

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Evergy)
Kansas South, Inc. for Approval of the)
Energy Supply Agreement between) Docket No. _24-EKSE-689-CON_
Evergy Kansas South and CVR)
Refining CVL, LLC.)

JOINT APPLICATION

COMES NOW Evergy Kansas South, Inc., d/b/a Evergy Kansas Central (“Evergy”) and CVR Refining CVL, LLC (“CVR”) (together as “Joint Applicants”) and file this Joint Application for an order approving the Energy Supply Agreement between Evergy and CVR (“the Agreement”), attached hereto as Exhibit A. In support of the Application, Joint Applicants state:

1. Evergy is a public utility subject to the jurisdiction of the Commission with respect to rates, services, and accounting procedures.

2. CVR currently takes service from Evergy under the Industrial and Large Power Service (“ILP”) tariff.

3. Evergy and CVR have entered into the Agreement and hereby submit the Agreement to the Commission for approval. The Agreement will be effective after it is approved by the Commission. The Agreement is for a five-year term and helps address the risk that CVR would otherwise relocate significant portions of its operations to areas outside of Evergy’s service territory or otherwise reduce its load because its location in Evergy’s territory is currently at a price disadvantage compared to its other location in Kansas and because CVR believes it is at a price disadvantage when compared to its competitors in Kansas.

4. The Agreement includes an all-energy rate with three-tiered pricing blocks with a declining block rate structure. It includes the requirement that CVR have a monthly minimum bill and subjects CVR to all riders and surcharges it would otherwise pay. The Agreement gives

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Evergy the ability to update rates when rates for other customers are changed to reflect the pro rata share of the change for the ILP class.

5. As Evergy witness Jason Klindt indicates in his Direct Testimony, attached hereto, the proposed contract meets the Commission's standard for approval of special contracts because it will provide a cost benefit to Evergy's remaining core customers and ensures CVR will pay rates greater than the incremental variable cost (or marginal cost) to serve CVR, resulting in a contribution from CVR to fixed costs.

6. Evergy requests approval from the Commission to defer for recovery in its next general rate case the difference between the base rate revenue it will receive from CVR under the proposed Agreement and the base rate revenue it would have received from CVR if CVR continued to take service under the ILP tariff. Mr. Klindt describes the calculation of this regulatory asset in more detail in his Direct Testimony. The Commission should approve the requested regulatory asset because the Agreement meets the Commission's standard for approval and will result in benefits for Evergy's remaining core customers. As a result, it is reasonable and appropriate for those remaining core customers to be responsible for the lost revenue that results from implementation of the Agreement. Effectiveness of the Agreement is conditioned on Commission approval of Evergy's request for deferral as described in this paragraph and in Mr. Klindt's Direct Testimony.

7. As part of this agreement, CVR requests expedited treatment for this Application because, as explained in the Direct Testimony of Mark Pytosh, Executive Vice President of CVR Energy, Inc., attached hereto, CVR is currently at a price disadvantage in relation to direct competitors in the state of Kansas. Further, CVR is considering locating renewable diesel facilities in Kansas and an expeditious decision by the KCC would clarify the regulatory environment faced

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in Kansas and hasten CVR's upcoming business decisions. Thus, Joint Applicants are requesting that the Commission issue its order in this docket so that the Agreement may become effective no later than November 1, 2024.¹

WHEREFORE, Joint Applicants respectfully request that the Commission issue an order approving the Amendment on or before November 1, 2024.

Respectfully submitted,

EVERGY KANSAS SOUTH, INC.

/s/ Cathryn Dinges

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**ATTORNEYS FOR CVR REFINING CVL,
LLC**

¹ Pursuant to Article 1 of the Agreement, the Agreement will become effective on the first day of the month following the date of approval by the Commission.

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

Cathryn J. Dinges, upon oath first duly sworn, states that she is Senior Director and Regulatory Affairs Counsel for Evergy Kansas South, Inc., and that she has reviewed the foregoing application, that she is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of her knowledge and belief.



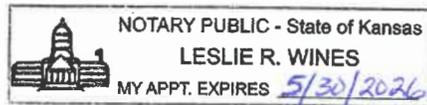
Cathryn J. Dinges

Subscribed and sworn to before me this 1st day of May, 2024.



Notary Public

My Appointment Expires: May 30, 2026



ENERGY SUPPLY AGREEMENT
BETWEEN
EVERGY KANSAS SOUTH, INC.
And
CVR REFINING CVL, LLC

THIS ENERGY SUPPLY AGREEMENT (“Agreement”) made and entered into this day of, 2024, by and between CVR Refining CVL, LLC, a Delaware corporation (“Customer”), and Evergy Kansas South, Inc. d/b/a Evergy Kansas Central (“Company” or “Evergy”). Each of Customer and Company may also be referred to individually as “Party” or collectively as “Parties.”

WITNESSETH:

WHEREAS, Customer and Company recognize Customer's petrochemical processing operations are of vital importance to the economy of the State of Kansas and the economy of areas served by Company;

WHEREAS, Customer and Company recognize Customer desires to maintain its petrochemical processing operations in the Coffeyville, Kansas area;

WHEREAS, Customer and Company recognize the retail price of electricity is a material consideration in the Customer's ability to maintain its petrochemical processing operations in the Coffeyville, Kansas area;

WHEREAS, Customer competes with petrochemical processors in jurisdictions with lower electricity pricing; and

WHEREAS, Customer and Company desire to enter into this Energy Supply Agreement, with the terms set forth below, to maintain the ongoing operations of Customer and to support potential future expansion by Customer;

NOW, THEREFORE, in consideration of the premises and of the mutual obligations and agreements herein contained, the Parties hereby agree as follows:

ARTICLE 1 - GENERAL DEFINITIONS

“Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, except that, notwithstanding anything herein to the contrary, Affiliate of Customer shall mean and include only CVR Energy, Inc. (“CVI”) and its subsidiaries and shall not include CVI's controlling stockholder or any other affiliates thereof. For this purpose, “control” means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m., central prevailing time (either Central Standard Time or central day-light time). The principal place of business of Customer is deemed to be in Sugarland, Texas. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“Code” means the United States Bankruptcy Code.

“Contract Quantity” has the meaning set forth in Section 4.1 of this Agreement.

“Contract Year” means, except for the first Contract Year, a 12 month period beginning 12:01 a.m. on the anniversary of the Effective Date in each new year and ending at midnight on last day prior to the anniversary of the Effective Date in the same year. The first Contract Year shall begin at 12:01 a.m. of the Effective Date and end at midnight on the date occurring twelve months after the Effective Date.

“Cogeneration” means any co-generation facility located at Customer’s Plant used to produce energy consumed or otherwise used for the benefit of Customer in lieu of usage contemplated in negotiation of this ESA.

“Day” means a time period of 24 hours.

“Defaulting Party” has the meaning set forth in Section 11.1 of this Agreement.

“Delivery Points” means the point at which the Energy will be delivered and received under this Agreement, as specified in Section 4.3 of this Agreement.

“Effective Date” means the first day of the month immediately following the date of approval of this Agreement by the KCC.

“Energy” means electric energy of the character commonly known as three-phase, four wire, alternating current at approximately sixty-hertz expressed in MWhs or kWhs that is delivered at the nominal voltage at the Delivery Points at approximately 12,470 volts.

“Event of Default” has the meaning set forth in Section 11.1 of this Agreement.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before

which proceedings to obtain same may be pending.

“Force Majeure” means an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party) claiming suspension (the “Claiming Party”), and which by the exercise of due diligence, the Claiming Party, or third party, is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Force Majeure may include, but is not restricted to: fire, flood, storm, extreme weather, or other acts of God; fire; civil disturbance; labor dispute; labor or material shortage; sabotage; action or restraint by court order or public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action). Force Majeure shall not be based on (i) the loss of Customer’s markets, (ii) Customer’s inability to economically use the Energy, (iii) Company’s ability to sell the Energy at a price greater than the price established by this Agreement, or (iv) Customer’s inability to pay for the Energy. Interruption by a Transmission Provider shall be deemed to be Force Majeure.

“Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a number of possible practices, methods or acts generally accepted in the region.

