

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

In the Matter of the Petition of Evergy Kansas )  
Central, Inc. and Evergy Metro, Inc. for )  
Determination of the Ratemaking Principles )  
and Treatment the Will Apply to the Recovery ) Docket No. 25-EKCE-207-PRE  
in Rates of the Cost to be Incurred for Certain )  
Electric Generation Facilities under K.S.A. )  
66-1239. )

**JOINT RESPONSE OF EVERGY KANSAS CENTRAL, INC. AND COMMISSION  
STAFF IN OPPOSITION TO PETITION FOR RECONSIDERATION**

COME NOW Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (together as “EKC” or the “Company”) along with Staff of the State Corporation Commission of the State of Kansas (respectively, “Staff” and “Commission”) and hereby submit their response in opposition to the Petition for Reconsideration (“PFR”) filed on behalf of seven commercial and industrial entities – The Kansas Industrial Consumers Group, Inc., Associated Purchasing Services, Cargill Incorporated, The Goodyear Tire and Rubber Company, Lawrence Paper Company, Occidental Chemical Corporation and Spirit AeroSystems, Inc. (collectively referred to as “KIC”) – and three agricultural associations – Kansas Grain and Feed Association, Kansas Agribusiness Retailers Association, and Renew Kansas Biofuels Association (collectively referred to as the “Kansas Agriculture Group”). Together, KIC and the Kansas Agricultural Group are referred to herein as “Petitioners.”

Petitioners request reconsideration of the Commission’s *Order Approving Unanimous Partial Settlement Agreement Regarding Solar Facility and Non-Unanimous Partial Settlement Agreement Regarding Natural Gas Facilities* (“Final Order”) entered by the Commission on July 7, 2025. As detailed below, EKC and Staff oppose reconsideration because Petitioners’

PFR fails to state any grounds to justify amending, modifying or clarifying the Final Order. Instead, Petitioners seek to use the administrative reconsideration process as a vehicle to improperly raise new issues and introduce new evidence that could have been presented before the Commission closed the record and entered its Final Order. Petitioners' collateral attack via reconsideration request should not be countenanced by the Commission. Such an approach undermines the integrity of the administrative decision-making process and violates the well-established principle that reconsideration is intended to provide the agency an opportunity to correct legal error prior to judicial review *based on the existing record*.

Also, as a preliminary matter, it should be noted that the PFR does not comply with K.A.R. 82-1-235(f)'s requirement that each party seeking reconsideration must file its own petition and rely solely upon its own petition. Nevertheless, without waiving their right to object to the PFR in this proceeding or a subsequent judicial-review proceeding, EKC and Staff submit the following response in opposition to the PFR.

## **I. BACKGROUND AND PROCEDURAL HISTORY**

1. Like many utilities throughout the United States, EKC is facing challenges related to sudden and unprecedented load growth, changes in load profiles, higher peak demands, electrification trends, exacting SPP resource adequacy and reliability requirements, and more frequent and severe grid-impacting weather events. Given these unprecedented conditions, there is a manifest need for firm dispatchable generation across the Evergy service territories and, in fact, across the entire Southwest Power Pool (SPP) footprint.<sup>1</sup>

2. The combination of extreme weather, increasing demand, and retirements of aging infrastructure is causing excess generating capacity and reserve margins within the SPP

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<sup>1</sup> Verified Application, p. 10 at ¶ 16; pp. 19-20 at ¶¶ 46-47.

region to shrink to dangerously low levels.<sup>2</sup> As the Commission determined in its Final Order, “[t]he record establishes that EKC faces a near-term and growing capacity deficit that, if left unaddressed, would jeopardize system reliability and violate the SPP’s planning reserve margin requirements.”<sup>3</sup>

