1500 SW Arrowhead Road
Topeka, KS 66604-4027

Kansas
Corporation Commission

Phone: 785-271-3100
Fax: 785-271-3354
http://kcc.ks.gov/

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Susan K. Duffy, Commissioner

Laura Kelly, Governor

Before the House Energy, Utilities, and Telecommunications Committee
February 11, 2021

Neutral Testimony on House Bill 2180

Submitted by Justin Grady, Chief of Revenue Requirements, Cost of Service and Finance, Utilities Division
On Behalf of The Staff of the Kansas Corporation Commission

Chair Seiwert, Vice Chair Schreiber, Ranking Minority Member Kuether, and members of the committee, thank you for the opportunity to provide testimony to your committee today on behalf of the Staff of the Kansas Corporation Commission (KCC or Commission).

Commission Staff is taking a neutral position on HB 2180, however, I will provide some general concerns and observations about the Bill.

Effect of the Bill

HB 2180 would make the following changes to K.S.A. 66-1237:

- Only electric public utilities that currently have a Transmission Delivery Charge (TDC) can continue to use it. No other electric public utility can file to receive a new TDC; and
- Changes in an existing TDC can only take place in a general rate proceeding filed pursuant to K.S.A. 66-117, unless the TDC revenue requirement change occurs through an Order issued by the Federal Energy Regulatory Commission (FERC).

In its current form, K.S.A 66-1237 allows a utility to file for a TDC any time it experiences a change in its transmission costs, as long as those transmission costs resulted from an Order from FERC. In practice, this means as long as the costs were properly reflected in a FERC-approved Transmission Formula Rate (TFR). The change to the TDC rate takes place after thirty business days, subject to refund pending final KCC review. The Commission's review of TDC filings is limited to whether the costs are accurately calculated in accordance with the TFR, and whether the TDC costs appropriately reflect only the retail customer's share of TFR costs.

Because FERC uses a TFR process to set transmission rates, which are updated annually to reflect the utility's most recent transmission costs, electric utilities in Kansas often file to change their TDC once per year.[1] This occurs without FERC issuing an Order, as the TFR process relies on a

[1] Because a utility's transmission costs as billed through the Southwest Power Pool (SPP) are composed of the TFR's of several different utilities across a 14-state region, these costs are changing throughout the year as different utilities update their TFR calculations. However, the majority of these changes occur at the beginning of the year, which causes Kansas electric utilities to update their TDC once per year.

stakeholder review process to ensure that rates are just and reasonable. This process involves customers, regulators, and other interested parties reviewing the inputs to the TFR to ensure that they are related to transmission operations, prudently incurred, etc. FERC only issues an Order changing the TFR in response to a petition filed by the utility or a complaint filed by a customer group or state regulator to change a major cost element of the formula rate. Examples are changes in federal tax rates as a result of the Tax Cuts and Jobs Act of 2017 or the change in the return on equity component of the TFR as a result of the KCC's complaint filed at FERC in Docket No. ER14-93. These changes occur infrequently, typically only a few times per decade.

The effect of the Bill would therefore be that Kansas electric public utilities could only change the TDC to reflect changes in transmission costs by filing a general rate case pursuant to K.S.A 66-117 or in response to an order from FERC changing the TFR itself.

<u>Possible Consequences of the Bill</u>

Using Evergy Kansas Central's (EKC) most recent TDC as an example, $117.38 million out of the $285.41 million (41%) of EKC's zonal transmission costs were related to zonally or regionally allocated transmission projects related to an SPP notice to construct. These costs are therefore outside of Evergy's direct control. If this legislation is enacted and these costs change significantly, Evergy's only option to recover these costs from customers would be to file a general rate case. General rate cases are expensive and time consuming, so it would not be ideal for this to be Evergy's only outlet to recover transmission costs outside their control. Staff believes it is in the public interest to avoid a base rate case because of costs that are uncontrollable to the utility.[2]

Another factor the Committee should consider is the fact that Evergy is currently under a base rate moratorium as a result of a Settlement Agreement reached during the merger between Westar and KCPL, approved by the Commission in Docket No. 18-KCPE-095-MER. This means that neither utility can change base rates under that agreement until December 20, 2023. However, there is a *force majeure* clause in paragraph 32.iii of the Settlement Agreement which reads:

> Notwithstanding the above, in the event of changes in law or regulations, or the occurrence of events outside the control of Westar or KCP&L that result in a material adverse impact to Westar or KCP&L, Westar and KCP&L, as applicable, may file an application with the Commission proposing methods to address the impact of the events, including the possibility of changes in base rates. The non-Applicant Signatories shall have the right to contest any such application, including whether the impact of the change or event is material to the company making the claim, and whether the proposed remedy in the application is reasonable.

In the event that Evergy were to invoke the *force majeure* clause of the Settlement Agreement, as a result of this change in law, other signatory parties would likely object and the Commission would rule on the request. Another possible option is for Evergy to seek to be released from its other

[2] One of the most important factors utility regulators consider when evaluating for the reasonableness of a surcharge or a rider mechanism is whether the cost is within the control of the utility and whether the cost is large enough to potentially drive a general rate case.

merger commitments, like the requirement to provide guaranteed bill credits to customers during the base rate moratorium. While the Commission would ultimately have to rule on any application to revise rates or a request to be relieved of merger commitments, this action could jeopardize the base rate stability, guaranteed rate credits, and Earnings Review and Sharing Plan (ERSP)[3] components of the Settlement Agreement. Evergy Kansas Central is currently obligated to provide customers $8.65 million in annual rate credits by March 31 of 2021 and again in 2022. Evergy Kansas Metro is currently obligated to provide $2.81 million in credits to its Kansas customers in each of the same two years.

While the proposed Bill would likely result in rate stability for the TDC component of customer's bills, this rate stability could come at the cost of more frequent general rate cases, the loss of current benefits attributed to the merger, or both.

Thank you again for the opportunity to present Staff's testimony regarding HB 2180.

[3] The ERSP is an earnings review mechanism that evaluates Evergy earnings during the moratorium period and calculates additional rate credits to customers in the event that Evergy exceeds synergy savings estimates and earns above the authorized rate of return.