“Interest Rate” shall mean for any date, the lesser of (1) the per annum rate of interest equal to the prime lending rate as may from time to time be published in the Wall Street Journal under “Money Rates” on such day (or if not published on such day, the most recent preceding day on which published), plus 2% and (2) the maximum rate permitted by Kansas law.

“kW” means kilowatt.

“kWh” means kilowatt-hour.

“KCC” means State Corporation Commission of the State of Kansas, also known as, the Kansas Corporation Commission.

“Letters of Credit” means one or more irrevocable standby letters of credit from a major U.S. commercial bank with such bank having a credit rating of at least “A-” from S&P or “A3” from Moody’s, in such form as is consistent with standard commercial banking practices and reasonably acceptable to the party in whose favor the Letter of Credit is issued.

“MW” means megawatt.

“MWH” means megawatt-hour.

“Material Adverse Change” means with respect to a Party, a material change has occurred in the creditworthiness, financial condition or ongoing business of that Party and such change is or is reasonably likely to materially and adversely affect that Party’s ability to perform hereunder.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“New Tax” means a franchise, license, or excise fee or an occupation, gross receipts, business, sales, excise, privilege or similar tax imposed upon the electrical operations of Company or Evergy after the Effective Date by a federal, state, county, local governmental authority, and which the KCC or other applicable regulatory body authorizes Company to pass through to all of Company’s retail customers as a charge in addition to or as part of tariff rates.

“Performance Assurance” means collateral in the form of either cash, obligations of the U.S. government with a maturity date of less than one year, or Letters of Credit.

“Plant” means the petrochemical processing facilities located at or near 808 East New Street, Coffeyville, Kansas 67337.

“Potential Event of Default” means an event which, to the knowledge of the subject Party, with notice or passage of time or both, would constitute an Event of Default, and for purposes of this Agreement, any Material Adverse Change shall be deemed to be a Potential Event of Default.

“PTS” means Property Tax Surcharge.

“Regulatory Event” has the meaning set forth in Section 14.4 of this Agreement.

“S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Term” has the meaning set forth in Section 9.1 of this Agreement.

“Transmission Provider” means any third party provider of electric transmission services that are relevant to a Party’s performance of its obligations under this Agreement, and in particular regard to this definition, the claiming Party’s performance obligations.

“Turnaround” means a scheduled event in which a portion of the Plant is purposely taken offline to perform maintenance and updates.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

- 2.1 On the Effective Date, each Party represents and warrants to the other Party that:
- A. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
 - B. it has, or will have as of the Effective Date, all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

- C. the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- D. this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- E. it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- F. there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially and adversely affect its ability to perform its obligations under this Agreement;
- G. no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- H. it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;
- I. it is a "forward contract merchant" and that this Agreement is a "forward contract" as that term is defined in the Code;
- J. it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Energy referred to in this Agreement to which it is a Party; and
- K. the electricity delivered by Company to Customer pursuant to this Agreement at all times shall meet the requirements of Energy as defined herein.

ARTICLE 3 - FACILITIES TO BE PROVIDED

- 3.1 Company agrees to maintain the facilities it owns, operates or utilizes necessary to supply Energy to the Plant at Delivery Point voltage of 12.5 KV supplied by two substations with 3 buses, Sunflower Substation and CRA Substation and all related high voltage substation feeder conductor and related equipment at 69 KV.

ARTICLE 4 – COMPANY'S SUPPLY OF ENERGY

Company shall provide and sell to Customer and Customer shall purchase from Company Energy sufficient to supply the total requirement of the Plant at such operating levels as

Customer shall determine from time to time in its sole discretion. In the event that Company cannot supply Customers full demand pursuant to this agreement, the Customer shall have the right to employ temporary generation or take any other action it deems appropriate under Kansas Law, until such time that Company can resume full demand delivery. Unless the Parties otherwise mutually agree in writing, Company shall not be required to supply to Customer Capacity, as measured over a 15-minute interval, in excess of 75,000 kW (“Contract Quantity”).

- 4.1 Energy sold by Company to Customer shall be used solely for the purpose of operating the Plant and related facilities.
- 4.2 The Delivery Points for the Energy to be supplied to Customer under this Agreement shall be at Customer’s side of the Sunflower Substation and CRA Substation in Coffeyville, Kansas.
- 4.3 Subject to the terms of this Agreement, the Energy requirements of the Plant shall be served entirely by Company.
- 4.4 Should the addition of Co-Generation or any other change to the power supply arrangement at the Plant reduce the Customer load or otherwise result in a negative impact to Company or other customers of the Company, the Company shall have the option to terminate this Agreement.

ARTICLE 5 - RATES

- 5.1 Beginning on the Effective Date of this Agreement, Customer shall pay monthly Company for all Energy provided hereunder. Pricing of such purchased Energy shall be established pursuant to the then applicable rates (cents per kWh) specified in the following monthly rate schedule:

A. For all months:

- i. First Block- 0 to 13,000,000 kWh per month
- ii. Second Block- 13,000,001 to 26,000,000 kWh per month
- iii. Third Block- above 26,000,001 kWh per month

B. Applicable taxes and/or fees, as identified in Sections 5.5 and 5.7 of this Agreement shall be added to Customer’s monthly bill.

C. Rates in Article 5.1 may be adjusted by the Customer’s Power Factor (as defined in Section 1.21 of the Company’s General Terms and Conditions on file with the KCC) provided the power factor is less than 0.90 at the point of delivery and the Company provides to Customer reasonable substantiating documentation of such Power Factor. Rates may be increased by the following equation:

Article 5.1 rates multiplied by 0.90 and dividing by the monthly power factor.

D. The foregoing rates are subject to adjustment as provided in the following Schedules as filed with KCC:

1. Retail Energy Cost Adjustment;
2. Property Tax Surcharge;
3. Transmission Delivery Charge; and
4. Energy Efficiency Rider.

5.2 Each Party shall act in good faith and shall use commercially reasonable efforts necessary to obtain the KCC's approval of this Agreement. This Agreement shall be filed with the KCC for approval within 45 days of the Execution Date.

5.3 Customer's minimum monthly bill, before taxes, shall be [REDACTED] during the Term of this Agreement. The monthly minimum bill shall be prorated in any month during the Term of this Agreement to the extent that in such month Customer's usage is reduced by the occurrence of an event of Force Majeure (a "Reduction Event"). In those months when the monthly minimum bill is prorated, the minimum amount payable shall be determined by multiplying [REDACTED] by a fraction, the numerator of which shall be the total hours in that billing month less the number of hours in that billing month that Customer's usage is reduced by a Reduction Event and the denominator of which shall be the number of hours in that billing month. This minimum bill will not apply during the period of a Turnaround event, disclosed according to Section 12.1. For the purpose of this provision, a Turnaround event will not exceed 60 days.

5.4 The monthly bill shall be due and payable when received by Customer. If Customer fails to pay Company within 15 days from such date, Customer shall pay a late payment charge pursuant to Company's Service Regulations.

All claims as to error in the preparation and computation of monthly bills, must, in each instance, be submitted by the claiming Party to the other Party in writing within 2 years from the date when such bill was delivered to Customer, otherwise each such claim shall for all purposes be considered and held to be waived. Any claim made pursuant to this Section 5.4, if not resolved by informal negotiations between the Parties, shall be submitted for resolution in accordance with Section 13.1 of this Agreement.

5.5 Any New Tax shall be added as a separate charge(s) and charged to Customer's bill for the Energy in the same form and at the same rate in which it is imposed on Company if the Energy to Customer is not exempted from the New Tax.

5.6 Customer shall be entitled its proportionate share of any refund required to be paid by Company to Company's other customers, as directed by KCC.

