

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

In the Matter of the Investigation into the Agreement)
between Evergy and Elliott Management to consider) Docket No. 20-EKME- 514 -GIE
a Modified Stand Alone Plan or Merger Transaction)

**PETITION OF COMMISSION STAFF FOR
ORDER INITIATING INVESTIGATION**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) hereby petitions the Commission for an order initiating a general investigation into an agreement (Agreement) entered into by the Board of Directors (Board) of Evergy Metro, Inc., Evergy Kansas Central, Inc., and Evergy South, Inc. (collectively, Evergy or the Company) and Elliott Associates, L.P., Elliott International, L.P., and affiliates (collectively Elliott Management or Elliott) to consider either a Modified Standalone Plan that would effectively cut operating and maintenance expenses and increase capital expenditures, or a Merger Transaction. In support thereof Staff states the following:

1. Evergy is a certificated electric public utility under the jurisdiction of the Commission pursuant to K.S.A. 66-104 and K.S.A. 66-131, and is obligated to provide efficient and sufficient service at just and reasonable rates in accordance with K.S.A. 66-101b.

2. The Commission has plenary authority under K.S.A. 66-101 to “supervise and control” the electric utilities doing business in Kansas and “is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.” Additionally, the Commission has authority under K.S.A. 66-101h to “examine and inspect the condition of each electric public utility” and the “manner of its conduct and its management with reference to the public safety and convenience.”

3. Elliott is an asset management firm that manages approximately \$40.2 billion in assets, with a stated goal of generating a consistent return to its investors and a stated focus as “...an opportunistic trading approach, the creation – not just the identification – of value, effective liquidity management, and managing operational and counterparty risk.”¹

4. On January 21, 2020, Elliott issued a press release summarizing the contents of an Open Letter that Elliott sent to the Board of Evergy. The letter made public the fact that Elliott had engaged in private discussions with Evergy management on ways to maximize value for all of Evergy’s key stakeholders.

5. Subsequently, on February 28, 2020, Evergy entered into an Agreement with Elliott resulting in the appointment of two new members to Evergy’s Board, and the creation of a Strategic Review & Operations Committee (Committee) to explore ways to increase Evergy’s shareholder value. Pursuant to the Agreement the Committee is to consider either a Modified Standalone Plan that would effectively cut operating and maintenance expenses and increase capital expenditures dramatically, or a Merger Transaction, and present its recommendation to Evergy’s Board for consideration and vote. Currently, the formal recommendation to the Board is due July 30, 2020, and the deadline for the Board to vote on the formal recommendation is August 17, 2020. Additionally, if Evergy pursues a Modified Standalone Plan, the deadline for publicly presenting the plan to the investor community is October 14, 2020.

6. Staff has been monitoring publically available information regarding the Agreement and the resulting activities of Evergy and Elliott in an attempt to ascertain the potential impacts on Evergy to meet its public utility obligations and the resulting impacts of either path selected by Evergy on its Kansas consumers. Staff has reduced to writing the results of its efforts

¹ Source for firm information and cite is <https://www.elliottmgmt.com/>.

to-date, which are contained in the Report and Recommendation attached hereto as **Attachment A** and incorporated herein by reference.

7. The specifics of Staff's recommendation are contained in Attachment A, but generally, Staff recommends the Commission open the investigation in order for the Commission, stakeholders, and customers to be fully informed of the analysis and rationale of Evergy's decisions relating to and resulting from the Elliot Agreement. As part of this recommendation, Staff requests the Commission require Evergy to file a report addressing the questions outlined by Staff, and allow Staff and all intervening stakeholders an opportunity to respond in writing. Staff recommends Evergy submit its report no later than two weeks after Evergy's Board makes its decision whether to pursue a Modified Standalone Plan or a Merger Transaction.

WHEREFORE, Staff respectfully requests the Commission grant this petition, thereby initiating an investigation as set forth above, and for any other such relief the Commission deems just and reasonable.

Respectfully submitted,

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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Susan K. Duffy
Commissioner Shari Feist Albrecht
Commissioner Dwight D. Keen

FROM: Justin Grady, Chief of Accounting and Financial Affairs
Jeff McClanahan, Director of Utilities

DATE: June 11, 2020

SUBJECT: Recommendation to Open a General Investigation to Evaluate the Elliott and Evergy Agreement Requirements to Pursue a Modified Standalone Plan or a Merger Transaction

I. EXECUTIVE SUMMARY

On January 21, 2020, Elliott Associates, L.P., Elliott International, L.P., and affiliates (collectively Elliott Management or Elliott) issued a press release and sent an Open Letter to the Board of Directors of Evergy, Inc. (Evergy).¹ The press release summarizes the contents of the letter and announces that Elliott owns an economic interest equivalent to 11.3 million shares in Evergy, which equated to approximately \$760 million in current market value as of the press release date. The letter made public the fact that – over the past three months – Elliott had been engaged in private discussions with Evergy management on ways to maximize value for all of Evergy’s key stakeholders. Elliott’s Open Letter indicated Elliott believes that it can increase shareholder value without increasing customer rates. However, the content of the Open Letter clearly focused more on increasing shareholder wealth than stabilizing or reducing customer rates.

On February 28, 2020, Evergy entered into an agreement (Agreement) with Elliott. The Agreement requires the appointment of two new members to Evergy’s Board of Directors and the creation of a committee to explore ways to increase Evergy’s shareholder value. The Agreement also requires that Evergy’s Board of Directors consider either a Modified Standalone Plan that would effectively cut operating and maintenance expenses and increase capital expenditures dramatically, or a Merger Transaction. In discussing the Agreement, Evergy CEO, Terry Bassham, stated, “The comprehensive strategic and operating review we are undertaking will help ensure that Evergy is directing capital to the greatest opportunities and continuing to consider all opportunities to enhance shareholder value.”² Jeff Rosenbaum, Senior Portfolio Manager for Elliott, stated “We believe Evergy is well positioned to significantly increase investment in critical electric infrastructure to

¹ Elliott Management’s letter is attached to this report as Exhibit A.

² Yarrowborough, India. “Evergy, Elliott reach settlement agreement”, Capital Journal, March 2, 2020.

benefit key stakeholders. We view this agreement, including the clear mandate of the Strategic Review & Operations Committee, as a great opportunity to ensure that Evergy is best positioned to drive shareholder value creation.”³

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. Such a result is in direct opposition to a variety of considerations – explained in the Background Section of this report – including, but not limited to, Evergy’s obligations pursuant to Docket No. 18-KCPE-095-MER (the 18-095 Docket or Merger Docket), and the current emphasis in Kansas to move Evergy’s rates towards regional competitiveness. Because either path selected under the Evergy and Elliott Agreement – a Stand Alone Plan or Merger Transaction – has the potential to affect Evergy’s ability to provide reasonably efficient and sufficient service at just and reasonable rates, it is important to have a transparent process as the utility works through its analysis and decision. Therefore, Staff requests the Commission open a general investigation in order for the Commission, stakeholders, and customers to be fully informed of the analysis and rationale of Evergy’s decision. As discussed in the Recommendation Section of this report, Staff requests the Commission require Evergy to file a report addressing the questions outlined by Staff and allow Staff and all intervening stakeholders an opportunity to respond in writing. This investigation will not require any affirmative action by the Commission. Rather, this investigation is informational in nature, will allow all parties to be informed of Evergy’s decision, and will allow Evergy to be informed of the Commission’s and all stakeholders concerns regarding its decision. Staff recommends Evergy submit its report no later than two weeks after Evergy’s Board of Directors makes its decision. Staff also notes in this report that it will petition the Commission to open a new docket to evaluate any Standalone Plan that may be approved by Evergy’s Board of Directors. Staff’s petition will be necessary because of the potential impact on the core elements of the merger agreement approved by the Commission in the 18-095 Docket.

II. BACKGROUND

Elliott Management’s Agreement with Evergy:

Elliott Management is an asset management firm that was founded in 1977 and manages approximately \$40.2 billion in assets.⁴ The firm employs approximately 473 people, including 165 investment professionals.⁵ The firm describes its goal as generating a consistent return to its investors and its focus as “...an opportunistic trading approach, *the creation – not just the identification – of value*, effective liquidity management, and managing operational and counterparty risk.”⁶ [Emphasis added]. The firm’s core strategies includes an equity-orientation described as follows:

The firm takes equity-oriented positions in several of its strategies, and

³ Yarborough, India. “Evergy, Elliott reach settlement agreement”, Capital Journal, March 2, 2020.

⁴ Source for firm information and cite is Elliottmgt.com.

⁵ Source for firm information and cite is Elliottmgt.com

⁶ Source for firm information and cite is Elliottmgt.com

takes on such positions in a variety of forms. *It is less common for the firm to take on long equity positions which are just driven by valuation considerations.* Elliott seeks out positions in particular which are uncorrelated with other positions in the portfolio or with the risks and expected price movements of equities generally, or where value and protection against risk can be enhanced by the firm's manual efforts. Positions with a high asymmetry of reward to risk create a high degree of optionality.⁷ [Emphasis added].

On January 21, 2020, Elliott issued a press release and sent an Open Letter to the Board of Directors of Evergy, Inc. (Evergy). The press release summarizes the contents of the letter and announces that Elliott owned an economic interest equivalent to 11.3 million shares in Evergy, which equated to approximately \$760 million in current market value as of the press release date. The letter made public the fact that – over the past three months – Elliott had been engaged in private discussions with Evergy management on ways to maximize value for all of Evergy's key stakeholders. However, the discussion had so far resulted in differing opinions on the right path forward.

Elliott's letter provides a summary and critique of Evergy's opportunities as well as an analysis of Evergy's current business plan and resulting underperformance. The letter also provides Elliott's recommendation that Evergy immediately explore two alternative paths. An overview of Elliott's summary and critique of Evergy's opportunities and underperformance is as follows:

- Elliott believes there is a clear opportunity to create significant shareholder value;
- Elliott believes Evergy's valuation does not properly reflect the value of its collection of high-quality regulated utilities in Kansas and Missouri;
- Elliott asserts a renewed focus on improving core-utility operations and investing in Evergy's critical electric infrastructure can improve its prolonged underperformance, discounted valuation and associated increased cost of capital;
- Elliott believes Evergy's stock-price underperformance since the completion of the Great Plains and Westar merger reflects investors' increasingly skeptical outlook on Evergy's long-term plan and its recent strategic decisions;
- In particular, Elliott asserts Evergy's investors are especially skeptical of the current strategy of using capital to repurchase Evergy's shares at the expense of increased investment in its infrastructure;
- Elliott asserts that increased system investment will provide more value to shareholders than share buybacks and it will also provide clearly superior benefits to Evergy's customers, employees, regulators, and the broader communities Evergy's utilities serve;

⁷ Source for firm information and cite is Elliottmgt.com.

- Elliott asserts that Evergy’s current long-term plans and current operating and strategy decisions have led to bottom-quartile (and in some instances bottom-decile) operating-cost performance, system capital investment, rate-base growth, and cost of capital among U.S. mid- and large-cap regulated utilities.
- Elliott believes that Evergy’s strategic operating-plan and capital-allocation issues can be addressed in the near-term, which will put Evergy on a track to create sustainable value for all key stakeholders. In order to accomplish this, Elliott asserts that Evergy should immediately explore both of the following alternative paths:
 - Standalone Path: Implement High-Performance Plan with Enhanced Oversight – Develop and implement a high-performance plan with the direct input of certain new highly-credentialed Board- and management-level leadership, to increase critical infrastructure investment and optimize operating costs, leading to annual rate-base growth of up to 10% with no expected overall rate impact on customer bills.
 - Combination Path: Pursue Strategic Premium Merger Transaction – Explore a strategic combination via a premium stock-for-stock merger, following which Evergy's new partner would oversee the implementation of a high-performance plan, leading to value creation in which Evergy's current shareholders would be able to participate by receiving stock in the combined entity.
- Elliott asserts that either path, if executed properly, should result in high-certainty, line-of-sight equity value creation of up to \$5 billion, with opportunities for significant additional value creation.⁸
- Elliott also provides its “thoughts”, which is effectively an analysis, in the letter. Elliott organized its thoughts in the following manner:
 - i. Elliott's Investment in Evergy;
 - ii. Evergy's Collection of High-Quality Regulated Utilities;
 - iii. Evergy's Current Plan and Resulting Underperformance;
 - iv. Opportunity for Value Creation at Evergy;
 - v. High-Performance Paths Forward for Evergy; and
 - vi. Next Steps.

This report will address elements of Elliott’s analysis in more detail in the Analysis Section that follows.

⁸ Elliott Management letter to Evergy’s Board of Directors at pp. 3-4, January 21, 2020.

On February 28, 2020, Evergy entered into an agreement (Agreement) with Elliott.⁹ Per the Agreement, Evergy has agreed to increase the number of directors on its Board of Directors (Board) from fifteen to seventeen. Effective March 3, 2020, Evergy agreed to fill the newly-created director positions by appointing two new “independent” directors presumably selected by Elliott.¹⁰ The new independent directors are Paul M. Keglevic, who served (2016-2018) with Energy Future Holdings as Executive Vice President, Chief Financial Officer, and Chief Risk Officer; and Kirkland B. Andrews who serves as Executive Vice President and Chief Financial Officer with NRG Energy, Inc. Evergy also agreed, subject to the terms of the Agreement, to nominate the new directors for election to the Evergy Board at Evergy’s 2020 annual shareholder meeting and to use its reasonable best efforts to obtain the election of the new directors. The Agreement also requires that four directors will retire from the Evergy Board at the end of their current term such that, at the time of the May 2020 Annual Shareholders Meeting, the Board will be reduced to 13 members. The number of directors on the Board will be further reduced to twelve at the 2021 Annual Shareholder Meeting.

Pursuant to the Agreement, the Evergy Board created a new Strategic Review and Operations Committee (Committee) that has a mandate to enhance long-term shareholder value, including through a strategic combination (Merger Transaction) or an enhanced long-term standalone operating plan and strategy (Modified Standalone Plan). The Committee is comprised of current director John A. Stall, current director and CEO Terry Bassham, and each of the new directors. The Committee is co-chaired by John Stall and Paul Keglevic. Per the Agreement, the Committee’s timeline to complete its review and make a formal recommendation on whether to pursue a Modified Standalone Plan or a Merger Transaction to the Evergy’s Board is on, or prior to, May 30, 2020. Should both of the new directors vote in favor of a formal recommendation that is not approved by a majority vote of the Committee, both formal recommendations will be simultaneously publicly disclosed by Evergy promptly after the competing formal recommendations are provided to the Board. The new directors will be permitted to discuss their formal recommendation and the reasons for their decision publicly without violating any confidentiality obligation to Evergy. Evergy’s Board will vote promptly on the recommendations and the decision will be announced no later than June 17, 2020. Other elements of the Agreement related to the formal recommendation(s) are as follows:

- In the event the Board does not approve a formal recommendation by the Committee to pursue a Merger Transaction, the Board will as promptly as practicable after the public announcement of such decision publicly disclose in reasonable detail:
 - The Committee Recommendation;
 - The material terms of any bona fide indication of interest for a Merger Transaction received by the Board in a form and substance acceptable to

⁹ Evergy’s SEC 8-K filing dated March 2, 2020, containing the Agreement is attached as Exhibit B.

¹⁰ While the Agreement does not explicitly state that these new directors were selected by Elliot, Elliott has been critical of the make-up of Evergy’s Board and has called for new Directors with high level utility experience.

members of the Committee who voted for such formal recommendation;

- If a bona fide indication of interest for a Merger Transaction is received prior to the Committee’s designated end date¹¹, the Committee will evaluate the potential transaction in parallel with the full Board;
- If Evergy’s Board votes for a Modified Standalone Plan, the Committee will assist the full Board and other relevant committees in assessing the optimal management team to execute the Modified Standalone Plan. This assessment may include potential recommendations to replace senior management with individuals with appropriate utility operating credentials;
- The Modified Standalone Plan will be publicly presented to the investor community no later than September 4, 2020 (Analyst Day); and
- The Modified Standalone Plan will be monitored on an ongoing basis, including potential adherence to certain metrics and targets, by the Board’s Finance Committee and the Nuclear, Operations and Environmental Oversight Committee for no less than two years after the Analyst Day.

On March 2, 2020, during its 4th quarter 2019 earnings call, Evergy announced that it was increasing its current capital expenditures budget by \$1.5 billion, from ~\$6.1 billion to ~\$7.6 billion. As discussed later, this announced increase affects the Earnings Review and Sharing Plan (ERSP) and the benefits – through lower capital investments – approved by the Commission in the 18-095 Docket. With this announcement, Evergy also suspended its stock buyback program.

On March 25, 2020, Evergy and Elliott entered into an amendment (Amendment) to their original Agreement. The Amendment extends the Committee formal recommendation date from May 30, 2020, to July 30, 2020, and the deadline for the Board to vote on the formal recommendation from June 17, 2020, to August 17, 2020. In addition, if Evergy pursues a Modified Standalone Plan, the deadline for Analyst Day has been extended from September 4, 2020, to October 14, 2020. The Amendment also contains the Strategic Review and Operating Committee’s Charter¹²

Kansas City Power & Light and Westar Energy Acquisition and Merger Attempts:

Docket No. 16-KCPE-593-ACQ: Kansas City Power & Light’s acquisition of Westar Energy

On June 28, 2016, Kansas City Power & Light (KCP&L) filed a Joint Application with Westar Energy (Westar) seeking the Commission’s authority for the Great Plains Energy (the parent company of KCP&L) to acquire Westar Energy. The proposed transaction was

¹¹ The Committee’s end date is the earlier of such time as the Company enters into a definitive agreement for a Merger Transaction, the Analyst Day defined as September 4, 2020, and the Expiration Date defined as November 2, 2020 with additional provisions.

¹² Evergy’s SEC 8-K filing dated March 25, 2020, is attached as Exhibit C.

structured such that Great Plains Energy (GPE) agreed to pay \$51 in cash and \$9 in GPE common stock for each share of Westar's outstanding stock, which equated to a cost of approximately \$8.6 billion.¹³ In addition, GPE was to assume Westar's debt totaling \$3.6 billion, which brought the total purchase price to \$12.2 billion.¹⁴ Included within the \$12.2 billion purchase price was an acquisition premium (excess of purchase price over the original net book value of Westar's assets) of \$5 billion, which was approximately 233% over Westar's net book value.¹⁵ In order to finance the transaction, GPE planned on issuing \$4.4 billion in new debt¹⁶ along with assuming the \$3.6 billion¹⁷ in existing Westar debt.

On September 26, 2016, at special shareholder meetings held by both Westar and GPE, shareholders approved GPE's acquisition of Westar. On September 27, 2016, GPE successfully issued \$1.6 billion of common stock and \$863 million of mandatory convertible preferred stock to the equity markets in order to finance the equity portion of the acquisition. According to GPE, this stock issuance, coupled with the fact that GPE had hedged its interest rate risk on the debt portion of the financing, removed the financing execution risk associated with its acquisition of Westar¹⁸.

On December 16, 2016, Staff and Intervenor testimony was filed. Each party opposed the merger based on similar grounds. From Staff's perspective, the proposed transaction could not be approved even with conditions due to several fundamental flaws. These flaws were:

- The purchase price of \$12.2 billion was too high because it resulted in GPE and its subsidiary Westar being in a significantly weaker financial position post-acquisition.
- Even though the Joint Applicants asserted they were not explicitly requesting recovery of the acquisition premium (AP) of \$5 billion, ratepayers would have inevitably paid the AP through the financial engineering created by GPE's assigned debt and equity levels to Westar and KCP&L. These assigned debt and equity levels would have required ratepayers to pay equity level returns on what would actually be debt financing.
- The Joint Applicants were unable to demonstrate that the transaction benefits customers through demonstrable and quantifiable savings that could be reasonably attributed to the acquisition.
- The Joint Applicants failed to provide any certainty with regard to the continued financial health of the combined companies. In particular, GPE was unable to provide any reasonable plan to pay down the significant amount of debt it would

¹³ Direct Testimony of Jeffrey D. McClanahan, p. 2, Docket No. 16-KCPE-593-ACQ, December 16, 2016.

¹⁴ Direct Testimony of Jeffrey D. McClanahan, p. 2, Docket No. 16-KCPE-593-ACQ, December 16, 2016.

¹⁵ Direct Testimony of Jeffrey D. McClanahan, p. 2, Docket No. 16-KCPE-593-ACQ, December 16, 2016.

¹⁶ Direct Testimony of Justin T. Grady, p. 7, Docket No. 16-KCPE-593-ACQ, December 16, 2016.

¹⁷ Direct Testimony of Jeffrey D. McClanahan, p. 2, Docket No. 16-KCPE-593-ACQ, December 16, 2016.

¹⁸ Rebuttal Testimony of Kevin E. Bryant, Docket No. 16-KCPE-593-ACQ, pp. 9-10, January 27, 2017.

incur to pay for the acquisition.¹⁹

On March 8, 2017, GPE and Westar filed a Motion to Reopen the Record for the limited purpose of updating information regarding debt issued to finance GPE's acquisition of Westar. The Motion to Reopen Record notified the Commission that on March 6, 2017 (post-evidentiary hearing), GPE priced \$4.3 billion of senior notes, which completed its financing of the acquisition.

On April 19, 2017, the Commission issued its Order denying the proposed acquisition. The Commission's overall position was that a merger between KCP&L and Westar made sense based on their adjoining geographic territories. However, the proposed transaction had an excessive purchase price that required GPE to take on significant debt. Moreover, the Joint Applicants advised the Commission that the transaction as presented was a take it or leave it proposal. In other words, any significant safeguards to protect consumers that the Commission might have required would cause the Joint Applicants to halt the transaction.

Docket No. 18-KCPE-095-MER (18-095 Docket): Kansas City Power & Light's and Westar Energy's Merger of Equals

On August 25, 2017, GPE, KCP&L and Westar filed a Joint Application requesting the Commission approve a merger of equals between Westar and KCP&L. This transaction was structured to correct many of the flaws that the Commission identified in its April 19, 2017, Order denying GPE's original request to acquire Westar, in Docket No. 16-KCPE-593-ACQ. Under the revised merger proposal, Westar shareholders would own 52.5% of the newly created holding company, with GPE shareholders owning 47.5% of the new entity. On January 26, 2018, Staff, CURB, and several interveners filed testimony in response to the revised merger Application. Staff recommended conditional approval of the merger, supported by 56 commitments as outlined in Staff's testimony. These conditions included, but are not limited to: (1) additional upfront and ongoing rate credits; (2) guaranteed merger savings reflected in upcoming rate cases (even before they were fully achieved); (3) a base rate moratorium for a period of five years; (4) an annual earnings review and sharing plan that would share 50% of any earnings achieved in excess of the authorized return on equity; (5) commitments to maintain a Topeka headquarters for ten years (with at least 500 full time positions for the first five years); (6) no involuntary terminations; and (7) extensive reporting on areas of quality of service, capital expenditure plans and merger integration success.²⁰

On March 7, 2018, Staff, CURB, the Joint Applicants, and several other interveners filed a Joint Motion requesting approval of a Non-Unanimous Settlement Agreement (Settlement). The Settlement contained the following major terms:

- 1) A five-year moratorium on rate cases beginning after Westar's (18-WSEE-328-RTS) and KCP&L's (18-KCPE-480-RTS) 2018 rate cases;

¹⁹ Direct Testimony of Jeffrey D. McClanahan, pp. 11-12, Docket No. 16-KCPE-593-ACQ, December 16, 2016.

²⁰ See *Generally*, Non-Unanimous Settlement Agreement, Docket No. 18-KCPE-095-MER, March 7, 2018.

- 2) Establish an Earnings Review & Sharing Plan to share additional merger savings between consumers and shareholders during the rate case moratorium;
- 3) Upfront payments to consumers of \$50 million across all jurisdictions (\$23.07 million Westar and \$7.51 million KCP&L-KS);
- 4) Annual bill credits from 2019 through 2022 of \$8.65 million for Westar customers and \$2.82 million for KCP&L-KS customers;
- 5) Guaranteed recognition of \$30 million of merger savings in the 2018 rate cases;
- 6) Agreement for parties to recommend the Commission adopt a 9.30% return on equity in the 2018 rate cases (18-WSEE-328-RTS and 18-KCPE-480-RTS);
- 7) Commitments to zero involuntary terminations and to maintain a headquarters in Topeka for at least ten years after the merger closes (500 full time positions in the Topeka headquarters for the next five years); and
- 8) Several reporting conditions involving capital expenditure plans, quality of service metrics, and merger integration and savings success.

Non-signatories opposed the Settlement for various reasons. Kansas Industrial Consumers Group, Inc. (KIC) in particular opposed the Settlement due to a lack of commitments to lower rates to a regionally competitive level.

Evaluation of Evergy's Rates:

During settlement negotiations in the revised KCP&L and Westar merger in the 18-095 Docket, Staff, Westar, and KCP&L were aware that several of the parties to the merger docket had expressed concerns about Westar and KCP&L rates and had been doing so for the last several years. As such, the parties to the non-unanimous settlement agreement included a condition to require a Rate Study. The purpose of the Rate Study was to identify, document, and explain the major differences between surrounding states' rates and the rates of Westar and KCP&L. Staff summarized the concerns in its Rate Study by stating the following:

Current concerns regarding the competitiveness of Kansas electricity prices compared to other regional states began around 2015. A number of stakeholders started to express concerns to Staff through informal meetings or to the Commission and Staff explicitly through testimony in a rate case. For example, Kansas Industrial Consumers Group, Inc. (KIC) is an organization consisting of Westar's industrial customers. KIC is an active participant in Westar's rate cases and generally files extensive testimony. During Westar's 2015 rate case, KIC witness Michael Gorman raised the issue in his testimony by pointing out that Westar's residential and

commercial customer rates are the fifth highest in the region, and requesting the Commission to direct Westar to be a more efficient and lower-cost provider.

KIC continued to address its concerns by supporting both legislation and concurrent resolutions in several variations during the 2018 Session. Several iterations of the legislative proposals “urge[d] the State Corporation Commission to take any and all lawful action to promptly reduce Kansas retail electric rates to regionally competitive levels...and to take any and all lawful action to maintain Kansas retail electric rates at regionally competitive levels.” The concerns raised by KIC during the 2018 legislative session spilled over into the political races in the fall of 2018. Most comments made during the 2018 political races involved the notion that Kansas’ electric rates are too high compared to surrounding states. However, a few comments implied the Commission is not protecting ratepayers.

Staff’s Rate Study provided an overview of our findings and conclusions regarding identifying the reasons why Westar and KCP&L’s rates were higher than the rates of surrounding states. Staff’s summary stated the following:

The study finds that Westar has gone from a utility with the 4th lowest Retail Revenue per kWh (\$.0662/kWh) in the study group in 2008, to a utility with the 9th highest overall retail rates in the group (\$.1032/kWh) in 2017. This was the 4th largest increase in rates in the group. Staff found this rise in rates is almost entirely attributed to Westar’s increase in Capital Investment (Net Plant per Retail MWh) —the 3rd largest increase in the group. In particular, Westar’s transmission expense has increased significantly during this time frame. Westar has also experienced Declining Sales due to above average losses in total retail sales, particularly industrial sales.

Westar’s capital investment can primarily be attributed to environmental retrofits and transmission investments. In fact, Staff’s analysis shows that almost 60% of Westar’s rate increases granted in the last 10 years were driven by government-mandated environmental retrofits or FERC-regulated transmission investments.

Staff also found that KCP&L has gone from a utility with below average rates in 2008 (14th in the study group, \$.0725/kwh), to a utility with the 2nd highest rates in the study group, at \$.1198/kWh. This was the largest increase in rates in the study group from 2008 to 2017. Staff found this could be attributed to three main factors: (1) KCP&L’s increase in capital investment (Net Plant per Retail MWh), which grew by the 4th largest margin during this time frame; (2) KCP&L’s Net Power Production Expense per Retail MWh, which grew by the largest margin in the group

during this period because of its generation mix; and (3) KCP&L's loss of retail sales, which was the 5th largest loss of these sales out of the 23-company study group.

KCP&L's capital investments are primarily the result of environmental retrofits at LaCygne and Iatan 1 coal-fired generating units and the construction of a new coal-fired generation unit, Iatan 2. KCP&L's increase in net fuel costs is attributed to increases in coal costs to run its generators, and the loss of profit from wholesale energy sales from excess coal production. Both coal costs and the profits from wholesale energy sales flowed through the energy cost adjustment (ECA). The increase in coal costs increased the ECA and, because the profits from wholesale energy sales reduced the ECA, the decline in wholesale energy profits also raised the ECA for retail customers. The profits from wholesale energy sales from excess coal production dried up because of the decline of natural gas prices and the rapid influx of zero marginal cost wind-powered energy in the Southwest Power Pool (SPP). Staff calculates that 62% of KCP&L's rate increases over the study period were driven by environmental investments, increases in net power production expenses, or FERC-regulated transmission charges authorized pursuant to K.S.A 66-1237.

Another important finding of the study is that the rate increases experienced by Westar and KCP&L over the last 10 years have not been due to mismanagement of overheads and discretionary expenses by these companies. Both Westar and KCP&L have managed to grow Administrative and General Expenses per MWh slower than the average company in the study group from 2008 to 2017, Westar ranking 16th highest and KCP&L 15th highest. The same goes for Total Salaries and Wages per MWh; Westar's change in this cost category ranks 14th highest in the study group (10th lowest) and KCP&L ranks 11th highest (13th lowest). Both were below the average rate of growth for this cost category. [Rate Study of Kansas City Power & Light and Westar Energy for the Years 2008 to 2018 (Staff's Rate Study) at pp. 6-7]. [Footnotes omitted].

Staff's Rate Study included a section on the future of electric rates for KCP&L and Westar in Kansas. In this section, Staff noted the following:

However, the recently completed merger between KCP&L and Westar will enable the newly formed parent company (Eversource) to create savings through both merger and non-merger savings that neither Westar or KCP&L could create as stand-alone companies. *The merger is forecasted to achieve approximately \$800 million in merger and non-merger related costs savings. These costs savings coupled with the completion of both company's major capital plans will bring price stability and may lead to further rate reductions.* Moreover, Staff, Westar, and KCP&L are currently

engaged in developing a capital expense reporting process as well as an integrated resource planning (IRP) model to provide greater transparency for capital investments budgeted in the near-term as well as longer-term resource planning. Staff also notes that, if volumetric sales rebound and begin to increase in the next five years, there could be even larger rate reductions.

The merger will provide a number of benefits to ratepayers that will aid in providing rate stability or perhaps lower rates over the next five to ten years. Some of these benefits are as follows:

- The merger agreement (Agreement) establishes a five-year base rate moratorium. More specifically, base rates may not go up for five years, but all of KCP&L and Westar's riders will continue to be updated annually. All but one of these riders (the fuel cost adjustment factor) are statutorily authorized.
- The merger is expected to achieve approximately \$800 million in merger and non-merger related savings over five years. Staff testified in the merger proceeding that the Agreement enables 60% of the net benefits of the merger to be guaranteed to benefit customers during the five-year moratorium period. After the five-year moratorium period is over, all of the achieved savings will be passed through to ratepayers in the first rate cases for KCP&L and Westar.
- *The merger has created efficiencies that reduce the need for capital investment by approximately \$1 billion over the next five years.*
- The Agreement provides \$50 million in upfront bill credits across all jurisdictions.
- The Agreement provides guaranteed bill credits for each year beginning in 2019 and ending in 2022 of \$8.65 million annually (\$34.6 million total) for Westar and \$2.8 million annually (\$11.3 million total) for KCP&L.
- The Agreement guarantees that at least \$22.5 million of merger-related savings would be included in Westar recently completed post-merger rate case and \$7.5 million would be reflected in KCP&L's recently completed post-merger rate case.
- *The Agreement includes an Earnings Review and Sharing Plan (ERSP) that allows ratepayers to share in any over earnings (additional merger savings) during the five-year moratorium.*

Both Westar and KCP&L recently completed rate cases that resulted in rate reductions of \$66 million and \$10.7 million respectively. These rate

reductions were largely possible because of the cumulative effect of the guaranteed level of merger savings noted above as well as the reduction in income tax expense related to the Tax Cuts and Jobs Act. With current reduced base rates locked into place by the five-year rate moratorium, *Westar and KCP&L's base rates have been stabilized. In addition, Westar and KCP&L have stated that their major capital investment plans have been completed and approximately \$800 million in merger and non-merger savings are expected to be generated over the next five years. Should these forecasts bear out, Staff expects rates to continue to be stable.* However, a variety of factors could impact these utilities' rate trends. For example, sales volumes could increase from a much higher penetration of electric vehicles or a new industry establishing industrial facilities in Kansas. Such an increase in sales volumes would lower rates. [Rate Study at pp. 146-147]. [Footnotes omitted]. [Emphasis added]. [Staff incorporates its Rate Study herein by reference, *See* Docket No. 18-KCPE-095-MER, filed January 14, 2019].

Overview of Utility Rate Related Legislative Proposals during the 2018 and 2019-2020 Legislative Sessions:

During the 2018, 2019, and 2020 Legislative Sessions, a number of bills were introduced with the intent of lowering KCP&L and Westar's rates. A listing of the most relevant bills introduced is as follows:

2018 Session:

- Senate Bill 356 & House Bill 2601 – SB 356 and HB 2601 would have required the KCC to provide a report to the legislature recommending statutory changes, executive actions, or changes in Commission rules and regulations that would lower electric rates to a level making Kansas electric rates competitive with the electric rates in other states in the region.
- Senate Bill 385 – SB 385, among other things, would have required a refund of income taxes based on a change in income tax rates.

2019-2020 Session:

- Senate Bill 24 & House Bill 2080 – SB 24 and HB 2080 would have lowered the return on equity from the existing FERC rate to the authorized KCC rate for all transmission related costs eligible for recovery through the transmission delivery charge.
- Senate Bill 127 – SB 127 would have prohibited any electric or natural gas utility subject to the jurisdiction of the Commission from recovering any federal or state income tax expense through base rates. Instead, utilities would recover from customers actual taxes paid via a surcharge mechanism.

- Senate Bill 181 – SB 181 created an energy policy task force to conduct a comprehensive, forward-looking study of energy policy issues in Kansas. Many elements of the bill’s required report and recommendations included analysis of the reasons for and the ways to reduce high rates.
- Senate Bill 198 – SB 198 would have authorized the issuance of low-cost securitized ratepayer-backed bonds to lower rates paid by electric utility customers by reducing the financing costs of certain retired electric generating facilities.
- Senate Bill 437 – SB 437 was a similar bill to SB 198.
- Substitute for Senate Bill 69 – Sub. SB 69 was enrolled and approved by the Governor on April 10, 2019. Sub. SB 69 directed the Legislative Coordinating Council (LCC) to authorize a study of retail rates of Kansas electric public utilities. The purpose of the study is to provide information that may assist future legislative efforts in developing electric policy that includes regionally competitive rates and reliable electric service. The study includes an extensive review of a large number of ratemaking issues. In order to conduct the study, the LCC is authorized to hire consultants to conduct the study. Phase 1 of the study was completed and filed into Docket Number 20-GIME-068-GIE (20-068 Docket) on January 8, 2020. Phase 2 of the study will be completed and filed in the 20-068 Docket by July 1, 2020.
- Substitute for Senate Bill 126 – SB 126 would exempt every electric and natural gas public utility subject to the regulation of the Commission from Kansas state income tax for tax years ending on or after December 31, 2021. Additionally, SB 126 requires deferral into a regulatory asset or liability account to reflect any over collection or under collection of income tax expenses due to a change in state or federal tax law.
- Senate Substitute for House Bill 2585 – the contents of HB 2585 was replaced with the contents of SB 126 and SB 339 (economic development contracts) to create Senate Substitute for HB 2585 (Sub. HB 2585). Sub. HB 2585 was passed by both the House and Senate on May 21, 2020, and is expected to be enrolled and submitted to Governor Kelly for her signature.

COVID-19 Issues:

On March 11, 2020, the World Health Organization declared the COVID 19 virus a pandemic. On March 12, 2020, Governor Kelly issued an emergency declaration for the State of Kansas, which authorized the use of state resources and personnel to assist with the response and recovery operations in affected counties. On March 13, 2020, President Trump declared the COVID 19 pandemic a national emergency. Because of the actions identified above, the Commission issued three separate Emergency Orders Suspending disconnects which prohibited disconnecting service for non-payment during the period that customers and communities are experiencing potential hardship as a result of the COVID

19 virus²¹.

Governor Kelly also issued a series of executive orders. For example, on March 28, 2020, Governor Kelly issued Executive Order 20-16, which instituted a stay-at-home order effective to at least April 19, 2020. In addition, Executive Orders have been issued that limit the number of people that can gather. These Executive Orders effectively shut down much of the Kansas economy. Governor Kelly's executive orders were consistent with the approach that the majority of the states have taken to prevent the spread of COVID 19. As a result, the national economy and Kansas' economy have taken serious downturns.

On April 14, 2020, Black Hills Gas Utility Company, LLC, Kansas Gas Service, a Division of ONE Gas, Inc. and Atmos Energy Corporation (collectively referred to as Gas Utilities) filed a Joint Application for an Accounting Authority Order (AAO) that would allow the Gas Utilities to record and preserve costs and lost revenues related to the COVID-19 virus. On April 16, 2020, The Empire District Electric Company (Liberty-Empire) also filed an Application for an AAO related to the COVID-19 Virus. The Gas Utilities and Liberty-Empire provide similar statements in their respective applications to support their rationale for requesting an AAO. The statements generally discussed the facts that: (1) they would incur extraordinary costs related to the COVID-19 virus, which could not have been anticipated and are not currently reflected in their base rates; (2) some of the extraordinary costs, such as bad debt expense, waiver of late payment fees and reconnection charges incurred as a result of the suspension of disconnecting service for non-payment, were mandated by the Commission and the State of Kansas; and (3) they will also lose revenues due to the shut-down of businesses ordered by the State of Kansas.

