

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of an Agreement Between                    ) Case No. EO-2021-XXXX  
Evergy, Inc., and Elliott Management, Inc.            )

**MOTION TO OPEN INVESTIGATION**

**COMES NOW** the Staff of the Missouri Public Service Commission and for its *Motion to Open an Investigation in the Matter of an Agreement Between Evergy, Inc., and Elliott Management, Inc.*, hereby states as follows:

1. Evergy, Inc., is a Missouri general business corporation in good standing, headquartered at 1200 Main Street, Kansas City, Missouri, 64105. Its registered agent is CSC-Lawyers Incorporating Service Company, 221 Bolivar St, Jefferson City, Missouri, 65101.

2. Evergy is a public utility holding company incorporated in 2017 and operates primarily through its wholly-owned, direct subsidiaries:

- Evergy Kansas Central, Inc., formerly known as Westar Energy, Inc., an integrated, regulated electric utility that provides electricity to customers in the state of Kansas. Evergy Kansas Central has one active wholly-owned subsidiary with significant operations, Evergy Kansas South, Inc., formerly known as Kansas Gas and Electric Company.
- Evergy Metro, Inc., formerly known as Kansas City Power & Light Company, is an integrated, regulated electric utility that provides electricity to customers in the states of Missouri and Kansas.

- Evergy Missouri West, Inc., formerly known as KCP&L Greater Missouri Operations Company, is an integrated, regulated electric utility that provides electricity to customers in the state of Missouri.
- Evergy Transmission Company, LLC , formerly known as GPE Transmission Holding Company, LLC, which owns 13.5% of Transource Energy, LLC, with the remaining 86.5% owned by AEP Transmission Holding Company, LLC, a subsidiary of American Electric Power Company, Inc. (AEP). Transource is focused on the development of competitive electric transmission projects. Evergy Kansas Central also owns a 50% interest in Prairie Wind Transmission, LLC, which is a joint venture between Evergy Kansas Central and subsidiaries of AEP and Berkshire Hathaway Energy Company. Prairie Wind owns a 108-mile, 345 kV double-circuit transmission line that provides transmission service in the Southwest Power Pool, Inc. (SPP).

Evergy serves approximately 1,604,300 customers located in Kansas and Missouri, including approximately 1,407,700 residences, 189,600 commercial firms and 7,000 industrials, municipalities and other electric utilities. Evergy was formed in 2017 by the merger of Great Plains Energy, Inc., and Westar.

3. Evergy and its operating subsidiaries are subject to regulation by this Commission as electrical corporations and public utilities pursuant to Chapters 386 and 393, RSMo.

4. Elliott Management Corporation is an investment management firm. Founded in 1977, Elliott Management Corporation is one of the oldest fund managers of

its kind under continuous management. As of June 30, 2020, Elliott manages approximately \$42 billion in assets. The firm employs a staff of 466 people, including 162 investment professionals, in its New York headquarters and affiliated offices elsewhere in the United States, London, Hong Kong, and Tokyo.

5. Elliott Management is said to be one of the largest “activist” funds in the world. A hedge fund is a limited partnership of private investors whose money is managed by a team of professional fund managers. Many hedge funds are passive in that they invest in businesses and then wait for returns to arise over a given time period. In contrast, activist hedge funds invest in businesses and then take actions that boost the companies’ stock price before selling the shares for a profit soon afterwards. Among other actions, they demand that target companies cut costs, scale back investments, restructure assets and redistribute cash to shareholders. With the support of enough shareholders, activist hedge funds can force management to take the actions they demand. Elliott Management has widely been described as a “vulture fund,” that is, a fund that invests in companies or properties which are performing poorly and may therefore be undervalued.

6. On January 21, 2020, Elliott Management, which manages funds owning an economic interest equivalent to 11.3 million shares in Evergy, equating to approximately \$760 million in current market value, released a letter to Evergy's Board accusing it of failing to increase shareholder value by pursuing a suboptimal long-term strategy. According to Elliott, funds used by Evergy to acquire shares ought instead to have been invested in rate base. Elliott stated:

Following the Merger, Evergy implemented a unique strategy premised on using cash flow and excess capital to repurchase shares rather than driving sustainable value creation by making critical long-term system investments. Specifically, Evergy's current business plan relies on holding rate base

growth to 2-3% for multiple years while relying on share buybacks to manufacture near-term growth in earnings per share.

