

**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 the Commission of the Evergy)
Energy Efficiency Rider 2021 Filing)** **Docket No. 22-EKCE-020-TAR**

TESTIMONY IN SUPPORT OF SETTLEMENT AGREEMENT

PREPARED BY

JUSTIN T GRADY

UTILITIES DIVISION

KANSAS CORPORATION COMMISSION

February 28, 2022

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

2 A. My name is Justin T. Grady and my business address is 1500 Southwest Arrowhead
3 Road, Topeka, Kansas 66604.

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

5 A. I am employed by the Kansas Corporation Commission (KCC or Commission) as
6 the Chief of Revenue Requirements, Cost of Service and Finance.

7 **Q. Please summarize your educational and employment background.**

8A. I earned a Master of Business Administration degree, with a concentration in
9 General Finance which includes emphases in Corporate Finance and Investment
10 Management, from the University of Kansas in December of 2009. I also hold a
11 Bachelor of Business Administration degree with majors in Finance and Economics
12 from Washburn University. I have been employed by the KCC in various positions
13 of increasing responsibility within the Utilities Division since 2002. I have been a
14 Section Head in the Utilities Division since May of 2012, and have been employed
15 in my current capacity since August 2020.

16 While employed with the Commission, I have participated in and directed the
17 review of various tariff/surcharge filings and rate case proceedings involving
18 electric, natural gas distribution, water distribution, and telecommunications
19 utilities. In my current position, I have supervisory responsibility for the activities
20 of the Commission's Audit section within the Utilities Division. In that capacity, I
21 plan, manage, and perform audits relating to utility rate cases, tariff/surcharge
22 filings, fuel cost recovery mechanisms, transmission delivery charges, alternative-
23 ratemaking mechanisms, class cost of service studies, and other utility filings that

1 may have an impact on utility rates in Kansas including mergers, acquisitions, and
2 restructuring filings.

3 **Q. Have you previously submitted testimony before this Commission?**

4 A. Yes. I have submitted written and oral testimony before this Commission on
5 multiple occasions regarding various regulatory accounting and ratemaking issues.

6 This work includes testimony filings in 68 dockets, including this one. A list of the
7 other dockets that encompass this experience is available upon request.

8 **Q. Please identify the purpose of your testimony.**

9 A. I am testifying on behalf of the Staff of the Kansas Corporation Commission (KCC
10 or Commission) in support of the settlement of the issues outlined in the Unanimous
11 Settlement and Agreement (Agreement) between Staff; Evergy Kansas Central and
12 Evergy Kansas South (Evergy or Evergy Central); and the Citizens' Utility
13 Ratepayer Board (CURB) (collectively, the "Parties").¹

14 My testimony will explain why the Commission should approve the Agreement
15 as a reasonable resolution of the issues in this Docket, which is in the public interest
16 and will produce just and reasonable rates. Specifically, I will:

- 17 • provide background information about this Docket;
- 18 • provide an overview and discussion of the Agreement;
- 19 • discuss the standard of review used to guide the Commission in its
20 consideration of whether to accept the Agreement;² and
- 21 • discuss the evidence in the record that supports the Agreement.

¹ *Joint Motion for Approval of Unanimous Settlement Agreement*, Docket No. 22-EKCE-020-TAR (Nov. 10, 2021).

² *Order Approving Contested Settlement Agreement*, Docket No. 08-ATMG-280-RTS, pp. 4-6 (May 12, 2008).

