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State Corporation Commission
of Kansas

**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 its Demand-Side Management Portfolio Pursuant to the Kansas Energy Efficiency Investment Act ("KEEIA"), K.S.A. 66-1283.	))))))	Docket No. 22-EKME-254-TAR

REPLY BRIEF OF EVERGY KANSAS METRO, INC., EVERGY KANSAS SOUTH, INC. AND EVERGY KANSAS CENTRAL, INC

COMES NOW Evergy Kansas Metro, Inc., Evergy Kansas South, Inc. and Evergy Kansas Central, Inc. ("Evergy") and files with the State Corporation Commission of the State of Kansas ("Commission") this Reply Brief pursuant to the Commission's Order issued January 3, 2023.

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I. INTRODUCTION

Initial Post-Hearing Briefs were filed by the Kansas Corporation Commission Staff ("Staff"); the Citizens' Utility Ratepayer Board ("CURB"); Natural Resources Defense Council ("NRDC"); jointly by Climate + Energy Project ("CEP"), Sierra Club and Kansas Appleseed Center for Law and Justice, Inc. ("Sierra Club" and "Kansas Appleseed"), and NRDC (referred to collectively as "Environmental Intervenors"); jointly by Atmos Energy Corporation ("Atmos"), Kansas Gas Service (KGS"), Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy ("Black Hills") (referred to collectively as "Gas Utilities"). In the interest of brevity, Evergy has focused on the more substantial issues in this Reply Brief. To the extent assertions in the Briefs of the other parties are not specifically responded to, it should not be interpreted as agreement.

Evergy's Reply Brief is structured as follows:

I. INTRODUCTION

II. RESPONSE TO STAFF

III. RESPONSE TO CURB

IV. RESPONSE TO NRDC AND ENVIRONMENTAL INTERVENORS

V. RESPONSE TO GAS UTILITIES

VI. CLOSING

II. RESPONSE TO STAFF

Evergy supports the Alternative S&A[1] and joins in most of Staff's arguments on why the Alternative S&A and the Non-Unanimous Partial Settlement Agreement – KEEIA Programs

[1] The Alternative S&A is the non-unanimous settlement agreement on programs and financial recovery mechanism between Evergy, Staff and the Gas Utilities filed on November 15, 2022.

(“Program S&A”) are consistent with KEEIA and will benefit the public interest of Kansas. However, Evergy rejects Staff’s overall approach to evaluation of the Initial S&As and disagrees with Staff’s arguments made in opposition to the Non-Unanimous Partial Settlement Agreement – Financial Recovery (“Financial Recovery S&A”).[2]

Throughout Staff’s Brief, Staff makes recommendations that would involve approval of the Program S&A as if it were not contingent upon approval of the Financial Recovery S&A as well. These two settlement agreements must be evaluated as a package because that is how they are presented. Contrary to this concept, Staff repeatedly says that the Program S&A should only be adopted if Staff’s recommendations on financial recovery are incorporated because Staff believes the Financial Recovery S&A is fatally flawed. Evergy has made very clear throughout the hearing and in its initial brief that the Initial S&As are contingent upon each other; if the Financial Recovery S&A is modified with Staff’s recommendations, Evergy will not go forward with the Program S&A.

It is also problematic that Staff changes its position on whether the Initial S&As meet the fourth factor of the Commission’s 5-factor test for non-unanimous settlement agreements. In its initial brief, Staff asserts that the Financial Recovery S&A does not meet factors 4 and 5 because it would not lead to just and reasonable rates and is not in the public interest.[3] But this does not accurately represent the testimony Staff presented at hearing.

Staff witness Mr. Grady said in his prefiled testimony that the Initial S&As met factors 1, 2 and 3.[4] With respect to the fourth factor, Mr. Grady said,

> Given the flaws inherent in the TD mechanism included in the Settlement, and the excessive levels of EO in the Settlement, Staff contends that the TD and EO

[2] The Program S&A and Financial Recovery S&A were filed in the docket on August 1, 2022, and are referred to together as the “Initial S&As”.
[3] Staff Brief, pp. 10, 15, 21, 22, and 23.
[4] Grady Testimony in Opposition to Non-Unanimous Settlement Agreement, pp. 9-10, 19.

> mechanisms that are part of the Settlement *would not contribute to the creation of just and reasonable rates.* In addition, the future rate increases associated with the TD and EO will offset other cost savings that would otherwise improve Evergy's regional rate competitiveness. Accordingly, Staff recommends that the TD and EO mechanisms included in the Settlement be modified as will be discussed in more detail later in my testimony. With those modifications, Staff contends that the Settlement would contribute to just and reasonable rates.[5]

This wording chosen by Mr. Grady was carefully crafted, as he acknowledged at hearing:

> Ms. Cafer: You're on page 19. Okay. I need to clarify what you're saying here. This is your testimony that addresses the Commission's five factor test. This one addresses the one that asks whether or not the settlement, non-unanimous settlement agreement, does it result in just and reasonable rates. And starting here on line 12, you start, you talk about that and talk about the flaws that you see in the TD mechanism. And you say: In light of those, if the TD and the EO mechanisms are part of a settlement, it would not contribute to the creation of just and reasonable rates. Are you saying that if those mechanisms that are in the settlement agreement are included, that the resulting rates from that would not be just and reasonable? Because that's not exactly how it reads.
>
> Mr. Grady: Well, it -- *I was careful in the crafting of that language. The overall rate that Evergy charges to customers may likely be or may very well be just and reasonable.* But I don't think that those components, and that the financial settlement *would contribute to just and reasonable rates.* In other words, it's clear in the record, or at least it should be, that these programs, Evergy's estimation of these programs is that it will increase customer bills for residential customers on a net present value basis over 30 years, for the first 10 years of the program and for the first 15 years of the program. Right. So I'm saying *there is a more* just and reasonable result than the financial settlement. And which is the reason why we couldn't sign on to the settlement.
>
> Ms. Cafer: Okay. A more just and reasonable one, but even with the inclusion of this, the rates resulting from it, the Commission can still ensure are just and reasonable. Is that correct?
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> Mr. Grady: I guess what I would say is that, just and reasonable rates is a, I view it as a spectrum. You know, I always have. It's within the zone of reasonableness and what not. So I, I don't think that, I don't think that if the Commission were to -- *I don't think that this component of the overall rate that Evergy has is so significant as to make their entire rate that the customer pays unjust and unreasonable*. But I –
>
> Ms. Cafer: The rates –

[5] *Id,* at 19.

Mr. Grady: Yeah. That's enough.

Ms. Cafer: *So even with the approval of the financial recovery S&A, the resulting rates can stay within the range of reasonableness or the zone of reasonableness that we all refer to. Is that what you're saying?*

Mr. Grady: *Yeah. That will be my opinion. Yes*.[6]

Thus, it was Mr. Grady's testimony that he felt rates would be *more* just and reasonable using his financial recovery recommendation, but that they would still be just and reasonable if the Commission approves the Initial Financial Recovery S&A.

As for the fifth factor of the test, Staff's testimony was that Staff could not support the Initial Financial Recovery S&A as being in the public interest because it does not include Staff's recommended changes to the TD and EO mechanisms.[7] But Staff testified that even without Staff's changes, the rates from the Initial S&As would be just and reasonable. As regards factor 5, rejecting Staff's recommended changes does not cause the Initial Financial Recovery S&A to fail the public interest test. As explained below, Staff's assertion otherwise cannot withstand scrutiny when the analysis is performed within the factual reality of this case – which is that there is no Initial Program S&A if Staff's recommended changes to the Initial Financial Recovery S&A are adopted.

Staff's assertion that the Initial Financial Recovery S&A is not in the public interest relies wholly upon the faulty premise that the Initial Program S&A will still go forward if Staff's recommended changes to the Initial Financial Recovery S&A are adopted. This is a meaningless analysis because it is not an option available to the KCC. The fact that some wished-for but *impossible* outcome might be more in the public interest than an actual *possible* outcome, cannot

[6] Grady, Tr. Vol. 2, pp. 442-444 (emphasis added).
[7] Grady Testimony in Opposition, p. 20.

serve to disqualify the latter from being in the public interest. The *possible* outcome is the scenario to evaluate, and it cannot be done in comparison to an outcome that is not possible.

The public interest analysis must consider the entirety of the case. When the relevant analysis is applied to Staff's testimony, the fifth factor is met. Staff admits that,

- the Initial S&As provide net benefits to Evergy's ratepayers;
- the Initial Program S&A is in the public interest generally because it allows customers to access DSM programs, which ultimately will reduce their energy use and reduce customer rates;
- rates resulting from the Initial S&As fall within the zone of reasonableness;
- the DSM programs will not be offered if Staff's recommended changes to the EO and TD are incorporated into the Initial Financial Recovery S&A;
- incorporating Staff's EO and TD recommended changes will cause ratepayers to lose the benefits of DSM.

These facts show the public interest is met. But, despite these admitted facts, Staff says that since there is an alternative way to give more to customers *even though that alternative cannot happen,* the option presented in the Initial S&As is not in the public interest *even though it results in just and reasonable rates*. This reasoning must fail.

The Initial S&As meet the Commission's 5-factor test under any reasonable analysis of the actual facts and posture of this case. This is the outcome of Staff's testimony despite the conclusion reached by Staff on the fifth factor; a conclusion that is not consistent with the substance of Staff's testimony when evaluated in the context of the actual realities of this docket.

Another clarification is required with regards to Staff's assertion that the TD represents the concept that utilities do not have an incentive to implement DSM.[8] It must be understood that we are talking about more than the utility not having an incentive to implement DSM – the utility has a *disincentive* to offering it. This is important because to classify it as an incentive indicates the TD amount is additive to Evergy's revenues, given to entice the Company to move forward with DSM. This is a view repeatedly reflected in Staff's testimony and it is not accurate. The TD removes the disincentive of the utility by keeping its revenues neutral so as to make it indifferent to DSM deployment.

Staff rejects the EO in the Initial Financial Recovery S&A because Staff feels it is an excessive percentage of Evergy's DSM program costs,[9] but this views the EO through the wrong lens. The EO is intended to compensate for earnings the utility would have received on investments in infrastructure that have been made unnecessary because of successful DSM deployment. Even so, the EO can be calculated in relation to the spend on programs as long as the goal and result is still an approximation of the lost earnings opportunity on infrastructure investment forgone by implementing DSM.[10] Staff's proposal does not do this. Staff recommends Evergy receive an EO based on 5.7787% of spend for Evergy Kansas Metro and 6.0316% of spend for Evergy Kansas Central, each of which are equal to the weighted average equity return currently authorized for Evergy in its last base rate case.[11] Staff's recommendation is for a return *on the amount spent* on the DSM programs, as compared to the EO in the Initial Financial Recovery S&A that provides

