BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Transportation Electrification Portfolio	)))))))	Case No. ET-2021-0151

INITIAL BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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Introduction

This case concerns a request by Evergy Missouri ("Evergy" or "the Company") for Commission approval of a multi-component electrification program portfolio for the Company's Missouri Metro and Missouri West service territories. The full program portfolio contains three distinct rebate programs, an expansion to the current cap on the Company's existing Clean Charge Network ("CC Network") of electric vehicle ("EV") charging stations, new tariff sheets for two rates specific to EV charging, and a variety of supporting requests including accounting treatment and rule waivers. *See* Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 9. The Office of the Public Counsel ("OPC") intends to show that the program portfolio offered by Evergy is poorly designed, lacks sufficient detail to warrant Commission approval, and is not cost efficient. Because of these problems, the OPC is requesting that the Commission deny the vast majority of Evergy's proposed electrification portfolio.[1]

While the OPC will show how the poor quality of Evergy's request should result in its denial, there is another factor that the Commission needs to take into consideration. The Federal Government has just this week finished passing the Infrastructure Investment and Jobs Act, which includes massive amounts of funding ($7.5 Billion) exclusively for the goal of promoting electric vehicles and electric vehicle charging infrastructure. Exhibit 100, *Staff Rebuttal Report*, pg. 28 lns. 9 – 13;

[1] There is one component of the requested CC Network expansion that the OPC is not opposing. This is the expansion to accommodate Evergy's partnership with the Metropolitan Energy Center and the City of Kansas City, Missouri to pilot streetlight charging installations in the city's right of way.

H.R.3684 - Infrastructure Investment and Jobs Act, https://www.congress.gov/bill/117th-congress/house-bill/3684 (last visited November 17, 2021) (showing that the bill has been signed by the president and "became law"). Regardless of whether it agrees with the OPC as to the major problems underlying Evergy's proposal, the Commission should appreciate that this bill (and the associated federal funding that comes with it) has effectively rendered much of Evergy's request superfluous. There is no need for ratepayer-backed expansion of EV charging station infrastructure in Evergy's service territory when the Federal Government is planning to do the exact same thing. Tr. Vol. 3 pg. 531 lns. 20 – 23 ("The fact that the federal government is coming in and throwing a hundred million dollars on top of this to go ahead and ease range anxiety concerns just nullifies the whole rationale behind this -- this portfolio." (cross-examination of OPC witness Marke)). The proper course of action for the Commission at this time is to just wait and see how much funding the State of Missouri will receive from the Federal Government and how much EV infrastructure can be built without Evergy's customers spending a cent. On this basis alone, Evergy's current request should be deemed premature and denied.

Issue 1: Should the Commission approve Evergy's proposed Residential Customer EV Outlet Rebate Program?

The Commission should not approve Evergy's proposed Residential Customer EV Outlet Rebate Program. This program is a complicated and clumsy way to change EV-owning customer's behavior that lacks any meaningful safeguards to ensure non-participants are held harmless. More importantly, this program is massively unnecessary as the underlying goal can be achieved more easily and efficiently by employing mandatory residential time of use ("TOU") rates. This proposal represents nothing more than Evergy's continued opposition to general TOU rates and approval of this program absent TOU rates will send a message that the Commission does not support such rates (which, again, will achieve the exact same goal as the residential rebate). The Commission should therefore deny Evergy's request and instead require Evergy to propose mandatory residential TOU rates in its next general rate case.

Explanation of the Program

At its most basic level, the residential rebate program allows EV owning Evergy customers to acquire one rebate per residence to cover 50% of the installation cost (with an upper limit of $500 per outlet) of a dedicated 240V circuit. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 23; Exhibit 100, *Staff Rebuttal Report*, pg. 5. The purpose of installing this 240V circuit is to allow for EV owners to use what is commonly known as a "Level 2" ("L2") charger as opposed to a "Level 1" ("L1") charger. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 23; Exhibit 100, *Staff Rebuttal Report*, pg. 5 lns 9 – 12.

The Company offers two basic justifications for why charging with an L2 charger is more beneficial than charging with an L1 charger. First, the Company claims that the L2 charger will consume less energy (7 – 15%). Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 23; Exhibit 100, *Staff Rebuttal Report*, pg. 6 lns. 10 – 11. Second, Evergy claims that having an L2 charger will allow EV owners to charge in less time and, consequently, change their charging behavior to charge at non-peak times. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 23; Exhibit 100, *Staff Rebuttal Report*, pg. 6 lns. 11 – 14 ("Evergy's position is that the Residential programs proposed by Evergy will cause EV charging load to shift to times more beneficial to the grid and to other Evergy customers, and that the load will be reduced as an energy efficiency gain"). There are major problems with both of these supposed benefits.

Reduced energy consumption by program participants will actively harm non-participants to the rebate program

The basic premise of an electrification case is to either encourage increased electrical consumption or more efficient grid management by prompting customers to switch from existing fuel sources to electricity (for example switching from gas powered internal combustion engines to electric vehicles or switching from natural gas heating to an electric fuel pump). The argument for allowing the cost of these electrification programs to be borne by non-participants is generally premised on the idea that the increased electrical sales generated from the new users will spread the electric utility's fixed costs over a greater number of customers thus lowering the

rates for each individual customer. This can be seen in the Commission's findings of fact for the Ameren Electrification case:

> The financial benefits to the utility and to the ratepayer from an EV charging network are not merely from the additional electricity sales at the charging stations, but are also obtained through additional electric sales from charging at home and creating more efficient utilization of the electric grid. **All ratepayers ultimately will receive those benefits from the spreading of fixed costs over a greater amount of usage creating rates that are lower than if there was less usage**.

Exhibit 14, *Report and Order (ET-2018-0132)*, pg. 17 ¶ 27 (2019) (emphasis added); *see also Id.* at pg. 22 ("Greater [EV] adoption will likely contribute to home charging during off-peak hours on a regular basis and provide a more efficient grid utilization to the benefit of both the Company and the ratepayers."). However, Evergy's proposal completely ignores this basic premise and is instead seeking to **reduce** energy consumption.

Because L2 "chargers do not lose as much energy to heat and sound during the charging process as a [L1 charger]," "Evergy asserts that charging via Level 2 consumes 10% less energy overall." Exhibit 100, *Staff Rebuttal Report*, pg. 10 lns. 4 – 6. "Using existing Evergy Metro rates, the existing Evergy Metro FAC Base Factor, and the energy-saving assumptions relied upon by Evergy," the Commission's Staff ("Staff") has estimated that "retail revenues from the customers eligible for this rebate will be reduced by $17.10 - $26.25 per year, net of the FAC Base factor." *Id.* at lns. 6 – 9. Because the revenue from program participants will be **reduced** under

this program, non-participants will necessarily have to pay **more** to cover the difference. Further, because the program is only eligible for individuals who own an EV, any person who does not own an EV will be excluded from participating and thus end up having increased rates **in addition to funding the $1 million cost of the program itself**. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, Appendix A (detailed description of residential rebate program). Hopefully the Commission can see how this is a tremendously unfair and regressive outcome.

Evergy's program literally asks for non-EV-owners to pay money so the Company can lower the energy bills of EV-owners, even as it increases the non-EV-owner's own bills. In other words, the residential rebate is a "pay to pay" program for non-EV owners in that non-EV owners pay money up front for the "privilege" of paying higher energy bills later on. Given the current price of EVs compared to other cars on the market, it is safe to assume that EVs have not penetrated deep into the ranks of Evergy's low-income customers. This program is thus effectively establishing a regressive tax on low-income individuals who will be hit with the twofold blow of paying for a million dollar program they cannot make use of **and then** having to pay more for energy to cover the reduced bills of the more affluent EV owners. Again, the OPC would hope that the obvious inequity of this outcome would be transparent to the Commission.

While the increased cost to non-participants due to the reduced revenue from participants is indisputable, there is another factor here to be considered. The reduced energy consumption induced by these level two charges might also reduce

the costs Evergy incurs to obtain that energy from the SPP market. Exhibit 100, *Staff Rebuttal Report*, pg. 10 lns. 10 – 14. In particular, Staff estimated that, "[u]sing the average weekday costs of energy in the SPP day ahead market for Evergy Metro," "the wholesale energy costs associated with providing the energy to decrease by approximately $22.87 per year for the 'Managed' charging scenario relative to the Base scenario, inclusive of the 10% reduction in total consumption." *Id*. Of course, this only means that if **everything** goes exactly as Evergy planned, the reduced revenue and reduced costs will just offset each other leaving no monetary benefit for non-participants to the program:

> In summary, before even looking at potential capacity cost increases, and free-ridership impacts, Evergy is requesting to give certain customers $500, with the possibility of reducing revenue by around $20 a year, and in a best-case scenario, reducing the wholesale energy costs passed through the FAC by around $20, to maybe breakeven, but without any requirement that the customer takes action to result in that wholesale cost decrease or that the customer absorbs the cost of that wholesale cost increase.

Exhibit 100, *Staff Rebuttal Report*, pg. 12 lns. 3 – 8. Even then, this "breakeven" outcome is still a problem because (a) non-participants are still on the hook for the cost of the program itself and (b) this outcome is **wholly** dependent on program participants changing their charging behavior. *Id*. This last point brings up the next major problem with Evergy's case.

Non-participants are dependent on participants changing charging behavior to prevent being hit twice for costs and there is no guarantee that participants will actually change their charging behavior

As previously discussed, the second supposed benefit that arises from Evergy's residential rebate is its ability to allow EV owners to charge in less time and, consequently, change their charging behavior to charge at non-peak times. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 23; Exhibit 100, *Staff Rebuttal Report*, pg. 6 lns. 11 – 14 ("Evergy's position is that the Residential programs proposed by Evergy will cause EV charging load to shift to times more beneficial to the grid and to other Evergy customers, and that the load will be reduced as an energy efficiency gain"). This change in load shape due to the difference in charging behavior is what Evergy referred to as the "managed" load shape.[2] Exhibit 100, *Staff Rebuttal Report*, pg. 7 lns. 7 – 14. If rebate program participants change their charging behavior to this "managed" loadshape, then the result is the reduced SPP costs that will allow this program to "breakeven" in as far as non-participants will not be hit with **double** costs. *Id.* at pg. 10 lns. 10 – 14, pg. 12 lns. 3 – 8. If Evergy's customers do **not** change their charging behavior, however, a completely different outcome occurs.

"To account for the lack of management of EV charging load in Evergy's proposed filing," Staff developed two competing models to show what would happen

[2] "'Load shape' refers to the pattern of electric consumption over a period of time." Exhibit 100, *Staff Rebuttal Report*, pg. 8 fn 9.

if an EV owners began charging at peak hours based on the data that Evergy had supplied. Exhibit 100, *Staff Rebuttal Report*, pg. 7 lns. 14 – 21. Staff referred to these to competing models as "Projected Weekday A" and "Projected Weekday B" for a one-hour and two-hour charge time respectively.[3] *Id.* Staff then calculated what the impact on the SPP market costs to Evergy would be under either of these two competing models:

> [F]or Projected Weekday Scenarios A & B, respectively, the move from Level 1 to Level 2 charging resulted in a net increase in wholesale energy costs of approximately $0.25 - $0.61 per year – inclusive of the 10% reduction in total consumption. In other words, if customers have the ability to charge at a higher level of demand, and continue to charge at the times they have found most convenient those customers will cause more wholesale energy costs, while consuming less energy (and paying a lower retail bill.).

Id. at pg. 10 lns. 14 – 20. The result, which Staff clearly states, is that if EV owners who participate in the residential rebate program **do not** change their charging patterns after transitioning from a L1 to L2 charger, the outcome will be an overall **increase** to all customers. *Id.*; Tr. Vol 2 pg. 376 lns. 7 – 16. This presents a serious problem.