1 **Background Information**

2 **Q. Please provide a brief background of this case.**

3 A. On July 15, 2021, Evergy Central filed an Application seeking Commission
4 approval of its Evergy Efficiency Rider (EER). Evergy files an updated EER
5 annually, in order to recover “actual program costs deferred for Commission
6 approved Energy Efficiency programs deferred over a 12-month period ending in
7 June of each year plus any true up amount from the prior period.”³ Evergy’s
8 Application sought recovery of costs incurred in relation to Commission-approved
9 demand response and energy efficiency programs in the amount of \$4,379,725.
10 This amount included unrecovered expenses of \$4,277,148 incurred from the
11 period of July 1, 2020, through June 30, 2021, and under-recovered costs of
12 \$102,577 incurred from the prior period. Staff reviewed Evergy’s filing and filed
13 its Report and Recommendation on October 1, 2021. In its Report and
14 Recommendation, Staff indicated that it found no errors in Evergy’s calculations or
15 the requested amounts. Staff did, however, recommend that an adjustment be made
16 to the true-up portion of the EER. Staff argued that Evergy recovered a small
17 percentage of its EER costs (4.3% to 4.7%) through its FERC-regulated
18 Transmission Formula Rate (“TFR”) from 2010 to 2019 and that the true-up for
19 this EER period should be utilized to correct for the amount of EER costs Evergy
20 recovered through its TFR during that time period. This cost recovery was not
21 recognized and subtracted from Evergy’s previous EER filings, therefore, Staff
22 contended that this amount, \$1,277,601 in total, was double recovered by Evergy.

³ Evergy Kansas Central EER Tariff, sheet 2.

1 On October 8, 2021, CURB filed a Response to Staff's Report and
2 Recommendation indicating that it agreed with Staff's findings and
3 recommendations.

4 On October 11, 2021, Evergy filed a Response to Staff's Report and
5 Recommendation indicating that it disagreed with Staff's recommendation to adjust
6 the true-up amount because Evergy believes that recommendation was inconsistent
7 with the language of the EER Tariff. On October 21, 2021, Staff filed a Reply in
8 support of its Report and Recommendation, arguing that its proposed adjustment
9 was appropriate. Subsequent to these filings, the Parties held informal settlement
10 discussions in an attempt to resolve the disputed issues before the Commission in
11 this docket and avoid the expense and time that would have been involved with
12 further litigation. The Parties were able to resolve the disputed issues and reached
13 an agreement, as outlined below.

14 **Terms of the Settlement Agreement**

15 **Q. Please provide an overview of the Agreement.**

16 A. The agreement states that Evergy will return to customers through the true-up
17 component of the EER rider that is to be effective through October 31, 2022, an
18 amount of \$479,779.85 in addition to the true-up calculation proposed by Evergy
19 in its initial filing, to address Staff's recommendation regarding recovery of energy
20 efficiency costs through Evergy's TFR.

21 **Q. How did this Settlement Agreement affect the calculated EER rate?**

22 A. The Agreement resulted in an EER rate of \$.000218/kWh. This compares to Staff's
23 original recommendation of \$.000161.

1 **Q. How would this revised EER rate affect the average residential customer in**
2 **Evergy Kansas Central's territory?**

3 A. The Agreement resulted in an EER rate of \$.000218/kWh. This compares to Staff's
4 original recommendation of \$.000161. For an average residential customer using
5 900 kWh per month, this revised rate will increase customer bills by \$.02 per month
6 compared to last years' EER.

7 **Commission Standards for Approving Settlement Agreements**

8 **Q. Has the Commission previously used factors or standards to review a**
9 **settlement agreement?**

10 A. Yes. The Commission's Order in Docket No. 08-ATMG-280-RTS (08-280 Docket)
11 discusses five factors, or standards, and multiple agreements have been reviewed
12 by the Commission using the five factors since that Order.⁴ However, more recent
13 Commission Orders have noted that for unanimous settlement agreements, parties
14 need not apply the historical five-factor test set forth in the 08-280 Docket.⁵

15 **Q. What standards does the Commission generally examine when considering a**
16 **unanimous settlement agreement?**

17 A. The Commission may accept a unanimous settlement agreement so long as approval
18 of the settlement is: (1) supported by substantial competent evidence in the record
19 as a whole; (2) results in just and reasonable rates; and (3) is in the public interest.⁶
20 Each of these factors is discussed individually below.

⁴ *Order Approving Contested Settlement Agreement*, 08-280 Docket, p. 5 (May 5, 2008).

⁵ *Order on KCP&L's Application for Rate Change*, Docket No. 15-KCPE-116-RTS, ¶ 16, p. 6 (Sept. 10, 2015).

⁶ *Ibid*, ¶ 15; *see also Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n of State of Kansas*, 28 Kan. App. 2d 313, 316 16 P.3d 319, 323 (2000).

