

171 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Evergy Kansas Central, Inc.

Docket Nos. ER20-396-000
ER20-396-001

ORDER ACCEPTING REVISIONS TO SERVICE AGREEMENTS AND FORMULA
RATE TARIFF AND MODIFYING PROPOSED EFFECTIVE DATE

(Issued April 13, 2020)

1. On November 18, 2019, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations,² Evergy Kansas Central, Inc. (Evergy),³ submitted proposed revisions to the transmission and distribution loss adjustment attachments of certain Cost-Based Formula Rate Agreements for Full Requirements Electric Service (Service Agreements) between Evergy and five customers⁴ and its Full Requirements Electric Service Rate Schedule (Formula Rate

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. § 35.13 (2019).

³ On September 16, 2019, Westar Energy, Inc. changed its legal name to Evergy Kansas Central, Inc.

⁴ The Service Agreements are follows: (1) Rate Schedule FERC No. 301, Cost-Based Formula Rate Agreement for Full Requirements Electric Service between the Kansas Electric Power Cooperative, Inc. (KEPCo) and Evergy; (2) Rate Schedule FERC No. 321, Cost-Based Formula Rate Agreement for Full Requirements Electric Service between the City of Arma, Kansas and Evergy; (3) Rate Schedule FERC No. 326, Cost-Based Formula Rate Agreement for Full Requirements Electric Service between Doniphan Electric Cooperative Association, Inc. and Evergy; (4) Rate Schedule FERC No. 327, Cost-Based Formula Rate Agreement for Full Requirements Electric Service between Kaw Valley Electric Cooperative Inc. and Evergy; and (5) Rate Schedule FERC No. 328, Cost-Based Formula Rate Agreement for Full Requirements Electric Service between Nemaha-Marshall Electric Cooperative Inc. (Nemaha-Marshall) and Evergy.

Tariff).⁵ As discussed below, we accept the proposed revisions to the Service Agreements and to the Formula Rate Tariff. However, we modify the proposed effective date to make the revisions effective as of November 18, 2019, the date of Evergy's filing.

I. Filing

2. Evergy states that it is proposing to revise the transmission and distribution loss adjustment attachments of the Service Agreements and its Formula Rate Tariff in order to incorporate updated loss factors contained in its Open Access Transmission Tariff (Evergy OATT) following the Commission's October 17, 2019 approval of the updated loss factors in a contested settlement agreement (2019 Settlement Agreement).⁶ Evergy requests that the Commission grant waiver of the prior notice requirement and accept the filing effective June 28, 2018, which is the same effective date granted by the Commission for the Evergy OATT loss factors. Evergy states good cause exists to grant the waiver, as this filing will ensure that customers receive the full benefits of the settlement loss factors.⁷

II. Notice and Responsive Pleadings

3. Notice of Evergy's filing was published in the *Federal Register*, 84 Fed. Reg. 64,518 (Nov. 22, 2019) with interventions and protests due on or before December 9, 2019. Nemaha-Marshall filed a motion to intervene and comments (Nemaha-Marshall Comments). Nemaha-Marshall and Evergy filed answers.

4. On February 13, 2020, Evergy submitted a response (Deficiency Response) to a letter issued by Commission staff on January 14, 2020 informing Evergy that its filing was deficient and requesting additional information (Deficiency Letter). Notice of Evergy's Deficiency Response was published in the *Federal Register*, 85 Fed. Reg. 11,066 (Feb. 26, 2020) with interventions and protests due on or before March 5, 2020. Nemaha-Marshall filed comments (Nemaha-Marshall Deficiency Comments).

A. Comments

5. Nemaha-Marshall argues that Evergy has not adequately identified the basis for

⁵ Evergy Kansas Central, Inc., Cost Based Tariffs, Rate Schedules and Other Agreements, Vol. 20 Full Requirements Electric Service Rate Schedule (0.0.0).

⁶ Filing at 3; *see also Westar Energy, Inc.*, 169 FERC ¶ 61,024 (2019).

⁷ Filing at 3-4.

the updated loss factors or demonstrated that the loss factors are just, reasonable, and not unduly discriminatory or preferential. According to Nemaha-Marshall, the 2019 Settlement Agreement resolved the loss factors to be used in the Evergy OATT but contains no provisions providing for application of those loss factors in this or any other proceeding.⁸ Additionally, Nemaha-Marshall asserts that Evergy has not identified any provision in the Service Agreement between Nemaha-Marshall and Evergy (Nemaha-Marshall Agreement) that allows Evergy to automatically replace the loss factors with those adopted in the Evergy OATT.⁹ Nemaha-Marshall asserts that without such a provision, Evergy must demonstrate that the proposed loss factors are just, reasonable, and not unduly discriminatory or preferential under section 205 of the FPA, which Evergy has failed to do in its filing.¹⁰