As has been clearly shown, Evergy's case is dependent on the idea that EV owners will change their charging behavior after switching from L1 to L2 chargers. If the EV owners do not change how they charge their EVs after receiving their new

[3] Staff would appear to have chosen a one hour and two hour charge time due to Evergy's projection that the "kWh daily consumption for home charging can be delivered in less than 1 hour by a Level 2 charger." Exhibit 100, *Staff Rebuttal Report*, pg. 7 lns. 17 – 18.

chargers/outlets, then this program will actively hurt non-participants. Exhibit 100, *Staff Rebuttal Report*, pg. 10 lns. 14 – 20; Tr. Vol 2 pg. 376 lns. 7 – 16, pg. 378 lns. 8 – 10. Therefore, non-participants are **dependent** on participants changing charging behavior in order to avoid the "pay to pay" situation described previously. Yet Evergy has gone out of its way to ensure that there is **no** guarantee that participants will actually change their charging behavior, thus stripping non-participants of any protection that this program might have had. This represents yet another major flaw in Evergy's proposal

As currently designed, the program offers no repercussions, pecuniary or otherwise, to participants who do not change their charging behavior. Exhibit 100, *Staff Rebuttal Report*, pg. 15 lns. 14 – 16 (the residential rebate program "has no protections against free ridership, and **no requirement for participation in managed charging**. (emphasis added)); *see also* Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, PDF pg. 52 (Residential Developer EV Outlet Rebate exemplar tariff sheet showing no repercussions for failure to participate in managed charging). Instead, Evergy merely assumes that program participants "will charge their EV in a manner that would be beneficial to both Evergy's system and all of its customers, without a managed charging program or participation in the Company's Residential time of use rate schedule." Exhibit 100, *Staff Rebuttal Report*, pg. 6 lns. 2 – 6. To make matters worse, Evergy actively opposes TOU rates that would actually encourage people to change their charging behavior. Exhibit 7, *Surrebuttal Testimony of Nick Voris*, pg. 14 ln. 7 – pg. 15 ln. 2. Evergy's stalwart

refusal to require TOU rates is especially ironic given that the Company also literally touts the ability of customers to use the exiting TOU pilot rate as a **benefit** that this program is supposed to offer. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 23 ("The Residential Customer EV Outlet Rebate facilitates the EV driver's ability to utilize Evergy's existing TOU pilot rate, creating a foundation for future active charge management programs."). This means that Evergy is actively working against the benefits that its own program is supposed to offer in addition to undermining what little protection this program might be able to afford to non-participants. This begs the question: why?

The simple fact of the matter is that Evergy does not have a very good excuse for why it is opposing TOU rates. To quote Evergy's own witness:

> While Evergy will use this program to educate customers on TOU and encourage TOU rate enrollment, we expect there will always be a subset of EV-owners who are uninterested in TOU rates due to specific consumption requirements or other reasons. Such disinterest, however, does not mean these customers are unwilling to charge overnight. Since an EV can easily be programed to charge within specified hours via the vehicle's smart phone app or on-board interface, Evergy believes it can effectively shift customers to off-peak charging by ensuring customers know how to program their cars to automatically charge overnight and/or during the weekend while at home ("set it and forget it"), are informed about their charging needs/behaviors, and understand the environmental and other advantages of off-peak charging.

Exhibit 7, Surrebuttal Testimony of Nick Voris, pg. 14 ln. 15 – pg. 15 ln. 1. This is very faulty logic. Evergy is arguing that there is some group of people who both (1) own an EV, and (2) can charge their EV "overnight and/or during the weekend while

at home" yet who would **still** not be willing to engage in TOU rates "due to specific consumption requirements or other reasons" but offers no indication who this theoretical group of EV owners are or how many this would constitute.[4] Evergy then relies entirely upon this theoretical subset of EV owners to design the program in a manner that neglects to provide the greatest incentive to charge off-peak. Further, Evergy is now seeking to deny **actual program safeguards** that encourage the very behavior (charging off peak) that is **necessary** for this program to work because it *expects* that some unknown portion potential program participants would just not like the idea of TOU rates. Therefore, in order to protect the delicate sensibilities of this wholly unknown number of potential program participants, the Company has decided to leave the several hundreds of thousands more non-participants unprotected and vulnerable.

The evidence in this case clearly shows that participants changing their charging behavior is **absolutely essential** to this program to not become even more costly to all Evergy customers. Exhibit 100, *Staff Rebuttal Report*, pg. 10 lns. 14 – 20; Tr. Vol 2 pg. 376 lns. 7 – 16, pg. 378 lns. 8 – 10. As explained by the OPC's witness during the hearing:

> Q. How does that ability to charge quicker help nonparticipants?
>
> A. I mean, it could potentially hurt nonparticipants quite easily. The key here is that charging needs to be done during off-peak hours. If you go

[4] Evergy has budgeted this program for only 2,000 people across both service territories. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, Appendix A (detailed description of residential rebate program). There are currently only about 1,412 EVs in Evergy's service territory **in total**. Exhibit 204, *Rebuttal Errata Sheet of Dr. Geoff Marke*, pg. 1. Given these numbers, it is safe to say that the theoretical group of potential program participants that Evergy is concerned about could easily be less than a hundred people.

> to work, you come home and you charge -- you know, you put your car in the garage and you charge it and you let it go, it will -- it's going to be increasing that overall peak. That's when everybody comes home for work. You're going to be [watching] the TV, doing laundry, cooking food, and then we throw on charging their EV. That's putting more of a strain that's increasing the overall SPP price. That's costs that are being borne out by all ratepayers and by nonparticipants.
>
> So effectively, what the Company out here is a program that would increase costs across the board. And not just cost, but it would also increase emissions because if you look at the generation profile of the units that are being run at night like that when you come home to meet that demand, it's not renewables. It's not intermittent, you know, generation because the full restrictions when it comes to renewables. You're bringing on gas, you're bringing on diesel. You know, you are further supporting coal. So if the end goal is, you know, towards a cleaner society, this program as it is drafted, doesn't accomplish that.

Tr. Vol 3 pg. 599 lns. 2 – 25. Given all this, the very least the Commission could do is provide some **minimal** protection for non-participants by requiring participants to either change their charging behavior or pay more (that is impose TOU rates). The witness for the Sierra Club and the Natural Resources Defense Council agreed on this point:

> Offering attractive time-variant rates and ensuring as many EV drivers as possible take service on those rates is also key to managing EV charging to support the operation of the grid.
>
> This is not a theoretical proposition, but a phenomenon that has been documented in states across the nation. For example, in Michigan, Consumers Energy's PowerMIDrive pilot showed that participating customers, who are required to take service on a TOU rate, conducted 86 percent of their weekday charging during off-peak hours. And real-world data from other states reveals that EV customers who are not on TOU rates charge immediately upon returning home in the evening, generally exacerbating peak system-wide electricity demand, whereas EV customers on well-designed TOU rates charge almost exclusively

> during off-peak hours, as illustrated in Figure 3. In contrast to drivers in Texas who charge during evening peak hours, EV customers in San Diego (who were required to take service on a TOU rate designed for EVs as a condition of receiving a free Level charging station) charge almost entirely between midnight and 5:00 AM when people are generally sleeping and there is plenty of spare capacity on the grid.
>
> Accordingly, to increase fuel cost savings and to encourage charging that supports the grid and benefits all utility customers, recipients of Evergy's charging infrastructure rebates should take service on time-variant rates.

Exhibit 700, *Surrebuttal Testimony of Max Baumhefner*, pg. 16 ln. 1 – pg. 17 ln. 6. Moreover, if the Commission allows program participants to opt out of TOU rates, then the Commission is sending a clear message that it does not consider TOU rates to be important. For all these reasons, it should be immensely obvious that requiring rebate program participants to adopt TOU rates (or a similar mechanism) is necessary to address the major design flaws in Evergy's proposal. This point provides a convenient segue into discussing another major problem with the proposed rebate.

Adopting mandatory TOU rates for all residential customers would render the proposed residential rebate superfluous.

It is far more cost effective for Evergy to encourage EV owners to change their charging behavior by adopting TOU rates that give EV owners a pecuniary reason to change instead of attempting to bribe EV owners with expensive gifts in the form of new outlets paid for by non-participants. Just consider the testimony of OPC witness Dr. Geoff Marke:

Q. Is there some other policy lever available to the Commission besides direct subsidies or marketing that would encourage charging during off-peak hours?

A. **The most direct and influential incentive to customers is provided by pricing the service appropriately with TOU rates**. Efficient energy consumption requires that prices charged to consumers reflect the social cost of producing and delivering energy. **The most clear-cut and efficient way to induce energy consumers to charge at socially desirable levels comes from correct pricing**. Most industries rely exclusively on prices to achieve optimal levels of consumption. Consequently, **the Commission should place primary importance on eliminating pricing distortions and creating easily understood and transparent price signals to ratepayers**.

Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 15 lns. 1 – 9 (emphasis added). Instead of mucking about with these types of small scale rebates and the hope that it can "encourage" EV owners to switch rates through "education," Evergy should heed Dr. Marke's advice and focus on developing and implementing mandatory residential time of use rates to be adopted in its next rate case. This will effectively accomplishes the same goal as the proposed rebate because the monetary incentive offered by the TOU rates will motivate EV owners to install 240 V outlets on their own volition, thus eliminating the need for non-participant subsidies

If the Commission were to order Evergy to adopt mandatory residential TOU rates in the Company's next general rate case, and those TOU rates, in turn, encouraged EV owners to change their charging patterns, the Commission would be removing the only justification this proposed rebate program has to offer. Stated differently, if TOU rates can achieve the same end as the current proposed program, then approving **both** this program and TOU rates for all residential customers would

be unnecessary. Under such circumstances, this rebate would revert to being just a mechanism to re-distribute wealth from non-EV owners to EV owners. The Commission should avoid this outcome by choosing to promote TOU rates **instead** of approving Evergy's proposed residential rebate program.

Conclusion

If this program is approved as drafted and Evergy is not able to encourage participants to change their charging behavior, this program becomes a regressive tax on non-EV owners. Exhibit 100, *Staff Rebuttal Report*, pg. 10 lns. 14 – 20; Tr. Vol 2 pg. 376 lns. 7 – 16, pg. 378 lns. 8 – 10; Tr. Vol 3 pg. 599 lns. 2 – 25. If this program is approved and then the Commission approves general TOU rates for residential customers that would have been equally effective at getting EV owners to change their charging behavior, this program become a regressive tax on non-EV owners. Given these factors, the obvious solution is to **start** with TOU rates and then re-consider this program **after** it becomes clear that general residential TOU rates are not capable of achieving the goal of getting EV owners to charge their EVs off peak time. The Commission should therefore deny this portion of Evergy's application and instead order general, mandatory TOU rates as part of Evergy's next general rate case.

Issue 1 sub-a: If the Commission approves Evergy's proposed Residential Customer EV Outlet Rebate Program, should the Commission require that participants also sign up for the Company's existing whole house, opt-in TOU rate?

As previously stated, having TOU rates would be the least that the Commission could do to help ensure that this program will not harm non-participants. If the Commission does not order TOU rates and participants choose not to change their charging patterns, then non-participants are paying for the privilege of paying higher bills while participants get to pay less. Exhibit 100, *Staff Rebuttal Report*, pg. 10 lns. 14 – 20; Tr. Vol 2 pg. 376 lns. 7 – 16, pg. 378 lns. 8 – 10; Tr. Vol 3 pg. 599 lns. 2 – 25. Without TOU rates, these rebates is practically guaranteed to become a "pay to pay" program for non-participants. Obviously, this bad result should be avoided at all cost. Again, having TOU rates is the very **least** that the Commission could do to protect non-participants.

Issue 1 sub- b: If the Commission approves Evergy's proposed Residential Customer EV Outlet Rebate Program, should the Commission modify the program consistent with ChargePoint's recommendations?

The Commission should not modify the program consistent with ChargePoint's recommendation. ChargePoint's recommendations represent nothing but a self-serving attempt to promote their own business interests, as the OPC's expert witness Dr. Geoff Marke explained:

> ChargePoint's modification to raise the subsidy to a flat $500 for all "qualifying residential customers" is both excessive and self-serving. ChargePoint makes no attempt to define what a "qualifying customer" is or what that might mean as far as an impact to Evergy's proposed budget. It is important to note that there are no additional kWh generated from the inclusion of this rebate. Just a greater chance that that the EV's will place a greater strain on the grid by charging during peak hours than it otherwise would and consequently increase rates for all customers. Assuming a set budget, this also means that there will be less "qualifying customers" receiving a rebate. Moreover, there is a real

> risk of home contractors taking advantage of this process. If they are aware that $500 is available for their service at no cost to the participant, it should not surprise anyone that the overall costs of installation will increase as well.
>
> The Commission should also reject the additional self-serving request by ChargePoint to redesign and redirect Evergy's proposed subsidies for outlet installation to EV charging stations. Again, ChargePoint sells EV Charging Stations. This recommendation is just another attempt to force Evergy customers to directly subsidize ChargePoint's business.
>
> Finally, the Commission should reject ChargePoint's recommendation to market EV charging station providers (like ChargePoint) on Evergy's website to residential customers through the recommended "list of qualifying chargers for the Residential Rebate program. It is neither necessary nor sensible for Evergy's website to become a platform to tell utility customers what type of EV charger they should buy.

Exhibit 201, *Surrebuttal Testimony of Dr. Geoff Marke*, pg. 6 ln. 8 – pg. 7 ln. 2. ChargePoint has a vested interest in the proposals it has made because they offer a means to directly support ChargePoint's bottom line. *Id*. at pg. 3 lns. 5 – 6. ("In short, ChargePoint has a vested interest in utilizing subsidized ratepayer funds to substantiate its bottom line."). The Commission should not allow this case to become a mechanism by which Evergy customers (especially non-participating customers) may be extorted for the benefit of a non-utility third party like ChargePoint.

Issue 2: Should the Commission approve Evergy's proposed Residential Developer EV Outlet Rebate Program?