On May 6, 2020, Evergy filed an Application for an AAO related to COVID-19 expenses. In support of its Application, Evergy stated the following:

2. A number of governmental and private sector measures aimed at restricting travel, crowd sizes, the operation of schools, businesses, and churches as well as sporting and other events have been implemented in an effort to mitigate the spread and impact of COVID-19. A large number of commercial and industrial businesses across Evergy's territory have significantly reduced operations or temporarily shut down. These contractions and closures as a result of the pandemic have reduced Evergy's revenues substantially and will continue to do so for an as yet unknown period of time into the future. For example, in Evergy's Kansas territory, 62 of the top 200 customers have had at least a partial shutdown and/or reduced employment. Spirit AeroSystems shut down for all Boeing-related production for a period of time and levels continue to fluctuate; Textron

²¹ See, Docket No 20-GIMX-393-MIS,

Aviation furloughed 7,000 employees; Goodyear closed its plant for three weeks; Hallmark Cards shut down its Lawrence and Leavenworth plants indefinitely; Kansas Star and Kansas Crossing Casinos are shut down indefinitely; Simon Properties temporarily closed the entire Towne East Mall in Wichita; and all universities and school districts in the territory are closed through the summer. There is already a mechanism in place – the utilities’ fuel clauses – which will allow all reduction in the variable fuel costs related to this reduced load to flow back to customers. As discussed below, allowing Evergy to defer the lost revenue will ensure symmetrical treatment of the impacts of these extraordinary circumstances.

3. Unemployment claims across the country and in Kansas have significantly risen as a result of COVID-19. Consistent with the Commission’s Emergency Order and subsequent orders in the docket, Evergy has suspended disconnections related to non-payment and suspended the accumulation of interest and late fees related to non-payment through at least June 1, 2020 for all but our largest business customers. Evergy is offering customers flexible payment arrangements over a 12-month period and working case-by-case with commercial and industrial customers on 3 payment arrangements as needed. As a result of these actions and the economic impact the pandemic is having on people’s ability to pay bills generally, arrearages have substantially increased and will continue to rise and Evergy expects this to result in significantly higher bad debt expense. Evergy is also developing new options for implementing programs to assist customers affected by the pandemic – those who are making good faith efforts to make payments – with paying their electric bills and intends to roll out such a program when the options are finalized. The costs of such programs should also be deferred for consideration in the next rate case because the program is expected to lower overall costs of operations related to disconnections as well as mitigate the potential for increased bad debt expense.

17. While there is not substantial precedent with the Commission for the deferral of lost revenues, it is appropriate in this instance given the extraordinary circumstances that exist as a result of the COVID-19 pandemic, including the government-ordered shut-down of businesses discussed above and the substantial financial impact the pandemic is having, and is expected to have over an as yet unknown period of time, on the utility sector. For example, on April 2, 2020, partly influenced by coronavirus-related concerns, S&P Global Ratings lowered its outlook for the North American regulated utility sector to “negative” from “stable.” The

credit markets, credit rating agencies, and investors are closely watching the actions state commissions take to support the financial strength of the utilities they regulate.²²

On May 20, 2020, Staff filed its Report and Recommendation in response to both Evergy and Liberty-Empire's Applications for an AAO. On May 21, 2020, Staff filed its Report and Recommendation in response to the Gas Utilities Application for an AAO. In Staff's Recommendation for each of the Applications, Staff recommended authorizing the requested AAO's as well as implementing monthly and quarterly reporting. In describing the need for the monthly and quarterly reporting, Staff stated the following in each Report and Recommendation:

There exists considerable uncertainty regarding the ultimate impact of COVID-19 on Evergy's customers, Evergy, and the broader economy. As a result, Staff recommends a different, more flexible, and data dependent approach to the pending AAO requests than has previously been the case with AAO Dockets. Typically, AAO Dockets are the result of a single quantifiable event that is relatively short lived and definite. After an Application and Commission Order, the issue is not usually considered again until the next rate case. In this case, Staff recommends the Commission require, as a condition to approval of the AAO, significant ongoing reporting throughout the course of the COVID-19 pandemic so that Staff and the Commission can remain apprised of the facts and circumstances affecting Evergy and its customers. *Staff recommends using the data provided by these reports to inform the next steps the Commission can take to provide customer protections or to ensure the financial stability of the utility.*²³ [Emphasis added].

Relevant Dockets, Statutes, Cases, and Regulatory Principles:

The Commission has clear authority to open this general investigation under its broad authority to do "all things necessary and convenient" to "supervise and control" public utilities. An example of a similar Commission investigation involves one of Evergy's subsidiaries, Westar Energy (f/k/a Western Resources), in Docket No. 01-WSRE-949-GIE (01-949 Docket). The general investigation was initiated on the Commission's own initiative to investigate the actions taken by Western Resources to separate its jurisdictional electric public utility business from its unregulated businesses. While the facts and

²² Application of Evergy Metro, Inc., Evergy Kansas Central, Inc., and Evergy Kansas South, Inc. for Accounting Authority Order Related to COVID-19 Costs and Financial Impacts, ¶¶ 2-3 and 17, Docket No. 20-EKME-454-ACT, May 6, 2020. [internal cites omitted].

²³ Staff Report and Recommendation, p. 5, Docket No. 20-EKME-454-ACT, May 20, 2020. The only difference in this statement for the other reports is the name of the utility.

circumstances of the 01-949 Docket were related to a restructuring of the utility, the Commission's description of its jurisdictional authority to open the general investigation is applicable to this general investigation. Specifically, the Commission stated:

13. WRI is a certificated electric public utility subject to the jurisdiction of the Commission pursuant to K.S.A. 66-104 and 66-131. An electric public utility is required under K.S.A. 2000 Supp. 66-101b to carry out the mandate of its certificate to provide efficient and sufficient service at just and reasonable rates.

14. The Commission has plenary authority under K.S.A. 66-101 to "supervise and control" the electric utilities doing business in Kansas and "is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction." The Commission has clear authority under K.S.A. 66-101h to "examine and inspect the condition of each electric public utility" and the "manner of its conduct and its management with reference to the public safety and convenience." Further, the Commission has the jurisdiction and authority to investigate, on its own initiative, any act or practice of an electric public utility that affects its ability to provide efficient and sufficient service at just and reasonable rates and to substitute such act or practice after investigation and hearing under K.S.A. 2000 Supp. 66-101d. These provisions, by themselves, create sufficient authority for the Commission to carry out this investigation, since the actions, events and relationships described above may affect the utilities' ability to provide efficient and sufficient service at just and reasonable rates.

In addition, K.S.A. 66-101g. states:

K.S.A. 66-101g Same; liberal construction; incidental powers granted. As applied to regulation of electric public utilities, the provisions of this act and all grants of power, authority and jurisdiction herein made to the commission, shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are expressly granted to and conferred upon the commission.

While service quality and rates are not immediately impacted by the Agreement between Elliott and Evergy, the subsequent decisions made with regard to either a Modified Stand Alone Plan or Merger Transaction will affect both. As such, it is important that all stakeholders understand now how decisions made as part of the Agreement may influence service and rate trajectories. Moreover, if Evergy does not consider balancing the interests of its customers and shareholders when making its decision, it can be assured that some or

all stakeholders will have some form of opposition to its selected path. The backdrop against which Staff evaluates and the Commission establishes just and reasonable rates is well-rooted in Kansas law and is set forth below in order to put Staff’s concerns in context.

Any future rates resulting from either path Evergy selects will necessarily require the Commission consider certain interests. These include the following:

The Kansas Supreme Court mandates the Commission consider and balance *the interests of the utility's investors vs. the ratepayers, the present ratepayers vs. the future ratepayers, and the public interest*. “[C]ases in this area clearly indicate that the goal should be a rate fixed within the zone of reasonableness after the application of a balancing test in which *the interests of all concerned parties are considered*.” [Emphasis added]²⁴

“The KCC is required to *balance* the public need for adequate, efficient, and reasonable service with the public utility's need for sufficient revenue to meet the cost of furnishing service and to earn a reasonable profit.” [15-115 Order at ¶ 71, citing *Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co.*, 267 Kan. 760, 773 (1999)]. [Emphasis added].

Further, the public interest is also implicated by the Agreement because either plan that Elliott promotes will affect the public interest. Staff has described the public interest standard as follows:

The “public interest” is derived from various statutory requirements throughout K.S.A. Chapter 66. When the Commission exercises its delegated administrative power, it is protecting and promoting the public interest (i.e., the welfare of the people). The State’s police power exists to promote the health, safety, and welfare of the public.²⁵ Generally speaking, the public interest is served when ratepayer interests are carefully considered and protected.²⁶ In the context of a rate case, the public interest is served when ratepayers are protected from unnecessarily high prices, discriminatory prices, and/or unreliable service. The public interest standard can also vary based on the type of case and the decision required from the Commission. For example, mergers and acquisitions have a specific set of standards established that must be evaluated in order to determine whether the proposed transaction meets a public interest

²⁴ Order Approving Stipulation and Agreement, Docket No. 15-WSEE-115-RTS (September 24, 2015) (15-115 Order) at ¶ 71 citing *Kansas Gas and Elec. Co. v. State Corp. Com 'n*, 239 Kan. 488 (1986).

²⁵ See *Manzanares v. Bell*, 214 Kan. 589, 606 (1974).

²⁶ See *Kansas City Power & Light Co. v. State Corp. Comm'n*, 238 Kan. 842,846 (1986).

standard.²⁷

III. ANALYSIS

One of the options under consideration by the Strategic Review and Operations Committee (Committee) is the enhanced standalone operating plan and strategy (Modified Standalone Plan or Plan). Assuming this Modified Standalone Plan would be similar to what Elliott called for in its January 21, 2020, Open Letter to Evergy's Board, the result of the Plan would be contrary to several of the key provisions of the Evergy merger that the Commission relied on when it approved the merger in the 18-095 Docket. Elliott's Plan would also shift the distribution of benefits of the Westar/KCP&L merger dramatically towards shareholders. Lastly, the Plan would be contrary to the regulatory policy goal, as stated in Sub. SB 69, of pursuing "regionally competitive electric rates and reliable electric service" in Kansas.

Elliott's High Performance Standalone Plan:

In its Open Letter to the Evergy Board, one of the options Elliott demanded that Evergy consider was the Standalone Path, described in the Open Letter as follows:

Standalone Path: Implement High-Performance Plan with Enhanced Oversight – Develop and implement a high-performance plan with the direct input of certain new highly-credentialed Board-and management-level leadership, to increase critical infrastructure investment and optimize operating costs, leading to annual rate-base growth of up to 10% with no expected overall rate impact on customer bills.

Elliott expanded on its Standalone Path option as follows:

Evergy should reasonably be able to create more than \$700 million in high-certainty, line of-sight, balanced rate headroom to facilitate more than \$4.5 billion in potential increased system capital investment. This would accelerate rate- base growth to up to 10% per year with no expected overall rate impact on customer bills.

Elliott further described its \$700 million of rate headroom:

- 1) More than \$250 million of non-generation operating & maintenance ("O&M") efficiencies. Benchmarking Evergy's non-generation O&M

²⁷ Rate Study of Kansas City Power & Light and Westar Energy for the years 2008-2018, Kansas Corporation Commission Staff, p. 15, Docket No. 18-KCPE-095-MER, January 14, 2019.

performance against similarly-situated U.S. regulated utilities shows clear evidence that Evergy operates with a bottom-quartile controllable cost structure, with unit costs nearly 50% higher than the median and 80% higher than top-quartile. The fact that Evergy is one of the highest-cost utilities in the U.S. is surprising given that the cost of living in its service territory is below the national average. Improving Evergy's cost structure from bottom-quartile to not even the median would result in incremental savings of more than \$350 million and create more than \$250 million in additional headroom above and beyond Evergy's anticipated Merger savings. We anticipate that these cost savings would be achieved in the next few years.

- 2) More than \$200 million of generation-related fuel and non-fuel O&M savings from replacing only a small portion (~20%) of remaining inefficient coal generation with renewables. Transitioning a portion of Evergy's environmentally unfriendly, high-cost coal generation to new renewables generation should yield significant savings in fuel and non-fuel O&M. Illustratively, replacing 5.0 TWh (~20%) of Evergy's highest cost, most inefficient coal generation with wind resources should yield more than \$200 million of savings. This transition can also create opportunities for incremental rate base investment into flexible, low-cost storage or capacity to enhance system reliability.
- 3) Up to \$250 million of rate headroom within the 3% annual limitation imposed by Missouri SB 564. Missouri SB 564 enables the implementation of plant-in-service accounting ("PISA"), allowing for more timely recording of earnings associated with capex investments. Under the PISA election, Evergy would be subject to a 3% annualized cap on rate increases from 2018 to 2023. We believe Evergy has up to \$250 million of rate headroom under the cap that can be used for investment.

Staff's Evaluation of Elliott's High Performance Standalone Plan

Staff has significant concerns with several elements of Elliott's Modified Standalone Plan as presented in the Open Letter to Evergy's Board. We perceive significant risk to achieving the level of O&M savings that Elliott claims to be likely with a Modified Standalone Plan, as discussed in more detail below. Because Elliott's Modified Standalone Plan is to create "headroom" by cutting significant amounts of O&M expense from Evergy's cost structure, then use those savings to cover the carrying charges associated with up to \$4.5 billion in new capital investment, there is significant risk to ratepayers of rate increases if the cost savings that Elliott predicts do not materialize. Additionally, if Evergy is unable to create these cost savings with the ease (and in the timeframe) that

Elliott predicts, Evergy may be pressured to cut critical areas of O&M expenses that could result in deterioration of service quality and reliability. While ratepayers face higher rates and poorer service quality if these risks materialize, there is little upside to ratepayers if the Plan is a success; however, Elliott and Evergy shareholders would benefit handsomely.

Moreover, as discussed in more detail below, Staff views the Modified Standalone Plan as inconsistent with many of the core provisions of the merger the Commission relied on when it approved the creation of Evergy in the 18-095 Docket. Lastly, because the benefits of the Plan would fall to shareholders, the Plan is not balanced as there is no sharing with ratepayers. Therefore, the Plan is incompatible with the goal of achieving regionally competitive electric rates as discussed in Sub. SB 69.

Staff's Critique of Elliott's "Headroom" Analysis

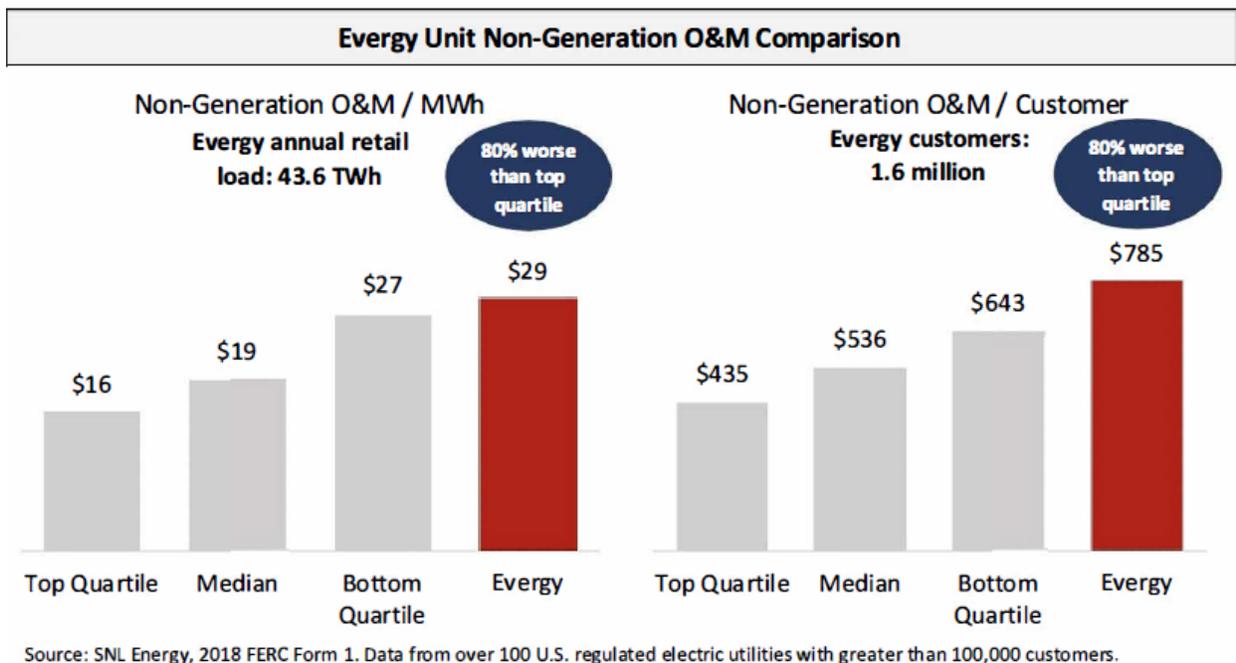
Central to Elliott's Modified Standalone Plan is the idea that Evergy could create \$450 million of O&M cost savings in order to finance the carrying charges of up to \$4.5 billion in rate base growth, without raising rates for customers. Elliott also suggests investing enough capital to raise rates up to 3% annually in Missouri to take advantage of Missouri Senate Bill 564.²⁸ The two prongs of Elliott's plan to achieve \$450 million in O&M savings are: 1) \$250 million in non-generation O&M savings associated with improving Evergy's cost structure to close to the median of other regulated electric utilities with greater than 100,000 customers; and 2) \$200 million in fuel and non-fuel O&M savings associated with replacing the energy produced by 20% of Evergy's existing coal fleet with renewable wind-powered generation.

With regard to Elliott's assumed \$250 million in non-generation O&M savings, Staff was able to replicate, with essentially the same results, the benchmarking analysis performed by Elliott. To do so, Staff utilized SNL Energy's Screener tool, which relies on the FERC FORM 1 data reported from publicly traded regulated utilities in the United States. After removing duplicate entries and data that contained significant reporting gaps, Staff evaluated the reported non-generation O&M cost profile for 81 different operating utilities in the United States that serve over 100,000 customers. These utilities included all three Evergy, Inc. operating utilities: Evergy Missouri West, Inc. (formerly Kansas City Power and Light Company Greater Missouri Operations); Evergy Kansas Central, Inc. (formerly Westar); and Evergy Metro, Inc. (formerly Kansas City Power and Light).

Using the data reported by these operating utilities, Staff was able to determine how

²⁸ This element of the Plan would not directly impact Kansas ratepayers, unless Evergy Metro were to invest in significant amounts of new capital that would then be allocated in part to Evergy Metro's Kansas operations.

Evergy’s cost profile compared to the other 78 non-Evergy utilities. For example, Staff was able to calculate that the median non-generation O&M cost per retail MWh sold for the non-Evergy utilities was \$19.11/MWh and that Evergy’s non-generation O&M cost per retail MWh was \$28.58/MWh. Likewise, Staff was able to calculate that the median non-generation O&M per customer for the non-Evergy utilities was \$538.35/customer and Evergy’s non-generation costs per customer was \$785.21/customer. All four of these figures correspond with the numbers reported by Elliott in its Open Letter, as seen in the graphic below:



Using the results of its benchmarking analysis, Elliott concludes that Evergy should be able to improve its cost structure to “not even the median” by cutting its non-generation O&M expenses by \$350 million, or \$250 million above its original synergy targets from 2018 O&M levels.

While it is not exactly clear how Elliott arrived at its \$350 million O&M expense reduction calculation, we assume that Elliott relied on some combination of the median figures for non-generation O&M/retail MWh and non-generation O&M/customer that it highlighted in its Open Letter. For example, using the benchmarking data produced by Staff, if Evergy were to improve its non-generation O&M/retail MWh to the median, the result would be \$412.8 million in O&M cost savings. Likewise, the per customer median figure would suggest \$391.8 million in savings was possible. The average of these two figures would suggest just over \$400 million in O&M savings could be achieved if Evergy exhibited a cost profile at the median.

While Staff was able to replicate Elliott’s analysis, we do not agree with its conclusions. By evaluating Evergy’s cost structure on the basis of non-generation costs per retail MWh, Elliot ignores the critical fact that 27.95% of Evergy’s total MWhs were sold to wholesale customers. While this mistake might have been understandable for the non-Evergy utilities in the benchmarking analysis, for whom wholesale sales account for only 11.70% of total sales, Evergy’s proportion of wholesale sales are nearly 2.4 times that level. It is therefore appropriate to evaluate Evergy’s non-generation O&M costs on the basis of *total* MWh sales because wholesale customer revenues represent a sizable credit to the retail cost of service in retail rate proceedings (or a portion of those costs are allocated out of retail proceedings to the same effect).

During 2018, the time period selected for Elliott’s benchmarking analysis, Evergy’s non-generation O&M per MWh (inclusive of retail and wholesale MWhs) was \$20.59/MWh, compared to the median of \$17.30/MWh. This implies \$198.9 million in cost savings is possible (or just 48.19% of Elliott’s claimed level). When one considers that Evergy has already cut non-generation O&M by \$127 million from 2018 levels (36% above original targets for 2019), with plans for a total of \$160 million in synergies (\$137 million greater savings than 2018 levels), the O&M cost savings that Elliott claims are “high-certainty, line of sight” and “able to be achieved in the next few years” becomes highly questionable.²⁹

While Staff disagrees with Elliott’s use of retail MWhs as the appropriate sales unit to evaluate Evergy’s cost profile, this still leaves the question of why Evergy’s non-generation O&M expense per customer benchmarks so high against its peers. As discussed above, if Evergy were able to lower its non-generation O&M expense to the median per customer level experienced by other utilities, Evergy could cut costs by \$391.8 million per year. One factor that contributes to this discrepancy is Evergy’s larger than average wholesale sales percentage as discussed above. This occurs because a wholesale customer is only listed as one customer, whereas that one customer contributes significantly to the MWhs sold by Evergy. Also, non-generation O&M expenses include costs that would otherwise be allocated out to wholesale customers in the ratemaking process, this metric does not provide a completely accurate picture of Evergy’s cost structure to serve retail customers.

Nonetheless, to understand the different expense categories that contribute to Evergy’s higher per customer O&M costs, Staff evaluated Evergy’s Transmission O&M expenses, Distribution O&M expenses, and its Administrative and General (A&G) expenses, all on a per customer basis as each of these categories contribute to Evergy’s total non-generation

²⁹ See Evergy Q1 2020 Earnings Call Presentation: <https://www.evergyinc.com/static-files/45a14d4b-a55c-4daa-9f92-e7e770e64757>

O&M expense level criticized by Elliot.

Evergy's transmission O&M per customer was \$243.6 million more than the non-Evergy utility median in the analysis. This means that over 60% of Evergy's non-generation costs per customer over the median can be explained by this category alone. As the Commission is well aware, transmission costs per customer is a cost component that is affected greatly by Evergy's system configuration and the costs that it incurs as a result of membership in the Southwest Power Pool (SPP). In other words, Staff does not view this cost category as one that Evergy will be likely to be able to reduce significantly.

Evergy's distribution costs per customer were lower than the median utility, so that is not a source of explanation for the higher costs. However, Evergy's A&G costs per customer were \$215.3 million higher than the median non-Evergy utility in the study group. Here again, when we consider that Evergy has already achieved \$127 million in savings over 2018 savings levels, that Evergy in 2019 was running 36% above its synergy targets, and that Evergy plans to achieve another \$71 million to \$107 million in O&M cost cuts during the year 2020³⁰, the level of additional A&G savings available to Evergy beyond what it is currently achieving (and expecting to achieve) is questionable at best.

Staff notes that the criticisms in this Report address the benchmarking analysis and potential for Evergy cost savings presented by Elliott in the Open Letter. This is not to suggest that Staff does not support a "no stone unturned" analysis to ensure that Evergy's cost structure is as efficient as possible, while still maintaining the level of service and reliability Evergy's customers expect. Moreover, if a detailed analysis does indicate that sustainable additional cost savings (beyond those already identified and planned) are possible, Staff asserts that those cost savings should be flowed through the ERSP and shared with ratepayers, not be used to provide a return "on and of" new discretionary capital expenditures.

While Elliott predicted \$200 million in savings on fuel and non-fuel O&M expenses associated with replacing 20% of Evergy's coal fleet with wind generation, there was no discussion in the letter as to what specific coal-fired generation units the calculations were based on. Additionally, there was no discussion of the costs or the assumed ratemaking treatment for the stranded asset costs of the unidentified units. Lastly, there was no discussion of the engineering realities of retiring the unidentified units including whether SPP or Evergy had performed a reliability study to determine the feasibility of retiring those base load units, or what the costs of any necessary transmission upgrades or unit dismantlement upon retirement of the units. Evergy is already engaged in a Commission-

³⁰ See Evergy Q1 2020 Earnings Call Presentation. Evergy's 2020 Adjusted O&M guidance contains a further reduction of ~6% to ~9% in O&M from 2019 levels of \$1,187 million.

approved, comprehensive IRP process. That IRP process will identify whether the cost savings associated with the early retirement of existing coal-fired generating units is attainable, what the costs would be for replacing the lost capacity and energy from those units, and any other important considerations such as the engineering realities of retiring one particular unit versus another.

In conclusion, Staff views Elliott's O&M cost savings analysis to be a high level, and likely unrealistic, evaluation of the cost savings that is readily attainable by Evergy now. Most of the reported difference between Evergy's cost structure and its peers is explained by the different operating characteristics between Elliott and its peers including Evergy's percentage of wholesale sales compared to total sales and its transmission costs per customer. These observations cast serious doubt on Evergy's ability to achieve the kind of sustainable cost savings Elliott claims are readily achievable under the Modified Standalone Plan. This exposes ratepayers to serious risks of higher rates, lower service quality, or both, if Evergy plans to use these cost savings to cover the increased revenue requirement associated with a significantly increased capital expenditure budget.

Inconsistency between Elliott's High Performance Standalone Plan and Core Elements of the Evergy Merger

Staff contends that the Modified Standalone Plan called for by Elliott in its Open Letter would be directly contrary to the core elements of the merger approved by the Commission in the 18-095 Docket. The core elements include: 1) the sharing of excess cost savings with ratepayers through the ERSP mechanism; and 2) Evergy reducing capital expenditures by nearly \$1 billion in the years following the merger. Elliott's proposed Modified Standalone Plan would instead raise capital expenditures by nearly \$4.5 billion and use excess merger savings to finance the carrying charges associated with that investment, instead of allowing those savings to flow through the ERSP. These significant revisions to the core elements of the merger approved by the Commission call into question whether Elliott's proposed Modified Standalone Plan is in the public interest. Both of these factors are discussed in more detail below.

Excess Cost Savings Flowing Through the ERSP

In the 18-095 Docket, Staff explicitly rejected a strategy similar to the one now advocated by Elliott to cut significant O&M costs and then use those savings to cover the carrying charges on additional capital expenditures.³¹ Additionally, Staff cautioned the

³¹ See 18-095 Docket, Direct Testimony of Justin T. Grady, pages 5-6: "As filed, the Transaction provides too little benefit to Westar and KCPL's ratepayers compared to the shareholders of the combined company. The Applicants' plan to retain most of the merger savings over the next five years to defer rate case filings,

Commission that one of the risks of relying on the merger savings to benefit ratepayers in the long term is the possibility that management would simply use the cost savings to fund additional capital expenditures. This is the concept of “headroom” advocated by Elliott in its Open Letter.³²

To address these concerns, and in order to ensure that customers received a balanced and equitable amount of merger savings during the five years of the rate moratorium, Staff recommended the establishment of the Earnings Review and Sharing Plan (ERSP). The purpose of the ERSP was described as “a structured, reasonable, and balanced regulatory solution to the challenge of how the millions of dollars in anticipated merger (and non-merger) savings should be shared between ratepayers and shareholders in the years following the merger.”³³ Referring to the ERSP in its May 24, 2018, Order Approving Merger, the Commission stated, “[w]ithout an ERSP, customers would not be able to share in any savings until the five year rate moratorium ends.”³⁴ Additionally, the Commission referred to the benefits of the ERSP in its Order Denying Petitions for Reconsideration. In paragraph 37, the Commission stated: “[u]nder the ERSP mechanism, Evergy will share any over-earnings equally with its retail electric customers. Absent the ERSP, Evergy would retain all of any over-earnings resulting from successful implementation of cost savings plans.”

These passages make it clear that it was important to Staff and the Commission that excess savings created during the five years of the rate moratorium be shared equally with ratepayers and shareholders through the ERSP mechanism. Elliott’s proposed Modified Standalone Plan is directly contrary to that goal and instead proposes to use excess cost savings to benefit shareholders by providing a return on and a return of significant quantities of new capital expenditures.

\$1 Billion Capital Expenditures Reduction

One of the stated benefits of the merger was the ability for the merged company to reduce its capital expenditures budget by nearly \$1 billion compared to the stand-alone forecasts. This benefit was a significant focus of the proceedings that occurred in the 18-095 Docket.

grow earnings, increase dividends, and fund capital investment would also result in less effective regulation of these utilities by the Commission.”

³² See 18-095 Docket, Direct Testimony of Justin Grady, page 24: “However, the longer that time goes on, the less confident Staff is that the original merger savings are still creating benefit for customers. For example, financial analysts and executives in the utility industry understand that cost savings associated with a merger creates rate “headroom” that can allow additional capital expenditures to be recovered more easily from ratepayers.”

³³ See 18-095 Docket, Direct Testimony of Justin T. Grady, page 47.

³⁴ See paragraph 59 of the May 24, 2018, Order Approving Merger. <https://estar.kcc.ks.gov/estar/ViewFile.aspx/20180524155136.pdf?Id=4ab19c7e-9957-40f1-8fb6-dd49aad0966f>

Further, the Commission relied on Evergy's commitment to reduce capital expenditures by nearly \$1 billion during the first five years after the merger as part of its findings that the merger was in the public interest. In the Commission's Order Approving Merger, the Commission stated the following:

60. KIC also ignores evidence that the Applicants will reduce their capital spending by a billion dollars over the next five years as a result of the merger. Greenwood summarized the impact of the merger by explaining, "[w]ithout this merger, we get zero merger savings. With this merger, we get \$555 million during the first five years. And we can spend a billion dollars less of capital during that time." Referring to the billion dollar reduction in capital spending, Greenwood testified, "[t]hose are savings that show up in lower customer bills." The billion dollars saved in capital expense over five years will be available for ratepayers to spend elsewhere, which should create an economic stimulus.

The Commission also referred to the reduced capital budget of the combined company in paragraph 76 of its Order:

As discussed in the evaluation of merger standard (c), the evidence suggests the Applicants will reduce their capital spending by a billion dollars over the next five years as a result of the merger, and that "[t]hose are savings that show up in lower customer bills." The Commission concludes that the billion dollars saved in capital expense over five years could create an economic stimulus. In addition, the ERSP mechanism may return even greater bill credits to retail customers, while at the same time giving the Applicants a powerful incentive to operate efficiently and reduce economic waste. The Commission agrees that the reduced capital spending resulting from the merger and the ERSP mechanism strongly support a finding that this merger will reduce the possibility of economic waste. Accordingly, the Commission concludes the Settlement Agreement satisfies merger standard (g).

As discussed above in the Background section of this Report, Evergy has already announced a \$1.5 billion increase in its capital expenditures budget for the years 2019-2024. This puts Evergy's capital expenditure budget for these five years at \$7.6 billion, up from \$6.1 billion. For comparison, the five-year capital expenditures budget presented to the Commission during the 18-095 Docket was \$6.219 billion, down from the pre-merger \$7.174 billion. This means that even before the Committee makes a recommendation for or against the Modified Standalone Plan, Evergy has already reversed course on a major

benefit the Commission relied on in approving the Evergy merger. This reversal of course also indicates how much control Evergy has on its capital expenditure budget at this time. In other words, these capital projects do not appear to be mandatory capital spend driven by aging equipment or a predefined maintenance interval on a generator, etc. This revision of Evergy's capital budget appears to be growth related capital, simply for the sake of growth. Staff also notes that the timing of this revised capital budget coincides with the timing of the announcement of Evergy's Agreement with Elliott.

As noted previously, the significant revisions to the core elements of the merger approved by the Commission in the 18-095 Docket call into question whether Elliott's proposed Modified Standalone Plan is in the public interest. Therefore, should Evergy's Board select a Modified Standalone Plan, Staff will petition the Commission to open a separate docket to fully investigate and analyze each element of the Modified Standalone Plan for both compliance with the core elements of the merger and the balancing of any benefits between customers and shareholders.

Inconsistency between Elliott's High Performance Standalone Plan and Legislative Goals in Sub. SB 69

As discussed in the Background section of this Report, many of Evergy's stakeholders have recently expressed serious concerns about the regional competitiveness of Evergy's rates. This had led to multiple legislative proposals aimed at identifying the causes for, and possible solutions to, Evergy's higher than average electric rates. During the 2019 Legislative Session, Sub. SB 69 became law. This bill required an independent rate study be performed, in two phases. The first phase was completed in January 2020. The second phase is due to be delivered to the KCC on July 1, 2020. The purpose of the study was stated in the law as follows:

To provide information that may assist future legislative and regulatory efforts to craft forward-looking electric policy that leads to regionally competitive electric rates and reliable electric service, the legislative coordinating council shall authorize a study of the retail rates of Kansas electric public utilities.

One of the other key provisions of the law requested information on "options available to the state corporation commission and the Kansas legislature to affect Kansas retail electricity prices to become regionally competitive while providing the best practicable combination of price, quality and service..." It is clear from these passages that it is an important policy goal for the State that Evergy and other electric utilities in Kansas achieve regionally competitive rates (while maintaining reliable electric service).

Elliott's proposed Modified Standalone Plan is not consistent with these key policy goals of the State as expressed in Sub. SB 69. Elliott's proposed Modified Standalone Plan, as expressed in its Open Letter, would at best be rate neutral, if all of Elliott's projected cost savings came to fruition.³⁵ Even if all of Elliott's projected cost savings were realized, its Plan would not do anything to reduce Evergy's above average retail rates to regionally competitive levels. In fact, because Elliott's proposal would result in cost savings being used to cover carrying charges for additional capital investment instead of sharing those cost savings through the ERSP, it is directly contrary to the goal of achieving regionally competitive rates.

The purpose behind many of Elliott's demands are to increase shareholder wealth, not provide a balanced distribution of benefits between shareholders and ratepayers. If Elliott is successful in pressuring Evergy to increase its capital expenditure budget significantly, and assuming that cost savings will pay for these capital expenditures, Evergy would be risking its rate levels getting further behind those of neighboring states, and potentially threatening reliability as well if critical cuts are made to make up for shortfalls in projected O&M savings.

Elliott's Merger Transaction Plan:

Staff also has serious concerns with Elliott's proposal to evaluate a Merger Transaction given Elliott's clear desire to maximize shareholder value. As noted previously, KCP&L's attempt to acquire Westar was denied. Staff's opposition to the acquisition attempt was primarily due to the purchase price, which attempted to maximize shareholder value. In summarizing Staff's position, Staff testified that:

Q. Does the Joint Application promote the public interest?

A. No. As reflected in Staff's overall recommendation, the Joint Application for approval of Great Plains Energy's (GPE) acquisition of Westar Energy (Westar) does not satisfy a majority of the merger standards. What's more, the proposed transaction would leave ratepayers, the state, and even the post-transaction entity in a worse position moving forward. *In fact, this Transaction primarily promotes the interests of Westar's shareholders – due to the overcompensation they will receive – to the*

³⁵ As discussed in detail above, Staff sees serious implementation risks to achieve the cost savings Elliott claims are likely.

detriment of the public interest. Because the Commission uses the merger standards as guidance as to whether a transaction promotes the public interest, failure to meet the majority of the merger standards is a strong indication that the public interest will not be promoted by approving the Transaction.³⁶

In order for a merger transaction to be approved, it must be in the public interest. The public interest for merger transactions has been defined by the Commission and restated in Staff's testimony in previous dockets and is as follows:

Q. What is the Public Interest Standard and how is it applied in merger dockets?

A. Generally speaking, the public interest is served when ratepayer interests are carefully considered and protected. In the context of a rate case, the public interest can be served when ratepayers are protected from unnecessarily high prices, discriminatory prices, and/or unreliable service. In the context of a merger, the Commission's Order in Docket Nos. 172,745-U and 174,155-U³⁷ (KPL/KGE Merger) states the following:

All parties generally agree that the merger should be approved only if it is "in the public interest." The parties have differed, however, on specifically what "in the public interest" means in the context of utility mergers. The Commission notes there are various cases addressing generally the meaning of "the public convenience and necessity." Public convenience means the convenience of the public, not the convenience of particular individuals. 206 Kan. 670, 676 (1971). Public necessity does not necessarily mean there must be some showing of absolute need. As used, the word "necessity" means a public need without which the public is inconvenienced to the extent of being handicapped.³⁸

Consistent with its broad authority to regulate public utilities for the benefit of the public interest, the Commission believes that in

³⁶ Direct Testimony of Jeffrey D. McClanahan, Docket No. 16-KCPE-393-ACQ, pp. 10-11. December 16, 2016. Emphasis added.

³⁷ The Commission's Order in Consolidated Docket Nos. 172,745-U and 174,155-U dated November 14, 1991, approved the merger of Kansas Power and Light Company with the Kansas Gas and Electric Company (the 1991 Merger Order).