B. Answers

6. Evergy states that the currently effective transmission and distribution loss factors in the Nemaha-Marshall Agreement reflect the Evergy OATT loss factors that were superseded by the loss factors in the 2019 Settlement Agreement. Evergy argues that the loss factors contained in its proposed revisions to the Service Agreements and the Formula Rate Tariff are required to ensure that the loss factors reflect the currently effective OATT. Evergy asserts that using superseded loss factors would not be just and reasonable.¹¹

7. In response, Nemaha-Marshall argues that Evergy's answer does not identify any provision that allows Evergy to automatically charge the loss factors in the Evergy OATT, nor does Evergy justify its proposed revisions to the Service Agreements and Formula Rate Tariff. Nemaha-Marshall asserts that Evergy cannot justify its filing on the basis of the 2019 Settlement Agreement and Evergy OATT loss factors because there is no provision in the Nemaha-Marshall Agreement requiring that the loss factors in the Nemaha-Marshall Agreement reflect the loss factors in the Evergy OATT.¹² Nemaha-Marshall acknowledges that the proposed changes to the loss factors represent a reduction in the loss factors and states that, as the filing proposes revisions to the loss factors in Evergy's agreements with other customers as well as the Nemaha-Marshall Agreement, Nemaha-Marshall does not seek to have the filing rejected. Instead,

⁸ Nemaha-Marshall Comments at 4.

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ Evergy Answer at 3.

¹² Nemaha-Marshall Answer at 4-5.

Nemaha-Marshall states that it is concerned that the filing may be used as precedent to allow Evergy to submit rate increases without contractual or other basis to support the filing.¹³

III. Deficiency Letter and Response

8. In the Deficiency Letter, Commission staff requested information from Evergy to explain how updating the loss factors in the Service Agreements is required by the 2019 Settlement Agreement and/or otherwise required by the Service Agreements. Alternatively, Commission staff requested that Evergy provide support for how the proposed revisions are just and reasonable for the Service Agreements and the Formula Rate Tariff.

A. Evergy Deficiency Response

9. Evergy states that the 2019 Settlement Agreement does not require that the loss factors in the Service Agreements or the Formula Rate Tariff be updated. Evergy states that nevertheless it is just and reasonable to update the Service Agreements and Formula Rate Tariff to reflect the loss factors because failure to adjust the loss factors would result in unduly discriminatory treatment of customers as their rates would be determined using different loss factors than those under the Evergy OATT.¹⁴ Evergy further states that such rates would also be unduly discriminatory because the 2019 Settlement Agreement loss factors are lower than those in the currently effective Service Agreements and the Formula Rate Tariff.¹⁵

B. Comments

10. Nemaha-Marshall reiterates that Evergy does not have the authority to automatically replace the loss factors in the Nemaha-Marshall Agreement with the loss factors contained in the Evergy OATT and that Evergy must demonstrate that the loss factors are just and reasonable under section 205 of the FPA.¹⁶ Nemaha-Marshall asserts that Evergy's explanation that it is changing the loss factors in the Nemaha-Marshall Agreement because the Evergy OATT loss factors have changed does not justify Evergy's proposal. Nemaha-Marshall asserts that the fact that the loss factors in the

¹³ *Id.* at 6.

¹⁴ Deficiency Response at 2-3.

¹⁵ *Id.* at 3.

¹⁶ Nemaha-Marshall Deficiency Comments at 1-2.

OATT have changed has no bearing on the loss factors in the Nemaha-Agreement.¹⁷ Nemaha-Marshall adds that a prior version of the Nemaha-Marshall Agreement provided a link to the OATT losses and stated as follows:

Losses shall be *the percentage identified in the Transmission Provider's currently effective OATT* multiplied by Customer's usage (measured in kWh and kW) as measured by the revenue-quality meter(s) installed at the Point of Receipt. In no case will Losses include losses that may be incurred from the Point(s) of Receipt to Customer's Load.¹⁸

Nemaha-Marshall states that this language has been removed from the Nemaha-Marshall Agreement and the currently-effective Nemaha-Marshall Agreement does not reference the Evergy OATT.

11. Nemaha-Marshall also disputes that it would be unduly discriminatory for the loss factors contained in the Service Agreements to be different from those in the Evergy OATT. Nemaha-Marshall states that it is not seeking to deprive any customers, including itself, of a rate reduction but argues that it is not unduly discriminatory for customers to pay different rates when one rate results from a settlement and the other does not.¹⁹ Nemaha-Marshall suggests that given that Evergy's filing in this proceeding proposes a rate reduction, the Commission could accept the filing as a voluntary rate reduction by Evergy.²⁰ According to Nemaha-Marshall, it is important that the Commission confirm that Evergy has not demonstrated that the loss factors in the Nemaha-Marshall Agreement are tied to the loss factors in Evergy OATT. Nemaha-Marshall states that such confirmation is important because although Evergy proposes to reduce the loss factors in this proceeding, Nemaha-Marshall is concerned about Evergy being able to change the loss factors in the Nemaha-Marshall Agreement without cause if the Evergy OATT loss factors were to increase in the future.²¹

¹⁷ *Id.* at 4.