The Commission should not approve Evergy's proposed Residential Developer EV Outlet Rebate program. To begin, this program is designed to achieve effectively the same goal as the proposed residential rebate program, in that, it is designed to potentially allow EV owners to charge with a L2 charger as opposed to an L1 charger. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, PDF pg. 24. This is accomplished by providing "a rebate to a builder or developer of a new residential construction project to install a dedicated 240V, 40 amp or greater circuit." Exhibit 100, *Staff Rebuttal Report*, pg. 5 lns. 14 – 16. Because the developer rebate program is designed to achieve effectively the same goal as the proposed residential rebate program, it suffers from all the same problems as the proposed residential rebate program. For example, Evergy argues that the program will provide a benefit by "reducing the costs associated with enabling L2 EV charging at home[,]" which "allows most EVs to charge during off-peak hours and lowers household transportation costs for future homeowners because it is both faster and more efficient than L1 charging." Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, PDF pg. 24. However, because more efficient EV charging is not a benefit to non-participants (in that it will actually **increase** their bills by reducing the Company's overall revenue) and that increased speed of an L2 charger is only a benefit if (1) the home is purchased by an EV owner, (2) the outlet is used to charge the owners EV, and (3) the EV owner does not charge on peak. Exhibit 100, *Staff Rebuttal Report*, pg. 10 lns. 6 – 20, pg. 12 lns. 3 – 8. Because the problems with

Evergy's underlying argument as it relates to these two rebates has already been discussed at length, the OPC will not reiterate those points here and instead focus on explaining just how much worse the developer rebate is than the proposed residential rebate.

The first thing the Commission needs to understand with regard to the developer rebate is that, "[t]o be eligible for this rebate, the builder only has to provide proof the outlet was installed, with no restriction on the outlet's placement or use." Exhibit 100, *Staff Rebuttal Report*, pg. 5 lns. 16 – 17. This produces several problems. First, there is no guarantee that anyone who buys a house with one of the outlets installed under this rebate program will actually own an EV. Exhibit 100, *Staff Rebuttal Report*, pg. 16 ln. 3 ("it is not reasonable to assume the plug will ever be used for charging at all."). Even if the new homeowner does own an EV, "there is no apparent way for Evergy's intended eventual 'education' component to reach the future homeowners." *Id*. at lns 4 – 5. This means that there is no way for Evergy to properly "encourage" the EV owners to charge at non-peak hours, which was previously established to be **essential** for this program to be at all cost effective. Exhibit 100, *Staff Rebuttal Report*, pg. 10 lns. 14 – 20; Tr. Vol 2 pg. 376 lns. 7 – 16, pg. 378 lns. 8 – 10; Tr. Vol 3 pg. 599 lns. 2 – 25. Instead, the only hope for non-participants is that "a customer will voluntarily stumble into a 'managed' charging pattern without requirement" Exhibit 100, *Staff Rebuttal Report*, pg. 16 lns. 2 – 3. To make such an assumption is clearly unreasonable.

Evergy does have a response to at least the last of the foregoing concerns in that, "[a]s part of the installation, Evergy will require the developer to place a branded sticker on the outlet to communicate to the homeowner that the 240V outlet is available specifically for EV charging." Exhibit 7, *Surrebuttal Testimony of Nick Voris*, pg. 21 lns. 12 – 14. This sticker concept was not something Evergy included in its original proposal or which the Company has made available to either the Commission or interveners:

> A. Aw yes, the sticker.
>
> Q. Do you agree that the sticker is sufficient?
>
> A. I -- having only learned about the sticker in the surrebuttal, since it wasn't something that we were able to discuss during technical conferences or have any understanding of prior to surrebuttal, I cannot recommend a sticker as sufficient for whatever it is the sticker is supposed to do.

Tr. pg. 385 lns. 16 – 22 (cross-examination of Staff Witness Lange). Notwithstanding that issue, it should be obvious that just slapping a sticker onto the outlet is not sufficient to rectify the glaring hole in the Company's proposal. There is no reason to believe that Evergy customers who buy a house with one of these outlets installed will go out of their way to try to contact Evergy to be educated on the best time to charge their EV because a sticker told him the outlet was "specifically for EV charging," which the customer can choose to ignore with no repercussions of any kind. Again, this is clearly unreasonable.

Overall, Evergy's developer rebate program represents a ridiculous situation where non-EV owners have to hope that:

1. The home that the outlets are installed in are purchased by EV owners
2. The outlet is in a location conducive to EV charging
3. That EV owners choose to purchase and buy an L2 charger
4. The EV owners see the sticker and decide to go out of their way to learn about EV charging on and off peak
5. The customer decides to change when they charge based on this information with absolutely no monetary incentive to do so.

This is a truly nonsensical program, which is why it should be no surprise that it was dropped in its entirety in the Company's settlement of the Kansas electrification portfolio docket. Exhibit 203, Non-Unanimous Stipulation Filed in Kansas Case 21-EKME-320-TAR, pg. 4. This Commission should deny the program as well.

As with the residential program, the far more reasonable and prudent option is to just order mandatory residential TOU rates in Evergy's next rate case. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 15 lns. 1 – 9. If general TOU rates are sufficient to encourage EV owners to change their charging behavior, then it renders this **entire** program effectively useless. Further, to the extent that Evergy hopes to change developer behaviors going forward, the far better option is to work with state and municipal leaders to change building codes and standards:

> Q. All right. You were asked about a study regarding changes to code. Do you recall that?
>
> A. I do.

> Q. Is that effectively what -- are changes to code effectively how the OPC believes the issue that the developer rebates are meant to be addressed, should be addressed?
>
> A. Yes, absolutely. This is -- I think it's naïve to sit here and think we go if we give out, you know, a $500 rebate or whatever go ahead and change a plug to entice a developer that is going to put that sort of plug in there anyway, first of all there's nothing in the tariffs or their portfolio of program description to make sure that that plug is actually going into an EV car or a new car at that. But infinitely, the most cost effective way would be to just go ahead and build things the right way. I forget who asked me that, if it was the RLJ or if it was Mr. Fischer. But just building things the right way and that is be accomplished through coding and standards at the local level. I know for a fact that Ameren is very active in those discussions with different municipalities. Moving forward, you know, I suspect Evergy is to a certain extent too. But that's the route to move, just build these things right the first way, but trying to back end it like this and hope that it works will inevitably be cost ineffective.

Tr. Vol 3 pg. 596 ln. 20 – pg. 597 ln. 18 (redirect examination of OPC witness Marke). Even Evergy's own witness tacitly acknowledged that this was one way that developer issue could be addressed. Tr. Vol 2 pg. 302 lns. 7 – 14 ("Q. Would it also be possible that codes and standards enacted by municipalities or similar government institutions could also require EV charging outlet -- or EV charging compatible outlets? A. Yeah. I think anything is possible, Mr. Clizer. I think it's going to take -- I said it earlier. I think it's going to take municipalities, codes, states, feds, utilities, third parties to meet what's coming.").

The way this program is currently designed, there is no guarantee that any of the money spent will ever provide any benefits. *See* Exhibit 100, *Staff Rebuttal Report*, pg. 16 lns. 1 – 8. This incredibly poorly developed program is far more likely

to harm Evergy's customers on the whole rather than help them. The Commission should thus deny Evergy's request.

Issue 3: Should the Commission approve Evergy's proposed Commercial EV Charger Rebate Program?

The Commission should not approve Evergy's proposed Commercial EV Charger Rebate Program. If this case was the first time Evergy had proposed a pilot program designed to encourage the electrification of motor vehicles through the deployment of EV charging infrastructure, then this proposal might have made sense. As it stands, though, Evergy already has an extensive network of EV charging infrastructure in place in its service territory in the form of the CC Network. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, 18 lns. 4 – 6; Exhibit 100, *Staff Rebuttal Report*, pg. 17 lns. 21 – 23. The Company is now asking the Commission to ignore the existence of its clean charge network and all the lessons that have been learned from it. The OPC is instead asking the Commission to treat Evergy's prior excursion into the world of EVs as an actual learning experience to guide its decision. The problem, however, is that the information that can be gained from Evergy's existing EV charging infrastructure deployment does not support the Company's current request.

The proposed program will not be cost effective

In its simplest form, the commercial rebate program is designed to facilitate the building of EV charging infrastructure by third-parties (*i.e.* not Evergy). Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 25, Appendix A (Detailed Program Description of the Commercial EV Charger Rebate). This is done

by directly rebating part of the cost to install the charging infrastructure that is incurred by the third-party. *Id*. There are two conceivable means by which this program could become cost effective: (1) the new EV charging stations receive enough use that they generate revenue sufficient to directly offset the cost of the rebate, or (2) the mere presence of the new EV charging stations induce greater EV adoption that ultimately results in increased electrical consumption and thereby increases revenues to a degree sufficient to offset the rebate costs (even if that increased electrical consumption does not occur at the chargers themselves). *See* Exhibit 100, *Staff Rebuttal Report*, pg. 16 lns. 12 – 13 ("Evergy's position is that the chargers subsidized under these programs will cause new load, and that the growth of load will exceed the value of the capacity and energy costs it causes."). An examination of Evergy's existing EV charging CC network shows that neither of these two possible outcomes are likely to occur.

Let us start by considering the easier of the two to dismiss: the idea that the new chargers will themselves see sufficient usage to justify the rebate. This is almost certainly not true considering the revenues gained from the existing CC Network. Consider, for example, the two tables found in Staff's rebuttal report that compare the revenues and investment costs from the existing CC Network.

Evergy Missouri West Clean Charge Network						
Year	Rate Revenue From CCN Tariff	kWh Usage	Plant Investment ER-2018-0146	AnnualO&M ER-2018-0146	Annual Cost of Service ER-2018-0146	Annual Cost of Service Shortfall
2016	$ 11,952	56,188	$ 5,400,000	$518,000	$765,000	$ (753,048)
2017	$ 35,284	165,875		$518,000	$765,000	$ (729,716)
2018	$ 36,109	171,521		$518,000	$765,000	$ (728,891)
2019	$ 39,412	188,508		$518,000	$765,000	$ (725,588)
2020	$ 30,829	147,877		$518,000	$765,000	$ (734,171)
2021	$ 9,564	46,152		$518,000	$765,000	$ (755,436)

Evergy Missouri Metro Clean Charge Network						
Year	Rate Revenue From CCN Tariff	kWh Usage	Plant Investment ER-2018-0145	AnnualO&M ER-2018-0145	Annual Cost of Service ER-2018-0145	Annual Cost of Service Shortfall
2016	$ 167,404	34,992	$8,700,000	$ 1,200,000	$ 1,500,000	$ (1,332,596)
2017	$ 488,245	100,742		$ 1,200,000	$ 1,500,000	$ (1,011,755)
2018	$ 446,241	91,122		$ 1,200,000	$ 1,500,000	$ (1,053,759)
2019	$ 580,167	117,481		$ 1,200,000	$ 1,500,000	$ (919,833)
2020	$ 379,063	76,653		$ 1,200,000	$ 1,500,000	$ (1,120,937)
2021	$ 99,040	20,067		$ 1,200,000	$ 1,500,000	$ (1,400,960)

Exhibit 100, *Staff Rebuttal Report*, pg. 21 lns. 1 – 4. These tables plainly show that the existing CC Network has failed to cover either the depreciable annual percentage of its initial capital costs or the operation and maintenance costs. Considering this data, there is no reason to assume that Evergy's proposed commercial rebate program will do better. This is especially true when you consider that the Commercial rebate program will be directly competing against the existing CC Network for usage.

The exiting CC Network and many of the chargers that might be installed under this commercial rebate program will be competing for the same pool of EV drivers. As such, any third party that builds, owns, or operates an EV charging

station for profit will see Evergy's clean charge network as a direct competitor. Tr. Vol 2. Pg. 300 ln. 24 – pg. 301 ln. 6 ("Q. If you are EVGo and your business model is to make money by selling electricity through charging stations, you would agree that each other charging station is a competitor to you? A. That can be, yes. If you're standalone facility and you're solely built to sell electricity then other stations could be and you'll probably consider that in your location that you build." (cross-examination of Evergy Witness Ives); Tr. Vol 3 pg. 500 lns. 10 – 13 ("I could see if they -- if Evergy and the commercial customer are providing the same service to public customers who are EV drivers, I can see where that could be viewed as competition." (cross-examination of Staff witness Kliethermes)). This ironically means that Evergy's two programs are effectively cannibalizing one another. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 18 lns. 3 – 20. The existing CC Network (and the proposed expansion that is part of this application) will therefore actively make it much harder for third parties to enter into the EV charging station market:

> Q. Finally, there's been quite a bit of discussion about third-party charging providers and the interactions that they would have in this case. How do you think a ratepayer-funded command control EV charging stations would help or hinder competition?
>
> A. It would hurt it. Unequivocally hurt it. Look no further. A lot of the focus on the competition, you know, I think has been misguided. The idea is well, you know, ChargePoint's in this case. And it's not just about ChargePoint or having EVGo. It's about locking your -- it's about what is great about the market. And what's great about a market is variety. What's great about a market is that risk -- that skin in the game risk that induces innovation, that induces competition. And really what I am speaking to -- look at the CCN network. What is the CCN network?