3. Seeking to address these exigencies, on November 6, 2024, EKC filed an application with the Commission requesting predetermination of the ratemaking principles and treatment applicable to EKC’s planned construction and acquisition of a 50% stake in a 710 MW combined cycle gas turbine (“CCGT”) located near Conway Springs in Sumner County, Kansas (the “Viola Facility”) and a 50% stake in a second 710 MW CCGT located near Hutchinson in Reno County, Kansas (the “McNew Facility”). The application also requested predetermination in connection with EKC’s construction and acquisition of approximately 200 MW<sub>DC</sub> (159 MW<sub>AC</sub>) of solar generation located in Douglas County, Kansas (the “Kansas Sky Facility”). The projected date of commercial operation for the Viola Facility is January 1, 2029, and the projected date of commercial operation for the McNew Facility is January 1, 2030. The Kansas Sky Facility is expected to begin commercial operations in December 2026.<sup>4</sup>

4. EKC filed its application under Kansas’ predetermination statute, which was recently amended by Kansas Laws 2024, ch. 60, § 4 (H.B. 2527) and is now codified at K.S.A. 2024 Supp. 66-1239. The amended predetermination statute allows a public utility to request a binding determination from the Commission of the ratemaking principles and treatment to be applied to the recovery in rates of costs associated with acquiring a stake in a generating facility during its expected useful life. K.S.A. 2024 Supp. 66-1239(c)(1)(A).

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<sup>2</sup> Final Order, p. 31 at ¶ 81.

<sup>3</sup> *Id.*, p. 37 at ¶ 141.

<sup>4</sup> *Id.*, p. 2 at ¶ 12.

5. Under the amended statute, a predetermination request may be granted if the utility's planned resource additions are consistent with its most recent preferred plan and resource acquisition strategy submitted to the Commission and is "reasonable, reliable and efficient." K.S.A. 2024 Supp. 66-1239(c)(2) and (3). In reviewing a predetermination request the Commission may consider whether the applicant issued a request for proposal from a wide audience of participants willing and able to meet the needs identified under the preferred plan. *Id.*

6. The amended predetermination statute also authorizes special ratemaking principles and treatment for new gas-fired generating facilities and permits the applicant to implement a rate adjustment mechanism to recover a return on 100% of construction work in progress ("CWIP") up to the definitive cost estimate found reasonable by the Commission in a proceeding conducted under the statute. K.S.A. 2024 Supp. 66-1239(c)(6).

7. In accordance with the amended predetermination statute, EKC included as part of its predetermination filing a description of how the Company's stake in the Viola and McNew CCGTs and the Kansas Sky solar facility is consistent with EKC's most recent preferred plan and resource acquisition strategy submitted to the Commission.<sup>5</sup> In an order issued on May 15, 2025, the Commission determined that EKC's 2024 IRP was the Company's most recent preferred plan as defined by K.S.A. 66-1239(c)(2).<sup>6</sup> The 2024 IRP is included as Volume 6 of the Company's May 17, 2024 Triennial Integrated Resource Plan ("IRP") filing.

8. EKC initially proposed constructing and owning a 50% stake in the Viola CCGT, with the remaining 50% stake held by Evergy Missouri West ("EMW"), and proposed acquiring full ownership of the McNew Facility with the flexibility to transfer half of its interest to either

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<sup>5</sup> Direct Testimony of Darrin R. Ives ("Ives Direct"), pp. 23-26 (Nov. 6, 2024); Direct Testimony of Cody VandeVelde ("VandeVelde Direct"), pp. 11-16 (Nov. 6, 2024); Direct Testimony of Jason Humphrey ("Humphrey Direct"), pp. 6-7; 11, 23 (Nov. 6, 2024).

<sup>6</sup> Final Order, p. 20 at ¶ 47.