5.7 It is agreed,

- A. After the Effective Date, (i) Customer agrees that the PTS rate schedule and the resulting rate as filed with and approved by the KCC shall be applied to the rates included in Section 5.1 of this Agreement as such rate schedule is modified from time to time; or (ii) if any federal, state, county or local governmental authority imposes, increases, decreases, or removes any applicable exemption on any sales, use, energy, value added, severance, production or similar tax or fee upon the fuels used by Company to generate electricity; or (iii) if any federal, state, county or local governmental authority imposes, increases, decreases or removes any applicable exemption on any tax, fee or charge upon Company for emissions or discharges associated with the electricity generated, sold or purchased by Company, then Company hereby reserves the right to make an application to the KCC to recover such increase in taxes or fees from, or pass such decrease in taxes or fees through to, Customer as a billing surcharge or credit, as the case may be, provided such increase or decrease applies against or is in favor of other customers of Company. The modification to costs described immediately above in consequence of increases or decreases in taxes or fees shall be allocated to Customer based on the ratio of sales to Customer in the prior 12 months divided by sales to all of Company's customers in the prior 12 months or pursuant to such alternative allocation methodology as may be ordered by the KCC. Customer reserves the right to oppose any such application by Company to the KCC hereunder.
- B. If any federal, state, county or local governmental authority enacts any rule, order, law, regulation or assessment which results in an increase or decrease in the sales or use tax on the fuel purchased by Company for use in its generating facilities in the production of electricity, the rates set forth in this Agreement will be automatically adjusted to reflect the actual cost of such sales or use tax; provided, however, such increase or decrease applies against all of Company's other retail customers.
- C. If any federal, state, county, or local governmental authority adjusts a fee or imposes a new fee and (i) such fee is applicable to Company and (ii) such fee is not reflected in Company's retail rates, then Company may file with the KCC to reflect such fee. Customer's rates as described in Section 5.1 of this Agreement and Customer's rate shall be modified to reflect any such applicable fee by adjusting the amount to incorporate the rate approved by the KCC or the rate, surcharge or adjustment amount approved by the KCC.
- D. If either through existing or future legislation, the Kansas legislature authorizes or otherwise permits Company to seek recovery of costs not covered in existing rates, or modifies existing rates to effect an unbundling of costs and Company files an application with the KCC to seek recovery of such costs or effect an unbundling of costs with respect to all of Company's retail customers, then Customer's rates as described in Section 5.1 of this Agreement shall be modified accordingly as authorized by the KCC.
- E. If the regulatory compact changes in a material way as a result of legislation, regulation, or otherwise, either Company or Customer shall have the option to terminate this Agreement on six months written notice.

- I. If Company terminates the Agreement pursuant to Paragraph 5.7.E, Customer will begin taking service under the ILP tariff, including the RECA and all other applicable riders and surcharges, upon the effective date of the termination of the Agreement.
 - F. If the KCC authorizes or otherwise permits Company to modify existing rates to effect an unbundling of costs and Company files an application with the KCC to seek recovery of such costs with respect to all of Company's retail customers, then Customer's rates as described in Section 5.1 of this Agreement shall be modified accordingly as authorized by the KCC.
 - G. Company may petition the KCC to reflect cost changes in rates. Company may in that petition seek recovery of a prorata share of said costs changes through the rates described in Section 5.1. In that petition, Company will request the KCC apply the same overall percentage increase or decrease that is allocated to the Industrial and Large Power Service (ILP) class of customers; however, the final allocation of any increase or decrease is under the full purview of the KCC. The rates in Section 5.1 shall be modified accordingly as authorized by the KCC order. In the event Company does petition the KCC to reflect cost changes in rates applicable to Customer, then Company shall provide Customer written notice of such request to the KCC at least 30 days in advance.
 - H. Customer agrees to pay in full all applicable taxes, fees and charges that are in effect as of the Effective Date of this Agreement and authorized by the KCC to be charged to Company's retail customers.
- 5.8 If Company receives notice from any federal, state or local governmental authority that a change(s) to any tax, fee, cost or charge upon Company is being proposed, and if the same may be passed through as a charge(s) to Customer under applicable law, then Company shall notify Customer of such proposed change(s) within a reasonable time of Company's receiving notice from that governmental authority. Company's failure to notify Customer hereunder shall not relieve Customer of any charges due and payable pursuant to the terms of this Article 5.
- 5.9 Notwithstanding Customer's compliance with Section 5.2, thereafter Customer is not prohibited by this Agreement from protesting and opposing any application to the KCC by Company seeking an increase in taxes, fees, costs or charges of the types contemplated by foregoing provisions of Article 5, or from instituting a proceeding before the KCC seeking a decrease in any taxes, fees, costs or charges of the types described in the foregoing provisions of Article 5 that are imposed on Customer.

ARTICLE 6 - METERING

- 6.1 Metering facilities for Delivery Points as described in Section 3.1 of this Agreement shall be owned and installed by Company.

- 6.2 The amounts of Energy supplied and received hereunder shall be determined from measurements taken by the metering facilities provided by Company. All meters located at the Delivery Points served under this Agreement will be totalized each billing month in order to calculate Customer's bill.
- 6.3 At Company's option, Energy may be metered at other than the delivery voltage, in which event; Company shall adjust such metered measurements to compensate for losses between the point of measurement and the point of interconnection.

ARTICLE 7 - INDEMNIFICATION

- 7.1 Each Party hereto shall defend, indemnify, and save harmless the other Party against liability, loss, costs and expense on account of any injury to persons (except employees of the Parties), including death, or damage to property occasioned on or adjacent to facilities of the indemnifying Party on its own respective side of the Delivery Points; provided, however, that no such indemnity obligation shall arise hereunder with respect to any injury or damage to the extent caused by the intentional and/or negligent act or omission of the other Party.
- 7.2 With respect to its own employees, each Party shall be deemed an "Employer" for purposes of this Agreement. Notwithstanding any provision to the contrary contained herein, an Employer shall have no obligation to defend, indemnify or save harmless the other Party against any liability, loss, costs or expenses resulting from injury to, or death of, the Employer's employees occurring while acting within the scope of their employment.

ARTICLE 8 - COMMISSION APPROVAL

- 8.1 This Agreement and all of the terms and conditions provided herein are contingent upon approval by the KCC and will become effective on the first day of the month following the month in which this Agreement is approved by the KCC (such date is referred to as the "Effective Date"). If the KCC does not approve this Agreement, as written, it shall be deemed null and void unless otherwise agreed upon by both Parties.
- 8.2 This Agreement will not become effective unless the KCC approves the Company's deferral as a regulatory asset of the difference in the amount recovered from Customer as a result of this Agreement and what would have been recovered under the existing tariffs until the time rates are changed in conjunction with Company's next general rate case, giving the Company the right to request recovery of that regulatory asset in the next general rate case and approves any necessary adjustments to the calculation of Company's TDC rates and/or allocation of the TDC revenue requirement to the customer classes to ensure other customers are not impacted by Customer's move from the ILP rate class to the special contract rate class.
- 8.3 Delivery of Energy under this Agreement is subject to the General Terms and Conditions of Company's Tariff at present on file with the KCC and any subsequent modifications or substitutions thereof lawfully made.

ARTICLE 9 - TERM AND TERMINATION

- 9.1 The primary term ("Term") of this Agreement shall be from the Effective Date through the date occurring five (5) calendar years after the Effective Date, and this Agreement shall thereafter expire as to Term, unless terminated earlier pursuant to the terms of this Agreement.
- 9.2 If at any time during the Term of this Agreement the KCC issues an order or imposes an agency action which will increase Customer's average monthly bill, expressed in cents per kWh, by greater than 5% in any rolling 24 month period or by greater than 15% over the Term of this Agreement over and above those monthly bill increases otherwise provided for in this Agreement, Customer may terminate this Agreement on 90 day prior written notice.
- 9.3 Customer may elect to terminate this Agreement at any time upon two months prior written notice coupled with an election to purchase Energy from Company after such termination pursuant to the terms of an applicable published tariff of Company.
- 9.4 If Customer terminates this Agreement in accordance with Section 9.2 or 9.3, then Customer shall pay Company an amount equal to the accumulated difference between what Customer's rates would have been under the ILP Tariff, or other applicable tariffs, as compared to what the rates actually were under the Agreement for the 12-month period immediately prior to any early termination of the Agreement.
- 9.5 If Company terminates the Agreement in accordance with Section 4.4, then the Customer will be served under the ILP Tariff or other generally available rate schedule, going forward from the date the Co-Generation is energized. The Parties are free to meet prior to energization of the Co-Generation to discuss, renegotiate and offer for Commission approval a new Energy Supply Agreement.

