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

REPLY BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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Introduction

The OPC does not consider it necessary or productive to review the arguments raised by every party for each issue presented. Instead, the OPC will limit this reply brief to addressing only a small number of concerns. As to any issue not specifically addressed, the OPC stands on the arguments presented in its initial brief. Before moving on to address particular claims made by other parties, however, the OPC does wish to spend one moment to reiterate its overall position.

The OPC is asking the Commission to deny the majority of the electrification program portfolio requested by Evergy because the portfolio is poorly designed, insufficiently supported, and is premature.[1] For example, Evergy has: proposed a residential rebate program that strips away non-participant protections by refusing to embrace time-of-use (TOU) rates; requested an expansion to its CC Network even though it cannot identify where new chargers would be built or how its proposed rideshare partnership would work; and is demanding millions in ratepayer-backed funding despite the imminent arrival of large federal grants. These problems, and many more like them, plague the Company's request. Yet it is also important to note that these problems lay with the **design** of Evergy's programs, not the underlying objectives. Stated a different way, the OPC is asking the Commission to deny this proffered program portfolio not because it promotes EVs, but rather, because it does

[1] As indicated in its initial brief, the OPC is not opposing the expansion of Evergy's CC Network 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.

such an immensely poor job of promoting EVs and EV adoptions that it is practically useless.

If this Commission wants to promote EV adoptions in the state of Missouri, then it should focus on finding and/or helping utilities develop electrification programs that: (1) make sense, and (2) actually work. Evergy's proposal cannot accomplish either of these simple goals. The Commission should therefore deny Evergy's request, but still encourage Evergy to work **with** Staff and the OPC to design programs that do make sense and that will work. Program design and funding are critical aspects of a successful EV program. The OPC seeks an order that sends a clear message the Commission requires smart well-designed programs and smart funding decisions that protect Evergy's non-participant customers.

Response to Evergy's mischaracterization of the OPC's position

Early on in Evergy's brief, the Company proffers a false synopsis of the OPC's (and Staff's) general recommendations in this case. *See*, Evergy, *Initial Brief*, pgs. 15 – 20. Specifically, Evergy insinuates that the OPC's position is that "the public utility should stay on the sidelines in the nascent development of the EV charging infrastructure in Missouri . . ." *Id*. at pg. 16. The Company's inane suggestion that the development of EV charging infrastructure in Missouri is "nascent" given Evergy's **already existing** 900+ charger CC Network notwithstanding, this is not an accurate statement of the OPC's position. It would appear that Evergy, lacking any meaningful way to respond to the many errors that the OPC and Staff have

pointed out in their application, has resorted to feeble *ad hominem* attacks in an attempt to paint the OPC as "anti-EV." Again, however, this is not the case.

The OPC has already shown itself more than willing to work with electrical utilities to develop meaningful and productive EV focused electrification portfolios. For example, the OPC was able to work with Ameren Missouri to reach a mutually agreeable settlement to its electrification request and, even when it disagreed with the company, its recommendation to the Commission was to **approve** the request subject to proposed modifications. In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of Efficient Electrification Program, *Order Approving Stipulation and Agreement*, ET-2018-0132 (Oct. 17, 2018). Further, the OPC is currently in the process of finalizing an agreement with the Empire District Electric Company with regard to its proposed electrification program portfolio. In the Matter of The Empire District Electric Company's Application for Approval of a Transportation Electrification Portfolio for Electric Customers in its Missouri Service Area, *Motion to Suspend Procedural Schedule*, ET-2020-0390 (May 19, 2021). Even **within this very case**, the OPC is asking the Commission to approve a portion of Evergy's proposal as it relates to the CC Network expansion. Thus, to claim that the OPC is asking utilities to "wait on the sidelines" when it comes to EV charging infrastructure is obviously false. The problem is not with the OPC; the problem is with Evergy's program design, the diminishing returns on its investments, and the $100 million in federal funding that negates the need to impose costs on Evergy's non-participating customers.