³⁸ Direct Testimony of Jeffrey D. McClanahan, pp. 5-6, Docket No. 18-KCPE-095-ACQ, January 29, 2018.

reviewing a merger or acquisition, it should consider a variety of factors. The Commission believes that to simply adopt a “no detriment” test as suggested by the Applicants or a “net benefits” standard as suggested by CURB is too simplistic. Utility mergers and acquisitions are complex transactions that affect both ratepayers and shareholders for many years to come and have significant implications for the utility service to be provided. Consistent with its mandate in approving the initiation of utility service as set out in K.S.A. 66-131, the Commission concludes that mergers and acquisitions be approved where the applicant can demonstrate that the merger or acquisition will promote the public interest. In determining whether a transaction promotes the public interest, the Commission looked to the variety of sources presented by the parties in their testimony and briefs. The Commission adopts the following list of factors it will weigh and consider in determining whether the proposed transaction promotes the public interest...³⁹ [Listing of Merger Standards omitted].⁴⁰

The Commission believes these factors will allow the Commission to uniformly review mergers and acquisitions that may be presented to the Commission in the future while maintaining some flexibility to deal with the particular circumstances of each transaction. Additionally, these factors will provide utilities contemplating a merger or acquisition with a standard that will be utilized to review any contemplated transaction.⁴¹

As the noted in the Commission Order provided above, a demonstration must be made that a merger or acquisition will promote the public interest. One of the key factors in determining that the public interest will be promoted is the distribution of benefits between ratepayers and shareholders. Staff has explained this previously in the testimony of Justin Grady. Mr. Grady stated as follows:

Q. Why do you believe it is appropriate to evaluate the distribution of benefits between ratepayers and shareholders when evaluating these two Merger Standards?

A. Based on my review of previous Commission Orders involving mergers

³⁹ Direct Testimony of Jeffrey D. McClanahan, p. 6, Docket No. 18-KCPE-095-ACQ, January 29, 2018.

⁴⁰ The Commission affirmed the use of the Merger Standards in its Order on Merger Standards in Docket No. 16-KCPE-593-ACQ.

⁴¹ Direct Testimony of Jeffrey D. McClanahan, p. 6, Docket No. 18-KCPE-095-ACQ, January 29, 2018.

and acquisitions, it is clear that the Commission has historically found that the benefits of a merger need to be shared between ratepayers and shareholders in a balanced fashion in order for the merger or acquisition to truly promote the public interest. For example, in paragraph 67 of the Commission's April 19, 2017 Order denying the original transaction, the Commission found as follows:

Merger standard (a) examines the effect of the transaction on consumers. It is undisputed that the **Joint Applicants are not proposing a rate moratorium or a refund to its customers as part of the proposed transaction. Instead, the Joint Applicants propose to pass savings to its customers through rate cases.** The Joint Applicants "expect all those savings to flow back to customers when we file a rate case, but there are **no interim flow back processes** before we file that next rate case." KCP&L has committed to filing a rate case in January 2019, and expects Westar to file a rate case along a similar timeline. **In the interim, the utilities can retain any transaction-related savings** to pay dividends to GPE to finance the debt, thus depriving the customers of full benefit of any transaction-related savings. **Without any interim flow back processes, the proposed transaction does not adequately benefit consumers.** (Emphasis Added)

This passage highlights the fact that the Commission's evaluation of a transaction under Merger Standard (a) (iii) calls for an examination of whether there is adequate benefit for customers, not simply whether there is some benefit to customers.

Another Commission Order that illustrates this concept is the Commission's November 14, 1991 Order approving the acquisition of Kansas Gas and Electric Company by the Kansas Power and Light Company (the two predecessor companies to the current day Westar). On page 88 of that Order, the Commission stated as follows:

The Commission agrees with CURB's position that the **\$15 million refund is insufficient** in light of the accounting changes proposed by the Applicants. The Commission finds that the **interests of both the ratepayers and the shareholders can be balanced.** Ratepayers can benefit from rate stability accomplished by imposing a rate moratorium with mandated rate refunds. Shareholders can benefit by deferring the amortization of the AP until the savings resulting from the combination of the two entities are sufficient to cover the

\$12.5 million annual amortization of the premium. (Emphasis Added)

Later in the Order, the Commission required a rate moratorium and a doubling of the customer refunds compared to the original Application. In the opening paragraph of the conclusion section of the Order, on page 106, the Commission stated:

The KPL/KGE merger as proposed is unacceptable because it does not promote the public interest, as such, is hereby rejected. Even so, a merger between KPL and KGE represents the Commission with a rare opportunity to achieve material and significant cost savings. **As proposed, however, the savings would primarily go to the stockholders of the Applicants and very little would flow to consumers.** Consequently, the proposed merger will be approved with a rigid set of conditions that will work to **ensure that customers of KPL and KGE receive their equitable share of savings generated by the merger.** (Emphasis Added)

These three passages from previous Commission Orders make it clear that in order to promote the public interest, adequate ratepayer benefits, resulting from a balanced and equitable sharing of the benefits attributed to a merger, is required.⁴²

Staff's main concern with Elliott's promotion of a Merger Transaction is that Elliott's only concern will be maximizing the share price because, once a price is agreed to by an acquirer, Elliott can sell its stock immediately and avoid the risks associated with the Commission's merger approval process. Therefore, it is important that Evergy provide supporting documentation that it has evaluated any potential Merger Transaction based on the Commission's merger standards, which include a reasonable purchase price and adequate ratepayer benefits that result from a balanced and equitable sharing of the benefits attributable to the merger.

Legislature's Review of Staff and Evergy Rate Studies:

During January of 2019, the Kansas Legislature (Legislature) held informational presentations that allowed Staff and Evergy to present their respective rate study findings resulting from the studies conducted pursuant to the non-unanimous settlement agreement

⁴² Direct Testimony of Justin T. Grady, Docket No. 18-KCPE-095-MER, pp. 20-21, January 29, 2018. Internal cites omitted.

in the 18-095 Docket. This Report summarizes the findings from Staff's rate study in the Background section. The Legislature also provided an opportunity for stakeholders to respond to those rate studies. On January 15-16, 2019, Staff presented its rate study findings to the Senate Utilities Committee (Senate Utilities). On January 22, 2019, Staff presented its rate study findings to the House Energy, Utilities, and Telecommunications Committee (House Utilities). On January 29, 2019, Evergy presented its rate study findings to both Senate Utilities and House Utilities.

On January 30, 2019, stakeholders presented their responses to Staff and Evergy's rate studies. In general, the stakeholders providing responses drew attention to the fact that Staff and Evergy's rate studies were not intended to provide solutions to reduce Kansas' electric rates. The Kansas Industrial Consumers Group's (KIC) response emphasized several points. Most relevant to this report is KIC's statement that "Investor-owned utilities like Westar and KCP&L make money when they invest capital. According to documents filed with the SEC, they are pursuing a strategy of rate base growth (through investing capital) to enhance shareholder earnings."⁴³ KIC's statement was based on its review of SEC reports.

As noted above, the Commission relied on Evergy's assertion/commitment that it would be lowering its projected capital investments by approximately \$1 billion during the merger agreements moratorium period of 2019-2023. However, Elliott has made clear that any Modified Standalone Plan will increase capital investment up to a 10% annual rate base growth. According the Evergy and Elliott Agreement, the initiation of the Modified Standalone Plan and its associated annual rate base growth will begin on Analyst Day, which is October 14, 2020. This clearly conflicts with the Evergy's merger commitment and validates KIC's concerns that Evergy would pursue a strategy of rate base growth (through investing capital) to enhance shareholder earnings.

Substitute for Senate Bill 69:

On March 7, 2019, Senate Utilities made extensive amendments to SB 69. The amendments were the result of extensive negotiations between the stakeholders, many of whom supported lower electric rates. The amendments were substantive enough that a substitute bill for SB 69 was created. On March 12, 2019, Senate Utilities passed Sub. SB 69. On March 19, 2019, House Utilities held a hearing on Sub. SB 69. The majority of the stakeholders supporting Sub. SB 69 indicated that they supported an independent consultant's review of Kansas electric rates in order to provide the legislature solutions for ways to make Kansas electric rates competitive. As noted in the previous sections of this Report, the independent review was bifurcated in to two phases.

⁴³ Testimony of Jim Zakoura, Kansas Industrial Consumers Group, Regarding the KCC Rate Study, Before the Senate Utilities Committee, January 30, 2019, p. 2.

The legislature awarded London Economics International, LLC. (LEI) the contract to conduct the first phase of the study required by Sub. SB 69. LEI's study was filed on the Commission's website and with the legislature on January 8, 2020. The legislature also awarded AECOM Technical Services, Inc. (AECOM) the contract for the second phase of the study. AECOM's report is due no later than July 1, 2020.

LEI's report was extensive as it covered the majority of the rate issues required to be studied by Sub. SB 69. Specifically, the study provided a number of options for the legislature to consider that would potentially reduce Kansas' electric rates and make the rates more competitive on a regional basis. [LEI's report is incorporated herein by reference, *See* Docket No. 20-GIME-068-GIE].

Stakeholder Focus on Rate Reduction Remedies During 2020 Legislative Session:

As noted in the Background section, a number of bills were introduced during the 2020 legislative session that were intended to lower electric rates. Examples include, but are not limited to, the following:

- Senate Bill 339 – SB 339 is an economic development bill that would require all customers to reimburse an electric utility for discounted rates offered to large customers. In explaining the rationale for such a bill, one stakeholder testified that “In its 2019 electric rate report, the KCC highlights the beneficial impact on utility rates when new industrial customers locate in Kansas. The reason for this is simple: additional customers and associated electric load allows fixed utility costs to be spread over more units of sale, lowering rates for all customers (including residential).⁴⁴”
- Substitute for Senate Bill 126 – Sub. SB 126 exempts every electric and natural gas public utility subject to the regulation of the Commission from Kansas state income tax for tax years ending on or after December 31, 2021. Additionally, Sub. SB 126 requires deferral into a regulatory asset or liability account to reflect any over collection or under collection of income tax expenses due to a change in state or federal tax law. In explaining the rationale for the bill one stakeholder testified that “Kansas Industrial Consumers Group (KIC) and Kansans for Lower Electric Rates (KLER) appreciate the opportunity to address a simple issue that can start the process of reducing Evergy's high electric rates, and the rates of other investor-owned utilities. Sub. SB 126 would end the Kansas corporate income tax for investor-owned utilities – without negative impacts to the state budget – and benefit customers by reducing rates.”⁴⁵

⁴⁴ Testimony of Paul Snider, Testimony of Kansas Industrial Group In Support of SB 339, Before the House Energy, Utilities, and Telecommunications Committee, March 10, 2020.

⁴⁵ Testimony of Paul Snider, Testimony of Kansas Industrial Group and Kansans for Lower Electric Rates In Support of Substitute for SB 126, Before the House Energy, Utilities, and Telecommunications Committee, March 10, 2020, p. 1.

- As noted in the Background section, the contents of HB 2585 were replaced with the contents of SB 126 and SB 339 (economic development contracts) to create Senate Substitute for HB 2585 (Sub. HB 2585). Sub. HB 2585 was passed by both the House and Senate on May 21, 2020, and is expected to be enrolled and submitted to Governor Kelly for her signature.

Staff notes that the 2020 Legislative Session was cut short due to the COVID-19 pandemic. However, despite a compressed schedule, the legislature did pass Sub. HB 2585 in an abbreviated session. In Staff's opinion, passage of Sub. HB 2585 indicates that the legislature is concerned about and supportive of reducing electric rates in Kansas.

COVID-19 Pandemic Impact on Utilities:

As discussed in the Background section, Governor Kelly has issued a series of Executive Orders that required people to stay-at-home as well as limit the number of people that can gather. These Executive Orders effectively shut down the Kansas economy and were consistent with the majority of other states response to the pandemic. As a result, the national economy and Kansas' economy have taken serious downturns.

There have been many news articles and financial analysts' reports that have addressed COVID-19's impact on the economy as a whole as well as the impact on the utility sector. Staff is providing several quotes from articles and financial analysts that are relevant to the impact of COVID-19 on the utility sector and Elliott's proposal to increase shareholder wealth. The quotes are as follows:

- U.S. investor-owned utilities continue to have access to capital but are taking precautions to maintain liquidity in an increasingly perilous economy wrought by the novel coronavirus.

Nearly all the large-cap utilities have raised new debt in the past two weeks, CreditSights analyst Andrew DeVries said. Several of these companies, including Exelon Corp. and Southern Co., ended the first quarter with multibillion-dollar debt offerings, which is "definitely not normal to come at the end of the quarter."

So far in 2020, U.S. utilities have collectively raised more than \$25 billion, including roughly \$15 billion in March alone, according to Scotia Capital (USA) Inc. analyst Andrew Weisel. Banks also have stronger balance sheets and capital positions compared to 2008 and 2009, giving utilities open access to bond markets.

"Companies seem to be taking preemptive actions to bolster their cash and liquidity positions in case we have a prolonged downturn," Weisel said in an April 9 email, adding that one CFO described the activity levels as "preparing for doomsday."

While the fully regulated utility sector has been spared the hard hits that oil and gas companies have received in the past month, the traditionally defensive industry has still been vulnerable to market volatility, and the recent debt raises reflect that "this market that is entirely focused on liquidity these days," DeVries said.

"It's all related to the volatility in the market," DeVries said in an April 8 interview. "Because if you are the CFO, you don't care about paying an extra 10 basis points, 20 basis points, 30 basis points — at least you don't have any liquidity issues. The liquidity is paramount for these guys." [Meyers, Ellen. "As US utilities prepare for downturn, 'liquidity is paramount'", *SNL/RRA*, April 10, 2020].

- While expectations remain high that considerable levels of capital expenditures will continue to support utility profit expansion in coming years, the ongoing COVID-19 pandemic will likely give management teams pause regarding the timing and scale of capital expenditure programs given ongoing economic uncertainty and an anticipated recession. Also, supply chain manufacturing problems worldwide in the booming renewables sector will likely delay some wind and solar projects for the utility sector.

During the December 2007-June 2009 recession, numerous utilities made downward revisions to capital spending budgets, with credit market and economic uncertainty as well as slower demand forecasts tied to the weakened economy factoring heavily in utility infrastructure and spending outlooks. We note that capex continues to be a moving target that could change as the financial and economic landscape evolves and companies evaluate both short- and long-term forecasts in coming weeks and months. [Lehmann, Jason and Cox, Charlotte. "COVID-19 related obstacles could give pause to utility capital expenditure plans", *SNL/RRA*, April 23, 2020].

- The impact of COVID-19 is expected to be felt on the utility sector for quite some time. The uncertainty associated with the pandemic has roiled the financial markets in recent weeks and has altered the focus of many utilities. The likelihood of new large electric and natural gas utility mergers and acquisitions, or M&A, being announced in the near future has diminished significantly. In the water sector, the acceleration of small-to-mid-sized municipal utility acquisitions is likely to continue. The changes in this highly fragmented sector have been driven by increasing capital investment

needs and legislation that encourages consolidation.

Before COVID-19 entered the picture, there were already lackluster prospects for M&A activity in the energy utility sector due to pre-pandemic economic concerns, political uncertainty associated with the upcoming elections and enhanced scrutiny of deals in recent years by state regulators. These factors led to a pullback in 2019 M&A activity. Recent transactions have been small in scale relative to the deals that took place just a few years ago and mostly involved individual assets or subsidiaries rather than the large holding company deals.

Regulatory Research Associates, a group within S&P Global Market Intelligence, looks for utilities to experience a relatively modest negative financial impact from COVID-19 relative to more cyclical businesses, some of which have been meaningfully impacted by dramatic events of the past several weeks. In particular, given the essential nature of their products and economically regulated business models, utility revenues and net income may experience only modest declines in 2020. However, economic hardship will be a factor for some utility customers, and it will be a reasonable strategy for utilities to focus on this and other key operational matters such as maintaining existing infrastructure and ensuring the safety of their workforce. This is particularly important in an environment in which utilities may be requesting regulatory authority to recover COVID-19 related expenses or to defer them and establish regulatory assets. In short, regulators likely will not have much appetite for utilities pursuing M&A transactions in the current business climate. [Ernst, Russell, Doerr, Heike, and Serzan, Tom. “In era of social distancing, most utilities unlikely to embrace mergers in 2020”, *SNL/RRA*, April 23, 2020].

- Although most North American utilities are well-positioned to weather a global recession in 2020, S&P Global Ratings said in a March 19 report utilities most exposed to downside risk are those with a high proportion of commercial and industrial customers, cyclical nonutility businesses and large construction projects.

S&P Global Ratings' base case scenario includes a global recession this year brought on by measures to contain the novel coronavirus, with S&P economists forecasting a second-quarter contraction of 6% before recovery begins in the second half of 2020. But utilities are likely to be spared from the worst of any economic effects.

The utility sector will likely experience reduced sales volumes in the near

term as large events like sporting events and concerts are postponed, and federal and local governments implement social distancing procedures, credit analyst Obioma Ugboaja wrote. But utilities "provide an essential service to consumers and businesses" that will likely protect their bottom line.

While some utilities benefit from decoupling, a regulatory mechanism that protects the companies' margins regardless of sales volume declines, it is not available in every state. As a result, utilities most at risk are those without decoupling, where a large proportion of their customer base is commercial and industrial, and that already have negative outlooks or limited cushion in their financial risk profiles, Ugboaja said. [Myers, Ellen. "S&P sees increased risks for certain utilities from coronavirus, recession", SNL/RRA, March 19, 2020].

- The coronavirus outbreak made America's job market go from 60 to zero in the blink of an eye.

Stay-at-home orders issued by states to stem the spread of the virus have frozen the economy. More than 38 million Americans have filed for initial unemployment benefits in the past seven weeks, a burst that economists say is unprecedented.

"I compare it to a natural disaster, a terrorist attack and a financial shock all at once," said Gregory Daco, chief U.S. economist at Oxford Economics. "We've never had this in history."

California was the first state to issue a stay-at-home order and has seen the greatest number of job losses. In a state with an estimated labor force of 19.5 million, 4.4 million Californians have filed unemployment applications since March 14.

But the torrent of claims is coming from everywhere. Fifty-one states and territories have seen more than one-in-10 eligible workers file for claims since mid March. Georgia, Kentucky, Hawaii and Washington have seen the largest percentage of cuts, with around 1-in-3 workers in each of those states losing their jobs.

Comparing the weekly claims reported by the Department of Labor to the same period a year ago shows that while job losses have hit every state and territory, the damage has been unique to each region.

In Massachusetts, Maryland and Michigan, the virus was like a brick wall,

putting a stop to more than a year of job growth. While in Texas and Puerto Rico, economies that Daco said were struggling from falling oil prices and the long recovery from Hurricane Maria and two earthquakes, respectively, the viral shutdowns have made things even worse.

While the week of March 21 is when unemployment claims spiked nationwide, most regions saw increases earlier, with Nevada, Texas and Washington, D.C., seeing the biggest changes the week before, beginning March 14.

Experts warn the job losses will likely get worse. Oxford Economics forecasts that the unemployment rate will rise to 16 percent by May, and Daco noted that several states, including Maine, Nevada, Vermont and Florida, are more vulnerable to severe economic shock because of a combination of factors, including older populations, a large reliance on retail or hospitality, or limited work-from-home possibilities. [Chiwaya, Nigel and Wu, Jiachuan. “The coronavirus has destroyed the job market in every state”, NBC News, April 14, 2020, Updated June 4, 2020].

- Diane Swonk, chief economist at the auditing firm Grant Thornton, said many laid-off workers have yet to file for benefits simply because state unemployment portals were not built for the wave of traffic they are now receiving.

“As bad as this is, it's still an undercount.” Swonk said.

In addition, Swonk noted that cash-strapped states are likely to cut back on public services without federal aid. Already experts are warning that several states won't have enough money to pay all of the new unemployment claims, and a Labor Department report from February found that unemployment trust funds were underfunded in nearly half of the states.

“States are much more limited in the amount they can fund via deficit funding,” Swonk said. “That means cuts to essential services including garbage pickup.”

Such cuts hampered the recovery from the 2008 financial crisis, and they might be unavoidable without federal assistance.

“Congress has to get transfers to the states,” Swonk said. “We're going to have them working in the opposite direction if we don't get them aid.” [Chiwaya, Nigel and Wu, Jiachuan. “The coronavirus has destroyed the job market in every state”, NBC News, April 14, 2020, Updated May 21, 2020].

The selected quotes from the articles above provide information on the economic challenges created by the COVID-19 pandemic. In general, the articles indicate that:

- The utility sector is focused on maintaining its liquidity.
- Expectations remain high that considerable levels of capital expenditures will continue to support utility profit expansion in the coming years. However the COVID-19 pandemic will likely cause utility management teams to reconsider the timing and scale of capital expenditure programs given ongoing economic uncertainty and an anticipated recession.
- The likelihood of new large electric and natural gas utility mergers and acquisitions being announced in the near-term has diminished significantly. Before COVID-19, there were already lackluster prospects for M&A activity in the energy utility sector due to pre-pandemic economic concerns, political uncertainty associated with the upcoming elections, and enhanced scrutiny of deals in recent years by state regulators.
- Economic hardship will be a factor for some utility customers. It will be a reasonable strategy for utilities to focus on this and other key operational matters such as maintaining existing infrastructure and ensuring the safety of their workforce. This is important in an environment in which utilities will most likely be requesting regulatory authority to recover COVID-19 related expenses or to defer them and establish regulatory assets. Therefore, regulators likely will not have much appetite for utilities pursuing M&A transactions in the current business climate.
- Stay-at-home orders issued by states to stem the spread of the virus have frozen the economy. More than 38 million Americans have filed for initial unemployment benefits in the past seven weeks, a burst that economists say is unprecedented.
- Experts warn the job losses will likely get worse. Some forecasts indicate that the unemployment rate will rise to 16 percent by May. In addition, many laid-off workers have yet to file for benefits because state unemployment portals were overwhelmed. As a result, the unemployment rate may be underreported.

The COVID-19 pandemic presents unprecedented challenges for both utilities and regulators. The near-term impact has become clear. The level of customers in arrears is exponentially higher than normal, businesses have closed due to stay-at-home orders, and social distancing requirements and the level of unemployment has reached levels equal to or greater than the Great Depression. What remains uncertain is the long-term impact of COVID-19. There may be many small and medium size businesses that will never reopen, the unemployment rate may remain high for an extended period, and the economic impact

of COVID-19 has led to a recession.⁴⁶

As Evergy noted in its Application for an AAO, “A large number of commercial and industrial businesses across Evergy’s territory have significantly reduced operations or temporarily shut down. These contractions and closures as a result of the pandemic have reduced Evergy’s revenues substantially and will continue to do so for an as yet unknown period of time into the future.” Staff recognized this reality and noted in its Report and Recommendation in response to Evergy’s AAO request that “Staff recommends using the data provided by these reports to inform the next steps the Commission can take to provide customer protections or to ensure the financial stability of the utility.” Thus, the COVID-19 impacts that both Evergy and Staff have addressed through the AAO docket will most likely lead to a situation where the Commission is faced with a decision to “ensure the financial stability” of Evergy at the same time a plan is put in place to increase shareholder value. This is clearly an untenable situation.

IV. RECOMMENDATION

Staff has documented in this report the extensive number of issues that present challenges to Elliott’s desired shareholder enhancement concept. These issues include, but are not limited to:

- Merger commitments made by Evergy that are contrary to Elliott’s plan;
- Staff and Evergy’s rate studies that identified extensive capital expense investments and reduced sales volumes as major drivers of the increases in Evergy’s rates;
- Stakeholder and legislative efforts to reduce Evergy’s rates in order for Evergy to become regionally competitive; and
- The economic impact of the COVID-19 pandemic.

Because of the extensive obstacles facing Elliott’s plan to increase shareholder value, Staff asserts that Evergy’s Board of Directors Strategic Review and Operations Committee’s evaluation of the Modified Standalone Plan and Merger Transaction should not only be transparent, but fully explained to the Commission and stakeholders. In order to accomplish this, Staff recommends that it begin to evaluate the Strategic Review and Operating Committees process and work product immediately and that Evergy submit a report to the Commission in this general investigation. Specifically, Staff recommends the following:

⁴⁶ See National Bureau of Economic Research Determination that United States entered a recession in February 2020. <https://www.nber.org/cycles/june2020.html>

- 1) Staff will review meeting materials and work product of Strategic Review & Operations Committee immediately.
 - a) Staff to review Board Minutes and related meeting materials immediately.
 - b) Staff to review all work product generated by consultants retained to evaluate both the Modified Standalone Plan and a possible Merger Transaction.
 - c) Staff to review final report submitted to Board for vote.⁴⁷
- 2) Evergy will provide a report to the Commission based on its evaluation no later than two weeks after Evergy's Board makes its decision.
 - a) Evergy shall submit the Strategic Review and Operations Committee's Report to the Board and provide full rationale and explanation of the following:
 - i) Modified Standalone Plan
 - (1) If selected, why was this plan selected?
 - (2) Why is this plan better than a Merger Transaction?
 - (3) What level of additional O&M savings have been identified that are achievable?
 - (4) Identify the specific areas of additional O&M savings.
 - (5) Describe the analysis performed to determine the increased amount of discretionary cap-ex growth.
 - (a) Provide all documents supporting the benefit/cost analysis of the discretionary cap-ex growth.
 - (b) Identify additional projects by type (e.g., generation, transmission, or distribution).
 - (6) Describe how the Modified Standalone Plan will comply with merger conditions.
 - (a) List each relevant condition and describe how the Modified Standalone Plan will comply with the condition.
 - (b) Discuss how utilizing all additional O&M savings to pay for "return" related to Discretionary Growth Cap-Ex balances the interests of customers and shareholders given a Cap-Ex budget was relied on in approving the merger.
 - (c) Discuss how utilizing all additional O&M savings to pay for "return" related to Discretionary Growth Cap-Ex balances the interests of

⁴⁷ Staff understands that some of the Board materials may be highly confidential and that a higher level of confidential treatment may be warranted.

customers and shareholders given that the risk shifts to ratepayers through increased rates if forecasted O&M savings are not achieved.

(7) Discuss how the Modified Standalone Plan conforms to the principle of achieving regionally competitive rates contained in Substitute for Senate Bill 69 (SB 69). The report shall address, at a minimum, the following elements of SB 69:

(a) Whether the plan supports Evergy's ability to adequately attract needed utility capital investments and adequately discourages unnecessary capital investments in Kansas (SB 69 Section 1(c)(1)(A));

(b) Whether the plan appropriately balances utility profits with the public interest objectives of achieving competitive rates over time while providing the best practicable combination of price, quality, and service (SB 69 Section 1(c)(1)(B));

(c) Whether the plan supports Kansas retail electricity prices becoming regionally competitive while providing the best practicable combination of price, quality and service, including reviewing whether (SB 69 Section 1(c)(1)(G)(2):

(i) Whether the plan assists in capital expenditures and operating expenses of Kansas electric public utilities being managed to achieve and sustain competitive retail rates while maintaining adequate and reliable service (SB 69 Section 1(c)(1)(G)(2)(A).

(8) How does the Modified Standalone Plan balance the needs of customers and shareholders given both the realized and potential impacts of COVID-19, including:

(a) Potential unemployment rates related to COVID-19;

(b) Probable loss of a large number of small and medium businesses;

(c) Evergy's need for liquidity;

(d) Most analysts and ratings agencies recommendations to reduce discretionary cap-ex growth and create O&M savings; and

(e) How does utilizing all additional O&M savings to pay for "return" related to Discretionary Growth Cap-Ex balance the interests of customers and shareholders given potential need of the Commission to "ensure the financial stability of Evergy"?

ii) Merger Transaction

(1) If selected, why was this plan selected?

- (2) Why is this plan better than Modified Standalone Plan?
 - (3) In selecting the Merger Transaction Plan, what level of additional O&M savings have been identified that are achievable on a standalone basis?
 - (a) Identify the specific areas of additional savings;
 - (b) If O&M savings were not evaluated, why were they not evaluated; and
 - (c) Should any potential acquirer receive credit for optimizing operating costs when Evergy could accomplish such on a standalone basis?
 - (4) Describe how any potential combination can continue to conform to the Merger Agreement and related conditions.
 - (5) Describe how the recommended Merger Transaction Plan does not place additional risk on ratepayers above what can be estimated for Evergy on an ongoing basis: (1) with its current merger agreement: and (2) with an enhanced long-term Modified Standalone Plan.
 - (6) Can the recommendation for a Merger Transaction guarantee customer benefits materially greater than the benefits generated by Evergy in its recent merger?
 - (a) Should any additional benefits be in the form of potential lower base rates?
 - (b) Should any additional benefits be in the form of guaranteed lower base rates?
 - (7) Did the Board consider whether a successful acquisition can be accomplished given Staff's position on merger premiums and control premiums outlined in the 16-KCPE-593-ACQ merger due to the likelihood that these Staff's position would be the same for any acquisition that includes a merger premium?
 - (8) Did the Board consider whether a successful acquisition can be accomplished given Staff's position on double leverage in the 16-KCPE-593-ACQ acquisition due to the likelihood that Staff's position will remain the same for any acquisition seeking to use double leverage?
- iii) Did the Board consider whether any acquirer can provide customer benefits that address the issues in SB 69?
 - iv) Did the Board consider whether any acquirer can reasonably quantify benefits to customers given the uncertainty created by COVID-19?

- v) Did the Board consider whether a potential Merger Transaction should be postponed indefinitely in order to focus on the risks associated with COVID-19 and the recovery efforts that will be required?
 - vi) Did the Board consider whether any potential acquirer could provide customer benefits that address the issues to be addressed in SB 69?
- 3) Staff, CURB, and any other intervenors have the opportunity to file responsive comments no later than 45 days after Evergy submits its report.

Exhibit A



Media Contact:

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**Elliott Management Sends Letter to Board of Directors of Evergy,
Inc.**

Highlights Readily Achievable \$5 Billion Value Creation Opportunity

*Identifies Tangible Benefits Available for All Key Stakeholders:
Customers, Employees and Local Communities*

Outlines Two Clear Paths For Long-Term Improvement

*Recommends Increased System Investment, Including Increased
Deployment of Renewables*

Full Letter Available at EnergizeEvergy.com

NEW YORK (January 21, 2020) – Elliott Management Corporation (“Elliott”), which manages funds that currently own an economic interest equivalent to 11.3 million shares in Evergy, Inc. (the “Company,” or “Evergy”), equating to approximately \$760 million in current market value, today released a letter to Evergy’s Board outlining steps which 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.

According to the letter, Elliott sees a clear opportunity to achieve this significant increase in shareholder value while providing tangible benefits to all of Evergy’s key stakeholders, including customers, employees and the broader communities its utilities serve. The letter asserts that a renewed focus on improving core utility operations and investing in Evergy’s critical system infrastructure can rectify its prolonged underperformance, discounted valuation and associated increased cost of capital.

In the letter, Elliott stated that increased system investment would not only provide meaningfully more value to shareholders than the current strategy to repurchase shares, but would also provide clearly superior benefits to Evergy’s other stakeholders, help facilitate the Company’s deployment

of renewables and reduce its carbon footprint. Elliott urged Evergy to immediately explore both of the following alternative paths:

- **Standalone Path: Implement High-Performance Plan with Enhanced Oversight** – Develop and implement a high-performance plan with the direct input of certain new highly-credentialed Board- and management-level leadership, to increase critical infrastructure investment and optimize operating costs, leading to annual rate-base growth of up to 10% with no expected overall rate impact on customer bills.
- **Combination Path: Pursue Strategic Premium Merger Transaction** – Explore a strategic combination via a premium stock-for-stock merger, following which Evergy’s new partner would oversee the implementation of a high-performance plan, leading to value creation in which Evergy’s current shareholders would be able to participate by receiving stock in the combined entity.

Elliott believes either path, if executed properly, 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 noted that it sought to engage the Evergy Board on a private basis in October 2019. However, in response to Elliott’s outreach, the Board chose not to engage with Elliott on the merits of its suggestions but instead opted to make defensive changes to the Company’s governance. Based on this abrupt change, Elliott determined that it would be in the best interest of all stakeholders to make public its views and facilitate a broader discussion of the best path forward for Evergy.

The letter can be downloaded at EnergizeEvergy.com.

The full text of the letter follows:

January 21, 2020

The Board of Directors
Evergy, Inc.
1200 Main Street
Kansas City, Missouri 64105

Dear Members of the Board:

We are writing to you on behalf of Elliott Associates, L.P., Elliott International, L.P. and affiliates (together “Elliott” or “we”). We have followed certain of Evergy’s utility companies dating back more than 15 years. Elliott currently owns an economic interest equivalent to 11.3 million shares in Evergy, Inc. (the “Company,” or “Evergy”), approximately \$760 million in market value.

Over the past three months, we have been engaged in a private dialogue principally with Evergy management on ways to maximize value for all of Evergy’s key stakeholders. We appreciate your

time and participation in this private dialogue and, while we currently appear to have differing views on the right path forward, we are hopeful that this discussion can continue.

We have made such a large investment in Evergy because we believe a clear opportunity exists to create significant shareholder value. This would lower the Company's cost of capital and provide tangible benefits to all of Evergy's key stakeholders, including customers, employees, regulators and the broader communities its utilities serve. We believe Evergy's valuation does not properly reflect the value of its collection of high-quality regulated utilities in Kansas and Missouri, and that a renewed focus on improving core utility operations and investing in Evergy's critical electric infrastructure can rectify its prolonged underperformance, discounted valuation and associated increased cost of capital.

We believe that Evergy's stock-price underperformance since the completion of the Great Plains / Westar Merger (the "Merger") reflects investors' increasingly skeptical outlook on the Company's long-term plan and its recent strategic decisions. Investors are especially skeptical regarding Evergy's current strategy of using capital to repurchase shares at the expense of increased investment in its infrastructure. As we lay out below, increased system investment would not only provide meaningfully more value to shareholders than buybacks, but would also provide clearly superior benefits to Evergy's customers, employees, regulators and the broader communities Evergy's utilities serve, in addition to helping to facilitate the Company's deployment of renewables and reducing its carbon footprint.

This long-term plan and current operating and strategy decisions have led to bottom-quartile (and in some instances bottom-decile) operating-cost performance, system capital investment, rate-base growth, and cost of capital among U.S. mid- and large-cap regulated utilities. Fortunately, we believe these strategic, operating-plan and capital-allocation issues can be addressed in the near term, allowing Evergy's utilities to become high-performing electricity providers. To put the Company back on a track where it can create sustainable value for all key stakeholders, Evergy should immediately explore both of the following alternative paths:

- **Standalone Path: Implement High-Performance Plan with Enhanced Oversight** – Develop and implement a high-performance plan with the direct input of certain new highly-credentialed Board- and management-level leadership, to increase critical infrastructure investment and optimize operating costs, leading to annual rate-base growth of up to 10% with no expected overall rate impact on customer bills.
- **Combination Path: Pursue Strategic Premium Merger Transaction** – Explore a strategic combination via a premium stock-for-stock merger, following which Evergy's new partner would oversee the implementation of a high-performance plan, leading to value creation in which Evergy's current shareholders would be able to participate by receiving stock in the combined entity.

We believe either path, if executed properly, 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. In addition, we believe the business improvements envisioned under either

path will leave Evergy better positioned to serve all of its key stakeholders, with stronger corporate governance and a greater commitment to renewable energy.

The purpose of today's letter is to share our thoughts with investors on the opportunities available at Evergy to create shareholder value and provide tangible benefits to its key stakeholders and constituent communities. Given our interactions with management and the Board to date as well as Evergy's persistent share-price underperformance, we believe the time has come for a full public discussion regarding the best path forward for Evergy.

We have organized our thoughts in the following manner:

- (i) Elliott's Investment in Evergy;
- (ii) Evergy's Collection of High-Quality Regulated Utilities;
- (iii) Evergy's Current Plan and Resulting Underperformance;
- (iv) Opportunity for Value Creation at Evergy;
- (v) High-Performance Paths Forward for Evergy; and
- (vi) Next Steps.

Elliott's Investment in Evergy

Elliott is a multi-strategy investment firm that was founded in 1977 and has more than \$40 billion in assets under management today. We have a strong track record of investing in the power, utility and energy sectors and working with companies to create long-term stakeholder value.

We first approached management and the Board on a private basis in early October 2019 and hoped to work privately to identify the best path forward for Evergy. **However, in response to our outreach, the Board chose not to engage with us on the merits of our suggestions but instead opted to make defensive changes to the Company's governance.**

Based on this abrupt change to the Company's governance, limiting the ability of shareholders to nominate and elect directors, as well as a lack of progress toward the exploration of any value-maximizing operational and/or strategic alternatives, we determined that it would be in the best interest of all stakeholders to make our views public and facilitate a broader discussion of the best path forward for Evergy.

Evergy's Collection of High-Quality Regulated Utilities

Evergy is composed of three coveted regulated utilities in constructive regulatory jurisdictions. With the right stakeholder-focused capital plan and an operating strategy centered around enhanced system investment to bolster safety, reliability, customer service, security and renewables, Evergy can become a highly valued utility with a lower cost of capital. This should result in Evergy's rate-base and earnings growth coming at least in-line with other leading regulated electric utilities in nearby states in the Midwest, West, Southwest and Southeast regions of the U.S.