ARTICLE 10 - CONFIDENTIALITY

- 10.1 Customer and Company consider the price terms of this Agreement confidential subject to any legally required review by a jurisdictional regulatory agency or disclosure required by any law, rule or order (including rules or regulations of any regulatory agency or securities exchange) applicable to either Party. In the event that either of the Parties is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or any similar process) to disclose any information relating to the price terms of this Agreement, the compelled Party will, to the extent practicable and legally permissible, provide the other Party with (a) prompt written notice so that the noncompelled Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 10.1, and (b) reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure. In the event that such protective order or other remedy is not obtained or that the noncompelled Party waives compliance with the provisions of this Section 12.1, the compelled Party will furnish only that portion of the requested information which is legally required and shall use commercially reasonable efforts (at the

noncompelled party's expense) to obtain assurances from the applicable court or agency that such confidential information will be afforded confidential treatment. Notwithstanding the foregoing, confidential terms and conditions shall not include any information or data that (a) is or becomes publicly known through no act or omission of the receiving Party in violation of this Agreement; (b) was known by the receiving Party without confidential or proprietary restriction before receipt from the disclosing Party, as evidenced by the receiving Party's contemporaneous written records; (c) becomes known to the receiving Party without confidential or proprietary restriction from a source other than the disclosing Party that is not known by the receiving Party to owe a duty of confidentiality to the disclosing Party with respect to such information and data; or (d) is independently developed by the receiving Party without reference to such information and data. In addition, the receiving Party may use or disclose such information and data to the extent approved in writing in advance by the disclosing Party.

ARTICLE 11- EVENTS OF DEFAULT

11.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- A. the failure to make, when due, any payment required pursuant to this Agreement if such failure is not cured within fifteen (15) Business Days after written notice;
- B. any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- C. the failure to perform any material covenant or obligation set forth in this Agreement if such failure is not cured within fifteen (15) days after written notice;
- D. such Party is Bankrupt;
- E. such Party is affected by the occurrence of a Material Adverse Change; provided, however, that such Material Adverse Change shall not be considered an Event of Default if, pursuant to the pertinent provisions of Section 11.4 hereof, such affected Party establishes and maintains for so long as the Material Adverse Change is continuing, Performance Assurance to the benefit of the other Party which is in form and amount acceptable to the other Party; or,
- F. such Party fails to establish, maintain, extend or increase Performance Assurance when required pursuant to Section 11.4 of this Agreement.

11.2 **Remedies.** Upon the occurrence of an Event of Default (including the expiration of applicable cure periods), the non-defaulting Party (the "Non-Defaulting Party") may terminate this Agreement. Except with respect to Customer's obligations in Article 7, the Parties expressly agree that Customer's aggregate liability for direct actual damages arising from one or more Events of Default by Customer shall not exceed the amount of liquidated damages that would be payable by Customer pursuant to Section 9.3.

- 11.3 **Bankruptcy.** Upon the filing of a petition by or against (which petition is not withdrawn or dismissed within 90 days), the Defaulting Party under the Code, the Defaulting Party, as debtor and as debtor-in-possession, agrees to adequately protect the Non-Defaulting Party as follows:
- A. to cure or to provide adequate assurance to cure each and every obligation of the Defaulting Party under this Agreement until such time as this Agreement is either rejected or assumed by order of the Bankruptcy Court;
 - B. to pay all monetary obligations required under this Agreement, including, without limitation, the payment of all sums required to be paid by the Defaulting Party under the terms and conditions of this Agreement as reasonable compensation for the Energy provided under this Agreement;
 - C. to provide the Non-Defaulting Party a minimum 30 days' prior written notice, unless a shorter period is permitted by the Code of any proceedings relating to any assumption of this Agreement or any intent to vacate or abandon this Agreement, which vacating or abandonment shall be deemed a rejection of this Agreement; and
 - D. to perform to the benefit of the Non-Defaulting Party as otherwise required under the Code.
- 11.4 **Performance Assurance.** Upon the occurrence of a Material Adverse Change that may adversely affect performance of a Party, the affected Party will promptly provide the unaffected Party with written notice of a Potential Event of Default, identifying with reasonable specificity in such notice the nature and extent of the Material Adverse Change. Within a reasonable time after receiving such notice of Potential Event of Default, the unaffected Party may give written notice requesting Performance Assurance in an amount determined in a commercially reasonable manner. Upon receipt of such notice requesting Performance Assurance, the Party affected by the Material Adverse Change shall have 3 Business Days to cure the Potential Event of Default by providing such Performance Assurance. In the event the affected Party fails to provide such Performance Assurance acceptable to the unaffected Party within 3 Business Days of receipt of notice, then an Event of Default under this Article 11 shall be deemed to have occurred, and the Non-Defaulting Party will be entitled to the remedies set forth in this Agreement.

ARTICLE 12 - NOTIFICATION

- 12.1 Customer shall use reasonable efforts to notify Company of a Turnaround period 120 days prior to the anticipated period and use reasonable efforts to notify the Company of the anticipated start and anticipated end date 60 days prior to the Turnaround. Said notification shall assist Company and Customer in preparing for and scheduling maintenance of the Company's substations that are used in providing service to Customer. Further, the Customer shall use reasonable efforts to notify Company 48 hours prior to the end of the turnaround/maintenance period.
- 12.2 All notices required or contemplated under this Agreement shall be first attempted via telephone to the appropriate personnel as contained herein. All notices via telephone

communication(s) shall be followed, within a 24 hour period, with written communication(s) taking the form of personal delivery, registered mail, courier delivery service or email. All communication(s) shall be deemed to have been given when received by the other Party, in all instances all charges prepaid, addressed as follows:

If to Customer:

CVR Refining CVL, LLC
Attention: Vice President & General Manager
Phone: 602-252-4488
Email: bxtraxel@cvrenergy.com

With a copy to:

CVR Refining CVL, LLC
2277 Plaza Drive, Suite 500
Sugar Land, Texas 77479
Attention: Office of the General Counsel
Phone: 281-207-3326
Email: LegalServices@cvrenergy.com

If to Evergy:

Evergy Kansas South, Inc.
818 S Kansas Ave.
Topeka, KS 66612
Attn: Kari West
Phone: 785.379.4351
Email: Kari.West@evergy.com

Notice by email or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day unless the sender of a notice via email receives a return message that the notice recipient is "out of office" or otherwise unavailable for a specified period of time, in which case, such notice via email will not be effective until the return date specified by such recipient in the automated reply to sender. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

ARTICLE 13 - DISPUTE RESOLUTION

- 13.1 In the event of a dispute which arises out of or relates to this Agreement, or the breach thereof, the Parties agree first to notify the other in writing of the nature of the dispute and of the remedy sought, and to try in good faith to settle the dispute by informal negotiations between representatives of Customer and Company who have authority to settle the dispute before resorting to litigation; provided, however, that notwithstanding the foregoing obligation to participate in good faith informal dispute resolution negotiations, either Party may seek appropriate injunctive relief upon proper showing.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

- 14.1 Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Customer located at the Plant or to all or substantially all of the electric business assets of Company; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof. In the event of any such assignment, if the non-assigning Party reasonably determines that the assignee does not meet the non-assigning Party's credit worthiness criteria for similarly sized companies as the assignee, the non-assigning Party may require the assignee to provide a suitable guaranty, Performance Assurance, or other credit or performance support in order to meet the credit and performance requirements of the non-assigning Party.
- 14.2 Any and all suits for any breach of this Agreement or for rescission or specific performance of this Agreement shall be filed and maintained in any court of competent jurisdiction in Topeka, Kansas. The interpretation and performance of this Agreement shall be in accordance with the laws of the State of Kansas, without reference to principles of conflicts of laws. Each Party waives its respective rights to any jury trial with respect to any litigation arising under or in connection with this Agreement.
- 14.3 No waiver by either Company or Customer of any default of the other under this Agreement shall operate as a waiver of future default, whether of like or different character or nature.
- 14.4 Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties.
- 14.5 This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The Parties agree that this Agreement shall not be interpreted or construed to favor either Party more than the other.
- 14.6 Each Party (and its representative(s)) has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of the Energy delivered at the Delivery Points. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the

payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid. No adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of 2 years from the rendition thereof. This provision will survive any termination or expiration of this Agreement for a period of 2 years from the date of such termination or expiration for the purpose of such statement and payment objections.