Evergy's electrification program portfolio suffers from numerous major faults that the Company either has not considered or does not care to fix. The OPC's initial brief addressed these problems in detail, so it will offer only a brief recitation here. First, with regard to the residential rebate program, Evergy's proposal is dependent on participants changing their charging behavior to achieve the "breakeven" point where non-participants are just paying for the cost of the program and nothing else. Exhibit 100, *Staff Rebuttal Report*, pg. 12 lns. 3 – 8. If Evergy does not achieve this shift in charging behavior, then the program will actually **harm** both participants and non-participants alike. Tr. Vol 3 pg. 599 lns. 2 – 25. Yet, despite the overwhelming obviousness of the need to encourage participants to change how and when they charge in order for this program to work, Evergy is actively opposing the use of TOU rates that will help accomplish this very goal. Exhibit 7, *Surrebuttal Testimony of Nick Voris*, pg. 14 ln. 7 – pg. 15 ln. 2.

The Company's flat rejection of TOU rates means that Evergy has designed a program that 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)). This total refusal to require participants to do the one thing that is actually necessary to make the program work is an obvious flaw. The second program, the commercial developer pilot, somehow manages to make this even worse because there is absolutely no restriction on where the outlet is placed or whether it is ever used.

Exhibit 100, *Staff Rebuttal Report*, pg. 5 lns. 16 – 17. There is no guarantee that the home built with one of these outlet is purchased by an EV owner, no guarantee that the outlet is placed in a location conducive to EV charging, and "no apparent way for Evergy's intended eventual 'education' component to reach the future homeowners." *Id.* at lns 4 – 5. Again, this should be seen as a massive glaring flaw.

The Company's commercial rebate program is similarly flawed in that there is no way to know if building more EV charging stations will induce more EV adoptions, as the Company's own witness acknowledged. Exhibit 6, *Surrebuttal Testimony of Timothy M. Nelson*, pg. 7 lns. 18 – 20 ("it is very difficult to definitively link EV adoption and EV programs, regardless of the funding source or administrator."). As such, Evergy's consultant did not even bother to *attempt* "to model the cost effectiveness of each proposed program, or the proposed portfolio of programs[.]" *Id*. All of this is a problem because the evidence shows that Evergy is already lagging behind its **low** adoption rate predicted in the Company's 2015 EPRI study. *Compare* Exhibit 204, *Rebuttal Errata Sheet of Dr. Geoff Marke*, pg. 1; *and* Exhibit 202, *Evergy 2015 EPRI Study*, pgs. A-1, B-1. When this is coupled with the fact that 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[,]" it should be obvious to see how this program is, again, massively flawed. Exhibit 100, *Staff Rebuttal Report*, pg. 18 lns. 11 – 13.

Fourth and finally, the requested CC Network expansion is also immensely unsound. Evergy's existing CC Network is not making enough revenue to cover its own costs. Exhibit 100, *Staff Rebuttal Report*, pg. 21 lns. 5 – 7. The Company has not been able to identify where, in its service territory, it intends to build all the highway corridor expansion sites that it is requesting. *Id.* at pg. 27 ln. 20 – pg. 28 ln. 1. With regard to its TNC/rideshare proposal, "Evergy has not identified locations for rideshare chargers or partnership opportunities" and "has not presented even a general framework for how such a partnership would be structured Exhibit 100." *Staff Rebuttal Report*, pg. 27 lns. 9 – 11. Once more, these are impressively obvious problems with Evergy's proposal.

Given all of these issues, it should be clear why the OPC (and Staff and MECG) are asking the Commission to reject the Company's proposal as it is currently developed. Instead of attempting to work with Staff and the OPC to improve the design of its program, the Company has decided to plow forward and litigate everything. It is this complete unwillingness to work with other parties that has lead this case to a different outcome than the other, similar electrification cases that have come before this Commission. Again, the OPC does not oppose EV electrification programs, the OPC opposes Evergy's incredibly poorly designed EV electrification program.

If this Commission wants to see good, well-developed EV electrification programs, then it needs to be willing to say no to the bad, poorly designed electrification programs. Approving poorly designed EV programs will inevitably lead

to unnecessary and wasteful spending that will not help the EV market and could, in fact, actively hurt it. The OPC has not only sought to demonstrate the flaws in Evergy's proposal, but has also offered solutions to attempt to mitigate those flaws. For example, if the Commission wants to approve the residential rebate program despite it being a cost ineffective way to encourage EV owners to charge off-peak, then it could at least require TOU rates to protect non-participants. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 15 lns. 1 – 9. If the Commission wants to approve the commercial rebate program despite the overwhelming evidence that it will not be cost effective, then it could at least cap rebates at 20% and/or require program funds be divided evenly among program targets so as to prevent free-riders. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 18 ln. 24 – pg. 19 ln. 2. If the Commission wants to approve the CC Network expansion despite the existing CC Network losing massive quantities of money, the Commission could at least require Evergy to present basic information about where the expansions will occur (and why those locations) **before** the Commission gives its blessing. These suggestions should demonstrate the OPC's **true** position on EVs, which is supporting programs that **actually work**.

