

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

In the Matter of a General Investigation)
Regarding the Rate Study and Assessment) Docket No. 20-GIME-068-GIE
Expenses Resulting from Substitute for)
Senate Bill No. 69.)

PETITION TO INTERVENE OF
THE KANSAS INDUSTRIAL CONSUMERS GROUP, INC.,
REQUEST FOR CONFIDENTIALITY RATIONALE, AND
REQUEST FOR PRODUCTION OF CONFIDENTIAL REPORT

COMES NOW, the Kansas Industrial Consumers Group, Inc. (“KIC”) and respectfully files this Petition to Intervene and associated requests. In support thereof, KIC states the following to the State Corporation Commission of the State of Kansas (“Commission”):

I. CONDENSED PROCEDURAL BACKGROUND

1. In 2019, the Kansas Legislature passed, and the Governor approved, Substitute for Senate Bill 69 (“Rate Study Bill”).¹ The Rate Study Bill required a two-phase study of retail rates of Kansas’ electric public utilities.² Phase I was completed in January 2020 and Phase II was completed in July 2020.³ The Commission has posted the reports from both phases on its website.⁴ AECOM prepared the report required by Phase II of the Rate Study Bill (“Phase II Report”).

II. PETITION TO INTERVENE

2. KIC is a corporation, organized and existing under the laws of the state of Kansas. KIC was incorporated in Kansas on April 13, 2005, and is active and in good standing in all respects.⁵ KIC is organized for the purpose of representing the interests of commercial, business, industrial, not-for-profit, and educational entities that purchase large volumes of electric energy

¹ See Substitute for Senate Bill No. 69. 2019 Kan. Laws Ch. 31 § 1, *codified at* K.S.A. 66-1287.

² See K.S.A. 66-1287(a), (b)(4).

³ See K.S.A. 66-1287(b)(4).

⁴ See Kansas Electric Rate Study, *available at* <https://kcc.ks.gov/electric/kansas-electric-rate-study> (last visited July 6, 2020).

⁵ The Secretary of State of Kansas has assigned to KIC the business identity I.D. No. 3771185.

and natural gas for their operations and activities. KIC routinely intervenes in Commission proceedings, files extensive testimony, participates in the settlement process, and advocates its interests during hearings. KIC represents a unique facet of the electric energy market and, derivatively, a unique segment of consumers that are dependent upon electric energy for a significant component of the State of Kansas' economy.⁶

3. KIC respectfully requests the Commission grant KIC's intervention without limitation in this matter and permit KIC to fully participate in all aspects of this Docket, including but not limited to the rights to serve relevant discovery, present witness testimony and other evidence, file briefs, motions, and other documents, as appropriate, and fully participate in any hearing.

A. Mandatory Intervention

4. Investigations, generally, are governed by the Kansas Administrative Procedure Act unless the Commission orders otherwise.⁷ K.S.A. 77-521 requires petitions for intervention be granted if: (1) it is in the interests of justice, (2) if the intervention will not impair the orderly and prompt conduct of the proceedings, and (3) if the party has stated facts demonstrating its legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding.⁸ KIC's intervention in the instant matter is in the interests of justice, will not impair the orderly and prompt conduct of the proceedings, and is supported by KIC's demonstrated potential for its legal interests to be affected by the proceeding.

⁶ KCC Consolidated Docket Nos. 08-ANGG-295-CCN and 08-TKOG-314-COC, Order Granting SWKIA's Petition to Intervene and Motion to Consolidate Dockets, ¶¶ 8-12 (Feb. 27, 2008). In its Order, the Commission granted intervention to an incorporated entity in good standing representing "a unique facet of the natural gas market and, derivatively, a unique segment of consumers for natural gas who are dependent upon gas service for a significant component of the economy of southwest Kansas. . ."

⁷ See K.S.A. 66-101d (Hearings in general investigations initiated by Commission subject to Kansas Administrative Procedure Act unless good cause exists to order otherwise.).

⁸ See K.S.A. 77-521(a).

