

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

In the Matter of the Application of Evergy)
Kansas Metro, Inc., Evergy Kansas South, Inc.)
and Evergy Kansas Central, Inc. for Approval of) Docket No. 22-EKME-254-TAR
its Demand-Side Management Portfolio)
Pursuant to the Kansas Energy Efficiency)
Investment Act (“KEEIA”), K.S.A. 66-1283.)

**MOTION TO APPROVE NON-UNANIMOUS
PARTIAL SETTLEMENT AGREEMENT ON FINANCIAL RECOVERY**

COME NOW Evergy Kansas Metro, Inc., Evergy Kansas South, Inc. and Evergy Kansas Central, Inc. (“Evergy”), the Citizens’ Utility Ratepayer Board (“CURB”), Climate + Energy Project (“CEP”), Natural Resources Defense Council (“NRDC”), Sierra Club (“Sierra Club”) and Kansas Appleseed Center for Law and Justice, Inc. (“Kansas Appleseed”), (referred to collectively as “Joint Movants”), and hereby request the State Corporation Commission of the State of Kansas (“Commission”) issue an order approving the Non-Unanimous Partial Settlement Agreement – Financial Recovery (“Financial Recovery S&A”) entered into by the Joint Movants and submitted with this Motion. In support of its Motion, Joint Movants state the following:

I. BACKGROUND

1. On December 17, 2021, pursuant to the Kansas Energy Efficiency Investment Act (“KEEIA”), K.S.A. 66-1283, Evergy filed an Application in this matter seeking approval of its proposed Demand-Side Management (“DSM”) Portfolio.¹

2. CURB, CEP, NRDC, Sierra Club, Kansas Appleseed, Atmos Energy Corporation

¹ On May 18, 2022, Evergy filed corrections to the Evergy KEEIA 2023-2026 Demand-Side Management Portfolio Report (“Report”) filed with its Application. The term “Application” as used herein refers to the December 17, 2021 Application as corrected on May 18, 2022.

(“Atmos”), Kansas Gas Service, a Division of ONE Gas, Inc. (“Kansas Gas Service”), Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (“Black Hills”), and Kansas Industrial Consumers Group, Inc. (“KIC”), Associated Purchasing Services (“APS”), Spirit AeroSystems, Inc. (“Spirit”), Occidental Chemical Corporation (“Oxy-Chem”), and The Goodyear Tire & Rubber Company (“Goodyear”), (collectively “KIC”) filed for, and were granted, intervention in the docket.

3. Pursuant to the *Revised Presiding Officer Order Granting Joint Motion To Modify Procedural Schedule* (“Procedural Order”) issued April 19, 2022, the parties to this proceeding met and conducted settlement discussions on July 26, 27 and 28, 2022.

4. As a result of the settlement discussions, Joint Movants reached a non-unanimous, partial settlement agreement on financial recovery mechanisms, which has been reduced to writing, is attached to this Joint Motion as **Exhibit A**, and is incorporated herein by reference.² This Financial Recovery S&A is partial in that it does not address the DSM programs contained in Evergy’s KEEIA Application, and it is non-unanimous in that the Staff of the State Corporation Commission of the State of Kansas (“Staff”) and KIC oppose the Financial Recovery S&A.³ Atmos, Kansas Gas Service, and Black Hills have taken no position on the Financial Recovery Mechanisms proposed in this docket and do not support or oppose this FR Agreement.

5. Joint Movants recognize that the law generally favors the good faith settlement of disputed issues,⁴ and that the Commission will evaluate a stipulated agreement to determine

² The Procedural Order established July 29, 2022 as the deadline for filing settlement agreements. On that date, the Joint Movants filed a motion for a one day extension of the deadline, which was granted.

³ Concurrent with the filing of this Financial Recovery S&A, a separate “Non-Unanimous Partial Settlement Agreement - KEEIA Programs” is being filed by a different subset of the parties that resolves all Program issues.

⁴ *Krantz v. University of Kansas*, 271 Kan. 234, 241-242, 21 P.3d 561, 567 (2001).

whether (a) it is supported by substantial competent evidence in the record as a whole, (b) it results in just and reasonable rates, and (c) it is in the public interest.⁵

6. Testimony in support of the Financial Recovery S&A will be filed by close of business on August 3, 2022.⁶ The testimony will explain that approval of the Financial Recovery S&A is supported by substantial competent evidence in the record as a whole, that it will result in just and reasonable rates, and that it is in the public interest.⁷

WHEREFORE, Joint Movants respectfully request the Commission grant this Motion, thereby approving in its entirety the attached Non-Unanimous Partial Settlement Agreement – Financial Recovery.

Respectfully submitted,

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ATTORNEYS FOR EVERGY

⁵ Order Approving Nonunanimous Stipulation and Agreement, Docket No. 12-WSEE-112-RTS, April 18, 2012, ¶ 24.

⁶ The Procedural Order established August 2, 2022 as the deadline for filing testimony on the settlement agreements. On July 29, 2022, the parties filed a motion for a one day extension of the deadline, which was granted.