Response to Evergy's false claims about EV adoption rates in its service territory.

Evergy's existing CC Network has completely failed to induce the number of EV adoptions found in the Company's own EPRI report. *Compare* Exhibit 204, *Rebuttal Errata Sheet of Dr. Geoff Marke*, pg. 1; *and* Exhibit 202, *Evergy 2015 EPRI Study*, pgs. A-1, B-1. The Company attempts to obfuscate this fact based on fabricated

numbers and unjustified assumptions. For example, Evergy's brief attempts to dispute Dr. Marke's EV numbers, which were taken directly from information provided by the Missouri Department of Revenue. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 9 fn. 14. Specifically, Evergy claims that there is a problem with this data because Dr. Marke's numbers only show that 7.5% of total EV numbers were plug in hybrid EVs ("PHEVs"), but "Evergy's analysis shows that about 45% of the total EVs in its area are PHEVs." Evergy, *Initial brief*, pgs. 8 – 9. This is false.

The report that Evergy cites to only states "The number of light-duty EVs operating in the Missouri Metro service territory was **estimated** to be 2,040 as of September 2020, with approximately 55% being BEVs and 45% PHEVs." Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 13 (emphasis added). Thus, Evergy does not have any "analysis" to show that PHEVs make up 45% of EVs, it is literally just **guessing** (*i.e.* "estimating") that percentage. Moreover, there is nothing in the report Evergy provided that cites to where this "estimate" originates from or offers an explanation as to how this estimate was calculated. Evergy's claim that there is "'analysis" showing 45% of EVs in its service territory are PHEVs is thus pure fiction supported by nothing but wishful thinking, as is much of the rest of the Company's claims in this section.

There are several other points wherein Evergy clearly misstates facts. For example, Evergy's brief claims that "[a]ccording to Dr. Marke'[s] updated testimony, there were 5,093 EVs in Missouri, based upon registration data from the Missouri

Department of Revenue, as of October 2020." Evergy, *Initial Brief*, pg. 9. This is, of course, false. Looking to the citation Evergy provided we find the following:

> Q. Oh, 5093. My calculator didn't work right. Okay. 5,093. So that would be your number, your estimate for the EVs in Kansas City and St. Louis; is that right?
>
> A. Yeah. **And to be clear, when I say Kansas City I mean Evergy Metro, Evergy West, all of the counties that they have a footprint in. And then St. Louis County, St. Louis City, and St. Charles County.**

Tr. vol. 3 pg. 579 lns. 19 – 25. Thus, the 5,093 number that Evergy is referring to is not all the EVs in Missouri, but rather, all the EVs in Evergy's service territory plus St. Louis County, St. Louis City, and St. Charles County. Evergy's attempt to discredit Dr. Marke as inconsistent by comparing this number to the 6,740 number, which **does** indicate the total number of EVs in Missouri, actually discredits Evergy's arguments and highlights the Company's confusion over what this data represents. The Company should understand that it is comparing two different numbers, yet still argues there is a false "inconsistency" when in fact Dr. Marke's testimony is entirely consistent.

Yet another point where Evergy again misstates the factual evidence before the Commission is the line in its brief that states: "Due to known integrity and reliability issues with state's registration data—particularly in terms of accurately discerning between conventional vehicles and plug-in hybrid vehicles—Evergy, like other public utilities, utilizes data sources that employ VIN decoding to ensure accurate vehicle categorization rather than relying solely on state registration data as OPC has done in this case." Evergy, *Initial Brief*, pg. 9. This statement is offered

with no citation to the record and there is no support to be found for it. There is no discussion anywhere in the record of any "integrity and reliability issues with state's registration data," there is no discussion anywhere in the record about the Department of Revenue's ability to discern between conventional vehicles and plug-in hybrid vehicles, and there is no discussion anywhere in the record regarding the use of "VIN decoding" by Evergy or any other utility. Moreover, the attack by Evergy on the Missouri Department of Revenue is completely unfounded and unjustified as Evergy acknowledges it gets its data from the same exact source. Evergy, *Initial Brief*, pg. 9 ("Mr. Voris explained during cross-examination that EPRI get its data from car registrations . . .").