The math demonstrating why this strategy is suboptimal for Evergy shareholders is simple: Based on average authorized returns on equity, \$1 of equity capital invested in rate base for most utilities can earn significantly more than double the return of \$1 used to buy back stock. As a result, \$1 invested in rate base is worth approximately \$2.40 to shareholders, while \$1 in share buybacks merely distributes \$1 back to shareholders.

7. Elliott's letter outlined certain demands which, it asserted, should result in high-certainty, line-of-sight equity value creation of up to \$5 billion, with opportunities for significant additional value creation over time. Elliott argued that this significant increase in shareholder value could be achieved while providing tangible benefits to all of Evergy's key stakeholders, including customers, employees and the broader communities its utilities serve.

8. On March 2, 2020, Evergy announced that it had entered into an agreement with affiliates of Elliott Management. As part of the agreement, two new independent directors joined the Evergy board of directors. In addition, the board established a new Strategic Review & Operations Committee with a mandate to explore ways to enhance shareholder value. The Strategic Review & Operations Committee was tasked with conducting a comprehensive, independent review to identify and recommend ways to enhance shareholder value, including through a potential strategic combination or a modified long-term stand-alone operating plan.

9. On May 12, 2020, it was reported that Evergy was expected to kick off a formal sale process in June under pressure from activist investor Elliott Management to improve its operations or sell itself, according to people familiar with the matter.

10. On June 19, 2020, it was reported that The Kansas Corporation Commission (“KCC”) was investigating the agreement between Evergy and Elliott Management because the deal might result in rate increases in the hunt for shareholder value. The KCC voted to initiate the investigation, saying, “Staff is very concerned that Elliott’s focus on increasing shareholder value will place Evergy’s customers at a high risk of paying higher rates or receiving lower quality service in order to support an increase in shareholder value.”

11. On August 4, 2020, it was reported that Evergy plans to remain independent after its board decided that bids solicited from prospective merger partners did not offer sufficient value. It was reported that Evergy had been reviewing strategic options under a March agreement with activist investor Elliott Management, which earlier this year demanded Evergy find a merger partner or implement changes aimed at bolstering the utility’s stock price. Reports stated that a number of bidders submitted offers for Evergy by the July 30 deadline, which were reviewed by the company’s board in consultation with its advisers.

12. On August 5, 2020, Evergy announced its new “Sustainability Transformation Plan” (“STP”) to drive increased value and benefits for all of the Company’s stakeholders, including Evergy’s shareholders, customers, employees and the communities it serves. The Sustainability Transformation Plan was unanimously approved by Evergy’s Board of Directors and follows a comprehensive, independent review that began earlier this year and was conducted by the Board’s Strategic Review & Operations Committee. “Our new Sustainability Transformation Plan accelerates our work to create a forward-thinking, sustainable energy company,” said

Terry Bassham, Evergy president and chief executive officer. “This plan is focused on additional investments to drive decarbonization and grid modernization, while continuing the cost conscious, financially strong and ‘People First’ culture fundamentals that are core to Evergy’s foundation. The result is greener, more reliable and affordable energy for our customers, and enhanced earnings growth and value creation for Evergy’s shareholders. We respect the views of our regulators and regulatory staff. We have had an ongoing positive dialogue with them regarding the Sustainability Transformation Plan and believe that they will recognize the meaningful benefits our plan creates.”

13. Evergy’s Sustainability Transformation Plan is reported to honor prior regulatory and merger commitments made in connection with Evergy’s formation, while enhancing the Company’s focus on grid modernization, renewable energy investment and cost management. The plan is built around the following key tenets to ensure benefits for all stakeholders:

- Increasing investments in critical utility infrastructure to unlock significant operational efficiencies and keep customer electricity rates competitive. Over the next five years, Evergy expects to invest approximately \$4.8 billion in upgrades to transmission and distribution infrastructure, and customer-facing platforms to improve reliability, lower operating costs, provide further access to renewable energy and enhance the customer experience.
- Optimizing capital allocation to create a stronger grid for the future. The Company’s new plan contemplates approximately \$500 million of investments in asset hardening, distribution automation and technology

through 2024 to expedite the evolution to a smarter, more reliable and more efficient grid.