5. KIC's intervention is in the interest of justice because no other party represents KIC's interests.⁹ Not only are KIC's interests unique to large volume consumers of electricity, but KIC's interests also encompass significant portions of the Kansas economy. KIC's participation in the instant matter is in the interests of justice because it will allow the record to become more fully established. The Commission's decisions "involve complex problems of policy, accounting, economics, and other special knowledge."¹⁰ KIC's participation in the instant matter, combined with its unique and unrepresented interests, will aid the Commission in resolving the complex problems before it.

6. KIC's intervention will not impair the orderly and prompt conduct of the proceedings. In fact, KIC's representation of multiple large-volume user interests through one active participant could greatly enhance the orderly and prompt conduct of the Commission's business.

7. KIC has demonstrated facts showing its rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding. Any decision stemming from the Commission's evaluation of reports provided from the Rate Study Bill has the potential to materially affect KIC – particularly ensuring the rates and terms of service available to KIC remain just and reasonable. The key goal of the Rate Study Bill is to "craft forward-looking electric policy that leads to regionally competitive electric rates and reliable electric service."¹¹ Because KIC's members are located in Evergy's¹² certificated service territory, it is only reasonable to conclude any resulting policy stemming from the Rate Study Bill will substantially affect KIC's legal rights,

⁹ Even if KIC's interests overlap with those of another party, representation of KIC's interests would be inadequate.

¹⁰ *Kansas Indus. Consumers Grp., Inc. v. State Corp. Comm'n of State of Kan.*, 36 Kan. App. 2d 83, 87, 138 P.3d 338, 344 (2006)

¹¹ *See* K.S.A. 66-1287(a).

¹² Comprised of Evergy Metro, Inc., Evergy Kansas Central, Inc., and Evergy Kansas South, Inc., collectively referred to in this pleading as "Evergy."

duties, privileges, immunities, or other legal interests. Moreover, KIC will be bound by Commission Orders in this proceeding and may be adversely affected thereby.

B. Permissive Intervention

8. The Commission has broad discretion to grant a petition for intervention when the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.¹³ As indicated above, KIC's participation in the docket is in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.

C. Commission Pre-Requisite

9. As a condition to KIC intervention, the Commission has previously required identification of entities participating through KIC.¹⁴ Therefore, KIC provides notice the following entities will be participating through KIC in this proceeding: Spirit AeroSystems, Inc., and Cargill, Incorporated. Spirit AeroSystems, Inc., and Cargill, Incorporated, are direct retail customers of Evergy, and their interests are not represented by another party in this matter. KIC expects multiple Evergy customers will intervene and actively participate in this proceeding through KIC. KIC will notify the Commission as additional entities opt to participate through its intervention.

III. REQUEST FOR CONFIDENTIALITY RATIONALE AND PRODUCTION OF CONFIDENTIAL REPORT

10. Significant portions of the Phase II Report are redacted and unavailable for the public or the Kansas Legislature to review. Nearly forty pages of critical analysis and conclusions are redacted, with some pages completely obscured from public inspection. This contravenes the State's open records policy and orders issued by the Commission in the instant matter. The

¹³ See K.S.A. 77-521(b).

¹⁴ See Docket No. 18-WSEE-328-RTS, Order Granting Intervention to Kansas Industrial Consumers Group, Inc., ¶¶ 8 – 11 (Mar. 20, 2018).

Commission should require AECOM to indicate why information was deemed confidential. Additionally, the Commission should require AECOM provide a confidential version of the Phase II Report for parties to review in accordance with the Commission’s confidentiality framework.

11. The Rate Study Bill indicates requests for information (necessary to complete required reports) would be subject to the Kansas Open Records Act, the Kansas Judicial Review Act, the Kansas Open Records Act, or any other laws or regulations applicable to the Commission.¹⁵ “It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by [the Kansas Open Records Act], and this act shall be liberally construed and applied to promote such policy.”¹⁶

12. The Rate Study Bill allowed the Commission to establish reasonable protections for the treatment of confidential information.¹⁷ On October 17, 2019, the Commission issued a Protective and Discovery Order in the instant matter,¹⁸ and established “procedures relating to confidential data and information.”¹⁹ The Phase II Report references the Commission’s Protective and Discovery Order, stating “Pursuant to the Protective and Discovery Order entered in KCC Docket No. 20-GIME-068-GIE, information designated as confidential by the utilities was redacted in the Public Version of this document.”²⁰

13. While the Commission allows parties to designate information confidential, the party “must provide a written statement of the specific grounds for the designation at the time the designation is made.”²¹ K.A.R. 82-1-221a(a)(5) requires this explanation “further specify the

¹⁵ See K.S.A. 66-1287(b)(3).