- 14.7 This Agreement constitutes the final, complete and entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersedes any previous agreements, representations, or discussions, whether oral or written, between the Parties relating to the subject matter contemplated by this Agreement.
- 14.8. Notwithstanding any provisions herein to the contrary, the obligations set forth in Articles 7, 9, 10, 11 and 14 shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months there from.

ARTICLE 15 - LIMITATIONS OF REMEDIES, LIABILITY AND DAMAGES

- 15.1 EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, A PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. IT IS THE INTENT OF THE PARTIES THAT, EXCEPT AS TO ACTS OF GROSS NEGLIGENCE OR WILFULL, WANTON OR INTENTIONAL MISCONDUCT, THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date above set forth.

CVR REFINING CVL, LLC

EVERGY KANSAS SOUTH, INC.

By: [Signature]
Name: Mark A. Pybus
Its: VP - Corporate Sec

By: [Signature]
Name: [Signature]
Its: SR Dir - External Affairs

PUBLIC

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

DIRECT TESTIMONY OF

JASON KLINDT

ON BEHALF OF EVERGY KANSAS SOUTH, INC.

**IN THE MATTER OF THE JOINT APPLICATION OF
EVERGY KANSAS SOUTH, INC.
AND CVR REFINING CVL, LLC FOR APPROVAL OF AN ENERGY SUPPLY
AGREEMENT.**

Docket No. _____

May 1, 2024

1 **Q. Please state your name and business address.**

2 A. My name is Jason Klindt. My business address is 1200 Main, Kansas City, Missouri
3 64105.

4 **Q. By whom and in what capacity are you employed?**

5 A. I am employed by Evergy Metro, Inc. and serve as Senior Director, External Affairs for
6 Evergy Metro, Inc. d/b/a Evergy Kansas Metro (“EKM”), Evergy Kansas Central, Inc. and
7 Evergy South, Inc., collectively d/b/a as Evergy Kansas Central (“EKC”), Evergy Metro,
8 Inc. d/b/a as Evergy Missouri Metro (“EMM”), Evergy Missouri West, Inc. d/b/a Evergy
9 Missouri West (“EMW”), the operating utilities of Evergy, Inc.

10 **Q. On whose behalf are you testifying?**

11 A. I am testifying on behalf of Evergy Kansas South, Inc. (“Evergy”).

12 **Q. What are your responsibilities?**

13 A. My responsibilities include leading our external affairs department. This includes helping
14 our key account customers with billing, outage, power quality and other questions related
15 to our service. I also manage our economic development team which helps attract new load
16 to the service territory and our government affairs group who work with policy makers at
17 the federal, state and local level.

18 **Q. Please describe your education, experience, and employment history.**

19 A. I graduated from Northwest Missouri State University in 1999 with a degree in public
20 relations and in 2002 with a Masters of Business Administration. I worked for U.S.
21 Congressman Sam Graves (MO-6) for about 10 years mostly as his communications
22 director. I also worked for Axiom Strategies, a political consulting firm, for about 5 years.
23 I joined then-Kansas City Power and Light as the government affairs manager for Missouri

1 in late 2014. I've also worked at Evergy, or its predecessor, as a Director of Customer
2 Intelligence and the Director of Government Relations and Economic Development.

3 **Q. Have you previously testified in a proceeding at the Kansas Corporation Commission**
4 **(“Commission” or “KCC”) or before any other utility regulatory agency?**

5 A. Yes

6 **I. INTRODUCTION**

7 **Q. What is the purpose of your testimony?**

8 A. We are proposing to enter into a special contract with CVR Refining CVL, LLC (“CVR”).
9 My testimony will describe the proposed Energy Supply Agreement (“ESA”) between
10 Evergy and CVR and demonstrate that it is consistent with the Commission’s policies
11 concerning approval of special contracts.

12 **Q. Describe CVR’s characteristics as a customer on Evergy’s system.**

13 A. CVR Refining CVL, LLC, is the third largest customer based on energy sales and second
14 largest customer based on revenues on the Evergy Kansas South system and takes service
15 at 12.47 kV distribution voltage. Their usage levels have consistently grown over the last
16 several years. With more than 540 full-time employees in Coffeyville, CVR is the largest
17 employer in Coffeyville and one of the largest employers in Southeast Kansas. During
18 their planned maintenance outages, CVR adds more than 3,500 skilled contract personnel,
19 and has disclosed early plans for potential further expansion¹ in the Coffeyville area. In
20 2022, CVR had \$10.9 billion in net sales up from \$7.2 billion in 2021. CVR has more than

¹ CVR Energy Continues To Consider SAF Projects At 2 Refineries, February 26, 2024 Biomass Magazine. (<https://biomassmagazine.com/articles/cvr-energy-continues-to-consider-saf-projects-at-2-refineries>)

1 1,471 employees in the U.S., including multiple sites in Oklahoma and a second refinery
2 in Wynnewood, Oklahoma, as well as fertilizer operations in Kansas and Illinois.

3 **Q. Why did Evergy decide to enter into the proposed ESA?**

4 A. Over the last year or so, Evergy has received indication from CVR that its location in
5 Evergy's service territory is at a price disadvantage compared to its location served by the
6 City of Coffeyville and its other locations outside of Kansas and also that CVR believes it
7 is at a competitive disadvantage compared to its competitors also served by Evergy who
8 have special contracts. These points are addressed directly within the Direct testimony of
9 Mark Pytosh, Executive Vice President – Corporate Services of CVR Energy, Inc. filed as
10 part of this Docket. Because of CVR's importance to the Kansas economy, Evergy decided
11 to enter the ESA in order to ensure the rates offered to CVR are competitive with its other
12 locations and with its competitors in Kansas. This will help encourage CVR to maintain
13 its existing load on Evergy's system, continue to be a large employer in Southeast Kansas,
14 and possibly locate any future expansion of load in Evergy's territory.

15 **II. ENERGY SUPPLY AGREEMENT**

16 **Q. Please describe the major terms of the ESA.**

17 A. The ESA has a five-year term. It includes an all-energy rate with three-tiered pricing blocks
18 with a declining block rate structure. It includes the requirement that CVR have a monthly
19 minimum bill, before taxes, of \$1 million and subjects CVR to all riders and surcharges it
20 would otherwise pay. The ESA gives Evergy the ability to update rates when rates for
21 other customers are changed to reflect the pro rata share of the change for the ILP class.

22 **III. THE ESA MEETS THE COMMISSION'S STANDARD FOR APPROVAL OF**
23 **SPECIAL CONTRACTS**

1 **Q. What is the Commission’s policy concerning special contracts between utilities and**
2 **their customers?**

3 A. In 2000 and 2001, the Commission investigated issues related to special contracts in
4 Docket No. 01-GIME-813-GIE (“813 Docket”). In its Order issued in that docket on
5 October 3, 2001, the Commission found substantial support “to demonstrate that these
6 contracts may benefit both ratepayers and shareholders, and that they should not be
7 prohibited.” Docket No. 813-GIE Order, at 2.

8 Specifically, the Commission stated that “[i]n order to be approved, the utility must
9 show that the special contract provides a cost benefit to the remaining core customers.”
10 813 Order, at ¶ 6. The Commission then provided a list of non-exclusive factors that may
11 be considered when evaluating the cost impact on core customers. Those factors are:

- 12 a. The load characteristics of the customer,
- 13 b. The presence of an ECA or other risk management tool(s),
- 14 c. The nature of the discount,
- 15 d. Benefits such as curtailment provisions or use of system non-peak times,
- 16 e. The length of the contract,
- 17 f. Information regarding the terms of the contract, and
- 18 g. The existing capacity of the utility.

19 The Commission also determines whether the amount the special contract customer
20 will pay under the ESA will produce an amount greater than the incremental variable cost
21 (marginal cost) to serve the customer, resulting in a contribution to fixed costs.²

22 **Q. What are the load characteristics of the customer?**

² Direct Testimony of Darrin Prince, at pp. 9-11, Docket No. 18-KG&E-303-CON.