EMW or Evergy Kansas Metro (“EKM”). The Company later updated its filing to confirm that EMW, rather than EKM, would be allocated the remaining 50% stake in the McNew CCGT.<sup>7</sup>

9. The Commission hosted a settlement conference on April 9, 2025, which ultimately yielded two settlements: (1) a unanimous settlement resolving all matters and issues in the docket related to the Kansas Sky solar facility as between all parties (the “Solar Settlement”) and (2) a nonunanimous settlement resolving all matters and issues in this docket related to the Viola and McNew facilities as between all signatories and non-objecting parties (the “CCGT Settlement”). Separate motions requesting approval of the settlements were filed with the Commission on April 16, 2025.<sup>8</sup>

10. Although the CCGT Settlement was not a unanimous settlement, it was supported (or not opposed) by entities representing a wide range of interests. Aside from EKC and Staff, the supporting and non-opposing parties included other Kansas load-serving entities, commercial and industrial customers (Walmart and CCPS), environmental organizations, two Kansas cities and a large county in EKC’s territory, and gas utilities. Notably, every load responsible entity in this docket signed on to the CCGT Settlement, indicating how important this docket is to improving reliability within Kansas and the SPP region.<sup>9</sup>

11. An evidentiary hearing was held from April 21 to April 23, 2025, and all parties had the opportunity to submit post-hearing briefs following the hearing.

12. On July 7, 2025, the Commission issued its Final Order approving both the unanimous Solar Settlement and the nonunanimous CCGT Settlement. The Commission

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<sup>7</sup> Supplemental Direct Testimony of Darrin R. Ives (Feb. 14, 2025), p. 1.

<sup>8</sup> Joint Motion for Approval of Non-Unanimous Partial Settlement Agreement Regarding Natural Gas Facilities (Apr. 16, 2025) and Joint Motion to Approve Unanimous Partial Settlement Solar Facility (Apr. 16, 2025).

<sup>9</sup> Testimony in Support of Natural Gas and Solar Settlement of Darrin Ives (Apr. 17, 2025) (“Ives Settlement Testimony”), p. 27.

approved the Solar Settlement upon finding the settlement satisfied the three-factor test for unanimous settlements: It was supported by substantial competent evidence, resulted in just and reasonable rates, and served the public interest.<sup>10</sup> The Commission approved the CCGT Settlement upon finding the settlement satisfied the five-factor test for approval of nonunanimous settlements: (1) each party had an opportunity to be heard on the reasons for opposing the settlement<sup>11</sup> and (2) the settlement was supported by substantial competent evidence in the record as a whole,<sup>12</sup> (3) conformed with applicable law,<sup>13</sup> (4) would result in just and reasonable rates,<sup>14</sup> and (5) was in the public interest.<sup>15</sup>

13. On July 16, 2025, Petitioners filed their PFR, asserting three principal grounds reconsideration of the Final Order. First, Petitioners assert the Commission failed to decide an

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<sup>10</sup> Final Order, pp. 16-18 at ¶¶ 36-39. The Commission noted that the Kansas Sky solar facility was cost-effective, aligned with the 2024 IRP, and would diversify EKC's generation mix, mitigate fuel risk, and was prudent in view of Kansas's currently limited solar development. For additional analysis regarding the Solar Settlement's satisfaction of the three-part test for unanimous settlements see EKC's Initial Post-Hearing brief at pp. 53-56 and supporting evidence cited therein.

<sup>11</sup> *Id.*, p. 19 at ¶ 43. For additional analysis regarding the CCGT Settlement's satisfaction of "opportunity to be heard" factor of the test for nonunanimous settlements see EKC's Initial Post-Hearing Brief at pp. 8-9 and supporting evidence cited therein.

<sup>12</sup> *Id.*, pp. 23-24 at ¶¶ 50-51; pp. 26-31 at ¶¶ 61-66. The Commission found the CCGT Settlement was supported by substantial competent evidence based on a comprehensive review of the IRP (and updated modeling) and a whole-record review of the evidence. It determined the CCGT Settlement was reasonable, efficient, and reliable and noted, among other things, that the CCGTs were selected in both base and high-load IRP modeling scenarios and had strong reliability, cost, and fuel efficiency attributes. For additional analysis regarding the CCGT Settlement's satisfaction of the "substantial competent evidence" factor of the test for nonunanimous settlements see EKC's Initial Post-Hearing Brief at pp. 9-10 and supporting evidence cited therein.