⁷ *Citizens' Utility Ratepayer Board v. State Corp. Comm 'n*, 28 Kan.App.2d 313, 316, 16 P.3d 319 (2000).

/s/ David W. Nickel

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ATTORNEY FOR CEP

EXHIBIT A

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

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Kansas Metro, Inc., Evergy Kansas South, Inc.)
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its Demand-Side Management Portfolio)
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**NON-UNANIMOUS PARTIAL SETTLEMENT
AGREEMENT - FINANCIAL RECOVERY**

COME NOW Evergy Kansas Metro, Inc., Evergy Kansas South, Inc. and Evergy Kansas Central, Inc. (“Evergy”), the Citizens’ Utility Ratepayer Board (“CURB”), Climate + Energy Project (“CEP”), Natural Resources Defense Council (“NRDC”), Sierra Club (“Sierra Club”) and Kansas Appleseed Center for Law and Justice, Inc. (“Kansas Appleseed”), and together as “Signatories” or “Signatory Parties”, hereby submit to the State Corporation Commission of the State of Kansas (“Commission”) for its consideration and approval the following Non-Unanimous Partial Settlement Agreement – Financial Recovery (“Financial Recovery S&A” or “FR Agreement”):

I. INTRODUCTION

1. On December 17, 2021, pursuant to the Kansas Energy Efficiency Investment Act (“KEEIA”), K.S.A. 66-1283, Evergy filed an Application in this matter seeking approval of its proposed Demand-Side Management (“DSM”) Portfolio.¹

2. CURB, CEP, NRDC, Sierra Club, Kansas Appleseed, Atmos Energy Corporation

¹ On May 18, 2022, Evergy filed corrections to the Evergy KEEIA 2023-2026 Demand-Side Management Portfolio Report (“Report”) filed with its Application. The term “Application” as used herein refers to the December 17, 2021 Application as corrected on May 18, 2022.

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(“Atmos”), Kansas Gas Service, a Division of ONE Gas, Inc. (“Kansas Gas Service”), Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (“Black Hills”), and Kansas Industrial Consumers Group, Inc. (“KIC”), Associated Purchasing Services (“APS”), Spirit AeroSystems, Inc. (“Spirit”), Occidental Chemical Corporation (“Oxy-Chem”), and The Goodyear Tire & Rubber Company (“Goodyear”), (collectively “KIC”) filed for, and were granted, intervention in the docket.

3. Commencing on Tuesday, July 26, 2022, the parties to this case held meetings to discuss settlement, pursuant to the Commission’s procedural order issued on April 19, 2022. As a result, Evergy, CURB, CEP, Sierra Club, Kansas Appleseed and NRDC were able to reach settlement on all issues concerning Evergy’s proposed Program Cost recovery mechanism, Throughput Disincentive (“TD”) mechanism and Earnings Opportunity (“EO”) mechanism, referred to collectively herein as “Financial Recovery Mechanisms”. This Financial Recovery S&A is partial in that it does not address the DSM programs contained in Evergy’s KEEIA Application, and it is non-unanimous in that the Staff of the State Corporation Commission of the State of Kansas (“Staff”) and KIC oppose the FR Agreement.²

4. Atmos, Kansas Gas Service, and Black Hills have taken no position on the Financial Recovery Mechanisms proposed in this docket and do not support or oppose this FR Agreement.

II. TERMS OF NON-UNANIMOUS PARTIAL SETTLEMENT AGREEMENT – FINANCIAL RECOVERY

5. In its Application, Evergy proposed mechanisms to recover Program Costs, address TD and provide Evergy an EO consistent with the provisions of KEEIA. The Signatory Parties

² Concurrent with the filing of this Financial Recovery S&A, a separate “Non-Unanimous Partial Settlement Agreement - KEEIA Programs” is being filed by a different subset of the parties that resolves all Program issues.

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agree that these Financial Recovery Mechanisms proposed by Evergy in its Application should be approved consistent with the terms set forth below:

Financial Recovery

- a. Program Carrying Costs
 - Use the average of 12 months of short-term debt and 6 months of long-term debt.

- b. Throughput Disincentive
 - i. Rate (\$/kWh) represents all revenue lost on kWh minus riders.
 - ii. Evaluated retrospective value of kWh saved for program year 1 and approved TRM use thereafter.
 - iii. Sunset of kWh lost revenue 4 years after measure install.

- c. Earnings Opportunity
 - i. Accept Staff matrix structure with min/max (75%-125%).
 - ii. Annual goals adjusted with new settlement proposed kWh/kW targets.
 - iii. Target \$ amount set based on 18% of Net Benefits approach from settlement proposal savings/budgets.
 - iv. Earnings opportunity for the Hard-to-Reach programs will be based on first-year cumulative incremental kWh target.

A summary of the financial impact of the program budgets and three components of recovery is included as **Attachment 1** to this agreement.

III. MISCELLANEOUS PROVISIONS

A. The Commission's Rights

6. Nothing in this Financial Recovery S&A is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including the obligation to ensure that Evergy is providing efficient and sufficient service at just and reasonable rates.