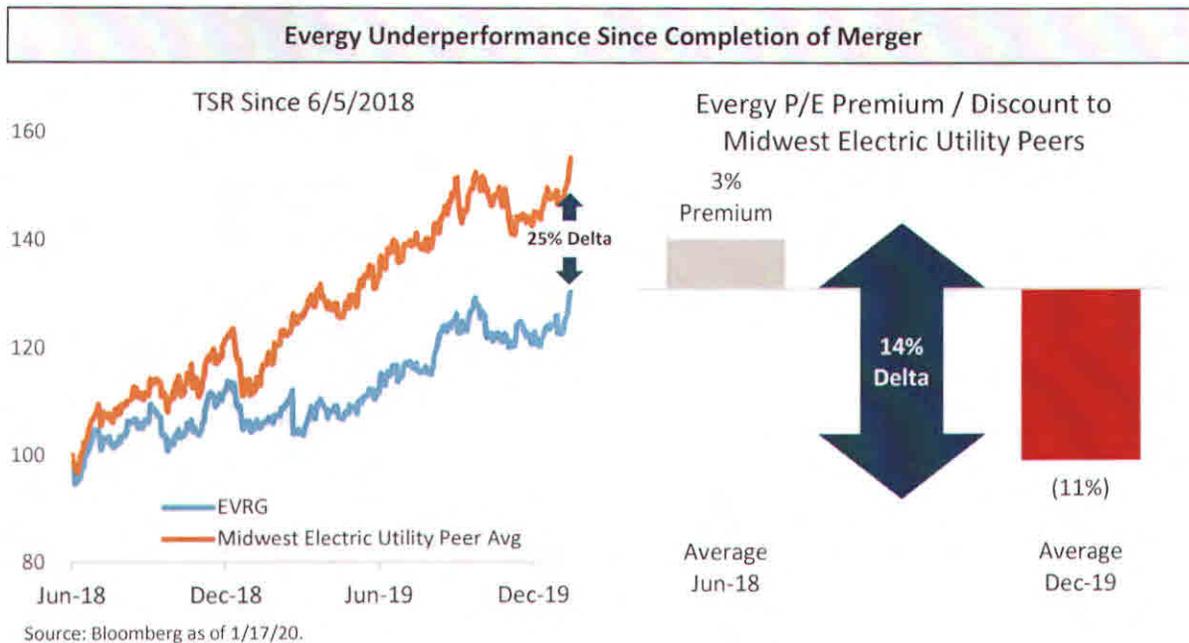
Notable features that distinguish Evergy from certain other utility companies include:

- **High-quality regulated utilities:** Evergy is a collection of high-quality, 100% regulated utilities across two states – Kansas and Missouri.
- **Regulatory certainty with constructive regulatory backdrop:** Evergy’s current multi-year regulatory agreements in Kansas and Missouri provide an extended period of regulatory and rate certainty.
- **Strong core investment growth opportunities:** Evergy has the continued opportunity to increase core system capital spending in areas that will lead to hardening, modernization, enhanced safety, reliability, security and customer service performance metrics, all on a rate-friendly basis to customers.
- **Strong investment opportunities around renewables:** Evergy’s advantageous geographic location in the wind corridor of the U.S. should provide ample capital deployment opportunities across its business – in transmission and distribution to facilitate greater renewables penetration, and in generation to transition Evergy’s aging coal fleet to renewable energy.
- **Strong financial metrics:** Evergy has moderate overall financial leverage with no need to issue equity in the near term. However, the Company’s use of over \$3.5 billion to repurchase shares has already somewhat weakened Evergy’s holding company balance sheet and increased leverage by ~1.5x, thereby limiting overall flexibility and ability to maintain a proactive strategic posture.
- **No overhangs:** Evergy is not exposed to merchant generation, foreign subsidiaries, mega-project construction risk or other unregulated businesses.

Evergy’s Current Plan and Resulting Underperformance

Despite its positive base business and broader environmental attributes, Evergy has meaningfully underperformed peers, resulting in a notable undervaluation and associated increased cost of capital. Since the Merger, Evergy’s total shareholder return (“TSR”) has lagged similarly situated Midwest electric utility peers by 25 percentage points.¹ While Evergy was valued at a slight premium to peers on a P/E basis for several months following the Merger, it is now valued at a significant discount.

¹ Midwest electric utility peers: XEL, WEC, AEE, CMS, LNT.



We believe the key reasons for Evergy’s underperformance, discounted valuation and associated increased cost of capital can be clearly explained and grouped into two categories:

- 1) **Suboptimal Plan and Strategy:** Evergy’s current capital plan and operating strategy have led to justifiable concerns around the Company’s ability to create long-term value on a standalone basis.
- 2) **Loss of Management and Board Credibility:** Operating issues at Great Plains as well as continued operating, accountability and communications issues since the Merger have further eroded investor confidence at Evergy.

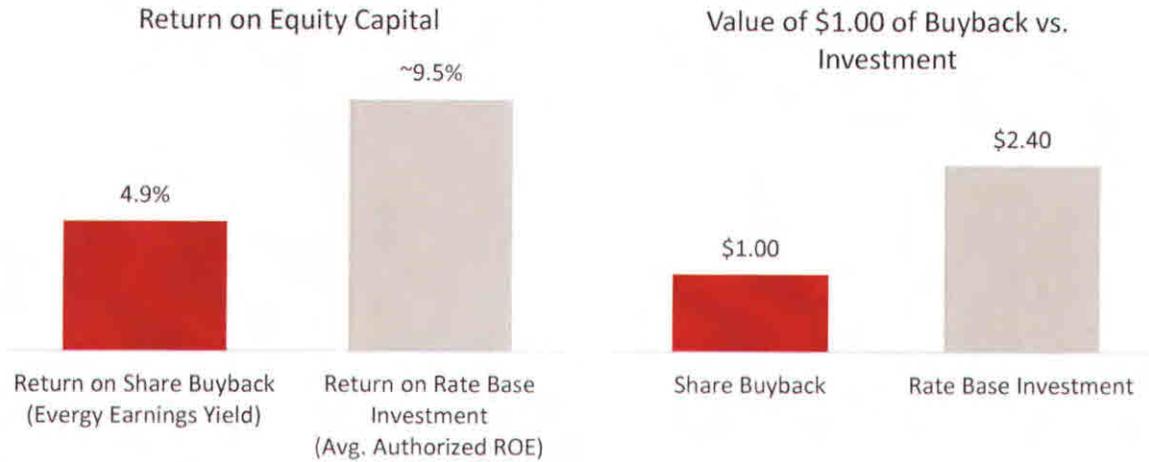
Suboptimal Plan and Strategy

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.²

² \$1.00 of equity investment can be levered against \$1.00 of debt to create \$2.00 of rate base, which would be valued at approximately \$3.40 in the market (1.7x rate base). The market value of the equity investment would be approximately \$2.40 (\$3.40 less \$1.00 of debt).

Shareholder Value Creation Comparison

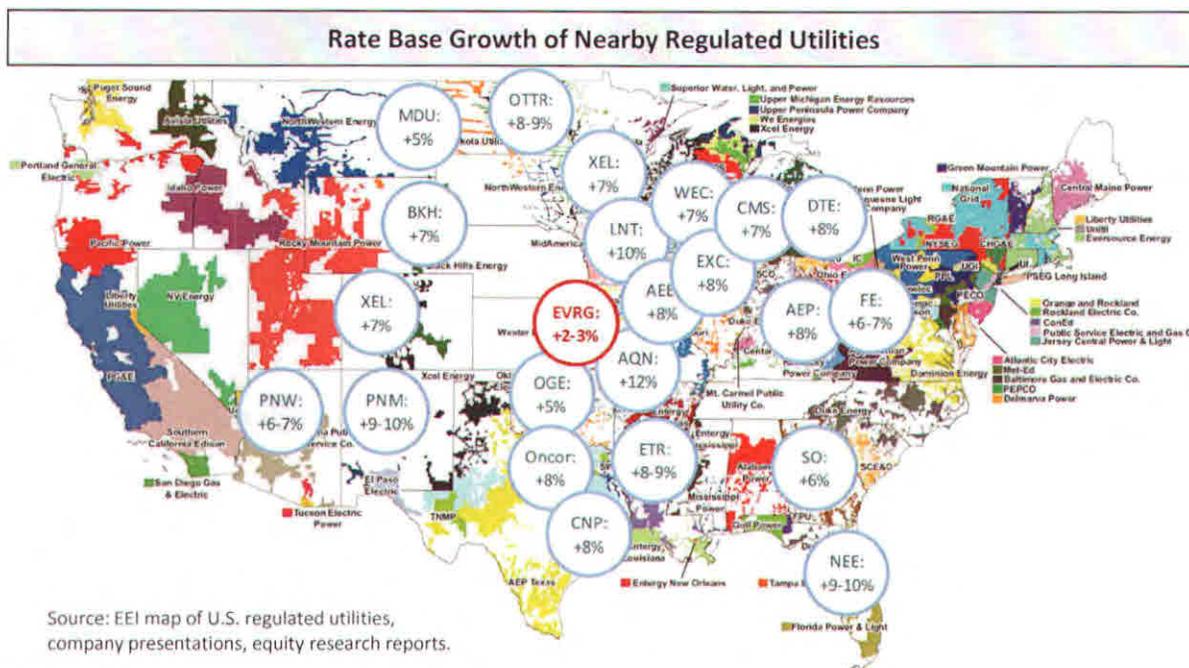


Source: Bloomberg, company presentations.

Following completion of the Merger, Evergy’s decision to use \$3.5 billion of capital to buy back stock instead of using that capital to make system investments will cause utility stakeholders to forego meaningful tangible benefits and **translates into approximately \$4 billion of shareholder value destruction.**

Unsurprisingly, Evergy is an outlier in pursuing this unusual capital-allocation strategy, as other major utilities in the U.S. have sought to invest in critical infrastructure for the benefit of the customers and communities they serve, while minimizing the impact on customer bills by improving efficiency. **Indeed, there simply is no recent evidence of value creation in the regulated utility industry from maneuvers such as large-scale levered share-repurchase programs.**

Evergy’s resulting rate-base growth trajectory is worst-in-class among peers, despite the clear system investment opportunities available to the Company. The map below throws the contrast between Evergy and its peers into stark relief:



Evergy's low rate base growth and its overreliance on share buybacks have created deep concerns among investors over Evergy's long-term growth outlook and its ability to create value after the share buybacks are completed in mid-2020. These concerns have been highlighted by the equity-research analyst community:

"So these updates put in to question not only the near term earnings profile...but also the L-T growth profile of the company after the financial engineering associated with their share buyback and synergy harvesting from the merger runs its course." – Evercore ISI, 2/24/19

"Longer term, EVRG has regulatory certainty with 4-5 year rate case stay outs in Missouri/Kansas, but there are concerns around earnings power given very modest rate base growth." – Wolfe, 8/8/19

These research analysts have followed Evergy (and its predecessor companies) for years. Their views are therefore shaped by deep institutional knowledge of Evergy and generally reflect the views of its shareholders.

This lack of confidence in Evergy's current direction is perhaps best illustrated by the fact that Evergy received two separate downgrades by equity research analysts shortly after management presented its business plan at the EEI conference in mid-November 2019.

Loss of Management and Board Credibility

Evergy's performance has been further hampered by consistently subpar execution, representing a continuation of the poor track record of Great Plains prior to the Merger:

- **Consistent Under-Earning:** During the Evergy senior team's tenure at Great Plains, its utilities failed to consistently earn their authorized ROEs and routinely under-earned by 100-200 basis points. This stands in stark contrast to the vast majority of U.S. regulated utilities, including those in Kansas and Missouri, which have been able to earn their authorized returns on equity. Earning at authorized levels is critical for a utility's ability to achieve access to plentiful, low-cost capital.
- **Failed LBO Attempt of Westar:** In 2017, Great Plains, a \$5 billion market cap company at the time, attempted to acquire Westar at a 36% premium for \$8.6 billion in a highly leveraged 85% cash / 15% stock transaction. The transaction was widely criticized by virtually all Great Plains stakeholders, including shareholders, ratepayer advocates and regulators, all of whom expressed grave concerns about the leverage used in the transaction. The Kansas Corporation Commission roundly rejected the transaction, noting that the transaction would leave the new entity with "little financial flexibility and very little margin of error."

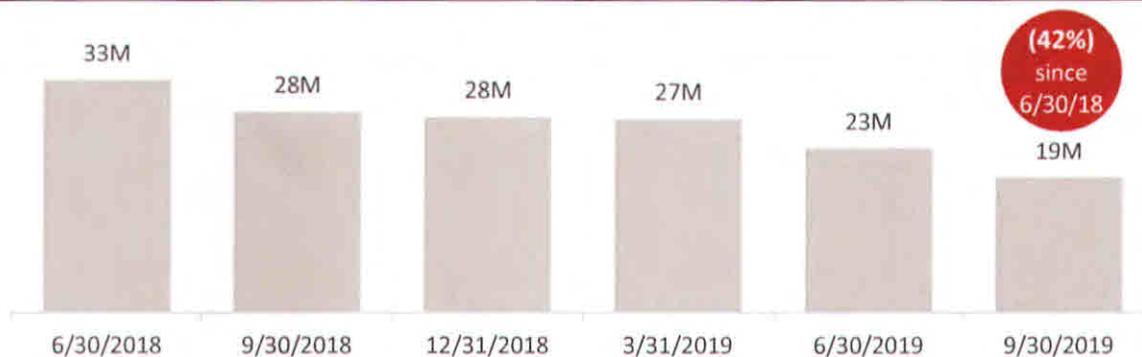
Although Great Plains and Westar ultimately consummated a revised, all-stock transaction, Great Plains' aggressive, ill-conceived attempted leveraged buyout of Westar unnecessarily extended the timeline of the transaction and led to heightened regulatory scrutiny.

While investors were hopeful that Evergy would have a fresh start, the record of subpar execution at Great Plains unfortunately has carried over to the combined Company, as evidenced by issues that have emerged since the Merger:

- **Negative Guidance Revision:** In February 2019, Evergy reported a meaningful earnings miss and lowered rate-base growth guidance from an already meager 3-4% down to 2-3%. This shift in the growth trajectory of the Company only nine months following the completion of the Merger led to widespread investor frustration and further management and Board accountability and credibility issues.
- **Regulatory Issues:** Continued regulatory issues related to the Sibley coal plant retirement and Jeffrey Energy Center stake acquisition again raised the specter of under-earning, despite regulatory certainty provided by rate stay-outs. Additionally, it appears the Sibley issue was self-inflicted and could have been avoided by fully settling the issue as part of the 2018 rate case.
- **Inadequate Carbon Reduction Targets:** Evergy's intention of operating its coal plants until the end of their useful lives (2040-2050) is uninspired and economically inefficient. Evergy lags behind leading peers that have pledged to reduce carbon emissions by 70-80% by 2030 and achieve net zero emissions by 2050.

Investors have been keenly aware of Evergy's issues, as evidenced by declining ownership in Evergy by large active stock managers:

Evergy Share Ownership By Selected Large Active Managers
(Millions of Shares)



Source: Bloomberg.

Nor have these issues gone unnoticed by the analysts who follow the Company:

“The management track record here is checkered with regard to delivering consistent financial results—more so on the GXP side of the house than the WR side—and the market reaction to the financial update is in part a function of skepticism that the newly merged companies will have to fight to overcome.” – Evercore ISI, 2/24/19

“Entering 2019, we considered EVRG to be a relatively low risk/high visibility play...that narrative changed, however, on the year-end earnings call as management talked down the growth rate through 2021...and laid out lackluster rate base growth of 2-3% through 2023. We were most disappointed by the 2021 guidance revision as that was the first target established for the merger of equals, representing the first critical step to building a track record as EVRG.” – Wells Fargo, 3/19/19

The unfortunate result of these missed targets, mishandled regulatory issues and other execution missteps has been a profound loss of investor confidence and an unwillingness on the part of the investment community to invest behind this management team and Board. Current and prospective shareholders see this fact pattern and cannot help but conclude that Evergy’s leadership team places little emphasis on providing shareholders with a strong value-proposition to buy and hold Evergy stock. There is a strong case to be made that a combination of changes in direction and oversight are needed to restore investor confidence and remedy the Company’s chronic underperformance.

Opportunity for Value Creation at Evergy

We believe robust investment in critical system infrastructure forms the foundation of the investor-owned utility model. U.S. regulated utilities are granted a monopoly franchise with authorized rates of return in order to access abundant low-cost capital to make critical infrastructure investments. The purpose of this model is to benefit customers, create opportunities for employees, and achieve various community objectives, including boosting local economic growth. Evergy’s

current strategy of limiting system investment and instead using excess capital to repurchase shares is both suboptimal and runs counter to the regulatory compact.

System investment is in fact encouraged by Evergy's regulators. In 2018, the Missouri legislature passed Senate Bill 564 ("SB 564") to encourage additional investment in the state's electrical grid. Missouri Public Service Commission Chairman Ryan Silvey recently commented in a conference call for the investment community: "We expect to see some capital invested in the grid, which was the point of the legislation. So we're hopeful that it results in a lot of upgrades to the grid. That's something that we are in need of." Since the passage of SB 564, both of Missouri's other investor-owned utilities, Ameren and Empire District Electric, have announced the largest capital plans in their respective companies' histories. Ameren expects to grow Missouri rate base at an 8% CAGR, and Empire District Electric expects to grow rate base at a 12% CAGR.

Evergy has significant runway to make much-needed investments in critical electric infrastructure across its system, including in the key areas of safety and reliability, grid hardening and modernization, and physical and cybersecurity infrastructure. **Additionally, because of the strength of the wind resource in Evergy's service territory, Evergy stands to be a leader in de-carbonization system investments that facilitate renewables growth and help transition its coal fleet (which still accounts for 40% of its generation capacity) to renewable resources.** To frame the opportunity, the U.S. Department of Energy estimates Kansas and Missouri have potential for 785 GW of wind capacity compared to 7 GW installed today.³

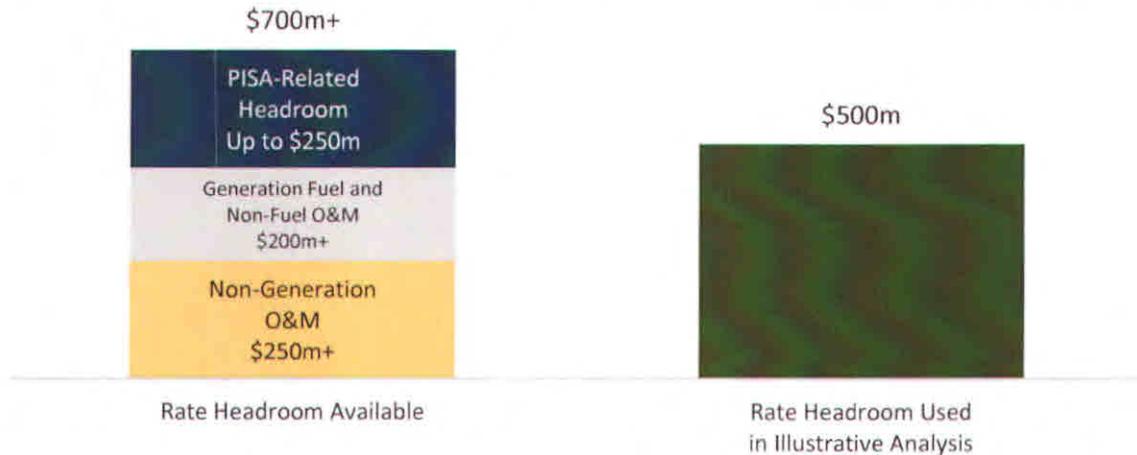
Quantifying the Evergy Opportunity

Evergy should reasonably be able to create *more than* \$700 million of high-certainty, line-of-sight, balanced rate headroom, on a standalone basis to support incremental system investment based on:

- 1) More than \$250 million of non-generation operating & maintenance ("O&M") efficiencies;
- 2) More than \$200 million of generation-related fuel and non-fuel O&M savings from replacing only a small portion (~20%) of remaining inefficient coal generation with renewables; and
- 3) Up to \$250 million of rate headroom within the 3% annual limitation imposed by SB 564.

³ Source: <https://windexchange.energy.gov>.

Illustrative Evergy Rate Headroom and Usage



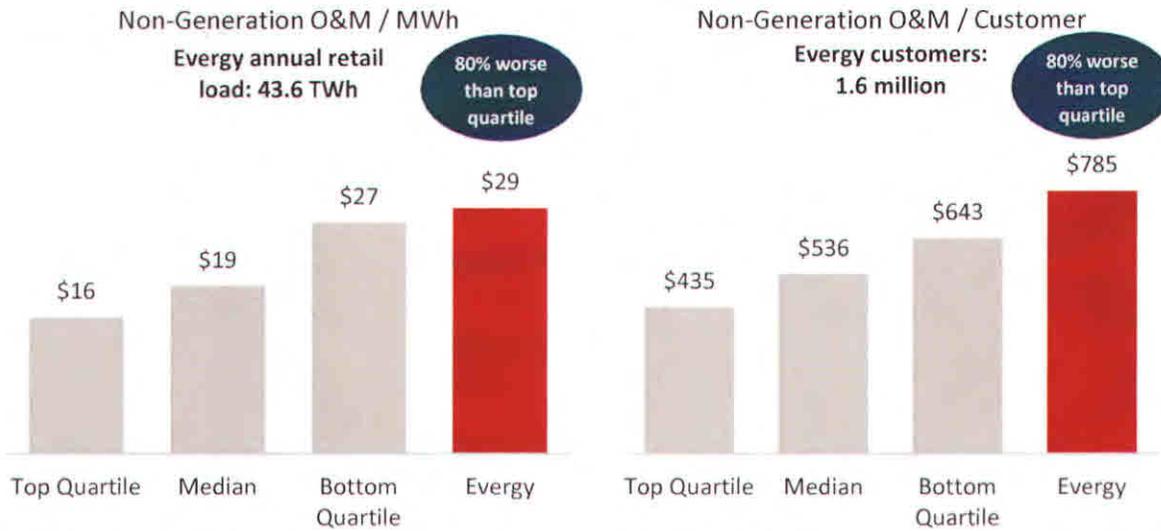
As \$1 of rate headroom can be translated into \$8-\$9 of rate base investment, deploying just \$500 million of the above-identified annual rate headroom should result in an **additional \$4.5 billion of rate base by 2023 compared to Evergy's current plan**. Because the bulk of the investment program is funded with ongoing fuel and O&M cost savings rather than rate increases, the overall annualized rate impact to customers is expected to be well below the rate of inflation and likely overall rate neutral.⁴

Non-Generation O&M Efficiencies: Benchmarking Evergy's non-generation O&M performance against similarly-situated U.S. regulated utilities shows clear evidence that Evergy operates with a bottom-quartile controllable cost structure, with unit costs nearly 50% higher than the median and 80% higher than top-quartile. The fact that Evergy is one of the highest-cost utilities in the U.S. is surprising given that the cost of living in its service territory is below the national average. Improving Evergy's cost structure from bottom-quartile to not even the median would result in incremental savings of more than \$350 million and create **more than \$250 million in additional headroom** above and beyond Evergy's anticipated Merger savings.⁵ We anticipate that these cost savings would be achieved in the next few years.

⁴ Overall annualized rate increase on average across Evergy's service territory.

⁵ Evergy is targeting \$100 million of incremental non-generation Merger savings from 2018-2023.

Energy Unit Non-Generation O&M Comparison



Source: SNL Energy, 2018 FERC Form 1. Data from over 100 U.S. regulated electric utilities with greater than 100,000 customers.

Generation-Related Fuel and Non-Fuel O&M Savings: Transitioning a portion of Evergy’s environmentally unfriendly, high-cost coal generation to new renewables generation should yield significant savings in fuel and non-fuel O&M. Illustratively, replacing 5.0 TWh (~20%) of Evergy’s highest cost, most inefficient coal generation with wind resources should yield **more than \$200 million of savings**. This transition can also create opportunities for incremental rate base investment into flexible, low-cost storage or capacity to enhance system reliability.

Potential Unit Cost Savings From Evergy Coal Plant Replacement



Note: All-In Cost includes fuel, non-fuel O&M, tax credits, D&A and return on capital.
Source: SNL Energy, rate case filings.

PISA Legislation: Missouri SB 564 enables the implementation of plant-in-service accounting (“PISA”), allowing for more timely recording of earnings associated with capex investments.

Under the PISA election, Evergy would be subject to a 3% annualized cap on rate increases from 2018 to 2023. We believe Evergy has **up to \$250 million of rate headroom** under the cap that can be used for investment.

As discussed earlier, this high-performance plan can be implemented either by Evergy on a standalone basis with enhanced oversight or by a strategic transaction partner. Either option would result in significant value creation above and beyond Evergy's current plan.

Evergy Value Upside From New High-Performance Plan				
	Midwest Electric Utility Peers	Status Quo 	High-Performance 	Status Quo vs. High- Performance Difference
2019 - 2023 Rate Base Growth	7% - 8%	2% - 3%	8% - 9%	5% - 7% Higher CAGR
2019 - 2023 EPS Growth	6% - 7%	4% - 6% ^(a)	8% - 10%	4% - 5% Higher CAGR
2021E P/E Multiple	22x - 23x	20.6x	22x - 23x +	10-15%+ Higher Multiple
2023E Rate Base		\$15.7 - \$16.5B	\$20.2 - \$21.0B	\$4.5B More Investment

(a) Elliott estimate based on Evergy's current business plan.

The analysis reflected above does not take into account key upside factors that could create meaningful additional efficiencies to facilitate even more investment and/or reduce customer rates:

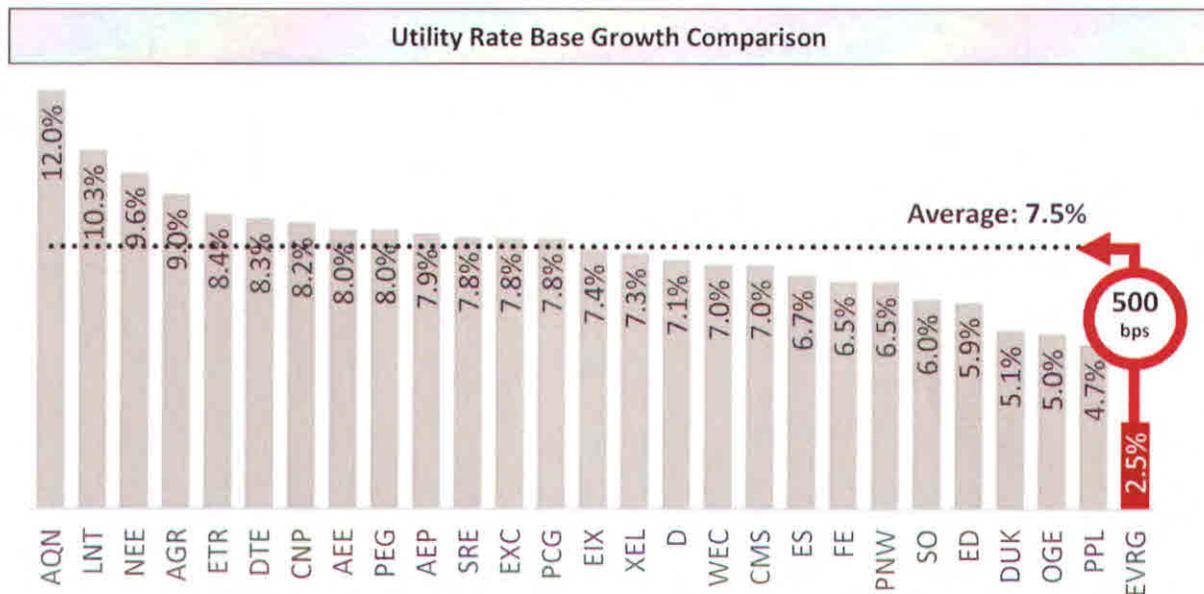
- Additional technology-enabled savings created directly by capital investments, as other utilities have experienced;
- Additional non-generation O&M savings from achieving actual median, top-quartile or top-decile cost performance;
- Substantial additional generation fuel and non-fuel O&M-related savings over time from retiring additional coal-plant capacity and replacing with renewables on an accelerated basis; and
- Non-generation O&M, generation fuel and non-fuel O&M, corporate G&A and cost-of-capital synergies from a strategic merger transaction.

Growing Rate Base While Limiting Impact on Customer Bills is a Well-Established Strategy

The “capex for opex” strategy is not novel. The best-run regulated utilities in the U.S. have long used this best-in-class strategy to drive robust rate-base growth with limited-to-no rate impacts on customer bills. For these companies, system investment and operational focus have led to improved safety and reliability, lowered costs of capital, increased service offerings for customers, stronger local economic growth, and climate leadership. For shareholders, this has translated into above-average rate-base growth, above-average earnings-per-share growth and significant long-term total return outperformance. Some examples of high-performance U.S. utilities are:

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NEED
TO
INCLUDE
THIS

- **NextEra Energy (FPL):** NextEra’s Florida Power & Light utility (“FPL”) subsidiary has been able to grow rate base at a 10% CAGR from 2008 to 2018 while reducing customer bills by 6% and obtaining industry-leading metrics for reliability and carbon emissions. FPL anticipates continuing to grow rate base at a 9% CAGR from 2018-22 while further reducing customer bills.
- **NextEra Energy (Gulf Power):** Following its acquisition by NextEra in 2019, Gulf Power expects to grow rate base at a 16% CAGR over three years while reducing customer bills by 9% in real terms, improving service reliability by 20% and reducing carbon emissions by 40%.
- **WEC Energy Group:** From 2015 to 2019, WEC was able to grow rate base in Wisconsin at a 7-8% CAGR despite a four-year base-rate freeze following its acquisition of Integrys.
- **Xcel Energy:** Through its “Steel for Fuel” program and disciplined O&M cost management, Xcel was able to keep customer bills flat from 2013 to 2018 while continuing robust capital investment in its system.
- **CMS Energy:** From 2013 to 2019, CMS was able to keep residential bills flat to down (on a weather-normalized basis) while growing total rate base at a 7%+ CAGR.

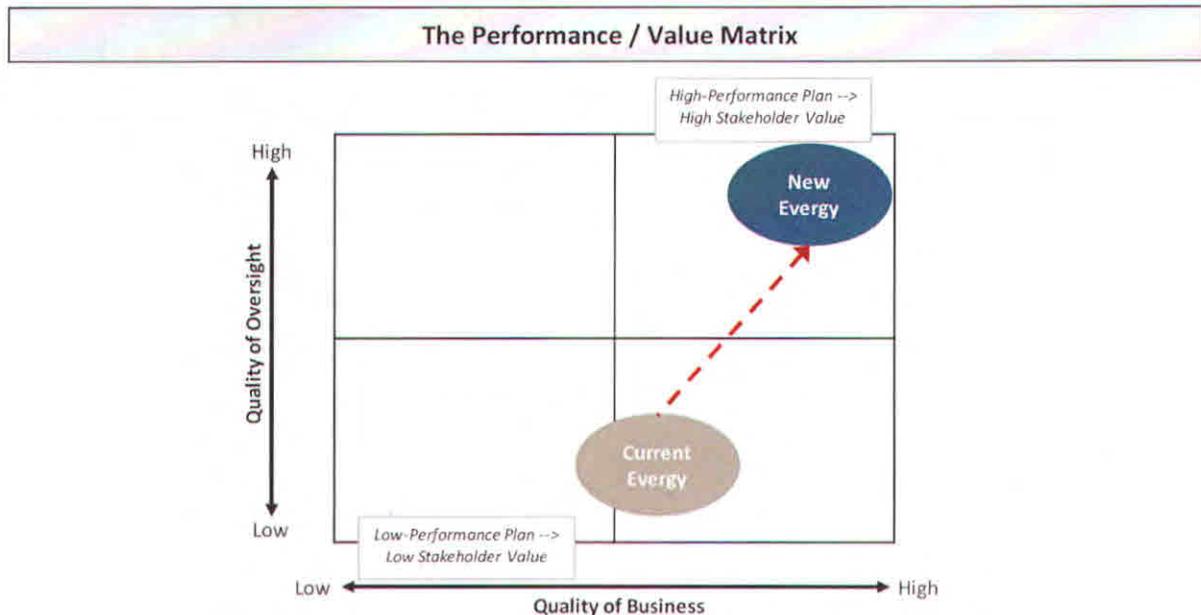


Note: Represents approximate midpoint of rate base growth range.
Source: Company presentations, equity research reports.

High-Performance Paths Forward for Evergy

We believe a full revamp of Evergy’s long-term capital plan and operating strategy is necessary to address underperformance and unlock full value for the benefit of all key stakeholders. This can

be accomplished either (i) on a standalone basis with the adoption of an improved capital plan and operating strategy in conjunction with enhanced Board- and management-level oversight, or (ii) via a premium stock-for-stock merger transaction where a tried-and-true strategic partner would accomplish the same. Both paths are superior to the status quo plan and either should allow Evergy to cross the chasm from low-performance / low-value to high-performance / high-value, creating meaningful shareholder value. These paths should be explored now, transparently and in parallel:



Standalone Path: Implement High-Performance Plan with Enhanced Oversight

- Evergy should reasonably be able to create more than \$700 million in high-certainty, line-of-sight, balanced rate headroom to facilitate more than \$4.5 billion in potential increased system capital investment. This would accelerate rate-base growth to up to 10% per year with no expected overall rate impact on customer bills.
- Implementation of such a high-performance plan would require enhanced Board oversight through the addition of highly qualified directors with fresh perspectives and deep utility operating experience. Of Evergy's current 15-member Board, outside of the Chairman and CEO, only three possess any relevant utility industry expertise.
- Likewise, given Evergy's record to date, management should include highly experienced utility executives, credentialed in and capable of executing a high-performance plan.
- To facilitate the formulation and implementation of a high-performance plan, Elliott has identified (i) highly qualified independent Board member candidates with deep industry, regulatory, energy policy, renewable energy and leadership experience; and (ii) former senior utility managers that have successfully developed, implemented and overseen high-performance plans at leading U.S. utilities.

Combination Path: Pursue Strategic Premium Merger Transaction

- Evergy’s core regulated utility franchises are some of the most pristine electric systems in the U.S. as evidenced by supportive regulatory environments and strong growth potential. We believe that both mid- / large-cap utilities from nearby states and large- / mega-cap diversified utility holding companies, several of whom have seen a meaningful re-rating in their own share prices, would have a keen interest in transacting with Evergy and working to create value for all of Evergy’s key stakeholders.
 - True scarcity value exists in the mid- / large-cap regulated utility industry in the U.S., which should accrue to the benefit of Evergy. Evergy’s Chairman Mark Ruelle noted this when discussing the strategic rationale for utility mergers during regulatory proceedings, stating “we have gone from more than 100 electric utilities in the country to 50 in just a couple of decades.”⁶
 - There is a demonstrated record of strong, clear interest in Westar (which accounts for more than 50% of Evergy) from the prior M&A process, in which six bidders (in addition to Great Plains) offered substantial premiums for Westar.
- A transaction with the right strategic partner and with the right stock / cash mix would be well-positioned to obtain regulatory approvals in Kansas and Missouri. Any transaction partner would likely use predominantly stock consideration in a merger with Evergy, avoiding the failed leveraged buyout strategy that doomed the original Great Plains transaction.
- A strategic transaction would eliminate Evergy’s valuation discount, lower its cost of capital on an accelerated timeframe, capture merger premium and allow shareholders to retain strong upside potential from mainly stock consideration while locking in high utility-sector valuations (consistent with the continued low point in interest rate cycle) from potential partial cash consideration.
- Importantly, we believe a strategic transaction provides clear benefits to all key stakeholders:
 - **Customers / Ratepayers:** Synergy cost savings; lower overall cost of capital; better technologies for customers / more customer offerings; sharing of best practices.
 - **Employees:** Increased opportunities through increased system investment.
 - **Regulators / Legislators / Local Communities:** Increased system investment providing safer, more reliable and cost-efficient service critical for local economic growth; maintenance of local leadership presence and current headquarters; facilitation of accelerated and more aggressive carbon-reduction targets.
 - **Investors:** Certain, premium value; future upside potential; increased geographic / regulatory diversification; mitigation of potential operational risk.
- Interestingly, in the prior Merger-related regulatory proceedings, Tony Somma’s testimony revealed:

⁶ Source: Direct Testimony of Mark Ruelle in 16-KCPE-593-ACQ from June 2016.

Guggenheim Securities, the financial advisor to Westar, conducted an analysis related to the benefits of increased size and scale from the perspective of regulated utilities and their customers... [and] found the following correlations with increased size and scale: 1) higher earned returns for larger utility holding companies; 2) lower non-fuel O&M costs as a percentage of property, plant and equipment balances for larger utility holding companies; and 3) lower effective borrowing costs for larger utility holding companies.⁷

We believe the same logic would apply today were Evergy to engage in the right strategic combination.

Next Steps

We believe Evergy is at a critical juncture in its history, as more than 19 months have elapsed since the completion of the Merger. Evergy must now determine the best path forward to create sustainable value for all key stakeholders.

Elliott strongly believes that renewed focus on critical system investment is clearly the best strategy and creates tangible benefits for all key stakeholders. As we outlined in this letter, a high-performance path can be achieved either on a standalone basis with enhanced Board oversight and management expertise or through a transaction with a respected strategic partner.

Elliott looks forward to engaging with other Evergy shareholders and stakeholders regarding our ideas, and we are committed to a transparent process to keep all key stakeholders fully informed.

We thank the Board for considering our thoughts and look forward to continuing our discussions to unlock Evergy's full potential. We hope to work constructively with you on the changes needed at Evergy – the changes all key stakeholders deserve.

Sincerely,

Jeff Rosenbaum

Jeff Rosenbaum
Senior Portfolio Manager

⁷ Source: Direct Testimony of Anthony Somma in EM-2018-0012 from August 2017.

About Elliott

Elliott Management Corporation manages approximately \$40.2 billion of assets. Its flagship fund, Elliott Associates, L.P., was founded in 1977, making it one of the oldest funds under continuous management. The Elliott funds' investors include pension plans, sovereign wealth funds, endowments, foundations, funds-of-funds, high net worth individuals and families, and employees of the firm.

###

Exhibit B

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): February 28, 2020

Evergy, Inc.

(Exact Name of Registrant as Specified in Charter)

Missouri
(State or Other Jurisdiction
of Incorporation)

001-38515
(Commission
File Number)

82-2733395
(I.R.S. Employer
Identification No.)

1200 Main Street
Kansas City, Missouri 64105
(Address of Principal Executive Offices, and Zip Code)

(816) 556-2200
Registrant's Telephone Number, Including Area Code

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Evergy Kansas Central, Inc.

(Exact Name of Registrant as Specified in Charter)

Kansas
(State or Other Jurisdiction
of Incorporation)

001-03523
(Commission
File Number)

48-0290150
(I.R.S. Employer
Identification No.)

818 South Kansas Avenue
Topeka, Kansas 66612
(Address of Principal Executive Offices, and Zip Code)

(785) 575-6300
Registrant's Telephone Number, Including Area Code

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Exhibit C

Evergy Metro, Inc.

(Exact Name of Registrant as Specified in Charter)

Missouri
(State or Other Jurisdiction
of Incorporation)

000-51873
(Commission
File Number)

44-0308720
(I.R.S. Employer
Identification No.)