<sup>13</sup> *Id.*, pp. 24-25 at ¶¶ 54-58; p. 34 at ¶ 72. The Commission found the settlement conformed with the predetermination statute, noting that the Company described how its stake in the CCGTs was consistent with the 2024 IRP, that RFPs were requested from a wide audience of participants willing and able to meet the needs identified under the IRP, and that the settlement was reasonable, efficient and reliable. For additional analysis regarding the CCGT Settlement's satisfaction of the "conformance with applicable law" factor of the test for nonunanimous settlements see EKC's Initial Post-Hearing Brief at pp. 10-13 and supporting evidence cited therein.

<sup>14</sup> *Id.*, ¶ 65-66, p. 31. The Commission noted the CCGT Settlement would support reasonably efficient, low-emission, dispatchable resources to help protect customers from cost spikes and reliability events. Crediting testimony provided by Staff, the Commission noted that modernizing aging generation assets like Jeffrey 3 was prudent to avoid rate spikes and reliability risks from sudden outages or retirements. For additional analysis regarding the CCGT Settlement's satisfaction of the "just and reasonable rates" factor of the test for nonunanimous settlements see EKC's Initial Post-Hearing Brief at pp. 43-45 and supporting evidence cited therein.

<sup>15</sup> *Id.*, ¶¶ 59-66, pp. 25-31. The Commission noted that the settlement would support modernization and diversification of EKC's generation fleet, enhance system reliability, and position the Company to meet future load growth and regional resource adequacy requirements. For additional analysis regarding the CCGT Settlement's satisfaction of the "public interest" factor of the test for nonunanimous settlements see EKC's Initial Post-Hearing Brief at pp. 6, 51 and supporting evidence cited therein.

issue requiring resolution with respect to the potential impacts of future regulatory action by the Missouri Public Service Commission (“MPSC”) in connection with the CCGT projects.<sup>16</sup> Second, they assert that certain determinations by the Commission regarding coal fleet retirements were arbitrary and capricious.<sup>17</sup> Finally, they assert the condition in the Final Order requiring firm gas transportation agreements to be provided “prior to beginning construction” is ambiguous and should be clarified.<sup>18</sup> All issues presented in the PFR pertain to the CCGT Settlement.

## II. RULES GOVERNING PETITIONS FOR RECONSIDERATION

14. Kansas law imposes strict procedural and substantive requirements on a party seeking reconsideration. These requirements are intended to ensure the Commission has an opportunity to address alleged errors before judicial intervention is sought. *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. State Corp. Comm’n*, 7 Kan. App. 2d 519, 525, 644 P.2d 999, 1004 (1982); *Kansas Indus. Consumers v. State Corp. Comm’n*, 30 Kan. App. 2d 332, 338, 42 P.3d 110, 115 (2002); K.S.A. 66-118b, 77-529(a). Reconsideration is an extraordinary remedy and must be used to address legal or procedural error.

15. A petition for reconsideration must “state the specific grounds upon which relief is requested.” K.S.A. 77-529(a)(1). Conclusory allegations are not sufficient. *See Peoples Natural Gas*, 7 Kan. App. 2d 519 at 525 (noting that a request for reconsideration must contain sufficiently specific allegations of legal or factual error to inform the Commission and parties of the precise points at issue). Additionally, a petition alleging error based on a failure to consider material evidence must cite to specific portions of the agency record that support the alleged omission. *See* K.A.R. 82-1-235(b).

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<sup>16</sup> PFR at pp. 4-8.

<sup>17</sup> *See id.* at pp. 10-12.

<sup>18</sup> *See id.* at pp.13-14.

16. The burden to establish valid grounds for reconsideration falls on the petitioning party. *See* K.A.R. 82-1-235(d). A presumption of validity attaches to all administrative agency action, *Equalization Appeal of Tallgrass Prairie Holdings, LLC*, 333 P.3d 899, 915 (Kan. App. 2014), and the burden to prove the invalidity of agency action falls on the party asserting invalidity. K.S.A. 77-621(a)(1).