- Accelerating Evergy's transition to a clean energy provider. Since 2005, Evergy has retired more than 2,400 megawatts of fossil generation and added or contracted for over 4,600 megawatts of renewables, making Kansas #2 in the nation for wind generation as a percentage of total generation. Additionally, there are opportunities related to decarbonization and renewables deployment that are not included in the STP which could support additional investment depending on outcomes from the stakeholder engagement process that is under way as Evergy updates its long-term energy plan. Evergy has the potential to reduce CO2 emissions 85% by 2030 compared to 2005 levels. The pace of decarbonization will ultimately be defined in collaboration with the Company's stakeholders. Currently, Evergy is targeting an 80% reduction by 2050.
14. Anticipated financial benefits of the Company's new plan include:
- Increased system investment and rate base growth. Under the Company's new plan, Evergy expects \$8.9 billion of base capital investments through 2024, or approximately \$1.4 billion more than its prior plan. These capital investments are expected to support 5% to 6% compounded annual rate base growth from 2019 to 2024. Evergy has identified and is currently evaluating additional projects that have the potential to create incremental capital investment opportunities. The STP does not require any new equity

issuances and is calculated to maintain Evergy's strong investment grade credit metrics.

- Enhanced earnings growth. The Company is targeting EPS compounded annual growth of 6% to 8% through 2024, consistent with top-performing utilities, compared to its previous target of 5% to 7% through 2023. This translates into a long-term guidance range of \$3.87 to \$4.25 per share in 2024.
- Continued cost discipline. Since closing its merger, Evergy has achieved in excess of \$250 million of merger savings, well ahead of its original target. Evergy plans to achieve a 25% reduction in O&M costs by 2024 from 2018 levels. Evergy states that it will achieve these savings while protecting jobs, supporting the continued health and safety of its employees and providing reliable service to customers.
- Value creating total returns. Evergy expects dividend growth in line with EPS growth targeting a payout ratio of 60% to 70%. Together with the current dividend yield of over 3% and EPS growth in the top quartile of U.S. electric utilities, Evergy plans to generate total annual shareholder returns of 9% to 11% through 2024.

15. During the initial 90-day implementation phase of the Sustainability Transformation Plan, Evergy and Elliott will continue their collaboration. To facilitate this ongoing dialogue, Evergy and Elliott have entered into a new Information Sharing Agreement that will allow Elliott, at its option, to receive certain non-public information and to continue to engage with members of the Board and senior management.

Additionally, and consistent with the Strategic Review & Operations Committee's charter, Elliott may consult with this committee during its review and evaluation of the optimal management team to execute on the Sustainability Transformation Plan. Evergy plans to make an announcement relating to a change, if any, in senior management within 90 days.

16. Like the KCC Staff, the Missouri Public Service Commission is concerned that Missouri ratepayers might experience higher rates and diminished quality of service due to Evergy's adoption and implementation of the Sustainability Transformation Plan. Additionally, Staff is determined that Evergy will continue to comply with the various agreements and assurances made during the KCP&L-Aquila merger and the GPE-Westar merger and the conditions imposed by the Commission when it approved those mergers, as well as any other applicable non-merger regulatory commitments it has made. Staff has closely followed the course of the Evergy-Elliott Management engagement and now, with the advent of the Sustainability Transformation Plan, seeks the opening of a formal investigatory docket to serve as a repository for the information it is collecting.

**WHEREFORE**, Staff prays that the Commission will open a formal investigatory docket to serve as a repository for the information it is collecting regarding the agreement between Evergy, Inc., and Elliott Management Corporation and related activities, including the Sustainability Transformation Plan announced on August 5, 2020; or grant such other and further relief as is just in the circumstances.

Respectfully submitted,

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