B. Regulatory Authority and Waiver of Cross Examination

7. The Signatory Parties are submitting this Financial Recovery S&A, with supporting testimony, pursuant to K.A.R. 82-1-230a and in accordance with the Commission's procedural

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schedule established by Order issued April 19, 2022.

8. The Signatory Parties waive cross-examination on all testimony filed by the Signatory Parties prior to the filing of this FR Agreement.

C. Negotiated Settlement

9. This Financial Recovery S&A represents a negotiated settlement that resolves the issues as presented in this pleading. The Signatory Parties represent that the terms of this FR Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Signatory Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide to not approve this Financial Recovery S&A in the instant proceeding or if the Commission materially modifies or adds to its terms. Subject to paragraph 11 below, if the Commission accepts this FR Agreement in its entirety and incorporates the same into a formal order without material modifications or additions, the Signatory Parties shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.

D. Interdependent Provisions

10. The provisions of this Financial Recovery S&A have resulted from negotiations among the Signatory Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this FR Agreement in total, or if the Commission imposes additional or modified terms or obligations that material impact the rights or obligations of a Signatory Party, that Signatory Party has the right to void this Financial Recovery S&A and, in such event, no Signatory Party hereto shall be bound, prejudiced, or in any way affected by any of

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the agreements or provisions hereof. Further, in the event any Signatory Party opts to void this FR Agreement pursuant to its terms, the FR Agreement shall be considered privileged and not admissible in evidence or made a part of the record in any other proceeding.

11. This Financial Recovery S&A is interrelated with the Non-Unanimous Partial Settlement Agreement - KEEIA Programs being filed concurrently in this docket. Pursuant to K.S.A. 66-1283(c)(1)(C), upon final ruling of the Commission order in this docket, Evergy has the right to reconsider and may withdraw its plan within 30 calendar days from the date the final order is issued. By entering into this Financial Recovery S&A, Evergy is not waiving its rights under K.S.A. 66-1283(c)(1)(C), and retains the ability to withdraw its proposal in its entirety if the Commission's final order on this Agreement or on the Non-Unanimous Partial Settlement Agreement - KEEIA Programs is not acceptable to Evergy.

IN WITNESS THEREOF, the Signatory Parties have executed and approved this Non-Unanimous Partial Settlement Agreement - KEEIA Programs effective as of the 1st day of August, 2022, by subscribing their signatures below.

By: *Darrin R. Ives*
Darrin R. Ives
ON BEHALF OF EVERGY

By: *David W. Nickel*
David Nickel
ON BEHALF OF CURB

By: *Tim Laughlin*
Tim Laughlin
ON BEHALF OF CEP

EXHIBIT A

By: */s/ Justin Somelofske*
Justin Somelofske
ON BEHALF OF SIERRA CLUB

By: */s/ Teresa A. Woody*
Teresa A. Woody
ON BEHALF OF KANSAS APPLESEED

By: */s/ Robert R. Titus*
Robert R. Titus
ON BEHALF OF NRDC

Evergy KEEIA DSM Portfolio 2023-2026 Financial Summary - Settlement Comparison

	Evergy Filing	Settlement (including reserve)
Full KEEIA Financial Proposal	\$ 235,549,218	\$ 185,677,280

Program Budgets

	Evergy Filing	Settlement including reserve
EKC	\$ 100,951,903	\$ 91,476,248
EKM	\$ 33,936,387	\$ 30,425,175
Total	\$ 134,888,291	\$ 121,901,423

Carrying Cost on Program Cost Recovery

	Evergy Filing	Settlement including reserve
Rate Term	WACC 18 months	STD - 12 mos; LTD - 6 mos 18 months
EKC	\$ 13,369,470	\$ 4,052,489
EKM	\$ 4,477,162	\$ 1,387,510
Total	\$ 17,846,632	\$ 5,439,999

Lost Revenue - Throughput Disincentive

	Evergy Filing	Settlement including reserve
Rate	Revenue Net of Fuel, Riders	Revenue Net of Fuel, Riders
Term - Carrying Cost	18 months - WACC	STD - 12 mos; LTD - 6 mos
EKC	\$ 36,633,318	\$ 25,072,280
EKM	\$ 21,061,501	\$ 15,160,551
Total	\$ 57,694,820	\$ 40,232,831

Earnings Opportunity

	Evergy Filing	Settlement including reserve
Approach	18 % of Net Benefits (EE/DR) / 5% of Spend (Education - HTR)	18 % of Net Benefits (EE/DR) / 5% of Spend (Education - HTR)
EKC	\$ 18,499,117	\$ 13,096,842
EKM	\$ 6,620,359	\$ 5,006,185
Total	\$ 25,119,476	\$ 18,103,026

Carrying Cost, TD, EO Subtotal	\$ 100,660,928	\$ 63,775,857
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STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

VERIFICATION

I, Glenda Cafer, verify under penalty of perjury that I have caused the foregoing pleading to be prepared; that I have read and reviewed the same; and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

Glenda Cafer

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing pleading was electronically served this 1st day of August, 2022 to:

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