17. The rules governing reconsideration are designed to promote the integrity and finality of administrative decision-making by ensuring all relevant arguments and evidence are presented during the administrative proceeding, not after the record is closed and a decision is issued. A petition for reconsideration is not a license to offer new arguments or evidence that could have been offered in the initial proceeding. Petitions for reconsideration must be confined to matters raised and evidence presented before the record closed. As contemplated by K.S.A. 66-118b, a party may not raise on reconsideration—and certainly not on judicial review—any issues or arguments not previously presented. *See Kansas Indus. Consumers Grp., Inc. v. State Corp. Comm'n of State of Kan.*, 36 Kan. App. 2d 83, 94, 138 P.3d 338, 348 (2006) (noting petitioner’s failure to raise issue in post-hearing briefs or petition for reconsideration); *Western Resources, Inc. v. Kansas Corporation Commission*, 30 Kan. App. 2d 348, 353-55, 42 P.3d 162 (2002) (noting that KCC has discretion to reopen the record for good cause shown, but the burden is on the movant to demonstrate that the new evidence was not available earlier and is material).

#### IV. POINTS IN OPPOSITION TO RECONSIDERATION

A. **Joint Petitioners state no grounds for reconsideration based on the joint, inter-jurisdictional ownership of the Viola and McNew facilities.**

18. Citing K.S.A. 77-621(c)(3) of the Kansas Judicial Review Act (“KJRA”), Petitioners contend reconsideration should be granted based on the Commission’s failure to

decide an issue requiring resolution. Specifically, they contend the Commission erred by not addressing the potential implications of EMW's ownership interest in the Viola and McNew facilities. The PFR summarizes Petitioners' contention as follows: "The fact that Evergy Kansas Central will only own 50% of the Viola and McNew gas plants requires the Commission to address in its Order on Reconsideration, the manner in which the Order will be affected and is dependent on the range of orders that the Missouri Public Service Commission (MPSC) may issue[.]"<sup>19</sup>

19. Petitioners' contention fails at the threshold because the hypothetical inter-jurisdictional issues identified in the PFR are newly minted and find no support in the record. These issues were not raised in the underlying proceeding and, therefore, cannot be offered as grounds for reconsideration. Furthermore, passing on speculative issues involving potential outcomes and regulatory contingencies in matters before the MSPC was not necessary in this case. The Commission does not have the power to resolve issues that fall under the authority of regulators in other states and cannot be asked to reconstruct its decisions to address hypotheticals or uncertain future events in other jurisdictions.

20. Nevertheless, as reflected in the Final Order, the Commission did in fact consider and address inter-jurisdictional issues related to joint ownership of the Viola and McNew CCGTs, appropriately confining its analysis to Kansas jurisdictional matters. The Commission applied Kansas' predetermination statute—which does not prohibit inter-jurisdictional joint ownership—and approved the CCGT Settlement based on the benefits and costs of the CCGT projects to Kansas customers. The Commission found "the record demonstrates that EKC ratepayers will

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<sup>19</sup> PFR at p. 4.

only pay for the 50% share of each CCGT, with the remaining costs being allocated to Evergy's Missouri affiliate.”<sup>20</sup>

21. Further, the Commission evaluated the CCGT definitive cost estimates based solely on EKC's 50% stake in the CCGT facilities<sup>21</sup> and recognized that amounts recovered through the CWIP rider would be “allocated to customer classes on the same basis that the costs of the underlying generation plant are allocated to customer classes in EKC's currently pending rate case, Docket No. 25-EKCE-294-RTS.”<sup>22</sup>

22. Petitioners' allegations of error by omission under K.S.A. 77-621(c)(3) are legally and factually unfounded and do not support reconsideration.