1 A. CVR is a customer with an extremely high load factor. For the year of 2023, its monthly
2 demand averages 51,877 KW, with a 96% load factor. CVR's peak demand over the last
3 twelve months was 53,977 KW.

4 **Q. Does the ESA contain risk management tools?**

5 A. Yes. As the Commission stated in its 813 Order, the presence of an ECA and other risk
6 management tools in the contract is relevant to the question of whether the contract
7 provides benefits to other customers. The ESA is for a five-year term and includes
8 minimum payment requirements for the entire term. It also allows Evergy to update the
9 rates charged to CVR when rates for other customers are changed in order to reflect a pro
10 rata share of the change in rates applicable to other customers. Additionally, all Riders and
11 Surcharges applicable to other customers will remain applicable to CVR. As the Riders
12 and Surcharges are adjusted, the rate to CVR is adjusted on a pro rata basis as well.

13 **Q. What is the nature of the special contract discount?**

14 A. Instead of a fixed, year-round, monthly demand and energy charge, CVR's rates will be
15 completely based on energy usage. The rate is structured with three usage blocks, with
16 declining prices per block.

17 **Q. Will the proposed contract provide a benefit to the remaining core customers of
18 Evergy?**

19 A. Yes. The ESA will encourage CVR to maintain at least its current levels of usage and
20 potentially locate any future expansions in Evergy's territory. If CVR's usage were to
21 decrease, the rates for all other customers would increase as a result. The ESA prevents
22 CVR from leaving the system or reducing usage and instead encourages increased usage
23 through a tiered pricing structure. If CVR left the system or reduced its operations in

1 Kansas, customers would also be indirectly impacted through reduction in employment
2 levels and other investments in the local economy. The ESA results in a five-year
3 commitment by CVR to Kansas by imposing minimum bill requirements of \$1 million per
4 month throughout the five-year agreement.

5 **Q. Will the rates under the proposed ESA result in CVR's contribution to fixed costs?**

6 A. Yes. In order to determine whether remaining Evergy customers are better off with or
7 without CVR as a Evergy customer on a cost basis, we replicated Staff's Variable Cost
8 Analysis from Docket No. 18-KG&E-303-CON which analyzed Total Operating Expenses
9 in the Industrial Large Power (ILP) group in Evergy's class cost of service filed in the 18-
10 328 Docket. For this analysis we compared CVR's total usage data for the period January
11 2023 through December 2023 to variable costs identified in the Company class cost of
12 service study offered in Docket #23-EKCE-775-RTS, the Company's most recent rate case.
13 The average rate per kWh using the proposed contract rates exceeds the variable cost floor
14 by nearly 52%. Using this method, there will clearly be a fixed costs contribution under
15 the contract. Therefore, Evergy customers are better off with the proposed special contract
16 versus CVR leaving the Evergy system. This contribution is in addition to the other
17 benefits of maintaining and possibly encouraging the growth of CVR's Kansas operations
18 that I discussed earlier.

19 **Q. Why is the special contract necessary?**

20 A. The contract is necessary because it provides the incentives needed to keep CVR as a large,
21 viable customer on our electric system and as a viable business in Kansas. The proposed
22 contract will continue to help address the electric cost disadvantages that CVR has
23 indicated it is experiencing.

1 **IV. REQUEST FOR DEFERRAL OF REGULATORY ASSET**

2 **Q. What is Evergy requesting with respect to a regulatory asset for the lost revenue**
3 **that will result from the proposed ESA?**

4 A. Evergy is requesting approval from the Commission to defer for recovery in its next general
5 rate case the difference between the base rate revenue it will receive from CVR under the
6 proposed ESA and the base rate revenue it would have received from CVR if CVR
7 continued to take service under the ILP tariff. We would expect in our next general rate
8 case to request recovery of the deferred amount over a period of time consistent with the
9 period of time during which the deferral balance is built.

10 **Q. How will Evergy calculate the regulatory asset?**

11 A. For the customer accounts that will be billed at the ESA rate, Evergy will calculate monthly
12 the base rate revenue under the applicable tariff assigned to each account prior to the
13 effective date of the ESA. This will be compared to actual base rate revenue billed using
14 the ESA rates. The difference will be booked to a regulatory asset account.

15 **Q. Why is approval of the requesting regulatory asset appropriate?**

16 A. The Commission should approve the requested regulatory asset because, as I discussed
17 above, the proposed ESA meets the Commission's standard for approval and will result in
18 benefits for Evergy's remaining core customers. As a result, it is reasonable and
19 appropriate for those remaining core customers to be responsible for the lost revenue that
20 results from implementation of the ESA.

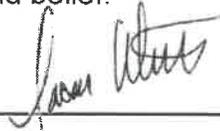
21 **Q. Thank you.**

PUBLIC

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

VERIFICATION

Jason Klindt, being duly sworn upon his oath deposes and states that he is the Sr. Director, External Affairs, for Evergy, Inc., that he has read and is familiar with the foregoing Direct Testimony, and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.



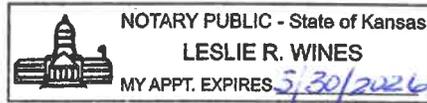
Jason Klindt

Subscribed and sworn to before me this 1st day of May, 2024.



Notary Public

My Appointment Expires May 30, 2026



PUBLIC

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

In the Matter of the Application of Evergy)
Kansas South, Inc. for Approval of the Energy)
Supply Agreement between Evergy Kansas) Docket No. 24-EKSE-____-CON
South and CVR Refining CVL, LLC.)
)

**DIRECT TESTIMONY OF MARK PYTOSH
EXECUTIVE VICE PRESIDENT OF CVR ENERGY, INC.
ON BEHALF OF
CVR REFINING CVL, LLC**

APRIL 30, 2024

*****CONFIDENTIAL VERSION*****

TABLE OF CONTENTS

I. BACKGROUND 1
II. INTRODUCTION..... 3
III. ANALYSIS 3
IV. CONCLUSION 11

1 **I. BACKGROUND**2 **Q. Please state your name and business address.**3 A. My name is Mark Pytosh. My business address is 2277 Plaza Dr. Sugar Land, Texas
4 77479.5 **Q. On whose behalf are you testifying?**

6 A. I am testifying on behalf of CVR Refining CVL, LLC.

7 **Q. By whom and in what capacity are you employed?**8 A. I am employed by CVR Services, LLC and am the Executive Vice President – Corporate
9 Services of CVR Energy, Inc. (“CVR Energy”), a publicly traded, diversified holding
10 company organized under the laws of the State of Delaware primarily engaged in the
11 renewables, petroleum refining and marketing businesses as well as in the nitrogen
12 fertilizer manufacturing business through its interest in CVR Partners, LP (“CVR
13 Partners”), a position I also hold for certain of CVR Energy’s subsidiaries including
14 Coffeyville Resources Refining & Marketing, LLC (“CRRM”), the operator of a petroleum
15 refinery located in Coffeyville, Kansas (the “Coffeyville Refinery”), and CVR Refining
16 CVL, LLC (“CVRR CVL” and together with CRRM referred, “CVR Refining”), which
17 owns the refining assets at the Coffeyville Refinery. In addition to its refining operations
18 in Kansas, CVR Energy subsidiaries own and/or operate a petroleum refinery and co-
19 located renewable diesel facility in Wynnewood, Oklahoma as well as marketing and
20 logistics businesses located in Kansas and Oklahoma.21 In addition, I serve as President and Chief Executive Officer of the general partner
22 of CVR Partners, a publicly traded Delaware limited partnership indirectly controlled by
23 CVR Energy focused on the production, marketing and distribution of nitrogen fertilizer

1 products, a position I also hold for certain of CVR Partners' subsidiaries including
2 Coffeyville Resources Nitrogen Fertilizers, LLC, which owns and operates a fertilizer
3 facility located adjacent to the Coffeyville Refinery in Coffeyville, Kansas (the "Fertilizer
4 Plant"). In addition to the Fertilizer Plant, CVR Partners' subsidiaries also own and operate
5 a nitrogen fertilizer facility in East Dubuque, Illinois and associated marketing and logistics
6 businesses in Kansas and Illinois.