Evergy's strategy appears to be an attempt to confuse the Commission regarding the poor performance of its existing EV programs. During the evidentiary hearing, a witness for Evergy offered **for the first time** a new claim regarding the number of EVs in Evergy's service territory. This new number was never presented in any of the Company's pre-filed testimony and was offered with no supporting documentation of any kind. In order for this number to be accurate, the number of EVs (both plug-in and hybrid) in Evergy's service territory would need to have more than doubled in an eight month window. *Compare* Exhibit 204, *Rebuttal Errata Sheet of Dr. Geoff Marke*, pg. 1 and Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 9 (showing 1,412 EVs in Evergy's service territory at end of October 2020) *with* Tr. vol. 1 pg. 176 ln. 25 (claiming Evergy had 3,659 EVs as of June 30, 2021). Moreover,

Evergy's completely unsupported number is inconsistent with the data provided by the United States Department of Energy.

In preparing his workpapers, Dr. Marke relied on data provided by the US Department of Energy that was last updated in June of 2021. Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 9 fn. 14; Exhibit 205,*Rebuttal Workpapers of Dr. Geoff Marke*, pg. 1; Tr. vol. 3 pg. 608 lns. 16 – 20. This data showed that there were 6,740 battery powered EVs ("BEVs") in Missouri as of June 2021. Exhibit 205, *Rebuttal Workpapers of Dr. Geoff Marke*, pg. 1. The data from the Missouri Department of Revenue shows that there were 5,901 BEVs in Missouri at end of October 2020. *Id*. at pgs. 2 – 3. This means that there were only 839 additional BEVs placed on Missouri roads during the eight months spanning the end of October 2020 to the end of June 2021. In the same time, Evergy claims that the combined number of PHEVs and BEVs in its service territory increased by 2,247 cars. *Compare* Exhibit 204, *Rebuttal Errata Sheet of Dr. Geoff Marke*, pg. 1 and Exhibit 200, *Rebuttal Testimony of Dr. Geoff Marke*, pg. 9 (showing 1,412 EVs in Evergy's service territory at end of October 2020) *with* Tr. vol. 1 pg. 176 ln. 25 (claiming Evergy had 3,659 EVs as of June 30, 2021). For this to be true, one would have to **first** assume that **all** 839 BEVs purchased in the **entire** State of Missouri were purchased exclusively in Evergy's service territory and **then** assume that an **additional** 1,408 PHEVs were added exclusively to Evergy's service territory. To put that in perspective, the data shows that there were only 562 PHEVs in the state at the end of October 2020, so this means that Evergy would have had to nearly triple that number, exclusively in

its service territory, in under a year. Exhibit 205, *Rebuttal Workpapers of Dr. Geoff Marke*, pgs 2 – 3. To believe Evergy's assumptions would require the acceptance of an entirely implausible outcome, contrary to the data of the only entities tracking this information.

Whether you look at the data from the Missouri Department of Revenue or the US Department of Energy, the answer is the same: Evergy's claim is unsupported and unbelievable. The Company's only answer to this is to ask the Commission to make an assumption regarding a 50/50 ratio of PHEVs to BEVs. Evergy, *Initial Brief,* pg. 9 ("If a 50/50 ratio of BEVs to PHEV[] is assumed as was done in the cross-examination of Dr. Marke . . ."). There is no evidentiary basis for the Commission to make such an assumption and Evergy, being the party who bears the burden of proof in this case, would not be entitled to such a presumption regardless. The Commission should thus reject Evergy's clearly faulty attempts to justify its existing CC Network.[2] The time has come for Evergy to face the fact that its CC Network is not covering its own costs and is not promoting enough EVs to justify the investment. Only by

[2] Evergy also attempts to justify the difference between its unsupported estimates and the OPC's actual data on EV registrations (which was gathered by impartial government agencies no less) by pointing to the fact that the registration data would not include EVs travelling through Evergy's service territory. Evergy, *Initial Brief*, pg. 9 ("Mr. Voris explained during cross-examination that EPRI gets its data from car registrations, **but also looks at the operation and movement of used vehicles in and out of the service territory**." (emphasis added)). However, this kind of data manipulation is obviously flawed. As Evergy itself points out, 80% of EV charging is typically done at home. Exhibit 1, *Evergy Transportation Electrification Portfolio Filing Report*, pg. 23 ("With approximately 80% of charging activity typically occurring at home . . ."). If EVs are registered in the county/state where the EV owner resides, then the EVs that are only travelling through Evergy's service territory will be predominantly charged **outside** of Evergy's service territory. If these EVs are primarily charged **outside** of Evergy's service territory, then it makes no sense to consider them as part of the justification for Evergy to promote EVs because Evergy customers will not see any benefit from these EVs. Stated more simply, Evergy's Missouri customers should not pay more in rates to promote EVs for Evergy's Kansas customers.

embracing these hard truths can this Commission hope to begin the course correction that is necessary to find EV electrification programs for Evergy that actually work.