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[8] Staff Brief, p. 18.
[9] *Id*, at p. 29.
[10] In 2023, MPSC shifted to evaluating EO for Evergy based on a percentage of program spend. However, when Missouri started implementing DSM ten years ago, it used an EO method similar to the Financial Recovery S&A proposed in this case. Over time, experience gained in Missouri on MEEIA allowed the MPSC to shift to the percentage of program spend approach that still results in the EO being an accurate representation of the foregone earnings on investment.
[11] Staff Brief, p. 17.

for an 18% sharing of the *net benefits* captured as a result of the DSM programs.[12] These are two different methodologies and the percentages under each require different analysis. Whether using a percentage return on net spend or a percentage of net benefits achieved, the result must allow Evergy an earnings opportunity similar to what it would receive on a supply side investment.[13]

To illustrate the inadequacy of Staff's recommendation, Missouri's EO is based upon a percentage of spend like Staff has done, but it grants recovery at 17% of the spend on programs, as compared to Staff's recommended 5.7787% and 6.0316%. The 17% of spend in Missouri equates very closely to the 18% of net benefits proposed in Kansas.[14] The Commission must keep the EO comparisons and methodologies on an apples-to-apples bases or it is inevitable that faulty conclusions will be reached.

Staff's recommended modification to the EO results in an EO incentive of $7 to $8 million for Evergy. Staff asserts that this provides earnings levels for Evergy shareholders that are equivalent to investments in supply side utility infrastructure.[15] But there is no support in the record for this assertion. Staff did not do an earning analysis of future capital investment without DSM to show its recommendation is equivalent. Staff uses the DSM spend to calculate its EO, but the spend is the same as the program cost and those are recovered otherwise in the financial recovery mechanism. Staff fails to explain how its recommended percentage of the spend is tied to or indicative of the foregone earnings Evergy would suffer as a result of deploying DSM.

Because Staff views the EO mechanism incorrectly, Staff believes the Initial Financial Recovery S&A has "lucrative incentive benefits" as it "provides over 50% for incentive

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[12] It is also important that the 18% sharing of net benefits not be confused with the percentage granted a utility in a rate case for its return on equity ("ROE"). An ROE is an amount added to the revenue requirement to provide a return to investors on the full amount of equity contained in Evergy's capital structure. The recommended 18% in this case is applied only to the amount of net benefits realized for customers from DSM programs.
[13] K.S.A. 66-1283(b).
[14] Ives, Tr. Vol. 3, p. 42.
[15] Staff's Brief, p. 17.

compensation in the amount of $63,775,857 in addition to the program costs of $121,901,423."[16] Staff presents the TD and EO as if they are additive to Evergy's revenues. They are not. They replace amounts Evergy would have received – and customers would have paid – absent implementation of DSM. These are amounts that keep Evergy neutral, and as such, cannot reasonably be classified as "lucrative" under any definition of the word. As CURB states in its Brief, "The Initial S&A is not designed to swell utility profit. Rather, it is intended to mitigate the disincentive between rate cases of asking customers to use less of a product while providing benefits to those same customers."[17]

For example, absent DSM, a customer would use more electricity running an inefficient air conditioner during a hot summer relative to their neighbor who has a new, efficient unit. Under KEEIA, Evergy offers a rebate to incent the customer to replace its inefficient air conditioner with a higher efficiency unit, which will use less energy during the hot summer. The TD represents that energy sales (revenue) that Evergy forgoes by incenting the replacement. Evergy continues to receive this TD until Evergy's next rate case, at which time the billing units reflect the reduced usage, and the TD associated with that air conditioning replacement is no longer collected in the TD charge. The TD is reset.

Additionally, because of the customer's replacement of the inefficient unit through Evergy's rebate, that customer will impose less of a demand on the system peak during hot days. The EO is a proxy for the generation investment that Evergy forgoes from the summation of all of the energy efficiency measures incented by Evergy that reduce its system peak demand. The definition of "lucrative" is to make a great deal of profit, but as illustrated by this example, profit is not realized - the TD and EO only allow Evergy to remain neutral.

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[16] Staff's Brief, pp. 38- 39. Staff refers the Commission to Attachment 1 of that S&A.
[17] CURB Brief, p. 43.

A major, threshold error in Staff's analysis and position is Staff's conclusion that the LRAM in the Initial Financial Recovery S&A is flawed because it allows Evergy to recover more revenue between rate cases than the KCC authorized in Evergy's last rate case.[18] This directly conflicts with the understanding of the other parties to this docket, as well as national DSM experts, that the TD and EO replace revenues that would otherwise be received by the utility between rate cases absent the offering of DSM. Evergy's rate case will set rates based upon revenues from sales occurring during an historical test year. If Evergy implements DSM programs after those rates are set, it will begin to lose sales from the programs immediately, which means it is losing revenues that Evergy would otherwise have kept if it had not implemented DSM. Those lost revenues continue to grow and accrue until new rates are made effective in the Company's next rate case. The revenues lost in between the rate cases as a result of DSM are lost forever.