7 **Q. Please describe your educational and professional background.**

8 A. I received a Bachelor of Science degree in chemistry from the University of Illinois,
9 Urbana-Champaign and have over thirty-five years of experience in senior executive roles
10 in the fertilizer, petroleum refining, environmental, power, solid waste, and investment
11 banking industries. My career has included both financial and operational roles in these
12 businesses, including being the Chief Executive Officer of a public company for 10 years
13 (CVR Partners) and Chief Financial Officer of both public and private companies. I have
14 direct experience in the power generation industry, having served as Chief Financial
15 Officer of Covanta Energy, the largest energy-from-waste company in the world.

16 I have also served as a director of the University of Illinois Foundation since 2007
17 and The Fertilizer Institute since 2015.

18 **Q. Have you previously testified before the Kansas Corporation Commission ("KCC" or**
19 **"Commission")?**

20 A. Yes. I submitted public and confidential direct testimony in Evergy's 2023 rate case,
21 Docket No. 23-EKCE-775-RTS, on behalf of CVR Refining.

22

1 **II. INTRODUCTION**

2 **Q. What is the purpose of your testimony?**

3 A. My testimony will provide support for the Joint Application of Evergy Kansas South, Inc.
4 d/b/a Evergy Kansas Central (“Evergy”) and CVR Refining, which requests the
5 Commission approve an Energy Supply Agreement between those entities (“Agreement”
6 or “ESA”). More specifically, I will describe CVR Refining’s operations and explain why
7 the Agreement is necessary and in the public interest from CVR Refining’s perspective.

8 **III. ANALYSIS**

9 **Q. Will you please provide a brief overview of CVR Energy’s operations?**

10 A. CVR Energy subsidiaries employ over 1,500 people nationwide. Nearly 400 employees
11 are employed at the Coffeyville Refinery and approximately 140 people are employed at
12 the Fertilizer Plant. The Coffeyville Refinery and Fertilizer Plant also engage numerous
13 independent contractors. These two operations generate substantial economic activity in
14 and around the City of Coffeyville and Montgomery County, Kansas and generally serve
15 as the highest paying employer and one of the largest taxpayers in the region.

16 **Q. Describe the Coffeyville Refinery’s operations?**

17 A. The Coffeyville Refinery is a complex full coking refinery that processes moderately
18 heavy, medium sulfur crude oil. The Coffeyville Refinery has a rated capacity of 132,000
19 barrels per calendar day, predominantly producing clean transportation products such as
20 gasoline, diesel fuels and propane. About 10% of the crude oil processed at the Coffeyville
21 Refinery is sourced from Kansas oil producers.

22 The major operations of the Coffeyville Refinery include fractionation, catalytic
23 cracking, hydrotreating, reforming, coking, isomerization, alkylation, sulfur recovery, and

1 propane and butane recovery operating units. The Coffeyville Refinery benefits from
2 significant refining unit redundancies, which include two crude oil distillation, two vacuum
3 towers, two sulfur recovery units, and five hydrotreating units. These redundancies allow
4 the Coffeyville Refinery to continue to receive and process crude oil even if one tower
5 requires maintenance without having to shut down the entire refinery.

6 Like every other complex refinery in the United States, electric service is critical to
7 operate the Coffeyville Refinery's facilities and generally represents between *** [REDACTED]
8 [REDACTED]*** of direct operating expenses.

9 **Q. Describe the Coffeyville Refinery and Fertilizer Plant's importance to the Kansas**
10 **economy and community.**

11 A. Maintaining the Coffeyville Refinery and Fertilizer Plant as vibrant and growing
12 businesses is vital to the Kansas economy, and particularly to the economy of Southeast
13 Kansas. Since acquiring the Coffeyville Refinery in 2005, CVR Energy has invested over
14 \$1 billion in capital upgrades and expansions to the facility. Generally, the Coffeyville
15 Refinery conducts major turnaround activity every 3 to 5 years where it currently invests
16 between \$150 million and \$200 million per turnaround to complete repairs, maintenance,
17 replacements, and upgrades of various pieces of equipment in the facility.

18 The annual median compensation paid to employees at the Coffeyville Refinery is
19 approximately *** [REDACTED]***, approximately *** [REDACTED]*** times the Coffeyville per capita
20 income of \$41,220.¹ In addition to direct employment of hundreds of Kansas residents,
21 CVR Refining and its affiliates regularly conduct business with more than 100 Kansas

¹ CENSUS BUREAU, QUICK FACTS: COFFEYVILLE, KANSAS,
<https://www.census.gov/quickfacts/fact/table/coffeyvillecitykansas/PST045222>.

1 contractors and suppliers, ranging from *** [REDACTED] [REDACTED]
2 [REDACTED] ***, all based out of Coffeyville. During
3 turnarounds, on average more than 3,000 additional independent contractors are engaged
4 at the Coffeyville Refinery, providing a windfall to the local economy. On average, we
5 believe the Coffeyville Refinery's turnaround activity generates an economic multiplier of
6 approximately 5x. CVR Refining has also invested significant dollars in growth projects,
7 including \$54 million on a new office building and warehouse scheduled to be operating
8 in early 2024.

9 The Fertilizer Plant also generates significant economic activity to the Southeast
10 region of Kansas with over \$69 million of capital investment and numerous turnaround
11 events since 2019, like the Coffeyville Refinery. As well, significant volumes of the
12 nitrogen fertilizer produced in Coffeyville are provided to farmers throughout the State of
13 Kansas.

14 CVR Energy and its subsidiaries also contribute significantly to the Kansas
15 economy through the payment of taxes, having paid approximately \$33.4 million in state
16 and local taxes to Kansas in 2023, as well as its charitable initiatives, having contributed
17 more than \$608,000 to the local community during the past 5 years and the construction of
18 a \$4 million church for the Sardis First Missionary Baptist Church. CVR Energy also
19 contributes to its communities through the time, energy and passion of its employees, by
20 offering all eligible employees one paid day per year to volunteer for charitable initiatives,
21 with employees contributing a total of 520 hours since the program was enacted in late
22 2021.

1 Collectively, the Coffeyville Refinery and Fertilizer Plant are major employers and
2 drivers of the economy in Southeast Kansas, a slower growing economy as compared to
3 other regions of Kansas. The viability and growth prospects for the Coffeyville Refinery
4 and Fertilizer Plant in Southeast Kansas will be critical to maintaining a solid economic
5 foundation for that region.

6 **Q. How does the Coffeyville Refinery and Fertilizer Plant currently take electric service?**

7 A. The Coffeyville Refinery is served by Evergy and the Fertilizer Plant is served by
8 Coffeyville Municipal Light & Power (“CMLP”). Because the Coffeyville Refinery and
9 Fertilizer Plant are served by two different electric service providers, they have different
10 rate structures and costs.

11 **Q. What are the terms under which Coffeyville Refinery and Fertilizer Plant receive
12 service?**

13 A. CVR Refining currently receives service as a retail electric customer under the Industrial
14 and Large Power (“ILP”) customer class. Specifically, CVR Refining takes service at
15 primary voltage rates. CVR Refining also pays various surcharges and rider charges
16 applicable to the ILP class. The Fertilizer Plant sources its electricity from the Grand River
17 Dam Authority in Oklahoma but has a special rate contract with CMLP. In addition, the
18 Coffeyville Refinery has a direct interconnect to the Southern Star Central Gas Pipeline
19 system, which provides natural gas to both the Coffeyville Refinery and Fertilizer Plant for
20 production needs.

21 **Q. What are the load characteristics of the Coffeyville Refinery?**

22 A. The Coffeyville Refinery has an extremely high load factor. During the first six months of
23 2023, its monthly average demand averages 50–55 MW, with a 95% load factor. The

1 Coffeyville Refinery's peak demand over the last twelve months was 55 MW. Based on
2 2023 rates, this makes CVR Refining the third largest consumer on Evergy's system.

3 Furthermore, under current rates, CVR Refining is the second largest producer of
4 revenue for Evergy in the Kansas Central jurisdiction.