1 **Support for the Settlement Agreement**

2 **Q. Please address whether the Agreement is supported by substantial competent**
3 **evidence in the record as a whole.**

4 A. The Agreement is supported by substantial competent evidence in the record as a
5 whole. The Agreement is supported by Evergy Central's Application, Staff's
6 Report and Recommendation, as well as the responses filed in this case. Staff
7 analyzed the Application and formed its own conclusions which were filed in its
8 Report and Recommendation. In addition, CURB reviewed the filing and stated
9 their positions in response to Staff's Report and Recommendation. These filed
10 positions represent the body of evidence the Commission would rely on to make a
11 determination of the issues presented by this case, if the case were to be fully
12 litigated. The Parties also relied on this evidence in negotiations and eventually
13 arrived at an agreed upon resolution of the issues in this case.

14 **Q. How did the Parties arrive at the \$479,780 true-up amount?**

15 A. The \$479,780 results in all over-recoveries back to 2014 being refunded to
16 customers. This can be verified by adding up all of the amounts from 2014 to 2019
17 in the "Total" column on the Staff Exhibit entitled "TFR Recovery", as attached to
18 Staff's October 1, 2021 Report and Recommendation. There are no over recoveries
19 for 2020 and 2021 due to the issue being corrected in Evergy's TFR for those years.
20 This settlement did not capture the over-recovery that occurred between the TFR
21 and the EER for the years 2010-2013.

22 **Q. Why did Staff agree to a settlement that refunds to customers less than half of**
23 **an amount that was clearly over-recovered?**

1 A. Staff agreed with the refund of the \$479,780 because there was no certainty that
2 our original litigation position would be accepted by the Commission, or upheld by
3 the Courts if the Commission sided with Staff, and Evergy were to appeal the
4 decision. Evergy made several arguments in its pleadings, including:

- 5 • the specificity of the tariff language for the true-up provision in the EER
6 tariff limiting the period of correction to the previous year;
- 7 • Staff's attempt to capture true-ups going back over ten years constitutes
8 impermissible retroactive ratemaking; and
- 9 • The proper place for making Staff's arguments was the TFR review
10 process, but the time for making those arguments has passed and the TFR
11 has since been corrected prospectively.

12 The Settlement captures nearly \$500,000 worth of refund certainty for Evergy's
13 customers without the administrative expense, delay, and uncertainty associated
14 with fully litigating this issue before the Commission and the Court of Appeals.

15 While Staff had our own arguments as to why the full over-recovered balance
16 should be refunded to customers, there are always risks and expenses associated
17 with litigation, and you can't always be certain what the outcome will be. This
18 Settlement captured 100% of the over-recovery going back a period of eight years.
19 The over-recovery that was not captured in this Settlement was paid as part of utility
20 rates from nine to 12 years ago. Staff's determination was that refund certainty for
21 the last eight years of over-recovery was preferred over the uncertainty of
22 *potentially* recovering amounts that were over-recovered in the four years prior to
23 that.

1 **Q. Does the Agreement result in just and reasonable rates?**

2 A. Staff contends this Agreement results in rates that fall within the “zone of
3 reasonableness” described by the Kansas courts in which the result is balanced
4 between the interests of investors versus ratepayers, present versus future
5 ratepayers, and is in the public interest generally. While Staff would have preferred
6 to receive all 12 years of over-recovery in a refund for customers, the difference
7 between the eight years of over-recovery that was called for in the Settlement
8 Agreement and the full 12-years of refunds is \$.05 per month for a typical
9 residential customer. In this case, our professional judgement was that the refund
10 certainty contained within the Settlement Agreement was preferable to the risk and
11 administrative expense associated with full litigation and likely appeals necessary
12 to capture the additional refund for years 2010-2013. For these reasons, we contend
13 that the Agreement will result in just and reasonable rates.

14 Staff’s view in this case and our negotiating position was intended on balancing
15 all of the interests represented in this case and the agreed upon total revenue
16 reduction provides certainty and minimizes administrative time and expense going
17 forward.

18 The presence of professional expert witnesses and attorneys helps ensure that
19 any unreasonable position(s) taken by any party are eliminated by opposing parties
20 through the settlement process. More specifically, while an unreasonable
21 position(s) may or may not be discussed explicitly in settlement, each party is
22 generally unwilling to make concessions to unreasonable position(s) and will
23 exclude such unreasonable position(s) from their respective settlement positions.