CURB provided a simple example to illustrate this concept:

> The effect of Staff's TD is shown by a simple example. Assume that a utility has increased net sales of $10 million due to several unidentifiable reasons. In between rate cases a utility is entitled to retain those increased sales to offset capital expenditures made between rate cases. The utility is $10 million ahead without offering energy efficiency programs. But let's also assume the utility offers energy efficiency programs that result in $20 million of lost revenues. Under Staff's TD, the $20 million revenue loss is offset by the $10 million gain. This results in only $10 million of lost revenues being recovered, plus the utility loses its $10 million in revenue gains that had nothing to do with energy efficiency measures. Why would any utility agree to offer a program that results in a $20 million loss when, by doing nothing, it gains $10 million? It wouldn't. Staff's LRAM is antithetical to developing energy efficiency in Kansas.
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> That disincentive is still present when Staff's modification for EV sales and industrial growth is considered. Under Staff's modified TD, there is significant litigation risk. Therefore, it is reasonable for Evergy not to move forward with significant DSM programs in Kansas, even under Staff's modified TD."[19]

[18] Staff's Brief, p. 18.
[19] Tr. Vol. 3, CURB's Opening Statement, pp. 24-25.

As CURB explained,

> The truth is, Staff's LRAM fails to achieve its intended purpose. That is, to eliminate the disincentive to utility implementation of energy efficiency programs, because these programs are designed to ultimately reduce sales. The test of whether an LRAM meets that purpose is this: If a utility would be better off not engaging in energy efficiency programs than engaging in them with a particular LRAM, the LRAM fails. This is very important because if an LRAM fails to meet its intended purpose, then no future energy programs will come about."[20]

The LRAM in the Initial Financial Recovery S&A keeps Evergy whole; it does not grant Evergy more revenue than authorized in its previous rate case.

Further, Staff's argument erroneously assumes the revenue requirement authorized by the KCC in a rate case is the amount the utility will receive between rate cases. Staff must know this is not correct. The revenue requirement is based on an historical test year, reflecting costs and circumstances that, upon day-1 of the new rates being implemented, are already no longer the utility's reality. In between rate cases, the utility's sales and related revenues change. So do its costs, most of which increase due to inflation and other factors. The utility absorbs those increased costs for as long as it can until it finally must come in for another rate adjustment. So, it is erroneously simplistic to base an argument on the faulty premise that the utility's revenue requirement calculated in its last rate case reflects the actual revenues and costs it will experience until its next rate case.

CURB provided the following comments in this regard:

> Evergy earnestly contends that its LRAM will accurately recover revenues lost due to implementation of efficiency programs. And Evergy has evidence in the record showing so. Staff, on the other hand, states, to compensate for possible over-collection of revenues due to rebounding free-ridership and other reasons, lost revenues should be capped at Evergy's revenue requirement set at its last rate case. That approach is austere. Due to probable revenue growth, it may fail to meet the intended purpose of lost revenue recovery mechanisms to replace revenues that are truly lost due to energy efficiency programs. Moreover, it bears noting that, while Staff believes that Evergy's TD may lead to over-collection of revenues, Missouri

[20] Tr. Vol. 3, CURB Opening Statement, pp. 23-24.

> has used that mechanism for approximately 10 years. One would think that if Evergy's TD was over-collecting, by now, the Missouri Commission would have made a correction.
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> Under Staff's TD, Evergy not only loses revenue gains between rate cases, those revenue gains are used to offset revenue losses suffered by Evergy for promoting energy efficiency. Evergy is better off not promoting energy efficiency in Kansas with Staff's TD. Thus, if Staff continues to insist on its TD, robust energy efficiency in Kansas will never move forward.[21]

In addition, Staff says, "Evergy's margin rates (used to calculate Lost Revenue in the TD) were also based on the assumption that all of Evergy's non-fuel costs were fixed between rate cases[22], which is an unreasonable assumption given that there are clearly costs in Evergy's cost structure that vary as sales increase and decrease, such as variable Operating and Maintenance expenses at power plants." Evergy notes that Staff did not oppose the LRAM in the Alternative S&A which contains the same Operating and Maintenance expense assumption.

Evergy also needs to respond to Staff's inaccurate representation that, "Evergy has indicated repeatedly that it will not implement the Program Agreement for any less than the recovery contained in the Recovery Agreement."[23] What Evergy actually stated is that it will not implement the Initial Program S&A if the Commission accepts the modifications recommended by Staff.

Staff also maintains that energy savings projected by Evergy as a result of the DSM programs are not reliable. In attempting to show this, Staff grasps at this claim by using Evergy's shade tree program as an example, pointing out that Evergy claims 30 kWhs are saved annually beginning in year one, but the tree isn't even giving shade until later years.[24] The 30 kWhs is an average over the 20+ year expected life of the tree and it is derived from data obtained from the

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[21] Tr. Vol. 3, CURB Opening Statement, p. 24.
[22] Staff Brief, p. 19.
[23] *Id*, at pp. 23, 24 and 31.
[24] *Id*, at p. 20.

Arbor Foundation.[25] This example by Staff does not undermine the savings estimates of the DSM programs.

Staff asserts that the Alternative S&A "preserves perhaps the most critical components of a DSM Portfolio by focusing on the areas of Education, Demand Response, and Low-Income programs."[26] Evergy agrees these programs are important and understands that these are the programs viewed as "most critical" to Staff. But from Evergy's perspective and based upon Evergy's experience, these programs are not any more valuable than the other programs proposed in the Initial Program S&A.