5 **Q. Will you please provide an overview of the new ESA under which CVR has agreed to**
6 **take future service from Evergy?**

7 A. Yes. The primary terms of the ESA are as follows:

8 1) Five-year term;

9 2) Agreed base energy rates, with three declining blocks;

10 3) CVR Refining will be charged all applicable surcharges and riders, as specified in
11 the ESA;

12 4) Agreed base rates may change as a result of a general base rate change approved
13 by the Commission, consistent with the overall percentage increase or decrease
14 allocated to the ILP customer class;

15 5) CVR Refining is obligated to pay a substantial minimum monthly bill.

16 **Q. Why are CVR Refining and Evergy requesting approval of this Agreement?**

17 A. CVR Refining and Evergy are requesting approval of this Agreement to address the price
18 disadvantage for electric service CVR Refining is experiencing at its Coffeyville operations
19 compared to its operations in other areas outside of Kansas and its competitor's operations
20 in Kansas. The Agreement is important because it helps maintain CVR Refining as a
21 vibrant and growing contributor to the Kansas economy.

1 **Q. Is the Agreement necessary?**

2 A. Yes. The refining industry is highly competitive. Being competitive in refining is
3 dependent on a number of cost inputs. One of those inputs is the price of electricity, and it
4 is a material component affecting the profitability of CVR Energy's current level of
5 operations and competitiveness for future expansion opportunities. In the case of the
6 Coffeyville Refinery, electricity costs are approximately ***[REDACTED]*** of the direct
7 operating costs at the refinery.

8 More importantly, the Coffeyville Refinery competes internally with CVR
9 Energy's operations in other states and with its fertilizer operations for capital for
10 expansions, upgrades and new build investments. For example, as I explained above, CVR
11 Energy has substantial manufacturing operations in Oklahoma in addition to the
12 Coffeyville operations. Notably, CVR Energy converted a unit at its Wynnewood,
13 Oklahoma refinery to renewable diesel service because, among a number of factors, its
14 electricity rates in Oklahoma were far lower than those in Kansas.

15 CVR Energy's electricity rate will be approximately 44% higher than our
16 Oklahoma rate, based on a recent three-year average. These price differentials are
17 substantial when considering the magnitude of CVR's total electricity usage and the highly
18 competitive nature of the petrochemical processing industry.

19 These price differentials are substantial when considering the magnitude of CVR
20 Energy's total electricity usage and the highly competitive nature of the refining industry
21 and the fact that the Coffeyville Refinery's competitive position would be further
22 weakened against other refining competitors in Kansas and a number of other refineries in

1 neighboring states due to the rate increase. CVR Energy will factor these cost
2 disadvantages into future investment decisions related to the Coffeyville Refinery.

3 **Q. Is CVR Energy considering expanding operations in Kansas?**

4 A. Yes. CVR Energy is exploring the potential expansion of its renewable fuels business
5 through the addition of a new renewable diesel/sustainable aviation fuel (“SAF”)
6 production plant that, if approved, would likely be sited near the Coffeyville Refinery. As
7 stated during CVR Energy’s Q4 2023 Earnings Call on February 21, 2024 regarding the
8 expansion:

9 Our current plan is to approach the market in the second half of 2024 to
10 solicit bids for partners to invest in the construction of a renewable diesel
11 and sustainable aviation fuel facility near Coffeyville with a capacity of up
12 to 500 million gallons per year. We believe there is interest in the market
13 for this projects [sic] like this, and ultimately our Board approval of the
14 project will depend on our ability to find partners willing to fund the cost of
15 construction.²

16
17 If approved, the potential renewable fuels facility would likely be a standalone
18 operation not constructed within the existing footprint of the Coffeyville Refinery. Among
19 many factors CVR Energy is considering for the development of the facility is the cost of
20 electricity. CVR Energy has many options for locating the facility that would allow us to
21 take advantage of lower electricity rates and other cost advantages in geographies such as
22 Oklahoma which is only three miles from the Coffeyville Refinery and Fertilizer Plant.
23 Lower costs in Oklahoma would allow the renewable fuels facility to be more competitive
24 than locating it in Kansas.

² A transcript of CVR Energy’s Q4 2023 Earnings Call is available at: https://finance.yahoo.com/news/cvr-energy-inc-nyse-cvi-133044262.html?soc_src=social-sh&soc_trk=ma.

1 **Q. Are these possible expansions expected to receive the pricing within this special**
2 **contract?**

3 A. No. The pricing for service to those possible expansions will be addressed separately as
4 these are executed.

5 **Q. Is CVR Energy considering alternatives to retail electric service?**

6 A. Yes. CVR Energy is considering a potential co-generation option for the Coffeyville
7 Refinery. CVR Energy believes that there is ready access to natural gas feedstock from
8 the Southern Star Central Gas Pipeline, which would serve as the feedstock for a potential
9 co-generation plant. CVR Energy would have the option to contract with a third party to
10 build and operate the co-generation facility, providing electricity through a tolling basis
11 with no capital required by CVR Energy. We believe that electricity rates from co-
12 generation would be lower than those offered by Eergy.

13 CVR Energy would also explore adding the Fertilizer Plant to this potential co-
14 generation project. Although CVR Energy would like to avoid this due to the loss of the
15 annual wheeling charges the City of Coffeyville receives from the special contract with the
16 Fertilizer Plant.

17 **Q. Aside from the lower base rate price component, how does the ESA encourage CVR**
18 **Refining to increase electricity usage at its Coffeyville operations?**

19 A. There are several pricing terms of the ESA specifically designed to encourage CVR
20 Refining to potentially expand its operations (and electricity usage). Most importantly, the
21 ESA institutes a declining block structure. If CVR Refining's electricity usage increases,
22 we will be able to take increasing advantage of the lower-priced energy blocks. This would
23 have the impact of significantly reducing our average "all-in" rate. As I understand it, this

1 increased usage should also benefit Evergy's other customers by providing incremental
2 revenue to help offset Evergy's fixed costs of service.

3 CVR Refining is also incentivized to fully utilize its Coffeyville operations because
4 the Agreement requires CVR Refining to pay a substantial monthly minimum bill
5 regardless of usage. Because CVR Refining is committed to make this large payment
6 regardless of its usage, it is in CVR Refining's interest to maintain a significant level of
7 operations. However, as noted above, the ESA encourages CVR Refining to find ways to
8 expand its electricity usage, as opposed to simply maintaining its current operations.

9 **Q. Please explain why the Agreement has a 5-year term.**

10 A. In negotiating this Agreement, it was very important for CVR Refining to have a measure
11 of long-term cost certainty. When CVR Refining pursues new projects, it must project its
12 costs over a long planning horizon. Therefore, the cost-stability of the five-year term is
13 extremely important for our strategic planning and competitive bidding processes.

14 **Q. Why is CVR Refining requesting expedited approval of this Application?**

15 A. As explained above, CVR Refining's Coffeyville operations are currently at a distinct
16 electricity pricing disadvantage compared to its facilities in other locations. Additionally,
17 CVR Refining has shared publicly its desire to expand its renewable fuels business
18 significantly. If there is uncertainty about the approval of this new ESA, CVR Refining
19 must take that cost differential into account in its planning and investment decisions.

20 **IV. CONCLUSION**

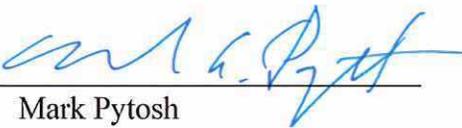
21 **Q. Does this conclude your testimony?**

22 A. Yes.

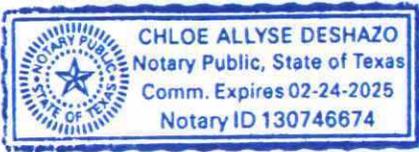
VERIFICATION

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

I, Mark Pytosh, being duly sworn, on oath state that I am the Executive Vice President of CVR Energy, Inc., that I have read the foregoing testimony and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief.

By: 
Mark Pytosh

The foregoing pleading was subscribed and sworn to before me this April 29, 2024.




Notary Public

My Commission Expires:

02/24/2025