1 Simply put, a settlement that is able to satisfy each of these very diverse and
2 competing interests is not easy to accomplish. The fact that the Parties in this case,
3 with diverse and often competing interests, have found common ground for
4 resolving their respective issues strongly supports Staff’s contention that the
5 Agreement in this case will result in just and reasonable rates that are in the public
6 interest.

7 **Q. Are you aware of the balancing test set forth by the Kansas Supreme Court**
8 **for determining whether rates are “just and reasonable”?**

9 A. Yes, the Kansas Supreme Court has stated:

10 The leading cases in this area clearly indicate that the goal should be a rate fixed
11 within the “zone of reasonableness” after the application of a balancing test in
12 which the interests of all concerned parties are considered. In rate-making
13 cases, the parties whose interests must be considered and balanced are these:
14 (1) the utility’s investors vs. the ratepayers; (2) the present ratepayers vs. the
15 future ratepayers; and (3) the public interest.⁷
16

17 **Q. What evidence in this case should be considered when performing the**
18 **balancing test set forth by the Kansas Supreme Court?**

19 A. Staff’s contention is the Agreement before the Commission passes the balancing test
20 set forth by the Kansas Supreme Court. The following supports this assertion: (1)
21 the agreed-upon refund amount balances the interests of the utility’s investors and
22 the ratepayers because it reflects 100% of the over-recovery for a period going back
23 eight years (through 2014), while it does not capture over-recoveries that were
24 included in utility rates between nine and twelve years ago; (2) Staff has strived to
25 eliminate any intergenerational inequity in our filed position and the Settlement

⁷ *Kan. Gas and Electric Co. v. State Corp Comm’n*, 239 Kan. 483, 488 (1986).

1 and, therefore, the Agreement provides a fair balance between present and future
2 ratepayers; and (3) the fact that both of the two factors above have been met is itself
3 an indication that the Agreement is in the public interest generally. I will discuss
4 this in greater detail below.

5 **Q. Does Staff believe the results of the Agreement are in the public interest?**

6 A. Yes. There were multiple interests represented by the parties involved in the
7 negotiations: CURB representing the interests of residential and small commercial
8 ratepayers; and Evergy Central representing the interest of its management and
9 shareholders. Staff was attempting to balance each of those interests while
10 representing the interests of the public generally. The fact that these varied interests
11 were able to collaborate and present a unanimous resolution of the issues in this
12 case strongly indicates the public interest standard has been met.

13 Generally speaking, the public interest is served when ratepayers are protected
14 from unnecessarily high prices, discriminatory prices and/or unreliable service.
15 More specifically, it is Staff's opinion that the Agreement meets the public interest
16 because:

- 17 • It reduces the amount of Evergy Central's requested revenue increase by
18 nearly \$500,000, without incurring the costs and delay associated with
19 litigation and appeals;
- 20 • In settlement negotiations, each of the parties represented their respective
21 interests by putting time, thought, and professional analysis into deriving a
22 settlement position it found reasonable; and

1 • The stipulated revenue increase was based on the record and is a reasonable
2 compromise among the Parties based on each party's own analysis of a
3 reasonable outcome.

4 **Q. Should the Commission accept the Agreement as a reasonable resolution of**
5 **the issues in this Docket?**

6 A. Yes, the Agreement represents a reasonable resolution of the issues in this Docket,
7 results in just and reasonable rates, is in the public interest, and is supported by
8 substantial competent evidence in the record.


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

10 A. Yes, thank you.

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

VERIFICATION

Justin T. Grady, being duly sworn upon his oath deposes and states that he is Chief of Revenue Requirements, Cost of Service and Finance for the Utilities Division of the Kansas Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Testimony*, and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Justin T. Grady
Chief of Revenue Requirements,
Cost of Service and Finance
State Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 28 day of February, 2022.



Notary

My Appointment Expires: 4/28/25



NOTARY PUBLIC - State of Kansas
ANN M. MURPHY
My Appt. Expires 4/28/25

CERTIFICATE OF SERVICE

22-EKCE-020-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing testimony was electronically delivered this 28th day of February, 2022, to the following:

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* Denotes those receiving the Confidential version