> That's a command control network that went into place that is not being utilized. That's effectively a stranded asset. We know that because they're not getting any revenues. They're not getting the revenues to cost its annual upkeep. They sure as heck aren't not getting enough revenues to go ahead and cover its overall total cost. It's questionable whether it ever will. One of the reasons why is because they are slow charging stations. I would argue that it's effectively close to being obsolete technology or will be in the future.

Tr. Vol 3 pg. 530 ln. 13 – pg. ln. 11 (cross-examination of OPC witness Marke). Moreover, it will make it **much** harder for **any** of the additional investments to individually result in sufficient energy usage to justify their installation, effectively diluting any potential benefit that non-EV owners may see from either program. It is most likely for this reason that Evergy is not making any serious effort to suggest that this rebate will result in increased usage "at the pump" that is sufficient to justify their costs. Instead, the Company turns to the second possible justification: the induction of greater EV adoption.

The second argument to justify Evergy's proposed commercial rebate program has already been laid out. To restate it simply, the Company argues that more EV charging stations will lead to more EV cars that will, in turn, consume more energy (whether they charge at home or on the road) to the benefit of all Evergy customers. As difficult as this may be for some to hear, the bitter truth is that the assumption that more EV charging stations will automatically lead to more EV cars on the road has been disproven. The final nail in the coffin for this misguided postulation should be the fact that the current saturation of Evergy's service territory with EV charging

stations due to the CC Network **has not** resulted in any significant increase in EV adoption rates.

The OPC's expert witness Dr. Geoff Marke was the only witness to present evidence as to the actual number of EVs registered to owners living in Evergy's service territory. This data was based on the information of another Missouri Government agency, the Department of Revenue, which no party directly refuted. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 9 fn. 14. The data provided by Dr. Marke shows that over Evergy's **entire** service territory (meaning **both** Missouri West and Missouri Metro **combined**) there were only 1,305 battery powered EVs and 107 plug-in hybrid EVs at the end of October 2020, for a total of 1,412 EVs. Exhibit 204, *Rebuttal Errata Sheet of Dr. Geoff Marke*, pg. 1. To give that number relevance, let us consider it in several different contexts. First, please consider that the 2015 EPRI report developed by Evergy predicted that under the Company's **low** adoption standard, there should be 1,424 EVs in the Evergy Metro service territory and 739 EVs in the Evergy West service territory at year-end 2020. Exhibit 202, *Evergy 2015 EPRI Study*, pgs. A-1, B-1. This means that Evergy is **already behind** its **low** EV adoption predictions, which directly contradicts what the Company is now seeking to claim.

Evergy witness Charles Caisley testified in surrebuttal that the EV growth "Evergy has observed through the years has largely been consistent with" the medium adoption scenario predicted in the 2015 EPRI report. Exhibit 3, *Surrebuttal Testimony of Charles A. Caisley*, pg.14 lns. 5 – 8. Mr. Caisley is clearly incorrect. As

has already been shown, Evergy's EV adoption rates are lagging behind its **low** adoption scenario and are nowhere near the medium scenario. *Compare* Exhibit 204, *Rebuttal Errata Sheet of Dr. Geoff Marke*, pg. 1; *and* Exhibit 202, *Evergy 2015 EPRI Study*, pgs. A-1, B-1. For example, the 2015 EPRI study predicted that there would be 4,058 EVs in Evergy Metro and 2,155 EVs in Evergy West at year end 2020, for a grand total of 6,213 EVs in Evergy's entire Missouri territory. Exhibit 202, *Evergy 2015 EPRI Study*, pgs. A-1, B-1. Instead, Evergy's combined service areas have 1,412 EVs total, or less than 25% of its "medium" adoption scenario. Exhibit 204, *Rebuttal Errata Sheet of Dr. Geoff Marke*, pg. 1. Mr. Caisley's confusion seems to lie with the fact that the US Department of Energy reported Missouri **total** EV registrations at June of 2021 to be 6,740 vehicles. Exhibit 205, *Rebuttal Workpapers of Dr. Geoff Marke*, pg. 1. In other words, Mr. Caisley would be right, if you assumed **all** EVs in the **entire state of Missouri** were **exclusive** to Evergy's service territory. However, we know that this is simply not true.

The same data provided by Dr. Marke shows that even if you consider all counties that Evergy Missouri Metro **and** West serve to any extent whatsoever, the number of EVs registered makes up only a fraction of the total number of registered EVs for the entire state. Exhibit 205, *Rebuttal Workpapers of Dr. Geoff Marke*, pg. 2. Based on Dr. Marke's workpapers, for example, we can quickly calculate that there were 6,463 registered EVs (both full battery and plug-in hybrids) in the state at the end of October 2020. *Id*. at pgs. 2 – 3. This means that all the EVs registered in every county touched by Evergy's entire Missouri service territory (1,412 EVs) only made

up about 22% of the total number of registered EV's in the State. By comparison, "[t]he combined areas of St. Louis County, St. Louis City and St. Charles County have 3,681 registered battery and plug-in EVs . . . ." Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 10 lns. 3 – 4. That means that these three counties on their own made up 57% of the State's EV registrations. This stark difference between the number of EVs's in Evergy's **entire** service territory and the number in just St. Louis County, St. Louis City, and St. Charles County only further demonstrates the absurdity of Evergy's claim that its EV infrastructure build out has been an effective means of promoting EV adoptions.

There is a small chance that Evergy might try to argue that these numbers are misleading because of the difference in population in the subject areas and that EV adoption needs to be considered on a *per capita* basis. To that end, the OPC notes that even if considered on a *per capita* basis, the data still shows that Evergy has not been anywhere near as successful as other parts of the state in prompting EV adoptions even after spending nearly $10 million on EV infrastructure. To demonstrate, consider the table below that shows the number of EVs in Jackson County, St. Louis County, St. Louis City, and St. Charles County:

Column A: County	Column B: County Population[5]	Column C: Number of registered EVs (Battery + Plug-in Hybrid)[6]	Column D: EV *per capita* (Column C divided by Column B)	Column E: Population per single EV (Column B divided by Column C)

[5] 2019-2020 OFFICIAL MANUAL OF THE STATE OF MISSOURI 788 – 91, *available at* https://www.sos.mo.gov/bluebook/2019-2020.
[6] Exhibit 205, *Rebuttal Workpapers of Dr. Geoff Marke*, pgs. 2 – 3.

Jackson	687,623	910	0.001323	755.6297
St. Louis County	998,954	2527	0.00253	395.3122
St. Louis City	319,294	449	0.001406	711.1225
St. Charles County	385,590	705	0.001828	546.9362

This table shows that Jackson County (which accounts for 65% of all registered EVs in Evergy's entire Missouri Service territory) still has less EVs *per capita* than either St. Louis County, St. Louis City, or St. Charles County. Further, the comparison between St. Louis City and Jackson County shows that, for major metropolitan areas, the rate of EV adoption has been effectively the same regardless of major EV charging infrastructure deployment. This all just goes to prove how flawed Evergy's assumption that the commercial rebate program will have any benefit for non-EV owners.

Please recall that the purpose of this digression is to show how wrong it is for Evergy to take for granted that more EV charging stations in its service territory will lead to more EV cars (which will consume more electricity) to the benefit of all Evergy's customers. The "more EV charging stations equals more EV cars" hypothesis is simply wrong, as shown by the actual EV adoption numbers presented in this case. This is all very important because, again, Evergy's argument for why these programs will benefit its customers are based exclusively on the idea that they will promote more EV adoptions (and thus increase load). Exhibit 100, *Staff Rebuttal Report*, pg. 16 lns. 12 – 13 ("Evergy's position is that the chargers subsidized under these programs will cause new load, and that the growth of load will exceed the value of the

capacity and energy costs it causes."). In fact, that assumption is so fundamental, that it is effectively taken for granted by the cost benefit analysis performed by ICF and provided by Evergy in this case. As explained by Evergy witness: "ICF's analysis does not attempt to model the cost effectiveness of each proposed program, or the proposed portfolio of programs, **because it is very difficult to definitively link EV adoption and EV programs, regardless of the funding source or administrator**." Exhibit 6, *Surrebuttal Testimony of Timothy M. Nelson*, pg. 7 lns. 18 – 20 (emphasis added). "Instead, ICF's methodology considers the costs and benefits of market-wide EV adoption as a whole rather than attempting to isolate the costs and benefits associated with Evergy's proposed programs." *Id*. at lns 21 – 23. This frank admission by Evergy demonstrates how erroneous their thinking is.

Evergy has effectively admitted that it has no way of knowing if this Commercial rebate will actually induce more EV cars. The data clearly shows that it is highly unlikely that this program will induce greater EV adoption given how paltry current EV adoptions are in Evergy's service territory despite the existing CC Network. Shackled with the constraints of this reality, Evergy is now seeking to fundamentally alter what it means to be "cost effective" in the vain attempt to confuse the Commission into believing this program makes sense. Specifically, the Company argues that, as long as the cost of the program does not exceed the increased revenue from what the Company **predicts** EV adoption rates are going to be, the program is "cost effective" *Id*. at pg. 8 lns. 4 – 7 ("ICF's cost effectiveness evaluation concludes that—for the range of assumptions and scenarios analyzed—there is a net benefit to

all customers when the revenues from EV adoption over the next 10 years are weighed against the projected costs to serve these EVs in terms of energy, capacity, and charging infrastructure."). There are two massive problems with this logic, and both need to be addressed: (1) a program is not cost effective because of increased revenues unless it is **actually responsible** for those increased revenues, and (2) the EV adoption rates used in the cost effectiveness study pre-date the implementation of any of the programs proposed in this case. Let us consider each in turn.

Regarding the first, to determine whether a program is cost effective one must look at the benefits produced by that specific program against the cost of that specific program. Evergy has already stated that it did not develop **any** means to determine the individual benefit (*i.e.* increased EV adoption) of any one given program in its analysis. *Id*. at pg. 7 lns. 18 – 20. Instead, the Company is arguing that the cost of the program should be compared to the benefits EVs provide in general. The problem here is that if the programs do not actually induce any additional EV adoptions, then it is entirely unreasonable to assign the benefit of EVs "in general" to that program for purposes of the cost benefit analysis. In other words, the Company is assigning benefits to programs without any evidence to show that those benefits actually arise from the program itself.

To further demonstrate this point, please consider an analogy. Imagine a farmer who owns a 1,000 acre farm on which he plants corn. This farmer hires a pagan druid to perform a ritual sacrifice designed to increase the size of his corn harvest. The farmer pays this druid $25,000 for his work. The farmer then harvests

his corn and sells it at market for $900,000. The farmer happily declares that hiring the druid was cost effective because the $25,000 he spent is less than the $900,000 he made. This is clearly nonsensical thinking. There is no evidence that the sacrifice performed by the druid actually did **anything** to increase the yield of the farmer's corn harvest. Moreover, even if you assume that the druid did manage to accomplish *something*, there is still nothing that shows how much the sacrifice increased the harvest by. This is essential because to truly measure how cost effective hiring the druid was, you have to measure his cost against the increased corn yield that can be specifically attributed to **the druid**. Despite what should be the overwhelming obviousness of this statement, Evergy has effectively adopted the exact same position as the farmer in this analogy.

Replace hiring the druid with building/rebating EV charging infrastructure and the farming of corn with the sale of electrical power to EVs and you reach the present situation. Evergy is arguing that the cost of all its proposed portfolio programs is less than the increased revenue it would receive if there was widespread EV adoption and thus the programs are cost effective. Yet, there is no analysis to shows that any of the programs will successfully lead to widespread EV adoption or even to show how many more EVs any one given program is likely to induce. Therefore, Evergy has no better reason for believing that these programs will be cost effective then the analogous farmer has for believing that his druid lead sacrifice will be cost effective. In fact, Evergy could literally add "druid led sacrifice to promote EVs" to its list of proposed programs and the cost-benefit analysis performed by ICF

would **still** show it is "cost effective" under Evergy's argument so long as the druid was paid less than the "benefits of market-wide EV adoption as a whole." That is how patently absurd the cost benefit "analysis" performed by ICF is, and this absurdity somehow gets worse when you move to the second point for consideration.