¹⁸ *Id.* (citing Westar Energy, Filing, Docket No. ER13-1633-000 (filed June 4, 2013); Evergy Kansas Central, Inc., Cost Based Tariffs, Rate Schedules and Other Agreements, RS No. 328 Nemaha-Marshall Electric Cooperative Association, art. I - Definitions at § 34 (0.0.0) (emphasis added by Nemaha-Marshall)).

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ *Id.* at 6.

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motion to intervene filed by Nemaha-Marshall serves to make it a party to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by Evergy and Nemaha-Marshall because they have provided information that assisted us in our decision-making process

B. Substantive Matters

14. We accept the proposed revisions to the Service Agreements and to the Formula Rate Tariff filing, effective November 18, 2019, the date of Evergy's filing.

15. Nemaha-Marshall asserts that because the Nemaha-Marshall Agreement does not include a provision allowing Evergy to automatically change the loss factors in that agreement to those in the OATT, Evergy must demonstrate that the proposed loss factors are just, reasonable, and not unduly discriminatory or preferential under section 205 of the FPA.²² We agree. A provision providing for such "automatic" update may have obviated the need for a separate filing under section 205 of the FPA. However, in this case, the currently effective Nemaha-Marshall Service Agreement contains no such provision. Accordingly, Evergy is required in this proceeding to show that the proposed revisions are just and reasonable under section 205 of the FPA.

16. Evergy's proposed revisions revise the loss factors in the Service Agreements and the Formula Rate Tariff to reflect the reduced loss factors contained in its OATT, which were part of the 2019 Settlement Agreement recently approved by the Commission. Nemaha-Marshall acknowledges that the proposed changes to the loss factors in the Nemaha-Marshall Service Agreements represent a reduction and states that because Evergy also proposes these revisions in Evergy's agreements with other customers, Nemaha-Marshall does not seek to have the filing rejected but is concerned that the filing

²² *Id.* As Nemaha-Marshall notes, a previous version of the Nemaha-Marshall Service Agreement contained a provision tying loss factors in the Nemaha-Marshall Agreement to the currently effective Evergy OATT.

may be used as precedent to allow Evergy to submit rate increases without contractual or other basis to support the filing.²³

17. We find the proposed revisions to the Service Agreements and the Formula Rate Tariff submitted in this proceeding to be just and reasonable, as they represent a reduction in Evergy's transmission and distribution loss factors, as Nemaha-Marshall points out, and are consistent with the loss factors accepted in the 2019 Settlement Agreement. We note that because the Nemaha-Marshall Agreement and the Formula Rate Tariff contain no provisions allowing the loss factors to be "automatically" updated, in order to change the loss factors in that agreement Evergy would need to submit those revisions under section 205 of the FPA, as it has done in this proceeding. Accordingly, we accept the proposed revisions to the Service Agreements and to the Formula Rate Tariff filing. However, we modify the proposed effective date to make the revisions effective as of November 18, 2019, the date of Evergy's filing.²⁴

The Commission orders:

Evergy's filing is hereby accepted, effective November 18, 2019, as discussed in the body of this order.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³ *Id.* at 5.

²⁴ See *Consolidated Edison Co. of New York v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003) (the Commission's section 205 good cause waiver authority does not permit it to make a retroactive rate adjustment, absent two exceptions not present in that case); *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 795-97 (D.C. Cir. 1990) (analogous good cause waiver provision in Natural Gas Act does not permit retroactive adjustments).

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Docket Nos. ER20-396-000
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(Issued April 13, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part from today’s order accepting revisions to Evergy Kansas Central, Inc’s (Evergy) Full Requirements Electric Service Agreements and tariff in which the Commission modifies the proposed effective date to November 18, 2019. I would have granted Evergy’s requested effective date of June 28, 2018, consistent with the Commission’s long-standing policy to grant requested waivers of prior notice where proposed tariff revisions represent a rate decrease.¹

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

¹ See *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338, *order on reh’g*, 61 FERC ¶ 61,089 (1992) (“We will generally grant waiver of the 60-day prior notice requirement ... [for] filings that reduce rates and charges—such as rate decreases ...”). See, e.g., *Sw. Pub. Serv. Co.*, 167 FERC ¶ 61,226, at P 13 (2019); *GenOn Power Midwest, LP*, 168 FERC ¶ 61,015, at P 14 (2019).