Commission for review and, if the energy efficiency
9 programs are cost-effective and in the interest of ratepayers, the Commission would
10 approve them.¹⁴ CURB notes that Evergy has now proposed a slate of energy efficiency
11 programs in Docket No. 22-EKME-254-TAR. CURB appreciates this filing and looks
12 forward to working with Evergy and other stakeholders in regard to the same.

13 2. CURB stated that portfolios of energy efficiency programs must provide benefits
14 to low-income ratepayers in an equitable manner.¹⁵ CURB notes that the above-referenced
15 proposed energy efficiency programs address low-income ratepayers. CURB is evaluating
16 the extent and propriety of the benefits to low-income customers in that docket.

17 3. Finally, CURB was concerned that low-income customers do not have the ability
18 to take advantage of the savings and benefits that these programs provide.¹⁶ Again, CURB
19 will address this concern in Docket No. 22-EKME-254-TAR. CURB is very optimistic
20 that Evergy will work with all stakeholders in that docket to arrive at cost-effective energy

14 CURB Response to Staff's Report and Recommendation, October 8, 2021.

15 Id.

16 Id.

1 efficiency programs in which all Evergy ratepayers, including low-income ratepayers, are
2 able to participate meaningfully.

3 **Q. What is your final recommendation?**

4 A. I support the Agreement and believe it satisfies the Commission's established criteria for
5 approval of a unanimous settlement agreement. Therefore, I recommend the Commission
6 approve the unanimous settlement agreement as proposed by the Parties.

7 **Q. Does this conclude your testimony?**

8 A. Yes, thank you.

VERIFICATION

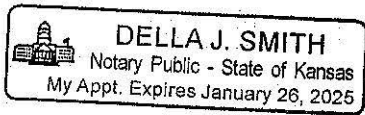
STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

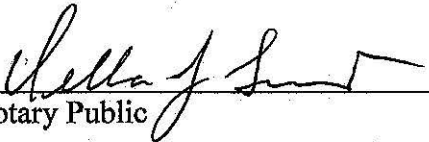
I, Patrick Orr, of lawful age and being first duly sworn upon my oath, state that I am a Regulatory Analyst for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



Patrick Orr

SUBSCRIBED AND SWORN to before me this 28th day of February, 2022.





Notary Public

My Commission expires: 01-26-2025.

CERTIFICATE OF SERVICE

22-EKCE-020-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 28th day of February, 2022, to the following:

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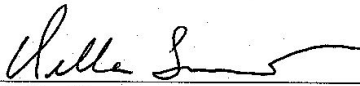
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