The ICF cost benefit "analysis" used the 2015 EPRI study as the basis for its EV adoption rate predictions. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, Appendix C pg. 5 ("EPRI provided low, medium, and high EV population projections with their associated energy (MWh) impacts for each Evergy jurisdiction past 2019. ICF used **these** projections to estimate year-by-year EV adoption out to 2040 within the Evergy Missouri Metro service territory for this analysis." (emphasis added)). The 2015 EPRI study was commissioned by Evergy to justify its **initial** build out of the CC Network, as the adoption rates were what EPRI predicted would occur because of the CC Network. Exhibit 202, *Evergy 2015 EPRI Study*, pg. 2-4 ("For this study, the starting point for the projections is the actual 2014 PEV registrations in each service territory prior to the construction of KCP&L's Clean Charge Network, which consists of over 1,000 electric vehicle charging stations, more than any city in the United States. Sales were then projected over time using estimates for three potential levels of PEV adoption: low, medium, and high."). None of the currently proposed programs were included or considered as part of the EPRI study because the EPRI study predates those programs by a wide margin. That means that **all** the proposed "benefits of market-wide EV adoption as a whole" considered in the ICF report (which are again based on the 2015 EPRI study) should

occur **regardless** of the implantation of **any** of the programs Evergy is now proposing. There is thus absolutely nothing in the ICF report to show that the current proposed program portfolio will produce any actual benefits at all let alone how those programs would be cost effective. This is, of course, to say nothing of the fact that the actual EV adoption rates in Evergy's service territory are already falling below the low adoption rates predicted in the 2015 EPRI study on which the ICF report was developed, which only further demonstrates the inherent flaws in Evergy's analysis. *Compare* Exhibit 204, *Rebuttal Errata Sheet of Dr. Geoff Marke*, pg. 1; *and* Exhibit 202, *Evergy 2015 EPRI Study*, pgs. A-1, B-1.

At the end of the day, the overwhelming evidence points to just one conclusion: additional deployment of EV charging infrastructure does not equate to an increase in EV adoptions. Evergy has no cost benefit analysis to shows that this Commercial EV charging station rebate program will induce more people to buy EVs and experience with the CC Network shows that this is highly unlikely to occur. Instead, this continued build out of commercial facing EV sites will only serve to cannibalize the existing CC Network and/or be exploited by free-riders. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 18 lns. 6 – 9. There is simply no evidence to support the idea that this proposal will be in any way cost effective and Evergy's customers should not be saddled with the burden of paying for the Company's ineffective vanity projects. This is made only doubly true when one considers the massive amount of federal funding that will soon be made available for this very type of program.

Evergy's proposed ratepayer-backed program is made unnecessary by federal funding

U.S. President Joe Biden signed into law the Infrastructure Investment and Jobs Act on November 15, 2021. H.R.3684 - Infrastructure Investment and Jobs Act, https://www.congress.gov/bill/117th-congress/house-bill/3684 (last visited November 17, 2021) (showing that the bill has been signed by the president and "became law"). This legislation is "one of the most substantial federal investments in roads, bridges, rail and EV charging stations in decades" Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 12 lns. 4 – 6. In a press briefing, the White house indicated that this bill included the following funding dedicated to Electric Vehicle infrastructure:

> Electric Vehicle Infrastructure
>
> The Bipartisan Infrastructure Deal will invest $7.5 billion to build out the first-ever national network of EV chargers in the United States. The deal is also a critical element in the Biden-Harris Administration's plan to accelerate the adoption of EVs to address the climate crisis and support domestic manufacturing jobs. The deal will provide funding for deployment of EV chargers along highway corridors to facilitate long-distance travel and within communities to provide convenient charging where people live, work, and shop – and funding will have a particular focus on rural, disadvantaged, and hard-to-reach communities.

White House Briefing Room, *FACT SHEET: The Bipartisan Infrastructure Deal Boosts Clean Energy Jobs, Strengthens Resilience, and Advances Environmental Justice*, The White House (November 8, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/08/fact-sheet-the-bipartisan-infrastructure-deal-boosts-clean-energy-jobs-strengthens-resilience-and-advances-environmental-justice/; Exhibit 100, *Staff Rebuttal Report*, pg. 28 lns. 9 – 13. The OPC's witness Dr.

Geoff Marke noted the following with regard to this funding and its application to just Missouri:

> Missouri was given a preview of its likely allocation of the Infrastructure Investment and Jobs Act several days ago. As it pertains to EV charging station funds in Missouri, the White House stated:
>
> > Under the Infrastructure Investment and Jobs Act, **Missouri would expect to receive $99 million over five years** to support the expansion of an EV charging network in the state. Missouri will also have the opportunity to apply for [an additional] $2.5 billion in grant funding dedicated to EV charging in the bill. (emphasis added)

Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 12 lns. 9 – 16. "[E]ven the most pro-EV advocate can recognize the need to exercise managerial prudency and see how things play out at the federal level first before investing further in EV charging stations on top of existing EV charging stations." *Id*. at lns. 23 – 25.

There is simply no justifiable excuse for Evergy to demand its customers pay for programs designed to accomplish the same goals the Federal Government is prepared to spend nearly $7.5 Billion on. Putting that dollar amount in perspective, please consider that the entire $10 million budget Evergy is requesting for the Commercial rebate program is approximately 0.13% of what the Federal government has earmarked. Exhibit 100, *Staff Rebuttal Report*, pg. 2 ln. 12. In fact, the Federal government could fund Evergy's **entire** portfolio ($15,590,000) with about one fifth of one percent (0.2%) of the entire budget the Act set aside exclusively for EV charging station deployment. *Id*. Why then should the Commission rush to approve this

program being funded on the backs of Evergy's captive customers? The money for these projects is already practically at hand; the Commission should just wait for the funding to be released and allow those funds to cover the cost of any additional EV infrastructure build out.

The OPC does not wish to belabor the point, but the incontrovertible imprudence of paying for costs that will soon be covered by the federal government is a matter that needs to be emphasized. Just imagine being an Evergy customer who is told, "You will pay through rates what everyone else in Missouri and across the Country will be receiving for free." Worse yet, consider the possibility that the Federal Government might look to the current, extensive build out of EV charging infrastructure in Evergy's service territory and decide there is "no compelling argument for further duplicative infrastructure as continuing to invest in EV charging stations on top of EV charging stations will result in diminishing returns." Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 10 lns. 16 – 19. It is hard to imagine what the public reaction would be to learning that the funding of EV charging stations with customer money inadvertently lead to Evergy being partially or wholly passed-over for federal funding. Fortunately, the Commission can easily avoid such an outcome by simply waiting until after the Federal Government has taken the first move to fund EV infrastructure deployment in Evergy's service territory. Moreover, if, for whatever reason, the federal funding is not sufficient to fully cover the EV charging needs of Evergy's service territory, then the Commission

would still be free to approve further funding in the future. Again, the answer is as clear as day: just wait for the federal funding.

Conclusion

"As a point of reference, Evergy West and Evergy Metro combined have less than half the number of non-residential customers as compared to Ameren Missouri; however, Evergy is requesting approximately $4 million more than Ameren Missouri's approved budget for Commercial EV charging rebates." Exhibit 100, *Staff Rebuttal Report*, pg. 17 ln. 23 – pg. 18 ln. 3. This request is unreasonable and unconscionable. Not only is Evergy seeking far more money than a utility with twice as many customers for the same end, "there are already 900+ EV charging stations in Evergy's service territory not to mention the additional private EV charging stations not funded by ratepayers (and any future EV charging stations that may materialize from federal funding)." Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 18 lns. 4 – 6. There is no reason for the Commission to believe that the proposed commercial EV infrastructure rebate program will produce benefits for Evergy's customers sufficient to justify the investment. The misguided hypothesis that adding more charging stations to compete with the already large and rarely used CC Network will result in greater EV adoptions (and thus more revenue for the company) is wholly unfounded and has been decisively refuted by comparing the current EV adoption rates in Evergy's service territory – that has an extensive EV charging network – to the same rate in the rest of the State. Moreover, Evergy's offered cost benefit analysis does not attempt to show or even test whether the

commercial rebate program will encourage more EV adoptions, which Evergy freely admits. Finally, the massive amount of federal funding that will soon be made available for these very programs renders Evergy's proposed ratepayer backed program both superfluous and imprudent. For these reasons, the Commission should not approve the offered commercial EV infrastructure rebate program.

Issue 3 sub-a: If the Commission approves Evergy's proposed Commercial EV Charger Rebate Program, should the Commission modify the program consistent with ChargePoint's recommendations?

The Commission should not modify the program consistent with ChargePoint's recommendations These recommendations are all self-serving attempts to promote ChargePoint's own business at the expense of Evergy's ratepayers. Dr. Marke explained:

> I fail to see why charger utilization data would/should be prohibited from being shared with Evergy. This suggestion seems to be here merely to make it easier for ChargePoint to sell its product. Predictably, ChargePoint has very little concern with what the impact on the grid will be or the results of actual utilization is from the EV station. Of course, these are two data points that regulators should be very keen to know. For example, data shows that Evergy's CCN hasn't been able to cover its costs due to lack of charging and that further investment would trigger a sunk cost fallacy where we would be throwing good money at bad. ChargePoint's modification to not make this information transparent is bad policy.
>
> As it pertains to ChargePoint's recommendation to remove the demand response event requirements, I am more sympathetic. However, this is almost entirely because of the lack of information, terms, or any details on Evergy's part. The inclusion of this provision by Evergy appears to be merely aspirational at this point as it is void of any explanation. Given Evergy's less than stellar history behind utilizing ratepayer invested CAPEX on demand response events I am even more skeptical than I

> would be otherwise. I am also unaware of any utility utilizing EV charging stations for demand response events anywhere. It is my understanding that at this point, it is merely theoretical.

Exhibit 201, *Surrebuttal Testimony of Dr. Geoff Marke*, pg. 7 ln. 22 – pg. 8 ln. 13. There is no reason for the Commission to approve either of ChargePoint's recommendations.

Issue 3 sub-b: If the Commission approves Evergy's proposed Commercial EV Charger Rebate Program, should the Commission require that 20 percent of Commercial Rebates be reserved for multi-family locations?

Evergy currently proposes to include multi-family as one of four (or five depending on how one counts) potential "site types" for the installation of EV charging stations under this proposed commercial rebate program. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 25. However, Evergy is also seeking "unfettered discretion in budgeting among sub-programs, and does not include provisions countering against duplication of charger availability in areas already (or proposed to be) served by the Clean Charge Network." Exhibit 100, *Staff Rebuttal Report*, pg. 18 lns. 11 – 13. As such, there is presently no guarantee that any of the $10 million in funding for the commercial rebate program will go toward multi-family dwellings. Sierra Club has recommended that the Commission require that 20% of Commercial Rebates be reserved for multi-family locations. Exhibit 700, *Surrebuttal Testimony of Max Baumhefner*, pg. 18 lns. 13 – 15. However, whether the commercial rebate charging stations are installed at multi-family dwellings as opposed to anywhere else will have no material effect on their ability to induce EV

adoptions (which the data shows is non-existent). Therefore, these chargers will not produce any benefits sufficient to justify requiring non-EV owners to pay for them regardless of where they are located. Given that the proposed Commercial EV Charger Rebate Program can be broken down into five distinct categories (Highway, Non-highway Public, Fleet, Workplace, and Multi-family), the Commission should just require Evergy to apply 20% of the rebates to each program if it is going to start making such decisions. After all, there is just as much of a reason to require Evergy to reserve 20% to **each** program as there is to **just** multi-family. At the end of the day, though, this entire exercise is the equivalent of arguing over the arrangement of deck chairs aboard the Titanic. The harm to non-EV owning Evergy customers will be complete the second the Commission approves the program, regardless of where new charging stations are built.

Issue 3 sub-b: If the Commission approves Evergy's proposed Commercial EV Charger Rebate Program, should the Commission order rebate incentive amounts be capped on a percentage basis to not exceed 20% of the total costs for a charger station?

If the Commission approves Evergy's proposed Commercial EV Charger Rebate Program, it should order rebate incentive amounts be capped on a percentage basis to not exceed 20% of the total costs for a charger station. Absent modification, Evergy' proposal is highly likely to result in significant free riders. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 18. lns. 7 – 8. For example, "[i]f a Company makes a green pledge to utilize an EV fleet they will invest in EV chargers at their workplace regardless of whether or not Evergy provides ratepayers subsidies." *Id.* at

lns. 22 – 23. The best way to address this free rider problem is to order a cap placed on the costs that can be incentivized for each charger station:

> **Q. Are there any ways that the free rider problem might be addressed?**
>
> A. If the Commission approves any part of the Commercial electrification section of the application I would highly recommend that, at a minimum, the rebate incentive amounts should also be capped on a percentage basis to not exceed 20% of the total costs for a charger station. A 20% discount should be enough enticement for customers who are "on the fence" and minimize the impact of the inevitable free riders that will take advantage of the offer.

Id. at pg. 18 ln. 24 – pg. 19 ln. 2. As such, the Commission should order just such a cap so that it might hope to mitigate the free rider problem to some extent.

Issue 4: Should the Commission approve Evergy's proposed Electric Transit Service Rate?

The primary point in contention in this issue is whether the Commission may legally change the rate for electrical service outside of a general rate case. Before diving into the weeds on that point, the OPC wishes to take a moment to examine just how absurdly futile this debate is. Evergy has filed its 60-day notice for a general rate increase in cases ER-2022-0129 and ER-2022-0130 for Evergy Missouri Metro and Evergy Missouri West, respectively. If the same Electric Transit Service Rate was presented in either of those cases, then the legal quandary now before the Commission would disappear entirely. Further, even if the Commission does approve Evergy's proposed Electric Transit Service Rate, that rate would still be subject to review in those same general rate cases. To repeat, Evergy's proposed Electric Transit Service Rate will, if approved, at best go into effect just as the process of reviewing that rate in a general rate case begins. Naturally, this begs the serious question: why does Evergy not just withdraw these rates and re-file them in 60 days' time so as to remove the entire legal debate.