**B. Petitioners state no grounds for reconsideration based on the Commission's analysis of coal unit retirement issues.**

23. Petitioners' PFR asserts the Commission's analysis of issues surrounding coal fleet retirements is erroneous and renders the Final Order arbitrary, capricious, and unsupported by the record evidence under K.S.A. 77-621(a)(7) and (8). Specifically, the PFR asserts the Final Order “mischaracterizes” the reliability of Evergy's coal fleet by equating aging units with reduced reliability,<sup>23</sup> arbitrarily uses the Jeffrey Unit 3 fire in 2022 as the sole basis for its analysis,<sup>24</sup> and accuses EKC of using planned retirements as a “bait and switch” tactic.<sup>25</sup> As detailed below, all of these assertions lack merit and should be rejected.

24. Petitioners' assertion that the Commission mischaracterized the reliability of EKC's coal fleet is misplaced. In its Final Order the Commission simply explained that EKC's

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<sup>20</sup> Final Order, p. 41-42 at ¶ 87 (noting that having two 50% ownership shares of two different plants instead of a single 100% ownership share of a single plant enhances geographic and fuel supply diversity, reduces construction and cost risk, and provides operational flexibility).

<sup>21</sup> Final Order, pp. 11-12 at ¶ 25.

<sup>22</sup> *Id.* at p. 11.

<sup>23</sup> PFR at pp. 8-9.

<sup>24</sup> *Id.* at p. 9.

<sup>25</sup> *Id.* at p. 10.

coal units are aging and found it prudent to commence planning for the modernization and diversification of EKC's thermal fleet.<sup>26</sup> Citing testimony provided in this case by Staff witness Justin Grady, the Commission agreed that planning for retirements is necessary due to the aging nature of Evergy's coal units, uncertainties surrounding environmental regulations, and risks associated with mechanical failures<sup>27</sup>

25. Despite unsupported claims leveled by certain intervenors that EKC's modeling assumptions artificially shortened the lives of coal-fired units, the Commission found the comprehensive integrated resource planning (IRP) analysis performed by the Company, and Staff's independent validation of that analysis, persuasive.<sup>28</sup>

26. Petitioners may disagree with the Commission's characterization of the reliability of EKC's coal fleet; however, the Commission's characterization is reasonable, accurate and amply supported by substantial competent evidence in the record. The mere existence of differing interpretations of the record evidence does not provide grounds for reconsideration. Moreover, Petitioners' contention that no party presented substantial evidence indicating the coal plants were unreliable or required retirement is largely irrelevant. The amended predetermination statute requires consistency with the applicant's IRP, not justification for retiring existing generating resources.

27. Petitioners allege the Commission erred by relying on the Jeffrey Unit 3 outage in 2022 as the sole basis for questioning coal fleet reliability. This assertion is belied by the plain language of the Final Order. The fire-related outage of Jeffrey Unit 3 (commissioned in

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<sup>26</sup> Final Order, p. 30 at ¶ 65.

<sup>27</sup> *Id.*, pp. 29-30.

<sup>28</sup> *Id.*, pp. 21-24.

1978) is clearly relevant as it took the unit out of service for longer than a year, forcing Evergy to buy paper capacity to meet summer capacity reserve requirements in 2023.<sup>29</sup>

28. However, the Jeffrey Unit 3 outage was cited in the Final Order as a cautionary example, not as dispositive evidence. Indeed, the Final Order demonstrates on its face that the Commission considered the entire body of evidence presented in the proceeding in concluding that the CCGT resource additions satisfy the requirements of the predetermination statute.

29. Petitioners also accuse EKC of using planned coal retirements as a “bait and switch” tactic to justify capital intensive projects—an accusation that finds no support in the record and should be dismissed out of hand. Petitioners’ implication of manipulation and deception in the face of a record that clearly establishes that the CCGT additions were selected through a transparent, empirically supported IRP process consistent with the dynamic nature of integrated resource planning is both unfounded and insulting.