1200 Main Street
Kansas City, Missouri 64105
(Address of Principal Executive Offices, and Zip Code)

(816) 556-2200
Registrant's Telephone Number, Including Area Code
Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Evergy, Inc. common stock	EVRG	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

This combined Current Report on Form 8-K is provided by the following registrants: Evergy, Inc. (“Evergy”), Evergy Kansas Central, Inc. (formerly known as Westar Energy, Inc.) (“Evergy Kansas Central”) and Evergy Metro, Inc. (formerly known as Kansas City Power & Light Company) (“Evergy Metro”). Information relating to any individual registrant is filed by such registrant solely on its own behalf. Each registrant makes no representation as to information relating exclusively to the other registrants.

Item 1.01 Entry into a Material Definitive Agreement

On February 28, 2020, Evergy entered into an Agreement (the “Agreement”) with Elliott Investment Management L.P., Elliott Associates, L.P. and Elliott International, L.P. (collectively, “Elliott”).

Pursuant to the Agreement, Evergy has agreed to increase the number of directors on its board of directors (the “Evergy Board”) from fifteen to seventeen, and has agreed to appoint two new independent directors, Paul M. Keglevic and Kirkland B. Andrews (each, a “New Director”), to fill the newly-created directorships, effective March 3, 2020. Evergy has also agreed, subject to the terms of the Agreement, to nominate the New Directors for election to the Evergy Board at Evergy’s 2020 annual meeting of shareholders (the “2020 Annual Meeting”) and to use its reasonable best efforts to obtain the election of such New Directors. The Agreement further provides that the size of the Evergy Board will subsequently be reduced such that (i) from the 2020 Annual Meeting to Evergy’s 2021 annual meeting of shareholders (the “2021 Annual Meeting”), the Evergy Board will have no more than thirteen directors and (ii) from the 2021 Annual Meeting to Evergy’s 2022 annual meeting of shareholders, the Evergy Board will have no more than twelve directors.

Pursuant to the Agreement, the Evergy Board has also formed a new Strategic Review & Operations Committee (the “Committee”) with a mandate to explore ways to enhance long-term shareholder value, including through a potential strategic combination or an enhanced long-term standalone operating plan and strategy. The Committee is comprised of John A. Stall, Terry Bassham and each of the New Directors, and is co-chaired by Mr. Stall and Mr. Keglevic. The Committee plans to complete its review, make its formal recommendation to the Evergy Board and publicly announce the review’s outcome during the first half of 2020, in accordance with the timeframes set forth in the Agreement.

Under the Agreement, Elliott has agreed to certain customary standstill provisions, and Elliott and Evergy have agreed to mutual non-disparagement provisions, effective until November 2, 2020 (which is subject to extension under certain circumstances set forth in the Agreement), subject to certain exceptions and early termination upon certain specified events. During such period, Elliott has also agreed to vote its and its controlled affiliates’ shares of common stock of Evergy in favor of each director nominated and recommended by the Board, against any proposals or resolutions to remove any member of the Board and otherwise in accordance with the recommendation of the Board, other than with respect to certain extraordinary transactions.

This summary of the Agreement does not purport to be complete and is qualified in its entirety by reference to the Agreement, a copy of which is attached as Exhibit 10.1 hereto and is incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

The description of the matters included under Item 1.01 are incorporated into this Item 5.02 by reference. In connection with such matters, the boards of directors of Evergy Kansas Central and Evergy Metro also each adopted a resolution increasing the number of directors from fifteen to seventeen and appointed the New Directors to fill the newly-created directorships on such board, effective March 3, 2020.

Mr. Keglevic served as Chief Executive Officer (2016 - 2018) and Executive Vice President, Chief Financial Officer and Chief Risk Officer (2008 - 2016) of Energy Future Holdings, the majority owner of a regulated transmission and distribution business. Mr. Keglevic was also appointed to the Compensation and Leadership Development Committee and the Finance Committee, effective as of the date of his appointment to the Board.

Mr. Andrews serves as Executive Vice President and Chief Financial Officer of NRG Energy, Inc. (NYSE: NRG) (since 2011). Mr. Andrews was also appointed to the Audit Committee and the Nuclear, Operations and Environmental Oversight Committee, effective as of the date of his appointment to the Board.

Each of the New Directors will participate in the compensation, benefit and other plans and arrangements for non-employee directors as described starting on page 29 of Evergy’s proxy statement for its 2019 annual meeting of shareholders. Evergy will

also enter into an indemnification agreement with each of the New Directors in the same form as has been entered into with other directors and officers, which was filed as Exhibit 10.2 to the Current Report on Form 10-Q filed on November 7, 2018. The indemnification agreement provides indemnification to the extent allowed under Missouri law.

Other than the matters described herein, there is no arrangement or understanding between any New Director and any other persons pursuant to which such New Director was selected as a director, nor are there any transactions required to be disclosed pursuant to Item 404(a) of Regulation S-K.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

In connection with the Agreement and the appointment of the New Directors, each of Evergy, Evergy Kansas Central and Evergy Metro amended and restated its by-laws to accommodate a larger board size. The Amended and Restated By-laws of each of Evergy, Evergy Kansas Central and Evergy Metro are attached hereto as Exhibits 3.1, 3.2 and 3.3, respectively, and are incorporated herein by reference.

Item 8.01 Other Events

On March 2, 2020, Evergy issued a press release related to the matters described herein, a copy of which is attached as Exhibit 99.1 hereto and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	<u>Amended and Restated By-laws of Evergy, Inc.</u>
3.2	<u>Amended and Restated By-laws of Evergy Kansas Central, Inc.</u>
3.3	<u>Amended and Restated By-laws of Evergy Metro, Inc.</u>
10.1	<u>Agreement, dated February 28, 2020, among Evergy, Inc., Elliott Investment Management L.P., Elliott Associates, L.P. and Elliott International, L.P.</u>
99.1	<u>Press Release issued by Evergy, Inc. on March 2, 2020.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrants have duly caused this report to be signed on their behalf by the undersigned hereunto duly authorized.

Evergy, Inc.

/s/ Heather A. Humphrey

Heather A. Humphrey
Senior Vice President, General Counsel and Corporate Secretary

Evergy Kansas Central, Inc.

/s/ Heather A. Humphrey

Heather A. Humphrey
Senior Vice President, General Counsel and Corporate Secretary

Evergy Metro, Inc.

/s/ Heather A. Humphrey

Heather A. Humphrey
Senior Vice President, General Counsel and Corporate Secretary

Date: March 2, 2020

EVERGY, INC.
AMENDED AND RESTATED BY-LAWS
AS OF FEBRUARY 28, 2020

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EVERGY, INC.

AMENDED AND RESTATED BY-LAWS

ARTICLE I

Offices

Section 1. The location of the registered office and the name of the registered agent of the Company in the State of Missouri shall be as stated in the Company's Amended and Restated Articles of Incorporation (the "Articles of Incorporation") or as determined from time to time by the Board of Directors and on file in the appropriate public offices of the State of Missouri pursuant to applicable provisions of law.

Section 2. The Company also may have offices at such other places either within or without the State of Missouri as the Board of Directors may from time to time determine or the business of the Company may require.

ARTICLE II

Shareholders

Section 1.

(a) All meetings of the shareholders shall be held at such place within or without the State of Missouri as may be selected by the Board of Directors or Executive Committee, but if the Board of Directors or Executive Committee shall fail to designate a place for said meeting to be held, then the same shall be held at the principal place of business of the Company.

(b) If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of remote communication:

- (i) Participate in a meeting of shareholders; and
- (ii) Be deemed present in person and vote at a meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:
 - a. The Company shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder;
 - b. The Company shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the

proceedings of the meeting substantially concurrently with such proceedings; and

- c. If any shareholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Company.

Section 2. The Board of Directors may, to the extent not prohibited by applicable law, adopt by resolution such rules, regulations, and procedures for the conduct of any meeting of shareholders as it shall deem appropriate. Except to the extent inconsistent with such rules, regulations, and procedures, the presiding officer for any meeting of shareholders, as designated in accordance with Article II, Section 10 (the "Presiding Officer"), may prescribe such rules, regulations, and procedures and do all such acts as, in the judgment of the Presiding Officer, are appropriate for the proper conduct of the meeting. Such rules, regulations, or procedures, whether adopted by the Board or prescribed by the Presiding Officer, may, to the extent not prohibited by applicable law, include, without limitation, the following: (i) the establishment of an agenda for the meeting and the order for the consideration of the items of business on such agenda; (ii) taking such actions as are necessary or appropriate to maintain order, decorum, safety, and security at the meeting; (iii) limitations on attendance at or participation in the meeting to shareholders of record of the Company, their duly authorized proxies, and such other persons as shall be determined by the Presiding Officer and, as a condition to permitting any person to attend or participate at the meeting, requiring such person to provide the Presiding Officer with evidence of his or her name and affiliation, whether he or she is a shareholder or a proxy for a shareholder, and the class and series and number of shares of each class and series of capital stock of the Company which are owned beneficially and/or of record by such shareholder; (iv) restrictions on entry to the meeting after a specified time; (v) limitations on the time allotted to questions or comments by participants; (vi) removing any shareholder who refuses to comply with meeting procedures, rules, or guidelines as established by the Presiding Officer; (vii) complying with any state and local laws and regulations concerning safety and security; (viii) restricting use of audio or video recording devices at the meeting; and (ix) taking such other action as, in the discretion of the meeting's Presiding Officer, is deemed necessary, appropriate or convenient for the proper conduct of the meeting. Unless otherwise determined by the Board or the Presiding Officer, meetings of shareholders shall not be required to be held in accordance with any rules of parliamentary procedure. An annual meeting of the shareholders shall be held on the first Tuesday of May in each year, if not a legal holiday, and if a legal holiday, then on the first succeeding business day which is not a legal holiday, at 10 a.m. Central Time; *provided, however*, the day fixed for such meeting in any year may be changed, by resolution of the Board of Directors, to such other day and time as the Board of Directors may deem to be desirable or appropriate, subject to any limitations of applicable law. The purpose of the annual meeting shall be to elect directors of the Company nominated in accordance with these By-laws and to transact such other business as may properly be brought before the meeting in accordance with these By-laws, the Articles of Incorporation, and applicable law.

Section 3. Unless otherwise expressly provided in the Articles of Incorporation of the Company with respect to Preference Stock, special meetings of the shareholders may only be called by the Chairman of the Board, by the Chief Executive Officer, by the President or at the request in writing (which shall include a request received by electronic transmission) of a majority

of the Board of Directors. Special meetings of shareholders of the Company may not be called by any other person or persons. Only such business shall be conducted at a special meeting of shareholders as shall have been specifically brought before the meeting pursuant to the Company's notice of meeting (or any supplement thereto) given by or at the direction of the person authorized to call the special meeting in accordance with these By-laws.

Section 4. Written or printed notice of each meeting of the shareholders, annual or special, shall be given in the manner provided in the corporation laws of the State of Missouri. Written notice shall include, but not be limited to, notice by electronic transmission which means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient. In case of a call for any special meeting, the notice shall state the time, place and purpose of such meeting.

Any notice of a shareholders' meeting sent by mail shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid addressed to the shareholder at his or her address as it appears on the records of the Company.

Section 5. Attendance of a shareholder at any meeting, whether in person or by means of remote communication, shall constitute a waiver of notice of such meeting except where a shareholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 6. At least ten (10) calendar days before each meeting of the shareholders, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order with the address of and the number of shares held by each, shall be prepared by the officer having charge of the transfer book for shares of the Company. Such list, for a period of ten (10) calendar days prior to such meeting, shall be kept on file at the registered office of the Company and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in the State of Missouri, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of shareholders. Failure to comply with the requirements of this Section shall not affect the validity of any action taken at any such meeting.

Section 7. Each outstanding share entitled to vote under the provisions of the Articles of Incorporation of the Company shall be entitled to one vote on each matter submitted at a meeting of the shareholders. A shareholder may vote either in person or by proxy in the manner provided in the corporation laws of the State of Missouri, including by means of electronic transmission or by telephone. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

At any election of directors of the Company, no shareholder shall be entitled to cumulative voting rights in any election of directors and each holder of outstanding shares of any class entitled to vote thereat, either in person or by proxy, shall only be entitled to cast for each director nominee such number of votes as shall equal the number of shares of such class held.

Section 8. At any meeting of shareholders, a majority of the outstanding shares entitled to vote represented in person, by means of remote connection or by proxy shall constitute a quorum for the transaction of business, except as otherwise provided by applicable law or by the Articles of Incorporation or by these By-laws. The Board of Directors, the Presiding Officer for the meeting or the holders of a majority of the shares represented in person or by proxy and entitled to vote at any meeting of the shareholders shall have the right successively to adjourn the meeting to a specified date not longer than ninety (90) calendar days after any such adjournment, whether or not a quorum be present. The time and place to which any such adjournment is taken shall be publicly announced at the meeting, and no notice need be given of any such adjournment to shareholders not present at the meeting. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 9.

(a) The vote for directors and the vote on any other question that has been properly brought before the meeting in accordance with these By-laws shall be by ballot. Each ballot cast by a shareholder must state the name of the shareholder voting and the number of shares voted by him and if such ballot be cast by a proxy, it must also state the name of such proxy. All matters, other than the election of directors, shall be decided by the affirmative vote of a majority of shares represented in person or by proxy at a meeting and entitled to vote on the matter, unless the matter is one on which by express provision of the statutes or of the Articles of Incorporation or of these By-laws a different vote is required, in which case such express provision shall govern and control the decision of such matter.

(b) Except as provided in Article III, Section 3, of these By-laws with respect to the filling of vacancies that occur from time to time on the Board of Directors, a nominee for director shall be elected to the Board of Directors by the vote of the majority of the votes cast by shareholders with respect to that director's election at any meeting of shareholders for the election of directors. For purposes of this Section 9(b), a majority of votes cast shall mean that the number of shares voted "for" a director's election exceeds fifty percent (50%) of the number of votes cast with respect to that director's election. Votes cast shall include a shareholder's direction to withhold authority in each case and shall exclude abstentions with respect to that director's election. Notwithstanding the foregoing, directors shall be elected by a plurality of the votes cast (and not by majority vote) at any meeting of shareholders where the election of directors is a Contested Election (as defined below). For purposes of these By-laws, an election of directors shall be considered a "Contested Election" if (i) the number of nominees standing for election at any meeting of shareholders exceeds the number of directors to be elected at such meeting, with the determination that an election is "contested" to be made by the Secretary of the Company, based on whether one or more notices of nomination, purporting to be in compliance with Article II, Section 13(b) or Article II, Section 14, of these By-laws, were received by the Secretary of the Company (provided that the determination that an election is a "Contested Election" shall not prejudice the ability of the Company to challenge whether a notice of nomination has been submitted in accordance with Article II, Section 13(b) or Article II, Section 14 of these By-laws, as applicable), and (ii) such notice of nomination or notices of nomination have not been withdrawn on or prior to the tenth (10th) calendar day preceding the date the Company files with the Securities and Exchange Commission ("SEC") its initial definitive proxy statement relating to

such meeting of shareholders such that the number of candidates for election as director no longer exceeds the number of directors to be elected at such meeting (regardless of whether or not such proxy statement is thereafter revised or supplemented). If directors are to be elected by a plurality of the votes cast, shareholders shall not be permitted to vote against a nominee.

(c) Each person who is nominated to stand for election as director, whether such nomination is proposed by the Company or a shareholder, including, without limitation, pursuant to Article II, Section 13(b) or Article II, Section 14, of these By-laws, shall, as a condition to such nomination, tender an irrevocable and executed letter of resignation in advance of the meeting for the election of directors. If a nominee for director is not elected and the nominee is an incumbent director, the Board's Nominating, Governance, and Corporate Responsibility Committee (the "Nominating and Governance Committee") will make a recommendation to the Board as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Board will act on the tendered resignation, taking into account the Nominating and Governance Committee's recommendation, and shall cause its decision regarding the tendered resignation and the rationale behind the decision to be Publicly Disclosed within ninety (90) calendar days from the date of the certification of the director election results. The Nominating and Governance Committee, in making its recommendation, and the Board, in making its decision, may each consider any factors or other information that they consider appropriate and relevant. The director whose tender of resignation is being considered will not participate in the recommendation of the Nominating and Governance Committee or the decision of the Board with respect to his or her tender of resignation, but may participate in the recommendation or the decision regarding another director's tender of resignation. If such incumbent director's resignation is not accepted by the Board of Directors, such director shall continue to serve until the next annual meeting and until his or her successor is duly elected and qualified, or his or her earlier resignation or removal.

(d) If a director's resignation is accepted by the Board of Directors pursuant to these By-laws, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors, in its sole discretion, may either (1) fill the resulting vacancy pursuant to the provisions of Article III, Section 3, of these By-laws, or (2) decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 2, of these By-laws.

Section 10. The Chairman of the Board, or in his or her absence the Chief Executive Officer, the President or any Vice President of the Company, shall convene all meetings of the shareholders. The Presiding Officer for a meeting of shareholders shall be such person as the Board of Directors may designate to preside over the meeting, or in the absence of such a person being otherwise designated, the Chairman of the Board of Directors shall serve as the Presiding Officer, or if none or in the Chairman of the Board of Directors' absence or inability to act as the Presiding Officer, the Chief Executive Officer, or if none or in the Chief Executive Officer's absence or inability to act as the Presiding Officer, the President, or if none or in the President's absence or inability to act as the Presiding Officer, a Vice President, or, if none of the foregoing is present or able to act as the Presiding Officer, by a Presiding Officer to be chosen by the holders of a majority of the shares who are present in person or by proxy at the meeting and entitled to vote thereat.

The Secretary of the Company shall act as secretary of all meetings of shareholders. In the absence of the Secretary at any meeting of shareholders, the President or acting chairman may appoint any person to act as secretary of the meeting.

Section 11. At any meeting of shareholders where a vote by ballot is taken for the election of directors or on any proposition, the person presiding at such meeting shall appoint not less than two persons, who are not directors, as inspectors to receive and canvass the votes given at such meeting and certify the result to him. Subject to any statutory requirements which may be applicable, all questions touching upon the qualification of voters, the validity of proxies, and the acceptance or rejection of votes shall be decided by the inspectors. In case of a tie vote by the inspectors on any question, the Presiding Officer for the meeting shall decide the issue.

Section 12. Unless otherwise provided by statute or by the Articles of Incorporation, any action required to be taken by shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Section 13. Notice of Shareholder Business and Nominations.

(a) Business Brought Before an Annual Meeting.

(1) At an annual meeting of shareholders, only such business shall be conducted that is properly brought before the meeting. Except for shareholder proposals properly submitted to the Company in accordance with Rule 14a-8 under the Exchange Act (as defined in Section 13(d)) and included in the Company's notice of meeting, which are addressed in Section 13(a)(5), to be properly brought before an annual meeting, business must be (i) specified in the Company's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (ii) brought before the meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (iii) otherwise properly brought before the meeting by a shareholder who: (A) was a shareholder of record at the time of giving the notice provided for in this Section 13(a) and on the record date for the determination of shareholders entitled to vote at the annual meeting, (B) is entitled to vote at the meeting, and (C) complied with all of the notice procedures set forth in this Section 13(a) as to such business. The foregoing clause (iii) shall be the exclusive means for a shareholder to propose business outside of Rule 14a-8 under the Exchange Act and intended to be brought before an annual meeting of the shareholders. Shareholders seeking to nominate persons for election to the Board of Directors must comply with the notice procedures set forth in Article II, Section 13(b) of these By-laws and, in addition thereto, for those Eligible Shareholders (as defined in Article II, Section 14(d)) intending to include director nominees in the Company's proxy materials, the notice procedures set forth in Article II, Section 14 of these By-laws, and this Section 13(a) shall not be applicable to director nominations except as expressly provided therein.

(2) Without qualification, for business to be properly brought before an annual meeting by a shareholder pursuant to clause (iii) of paragraph (a)(1) of this Section 13, the shareholder must have given Timely Notice (as defined in Section 13(d)) thereof in writing to the Secretary of the Company and any such proposed business must constitute a proper matter for shareholder action under these By-laws, the Articles of Incorporation, and applicable law. In no

event shall the Public Disclosure of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above.

(3) Such shareholder's notice for the annual meeting shall set forth:

- (i) (A) the name and address of the shareholder providing the notice, as they appear on the Company's books, and of the other Proposing Persons (as defined in Section 13(d)), (B) the class or series and number of shares of the Company that are, directly or indirectly, owned of record, and the class and number of shares beneficially owned (as defined in Rule 13d-3 under the Exchange Act) by each Proposing Person, except that any such Proposing Person shall be deemed to beneficially own any shares of any class or series of the Company as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future, and (C) a representation that each Proposing Person will notify the Company in writing of the class and number of shares owned of record, and of the class and number of shares owned beneficially, in each case, as of the record date for the meeting;
- (ii) as to each Proposing Person: (A) any Derivative Instruments (as defined in Section 13(d)) that are, directly or indirectly, owned or held by such Proposing Person; (B) any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person, directly or indirectly, has or shares a right to vote any shares of any class or series of the Company; (C) any Short Interests (as defined in Section 13(d)), that are held directly or indirectly by such Proposing Person; (D) any rights to dividends on the shares of any class or series of the Company owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Company; (E) any performance-related fees (other than an asset based fee) that such Proposing Person is entitled to receive based on any increase or decrease in the price or value of shares of any class or series of the Company, Derivative Instruments or Short Interests, if any, including, without limitation, any such interests held by persons sharing the same household as such Proposing Person; and (F) any plans or proposals that the Proposing Person may have that relate to or may result in the acquisition or disposition of securities of the Company, an extraordinary corporate transaction (such as the sale of a material amount of assets of the Company or any of its subsidiaries, a merger, reorganization or liquidation) involving the Company or any of its subsidiaries, any change in the Board of Directors or management of the Company (including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the Board of Directors), any material change in the present capitalization or dividend policy of the Company, any change in the Company's Articles of Incorporation or By-laws, causing a class of securities of the Company to

be delisted from a national securities exchange or any other material change in the Company's business or corporate structure or any action similar to those listed above;

- (iii) as to each matter proposed to be brought by any Proposing Person before the annual meeting: (A) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the meeting, and any material interest of such Proposing Person in such business and (B) a reasonably detailed description of all agreements, arrangements, understandings or relationships between or among any of the Proposing Persons and/or any other persons or entities (including their names) in connection with the proposal of such business by such Proposing Person; and
- (iv) any other information relating to (A) each matter proposed to be brought by any Proposing Person, and (B) any Proposing Person, in each case, that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the contested solicitations of proxies for approval of the proposal pursuant to Section 14 of the Exchange Act and/or the rules and regulations promulgated thereunder.

(4) A shareholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 13(a) shall be true and correct as of the record date for the meeting and as of the date of the meeting or any adjournment or postponement thereof, as the case may be, and such update and supplement shall be delivered to or mailed and received by the Secretary at the principal executive offices of the Company not later than five (5) business days after the later of the record date for the meeting or the date notice of such record date is first Publicly Disclosed (in the case of the update and supplement required to be made as of the record date), and as promptly as practicable (in the case of any update or supplement required to be made after the record date). For the avoidance of doubt, any such updates or supplements do not cause a notice that was not true and correct when first delivered to the Company to thereafter be in proper form in accordance with this Section 13(a).

(5) This Section 13(a) is expressly intended to apply to any business proposed to be brought before an annual meeting, regardless of whether or not such proposal is made by means of an independently financed proxy solicitation. In addition to the foregoing provisions of this Section 13(a), each Proposing Person shall also comply with all applicable requirements of the Exchange Act and other applicable law with respect to the matters set forth in this Section 13(a). Notwithstanding anything in this Section 13 to the contrary, this Section 13 shall not be deemed to affect (i) the rights of shareholders to request inclusion of proposals in the Company's proxy statement pursuant to Rule 14a-8 under the Exchange Act and, if required by such rule to be included in the Company's proxy statement, to include a description of such proposal in the notice of meeting and to be submitted for a shareholder vote at the applicable meeting, or (ii) the rights of the holders of any series of Preferred Stock if and to the extent provided under applicable law, the Articles of Incorporation or these By-laws.

(6) In the event Timely Notice is given pursuant to Section 13(a)(2) and the business described therein is not disqualified pursuant to this Section 13(a), such business may be presented by, and only by, the shareholder who shall have given the notice required by this Section 13(a), or a representative of such shareholder who is qualified under the law of the State of Missouri to present the proposal on the shareholder's behalf at the meeting.

(7) Notwithstanding anything in these By-laws to the contrary: (i) no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this Section 13(a) or, subject to Section 13(a)(1) or Section 13(a)(5), as permitted under Rule 14a-8 under the Exchange Act (other than the nomination of a person for election as a director, which is governed by Article II, Section 13(b) and, in addition thereto, for those Eligible Shareholders (as defined in Article II, Section 14(d)) intending to include director nominees in the Company's proxy materials, Article II, Section 14), and (ii) unless otherwise required by law, if a Proposing Person intending to propose business at an annual meeting pursuant to Section 13(a)(1)(iii) does not provide the information required under Section 13(a)(2)-(4) within the periods specified therein, or the shareholder who shall have given the notice required by Section 13(a) (or a qualified representative of the shareholder) does not appear at the meeting to present the proposed business, such business shall not be transacted, notwithstanding that proxies in respect of such business may have been received by the Company. The chairman of the annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 13(a) and any such business not properly brought before the meeting shall not be transacted. The requirements of this Section 13(a) are included to provide the Company and the Board of Directors notice of a shareholder's intention to bring business before an annual meeting and shall in no event be construed as imposing upon any shareholder the requirement to seek approval from the Company as a condition precedent to bringing any such business before an annual meeting.

(b) Nominations of Directors.

(1) Nominations of persons for election to the Board of Directors at an annual meeting or special meeting (but only if the Board of Directors has first determined that directors are to be elected at such special meeting) may be made at such meeting (i) by or at the direction of the Board of Directors (or a duly authorized committee thereof), or (ii) by any shareholder who: (A) was a shareholder of record at the time of giving the notice provided for in this Section 13(b) and on the record for determination of shareholders entitled to vote at the meeting; (B) is entitled to vote at the meeting; and (C) complied with the notice procedures set forth in this Section 13(b) as to such nomination. Section 13(b)(1)(ii) of these By-laws shall be the exclusive means for a shareholder to propose any nomination of a person or persons for election to the Board of Directors to be considered by the shareholders at an annual meeting or special meeting.

(2) Without qualification, for nominations to be made at an annual meeting by a shareholder, the shareholder must (i) provide Timely Notice (as defined in Section 13(d)) in writing and in proper form to the Secretary of the Company and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 13(b). Without qualification, if the Board of Directors has first determined that directors are to be elected at a special meeting, then for nominations to be made at a special meeting by a shareholder, the shareholder must (i) provide notice thereof in writing and in proper form to the Secretary of the

Company at the principal executive offices of the Company not earlier than the one hundred twentieth (120th) calendar day prior to such special meeting and not later than the ninetieth (90th) calendar day prior to such special meeting or, if later, the tenth (10th) calendar day following the day on which the date of such special meeting was first Publicly Disclosed and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 13(b). In no event shall any adjournment or postponement of an annual meeting or special meeting, or the Public Disclosure thereof, commence a new time period for the giving of a shareholder notice as described above.

(3) To be in proper form for purposes of this Section 13(b), a shareholder's notice to the Secretary pursuant to this Section 13(b) must set forth:

- (i) (A) the name and address of Proposing Person providing the notice, as they appear on the Company's books, and of the other Proposing Persons, (B) any Material Ownership Interests (as defined in Section 13(d)) of each Proposing Person, as well as the information set forth in Section 13(a)(3)(ii), clause (F) regarding each Proposing Person and (C) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitation of proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and/or the rules and regulations promulgated thereunder; and
- (ii) as to each person whom the shareholder proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a shareholder's notice pursuant to this Section 13(b) if such proposed nominee were a Proposing Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and/or the rules and regulations promulgated thereunder (including such proposed nominee's written consent to being named in the proxy statement as a nominee, if applicable, and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Proposing Person, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, and any other persons Acting in Concert with such nominee, affiliates, associates and other person, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if the Proposing Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and a representation that each Proposing Person will notify the Company in writing of any such relationships, arrangements, agreements or understandings as of the record date for the meeting, promptly following

the later of such record date or the date the notice of such record date is first Publicly Disclosed, (D) a completed and signed questionnaire, representation and agreement as provided in Section 13(b)(7), and (E) an irrevocable and executed letter of resignation as a director of the Company, effective immediately upon (I) such person's failure to receive, in accordance with Article II, Section 9(b) of these By-laws, the required vote for re-election at the next meeting of shareholders at which such person would face re-election, and (II) acceptance of such resignation by the Board.

(4) The Company may require any proposed nominee to furnish such other information as may reasonably be required by the Company to determine the eligibility of such proposed nominee to serve as an independent director of the Company or that could be material to a reasonable shareholder's understanding of the independence or lack of independence of such nominee.

(5) A shareholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 13(b) shall be true and correct as of the record date for the meeting and as of the date of the meeting or any adjournment or postponement thereof, as the case may be, and such update and supplement shall be delivered to or mailed and received by the Secretary at the principal executive offices of the Company not later than five (5) business days after the later of the record date for the meeting or the date notice of such record date is first Publicly Disclosed (in the case of the update and supplement required to be made as of the record date), and as promptly as practicable in the case of any update or supplement required to be made after the record date. For the avoidance of doubt, any such updates or supplements do not cause a notice that was not true and correct when first delivered to the Company to thereafter be in proper form in accordance with this Section 13(b).

(6) Notwithstanding anything in the Timely Notice requirement in the first sentence of Section 13(b)(2) to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement by the Company naming all of the nominees for director or specifying the size of the increased Board of Directors at least one hundred (100) calendar days prior to the first anniversary of the preceding year's annual meeting of shareholders, a shareholder's notice required by this Section 13(b) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to or mailed and received by the Secretary at the principal executive offices of the Company not later than the close of business on the tenth (10th) day following the day on which such nominees or increased size was first Publicly Disclosed by the Company.

(7) To be eligible to be a shareholder proposed nominee for election as a director of the Company, a person must deliver (in accordance with the time periods prescribed by delivery of notice under this Section 13(b) to the Secretary at the principal executive offices of the Company a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in form provided by the Secretary upon written request) that such person (i) is not and will not become a party to (A) any Voting Commitment (as defined in Section

13(d) that has not been disclosed therein, or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Company, with such person's fiduciary duties under applicable law, (ii) is not, and will not become a party to, any agreement, arrangement, or understanding, written or oral, formal or informal, with any person or entity other than the Company with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (iii) in such person's individual capacity, if elected as a director of the Company, will comply with applicable Publicly Disclosed code of ethics and/or business conduct, corporate governance, conflict of interest, confidentiality, public disclosure, and stock ownership, hedging, pledging, and trading policies and guidelines of the Company applicable to the Company's directors.

(8) In addition to the foregoing provisions of this Section 13(b), each Proposing Person shall also comply with all applicable requirements of the Exchange Act and other applicable law with respect to the matters set forth in this Section 13.

(9) Only such persons who are nominated in accordance with the procedures set forth in this Section 13(b) or Article II, Section 14 shall be eligible to serve as directors. Except as otherwise provided by applicable law, the Articles of Incorporation or these By-laws, the Presiding Officer for the meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in this Section 13(b) and, if any proposed nomination is not in compliance with this Section 13(b), to declare that such defective nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Company.

(10) A shareholder that nominates an individual for election as a director at an annual meeting of shareholders for inclusion in the Company's proxy statement pursuant to Section 14 of Article II, must comply with the provisions of this Section 13(b) as well as the provisions of Section 14 of Article II.

(c) Special Meetings of Shareholders. Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the Company's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of shareholders at which directors are to be elected pursuant to the Company's notice of meeting (1) by or at the direction of the Board of Directors, or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any shareholder of the Company who is a shareholder of record at the time the notice provided for in this Section 13 is delivered to the Secretary of the Company, who is entitled to vote at the meeting and upon such election and who complies with the notice procedure set forth in this Section 13. In the event the Company calls a special meeting of shareholders for the purpose of electing one or more directors to the Board of Directors, any such shareholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Company's notice of meeting, if the shareholder's notice required by paragraph (b)(2) of this Section 13 shall be delivered to the Secretary at the principal executive offices of the Company not earlier than the close of business on the one hundred twentieth (120th) calendar day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) calendar day prior to such special meeting or the tenth (10th) calendar day following the

day on which the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first Publicly Disclosed by the Company. In no event shall the Public Disclosure of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) of the giving of a shareholder's notice as described above.

(d) Definitions. For purposes of Section 13, of these By-laws, the following terms have the meanings specified or referred to below:

(1) "Acting in Concert" means a person will be deemed "Acting in Concert" with another person for purposes of these By-laws if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert with, or towards a common goal relating to the management, governance or control of the Company in parallel with, such other person where (A) each person is conscious of the other person's conduct or intent and this awareness is an element in their decision-making processes, and (B) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; provided, that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of revocable proxies from such other person in connection with a public proxy solicitation pursuant to, and in accordance with, the Exchange Act. A person that is Acting in Concert with another person shall also be deemed to be Acting in Concert with any third party who is also Acting in Concert with the other person.

(2) "Derivative Instruments" shall mean (i) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise, conversion or exchange privilege or settlement payment or mechanism at a price related to any class or series of shares of the Company or with a value derived in whole or in part from the price or value or volatility of any class or series of shares of the Company, or (ii) any derivative, swap or other transaction, right or instrument or series of transactions, rights or instruments engaged in, directly or indirectly, by any Proposing Person the purpose or effect of which is to give such Proposing Person economic risks or rights similar to ownership of shares of any class or series of the Company, including, due to the fact that the value of such derivative, swap or other transaction, right or instrument is determined by reference to the price or value or volatility of any shares of any class or series of the Company, or which derivative, swap or other transaction, right or instrument provides, directly or indirectly, the opportunity to profit from any increase or decrease in the price or value or volatility of any shares of any class or series of the Company, in each case whether or not such derivative, swap, security, instrument, right or other transaction or instrument, (A) conveys any voting rights in such shares to any Proposing Person, or is required to be, or is capable of being, settled through delivery of such shares, or (B) any Proposing Person may have entered into other transactions or arrangements that hedge or mitigate the economic effect of such derivative, swap, security, instrument or other right or transaction related to any of the foregoing.

(3) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(4) “Material Ownership Interests” shall mean the disclosures to be made pursuant to Section 13(a)(3)(i), clauses (B) and (C), and pursuant to Section 13(a)(3)(ii), clauses (A) through (E).

(5) “Proposing Person” shall mean (i) the shareholder providing the notice of business proposed to be brought before an annual meeting or the shareholder providing notice of the nomination of a director, (ii) such beneficial owner, if different, on whose behalf the business proposed to be brought before the annual meeting, or on whose behalf the notice of the nomination of the director, is made, (iii) any affiliate or associate of such shareholder or beneficial owner (the terms “affiliate” and “associate” are defined in Rule 12b-2 under the Exchange Act), and (iv) any other person with whom such shareholder or beneficial owner (or any of their respective affiliates or associates) is Acting in Concert.

(6) “Publicly Disclosed” or its corollary “Public Disclosure” shall mean disclosure of the information (i) in a press release issued by the Company and disseminated by a national news or press release dissemination service, (ii) in a document publicly filed by the Company with the SEC pursuant to Section 13, 14 or 15(d) of the Exchange Act, or (iii) pursuant to another method reasonably intended by the Company to achieve broad-based dissemination of such information.

(7) “Short Interests” shall mean any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, engaged in, directly or indirectly, by any Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk of shares of any class or series of the Company by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of the Company, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Company.

(8) “Timely Notice” shall mean a shareholder’s notice to the Secretary of the Company not less than sixty (60) calendar days nor more than ninety (90) calendar days prior to the date of the annual meeting of shareholders that is Publicly Disclosed by the Company; *provided, however*, that in the event that less than seventy (70) calendar days’ notice or prior Public Disclosure of the date of the meeting is given to shareholders, notice by the shareholder to be timely must be so received not later than the close of business on the tenth (10th) calendar day following the earlier of (i) the day on which such notice of the date of the annual meeting was first mailed by the Company, or (ii) the day that such Public Disclosure of the date of the annual meeting was first made by the Company.

(9) “Voting Commitment” shall mean any agreement, arrangement or understanding, written or oral, formal or informal, with any person or entity as to how such nominee, if elected as a director of the Company, will act or vote on any issue or question.

Section 14. Shareholder Nominations Included in the Company’s Proxy Materials.

(a) Subject to the provisions of this Section 14, if the Company receives a notice from an Eligible Shareholder (as defined in paragraph (d) of this Section 14) that complies with the

requirements of both Section 13(b) of Article II and this Section 14, and the Eligible Shareholder expressly elects in the notice to have its nominee (the “Shareholder Nominee”) included in the Company’s proxy materials pursuant to this Section 14, the Company shall include in its proxy statement for any annual meeting of shareholders:

(1) the name of any Shareholder Nominee identified in the notice;

(2) information concerning the Shareholder Nominee and the Eligible Shareholder that the Company determines is required to be disclosed pursuant to applicable laws or regulations;

(3) if the Eligible Shareholder so elects, a Statement; and

(4) any other information that the Company or the Board of Directors determines, in their discretion, to include in the proxy statement, including, without limitation, any statement in opposition to the nomination and any of the information provided pursuant to this Section 14.

(b) The name of any Shareholder Nominee included in a proxy statement shall be included on any corresponding ballot and form of proxy (or other format through which the Company permits proxies to be submitted) distributed by the Company.