Staff compares KEEIA with the Missouri statute, MEEIA, in an apparent attempt to support rejection of proposals in Kansas that have served the people of Missouri well.[27] Contrary to Staff's representation otherwise, MEEIA provides the MPSC with authority to determine reasonable and prudent costs associated with the delivery of Commission approved demand-side programs the same as KEEIA provides to the KCC.[28] Staff says the most striking difference between KEEIA and MEEIA is "the provision giving Evergy co-authority over the type of programs to allow and cost recovery. As such, Evergy is authorized to reject any program and cost recovery mechanism it does not like."[29] But MEEIA contains provisions that the MPSC has explained are the equivalent of KEEIA, stating - "Participation in MEEIA is voluntary and no company is required to offer demand-side programs under MEEIA. As stated above the Commission can approve the applications with modifications so long as those modifications are acceptable to Evergy."[30]

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[25] Evergy's Application, Appendix C TRM – Row 48, Column M.
[26] Staff Brief, p. 30.
[27] *Id*, at p. 34.
[28] MO Statute 393.1075 (3).
[29] Staff Brief, p. 34.
[30] MPSC Amended Report and Order, issued March 11, 2020, in File No. EO-2019-0132, p. 24, addressing MO Statute 393.1075 (4) and Commission Rule 20 CSR 4240-20.094(4)(H), which reads "Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demandside programs if the utility intends for unrecovered and/or new costs related to the existing demand-side

Staff makes some broad and unsubstantiated assertions about the Investment Recovery Act ("IRA") passed recently by Congress, arguing that the minimal steps taken in the Alternative S&A are more appropriate as we wait for specific information on how the IRA will target its resources.[31] First, Staff fails to cite to the record for the assertions made in its Brief about the IRA because most of this information is not in the record. Evergy requests the Commission consider this as it determines how much weight to give these arguments. It is not appropriate to place weight on what amounts to additional testimony from a party presented for the first time in a post-hearing brief.

That said, with regards to the IRA generally, Evergy addressed in its Initial Brief why it is not in the best interests of Kansas to hold up the offerings presented in this docket to wait to see what happens with the IRA.[32] Holding back while we continue to assess events occurring in the DSM sector just promises to keep Kansas behind the curve in energy efficiency.

As explained by Mr. Ives at hearing, having existing infrastructure like vendors, supply chain and program managers already in place when the IRA starts to be implemented will help Kansas deploy and deliver needed funds quicker to customers to help them make their homes more efficient. This has the potential to reduce administrative burden on state agencies as well as provide quality energy job creation within the state. In response to CURB at the January 5th hearing, Staff witness Grady stated that he did not believe the IRA will supplant the need for utility energy efficiency.[33] The question and answer were specifically related to energy efficiency programs which are a significant portion of the Program S&A and Financial Recovery S&A.

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program be included in the DSIM. The commission shall approve***, approve with modification acceptable to the electric utility***, or reject such applications for approval of demand-side program plans within one hundred twenty (120) days of the filing of an application under this section only after providing the opportunity for a hearing. In the case of a utility filing an application for approval of an individual demand-side program, the commission shall approve, ***approve with modification acceptable to the electric utility***, or reject applications within sixty (60) days of the filing of an application under this section only after providing the opportunity for a hearing."

[31] Staff Brief, pp. 36-38, 40.

[32] Evergy Initial Brief, pp. 27 -29.

[33] Grady, Tr. Vol. 3, p. 194.

Finally, Staff indicates the Commission could order Evergy to engage in the Initial S&As' collaborative process if the Alternative S&A is adopted.[34] As Mr. Ives testified to at hearing, and as stated again in this Reply Brief, if the Initial S&As are rejected by the Commission, Evergy will still continue to work with stakeholders as it has in the past in developing future DSM for Kansas. Certainly, the Commission has the power to require Evergy to attend meetings and workshops. However, Evergy does not agree that the Commission can impose on Evergy obligations it accepted in the Initial S&As as part of the give-and-take of settlement negotiations if the Initial S&As are rejected.

In closing, Evergy disagrees with Staff's assertion in its Brief that, "the implementation of a DSM Portfolio, and a chance to improve Kansas's ranking for energy efficiency policies, is not unilaterally the Commission's responsibility."[35] It is entirely within the realm of the KCC's authority and responsibility to approve DSM proposals that are consistent with KEEIA and that benefit Kansas ratepayers. Evergy has discretion on whether to propose such plans, but once proposed, as has been done in this case, the Commission is the *only* entity that has the power to ensure they are implemented. To the extent such proposals are rejected by the Commission and its Staff, it is hard to see how the failure to launch DSM in Kansas can be laid at the doorsteps of other stakeholders.

III. RESPONSE TO CURB

Evergy agrees with the majority of CURB's Brief in support of the Initial S&As. Rejecting the Initial S&As for reasons related to rate competitiveness with other states is not a valid position. As CURB points out,

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[34] Staff Brief, p. 39.

[35] *Id*, at p. 23.

> Staff's long-term view for the net present value of the programs in the Initial S&A and energy efficiency in general does not comport with the economic realities around the country. It is no secret that Kansas is trying to focus on achieving regional rate competitiveness, as shown by the legislative study on rates in 2020. The states with which Kansas finds itself competing on this front (Missouri, Oklahoma, and Colorado) have extensive histories with energy efficiency programs ran by utilities. Yet, somehow, those states are able to compete and even perform better than Kansas on electric rates, despite Kansas not having energy efficiency programs in rates.[36]

Evergy agrees with CURB that DSM is important for keeping Kansas utility rates competitive and for giving customers options and more control of their utility bills.

That said, there are a few comments contained in CURB's Brief that require a response. First, CURB points out that no party explains why the EO and TD in the Initial S&As is high enough to be outside the zone of reasonableness, and that Ms. Napoleon testified 15% for the EO would be in line with other states.[37] While Ms. Napoleon's 15% may be within a zone of reasonableness, unlike Staff's recommendation for EO, the 18% is also within that zone and it is what was negotiated among the signatories to the Initial S&A's.