¹⁶ K.S.A. 45-216(a).

¹⁷ See K.S.A. 66-1287(b)(3); See also K.S.A. 66-1220a and K.A.R. 82-1-221a.

¹⁸ Protective and Discovery Order (Oct. 17, 2019).

¹⁹ See *id.* at ¶3.

²⁰ See Study of Consequential Issues Materially Affecting Kansas Electric Rates, Public Version, p. 2 (filed July 2, 2020) (Phase II Rate Study).

²¹ See Protective and Discovery Order, ¶5, *citing* K.A.R. 82-1-221a(a)(5).

harm or potential harm that disclosure would cause to the entity seeking nondisclosure.” The Phase II Report does not indicate why information was redacted – only that it was redacted because utilities designated information confidential. KIC requests the Commission require AECOM supplement the Phase II Report with a statement regarding the specific grounds and rationale for redacting information. KIC requests this supplement be filed in the instant matter. AECOM is required to provide this statement under Kansas law, and such statement is necessary for interested parties to determine whether good cause exists to uphold any confidentiality designation.

14. Parties may access confidential information provided they comply with the Commission’s confidentiality framework (e.g., execution of a Nondisclosure Certificate; destruction of confidential materials post-proceeding).²² However, a “confidential” version of the Phase II Report has not been filed in the docket.²³ As such, even parties who have executed Nondisclosure Certificates cannot access the full Phase II Report. If a party disagrees information should be confidential, the Commission’s Protective Order provides a procedure for parties to resolve the dispute.²⁴ However, parties cannot make this determination if the confidential report is not available for inspection. KIC requests the Commission require AECOM submit a confidential version of the Phase II Report for filing in the instant matter.

WHEREFORE, for the reasons stated above, KIC respectfully requests the Commission: (1) grant KIC’s Petition to Intervene, (2) require AECOM supplement the Phase II Report citing the specific grounds relied on to redact portions of the report and file such supplement in the instant

²² See Protective and Discovery Order, ¶¶ 3 – 14.

²³ As of 1:30 p.m. on July 6, 2020, only the “Public Version” of the Phase II Report was available on the Commission’s Website. See Docket No. 20-GIME-068-GIE Docket Documents, *available at* <https://estar.kcc.ks.gov/estar/portal/kscd/page/docket-docs/PSC/DocketDetails.aspx?DocketId=b75e7397-ebd1-4b12-ac3f-2e547414adbe> (Last Visited July 6, 2020).

²⁴ See Protective and Discovery Order, ¶13.

matter, (3) require AECOM submit a confidential version of the Phase II Report for filing in the instant matter, and (4) for any other relief the Commission deems just and reasonable.

Respectfully submitted,

/s/ Robert Elliott Vincent

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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

Robert Elliott Vincent, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., that he has read and is familiar with the foregoing *Petition to Intervene of The Kansas Industrial Consumers Group, Inc., Request for Confidentiality Rationale, and Request for Production of Confidential Report*, and the statements therein are true to the best of his knowledge, information, and belief.



Robert Elliott Vincent

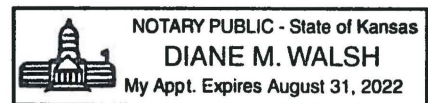
SUBSCRIBED AND SWORN to before me this 6th day of July, 2020.



Notary Public

My Appointment Expires:

08-31-2022



CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2020, the foregoing *Petition to Intervene of The Kansas Industrial Consumers Group, Inc., Request for Confidentiality Rationale, and Request for Production of Confidential Report*, was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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