(c) The Company is not required to include in a proxy statement any Shareholder Nominees (including Shareholder Nominees that were submitted by an Eligible Shareholder for inclusion in the Company’s proxy materials pursuant to this Section 14, but either are subsequently withdrawn or that the Board of Directors decides to nominate as Board nominees) that exceed twenty-five percent (25%) of the number of directors in office as of the last day on which notice of a nomination may be delivered pursuant to Section 13(b) (the “Final Proxy Access Nomination Date”), or if such amount is not a whole number, the closest whole number below twenty-five percent (25%) (the “Permitted Number”); *provided, however*, that the Permitted Number shall be reduced, but not below zero, by the number of such director candidates for which the Company shall have received, pursuant to Section 13(b) and prior to the Final Proxy Access Nomination Date, one or more valid notices that a shareholder (other than an Eligible Shareholder) intends to nominate director candidates for election to the Board of Directors; *provided, further*, that in no circumstance shall the Permitted Number exceed the number of directors to be elected at the applicable annual meeting as noticed by the Company; *provided, further*, that in the event that one or more vacancies for any reason occurs on the Board of Directors at any time after the Final Proxy Access Nomination Date and before the date of the applicable annual meeting of shareholders and the Board of Directors resolves to reduce the size of the Board of Directors effective on or prior to the date of the annual meeting, the Permitted Number shall be calculated based on the number of directors in office as so reduced. Any Eligible Shareholder submitting more than one Shareholder Nominee for inclusion in the Company’s proxy materials pursuant to this Section 14 shall rank such Shareholder Nominees based on the order that the Eligible Shareholder desires such Shareholder Nominees to be selected for inclusion in the Company’s proxy materials. If the number of Shareholder Nominees submitted by Eligible Shareholders exceeds the Permitted Number, the Company will include in the proxy statement the highest ranking Shareholder Nominee from each Eligible Shareholder until the Permitted Number is reached, going in the order

of the amount (largest to smallest) of shares of the Company's common stock each Eligible Shareholder disclosed as owned in the written notice of the nomination submitted to the Company. If the Permitted Number is not reached, this selection process shall continue as many times as necessary, following the same order each time, until the Permitted Number is reached. If, after the Final Proxy Access Nomination Date, an Eligible Shareholder becomes ineligible or withdraws its nomination or a Shareholder Nominee becomes unwilling to serve on the Board of Directors, whether before or after the mailing of a definitive proxy statement, then the nomination shall be disregarded and no vote on such Shareholder Nominee will occur, notwithstanding that ballots or proxies in respect of such vote may have been received by the Company, and the Company (1) shall not be required to include in its proxy statement or on any ballot or form of proxy the disregarded Shareholder Nominee or any successor or replacement nominee proposed by the Eligible Shareholder or by any other Eligible Shareholder and (2) may otherwise communicate to its shareholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Shareholder Nominee will not be included as a director nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting.

(d) An "Eligible Shareholder" means one or more shareholders of record who own and have owned, or are acting on behalf of one or more persons who own and have owned, three percent (3%) or more of the Company's outstanding common stock continuously for at least three (3) years (the "Required Shares") as of the date the written notice of the nomination is received by the Company, and who continues to own the Required Shares at all times thereafter through the date of the applicable annual meeting, and that complies with all applicable provisions of this Section 14; *provided that* (1) if and to the extent a shareholder of record is acting on behalf of one or more beneficial owners, only the common stock of the Company owned by any such beneficial owner or owners, and not any other common stock of the Company owned by any such shareholder of record, shall be counted, subject to the other provisions of this Section 14(d), for purposes of determining the number of shareholders whose holdings may be considered as part of an Eligible Shareholder's holdings, and (2) the aggregate number of shareholders of record and all such beneficial owners whose stock ownership is counted for the purposes of satisfying the foregoing ownership requirement shall not exceed twenty (20). In determining whether a person is an Eligible Shareholder of the Company under this Section 14(d), the period of time during which a shareholder continuously owned three percent (3%) or more of the outstanding common stock in either of the predecessor entities to the Company, Westar Energy, Inc., a Kansas corporation, or Great Plains Energy Incorporated, a Missouri corporation, immediately prior to the effectiveness of the merger that resulted in the formation of the Company, shall be counted for purposes of determining whether a person held three percent (3%) or more of the Company's outstanding common stock continuously for at least three (3) years. For purposes of calculating Required Shares, two or more collective investment funds that are (I) under common management and investment control, (II) under common management and funded primarily by the same employers, or (III) a "group of investment companies" as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940 shall be treated as one shareholder or person for the purpose of determining the aggregate number of shareholders in this Section 14(d), provided that each fund so included otherwise meets the requirements for an Eligible Shareholder set forth in this Section 14(d). No shares may be attributed to more than one group constituting an Eligible Shareholder

under this Section 14(d) (and, for the avoidance of doubt, no shareholder may be a member of more than one group constituting an Eligible Shareholder).

(e) No later than the Final Proxy Access Nomination Date, an Eligible Shareholder must provide the following information in writing to the Secretary (in addition to the information required to be provided pursuant to Section 13(b)):

(1) one or more written statements from the record holder of the Required Shares (and evidence from each intermediary through which the Required Shares are or have been held during the requisite three-year holding period in a form that the Board of Directors or its designee, acting in good faith, determines would be deemed acceptable for purposes of a shareholder proposal made pursuant to Rule 14a-8 under the Exchange Act, as may be amended) verifying that, as of a date within seven (7) calendar days prior to the date the written notice of the nomination is delivered to or mailed and received by the Company, the Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder hereunder) owns, and has owned continuously for the preceding three (3) years, the Required Shares, and the agreement of the Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder hereunder) to provide the Company with the following information: (A) within five (5) business days after the record date for the annual meeting, written statements from the record holder and evidence from the intermediaries verifying the continuous ownership of the Required Shares by the Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder hereunder) through the record date, together with any additional information reasonably requested by the Company to verify such person's ownership of the Required Shares, *provided that* if and to the extent that a shareholder of record is acting on behalf of one or more beneficial owners, such written statements and additional information shall also be submitted by any such beneficial owner or owners, and (B) immediate notice if the Eligible Shareholder ceases to own any of the Required Shares at any time prior to the date of the applicable annual meeting;

(2) the written consent of each Shareholder Nominee to be named in the proxy statement as a nominee and to serving as a director if elected;

(3) a copy of the Schedule 14N that has been filed with the SEC as required by the Exchange Act;

(4) representations that the Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder and each beneficial owner on whose behalf the Eligible Shareholder is acting hereunder) and its affiliates:

- (i) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Company, and do not presently have such intent;
- (ii) have not nominated or caused to be nominated, and will not nominate or cause to be nominated, for election to the Board of Directors at the annual meeting any person other than the Shareholder Nominee(s) being nominated pursuant to this Section 14;

- (iii) have not engaged and will not engage in, and have not and will not be, a “participant” in another person’s “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Shareholder Nominee(s) or a director nominee of the Board of Directors;
- (iv) will not distribute or cause to be distributed to any shareholder of the Company any form of proxy for the annual meeting other than the form distributed by the Company;
- (v) intend to continue to own the Required Shares at all times through the date of the annual meeting;
- (vi) will provide facts, statements, and other information in all communications with the Company and its shareholders that are and will be true and correct and do not and will not omit to state a fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and will otherwise comply with all applicable laws, rules, and regulations in connection with any actions taken pursuant to this Section 14; and
- (vii) in the case of a nomination by a group of shareholders that together constitute an Eligible Shareholder, the designation by all group members of one group member that is authorized to act on behalf of all members of the nominating shareholder group with respect to the nomination and all matters related thereto, including, but not limited to, the withdrawal of the nomination.

(5) a written undertaking pursuant to which the Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder and each beneficial owner on whose behalf the Eligible Shareholder is acting hereunder) agrees to (i) assume all liability stemming from any legal or regulatory violation arising out of such person’s communications with the Company’s shareholders or out of the information that such person provided to the Company, (ii) indemnify and hold harmless the Company and its affiliates and each of its and their directors, officers, and employees individually against any liability, loss, or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative, or investigative, against the Company or any of its affiliates, or any of its or their directors, officers, or employees arising out of any legal or regulatory violation arising out of the Eligible Shareholder’s communications with the shareholders of the Company or out of the nomination and/or other information that the Eligible Shareholder provides to the Company or out of any failure of the Eligible Shareholder to comply with, or any breach of, its obligations, agreements, or representations pursuant to these By-laws, (iii) file with the SEC all solicitation and other written communications that it provides to the Company’s shareholders relating to the annual meeting at which the Shareholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation materials or other communications under Regulation 14A of the Exchange Act, and (iv) comply with all laws, rules, regulations, and listing standards

applicable to nominations or solicitations in connection with the annual meeting, and promptly provide the Company with such other information as the Company may reasonably request.

(f) No later than the Final Proxy Access Nomination Date, a Shareholder Nominee must provide the following information in writing to the Secretary (in addition to the information required to be provided pursuant to Section 13(b)):

(1) an executed agreement, in a form deemed satisfactory by the Board of Directors or its designee (which form shall be provided by the Company reasonably promptly upon written request of a shareholder), that such Shareholder Nominee consents to being named in the Company's proxy statement and form of proxy card (and will not agree to be named in any other person's proxy statement or form of proxy card with respect to the Company) as a nominee; and

(2) such additional information as necessary to permit the Board of Directors to determine if such Shareholder Nominee: (A) is independent under the listing standards of the New York Stock Exchange, any applicable rules of the SEC and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Company's directors; (B) would, by serving on the Board of Directors, violate or cause the Company to be in violation of these By-laws, the Articles of Incorporation, the rules and listing standards of the New York Stock Exchange, or any applicable law, rule or regulation; and (C) is or has been subject to any event specified in Item 401(f) of Regulation S-K of the SEC.

(g) For purposes of calculating the Required Shares, "ownership" shall be deemed to consist of and include only those outstanding shares of the Company's common stock as to which a person possesses both (1) the full voting and investment rights pertaining to the shares and (2) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares (i) sold by such person or any of its affiliates in any transaction that has not been settled or closed, (ii) borrowed by such person or any of its affiliates for any purposes or purchased by such person or any of its affiliates pursuant to an agreement to resell or (iii) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such person or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Company's common stock, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (A) reducing in any manner, to any extent or at any time in the future, such person's or affiliates' full right to vote or direct the voting of any such shares, and/or (B) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such shares by such person or affiliate. "Ownership" shall include shares held in the name of a nominee or other intermediary so long as the person claiming ownership of such shares retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares, provided that this provision shall not alter the requirement that any notice provided under this Section 14 be provided by a shareholder of record. A person's ownership of shares shall be deemed to continue during any period in which (x) the person has loaned such shares, provided that the person has the power to recall such loaned shares on three (3) business days' notice; or (y) the person has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the person. Whether outstanding shares of the Company's common stock

are “owned” for these purposes shall be determined by the Board of Directors or its designee, acting in good faith, which determination shall be conclusive and binding on the Company and its shareholders. For purposes of this Section 14, the term “affiliate” shall have the meaning ascribed thereto in the regulations promulgated under the Exchange Act.

(h) The Eligible Shareholder may provide to the Secretary, at the time the information required by Section 13(b) is originally provided, a written statement for inclusion in the Company’s proxy statement for the annual meeting, not to exceed five hundred (500) words, in support of the Shareholder Nominee’s candidacy (the “Statement”). Notwithstanding anything to the contrary contained in this Section 14, the Company may omit from its proxy materials any information or Statement that it, in good faith, believes is false or misleading, omits to state any fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or would violate any applicable law, rule, regulation or listing standard.

(i) The Company shall not be required to include, pursuant to this Section 14, a Shareholder Nominee in its proxy statement, ballot, and form of proxy:

(1) for any meeting for which the Secretary receives a notice that the Eligible Shareholder or any other shareholder has nominated one or more Shareholder Nominees for election to the Board of Directors pursuant to the requirements of Section 13(b) and does not expressly elect, prior to the Final Proxy Access Nomination Date, to have such Shareholder Nominee(s) included in the Company’s proxy materials pursuant to this Section 14;

(2) if the Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder and each beneficial owner on whose behalf the Eligible Shareholder is acting hereunder) who has nominated such Shareholder Nominee, or any of its affiliates, has engaged in or is currently engaged in, or has been or is a “participant” in another person’s, “solicitation” under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Shareholder Nominee(s) or a director nominee nominated by the Board of Directors;

(3) who does not qualify as an independent director of the Company under applicable laws, rules, or regulations, New York Stock Exchange listing standards, or any publicly-disclosed standards used by the Board of Directors in determining and disclosing independence of the Company’s directors, in each case, as determined by the Board of Directors or its designee;

(4) whose service as a member of the Board of Directors would cause the Company to be in violation of these By-laws, the Articles of Incorporation, the rules and listing standards of the New York Stock Exchange, or any applicable state or federal law, rule or regulation;

(5) who does not qualify as a “non-employee director” for purposes of Rule 16b-3 under the Exchange Act;

(6) who is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914;

(7) who is or has been subject to any event specified in Item 401(f) of Regulation S-K;

(8) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended;

(9) if the Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder and each beneficial owner on whose behalf the Eligible Shareholder is acting hereunder) or applicable Shareholder Nominee shall have provided information to the Company in respect to such nomination that was untrue or omitted to state a fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading, as determined by the Board of Directors;

(10) who is a director or officer of any public utility company or other entity regulated by the Federal Energy Regulatory Commission or any state commission that has jurisdiction over the Company or one of its affiliates;

(11) who is a director or officer of any bank, trust company, banking association or firm that is authorized by law to underwrite or participate in the marketing of securities of the Company or one of its affiliates;

(12) who is a director or officer of any company supplying electrical equipment to the Company or one of its affiliates; or

(13) if the Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder and each beneficial owner on whose behalf the Eligible Shareholder is acting hereunder) or applicable Shareholder Nominee otherwise contravenes any of the agreements or representations made by such Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder and each beneficial owner on whose behalf the Eligible Shareholder is acting hereunder) or Shareholder Nominee or fails to comply with its obligations pursuant to Section 13(b) or this Section 14.

(j) Notwithstanding anything to the contrary set forth herein, the Board of Directors or the person presiding at the annual meeting may declare a nomination by an Eligible Shareholder to be invalid, and such nomination shall be disregarded and no vote on such Shareholder Nominee will occur, notwithstanding that ballots or proxies in respect of such vote may have been received by the Company, if (1) the Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder and each beneficial owner on whose behalf the Eligible Shareholder is acting hereunder) becomes ineligible to nominate a director for inclusion in the Company's proxy materials pursuant to this Section 14 or withdraws its nomination or a Shareholder Nominee becomes unwilling, unavailable, or ineligible to serve on the Board of Directors, whether before or after the Company's issuance of the definitive proxy statement, (2) the Eligible Shareholder (including each shareholder whose ownership is aggregated to collectively constitute an Eligible Shareholder and each beneficial owner on whose behalf the Eligible Shareholder is acting hereunder) and/or applicable Shareholder Nominee(s) shall have breached its or their obligations, agreements or representations under Section 13(b) or this Section

14, as determined by the Board of Directors or the person presiding at the annual meeting, or (3) the Eligible Shareholder (or a qualified representative thereof) does not appear at the annual meeting to present any nomination made pursuant to this Section 14. No shareholder of record or beneficial owner may have their ownership of shares aggregated with the ownership of other persons for purposes of collectively constituting an Eligible Shareholder under Section 14(d) more than once each meeting. If any shareholder of record or beneficial owner appears as a member of more than one group of Eligible Shareholders, such person shall be deemed to be a member of the group of Eligible Shareholders that has the largest ownership of shares as determined pursuant to this Section 14.

(k) Any Shareholder Nominee who is included in the Company's proxy materials for a particular annual meeting of shareholders but either (1) withdraws from or becomes ineligible or unavailable for election at the annual meeting (other than by reason of such Shareholder Nominee's disability or other health reason), or (2) receives votes in favor of his or her election representing less than twenty-five percent (25%) of the total votes cast with respect thereto, shall be ineligible to be a Shareholder Nominee pursuant to this Section 14 for the next two (2) annual meetings of shareholders following the annual meeting for which the Shareholder Nominee had been nominated for election.

(l) Any Shareholder Nominee who is included in the Company's proxy statement for a particular annual meeting of shareholders, but subsequently is determined not to satisfy the eligibility requirements of this Section 14, Section 13, or any other applicable provision of these By-laws, the Articles of Incorporation, or other applicable law, rules, or regulations any time before such annual meeting of shareholders, shall not be eligible for election at such annual meeting of shareholders.

(m) For the avoidance of doubt, the provisions of this Section 14 shall not apply to any special meeting of shareholders, and the Company shall not be required to include a director nominee of a shareholder or any other person in the Company's proxy statement or any corresponding ballot or form of proxy (or other format through which the Company permits proxies to be submitted) distributed by the Company for any special meeting of shareholders. This Section 14 shall be the exclusive method for shareholders (including beneficial owners of stock) to include nominees for election as directors in the Company's proxy materials.

ARTICLE III

Board of Directors

Section 1. The property, business and affairs of the Company shall be managed and controlled by a Board of Directors which may exercise all such powers of the Company and do all such lawful acts and things as are not by statute or by the Articles of Incorporation or by these By-laws directed or required to be exercised or done by the shareholders.

Section 2.

(a) The Board of Directors shall consist of not less than seven (7) nor more than seventeen (17) directors, the exact number to be set from time-to-time by a resolution adopted by the

affirmative vote of the majority of the whole Board. Each director shall be elected at the annual meeting of the shareholders to serve until the next annual meeting of the shareholders and until his or her successor shall be elected and qualified. Subject to Section 20 of this Article III, the Board of Directors shall elect on an annual basis the Chairman of the Board. The independent directors of the Board of Directors shall elect on an annual basis an independent director as Lead Director. The powers and responsibilities of the Lead Director shall be established from time to time by the Board of Directors and shall be set forth in the Corporate Governance Guidelines of the Board of Directors. The Lead Director may call, and shall preside over, all meetings of the independent directors of the Company.

(b) No person shall be eligible to be elected and to hold office as a director if such person is determined by a majority of the whole Board of Directors to have acted contrary to the Company's best interest.

(c) Any director may resign at any time by giving notice in writing or by electronic transmission to the Chairman of the Board or to the Secretary. The resignation of any director shall take effect upon the acceptance of such resignation by the Board of Directors. A resignation that is conditioned upon the director failing to receive a specified vote for election as a director may provide that it is irrevocable.

Section 3. In case of the death, resignation or removal of one or more of the directors of the Company, vacancies existing on the Board of Directors for any reason and newly created directorships resulting from any increase in the authorized number of directors, a majority of the remaining directors, though less than a quorum, may fill the vacancy or vacancies until the successor or successors are elected at a meeting of the shareholders.

Section 4. The Board of Directors may hold its regular meetings either within or without the State of Missouri at such place as shall be specified in the notice of such meeting. The Chairman of the Board, or in his or her absence the Lead Director or other director appointed by the members of the Board of Directors, shall convene all meetings of the Board of Directors and shall act as chairman thereof.

Section 5. Regular meetings of the Board of Directors shall be held as the Board of Directors shall from time to time determine. The Secretary or an Assistant Secretary shall give at least three (3) business days' notice of the time and place of each such meeting to each director in the manner provided in Section 9 of this Article III. The notice need not specify the business to be transacted.

Section 6. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, the Lead Director, the Chief Executive Officer, the President or three (3) members of the Board of Directors and shall be held at such place as shall be specified in the notice of such meeting. Notice of such special meeting stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting, or personally or by telephone, electronic transmission or similar means of communication on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 7. A majority of the full Board of Directors as prescribed in these By-laws shall constitute a quorum for the transaction of business. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the directors, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Members of the Board of Directors or of any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or committee thereof by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 8. The Board of Directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation for directors. Compensation for nonemployee directors may include both a stated annual retainer and a fixed fee for attendance at each regular or special meeting of the Board of Directors. Nonemployee members of special or standing committees of the Board of Directors may be allowed a fixed fee for attending committee meetings. Any director may serve the Company in any other capacity and receive compensation therefor. Each director may be reimbursed for his or her expenses, if any, in attending regular and special meetings of the Board of Directors and committee meetings.

Section 9. Whenever under the provisions of the statutes or of the Articles of Incorporation or of these By-laws, notice is required to be given to any director, it shall not be construed to require personal notice, but such notice may be given by telephone, electronic transmission or similar means of communication addressed to such director at such address as appears on the books of the Company, or by mail by depositing the same in a post office or letter box in a postpaid, sealed wrapper addressed to such director at such address as appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be thus telephoned, electronically transmitted or mailed.

Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 10. The Board of Directors may by resolution provide for an Executive Committee of said Board, which shall serve at the pleasure of the Board of Directors and, during the intervals between the meetings of said Board, shall possess and may exercise any or all of the powers of the Board of Directors in the management of the business and affairs of the Company, except with respect to any matters which, by resolution of the Board of Directors, may from time to time be reserved for action by said Board.

Section 11. The Executive Committee, if established by the Board of Directors, shall consist of the Chairman of the Board and two or more additional directors, who shall be elected by the Board of Directors to serve at the pleasure of said Board until the first meeting of the Board of Directors following the next annual meeting of shareholders and until their successors shall have been elected. Vacancies in the Committee shall be filled by the Board of Directors.

Section 12. Meetings of the Executive Committee shall be held whenever called by the Chairman or by a majority of the members of the committee, and shall be held at such time and place as shall be specified in the notice of such meeting. The Secretary or an Assistant Secretary shall give at least one day's notice of the time, place and purpose of each such meeting to each committee member in the manner provided in Section 9 of this Article III, provided, that if the meeting is to be held outside of Kansas City, Missouri, at least three (3) calendar days' notice thereof shall be given.

Section 13. At all meetings of the Executive Committee, a majority of the committee members shall constitute a quorum and the unanimous act of all the members of the committee present at a meeting where a quorum is present shall be the act of the Executive Committee. All action by the Executive Committee shall be reported to the Board of Directors at its meeting next succeeding such action.

Section 14. In addition to the Executive Committee provided for by these By-laws, the Board of Directors, by resolution adopted by a majority of the whole Board of Directors, may designate one or more standing or special committees, each consisting of two or more directors. Each standing or special committee shall have and may exercise so far as may be permitted by law and to the extent provided in such resolution or resolutions or in these By-laws, the responsibilities of the business and affairs of the Company. The Board of Directors may, at its discretion, appoint qualified directors as alternate members of a standing or special committee to serve in the temporary absence or disability of any member of a committee. Except where the context requires otherwise, references in these By-laws to the Board of Directors shall be deemed to include the Executive Committee, a standing committee or a special committee of the Board of Directors duly authorized and empowered to act in the premises.

Section 15. Each standing or special committee shall record and keep a record of all its acts and proceedings and report the same from time to time to the Board of Directors.

Section 16. Regular meetings of any standing or special committee, of which no notice shall be necessary, shall be held at such times and in such places as shall be fixed by majority of the committee. Special meetings of a committee shall be held at the request of any member of the committee. Notice of each special meeting of a committee shall be given not later than one day prior to the date on which the special meeting is to be held. Notice of any special meeting need not be given to any member of a committee, if waived by him in writing or by electronic transmission before or after the meeting; and any meeting of a committee shall be a legal meeting without notice thereof having been given, if all the members of the committee shall be present.

Section 17. A majority of any committee shall constitute a quorum for the transaction of business, and the act of a majority of those present, by telephone conference call (or similar communications equipment whereby all persons participating in the meeting can hear each other), at any meeting at which a quorum is present shall be the act of the committee. Members of any committee shall act only as a committee and the individual members shall have no power as such.

Section 18. The members or alternates of any standing or special committee shall serve at the pleasure of the Board of Directors.

Section 19. If all the directors severally or collectively shall consent in writing or by electronic transmission to any action which is required to be or may be taken by the directors, such consents shall have the same force and effect as a unanimous vote of the directors at a meeting duly held. The Secretary shall file such consents with the minutes of the meetings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 20. Upon the adoption of these By-laws, the initial members of the Board of Directors, the Lead Director, the Chairman of the Board and the composition of the committees shall be as determined in accordance with Exhibit B to that certain Amended and Restated Agreement and Plan of Merger, dated as of July 9, 2017 (as amended, restated or otherwise modified, the "Merger Agreement"), by and among the Company, Westar Energy, Inc., a Kansas corporation, Great Plains Energy Incorporated, a Missouri corporation, King Energy, Inc., a Kansas corporation, and for limited purposes set forth therein, GP Star, Inc., a Kansas corporation. Without limiting the generality of the foregoing, the initial non-executive Chairman of the Board shall be appointed for a term of three (3) years until his or her successor shall be elected in accordance with these By-laws.

ARTICLE IV

Officers

Section 1. The officers of the Company shall include a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers, all of whom shall be appointed by the Board of Directors. Any one person may hold two or more offices except that the offices of President and Secretary may not be held by the same person.

Section 2. The officers of the Company shall be appointed by the Board of Directors.

Section 3. The Board of Directors may from time to time appoint such other officers as it shall deem necessary or expedient, who shall hold their offices for such terms and shall exercise such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 4. Each officer of the Company shall hold such person's office at the pleasure of the Board of Directors or for such other period as the Board may specify at the time of such person's election or appointment, or until such person's death, resignation or removal by the Board, whichever occurs first. Any officer appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole board. If the office of any officer becomes vacant for any reason, or if any new office shall be created, the vacancy may be filled by the Board of Directors.

Section 5. The salaries of all officers of the Company shall be fixed by the Board of Directors or by such person or persons as delegated by the Board of Directors.

Section 6. Upon the adoption of these By-laws, the initial officers of the Company shall include those specified in Exhibit C to the Merger Agreement.

ARTICLE V

Powers and Duties of Officers

Section 1. The Board of Directors shall designate the Chief Executive Officer of the Company, who may be the Chairman of the Board and/or the President. The Chief Executive Officer shall have general and active management of and exercise general supervision of the business and affairs of the Company, subject, however, to the right of the Board of Directors, or the Executive Committee acting in its stead, to delegate any specific power to any other officer or officers of the Company, and the Chief Executive Officer shall see that all orders and resolutions of the Board of Directors and the Executive Committee are carried into effect. During such times when neither the Board of Directors nor the Executive Committee is in session, the Chief Executive Officer of the Company shall have and exercise full corporate authority and power to manage the business and affairs of the Company (except for matters required by law, the By-laws or the Articles of Incorporation to be exercised by the shareholders or Board itself or as may otherwise be specified by orders or resolutions of the Board) and the Chief Executive Officer shall take such actions, including executing contracts or other documents, as he or she deems necessary or appropriate in the ordinary course of the business and affairs of the Company. The Vice Presidents and other authorized persons are authorized to take actions which are (i) routinely required in the conduct of the Company's business or affairs, including execution of contracts and other documents incidental thereto, which are within their respective areas of assigned responsibility, and (ii) within the ordinary course of the Company's business or affairs as may be delegated to them respectively by the Chief Executive Officer.

Section 2. The President, if not designated Chief Executive Officer, shall perform such duties and exercise such powers as shall be assigned to him from time to time by the Board of Directors or the Chief Executive Officer.

Section 3. The Vice Presidents shall perform such duties and exercise such powers as shall be assigned to them from time to time by the Board of Directors or the Chief Executive Officer.

Section 4. The Secretary shall attend meetings of the shareholders, the Board of Directors and the Executive Committee, and shall keep the minutes of such meetings. He or she shall give, or cause to be given, notice of all meetings of the shareholders, the Board of Directors and the Executive Committee, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. He or she shall be the custodian of the seal of the Company and shall affix the same to any instrument requiring it and, when so affixed, shall attest it by his or her signature. He or she shall, in general, perform all duties incident to the office of secretary.

Section 5. The Assistant Secretaries shall perform such of the duties and exercise such of the powers of the Secretary as shall be assigned to them from time to time by the Board of Directors or the Chief Executive Officer or the Secretary, and shall perform such other duties as the Board of Directors or the Chief Executive Officer shall from time to time prescribe.

Section 6. The Treasurer shall have the custody of all moneys and securities of the Company. He or she is authorized to collect and receive all moneys due the Company and to receipt therefor, and to endorse in the name of the Company and on its behalf when necessary or proper all checks, drafts, vouchers or other instruments for the payment of money to the Company and to deposit the same to the credit of the Company in such depositories as may be designated by the Board of Directors. He or she is authorized to pay interest on obligations and dividends on stocks of the Company when due and payable. He or she shall, when necessary or proper, disburse the funds of the Company, taking proper vouchers for such disbursements. He or she shall render to the Board of Directors and the Chief Executive Officer, whenever they may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Company. He or she shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. He or she shall, in general, perform all duties incident to the office of treasurer.

Section 7. The Assistant Treasurers shall perform such of the duties and exercise such of the powers of the Treasurer as shall be assigned to them from time to time by the Board of Directors or the Chief Executive Officer or the Treasurer, and shall perform such other duties as the Board of Directors or the Chief Executive Officer shall from time to time prescribe.

Section 8. In the case of absence or disability or refusal to act of any officer of the Company, the Chief Executive Officer may delegate the powers and duties of such officer to any other officer or other person unless otherwise ordered by the Board of Directors.

Section 9. The President, the Chief Executive Officer, the Vice Presidents and any other person duly authorized by resolution of the Board of Directors shall severally have power to execute on behalf of the Company any deed, bond, indenture, certificate, note, contract or other instrument authorized or approved by the Board of Directors.

Section 10. Unless otherwise ordered by the Board of Directors, the President, the Chief Executive Officer or any Vice President of the Company (a) shall have full power and authority to attend and to act and vote, in the name and on behalf of this Company, at any meeting of shareholders of any corporation in which this Company may hold stock, and at any such meeting shall possess and may exercise any and all of the rights and powers incident to the ownership of such stock, and (b) shall have full power and authority to execute, in the name and on behalf of this Company, proxies authorizing any suitable person or persons to act and to vote at any meeting of shareholders of any corporation in which this Company may hold stock, and at any such meeting the person or persons so designated shall possess and may exercise any and all of the rights and powers incident to the ownership of such stock.

ARTICLE VI

Certificates of Stock

Section 1. The Board of Directors shall provide for the issue, transfer and registration of the certificates representing the shares of capital stock of the Company in such form as may be prescribed by the Board of Directors in conformity with law, and shall appoint the necessary

officers, transfer agents and registrars for that purpose; provided that some or all of the shares of capital stock may be uncertificated shares as determined by the Board of Directors.

Section 2. Until otherwise ordered by the Board of Directors, stock certificates shall be signed by the President, the Chief Executive Officer or a Vice President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, and sealed with the seal of the Company. Such seal may be facsimile, engraved or printed. In case any officer or officers who shall have signed, or whose facsimile signature or signatures shall have been used on, any stock certificate or certificates shall cease to be such officer or officers of the Company, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Company, such certificate or certificates may nevertheless be issued by the Company with the same effect as if the person or persons who signed such certificate or certificates or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or officers of the Company.

Section 3. Transfers of stock shall be made on the books of the Company only by the person in whose name such stock is registered or by his or her attorney lawfully constituted in writing, and unless otherwise authorized by the Board of Directors only on surrender and cancellation of the certificate transferred. No stock certificate shall be issued to a transferee until the transfer has been made on the books of the Company.

Section 4. The Company shall be entitled to treat the person in whose name any share of stock is registered as the owner thereof, for all purposes, and shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have notice thereof, except as otherwise expressly provided by the laws of Missouri.

Section 5. In case of the loss or destruction of any certificate for shares of the Company, a new certificate may be issued in lieu thereof under such regulations and conditions as the Board of Directors may from time to time prescribe.

Section 6.

(a) Notwithstanding anything to the contrary in this Article VI, unless the Articles of Incorporation or another provision in these By-laws provide otherwise, the Board of Directors may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until such certificates are surrendered to the Company.

(b) Every holder of uncertificated shares is entitled to receive a statement of holdings as evidence of share ownership.

(c) After the issue or transfer of shares without certificates, the Company shall, if required by law or agreement, provide to such holders of the applicable uncertificated shares a statement that the Company will furnish each such shareholder information pertaining to classes of shares or different series within a class, the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each such series.

ARTICLE VII

Closing of Transfer Books

The Board of Directors shall have power to close the stock transfer books of the Company for a period not exceeding seventy (70) calendar days preceding the date of any meeting of shareholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of shares shall go into effect; provided, however, that in lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix in advance a date, not exceeding seventy (70) calendar days preceding the date of any meeting of shareholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at, any such meeting, and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of shares, and in such case such shareholders and only such shareholders as shall be shareholders of record on the date of closing the transfer books or on the record date so fixed shall be entitled to notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the Company after such date of closing of the transfer books or such record date fixed as aforesaid.

ARTICLE VIII

Inspection of Books

Section 1. The Company shall keep correct and complete books and records of account, including the amount of its assets and liabilities, minutes of its proceedings of its shareholders and Board of Directors (and any committee having the authority of the Board) and the names and business or residence addresses of its officers. The Company shall keep at its registered office or principal place of business in the State of Missouri, or at the office of its transfer agent in the State of Missouri, if any, books and records in which shall be recorded the number of shares subscribed, the names of the owners of the shares, the numbers owned by them respectively, the amount of shares paid, and by whom, and the transfer of such shares with the date of transfer.

Section 2. A shareholder may, upon written demand, inspect the records of the Company, pursuant to any statutory or other legal right, during the usual and customary hours of business and in such manner as will not unduly interfere with the regular conduct of the business of the Company. A shareholder may delegate such shareholder's right of inspection to a certified or public accountant on the condition, to be enforced at the option of the Company, that the shareholder and accountant agree with the Company to furnish to the Company promptly a true and correct copy of each report with respect to such inspection made by such accountant. No shareholder shall use, permit to be used or acquiesce in the use by others of any information so obtained to the detriment competitively of the Company, nor shall he or she furnish or permit to be furnished any information so obtained to any competitor or prospective competitor of the Company. The Company as a condition precedent to any shareholder's inspection of the records of the Company may require the shareholder to indemnify the Company, in such manner and for

such amount as may be determined by the Board of Directors, against any loss or damage which may be suffered by it arising out of or resulting from any unauthorized disclosure made or permitted to be made by such shareholder of information obtained in the course of such inspection.

Section 3. The Company shall not be liable for expenses incurred in connection with any inspection of its books.

ARTICLE IX

Corporate Seal

The corporate seal of the Company shall have inscribed thereon the name of the Company and the words “Corporate Seal - Missouri.”

ARTICLE X

Fiscal Year

Section 1. The fiscal year of the Company shall be the calendar year.

Section 2. As soon as practicable after the close of each fiscal year, the Board of Directors shall cause a report of the business and affairs of the Company to be made to the shareholders. Such report may take the form of the Company’s Annual Report on Form 10-K that is publicly filed with the SEC.

ARTICLE XI

Waiver of Notice

Whenever by statute or by the Articles of Incorporation or by these By-laws any notice whatever is required to be given, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII

Amendments

The Board of Directors may make, alter, amend, or repeal By-laws of the Company by a majority vote of the whole Board of Directors at any regular meeting of the Board or at any special meeting of the Board if notice thereof has been given in the notice of such special meeting. Nothing in this Article shall be construed to limit the power of the shareholders to make, alter, amend or repeal By-laws of the Company at any annual or special meeting of shareholders by a majority vote of the shareholders present and entitled to vote at such meeting, provided a quorum is present.

EVERGY KANSAS CENTRAL, INC.
(formerly Westar Energy, Inc.)

AMENDED AND RESTATED BY-LAWS

AS OF FEBRUARY 28, 2020

EVERGY KANSAS CENTRAL, INC.

AMENDED AND RESTATED BY-LAWS

ARTICLE I

Offices

Section 1. The location of the registered office and the name of the registered agent of Evergy Kansas Central, Inc. (the “*Company*”) in the State of Kansas shall be as stated in the Articles of Incorporation or as determined from time to time by the Board of Directors and on file in the appropriate public offices of the State of Kansas pursuant to applicable provisions of law.

Section 2. The Company also may have offices at such other places either within or without the State of Kansas as the Board of Directors may from time to time determine or the business of the Company may require.

ARTICLE II

Shareholders

Section 1. (a) All meetings of the shareholders shall be held at such place within or without the State of Kansas as may be selected by the Board of Directors or Executive Committee, but if the Board of Directors or Executive Committee shall fail to designate a place for said meeting to be held, then the same shall be held at the principal place of business of the Company.

(b) If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of remote communication:

(i) Participate in a meeting of shareholders; and

(ii) Be deemed present in person and vote at a meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:

a. The Company shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder;

b. The Company shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to

read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

c. If any shareholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Company.

(c) The Board of Directors may, to the extent not prohibited by law, adopt by resolution such rules and regulations for the conduct of the meetings or any meeting of shareholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations, the Chairman of the Board may prescribe such rules, regulations and procedures and do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the Chairman of the Board, may, to the extent not prohibited by law, include, without limitation, the following: (i) the establishment of an agenda for the meeting; (ii) the maintenance of order at the meeting; (iii) limitations on attendance at or participation in the meeting to shareholders of record of the Company, their duly authorized proxies and such other persons as shall be determined; (iv) restrictions on entry to the meeting after a specified time; and (v) limitations on the time allotted to questions or comments by participants. Unless otherwise determined by the Board or the Chairman of the Board, meetings of shareholders shall not be required to be held in accordance with any rules of parliamentary procedure.

Section 2. An annual meeting of the shareholders shall be held on the first Tuesday of May in each year, if not a legal holiday, and if a legal holiday, then on the first succeeding day which is not a legal holiday, at 10 a.m.; provided, however, the day fixed for such meeting in any year may be changed, by resolution of the Board of Directors, to such other day and time as the Board of Directors may deem to be desirable or appropriate, subject to any applicable limitations of law. The purpose of the annual meeting shall be to elect directors of the Company and transact such other business as may properly be brought before the meeting.

Section 3. Special meetings of the shareholders may only be called by the Chairman of the Board, by the Chief Executive Officer, by the President or at the request in writing (which shall include a request received by electronic transmission) of a majority of the Board of Directors. Special meetings of shareholders of the Company may not be called by any other person or persons.