Second, CURB mirrors Evergy's assessment of Staff's aversion to the Financial Recovery S&A, stating, "Boiled down, Staff's issue is with how KEEIA is written and the leeway it grants utilities in moving forward with such programs." However, CURB then asserts that a utility company is not required to offer DSM programs, but if it does not and it chooses instead to maintain normal operations "theoretically, the Commission or Staff could withhold approval of new capital expenditures or issue lower rates of return in other cases unless progress is made on energy efficiency."[38] Evergy disagrees that this would be an appropriate exercise of the Commission's authority. CURB's comment inappropriately suggests that the Commission can

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[36] CURB Brief, p. 41.
[37] *Id*, at p. 40, ¶86.
[38] *Id*, at p. 48.

accomplish through the back door what KEEIA forbids it from doing through the front door – force a utility to offer DSM. As such, CURB is correct that, "this brinksmanship is likely to come under legal challenges from the utility and result in even more contentious litigation."[39] It most certainly would.

Finally, CURB mentions the testimony of Staff witness, Dr. Glass, in discussing the "three legs of the cost recovery stool."[40] Evergy wants to clarify, once again, that the testimony of Dr. Glass cited by CURB erroneously mixes recovery approaches -

> Dr. Glass from Staff summarizes the earnings requirement when comparing it to traditional investments for Evergy's shareholders, But it really comes down to Evergy. They need a return. They need incentive to do these programs. Just getting lost revenue isn't enough. They need incentive to do the programs. But the incentive is, the energy efficiency programs are not providing assets for the rate for these shareholders. Shareholders only get assets when something is built, not when something isn't built. So there is that opportunity cost. And the trade-off that the shareholders are having to make is between an 18 percent return on some sort of net benefit calculation and what they would get with a new natural gas-fired generation plant. Well, the new natural gas-fired generation plant will be depreciated over 30, 35 years, something like that. And they'll get all of that back, plus they'll earn a return on it. So there is a lot to get back from that. *But I don't think you could ever say they're going to get 18 percent in four years off a generation plant.*[41]

The 18% Dr. Glass refers to is not the annual return on a generation plant; it is a percent of the net benefits created.

IV. RESPONSE TO NRDC AND ENVIRONMENTAL INTERVENORS

For the most part, Evergy believes the Environmental Intervenors have accurately represented the various options presented to the Commission in this docket. However, there are a few areas that require clarification and response.

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[39] *Id*, at p. 48.
[40] *Id*, at p. 30.
[41] *Id*, at pp. 30-31, citing to Dr. Glass' testimony at Tr. Vol. 2, pp. 135-136.

The Environmental Intervenors assert that, if the Commission approves the Initial S&As and then during Evergy's next rate case determines the lost revenue recovery mechanism in the Financial Recovery S&A overcompensates the Company, "the Commission can determine the KEEIA programs in the Original Settlement will result in just and reasonable rates *and still exercise its power to limit any requested increase in revenue requirement or return on equity as is necessary*."[42] The suggestion being made in this statement is not totally clear. However, if it is an assertion that Evergy's revenue requirement can be reduced in a future rate case to compensate for some amount the KCC might determine the Company should not get (or should not have gotten) under the DSM financial recovery mechanism, it is incorrect. The Commission retains the ability to modify the DSM program or the financial recovery mechanism in the future *prospectively* if it is deemed necessary to ensure just and reasonable rates. In response, Evergy retains the ability to discontinue its DSM offerings if the revised terms are unacceptable. But the Commission cannot "correct" for amounts recovered under the DSM financial recovery mechanisms by taking revenues away from Evergy (or giving Evergy additional revenues) through adjustments of its cost of service or return on equity in a future rate case. In other words, as stated above, the Commission cannot accomplish through the back door what KEEIA prohibits it from doing through the front door.

Evergy also wants to clarify certain comments made by the Environmental Intervenors about the agreement for a collaborative process contained in the Initial S&As. They say,

> Even though the Environmental Intervenors disagree with Staff's characterization of the importance of the collaborative process to stakeholders and its description of the quality of discussions in developing the Alternative Settlement ... , the Environmental Intervenors wholly believe this collaborative should proceed regardless of this docket's ultimate outcome. *Therefore, in the event the Commission selects the Alternative Agreement, the Environmental Intervenors*

[42] Environmental Intervenor Brief, pp. 26-27 (emphasis added).

> *respectfully request that the Commission amend the agreement to include the collaborative process framework agreed to in the Original Settlement.”*[43]

As stated earlier, Mr. Ives represented at the hearing that Evergy would continue to involve stakeholders in Evergy’s future DSM planning even if the Initial S&As are not approved. However, that is much different than imposing the commitment made in the Initial S&As upon Evergy if the Initial S&As are not adopted. The provisions of the S&As cannot be mixed like this – the elaborate and detailed terms of the collaborative process in the Initial S&As were a commitment Evergy made in return for other provisions of the Initial S&As that Evergy viewed as favorable to its position. The Environmental Intervenors are suggesting the Commission should impose this commitment upon the Company while taking away Evergy’s corresponding benefit of the bargain obtained in exchange for making the commitment. This is inappropriate and Evergy objects to the request.