30. The 2024 IRP is not immutable, and the planned retirements identified in the IRP filing are not fixed retirement decisions. The IRP adopts a flexible, iterative approach to coal unit retirements and provides a long-term strategy for measured retirement of coal plants over time and replacement of that generation capacity and energy with a mix of highly efficient dispatchable thermal resources, renewable resources and demand-side management programs.”<sup>30</sup> As EKC witness Cody VandeVelde testified, “given the significant increase in economic development activity in the EKC territory, ongoing changes to the SPP Resource Adequacy requirements, and the finalization of the [EPA] Greenhouse Gas (GHG) Rule, there could be modifications to our plant retirement schedule.”<sup>31</sup>

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<sup>29</sup> Final Order, p. 30 at ¶ 65.

<sup>30</sup> Rebuttal Testimony of Jason Humphrey (April 4, 2025) (“Humphrey Rebuttal”), pp. 3-4.

<sup>31</sup> VandeVelde Direct, p. 12.

31. What is more, the Viola and McNew additions were not selected based on assumed coal retirements; they were selected because they are necessary resources to meet EKC's needs. These CCGTs are needed to meet forecasted capacity requirements and system reliability objectives independent of any specific plant retirement schedule. As Company witness Jason Humphrey testified, moving forward with the CCGT builds and delaying coal-unit retirements are not mutually exclusive planning scenarios.<sup>32</sup> Staff witness Justin Grady reinforced this point, testifying at hearing that he would support the two CCGT builds even if the retirements of Jeffrey Units 2 and 3 were delayed.<sup>33</sup>

32. Petitioners attempt to support their offbeat "bait and switch" theory by citing to Staff's July 2, 2025, Report and Recommendation evaluating EKC's 2025 IRP framework.<sup>34</sup> This extra-record material is barred under the rules governing reconsideration and has limited probative value in this case. What is important in this case is the considerable evidence Staff provided roundly supporting the CCGT Settlement and the CCGT projects generally, not Staff's preliminary evaluation of the 2025 IRP framework. It is important to note, as well, that the Commission approved the Company's 2024 IRP framework in January 2025, concluding the updated framework reflected best practices and provided a clear structure for evaluating future resource needs.<sup>35</sup>

33. Finally, Petitioners contend the Commission should not have relied solely on the requirements prescribed by the amended predetermination statute but should have used a

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<sup>32</sup> Humphrey Rebuttal, p. 4.

<sup>33</sup> Justin Grady Hearing Testimony, Tr. at pp. 530–32.

<sup>34</sup> PFR, p. 12.

<sup>35</sup> Order Finding Evergy's 2024 IRP Complied with Requirements of Capital Plan Framework, Docket No. 24-EKCE-387-CPL (Jan. 30, 2025) at p. 20, ¶ 52 (also noting "the IRP process approved in this Order will promote transparency by ensuring that stakeholders and Staff have access to the same modeling tools and inputs the utilities rely upon in their planning processes").

“commonsense approach” to the issues presented in this case.<sup>36</sup> This contention invites legal error and should not be endorsed by the Commission. Although the Commission has been delegated broad discretionary authority, that authority is limited in cases where, as here, a statutory framework prescribes specific standards or criteria for resolving a matter. *See Kan. Elec. Power Cooperative, Inc. v. State Corp. Comm 'n*, 235 Kan. 661, 668, 683 P.2d 1235 (1984). The amended predetermination statute provides the standards and criteria for resolving the issues in this case. Abandoning this statutory framework to apply a subjective, ill-defined “commonsense approach” would be arbitrary, capricious and contrary to applicable law. *See Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106 (2013) (noting that deviation from prescribed legal framework may be abuse of discretion.)

**C. Petitioners state no grounds for reconsideration based on the firm gas supply condition contained in the Final Order.**

34. Petitioners assert the Commission should reconsider or clarify the gas supply condition incorporated in the Final Order, which requires EKC to submit assurances it has contracted firm transportation and supply to serve the CCGTs “prior to beginning construction.”<sup>37</sup>

35. Petitioners contend the Commission’s failure to define “commencement of construction” renders the Final Order ambiguous. They also allege that based on the U.S. Environmental Protection Agency’s (EPA’s) definition of the term, EKC might already be in violation of the condition.<sup>38</sup> These contentions are not well-taken, and do not provide grounds for reconsideration in any case.