The OPC is loath to attempt fathoming Evergy's reasoning for instigating a legal dispute over whether the Commission can change rates outside of a general rate case mere months before the Company files direct in its general rate case. However, the OPC does suspect that Evergy's issue might be related to the delay between the date of the rate case filing and the date the tariffs that result from the Commission's decision in the rate case will go into effect. To that end, the OPC feels that it is

important to outline just how small an effect this proposed rate would have and how meaningless the potential delay would be.

The Electric Transit Service rate is specifically tailored to transit bus fleet customers in Missouri. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 27. "Evergy anticipates that **no** customers will immediately be served on the ETS rate **and only a nominal amount** of consumption is expected to be served pursuant to the rate in the near term." *Id.* In fact, Evergy has only indicated **one** potential user of this new rates, the Kansas City Area Transportation Authority, who has purchased a grand total of **two** EV buses. *Id.* at 28. That is all that there is to this whole issue. Evergy has stirred up an extensive legal debate over whether it should be allowed to change its rates now as opposed to waiting until a general rate case to account for a single customer that has only two busses to serve. This is truly an absurd situation.

There is a very simple answer available to the Commission with regard to this issue: deny the requested Electric Transit Service Rate and allow Evergy to re-request the rate in its soon-to-be-filed general rate case. This delay is hardly likely to cause any real pain to anyone because the Company itself has stated that it does not expect any customers to be immediately served on the rate. *Id.* at 27. There *is* an immediate benefit from denying the requested rate, however, in that it would permit the Commission to side step a contentious legal issue. This is an instance where a very small amount of patience could resolve and remove a potentially quite large

headache. Nonetheless, the OPC will now proceed to discuss the legal merits of the present issue.

Issue 4 sub-a: Is it lawful for the Commission to approve a rate for this new service outside of a general rate case?

It is well established under Missouri law that the Commission must consider "all relevant factors" when setting rates for a utility. *State of Mo. ex rel. Pub. Counsel v. PSC of Mo.*, 397 S.W.3d 441, 448 (Mo. App. WD 2012) ("In reliance upon § 393.270.4, Missouri courts have traditionally held that the Commission's 'determination of the proper rate for [utilities] is to be based on all relevant factors rather than on consideration of just a single factor.'" (quoting *State ex rel. Midwest Gas Users' Ass'n v. Psc*, 976 S.W.2d 470, 479 (Mo. App. WD 1998)). "Thus, when a utility's rate is adjusted on the basis of a single factor, without consideration of all relevant factors, it is known as single-issue ratemaking." *Id.* "Single-issue ratemaking is generally prohibited in Missouri 'because it might cause the [Commission] to allow [a] company to raise rates to cover increased costs in one area without realizing that there were counterbalancing savings in another area.'" *Id.* (quoting *Midwest Gas Users'*, 976 S.W.2d at 480)). Because the proposed Electric Transit Service Rate is being offered outside of a general rate proceeding, it is being offered without "all relevant factors" being made available for consideration. Approval of the proposed Electric Transit Service Rate would thus constitute prohibited "single issue ratemaking"

Sensing this problem, Evergy has attempted to rebut the charge that their rate constitutes single-issue ratemaking by relying on *State ex rel. Sprint Spectrum L.P. v. Missouri Public Service Com'n* (hereinafter the *Sprint* case). Exhibit 4, *Surrebuttal Testimony of Darrin R. Ives*, pg. 4 lns 11 – 12. However, Evergy's reliance on this case is misplaced. To fully understand why, one must first understand the underlying nature of the dispute in the *Sprint* case. The Court does a good job of summing up the issue at the beginning of the Opinion:

> This litigation involves a dispute concerning how small rural telephone companies ("rural carriers") in western Missouri can be compensated for delivering calls that originate from wireless phones. Currently, the wireless companies direct their originated calls to a large interexchange carrier for transport to the destination telephone within the network of one of the rural local exchange companies. Although the wireless customers pay the wireless companies for originating such calls, and the wireless companies compensate the large interexchange carrier for transporting the traffic, this dispute arose because no one compensates the rural carriers for the use of their networks in completing these calls. The rural carriers initiated this proceeding by filing tariffs, with the Missouri Public Service Commission, to establish rates, terms, and conditions for delivering the wireless originated traffic to their local customers.

State ex rel. Sprint Spectrum L.P. v. Mo. PSC, 112 S.W.3d 20, 22 (Mo. App. WD 2003).The critical thing to understand here is that the rates at issue were designed to cover an entirely new service offered by rural phone companies: the completion of calls originating form wireless service providers. This was necessary because "no one [would compensate] the rural carriers for the use of their networks in completing these calls" in the absence of the new rates. *Id*. Thus this was a "new" service offered

by the rural phone company in the sense that, absent the rate, there was no compensation for the service being performed.

The fact that the rural phone company was offering a new service for which it would otherwise not receive compensation was instrumental to the Court's finding. Specifically, the Court found the rationale behind the prohibition on single-issue ratemaking did not apply "in the instant case because tariffs have never been established for the rural carriers' termination of the wireless-originated traffic." *Id*. at 28. Because there was no existing rate for the service being provided (the termination of the wireless-originated telephone traffic), the Court found it was distinguishable from other cases that dealt with attempts "to increase or change *existing* rates." *Id*. (emphasis in original); *see also Id*. ("These cases are clearly distinguishable from the subject dispute because no rates existed at the time the rural carriers filed for approval of Wireless Termination Service tariffs."). The question before the Commission is therefore simply this: is the provision of electricity for the charging of electric busses a service that Evergy **does** receive compensation for under an existing rate or is it a service that Evergy **does not** receive compensation for under an existing rate. If Evergy does receive compensation for charging electric busses under an existing rate, then the proposed Electric Transit Service Rate would change the existing rate for that service and thus be single-issue ratemaking. If Evergy does not receive compensation for charging electric busses under an existing rate, then the proposed Electric Transit Service Rate would be directly analogous to the new rate

for the termination of wireless-originated telephone traffic that was at issue in the *Sprint* case and would therefore not be single-issue ratemaking.

Evergy currently receives compensation for charging electric vehicles under its existing rates. Tr. vol. 3 pg. 484 ln. 22 – pg. 485 ln. 3 ("Q. Is it correct to say that existing electric vehicles in Evergy's service territory are already capable of being charged off of Evergy's existing rates? A. Yes. So, yes. So customers who currently -- or businesses who currently have charging facilities that they own are currently being billed under tariff -- currently tariffed rates for Evergy." (cross-examination of Staff witness Kliethermes)). The Electric Transit Service Rate Evergy proposes is therefore not a "new service" as the Company claims. Tr. vol. 3 pg. 485 lns. 4 – 10 ("Q. So then it is correct to say these rates -- these proposed rates are not offering a new service? A. No, unless you are defining the TOU option of it as a new service, but otherwise customers who are -- who have electric vehicle charging, but business customers are already being served on tariffs. So these are not offering new electric service." (cross-examination of Staff witness Kliethermes)). This point was further established by the OPC's witness during the hearing:

> Q. Let's look at some specific examples. I believe you talked about this briefly with Staff. Are you aware that Kansas City Metro, the city itself already has transit vehicles that are electric?
>
> A. Yes.
>
> Q. And Kansas City is able to charge its transit vehicles, despite the fact that there is currently an Evergy electric transit service rate schedule?
>
> A. Right. So the electric streetcar or electric buses would be charged under one of the current general service rate schedules.

Q. So then this would not be a new service because they're already able to access electric service under current tariffs?

A. Correct.

Tr. vol. 3 pg. 549 lns. 7 – 21 (cross-examination of OPC witness Marke). The plain evidence thus clearly shows one thing: Evergy is currently receiving compensation for the provision of electricity to electric vehicles (including electric transit vehicles), which means that the present situation is nothing like what occurred in the *Sprint* case where the rural telephone service providers were not being paid for their services. *State ex rel. Sprint Spectrum L.P. v. Mo. PSC*, 112 S.W.3d 20, 22 (Mo. App. WD 2003) ("this dispute arose because no one compensates the rural carriers for the use of their networks in completing these calls.").

Having refuted Evergy's reliance on the *Sprint* case, it quickly becomes clear that the present Electric Transit Service Rate is nothing but an attempt to engage in single-issue ratemaking. Evergy's proposed Electric Transit Service Rate seeks to change a rate for an existing service for an existing customer without an all relevant factors review. Evergy is free to request such new rate, but to avoid single-issue ratemaking concerns it needs to request the new rate in a general rate case with an "all relevant factors" review necessary for properly setting utility rates under Missouri law. *State of Mo. ex rel. Pub. Counsel v. PSC of Mo.*, 397 S.W.3d 441, 448 (Mo. App. WD 2012). As previously stated, the Commission should thus deny this request and wait for Evergy's next general rate case (which again is set to filed in less than 60 days) so that all relevant factors can actually be considered.

Issue 4 sub-b: Is it lawful for the Commission to approve a rate for this new rate at this time given the Company has elected PISA?

This issue is a distraction. The Commission should not approve the proposed Electric Transit Service Rate because it violates the prohibition on single-issue ratemaking and nothing in the PISA statue permits Evergy to ignore the general prohibition.

Issue 4 sub-c: If the Commission does approve the new rate, should the Company use the revenue received from the rate schedule to offset the costs Evergy is requesting to defer to a regulatory asset account?

Yes. Exhibit 100, *Staff Rebuttal Report*, pg. 5 lns. 4 – 6 ("However, if the Commission approves the Company's BEVCS and ETS rate schedules, Staff recommends the Company use the revenue received from the rate schedules to offset the costs Evergy is requesting to defer to a regulatory asset account.").

Issue 5: Should the Commission approve Evergy's proposed Business EV Charging Service Rate?

The OPC's response to this issue is primarily the same as its response to Issue 4.

Issue 5 sub-a: Is it lawful for the Commission to approve a rate for this new service outside of a general rate case?

See response to Issue 4 sub-a

Issue 5 sub-b: Is it lawful for the Commission to approve a rate for this new rate at this time given the Company has elected PISA?

See response to Issue 4 sub-b

Issue 5 sub-c: If the Commission does approve the new rate, should the Company use the revenue received from the rate schedule to offset the costs Evergy is requesting to defer to a regulatory asset account?

See response to Issue 4 sub-c

Issue 6: Should the Commission approve Evergy's proposed cap increase for the Clean Charge Network Expansion?

There are three separate components of Evergy's proposed cap increase to the CC Network: highway corridor, street lighting, and transportation network companies (rideshare). Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 34. Of these three, the OPC believes that only the cap increase needed to accommodate the streetlight program should be granted. The Commission should deny the cap increase related to the remaining two programs (highway corridor and rideshare) as well as the request by Evergy to grant decisional pre-approval to its proposed expansion.

The primary rationale for why the Commission should deny the requested highway corridor and rideshare expansions is effectively the same as the reasons presented in response to the commercial rebate program. To reiterate, there are two central concerns: (1) the CC Network expansions are not cost effective, and (2) there is no need for ratepayer-backed funding of these expansions in the face of imminent federal funding. Because these two arguments were already discussed extensively with regard to the proposed commercial rebate, the OPC will only briefly summarize those points now as they relate generally to the requested CC Network expansion. In addition, the OPC will later show how these two concerns do not apply to the proposed streetlight expansion.

Starting with the first concern, the existing CC Network demonstrates that the program is already not cost effective. "[O]ver the existing 6 year program life, the

EV chargers currently served under [Evergy's CCN tariff] are not generating revenues that are sufficient to cover the revenue requirement caused by [Evergy's CCN tariff]'s infrastructure and related costs." Exhibit 100, *Staff Rebuttal Report*, pg. 21 lns. 5 – 7. The math underlying this issue crystal-clear, consistent, and certain. The outcome is thus irrefutable: the CC Network is consistently losing vast quantities of money on a yearly basis.

The only possible response by Evergy is to claim that the Commission must consider the energy used by EVs that charge at residential homes as part of the cost-effectiveness of the CC Network. However, considering the energy consumed at residential homes when determining the cost-effectiveness of the CC Network could only ever be possibly justified if the CC Network was somehow responsible for getting residential customers to purchase the EVs in the first place. This is a **monumentally** important point. There is no possible logical justification for attributing the energy used by an EV in a residential home as a "benefit" created by the CC Network unless it can be shown that the EV in question would not have been acquired absent the CC Network. Stated differently, if an EV would have been acquired regardless of the CC Network's existence, then there is no possible logical justification for claiming that the energy consumed by that EV while stationed in a residential home is in any way related to the CC Network. The critical question thus becomes obvious: has the CC Network been successful in spurring more EV adoptions? Sadly, the answer is unmistakably no.