Section 4. Written or printed notice of each meeting of the shareholders, annual or special, shall be given in the manner provided in the Kansas General Corporation Code. Written notice shall include, but not be limited to, notice by electronic transmission which means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient. In case of a call for any special meeting, the notice shall state the time, place and purpose of such meeting.

Any notice of a shareholders' meeting sent by mail shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid addressed to the shareholder at his or her address as it appears on the records of the Company.

Section 5. Attendance of a shareholder at any meeting, whether in person or by means of remote communication, shall constitute a waiver of notice of such meeting except where a shareholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 6. At least ten days before each meeting of the shareholders, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order with the address of and the number of shares held by each, shall be prepared by the officer having charge of the transfer book for shares of the Company. Such list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the Company and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in the State of Kansas, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of shareholders.

Failure to comply with the requirements of this Section shall not affect the validity of any action taken at any such meeting.

Section 7. Each outstanding share entitled to vote under the provisions of the Articles of Incorporation of the Company shall be entitled to one vote on each matter submitted at a meeting of the shareholders. A shareholder may vote either in person or by proxy in the manner provided in the corporation laws of the State of Kansas, including by means of electronic transmission or by telephone. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

At any election of directors of the Company, each holder of outstanding shares of any class entitled to vote thereat shall have the right to cast as many votes in the aggregate as shall equal the number of shares of such class held, multiplied by the number of directors to be elected by holders of shares of such class, and may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute them among two or more candidates as such holder shall elect.

Section 8. At any meeting of shareholders, a majority of the outstanding shares entitled to vote represented in person, by means of remote connection or by proxy shall constitute a quorum for the transaction of business, except as otherwise provided by statute or by the Articles of Incorporation or by these By-laws. The Board of Directors, the chairman of the meeting or the holders of a majority of the shares represented in person or by proxy and entitled to vote at any meeting of the shareholders shall have the right successively to adjourn the meeting to a specified date not longer than ninety days after any such adjournment, whether or not a quorum be present. The time and place to which any such adjournment is taken shall be publicly announced at the meeting, and no notice need be given of any such adjournment to shareholders not present at the meeting. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 9. The vote for directors and the vote on any other question that has been properly brought before the meeting in accordance with these By-laws shall be by ballot. Each ballot cast by a shareholder must state the name of the shareholder voting and the number of shares voted by him and if such ballot be cast by a proxy, it must also state the name of such proxy. All elections and all other questions shall be decided by plurality vote, unless the question is one on which by express provision of the statutes or of the Articles of Incorporation or of these By-laws a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 10. The Chairman of the Board, or in his or her absence the Chief Executive Officer, the President or any Vice President of the Company, shall convene all meetings of the shareholders and the Chairman of the Board shall act as chairman thereof. The Board of Directors may appoint any shareholder to act as chairman of any meeting of the shareholders in the absence of the Chairman of the Board, and in the case of the failure of the Board so to appoint a chairman, the shareholders present at the meeting shall elect a chairman who shall be either a shareholder or a proxy of a shareholder.

The Secretary of the Company shall act as secretary of all meetings of shareholders. In the absence of the Secretary at any meeting of shareholders, the President or acting chairman may appoint any person to act as secretary of the meeting.

Section 11. At any meeting of shareholders where a vote by ballot is taken for the election of directors or on any proposition, the person presiding at such meeting shall appoint not less than two persons, who are not directors, as inspectors to receive and canvass the votes given at such meeting and certify the result to him. Subject to any statutory requirements which may be applicable, all questions touching upon the qualification of voters, the validity of proxies, and the acceptance or rejection of votes shall be decided by the inspectors. In case of a tie vote by the inspectors on any question, the presiding officer shall decide the issue.

Section 12. Unless otherwise provided by statute or by the Articles of Incorporation, any action required to be taken by shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Section 13. No business may be transacted at an annual meeting of shareholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any shareholder of the Company (i) who is a shareholder of record on the date of the giving of the notice provided for in this Section 13 and on the record date for the determination of shareholders entitled to vote at such annual meeting and (ii) who complies with the notice procedure set forth in this Section 13.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a shareholder, such shareholder must have given timely notice thereof in proper written form to the Secretary of the Company.

To be timely, a shareholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Company not less than sixty (60) days nor more than ninety (90) days prior to the date of the annual meeting of shareholders; provided, however, that in the event that less than seventy (70) days' notice or prior public disclosure of the date of the meeting is given to shareholders, notice by the shareholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs.

To be in proper written form, a shareholder's notice to the Secretary must set forth as to each matter such shareholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such shareholder, (iii) the class or series and number of shares of capital stock of the Company that are owned beneficially or of record by such shareholder, (iv) a description of all arrangements or understandings between such shareholder and any other person or persons (including their names) in connection with the proposal of such business by such shareholder and any material interest of such shareholder in such business and (v) a representation that such shareholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

No business shall be conducted at the annual meeting of shareholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 13, provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 13 shall be deemed to preclude discussion by any shareholder of any such business. If the Chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

ARTICLE III

Board of Directors

Section 1. The property, business and affairs of the Company shall be managed and controlled by a Board of Directors which may exercise all such powers of the Company and do all such lawful acts and things as are not by statute or by the Articles of Incorporation or by these By-laws directed or required to be exercised or done by the shareholders.

Section 2. (a) The Board of Directors shall consist of not less than seven (7) nor more than seventeen (17) directors, the exact number to be set from time-to-time by a resolution adopted by the affirmative vote of the majority of the whole Board. Each director shall be elected at the annual meeting of the shareholders to serve until the next annual meeting of the shareholders and until his or her successor shall be elected and qualified.

(b) No person shall be eligible to be elected and to hold office as a director if such person is determined by a majority of the whole Board of Directors to have acted contrary to the Company's best interest, including, but not limited to, (i) violation of either state or federal law, (ii) maintenance of interests not properly authorized and in conflict with the interests of the Company, or (iii) breach of any agreement between such director and the Company relating to such director's services as a director, employee or agent of the Company.

(c) Any director may resign at any time by giving notice in writing or by electronic transmission to the Chairman of the Board or to the Secretary. The resignation of any director shall take effect upon the acceptance of such resignation by the Board of Directors.

Section 3. In case of the death, resignation or removal of one or more of the directors of the Company, vacancies existing on the Board of Directors for any reason and newly created directorships resulting from any increase in the authorized number of directors, a majority of the remaining directors, though less than a quorum, may fill the vacancy or vacancies until the successor or successors are elected at a meeting of the shareholders.

Section 4. The Board of Directors may hold its regular meetings either within or without the State of Kansas at such place as shall be specified in the notice of such meeting. The Chairman of the Board, or in his or her absence another director appointed by a majority of the members of the Board of Directors, shall convene all meetings of the Board of Directors and shall act as chairman thereof.

Section 5. Regular meetings of the Board of Directors shall be held as the Board of Directors shall from time to time determine. The Secretary or an Assistant Secretary shall give at least three (3) business days' notice of the time and place of each such meeting to each director in the manner provided in Section 9 of this Article III. The notice need not specify the business to be transacted.

Section 6. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, the Chief Executive Officer, the President of the Company or three members of the Board and shall be held at such place as shall be specified in the notice of such meeting. Notice of such special meeting stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting, or personally or by telephone, electronic transmission or similar means of communication on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 7. A majority of the full Board of Directors as prescribed in these By-laws shall constitute a quorum for the transaction of business. The act of the majority of the directors present

at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the directors, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Members of the Board of Directors or of any committee designated by the Board of Directors may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 8. The Board of Directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation for directors. Compensation for nonemployee directors may include both a stated annual retainer and a fixed fee for attendance at each regular or special meeting of the Board. Nonemployee members of special or standing committees of the Board may be allowed a fixed fee for attending committee meetings. Any director may serve the Company in any other capacity and receive compensation therefor. Each director may be reimbursed for his or her expenses, if any, in attending regular and special meetings of the Board and committee meetings.

Section 9. Whenever under the provisions of the statutes or of the Articles of Incorporation or of these By-laws, notice is required to be given to any director, it shall not be construed to require personal notice, but such notice may be given by telephone, electronic transmission or similar means of communication addressed to such director at such address as appears on the books of the Company, or by mail by depositing the same in a post office or letter box in a postpaid, sealed wrapper addressed to such director at such address as appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be thus telephoned, electronically transmitted or mailed.

Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 10. The Board of Directors may by resolution provide for an Executive Committee of said Board, which shall serve at the pleasure of the Board of Directors and, during the intervals between the meetings of said Board, shall possess and may exercise any or all of the powers of the Board of Directors in the management of the business and affairs of the Company, except with respect to any matters which, by resolution of the Board of Directors, may from time to time be reserved for action by said Board.

Section 11. The Executive Committee, if established by the Board, shall consist of the Chairman of the Board and two or more additional directors, who shall be elected by the Board of Directors to serve at the pleasure of said Board until the first meeting of the Board of Directors following the next annual meeting of shareholders and until their successors shall have been elected. Vacancies in the Committee shall be filled by the Board of Directors.

Section 12. Meetings of the Executive Committee shall be held whenever called by the Chairman or by a majority of the members of the committee, and shall be held at such time and

place as shall be specified in the notice of such meeting. The Secretary or an Assistant Secretary shall give at least one day's notice of the time, place and purpose of each such meeting to each committee member in the manner provided in Section 9 of this Article III, provided, that if the meeting is to be held outside of Topeka, Kansas, at least three days' notice thereof shall be given.

Section 13. At all meetings of the Executive Committee, a majority of the committee members shall constitute a quorum and the unanimous act of all the members of the committee present at a meeting where a quorum is present shall be the act of the Executive Committee. All action by the Executive Committee shall be reported to the Board of Directors at its meeting next succeeding such action.

Section 14. In addition to the Executive Committee provided for by these By-laws, the Board of Directors, by resolution adopted by a majority of the whole Board of Directors, may designate one or more committees, each consisting of two or more directors. Each committee shall have and may exercise so far as may be permitted by law and to the extent provided in such resolution or resolutions or in these By-laws, the responsibilities of the business and affairs of the Company. The Board of Directors may, at its discretion, appoint qualified directors as alternate members of a committee to serve in the temporary absence or disability of any member of a committee. Except where the context requires otherwise, references in these By-laws to the Board of Directors shall be deemed to include the Executive Committee or a committee of the Board of Directors duly authorized and empowered to act in the premises.

Section 15. Each committee shall record and keep a record of all its acts and proceedings and report the same from time to time to the Board of Directors.

Section 16. Regular meetings of any committee, of which no notice shall be necessary, shall be held at such times and in such places as shall be fixed by majority of the committee. Special meetings of a committee shall be held at the request of any member of the committee. Notice of each special meeting of a committee shall be given not later than one day prior to the date on which the special meeting is to be held. Notice of any special meeting need not be given to any member of a committee, if waived by him in writing or by electronic transmission before or after the meeting; and any meeting of a committee shall be a legal meeting without notice thereof having been given, if all the members of the committee shall be present.

Section 17. A majority of any committee shall constitute a quorum for the transaction of business, and the act of a majority of those present, by telephone conference call (or similar communications equipment whereby all persons participating in the meeting can hear each other), at any meeting at which a quorum is present shall be the act of the committee. Members of any committee shall act only as a committee and the individual members shall have no power as such.

Section 18. The members or alternates of any committee shall serve at the pleasure of the Board of Directors.

Section 19. If all the directors severally or collectively shall consent in writing or by electronic transmission to any action which is required to be or may be taken by the directors,

such consents shall have the same force and effect as a unanimous vote of the directors at a meeting duly held. The Secretary shall file such consents with the minutes of the meetings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE IV

Officers

Section 1. The officers of the Company shall include a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers, all of whom shall be appointed by the Board of Directors. Any one person may hold two or more offices except that the offices of President and Secretary may not be held by the same person.

Section 2. The officers of the Company shall be appointed by the Board of Directors.

Section 3. The Board of Directors may from time to time appoint such other officers as it shall deem necessary or expedient, who shall hold their offices for such terms and shall exercise such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 4. Each officer of the Company shall hold such person's office at the pleasure of the Board of Directors or for such other period as the Board may specify at the time of such person's election or appointment, or until such person's death, resignation or removal by the Board, whichever occurs first. Any officer appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole board. If the office of any officer becomes vacant for any reason, or if any new office shall be created, the vacancy may be filled by the Board of Directors.

ARTICLE V

Powers and Duties of Officers

Section 1. The Board of Directors shall designate the Chairman and the Chief Executive Officer of the Company, who may be the Chairman of the Board and/or the President. The Chief Executive Officer shall have general and active management of and exercise general supervision of the business and affairs of the Company, subject, however, to the right of the Board of Directors, or the Executive Committee acting in its stead, to delegate any specific power to any other officer or officers of the Company, and the Chief Executive Officer shall see that all orders and resolutions of the Board of Directors and the Executive Committee are carried into effect. During such times when neither the Board of Directors nor the Executive Committee is in session, the Chief Executive Officer of the Company shall have and exercise full corporate authority and power to manage the business and affairs of the Company (except for matters required by law, the By-laws or the Articles of Incorporation to be exercised by the shareholders or Board itself or as may otherwise be specified by orders or resolutions of the Board) and the Chief Executive Officer

shall take such actions, including executing contracts or other documents, as he or she deems necessary or appropriate in the ordinary course of the business and affairs of the Company. The Vice Presidents and other authorized persons are authorized to take actions which are (i) routinely required in the conduct of the Company's business or affairs, including execution of contracts and other documents incidental thereto, which are within their respective areas of assigned responsibility, and (ii) within the ordinary course of the Company's business or affairs as may be delegated to them respectively by the Chief Executive Officer.

Section 2. The President, if not also designated Chief Executive Officer, shall perform such duties and exercise such powers as shall be assigned to him from time to time by the Board of Directors or the Chief Executive Officer.

Section 3. The Vice Presidents shall perform such duties and exercise such powers as shall be assigned to them from time to time by the Board of Directors or the Chief Executive Officer.

Section 4. The Secretary shall attend all meetings of the shareholders, the Board of Directors and the Executive Committee, and shall keep the minutes of such meetings. He or she shall give, or cause to be given, notice of all meetings of the shareholders, the Board of Directors and the Executive Committee, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. He or she shall be the custodian of the seal of the Company and shall affix the same to any instrument requiring it and, when so affixed, shall attest it by his or her signature. He or she shall, in general, perform all duties incident to the office of secretary.

Section 5. The Assistant Secretaries shall perform such of the duties and exercise such of the powers of the Secretary as shall be assigned to them from time to time by the Board of Directors or the Chief Executive Officer or the Secretary, and shall perform such other duties as the Board of Directors or the Chief Executive Officer shall from time to time prescribe.

Section 6. The Treasurer shall have the custody of all moneys and securities of the Company. He or she is authorized to collect and receive all moneys due the Company and to receipt therefor, and to endorse in the name of the Company and on its behalf when necessary or proper all checks, drafts, vouchers or other instruments for the payment of money to the Company and to deposit the same to the credit of the Company in such depositories as may be designated by the Board of Directors. He or she is authorized to pay interest on obligations and dividends on stocks of the Company when due and payable. He or she shall, when necessary or proper, disburse the funds of the Company, taking proper vouchers for such disbursements. He or she shall render to the Board of Directors and the Chief Executive Officer, whenever they may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Company. He or she shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. He or she shall, in general, perform all duties incident to the office of treasurer.

Section 7. The Assistant Treasurers shall perform such of the duties and exercise such of the powers of the Treasurer as shall be assigned to them from time to time by the Board of

Directors or the Chief Executive Officer or the Treasurer, and shall perform such other duties as the Board of Directors or the Chief Executive Officer shall from time to time prescribe.

Section 8. The Board of Directors may, by resolution, require any officer to give the Company a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of his or her office and for the restoration to the Company, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control and belonging to the Company.

Section 9. In the case of absence or disability or refusal to act of any officer of the Company, the Chief Executive Officer may delegate the powers and duties of such officer to any other officer or other person unless otherwise ordered by the Board of Directors.

Section 10. The President, the Chief Executive Officer, the Vice Presidents and any other person duly authorized by resolution of the Board of Directors shall severally have power to execute on behalf of the Company any deed, bond, indenture, certificate, note, contract or other instrument authorized or approved by the Board of Directors.

Section 11. Unless otherwise ordered by the Board of Directors, the President, the Chief Executive Officer or any Vice President of the Company (a) shall have full power and authority to attend and to act and vote, in the name and on behalf of this Company, at any meeting of shareholders of any corporation in which this Company may hold stock, and at any such meeting shall possess and may exercise any and all of the rights and powers incident to the ownership of such stock, and (b) shall have full power and authority to execute, in the name and on behalf of this Company, proxies authorizing any suitable person or persons to act and to vote at any meeting of shareholders of any corporation in which this Company may hold stock, and at any such meeting the person or persons so designated shall possess and may exercise any and all of the rights and powers incident to the ownership of such stock.

ARTICLE VI

Certificates of Stock

Section 1. The Board of Directors shall provide for the issue, transfer and registration of the certificates representing the shares of capital stock of the Company in such form as may be prescribed by the Board of Directors in conformity with law, and shall appoint the necessary officers, transfer agents and registrars for that purpose; provided that some or all of the shares of capital stock may be uncertificated shares as determined by the Board of Directors.

Section 2. Until otherwise ordered by the Board of Directors, stock certificates shall be signed by the President, the Chief Executive Officer or a Vice President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, and sealed with the seal of the Company. Such seal may be facsimile, engraved or printed. In case any officer or officers who shall have signed, or whose facsimile signature or signatures shall have been used on, any stock certificate or certificates shall cease to be such officer or officers of the Company, whether because

of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Company, such certificate or certificates may nevertheless be issued by the Company with the same effect as if the person or persons who signed such certificate or certificates or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or officers of the Company.

Section 3. Transfers of stock shall be made on the books of the Company only by the person in whose name such stock is registered or by his or her attorney lawfully constituted in writing, and unless otherwise authorized by the Board of Directors only on surrender and cancellation of the certificate transferred. No stock certificate shall be issued to a transferee until the transfer has been made on the books of the Company.

Section 4. The Company shall be entitled to treat the person in whose name any share of stock is registered as the owner thereof, for all purposes, and shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have notice thereof, except as otherwise expressly provided by the laws of the State of Kansas.

Section 5. In case of the loss or destruction of any certificate for shares of the Company, a new certificate may be issued in lieu thereof under such regulations and conditions as the Board of Directors may from time to time prescribe.

ARTICLE VII

Closing of Transfer Books

The Board of Directors shall have power to close the stock transfer books of the Company for a period not exceeding seventy days preceding the date of any meeting of shareholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of shares shall go into effect; provided, however, that in lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix in advance a date, not exceeding seventy days preceding the date of any meeting of shareholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at, any such meeting, and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of shares, and in such case such shareholders and only such shareholders as shall be shareholders of record on the date of closing the transfer books or on the record date so fixed shall be entitled to notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the Company after such date of closing of the transfer books or such record date fixed as aforesaid.

ARTICLE VIII

Inspection of Books

Section 1. The Company shall keep correct and complete books and records of account, including the amount of its assets and liabilities, minutes of its proceedings of its shareholders and Board of Directors (and any committee having the authority of the Board) and the names and business or residence addresses of its officers. The Company shall keep at its registered office or principal place of business in the State of Kansas, or at the office of its transfer agent in the State of Kansas, if any, books and records in which shall be recorded the number of shares subscribed, the names of the owners of the shares, the numbers owned by them respectively, the amount of shares paid, and by whom, and the transfer of such shares with the date of transfer.

Section 2. A shareholder may, upon written demand, inspect the records of the Company, pursuant to any statutory or other legal right, during the usual and customary hours of business and in such manner as will not unduly interfere with the regular conduct of the business of the Company. A shareholder may delegate such shareholder's right of inspection to a certified or public accountant on the condition, to be enforced at the option of the Company, that the shareholder and accountant agree with the Company to furnish to the Company promptly a true and correct copy of each report with respect to such inspection made by such accountant. No shareholder shall use, permit to be used or acquiesce in the use by others of any information so obtained to the detriment competitively of the Company, nor shall he or she furnish or permit to be furnished any information so obtained to any competitor or prospective competitor of the Company. The Company as a condition precedent to any shareholder's inspection of the records of the Company may require the shareholder to indemnify the Company, in such manner and for such amount as may be determined by the Board of Directors, against any loss or damage which may be suffered by it arising out of or resulting from any unauthorized disclosure made or permitted to be made by such shareholder of information obtained in the course of such inspection.

Section 3. The Company shall not be liable for expenses incurred in connection with any inspection of its books.

ARTICLE IX

Corporate Seal

The corporate seal of the Company shall have inscribed thereon the name of the Company and the words "Corporate Seal - Kansas."

ARTICLE X

Fiscal Year

Section 1. The fiscal year of the Company shall be the calendar year.

Section 2. As soon as practicable after the close of each fiscal year, the Board of Directors shall cause a report of the business and affairs of the Company to be made to the shareholders.

ARTICLE XI

Waiver of Notice

Whenever by statute or by the Articles of Incorporation or by these By-laws any notice whatever is required to be given, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII

Amendments

The Board of Directors may make, alter, amend or repeal By-laws of the Company by a majority vote of the whole Board of Directors at any regular meeting of the Board or at any special meeting of the Board if notice thereof has been given in the notice of such special meeting. Nothing in this Article shall be construed to limit the power of the shareholders to make, alter, amend or repeal By-laws of the Company at any annual or special meeting of shareholders by a majority vote of the shareholders present and entitled to vote at such meeting, provided a quorum is present.

EVERGY METRO, INC.,
(formerly Kansas City Power & Light Company)

AMENDED AND RESTATED BY-LAWS

AS OF FEBRUARY 28, 2020

EVERGY METRO, INC.

AMENDED AND RESTATED BY-LAWS

ARTICLE I

Offices

Section 1. The location of the registered office and the name of the registered agent of the Company in the State of Missouri shall be as stated in the Articles of Consolidation or as determined from time to time by the Board of Directors and on file in the appropriate public offices of the State of Missouri pursuant to applicable provisions of law.

Section 2. The Company also may have offices at such other places either within or without the State of Missouri as the Board of Directors may from time to time determine or the business of the Company may require.

ARTICLE II

Shareholders

Section 1. (a) All meetings of the shareholders shall be held at such place within or without the State of Missouri as may be selected by the Board of Directors or Executive Committee, but if the Board of Directors or Executive Committee shall fail to designate a place for said meeting to be held, then the same shall be held at the principal place of business of the Company.

(b) If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of remote communication:

i. Participate in a meeting of shareholders; and

ii. Be deemed present in person and vote at a meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:

a. The Company shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder;

b. The Company shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

c. If any shareholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Company.

(c) The Board of Directors may, to the extent not prohibited by law, adopt by resolution such rules and regulations for the conduct of the meetings or any meeting of shareholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations, the Chairman of the Board may prescribe such rules, regulations and procedures and do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the Chairman of the Board, may, to the extent not prohibited by law, include, without limitation, the following: (i) the establishment of an agenda for the meeting; (ii) the maintenance of order at the meeting; (iii) limitations on attendance at or participation in the meeting to shareholders of record of the Company, their duly authorized proxies and such other persons as shall be determined; (iv) restrictions on entry to the meeting after a specified time; and (v) limitations on the time allotted to questions or comments by participants. Unless otherwise determined by the Board or the Chairman of the Board, meetings of shareholders shall not be required to be held in accordance with any rules of parliamentary procedure.

Section 2. An annual meeting of the shareholders shall be held on the first Tuesday of May in each year, if not a legal holiday, and if a legal holiday, then on the first succeeding day which is not a legal holiday, at 10 a.m.; provided, however, the day fixed for such meeting in any year may be changed, by resolution of the Board of Directors, to such other day and time as the Board of Directors may deem to be desirable or appropriate, subject to any applicable limitations of law. The purpose of the annual meeting shall be to elect directors of the Company and transact such other business as may properly be brought before the meeting.

Section 3. Special meetings of the shareholders may only be called by the Chairman of the Board, by the Chief Executive Officer, by the President or at the request in writing (which shall include a request received by electronic transmission) of a majority of the Board of Directors. Special meetings of shareholders of the Company may not be called by any other person or persons.

Section 4. Written or printed notice of each meeting of the shareholders, annual or special, shall be given in the manner provided in the corporation laws of the State of Missouri. Written notice shall include, but not be limited to, notice by electronic transmission which means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient. In case of a call for any special meeting, the notice shall state the time, place and purpose of such meeting.

Any notice of a shareholders' meeting sent by mail shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid addressed to the shareholder at his or her address as it appears on the records of the Company.

Section 5. Attendance of a shareholder at any meeting, whether in person or by means of remote communication, shall constitute a waiver of notice of such meeting except where a

shareholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 6. At least ten days before each meeting of the shareholders, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order with the address of and the number of shares held by each, shall be prepared by the officer having charge of the transfer book for shares of the Company. Such list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the Company and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in the State of Missouri, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of shareholders.

Failure to comply with the requirements of this Section shall not affect the validity of any action taken at any such meeting.

Section 7. Each outstanding share entitled to vote under the provisions of the articles of consolidation of the Company shall be entitled to one vote on each matter submitted at a meeting of the shareholders. A shareholder may vote either in person or by proxy in the manner provided in the corporation laws of the State of Missouri, including by means of electronic transmission or by telephone. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

At any election of directors of the Company, each holder of outstanding shares of any class entitled to vote thereat shall have the right to cast as many votes in the aggregate as shall equal the number of shares of such class held, multiplied by the number of directors to be elected by holders of shares of such class, and may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute them among two or more candidates as such holder shall elect.

Section 8. At any meeting of shareholders, a majority of the outstanding shares entitled to vote represented in person, by means of remote connection or by proxy shall constitute a quorum for the transaction of business, except as otherwise provided by statute or by the articles of consolidation or by these By-laws. The Board of Directors, the chairman of the meeting or the holders of a majority of the shares represented in person or by proxy and entitled to vote at any meeting of the shareholders shall have the right successively to adjourn the meeting to a specified date not longer than ninety days after any such adjournment, whether or not a quorum be present. The time and place to which any such adjournment is taken shall be publicly announced at the meeting, and no notice need be given of any such adjournment to shareholders not present at the meeting. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 9. The vote for directors and the vote on any other question that has been properly brought before the meeting in accordance with these By-laws shall be by ballot. Each ballot cast by a shareholder must state the name of the shareholder voting and the number of shares voted by him and if such ballot be cast by a proxy, it must also state the name of such proxy. All

elections and all other questions shall be decided by plurality vote, unless the question is one on which by express provision of the statutes or of the articles of consolidation or of these By-laws a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 10. The Chairman of the Board, or in his or her absence the Chief Executive Officer, the President or any Vice President of the Company, shall convene all meetings of the shareholders and the Chairman of the Board shall act as chairman thereof. The Board of Directors may appoint any shareholder to act as chairman of any meeting of the shareholders in the absence of the Chairman of the Board, and in the case of the failure of the Board so to appoint a chairman, the shareholders present at the meeting shall elect a chairman who shall be either a shareholder or a proxy of a shareholder.

The Secretary of the Company shall act as secretary of all meetings of shareholders. In the absence of the Secretary at any meeting of shareholders, the President or acting chairman may appoint any person to act as secretary of the meeting.

Section 11. At any meeting of shareholders where a vote by ballot is taken for the election of directors or on any proposition, the person presiding at such meeting shall appoint not less than two persons, who are not directors, as inspectors to receive and canvass the votes given at such meeting and certify the result to him. Subject to any statutory requirements which may be applicable, all questions touching upon the qualification of voters, the validity of proxies, and the acceptance or rejection of votes shall be decided by the inspectors. In case of a tie vote by the inspectors on any question, the presiding officer shall decide the issue.

Section 12. Unless otherwise provided by statute or by the articles of consolidation, any action required to be taken by shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Section 13. No business may be transacted at an annual meeting of shareholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any shareholder of the Company (i) who is a shareholder of record on the date of the giving of the notice provided for in this Section 13 and on the record date for the determination of shareholders entitled to vote at such annual meeting and (ii) who complies with the notice procedure set forth in this Section 13.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a shareholder, such shareholder must have given timely notice thereof in proper written form to the Secretary of the Company.

To be timely, a shareholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Company not less than sixty (60) days nor more than ninety (90) days prior to the date of the annual meeting of shareholders; provided, however,

that in the event that less than seventy (70) days' notice or prior public disclosure of the date of the meeting is given to shareholders, notice by the shareholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs.

To be in proper written form, a shareholder's notice to the Secretary must set forth as to each matter such shareholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such shareholder, (iii) the class or series and number of shares of capital stock of the Company that are owned beneficially or of record by such shareholder, (iv) a description of all arrangements or understandings between such shareholder and any other person or persons (including their names) in connection with the proposal of such business by such shareholder and any material interest of such shareholder in such business and (v) a representation that such shareholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

No business shall be conducted at the annual meeting of shareholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 13, provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 13 shall be deemed to preclude discussion by any shareholder of any such business. If the Chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

ARTICLE III

Board of Directors

Section 1. The property, business and affairs of the Company shall be managed and controlled by a Board of Directors which may exercise all such powers of the Company and do all such lawful acts and things as are not by statute or by the articles of consolidation or by these By-laws directed or required to be exercised or done by the shareholders.

Section 2. (a) The Board of Directors shall consist of not less than seven (7) nor more than seventeen (17) directors, the exact number to be set from time-to-time by a resolution adopted by the affirmative vote of the majority of the whole Board. Each director shall be elected at the annual meeting of the shareholders to serve until the next annual meeting of the shareholders and until his or her successor shall be elected and qualified.

(b) No person shall be eligible to be elected and to hold office as a director if such person is determined by a majority of the whole Board of Directors to have acted contrary to the Company's best interest, including, but not limited to , (i) violation of either state or federal law, (ii) maintenance of interests not properly authorized and in conflict with the interests of the Company, or (iii) breach of any agreement between such director and the Company relating to such director's services as a director, employee or agent of the Company.

(c) Any director may resign at any time by giving notice in writing or by electronic transmission to the Chairman of the Board or to the Secretary. The resignation of any director shall take effect upon the acceptance of such resignation by the Board of Directors.

Section 3. In case of the death, resignation or removal of one or more of the directors of the Company, vacancies existing on the Board of Directors for any reason and newly created directorships resulting from any increase in the authorized number of directors, a majority of the remaining directors, though less than a quorum, may fill the vacancy or vacancies until the successor or successors are elected at a meeting of the shareholders.

Section 4. The Board of Directors may hold its regular meetings either within or without the State of Missouri at such place as shall be specified in the notice of such meeting. The Chairman of the Board, or in his or her absence another director appointed by a majority of the members of the Board of Directors, shall convene all meetings of the Board of Directors and shall act as chairman thereof.

Section 5. Regular meetings of the Board of Directors shall be held as the Board of Directors shall from time to time determine. The Secretary or an Assistant Secretary shall give at least three (3) business days' notice of the time and place of each such meeting to each director in the manner provided in Section 9 of this Article III. The notice need not specify the business to be transacted.

Section 6. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, the Chief Executive Officer, the President of the Company or three members of the Board and shall be held at such place as shall be specified in the notice of such meeting. Notice of such special meeting stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting, or personally or by telephone, electronic transmission or similar means of communication on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 7. A majority of the full Board of Directors as prescribed in these By-laws shall constitute a quorum for the transaction of business. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the directors, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Members of the Board of Directors or of any committee designated by the Board of Directors may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 8. The Board of Directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation for directors. Compensation for nonemployee directors may include both a stated annual retainer and a fixed fee for attendance at each regular or special meeting of the Board. Nonemployee members of special or standing committees of the Board may

be allowed a fixed fee for attending committee meetings. Any director may serve the Company in any other capacity and receive compensation therefor. Each director may be reimbursed for his or her expenses, if any, in attending regular and special meetings of the Board and committee meetings.

Section 9. Whenever under the provisions of the statutes or of the articles of consolidation or of these By-laws, notice is required to be given to any director, it shall not be construed to require personal notice, but such notice may be given by telephone, electronic transmission or similar means of communication addressed to such director at such address as appears on the books of the Company, or by mail by depositing the same in a post office or letter box in a postpaid, sealed wrapper addressed to such director at such address as appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be thus telephoned, electronically transmitted or mailed.

Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 10. The Board of Directors may by resolution provide for an Executive Committee of said Board, which shall serve at the pleasure of the Board of Directors and, during the intervals between the meetings of said Board, shall possess and may exercise any or all of the powers of the Board of Directors in the management of the business and affairs of the Company, except with respect to any matters which, by resolution of the Board of Directors, may from time to time be reserved for action by said Board.

Section 11. The Executive Committee, if established by the Board, shall consist of the Chairman of the Board and two or more additional directors, who shall be elected by the Board of Directors to serve at the pleasure of said Board until the first meeting of the Board of Directors following the next annual meeting of shareholders and until their successors shall have been elected. Vacancies in the Committee shall be filled by the Board of Directors.

Section 12. Meetings of the Executive Committee shall be held whenever called by the Chairman or by a majority of the members of the committee, and shall be held at such time and place as shall be specified in the notice of such meeting. The Secretary or an Assistant Secretary shall give at least one day's notice of the time, place and purpose of each such meeting to each committee member in the manner provided in Section 9 of this Article III, provided, that if the meeting is to be held outside of Kansas City, Missouri, at least three days' notice thereof shall be given.

Section 13. At all meetings of the Executive Committee, a majority of the committee members shall constitute a quorum and the unanimous act of all the members of the committee present at a meeting where a quorum is present shall be the act of the Executive Committee. All action by the Executive Committee shall be reported to the Board of Directors at its meeting next succeeding such action.

Section 14. In addition to the Executive Committee provided for by these By-laws, the Board of Directors, by resolution adopted by a majority of the whole Board of Directors, may

designate one or more committees, each consisting of two or more directors. Each committee shall have and may exercise so far as may be permitted by law and to the extent provided in such resolution or resolutions or in these By-laws, the responsibilities of the business and affairs of the Company. The Board of Directors may, at its discretion, appoint qualified directors as alternate members of a committee to serve in the temporary absence or disability of any member of a committee. Except where the context requires otherwise, references in these By-laws to the Board of Directors shall be deemed to include the Executive Committee or a committee of the Board of Directors duly authorized and empowered to act in the premises.

Section 15. Each committee shall record and keep a record of all its acts and proceedings and report the same from time to time to the Board of Directors.

Section 16. Regular meetings of any committee, of which no notice shall be necessary, shall be held at such times and in such places as shall be fixed by majority of the committee. Special meetings of a committee shall be held at the request of any member of the committee. Notice of each special meeting of a committee shall be given not later than one day prior to the date on which the special meeting is to be held. Notice of any special meeting need not be given to any member of a committee, if waived by him in writing or by electronic transmission before or after the meeting; and any meeting of a committee shall be a legal meeting without notice thereof having been given, if all the members of the committee shall be present.

Section 17. A majority of any committee shall constitute a quorum for the transaction of business, and the act of a majority of those present, by telephone conference call (or similar communications equipment whereby all persons participating in the meeting can hear each other), at any meeting at which a quorum is present shall be the act of the committee. Members of any committee shall act only as a committee and the individual members shall have no power as such.

Section 18. The members or alternates of any committee shall serve at the pleasure of the Board of Directors.

Section 19. If all the directors severally or collectively shall consent in writing or by electronic transmission to any action which is required to be or may be taken by the directors, such consents shall have the same force and effect as a unanimous vote of the directors at a meeting duly held. The Secretary shall file such consents with the minutes of the meetings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE IV

Officers

Section 1. The officers of the Company shall include a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers, all of whom shall be appointed by the Board of Directors. Any one person may hold two or more offices except that the offices of President and Secretary may not be held by the same person.

Section 2. The officers of the Company shall be appointed by the Board of Directors.

Section 3. The Board of Directors may from time to time appoint such other officers as it shall deem necessary or expedient, who shall hold their offices for such terms and shall exercise such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 4. Each officer of the Company shall hold such person's office at the pleasure of the Board of Directors or for such other period as the Board may specify at the time of such person's election or appointment, or until such person's death, resignation or removal by the Board, whichever occurs first. Any officer appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole board. If the office of any officer becomes vacant for any reason, or if any new office shall be created, the vacancy may be filled by the Board of Directors.

ARTICLE V

Powers and Duties of Officers

Section 1. The Board of Directors shall designate the Chairman and the Chief Executive Officer of the Company, who may be the Chairman of the Board and/or the President. The Chief Executive Officer shall have general and active management of and exercise general supervision of the business and affairs of the Company, subject, however, to the right of the Board of Directors, or the Executive Committee acting in its stead, to delegate any specific power to any other officer or officers of the Company, and the Chief Executive Officer shall see that all orders and resolutions of the Board of Directors and the Executive Committee are carried into effect. During such times when neither the Board of Directors nor the Executive Committee is in session, the Chief Executive Officer of the Company shall have and exercise full corporate authority and power to manage the business and affairs of the Company (except for matters required by law, the By-laws or the articles of consolidation to be exercised by the shareholders or Board itself or as may otherwise be specified by orders or resolutions of the Board) and the Chief Executive Officer shall take such actions, including executing contracts or other documents, as he or she deems necessary or appropriate in the ordinary course of the business and affairs of the Company. The Vice Presidents and other authorized persons are authorized to take actions which are (i) routinely required in the conduct of the Company's business or affairs, including execution of contracts and other documents incidental thereto, which are within their respective areas of assigned responsibility, and (ii) within the ordinary course of the Company's business or affairs as may be delegated to them respectively by the Chief Executive Officer.

Section 2. The President, if not also designated Chief Executive Officer, shall perform such duties and exercise such powers as shall be assigned to him from time to time by the Board of Directors or the Chief Executive Officer.

Section 3. The Vice Presidents shall perform such duties and exercise such powers as shall be assigned to them from time to time by the Board of Directors or the Chief Executive Officer.