Response to Evergy's claim regarding materiality of peak shifting in its residential rebate program

Evergy's residential rebate program is justified on the premise that the switch from level 1 to level 2 charging will allow EV owners to change how they charge their vehicles and thereby shift load off-peak. 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"). Staff and the OPC have pointed out that, if this shift in peak charging does not occur, and EV owners continue to charge on peak, then the program will harm participants and non-participants alike. 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. Evergy has apparently decided to respond to this by arguing as follows: "[w]hile charging could occur on-peak, the size of the pilot program is not large enough to raise a serious concern in this regard." Evergy, *Initial Brief*, pg. 24. In this regard, Evergy has directly undermined its own justification for this program.

To put it simply, the problem is this: if the pilot program is so small that EV owners who receive the rebate but who do not stop charging on-peak will not have a material effect, then it must also be true that the program is so small that the EV

owners who receive the rebate and *do* switch to charging off-peak will **also** have no material effect. Stated differently, getting EV owners to switch from charging on peak to charging off peak either must have a material effect or it must not. If Evergy is correct and EV owners charging on peak does **not** have a material effect, then the company cannot simultaneously argue that allowing the EV owners to switch to charging off-peak will have a material effect. Therefore, it cannot point to the ability of the rebate to allow charging off-peak as a benefit to justify the program. The inherent inconsistency between Evergy's proffered justification for this program and its response to the Staff and the OPC's concerns regarding that program further illustrates the tremendous flaws in Evergy's overall program portfolio.

Response to Evergy's legal arguments regarding proposed rates

Much of Evergy's argument regarding the legality of introducing new rates for existing services outside of a general rate case has already been addressed in the OPC's initial brief. The only new point that merits response is Evergy's reliance on section 393.1610 of the Revised Statutes of Missouri. Naturally, this reliance is misplaced. Missouri revised statute section 393.1610 only applies to **pilot** programs. However, Evergy does not propose the ETS and BEVCS rates as pilot programs:

> Q. And are these rates being offered as part of a pilot program?
>
> A. They are not. So the rate tariff, the business EV charging service tariff and the electric transit service tariff are not part of the transportation electrification pilot program. They are separate tariffs. They do not -- one thing to clarify is that the transportation electrification pilot tariff has a recommended start after a certain date. And the business EV charging service tariff and the transit service tariff, those tariffs are not identified as pilots and they do not have a start after a certain period date within that tariff sheet.

Tr. vol. 3 pg. 485 lns. 11 – 22 (cross-examination of Staff witness Kliethermes). Because the ETS and BEVCS rates are not being offered as pilot rates but are instead being offered as new **permanent** rates, section 393.1610 does not apply.

In the same vein, Evergy's claim about these being "experimental" is also false. For example, Evergy argues that "the approval of the ETS and BEVCS pilot rates will also allow the Company to obtain data to develop rates for these services on a more permanent basis." Evergy, *Initial Brief*, pg. 38. However, as Staff's witness explained, the ETS and BEVCS rates are not pilots and are designed to be permanent rates. Tr. vol. 3 pg. 485 lns. 11 – 22. There is thus no reason for the Commission to rely upon language related to "experimental" rates.

Conclusion

Evergy's electrification portfolio is rife with flaws, inconsistencies, and other problems. The Commission should deny this application and ask Evergy to return after it has corrected for these issues. If the Commission nevertheless wishes to approve Evergy's application, then it should only do so after incorporating the recommendations made by Staff and the OPC to help mitigate the damage that this proposal will otherwise do to non-participants. This includes such simple things as: (1) requiring participants in the residential rebate program to adopt TOU rates, (2) capping the commercial rebate at 20% of cost, and (3) requiring Evergy to identify the location of its proposed CC Network **before** the Commission approves additional spending. Again, these suggestions will not **fix** Evergy's proposal, but will blunt the worst problems with the proposal.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Reply 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 twenty-ninth day of November, 2021.

/s/ John Clizer