36. The Final Order does not incorporate expressly, or by reference, the EPA definition of “commencement of construction” to define the words “prior to beginning

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<sup>36</sup> PFR at p. 12.

<sup>37</sup> *See* Final Order, p. 46, ¶ 93.

<sup>38</sup> PFR at p. 13 (citing EPA Applicability Determination Index, Control No. 0900067 (Jul. 3, 2008)).

construction” and no definitional guidance is provided in the Commission’s rules and regulations. Still, even if the Commission had intended the words “prior to beginning construction” to be synonymous with the term “commencement of construction,” there are many context-dependent definitions of that term, and EPA’s definition appears to be the least applicable definition in this context. In fact, EPA’s definition is legally untenable. As Petitioners have alleged, if the EPA definition were adopted in this circumstance, EKC could be deemed to have violated the Final Order before the order was even issued, an absurd result that could not have been intended by the Commission. Based on regulatory intent and purpose, a more reasonable definition of “commencement of construction” in this context would be based on the initiation of actual on-site work and would exclude planning, permitting, procurement, and other pre-construction activities.

37. Petitioners are attempting to obtain an advisory opinion on how the Final Order might apply in unknown future circumstances. Entertaining such a request under the guise of reconsideration would open the door to unlimited post-order hypotheticals and would undermine the efficiency, integrity and finality of agency decision-making. Unripe claims about speculative future compliance issues are not reviewable claims in a judicial review proceeding and are not grounds for reconsideration. *See* 2 Am. Jur. 2d Administrative Law § 336 (noting that the basis for seeking reconsideration of agency action cannot be speculative because speculative claims generally are not subject to judicial review). Issues related to interpretation and compliance under the Final Order should not be determined in a reconsideration proceeding but should be addressed in a separate compliance docket.

**V. CONCLUSION AND REQUEST FOR RELIEF**

38. As reflected in the Final Order, the Commission correctly applied the legal framework prescribed by K.S.A. 2024 Supp. 60-1239 to the evidence developed and disclosed to all parties in this proceeding, which overwhelmingly supports approval of the CCGT Settlement. Instead of pointing to alleged legal or procedural error based on the existing record and governing law, Petitioners' PFR seeks to introduce new issues not previously raised and requests speculative advisory opinions regarding uncertain future events. That is an improper use of the administrative reconsideration process.

39. Based on the foregoing, and for the reasons stated, EKC and Staff request the Commission deny Petitioners' PFR in its entirety and without further proceedings.

Respectfully submitted,

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**EVERGY KANSAS CENTRAL, INC.**

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**COMMISSION STAFF**

**VERIFICATION**

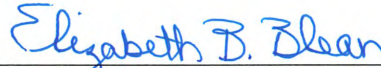
STATE OF KANSAS, COUNTY OF SHAWNEE, ss:

I, Trevor C. Wohlford, hereby verify that as counsel for Evergy Kansas Central, Inc., in the above-captioned matter, I am familiar with the contents of the above and foregoing pleading, and to the best of my knowledge, information, and belief formed after reasonable inquiry, the statements therein are true and correct.



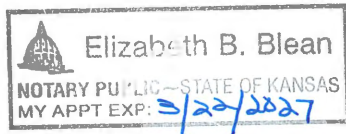
\_\_\_\_\_  
Trevor. C. Wohlford

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of July, 2025.



\_\_\_\_\_  
Notary Public

My appointment/commission expires:



## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 28<sup>th</sup> day of July, 2025, the above and foregoing **Joint Response of Evergy Kansas Central, Inc. and Commission Staff in Opposition to Petition for Reconsideration** was filed electronically with the Kansas Corporation Commission and that a copy of the same was delivered electronically to all parties on the service list as follows:

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