As the OPC has already demonstrated, the rate of EV adoptions in Evergy's service territory pales in comparison to the rate of adoption in other parts of the State **despite** having vastly more charging stations. *See* Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 10 lns. 1 – 6. The mere presence of extensive EV charging infrastructure must consequently not be contributing greatly to whatever is enticing Missouri citizens to purchase EVs. Evergy itself seems to tacitly acknowledge this point because the ICF report it presented to support its position cannot be bothered to even *try* to prove how many EVs the CC Network has managed to induce. Exhibit 6, *Surrebuttal Testimony of Timothy M. Nelson*, pg. 7 lns. 18 – 20. Instead, the Company can only claim specious "estimates" regarding the number of EVs in its service territory. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 13 ("The number of light-duty EVs operating in the Missouri Metro service territory was **estimated** to be . . . ." (emphasis added)). However, these estimates are easily shown to be false by comparing them to the **actual** data provided by the Missouri Department of Revenue and the Federal Department of Energy. Exhibit 204, Rebuttal Errata Sheet of Dr. Geoff Marke, pg. 1; Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 9 fn. 14. When fettered to the facts, Evergy's claim that its program has spurred massive EV adoptions melts away leaving the cold hard truth of the CC Network's failures. The Commission needs to recognize this and stop permitting Evergy to burn through even more ratepayer money with its CC Network, especially in light of the federal funding that will soon be made available.

One of the specific stated goals of the $7.5 billion dollars earmarked for EV infrastructure in the Federal Government's Infrastructure Bill was to "provide funding for deployment of EV chargers along highway corridors to facilitate long-distance travel" White House Briefing Room, *FACT SHEET: The Bipartisan Infrastructure Deal Boosts Clean Energy Jobs, Strengthens Resilience, and Advances Environmental Justice*, The White House (November 8, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/08/fact-sheet-the-bipartisan-infrastructure-deal-boosts-clean-energy-jobs-strengthens-resilience-and-advances-environmental-justice/; Exhibit 100, *Staff Rebuttal Report*, pg. 28 lns. 9 – 13. The OPC's witness Dr. Marke testified how Missouri alone should expect to receive $99 Million of this funding over five years. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 12 lns. 12 – 13. There is no justifiable reason for Evergy to continue expanding its CC Network with ratepayer funds now when the Federal Government is preparing to accomplish the **same** goal. As the OPC pointed out before, the answer is obviously to wait until this federal funding becomes available and is spent down **before** requesting ratepayers foot the bill.

The two reasons thus stated explain why the Commission should deny both the highway corridor and rideshare portions of Evergy's requested CC Network expansion. At a larger level though, it is also important to remember that Evergy is a regulated monopoly that is now seeking to intervene and ingrain itself into a developing competitive market. This is likely to have serious long-term implications on the landscape of the EV charger marketplace in Missouri in general and the

Evergy service territory in particular. The OPC's expert witness Dr. Geoff Marke explained the current situation best in his testimony:

> **Markets will thrive best where there is both the perception and the reality of a level playing field, and that is best accomplished by restricting the ability of regulated utilities from participating**. Public utility regulation is supposed to serve as a proxy for market, not as a means to function as a command-and-control economy.
>
> Natural monopolies entering into a competitive market with the backing of captive ratepayer funds will do nothing but inhibit competition and reinforce long-term market failures. **The fact that these are capital investments for non-essential services cannot be stressed enough**. Utilities have a perverse incentive to build out rate base under cost-plus regulation, as they will earn a profit if they are allowed to add the ratepayer funded EV charging station investments into their rate base regardless of whether or not said investments generate enough revenues to cover their costs or if they are ever actually used. Today, there are free market actors that put up the capital, provide this service, and accept the risks and rewards accordingly. **A subsidized, non-essential rate-base asset disincentives innovation, inhibits private investment, shifts risks to ratepayers, and rewards the utility regardless of the outcome. Such activity would almost assuredly result in regulatory failure and be considered economically inefficient**.

Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 10 ln. 20 – pg. 11 ln. 9. The OPC hopes the Commission will keep these very real and important economic considerations in mind, along with the previously identified cost-ineffectiveness and federal funding issues, when considering the merit of Evergy's request.

Issue 6 sub-a: Should the Commission approve Evergy's request to expand its CCN along the highway corridors?

For the reasons already laid out above, the Commission should not grant Evergy's request to expand its CC Network along highway corridors. In addition, the

OPC also notes that Evergy does not actually know where it is going to place these eight sites that it somehow claims to "need." Instead, "Evergy has described a general framework for identifying the highway location sites, focusing on secondary and tertiary highways that Evergy anticipates third parties will not be interested in installing." Exhibit 100, *Staff Rebuttal Report*, pg.28 lns. 4 – 6. Moreover, of the sites that Evergy has identified as possible locations, nearly half are outside of the Company's service territory. *Id.* at pg. 27 ln. 20 – pg. 28 ln. 1. "To the extent finalized highway corridor stations are located outside of its service territories, Evergy is required to file an application for a Certificate of Convenience and Necessity." *Id.* at pg. 28 lns. 1 – 3. Evergy has filed no such application. The Commission should thus deny Evergy's request until it can, **at a minimum**, identify where these requested EV charging stations will actually go.

Issue 6 sub-b: Should the Commission approve Evergy's request to partner with the Metropolitan Energy Center and the City of Kansas City, Missouri to pilot streetlight charging installations in the city's right of way?

This program does not suffer from the same problems plaguing the other two CC Network expansion requests. For example, there is no need to wait for federal funding with regard to this requested CC Network expansion because the expansion is already being funded by the federal government. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 35 ("The U.S. Department of Energy awarded a grant to demonstrate and test the benefits of curbside charging for EVs utilizing streetlight infrastructure."). In the same vein, there is substantially less

concern that this investment will not be cost effective because Evergy is not responsible for paying the majority of the costs due to the aforementioned federal grant. Finally, unlike the highway corridor expansion, the Company has been able to provide the parties with detailed information regarding exactly where it expects these chargers to be built.[7] Given that this program is already being funded heavily by the federal government and is much more clearly defined and supported, the OPC does not oppose it. That being said, the OPC does still support Staff's recommendation "that the Commission order Evergy to develop its own pilot metrics and learning objectives and file a report to the Commission after 3 years." Exhibit 100, *Staff Rebuttal Report*, pg. 27 lns. 1 – 3.

Issue 6 sub-c: Should the Commission approve Evergy's request to utilize some of the charging stations under the cap towards use by transportation network companies ("TNCs")/rideshare companies?

For the reasons already laid out above, the Commission should not grant Evergy's request to expand its CC Network towards use by TNCs/rideshare companies. More importantly though, the Company has offered effectively no explanation for how this proposal would even work. "Evergy has not identified locations for rideshare chargers or partnership opportunities." Exhibit 100, *Staff Rebuttal Report*, pg. 27 lns. 9 – 10. "Additionally, Evergy has not presented even a general framework for how such a partnership would be structured." *Id.* at lns. 10 –

[7] For some reason, the Company did not bother to supply this information in the record itself. However, it was included in a presentation that was given to interveners and which was attached to Staff's *Rebuttal Report*. Exhibit 100, *Staff Rebuttal Report*, PDF pg. 105.

11. This amount of missing detail in the proposal should, on its own, given the Commission sufficient reason to deny it.

There are some very basic questions that the Commission should have about this proposal. Will these charging stations be exclusive to only TNCs/rideshare companies? If so, which companies? If not, then how are these charging stations "utilized" toward TNCs/rideshare companies? How will the location of these stations be chosen given that TNCs/rideshare companies generally rely on gig workers and lack the centralized hub or depot of taxi companies where cars could be parked to charge? Would rideshare companies have unique charging rates? If the chargers are available to non-TNC/rideshare company cars, would the TNC/rideshare cars have preference over other cars? If so, how would that work or be enforced? These questions, and many more like them, should be answered *before* the Commission grants Evergy a greenlight to build new plant. As it stands, this request is "merely an excuse to increase the number of fast charging stations in the metro area it can rate base." Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 22 lns. 14 – 15.

Between the complete lack of detail in how this program will work and the already stated problems related to cost-effectiveness and federal funding, there is no good reason for the Commission to approve this expansion. At a minimum, the Commission should at least deny the requested expansions until Evergy can provide a clear explanation of the program that answers at least some of the major questions as to how this idea would even work.

Issue 6 sub-d: Should the Commission approve Evergy's request that the Commission find that the limited and targeted CCN expansion plans Evergy has proposed in this filing are prudent from a decisional perspective?

The Commission should absolutely not make a finding of decisional prudence in this case as it is wholly unnecessary and improper. One of the more difficult aspects of answering this question is determining *exactly* what it is that Evergy is really seeking. During the evidentiary hearing, a witness for Evergy further clarified and explained the Company request:

> I think what we're asking for with decisional prudence is that the one answer the Commission won't use when we bring constructed charging stations back in for requested recovery is that utilities should not be building charging stations. That's the request.
>
> [. . .]
>
> I mean again, I just want to be -- I want to be really clear. What we're asking and what we're not, Mr. Clizer, because I've said on the stand in front of this Commission where they've said they didn't want the utility to be in the charging station business. And if that is the answer that the Commission wants to give in this proceeding, I want to know it before we construct additional charging stations so that we don't get that answer from them post investment.
>
> [. . .]
>
> I mean, you know, sometimes people get hung up on the word decisional prudence. I mean I'd call it a policy direction. I'd call it direction from the Commission, any number of things. But what we really can't have happened from my perspective and I think Mr. Caisley echoes it in his testimony, is make a decision to invest in charging station infrastructure invested in and owned by the utility that then the Commission and parties would come back in post-investment and say utilities shouldn't be investing in charging stations, you can't recover these dollars because you shouldn't be in that line of investment. I just need to know that now so that if that is the Commission's belief, I don't

> go spend the money and then ultimately ask my shareholders to foot the bill for service to customers.

Tr. vol 2 pg. 235 lns. 16 – 20, pg. 236 lns. 6 – 14. Based on this testimony, all that Evergy appears to be asking for is a guarantee that the Commission will not later find that the utility should not be in the business of building charging stations. That Evergy believes it would need such a guarantee is absurd.

Evergy has previously shown that it is willing to develop extensive investments in EV charging infrastructure without such a guarantee of recovery by the Commission:

> Q. Are you aware that Evergy already has 650 vehicle chargers in its Missouri service area?
>
> A. I am.
>
> Q. And that through this case Evergy is simply seeking to expand that from 650 to 800 electric vehicle chargers; is that correct?
>
> A. Or potentially more. Yes. Q. Do you know whether Evergy sought a similar 14 prudency determination from the Commission with regard to the original 650 vehicle chargers?
>
> A. They did not.
>
> [. . .]
>
> Q. Instead, Evergy simply built the charging network and then sought recovery in a rate case; is that correct?
>
> A. That's correct.
>
> Q. So Evergy was comfortable making a managerial decision to construct 650 vehicle chargers then, but now says that it needs assurances from the Commission to simply build 150 more; is that correct?
>
> A. That's correct.

Tr. vol. 3 pg. 539 ln. 6 – pg. 540 ln. 11 (cross-examination of OPC witness Marke). This Commission has already allowed those same charging stations to be include in rates and recovered from customers. *See* ER-2018-0145 & ER-2018-0146, *Order Approving Stipulations and Agreements*, pg. 3, Stip 1. Pg. 3. This Commission has further issued an order allowing another major electric utility to get into the business of promoting EV charging infrastructure. Exhibit 14, *Report and Order (ET-2018-0132)*, pg. 23. The idea that this Commission would, in any way, suggest that Evergy should not be in the business of investing in, building, or owning charging stations is ridiculous. The Commission has made its policy on EV charging infrastructure **abundantly** clear and Evergy's claim that it needs "policy direction" is so nonsensical it raises red flags as to what Evergy actually seeks.

At this point, one might be tempted to think the decisional prudence issue is not a big deal. For example, one might think that all granting decision prudence would do is provide the policy direction that Evergy's witness explains that the company is requesting. **That is not is true**. If the Commission were to grant the Company's request, Evergy would most likely hijack the finding of decisional prudence to prevent further scrutiny and guarantee cost recovery. The issue lies with legal implications of the term "decisional prudence" and how it would be applied in the future.

During the evidentiary hearing, counsel for the OPC asked Evergy's witness several questions regarding the implications of the request for decisional prudence.

In response, that witness testified that a grant of decisional prudence in this case would **not** prevent the Commission from disallowing all costs related to the construction of a charging station. Tr. vol. 2 pg. 235 lns. 12 – 16 ("Q. So you believe that if the Commission were to determine it was decisionally prudent to build these charging stations, they could still disallow all costs related to the charging station? A. It is a possibility, Mr. Clizer."). Of particular importance is the following exchange:

> Q. Does that include whether or not it's cost effective for Evergy to have built a particular charging station?
>
> A. No. That's a cost and management prudence decision that comes at the time that we bring the constructed assets in for requested recovery.