As for the collaborative process in the Initial S&As, the Environmental Intervenors also assert,

> A reasonable interpretation of this settlement agreement provision is that alternative cost recovery mechanisms, including but not limited to decoupling, will be considered and deliberated in preparing any recommendation the collaborative makes to the Commission pursuant to the terms of the Programs Agreement. Multiple parties support this interpretation.[44]
>
> . . .
>
> The Original Settlement’s language regarding the collaborative process was intentionally broad, like the correlating provision in KEEIA, to consider various recovery mechanisms available to potentially recommend to the Commission—not just decoupling. As such, the Environmental Intervenors believe KCC’s proposal could also be a viable alternative to the existing lost revenue recovery mechanism if the discussions on decoupling fail to gain traction—as Staff suspects. Unfortunately, the effects of that proposal were too complex to reasonably identify and resolve in a three-day settlement conference and Staff’s testimony in opposition to the Financial Recovery Agreement. The Original Settlement’s collaborative

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[43] *Id*, at p. 22, footnote 57.
[44] *Id*, at p. 21, footnote 52.

process is an all-of-the-above review and provides the additional time necessary to resolve complex issues.[45]

Evergy believes the collaborative process is a place to further weigh the merits of Staff's recovery proposals but, for clarification, their proposals are not up for a decision here. The Financial Recovery S&A and the Alternative S&A are the financial recovery options agreed upon in this case and are presented before the Commission for consideration.

In their objection to the Alternative S&A, the Environmental Intervenors also assert that,

> In the Alternative Settlement, low-income households stand to generate approximately 50% of the MWh savings, despite the percentage of the total budget allocated to low-income programs is only 21%. The Environmental Intervenors adamantly support low-income energy efficiency programs, but take seriously arguments, and the appearance, of undue preferential treatment."[46]

They make similar assertions about losing programs that benefit low-income customers, arguing that by reducing their ability to participate in the programs, the energy insecurity and energy burdens of the low-income customers – and all residential customers - will worsen because these customers will get hit with the costs of the DSM programs but cannot access the direct benefits of participation. As such, they argue the Initial S&As are the only option before the Commission where the programs are appropriately designed to reach a critical number of intended households to justify the bill impacts of these new programs.[47] They claim the signatories to the Alternative Settlement "seek to limit the Commission's consideration of just and reasonable rates to an absolute mathematical formula: the Alternative Settlement is less costly, therefore it is more just and reasonable as it will impact rates less."[48] They contend that such a limited analysis is insufficient and, if accepted, "will result in adopting a suite of programs with unintended

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[45] *Id*, at p. 22.
[46] *Id*, at p. 24.
[47] *Id*, at pp. 25-26.
[48] *Id*, at p. 23.

consequences that violate the doctrine of just and reasonable rates."[49] They indicate the Alternative S&A could run afoul of the legal concept that one class of consumers shall not be burdened with costs created by another class, because, by taking away programs for low-income customers, it is asking a majority of ratepayers to pay for benefits they are not eligible to receive and for costs they are not causing.[50] They argue that the level of spending on low-income programs should be proportional to the percentage of the low-income population in Evergy's service territories, which does not occur under the Alternative S&A.[51]

It is important to properly frame these statements made by the Environmental Intervenors. First, low-income customers only pay the portion of the DSM portfolio investment relative to residential programs (not the business programs). Using the correct denominator in the equation (residential programs only), brings the percent of budget closer to the 25-30% range of the residential sector budget – not the 21% represented by the Environmental Intervenors. Second, the Residential Demand Response program will absolutely include participation from the low-income segment of residential customers with a free (or nearly free) smart thermostat device. The budget was not segmented by income class for the Residential Demand Response program and therefore cannot be specifically included in the calculation accurately for comparison. Third, the residential education budget will also include marketing and education efforts specifically targeted to the low-income sector, which will be focused on supporting those customers' participation in both programs. Fourth, both S&As include almost the same levels of savings and investment for the low-income residential sector. Finally, it must be remembered that the level of savings is not

[49] *Id*, at p. 23.
[50] *Id*, at pp. 23-24.
[51] *Id*, at p. 24.

proportionally the same as the level of spend because different programs have different savings profiles.

The Environmental Intervenors also argue that one of the major reasons the Alternative S&A is unacceptable is because it does not include implementation of an on-bill financing program, whereas the Initial S&As adopt PAYS® for this program.[52] Evergy points out that the biggest impact of PAYS happens when customers have energy efficiency incentives to go along with the financing, and the Alternative S&A provides those EE incentives. However, if the Commission determines that it wants to include a PAYS program as part of accepting the Alternative S&A, it must also address the need for residential energy efficiency rebates that complement a PAYS program for measures such as HVAC rebates, insulation and weatherization. These measures create lost revenues and earnings, so Evergy would need to be kept whole. While the Commission could order Evergy to offer a financing mechanism like PAYS, Evergy would only go forward with the offering if the Commission also provides for Evergy's recovery of the related program costs, TD and EO. The Commission would also need to approve tariffs to support the rebates for the measures that make the biggest impact for a successful PAYS program. Mr. Grady recognized this at hearing, stating,

> So earlier there was a discussion of why there is not a PAYS Program. And, you know, if we add that to the settlement, then we're going to get to a point where Staff gets uncomfortable with the level of lost revenue. Well, the way I would think about that, if I was a Commissioner, is, well, who cares what Staff's level of comfort is. I mean, I even say that about myself, personally. Like, who cares whether we like it or not? The Commission likes the PAYS Program and thinks it's the right thing to do for the public interest of Kansas, then, you know, *then I assume that can be added and we can calculate lost revenue for that program and hopefully we can calculate it in the same fashion that we did in the alternative agreement. And if it results in 20 percent or 30 percent of the lost revenue that was in the original settlement agreement, then so be it.* You know. It's not like it's personal for us and we're anti lost revenue. We're just trying to follow the Commission precedent and

[52] *Id*, at p. 14.