Tr. vol. 2 pg. 235 ln. 21 – pg. 236 ln. 1. This question and answer demonstrates that Evergy's witness believes an argument related to cost-effectiveness is not prohibited by a finding of decisional prudence by the Commission. If this is true, it raises the question of what, if anything, decisional prudence would actually mean.

An argument that it was imprudent for Evergy to decide to install an EV charging station because it was not cost effective to do so would appear to question decisional prudence because it is questioning the prudency of a management decision. However, Evergy does not appear to believe that questions regarding the prudency of management decisions (including for example the decision of where to locate chargers, the decision to build in a saturated market, or the decision not to wait for available federal funding) are precluded by a Commission finding of decisional prudency. Tr. vol 2 pg. 236 lns. 2 – 24. Instead, what Evergy *appears* to be asking for

is, just as Mr. Ives suggested, a **policy** determination. The problem is that a policy determination and a decisional prudence determination are separate and distinct concepts. By conflating the two, Evergy has created a messy and problematic situation.

The good news is that there is a very simple solution to this problem; one that the Commission has employed previously. In case EO-2018-0092, a request was made for the Commission to determine the prudency of the acquisition of a wind generating facility **before** the facility was acquired. In other words, the Commission was asked to make a determination of decisional prudence before the utility undertook the proposed action (just as Evergy is requesting in this case). In response, the Commission found as follows:

> Empire requests a Commission determination that Empire's decisions to acquire wind generation using a tax equity partner and to keep Asbury open at this time are reasonable. It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources .In past decisions, the Commission has stated its support in general for renewable energy generation, which provides benefits to the public. Empire's proposed acquisition of 600 MW of additional wind generation assets is clearly aligned with the public policy of the Commission and this state.
>
> However, it is premature for this Commission to make a legal conclusion that Empire's decision to acquire wind generation using a tax equity partner is reasonable. Since Empire has not yet identified sites for the wind farms, contractors to build the wind generation assets, or tax equity partners to provide financing, there will likely be additional proceedings at the Commission related to the CSP, such as certificate cases for the wind farms, financing approval cases, or rate cases to consider adding the wind assets into rate base and including prudently-incurred costs into rates. Since the Commission may be presented with these requests

> in the future, making a legal conclusion on reasonableness now could constitute an improper advisory opinion.

Report and Order, EO-2018-0092, pgs. 20 – 21. This is the perfect example of how the Commission should resolve the present issue. First, with regard to Evergy's stated need for a policy determination, the Commission can mirror the first paragraph of the above excerpt to expressly address the Company's concern. However, the Commission should not issue an order granting the request for "decisional prudence" because "the Commission may be presented with these requests in the future." *Id*. As such, "making a legal conclusion on [prudence] now could constitute an improper advisory opinion." *Id*. (citing *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State*, 392 S.W.3d 24, 38 (Mo. App. 2012) ("The Commission was restricted to determining the complaint before it, and it should not be issuing decisions with 'no practical effect and that are only advisory as to future, hypothetical situations'" (citing *State ex rel. Mo. Parks Assoc. v. Mo. Dept. of Natural Res.*, 316 S.W.3d 375, 384 (Mo.App.2010)))).

Evergy's request that the Commission find its proposed expansion "prudent from a decisional perspective" has added a ridiculous level of complexity and legal uncertainty to what should be a very simple issue. First, Evergy should look to the Missouri statutes to understand the policies of the State. If any company should understand state policy on electric vehicle plant owned by a regulated electric company, it should be Evergy. Just three years ago, Evergy's (then known as KCP&L) appeal resulted in Missouri courts interpreting Missouri's statutory policy to include

electric charging stations in the definition of "electric plant" owned by a regulated electric utility. *Kan. City Power & Light Co.'s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Mo. Pub. Serv. Comm'n*, 557 S.W.3d 460, 473 (Mo. App. WD 2018). Second, there is currently no clear legal indication as to what a finding of "decisional prudence" or "prudency from a decisional standpoint" would entail. Given the testimony of Evergy's witness that the Commission could disallow costs for EV charging infrastructure in a future rate case due to the impudence of management decisions related to that infrastructure, there is no clear way to determine where "decisional prudence" begins or ends. If the Commission does grant the Company's request, it should be very careful to accurately describe what exactly it is finding. Third, and most importantly, there is currently no guarantee that **any** of the proposed charging stations will actually be built, which means that a ruling on the prudence of these charging stations would have no immediate practical effect and would only be advisory as to future, hypothetical situations. This would make the prudency decision an improper advisory opinion that the Commission has previously consider and determined should not be granted. *Report and order*, EO-2018-0092, pgs. 20 – 21; *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State*, 392 S.W.3d 24, 38 (Mo. App. 2012) ("The Commission was restricted to determining the complaint before it, and it should not be issuing decisions with 'no practical effect and that are only advisory as to future, hypothetical situations'" (citing *State ex rel. Mo. Parks Assoc. v. Mo. Dept. of Natural Res.*, 316 S.W.3d 375, 384 (Mo.App.2010))).

For these reasons, the Commission should absolutely not make a finding of decisional prudence in this case. If the Commission wants to make a prudence determination (which is effectively all that Evergy is requesting) then the Commission should just explain Missouri's policy in the issued *Report and Order*. Again, the OPC has provided a perfect example of exactly how to address this very issue, to the satisfaction of all parties, in the form of another recent Commission decision. There is no good reason for the Commission to depart from the legal analysis put forward in case EO-2018-0092.

Issue 6 sub-e: Should the Commission direct Evergy to allow site hosts at new CCN sites to choose the EV charging hardware and network service provider and to set the prices paid by drivers?

No. This proposal makes absolutely no sense when considered in the context of the existing CCN network and should not be implemented. Exhibit 201, *Surrebuttal Testimony of Dr. Geoff Marke*, pg. 9 lns. 4 – 5. As Dr. Marke elucidated:

> ChargePoint does not seem to understand that Evergy's CCN's costs are recovered from participants and shareholders. Given this, there is no reason to allow a site host to select what the price to use an EV charger should be if Evergy's shareholders have to cover the difference. The same is true for the selection of the EV charging hardware which is currently being qualified as utility plant for purpose of the CCN. Selection of the right EV hardware should therefore be undertaken according to the same prudency considerations that would apply to any other type of investment. This would not be possible if site hosts are calling the shots regarding what type of charger to install.
>
> If ChargePoint is proposing that site hosts cover all of the costs of service and provide contributions in aid of construction to cover the cost of the plant, than I suppose I am indifferent to their recommendation (not withstanding my position to reject the entirety of Evergy's proposal). Otherwise, this recommendation should not be implemented. I would

> also like to point out that rates should be set to accurately reflect the cost of service and be set within the context of a rate case.

Id. at lns. 6 – 19. Site hosts already have the ability to work with Evergy to host competitive providers, or own and operate their own stations under the existing CC Network tariff. Exhibit 101, *Surrebuttal Testimony of Robin Kliethermes*, pg. 3 lns. 8 – 12. Allowing CCN site hosts to choose the EV charging hardware and network service provider and to set the prices paid by drivers **without** paying for, or otherwise directly owning, the CC network site directly contradicts allowing these charging stations and network service providers to operate as utility plant that may be recovered through the utility's rates. ChargePoint's recommendation is unworkable and should not be adopted.

Issue 7: Should the Commission approve Evergy's proposed Customer Education and Program Administration proposal?

This is a trick question. Evergy has no real customer education and program administration proposal. The *Report* Evergy provided spends a little over one page on this issue. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pgs. 30 – 31. That report contains nothing but vague statements such as "Evergy will use several methods to notify and educate developers about the residential developer rebate availability and benefits" and "Evergy may create educational materials for developers, certified electricians, and related trade associations to support education about rebate availability." *Id*. at 30. The detailed program description found in Appendix A of Evergy's report offers little in addition other than stating that Evergy *intends* to include, at a minimum, the following: internal staff training focused on customer-facing roles, material/collateral development and production, website content specific to new programs, customer education and outreach related to new programs, and technical assistance to support infrastructure planning and rate assessment. *Id*. at Appendix A (Detailed Program Descriptions Customer Education and Program Administration). This is nothing but a collection of meaningless buzzwords and phrases that lacks any useful detail. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 20 ln 4.

According to Evergy's own report, this education and administration cost makes up 15% of the overall cost of its program. Staff has identified, based on Evergy's representations, that the bulk of this funding will be exclusive to the education surrounding the residential rebate program. Exhibit 100, *Staff Rebuttal*

Report, pg. 7 lns. 3 – 6. This kind of excessive spending is unnecessary. Instead, Evergy and the Commission should focus on pricing electricity appropriately and transparently. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 20 lns 5 – 6. As Dr. Marke explained:

> I would argue that the lack of clear, transparent, and understandable price signals for the cost of service has historically been in the utilities' best interest; however, it is now an impediment to EV adoption. If Evergy is serious about encouraging EV adoption they need a renewed emphasis not only on correct pricing but affordable, transparent, and easily seen pricing to make the case that EV ownership is cost competitive with internal combustion vehicles. I do not see that level of focus in this proposal.

Id. pg. 20 lns... 3 – 8. It is this kind of work, and not spending $1.6 million on unspecified education, that Evergy should focus on.

Issue 8: Should the Commission approve Evergy's proposal to administer the new pilot rebate programs over a five-year period, beginning in the first quarter of 2022 and concluding in the first quarter of 2027, including periodic reporting to the Commission and stakeholders?

The OPC opposes Evergy's pilot rebate programs in their entirety. If the Commission does approve Evergy's proposal then it should order periodic reporting.

Issue 9: Should the Commission approve Evergy's request that the Commission authorize the Company to use a regulatory asset tracking mechanism to track and defer the pilot program costs which include rebate incentives and certain associated customer education and administrative costs?

The Commission does not need to authorize Evergy to use a regulatory asset tracking mechanism to track and defer the pilot program costs. If the Company believes that there is a reasonable expectation of recovery then it can track those costs of its own initiative. Commission authority to engage in deferral accounting, and the establishment of regulatory assets and liabilities, is limited to "extraordinary" events. EC-2019-0200, *Report and Order*, pg. 11 ("In a 1991 decision involving a request for an AAO, the Commission held that an AAO was appropriate where 'events occur during a period which are extraordinary, unusual and unique, and not recurring.' This has sometimes been described as 'the Sibley Standard.'" (citing *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations*, Case No. EO-91-358, Report and Order, 1 Mo. P.S.C. 3d 200, 205, 1991)). Evergy has not argued and there is no evidence to support the finding that these pilot programs are "extraordinary" events. The Commission should therefore not order a tracker and leave Evergy to operate on its own initiative.

Issue 9 sub-a: Should the Commission approve the requested 5-year amortization timeframe requested as part of this case?

The Commission should not approve Evergy's requested 5-year amortization timeframe as part of this case. "[D]etermination of the amortization period for the

deferred costs should be determined in a future rate case, not in this proceeding." Exhibit 100, *Staff Rebuttal Report*, pg. 32 lns. 5 – 6. The Commission should therefore wait until Evergy's next general rate case (which will begin in less than 60 days) to determine the proper amortization period.

Issue 10: Should the Commission approve Evergy's requests for a variance of subsections 4 CSR 240-14.020(1)(B), (1)(D), and (1)(E) only as those subsections are applied to the pilot programs as described in any approved compliance tariffs resulting from this case?

Only to the extent and duration necessary to effectuate any order resulting in this case. Exhibit 100, *Staff Rebuttal Report*, pg. 32 lns. 12 – 18.

Conclusion

The OPC has demonstrated that the vast majority of Evergy's proposed electrification program portfolio is poorly designed, lacks sufficient detail to warrant Commission approval, and is not cost efficient. The only part of the portfolio that escapes these charges is Evergy's proposed partnership with the Metropolitan Energy Center and the City of Kansas City, Missouri to pilot streetlight charging installations in the city's right of way. However, the streetlight program is only reasonable because the proposal is largely funded through a federal grant. Exhibit 100, *Staff Rebuttal Report*, pg. 26 lns. 6 – 8. This shows how important it is for the Commission to heed the OPC's call to wait for the $7.5 billion in federal funding for EV infrastructure found in the Infrastructure Investment and Jobs Act to become available for state use. *Id*. at pg. 28 lns. 9 – 13. Choosing to wait now will give Evergy the time it needs to properly refine and explain its proposals, allow for continued examination of the data gained from the existing CC Network, and prevent the further unnecessary – and potentially anti-competitive – development of a financially failed system. The OPC is therefore asking the Commission to deny all parts of Evergy's request (except for aforementioned partnership with the Metropolitan Energy Center and the City of Kansas City, Missouri) and invite Evergy to return again when it has a properly planned and properly timed program.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Initial Brief* and rule in the Office of the Public Counsel's favor on all matters addressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this nineteenth day of November, 2021.

/s/ John Clizer