> express our concerns. You know. So I don't know if that answered your question but that's as candid as I could be about the fact that -- in response.[53]

Finally, the Environmental Intervenors compare the budget and MWh savings of the entire Alternate S&A with the fourth year of the Initial S&As. Referencing the testimony of Mr. Ives that "the amount of investment dictates the amount of proven return", the Environmental Intervenors ask, if this is true, why in the Alternate S&A are ratepayers – for similar money – realizing less than a quarter of the energy savings contained in only one year of the Initial S&As. They assert that this delta suggests that there are "deep flaws" in the Alternative S&As program design.[54] This does not suggest deep flaws in the Alternative S&A. Rather, it reflects that investment in energy efficiency produces savings in energy and demand, whereas investment in demand response programs, which is a greater portion of the programs in the Alternative S&A, primarily produces just demand savings.

V. RESPONSE TO GAS UTILITIES

The Gas Utilities maintain that the Business Comfort measure of the Whole Business Efficiency and Hard to Reach Business programs included in Evergy's Application and the Program S&A fails to conform with K.S.A. 66-1283(a)(3)(A) of KEEIA and the Commission's Order in Docket No. 16-KCPE-446-TAR ("16-446 Order").[1] The Gas Utilities argument is that these programs must limit the replacement of appliances to "like-for-like" in order to comply with the law. This is incorrect.

[53] Grady, Tr. Vol. 3, p. 222 (emphasis added).
[54] Environmental Intervenor Brief, p. 13.

K.S.A. 66-1283(a)(3)(A) and (4) reads in relevant part:

> (a) As used in this section …
>
> (3) "demand-side program" means any program conducted by: (A) An electric utility to reduce the net consumption of electricity by a retail electric customer; or (B) a natural gas utility to reduce the net consumption of natural gas by a retail gas customer.
>
> "Demand-side program" may include, but shall not be limited to: (A) Energy efficiency measures, not to include any measures to incent fuel switching for *residential* heating systems; (B) load management; (C) demand response; and (D) interruptible or curtailable load;
>
> (4) "energy efficiency" means measures that reduce the amount of energy required to achieve a given end use; …

First, KEEIA only *prohibits* fuel switching for *residential* heating systems. Specifically, K.S.A. 66-1283(a)(3) states that a demand-side program may include, but is not limited to, "[e]nergy efficiency measures, not to include any measures to incent fuel switching for residential heating systems." If the definition of a demand side program in this section of the statute is interpreted as prohibiting programs that incent fuel switching for all classes of customers as the Gas Utilities argue, then the specific limitation on only residential customer programs in the second part of the statute would be redundant and meaningless.[55] If the KEEIA had intended to prohibit fuel switching for business programs, it would have explicitly included such programs in the specific fuel switching prohibition language of K.S.A. § 66-1283(a)(3). It did not. If not prohibited by the KEEIA, the Commission has the authority to approve these proposed programs.

Second, the Gas Utilities have not supported with data or authority their argument that business customers who participate in these programs and displace natural gas equipment with high efficiency electric equipment will experience increased electricity as a result. They Gas

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[55] "Further, "[w]e must construe statutes to avoid unreasonable or absurd results and presume the legislature does not intend to enact meaningless legislation." *Chambers v. Kansas Dep't of Revenue*, No. 115,141, 2017 WL 1035442, at *5 (Kan. Ct. App. Mar. 17, 2017), *citing State v. Frierson*, 298 Kan. 1005, 1013, 319 P.3d 515 (Kan. 2014).

Utilities only *assume* that will be the outcome. The Gas Utilities witness, Mr. Raab, bases his conclusion in this regard on two assumptions: (1) that increased consumption of electricity necessarily implies increased usage of the fossil fuel needed to produce that electricity, and (2) that more fossil fuel energy is required to provide a Btu of electrical energy at the point of usage than to provide a Btu of the fossil fuel energy at the same point of usage. But the testimony of CURB witness, Ms. Napoleon, explains the fallacy of these assumptions. Ms. Napoleon testified that "Mr. Raab's statements are not only disputable; they are also unlikely."[56]

The Commission's 16-446 Order is also insufficient to support rejection of these business programs on the basis that they do not contain a like-for-like limitation. The 16-446 Order specifically recognizes that "KEEIA does not expressly forbid attempts to incentivize fuel switching of business or industrial customers."[57] To the extent any further guidelines for restrictions in this regard may have been endorsed by the Commission in previous orders, such decisions are not binding precedent that would prevent approval of these programs in this case.

Further, as addressed fully in Evergy's Initial Post Hearing Brief, substantial time has passed since the issuance of prior KCC orders on DSM and changes in circumstances justify revisiting and modifying findings that are outdated and no longer serve the public interest in Kansas. The Commission can deviate from previous orders if it explains the basis for the deviation.

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[56] Napoleon Cross-Answering filed June 24, 2022, p. 3.
[57] 16-466 Order issued June 22, 2017, p. 53.

VI. CLOSING

Evergy believes the Post-Hearing Briefs of the parties provide abundant support showing that the Initial S&As should be approved and the robust portfolio of DSM programs offered thereunder become available to Evergy's customers as soon as possible.

If the Commission decides otherwise, then Evergy supports the Alternative S&A as being in the public interest.

The only option that is not in the public interest is to forego DSM altogether. This will happen if the Commission adopts any of the recommendations made in this docket that would cause Evergy to have to walk away again.

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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.

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CERTIFICATE OF SERVICE

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