Section 4. The Secretary shall attend all meetings of the shareholders, the Board of Directors and the Executive Committee, and shall keep the minutes of such meetings. He or she

shall give, or cause to be given, notice of all meetings of the shareholders, the Board of Directors and the Executive Committee, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. He or she shall be the custodian of the seal of the Company and shall affix the same to any instrument requiring it and, when so affixed, shall attest it by his or her signature. He or she shall, in general, perform all duties incident to the office of secretary.

Section 5. The Assistant Secretaries shall perform such of the duties and exercise such of the powers of the Secretary as shall be assigned to them from time to time by the Board of Directors or the Chief Executive Officer or the Secretary, and shall perform such other duties as the Board of Directors or the Chief Executive Officer shall from time to time prescribe.

Section 6. The Treasurer shall have the custody of all moneys and securities of the Company. He or she is authorized to collect and receive all moneys due the Company and to receipt therefor, and to endorse in the name of the Company and on its behalf when necessary or proper all checks, drafts, vouchers or other instruments for the payment of money to the Company and to deposit the same to the credit of the Company in such depositories as may be designated by the Board of Directors. He or she is authorized to pay interest on obligations and dividends on stocks of the Company when due and payable. He or she shall, when necessary or proper, disburse the funds of the Company, taking proper vouchers for such disbursements. He or she shall render to the Board of Directors and the Chief Executive Officer, whenever they may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Company. He or she shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. He or she shall, in general, perform all duties incident to the office of treasurer.

Section 7. The Assistant Treasurers shall perform such of the duties and exercise such of the powers of the Treasurer as shall be assigned to them from time to time by the Board of Directors or the Chief Executive Officer or the Treasurer, and shall perform such other duties as the Board of Directors or the Chief Executive Officer shall from time to time prescribe.

Section 8. The Board of Directors may, by resolution, require any officer to give the Company a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of his or her office and for the restoration to the Company, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control and belonging to the Company.

Section 9. In the case of absence or disability or refusal to act of any officer of the Company, the Chief Executive Officer may delegate the powers and duties of such officer to any other officer or other person unless otherwise ordered by the Board of Directors.

Section 10. The President, the Chief Executive Officer, the Vice Presidents and any other person duly authorized by resolution of the Board of Directors shall severally have power to execute on behalf of the Company any deed, bond, indenture, certificate, note, contract or other instrument authorized or approved by the Board of Directors.

Section 11. Unless otherwise ordered by the Board of Directors, the President, the Chief Executive Officer or any Vice President of the Company (a) shall have full power and authority to attend and to act and vote, in the name and on behalf of this Company, at any meeting of shareholders of any corporation in which this Company may hold stock, and at any such meeting shall possess and may exercise any and all of the rights and powers incident to the ownership of such stock, and (b) shall have full power and authority to execute, in the name and on behalf of this Company, proxies authorizing any suitable person or persons to act and to vote at any meeting of shareholders of any corporation in which this Company may hold stock, and at any such meeting the person or persons so designated shall possess and may exercise any and all of the rights and powers incident to the ownership of such stock.

ARTICLE VI

Certificates of Stock

Section 1. The Board of Directors shall provide for the issue, transfer and registration of the certificates representing the shares of capital stock of the Company in such form as may be prescribed by the Board of Directors in conformity with law, and shall appoint the necessary officers, transfer agents and registrars for that purpose; provided that some or all of the shares of capital stock may be uncertificated shares as determined by the Board of Directors.

Section 2. Until otherwise ordered by the Board of Directors, stock certificates shall be signed by the President, the Chief Executive Officer or a Vice President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, and sealed with the seal of the Company. Such seal may be facsimile, engraved or printed. In case any officer or officers who shall have signed, or whose facsimile signature or signatures shall have been used on, any stock certificate or certificates shall cease to be such officer or officers of the Company, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Company, such certificate or certificates may nevertheless be issued by the Company with the same effect as if the person or persons who signed such certificate or certificates or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or officers of the Company.

Section 3. Transfers of stock shall be made on the books of the Company only by the person in whose name such stock is registered or by his or her attorney lawfully constituted in writing, and unless otherwise authorized by the Board of Directors only on surrender and cancellation of the certificate transferred. No stock certificate shall be issued to a transferee until the transfer has been made on the books of the Company.

Section 4. The Company shall be entitled to treat the person in whose name any share of stock is registered as the owner thereof, for all purposes, and shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have notice thereof, except as otherwise expressly provided by the laws of Missouri.

Section 5. In case of the loss or destruction of any certificate for shares of the Company, a new certificate may be issued in lieu thereof under such regulations and conditions as the Board of Directors may from time to time prescribe.

ARTICLE VII

Closing of Transfer Books

The Board of Directors shall have power to close the stock transfer books of the Company for a period not exceeding seventy days preceding the date of any meeting of shareholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of shares shall go into effect; provided, however, that in lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix in advance a date, not exceeding seventy days preceding the date of any meeting of shareholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at, any such meeting, and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of shares, and in such case such shareholders and only such shareholders as shall be shareholders of record on the date of closing the transfer books or on the record date so fixed shall be entitled to notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the Company after such date of closing of the transfer books or such record date fixed as aforesaid.

ARTICLE VIII

Inspection of Books

Section 1. The Company shall keep correct and complete books and records of account, including the amount of its assets and liabilities, minutes of its proceedings of its shareholders and Board of Directors (and any committee having the authority of the Board) and the names and business or residence addresses of its officers. The Company shall keep at its registered office or principal place of business in the State of Missouri, or at the office of its transfer agent in the State of Missouri, if any, books and records in which shall be recorded the number of shares subscribed, the names of the owners of the shares, the numbers owned by them respectively, the amount of shares paid, and by whom, and the transfer of such shares with the date of transfer.

Section 2. A shareholder may, upon written demand, inspect the records of the Company, pursuant to any statutory or other legal right, during the usual and customary hours of business and in such manner as will not unduly interfere with the regular conduct of the business of the Company. A shareholder may delegate such shareholder's right of inspection to a certified or public accountant on the condition, to be enforced at the option of the Company, that the shareholder and accountant agree with the Company to furnish to the Company promptly a true and correct copy of each report with respect to such inspection made by such accountant. No shareholder shall use, permit to be used or acquiesce in the use by others of any information so obtained to the detriment competitively of the Company, nor shall he or she furnish or permit to be furnished any information so obtained to any competitor or prospective competitor of the Company. The Company as a condition precedent to any shareholder's inspection of the records of the Company may require the shareholder to indemnify the Company, in such manner and for

such amount as may be determined by the Board of Directors, against any loss or damage which may be suffered by it arising out of or resulting from any unauthorized disclosure made or permitted to be made by such shareholder of information obtained in the course of such inspection.

Section 3. The Company shall not be liable for expenses incurred in connection with any inspection of its books.

ARTICLE IX

Corporate Seal

The corporate seal of the Company shall have inscribed thereon the name of the Company and the words "Corporate Seal - Missouri."

ARTICLE X

Fiscal Year

Section 1. The fiscal year of the Company shall be the calendar year.

Section 2. As soon as practicable after the close of each fiscal year, the Board of Directors shall cause a report of the business and affairs of the Company to be made to the shareholders.

ARTICLE XI

Waiver of Notice

Whenever by statute or by the articles of consolidation or by these By-laws any notice whatever is required to be given, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII

Amendments

The Board of Directors may make, alter, amend or repeal By-laws of the Company by a majority vote of the whole Board of Directors at any regular meeting of the Board or at any special meeting of the Board if notice thereof has been given in the notice of such special meeting. Nothing in this Article shall be construed to limit the power of the shareholders to make, alter, amend or repeal By-laws of the Company at any annual or special meeting of shareholders by a majority vote of the shareholders present and entitled to vote at such meeting, provided a quorum is present.

AGREEMENT

This Agreement (this "Agreement"), dated as of February 28, 2020, is by and among Elliott Investment Management L.P., a Delaware limited partnership, Elliott Associates, L.P., a Delaware limited partnership, and Elliott International, L.P., a Cayman Islands limited partnership (each, an "Elliott Party," and, collectively, the "Elliott Parties"), and Evergy, Inc., a Missouri corporation (the "Company"). In consideration of and reliance upon the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Elliott Parties and the Company agree as follows:

1. New Directors.

(a) *New Director Appointments.* Simultaneously with the execution of this Agreement, the Board of Directors of the Company (the "Board") shall take such actions as are necessary to (i) increase the size of the Board by two (2) directors to a total of seventeen (17) directors and (ii) appoint each of Paul M. Keglevic and Kirkland B. Andrews (each, a "New Director" and, together, the "New Directors") as members of the Board, in each case, in accordance with the Company's Amended and Restated Articles of Incorporation (the "Articles"), the Company's Amended and Restated By-laws (the "Bylaws") and the General and Business Corporation Law of Missouri, and effective on March 3, 2020.

(b) *Nomination of New Directors at the 2020 Annual Meeting.* The Company agrees that, provided that a New Director continues to be a Qualified Candidate (as defined below) and is able and willing to serve on the Board:

(i) at the Company's 2020 Annual Meeting of Shareholders (the "2020 Annual Meeting"), the Board will nominate such New Director as a director of the Company, with a term expiring at the Company's 2021 Annual Meeting of Shareholders (the "2021 Annual Meeting");

(ii) the Board will recommend that the shareholders of the Company vote to elect such New Director as a director of the Company at the 2020 Annual Meeting;

(iii) the Company will use its reasonable best efforts (which will include the solicitation of proxies) to obtain the election of such New Director at the 2020 Annual Meeting (for the avoidance of doubt, the Company will only be required to use substantially the same level of efforts as is used for the other director nominees of the Company with respect to the 2020 Annual Meeting); and

(iv) the Company will cause all Company Common Stock (as defined below) represented by proxies granted to it (or any of its Representatives) to be voted in favor of the election of such New Director as a director of the Company at the 2020 Annual Meeting to the extent permitted pursuant to such proxies.

(c) *Board Committees.*

(i) *Strategic Review & Operations Committee.* Effective upon the appointment of the New Directors to the Board, the Board will take such action necessary to form a Strategic Review & Operations Committee of the Board (the "Strategic Review & Operations Committee") with a charter in a form mutually agreed by the Company and the Elliott Parties as of the date hereof (the "Committee Charter"). Any amendment to the Committee Charter prior to the Committee End Date (as defined below) will require the consent of the Elliott Parties. The Board will take such action necessary to (A) appoint as

the only members of the Strategic Review & Operations Committee each of the New Directors, Art Stall and Terry Bassham, (B) appoint Paul M. Keglevic and Art Stall as Co-Chairs of the Strategic Review & Operations Committee and (C) until the Committee End Date, maintain the size of the Strategic Review & Operations Committee at four (4) members. The Strategic Review & Operations Committee will explore ways to enhance long-term shareholder value (accounting for applicable legal and regulatory requirements and any other relevant considerations), including through (1) a potential strategic combination (a “Merger Transaction”) or (2) an enhanced long-term standalone operating plan and strategy (a “Modified Standalone Plan”). The Strategic Review & Operations Committee will remain in place at least until the earlier of (x) such time as the Company enters into a definitive agreement providing for a Merger Transaction (a “Merger Agreement”), (y) the Analyst Day (as defined below), if any, and (z) the Expiration Date (the “Committee End Date”). The Strategic Review & Operations Committee will be provided with all necessary resources and authority for it to discharge its purpose, including authority to retain its own independent advisors (including strategy and cost consultants, financial advisors, regulatory advisors, transaction and tax counsel, and other experts). On or prior to May 30, 2020, the Strategic Review & Operations Committee will present a formal recommendation (determined by majority vote) to the Board on whether the Company should pursue a Merger Transaction or a Modified Standalone Plan; provided, however, that if both of the New Directors vote in favor of a formal recommendation that is not approved by a majority vote of the Strategic Review & Operations Committee, (x) the Strategic Review & Operations Committee will present to the Board both the formal recommendation of the New Directors and that of the other members of the Strategic Review & Operations Committee, (y) both formal recommendations will simultaneously be publicly disclosed by the Company promptly following delivery of such recommendations to the Board (in no event more than five (5) business days later) and (z) the New Directors will be permitted to discuss their formal recommendation and the reasons for their decision publicly, which disclosure the Company agrees will not be deemed to violate any confidentiality obligation to the Company or any other Company Policy applicable to the New Directors so long as such disclosure does not cause the Company to breach a confidentiality obligation to a Third Party (any of such recommendations, the “Committee Recommendation(s)”). The Board will evaluate and vote on the Committee Recommendation(s) promptly after it is (they are) presented, and publicly announce its decision within two (2) weeks after such Committee Recommendation(s) is (are) presented (no later than June 17, 2020). In the event the Board does not approve a Committee Recommendation to pursue a Merger Transaction, the Board will as promptly as practicable after the public announcement of such decision (in no event more than two (2) business days later) publicly announce in reasonable detail (x) the Committee Recommendation and (y) the material terms of any bona fide indication of interest for a Merger Transaction received by the Board, which public disclosure will be in form and substance acceptable to the members of the Strategic Review & Operations Committee who voted for such Committee Recommendation (in consultation with independent advisors to the Strategic Review & Operations Committee). Additionally, (x) if a bona fide indication of interest for a Merger Transaction is received by the Board prior to the Committee End Date, the Strategic Review & Operations Committee will evaluate such potential transaction in parallel with the full Board on a priority basis (it being understood that the Board will retain final decision-making authority in connection with entering into a Merger Agreement) and (y) if the Company pursues a Modified Standalone Plan following the Board’s vote on the Committee Recommendation(s), (A) the Strategic Review & Operations Committee will assist the full Board and other relevant committees in assessing the optimal management team to execute the Modified Standalone Plan,

including potential supplemental and replacement senior management candidates with appropriate utility operating credentials, (B) the Modified Standalone Plan will be publicly presented to the investor community no later than September 4, 2020 (the date of such presentation, the “Analyst Day”) and (C) the implementation and execution of the Modified Standalone Plan, including any public disclosure to be made in connection therewith, will be monitored on an ongoing basis (including, if appropriate, adherence to certain metrics and targets) by the Finance Committee and the Nuclear, Operations and Environmental Oversight Committee of the Board for no less than two years after the Analyst Day. Notwithstanding anything to the contrary contained in this Section 1(c), the Company may delay any public disclosure required pursuant to this Section 1(c) in increments of up to two weeks (but for no longer than an aggregate of eight weeks) if each of the Strategic Review & Operations Committee and the Board determines (in each case, by majority vote including both of the New Directors) that any such delay would be in the best interests of the Company.

(ii) If any member of the Strategic Review & Operations Committee is unable or unwilling to serve as a member, resigns as a member, is removed as a member or ceases to be a member for any other reason prior to the Committee End Date (an “Exiting Member”) and (A) such Exiting Member is not a New Director, the Company shall be entitled to select any director with utility operating experience serving on the Board at the time of such selection to serve on the Strategic Review & Operations Committee as a replacement for such Exiting Member (it being agreed that if the Exiting Member qualified as independent of the Company under all applicable listing standards, applicable rules of the SEC (as defined below) and publicly disclosed standards used by the Board in determining the independence of the Company’s directors, the replacement director selected by the Company must also be so qualified) or (B) such Exiting Member is a New Director, the Elliott Parties shall be entitled to select a director serving on the Board at the time of such selection (including a Replacement New Director) to serve on the Strategic Review & Operations Committee as a replacement for such Exiting Member; provided that, if the Elliott Parties (together with their Affiliates) do not have beneficial ownership of, or aggregate economic exposure to, at least 2.0% of the shares of Company Common Stock outstanding at such time, then the Company shall be entitled to select such replacement. If an Exiting Member is a New Director and the Elliott Parties are entitled to select a director serving on the Board at the time of such selection (including a Replacement New Director) to serve on the Strategic Review & Operations Committee as a replacement for such Exiting Member in accordance with this Section 1(c)(ii), for any period during which only one New Director is serving on the Strategic Review & Operations Committee and until a replacement for such Exiting Member is seated on the Strategic Review & Operations Committee in accordance with this Section 1(c)(ii), (A) such remaining New Director will serve as Co-Chair of the Strategic Review & Operations Committee and (B) any action of such remaining New Director (including voting) will be deemed to be an action on behalf of two members of the Strategic Review & Operations Committee.

(iii) Simultaneously with entering into this Agreement, Elliott Investment Management L.P. has entered into a confidentiality agreement with the Company (the “Confidentiality Agreement”) pursuant to which it may elect to receive certain confidential information regarding review, actions, conclusions and recommendations by the Strategic Review & Operations Committee related to its exploration of a potential Merger Transaction, subject to the terms and conditions set forth therein.

(iv) *Other Board Committees.* Effective upon their respective appointments to the Board, the Board will take such action necessary to appoint (i) Paul M. Keglevic to the Compensation and Leadership Development Committee and the Finance Committee of the Board and (ii) Kirkland B. Andrews to the Audit Committee and the Nuclear, Operations and Environmental Oversight Committee of the Board. Additionally, if the Company pursues a Modified Standalone Plan following the Board's vote on the Committee Recommendation(s), the Board will as promptly as practicable (in no event more than two (2) business days later) take such action necessary to appoint Paul M. Keglevic as Co-Chair of the Finance Committee of the Board.

(d) *Replacement New Directors.* If a New Director (or any Replacement New Director (as defined below)) is unable or unwilling to serve as a director, resigns as a director, is removed as a director or ceases to be a director for any other reason (including as the result of a failure to receive the requisite number of votes at the 2020 Annual Meeting) during the Cooperation Period, and at such time the Elliott Parties (together with their Affiliates) have beneficial ownership of, or aggregate economic exposure to, at least 2.0% of the shares of Company Common Stock outstanding at such time, as promptly as practicable, the Company and the Elliott Parties shall cooperate with each other to select a mutually acceptable Qualified Candidate to be appointed to the Board as a substitute director (a "Replacement New Director"), and the Board will take all action necessary to appoint such person to serve as a director of the Company for the remainder of the New Director's term. Effective upon the appointment of a Replacement New Director to the Board, such Replacement New Director will be considered a New Director for all purposes of this Agreement. Notwithstanding anything to the contrary herein, in the event that the Elliott Parties seek to exercise any rights under Section 1(c)(ii) or this Section 1(d) that are contingent or conditioned on a beneficial ownership or aggregate economic exposure threshold, the Elliott Parties shall certify in writing to the Company that their and their Affiliates' beneficial ownership of, or aggregate economic exposure to, Company Common Stock is in excess of such applicable threshold as of the proposed time of any such exercise.

(e) *Company Policies.* The parties to this Agreement acknowledge that each of the New Directors, upon appointment to the Board, will be governed by the same protections and obligations regarding confidentiality, conflicts of interest, related party transactions, fiduciary duties, codes of conduct, trading and disclosure policies, director resignation policies and other governance guidelines and policies of the Company as other directors of the Company (collectively, "Company Policies"), and shall have the same rights and benefits, including with respect to insurance, indemnification, compensation, fees and reimbursement of expenses, as are applicable to all non-employee directors of the Company.

(f) *Existing Directors; Board Size.* The Company agrees that from the conclusion of the 2020 Annual Meeting until the 2021 Annual Meeting, the size of the Board will be no greater than thirteen (13) directors, and from the conclusion of the 2021 Annual Meeting until the 2022 Annual Meeting, the size of the Board will be no greater than twelve (12) directors. The Company will consider any views privately communicated by the Elliott Parties to the Board (or any appropriate committee thereof) with respect to Board composition, including directors to retire and to remain with the Board following each of the 2020 Annual Meeting and the 2021 Annual Meeting.

(g) *New Director Agreements, Arrangements and Understandings.* Each of the Elliott Parties agrees that neither it nor any of its Affiliates (as defined below) will (i) pay any compensation to any New Director (including any Replacement New Director) for such person's service on the Board or any committee thereof or (ii) have any agreement, arrangement or understanding, written or oral, with any New Director (including any Replacement New Director) regarding such person's service on the Board or any committee thereof (including pursuant to which such person will be compensated for his or her service as a director on, or nominee for election to, the Board or any committee thereof).

(h) *New Director Information.* As a condition to any Replacement New Director's appointment to the Board and any New Director's nomination for election as a director at the 2020 Annual Meeting, such Replacement New Director or New Director, as the case may be, will provide any information the Company reasonably requests, including information required to be disclosed in a proxy statement or other filing under applicable law, stock exchange rules or listing standards and information in connection with assessing eligibility, independence and other criteria applicable to directors and committee members or satisfying compliance and legal obligations, and will consent to appropriate background checks, in each case, to the extent consistent with the information and background checks required by the Company in accordance with past practice with respect to other members of the Board.

(i) *Termination.* Notwithstanding anything in this Agreement to the contrary, the Company's obligations under this Section 1 shall terminate, and the Elliott Parties shall have no rights under this Section 1, as a nonexclusive remedy for any material breach of this Agreement by any of the Elliott Parties, upon five (5) business days' written notice by the Company to the Elliott Parties if such breach has not been cured within such notice period, provided that the Company is not in material breach of this Agreement at the time such notice is given or prior to the end of the notice period.

2. Cooperation.

(a) *Non-Disparagement.* Each of the Elliott Parties and the Company agrees that, during the Cooperation Period (as defined below), the Company and each Elliott Party will each refrain from making, and will cause their respective Affiliates and Representatives to refrain from making, any public ad hominem attack on or other public statement that disparages, defames, slanders, impugns or is reasonably likely to damage the reputation of (A) in the case of any such statements by any of the Elliott Parties or their Affiliates or Representatives: the Company and its Affiliates or any of its or their current or former Representatives, and (B) in the case of any such statements by the Company or its Affiliates or Representatives: the Elliott Parties and their Affiliates or any of their current or former Representatives, in each case including (x) in any statement, document or report filed with, furnished or otherwise provided to the SEC or any other governmental or regulatory agency, or in any discussions with governmental or regulatory officials or (y) in any press release, podcast, Internet or social media communication; provided, however, that the foregoing will not restrict the ability of any person to comply with any subpoena or other legal process or respond to a request for information from any governmental authority with jurisdiction over the party from whom information is sought or to enforce such person's rights under this Agreement.

(b) *Voting.* During the Cooperation Period, each Elliott Party will cause all of the outstanding shares of Company Common Stock that such Elliott Party or any of its controlled Affiliates has the right to vote as of the applicable record date, to be present in person or by proxy for quorum purposes and to be voted at any meeting of shareholders of the Company, or at any adjournments or postponements thereof, and to consent in connection with any action by written consent in lieu of a meeting: (i) in favor of each director (including each New Director) nominated and recommended by the Board for election at the 2020 Annual Meeting; (ii) against any proposals or resolutions to remove any member of the Board; and (iii) otherwise in accordance with the recommendation of the Board on all other proposals or business that may be the subject of shareholder action at such meetings or written consents; provided, however, that the Elliott Parties and their Affiliates shall be permitted to vote in their sole discretion on any proposal related to any Extraordinary Transaction (as defined below).

(c) *Standstill.* From the date of this Agreement until the Expiration Date (as defined below) or until such earlier time as the restrictions in this Section 2(c) terminate as provided herein (such period, the "Cooperation Period"), the Elliott Parties will not, and will cause their controlling and controlled Affiliates and their respective Representatives acting on their behalf (together with the Elliott Parties, the

“Restricted Persons”), not to, directly or indirectly, without prior written invitation or authorization by the Company or the Board:

(i) engage in, directly or indirectly, any “solicitation” (as such term is defined under the Exchange Act) of proxies or consents with respect to the election or removal of directors of the Company or any other matter or proposal relating to the Company or become a “participant” (as such term is defined in Instruction 3 to Item 4 of Schedule 14A promulgated under the Exchange Act) in any such solicitation of proxies or consents;

(ii) knowingly encourage or advise any Third Party or knowingly assist any Third Party in encouraging or advising any other person (A) with respect to the giving or withholding of any proxy or consent relating to, or other authority to vote, any Voting Securities, or (B) in conducting any type of referendum relating to the Company (other than such encouragement or advice that is consistent with the Board’s recommendation in connection with such matter);

(iii) form, join or act in concert with any “group” as defined pursuant to Section 13(d) of the Exchange Act with respect to any Voting Securities, other than solely with Affiliates of the Elliott Parties with respect to Voting Securities now or hereafter owned by them;

(iv) acquire, or offer or agree to acquire, by purchase or otherwise, or direct any Third Party in the acquisition of, any Voting Securities, or engage in any swap or hedging transactions or other derivative agreements of any nature with respect to Voting Securities, in each case, if such acquisition, offer, agreement or transaction would result in the Elliott Parties (together with their Affiliates) having beneficial ownership of, or aggregate economic exposure to, more than 9.9% of the shares of Company Common Stock outstanding at such time;

(v) make, or in any way participate in, any offer or proposal with respect to any tender offer, exchange offer, merger, consolidation, acquisition, business combination, recapitalization, restructuring, liquidation, dissolution or similar extraordinary transaction involving the Company or any of its subsidiaries or any of its or their respective securities or assets (for avoidance of doubt, including any Merger Transaction) (each, an “Extraordinary Transaction”), either publicly or in a manner that would reasonably require public disclosure by the Company or any of the Restricted Persons (it being understood that the foregoing will not restrict the Restricted Persons from tendering shares, receiving payment for shares or otherwise participating in any Extraordinary Transaction initiated by a Third Party on the same basis as other shareholders of the Company);

(vi) make any public proposal with respect to any material change in the capitalization, stock repurchase programs, dividend policy, management, business, strategy or corporate structure of the Company or any of its subsidiaries, except for such statements that are consistent with the Press Release (as defined below) or the provisions of this Agreement;

(vii) enter into a voting trust, arrangement or agreement with respect to any Voting Securities, or subject any Voting Securities to any voting trust, arrangement or agreement, in each case other than (A) this Agreement, (B) solely with Affiliates of the Elliott Parties or (C) granting proxies in solicitations approved by the Board;

(viii) (A) seek, alone or in concert with others, election or appointment to, or representation on, the Board or nominate or propose the nomination of, or recommend the nomination of, any candidate to the Board (including, for the avoidance of doubt, by making a change to the size of the Board or proposing to fill any vacancies on the Board), except as set forth in this Agreement, (B) make or be the proponent of any shareholder proposal to the Company, (C) seek, alone or in concert with others, the removal of any member of the Board, (D) call or seek to call, alone or in concert with others, a special meeting of shareholders of the Company or (E) conduct a referendum of shareholders of the Company; provided that nothing in this Agreement will prevent the Elliott Parties or their Affiliates from taking actions in furtherance of identifying any Replacement New Director;

(ix) institute, solicit or join, as a party, any litigation, arbitration or other proceeding against or involving the Company or any of its subsidiaries or any of its or their respective current or former directors or officers (including derivative actions); provided, however, that for the avoidance of doubt, the foregoing will not prevent any Restricted Person from (A) bringing litigation to enforce any provision of this Agreement, (B) making counterclaims with respect to any proceeding initiated by, or on behalf of, the Company or its Affiliates against a Restricted Person, (C) bringing bona fide commercial disputes that do not relate to the subject matter of this Agreement or (D) exercising statutory appraisal rights;

(x) make any request for books and records of the Company or any of its subsidiaries under Section 351.215 of the General and Business Corporation Law of Missouri, or other statutory or regulatory provisions providing for shareholder access to books and records;

(xi) enter into any negotiations, agreements or understandings with any Third Party to take any action that any of the Restricted Persons are prohibited from taking pursuant to this Section 2(c);

(xii) engage in any short sale or any purchase, sale or grant of any option, warrant, convertible security, stock appreciation right or other similar right (including any put or call option or “swap” transaction) with respect to any security (other than any index, exchange traded fund, benchmark or other basket of securities) that includes, relates to or derives any significant part of its value from a decline in the market price or value of the securities of the Company and would, in the aggregate or individually, result in the Elliott Parties (together with their Affiliates) ceasing to have a net long position (as defined in Rule 14e-4 under the Exchange Act) in the Company; or

(xiii) make any request or submit any proposal to amend or waive the terms of this Agreement, in each case publicly or which would reasonably be expected to result in a public announcement or disclosure of such request or proposal by the Company or any of the Restricted Persons;

provided that the restrictions in this Section 2(c) will terminate automatically upon the earliest of: (i) as a nonexclusive remedy for any material breach of this Agreement by the Company (including its failure to appoint a New Director or a Replacement New Director to the Board or any committee in accordance with Section 1), upon five (5) business days’ written notice by any of the Elliott Parties to the Company if such breach has not been cured within such notice period, provided that none of the Elliott Parties are in material breach of this Agreement at the time such notice is given or prior to the end of the notice period; (ii) the

Company's entry into (x) a definitive agreement providing for an Extraordinary Transaction that would result in the acquisition by any person of more than 50% of the Voting Securities or assets having an aggregate value exceeding 50% of the aggregate enterprise value of the Company during the Cooperation Period, (y) one or more definitive agreements providing for the acquisition by the Company of one or more businesses or assets (other than rate base assets in the Company's existing regulatory jurisdictions, including utility-scale energy projects) having an aggregate value exceeding 20% of the aggregate enterprise value of the Company during the Cooperation Period or (z) one or more definitive agreements providing for a transaction or series of transactions which would in the aggregate result in the Company issuing to one or more Third Parties at least 5.0% of the Company's equity or equity equivalent securities (including in a PIPE, convertible note, convertible preferred security or similar structure) during the Cooperation Period; (iii) the commencement of any tender or exchange offer (by any person other than the Elliott Parties or their Affiliates) which, if consummated, would constitute an Extraordinary Transaction that would result in the acquisition by any person of more than 50% of the Voting Securities, where the Company files with the SEC a Schedule 14D-9 (or any amendment thereto) that does not recommend that its shareholders reject such tender or exchange offer (provided that nothing herein will prevent the Company from issuing a "stop, look and listen" communication pursuant to Rule 14d-9(f) promulgated under the Exchange Act in response to the commencement of any tender or exchange offer); (iv) such time as the Company files with the SEC or delivers to its shareholders any preliminary proxy statement, definitive proxy statement or proxy card in connection with the 2020 Annual Meeting that does not nominate and/or recommend the election of the New Directors, in each case to the extent required by this Agreement, or otherwise is inconsistent with the terms of this Agreement; (v) such time as the Company, directly or indirectly through its Affiliates or its employees or through its counsel, regulatory advisors or lobbyists acting on behalf of the Company, makes any public statement (or any private statement to a governmental or regulatory official having jurisdiction over the Company) with respect to the Strategic Review & Operations Committee, including its mandate or responsibilities as described in the Committee Charter or the Press Release, that is inconsistent with the Committee Charter or the Press Release and could reasonably be expected to negatively impact in a material respect the Company's ability to pursue a Merger Transaction or a Modified Standalone Plan; (vi) such time as any New Director resigns from, or otherwise ceases to be a member of, the Strategic Review & Operations Committee following such New Director's determination that the Company and/or the Board has failed to abide by the Committee Charter in any material respect, provided that such New Director communicated such determination to the Board in writing at least three (3) business days in advance of such resignation and the matter underlying such determination remained uncured at the time of such resignation; and (vii) the adoption by the Board of any amendment to the Articles or the Bylaws, each as in effect on the date hereof, that would reasonably be expected to impair the ability of a shareholder to submit nominations of individuals for election to the Board or shareholder proposals in connection with any shareholder meeting to be held after the 2020 Annual Meeting. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement (including but not limited to the restrictions in this Section 2(c)) will prohibit or restrict any of the Restricted Persons from (A) making any public or private statement or announcement with respect to any Extraordinary Transaction that is publicly announced by the Company or a Third Party, (B) making any factual statement to comply with any subpoena or other legal process or respond to a request for information from any governmental authority with jurisdiction over such person from whom information is sought (so long as such process or request did not arise as a result of discretionary acts by any Restricted Person), (C) granting any liens or encumbrances on any claims or interests in favor of a bank or broker-dealer or prime broker holding such claims or interests in custody or prime brokerage in the ordinary course of business, which lien or encumbrance is released upon the transfer of such claims or interests in accordance with the terms of the custody or prime brokerage agreement(s), as applicable, or (D) negotiating, evaluating and/or trading, directly or indirectly, in any index, exchange traded fund, benchmark or other basket of securities which may contain or otherwise reflect the performance of, any securities of the Company.

(d) *Private Communications.* Notwithstanding anything to the contrary contained in this Agreement, during the Cooperation Period the Elliott Parties and their Affiliates may initiate and hold private communications regarding any matter with the Company's directors, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, General Counsel, investor relations personnel or advisors, so long as such private communications would not reasonably be expected to require any public disclosure thereof by the Company or the Restricted Persons. The Elliott Parties acknowledge and agree that the directors of the Company may engage in discussions with the Elliott Parties and their Affiliates only subject to, and in accordance with, their respective fiduciary duties and other obligations to the Company and the Company Policies.

(e) *Public Communications.* Notwithstanding anything to the contrary contained in this Section 2, the restrictions set forth in Section 2(c)(vi) shall cease to apply in the event that either (i) both of the New Directors vote in favor of a recommendation that is not approved by a majority vote of the Strategic Review & Operations Committee or (ii) the Board does not approve the Committee Recommendation.

3. Public Announcement. Not later than 9:30 a.m. Eastern Time on March 2, 2020, the Company shall issue a press release in the form attached to this Agreement as Exhibit A (the "Press Release") and file a Current Report on Form 8-K disclosing the Company's entry into this Agreement, which will be in form and substance reasonably acceptable to the Company and the Elliott Parties. None of the Company, the Elliott Parties or any of their respective Affiliates shall make any public statement regarding the subject matter of this Agreement or the matters set forth in the Press Release prior to the issuance of the Press Release.

4. Representations and Warranties of the Company. The Company represents and warrants to the Elliott Parties as follows: (a) the Company has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and to consummate the transactions contemplated by this Agreement; (b) this Agreement has been duly and validly authorized, executed and delivered by the Company, constitutes a valid and binding obligation and agreement of the Company and is enforceable against the Company in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights of creditors and subject to general equity principles; and (c) the execution, delivery and performance of this Agreement by the Company does not and will not (i) violate or conflict with any law, rule, regulation, order, judgment or decree applicable to the Company, or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could constitute a breach, violation or default) under or pursuant to, or result in the loss of a material benefit under, or give any right of termination, amendment, acceleration or cancellation of, any organizational document, agreement, contract, commitment, understanding or arrangement to which the Company is a party or by which it is bound.

5. Representations and Warranties of the Elliott Parties. Each Elliott Party represents and warrants to the Company as follows: (a) such Elliott Party has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and to consummate the transactions contemplated by this Agreement; (b) this Agreement has been duly and validly authorized, executed and delivered by such Elliott Party, constitutes a valid and binding obligation and agreement of such Elliott Party and is enforceable against such Elliott Party in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights of creditors and subject to general equity principles; (c) the execution, delivery and performance of this Agreement by such Elliott Party does not and will not (i) violate or conflict with any law, rule, regulation, order, judgment or decree applicable to such Elliott Party, or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could

constitute a breach, violation or default) under or pursuant to, or result in the loss of a material benefit under, or give any right of termination, amendment, acceleration or cancellation of, any organizational document, agreement, contract, commitment, understanding or arrangement to which such Elliott Party is a party or by which it is bound; and (d) as of the date of this Agreement, the Elliott Parties and their Affiliates have aggregate economic exposure to 9,988,412 shares of Company Common Stock.

6. Definitions. For purposes of this Agreement: the term “Affiliate” has the meaning set forth in Rule 12b-2 promulgated by the SEC under the Exchange Act; provided, that none of the Company or its Affiliates or Representatives, on the one hand, and the Elliott Parties and their Affiliates or Representatives, on the other hand, shall be deemed to be “Affiliates” with respect to the other for purposes of this Agreement; provided, further, that “Affiliates” of a person shall not include any entity, solely by reason of the fact that one or more of such person’s employees or principals serves as a member of its board of directors or similar governing body, unless such person otherwise controls such entity (as the term “control” is defined in Rule 12b-2 promulgated by the SEC under the Exchange Act); provided, further, that with respect to the Elliott Parties “Affiliates” shall not include any portfolio operating company of any of the Elliott Parties or their Affiliates;

(b) the terms “beneficial ownership” and “beneficially own” have the respective meanings set forth in Rule 13d-3 promulgated by the SEC under the Exchange Act;

(c) the term “Company Common Stock” means the Company’s common stock, no par value per share;

(d) the term “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the SEC thereunder;

(e) the term “Expiration Date” means November 2, 2020; provided that, if the Company enters into a definitive Merger Agreement prior to such date, other than with respect to the restrictions provided under Section 2(c)(iv), (v), (vi), (x) and (xii) which shall expire on such date, the Expiration Date shall be automatically extended to the earlier of (i) 400 days after the date the Company entered into such Merger Agreement, (ii) the closing of the Merger Transaction provided by such Merger Agreement, (iii) such time as such Merger Agreement is terminated, expires or otherwise ceases to be in full force and effect for any reason, and (iv) any formal denial of a proposed Merger Transaction issued by either the Kansas Corporation Commission or the Missouri Public Service Commission;

(f) the terms “person” or “persons” mean any individual, corporation (including not-for-profit), general or limited partnership, limited liability or unlimited liability company, joint venture, estate, trust, association, organization or other entity of any kind or nature;

(g) the term “Qualified Candidate” means an individual who (i) qualifies as independent of the Company under all applicable listing standards, applicable rules of the SEC and publicly disclosed standards used by the Board in determining the independence of the Company’s directors, (ii) is not an employee, officer, director, principal, general partner, manager or other agent of an Elliott Party or of any Affiliate of an Elliott Party, (iii) is not a limited partner, member or other investor (unless such investment has been disclosed, and is reasonably acceptable, to the Company) in any Elliott Party or any Affiliate of an Elliott Party, (iv) does not have any agreement, arrangement or understanding, written or oral, with any Elliott Party or any Affiliate of an Elliott Party regarding such person’s service as a director of the Company and (iv) meets all other qualifications required for service as a director set forth in the Bylaws and the Company’s Corporate Governance Guidelines;

(h) the term “Representative” means a party’s directors, members, partners, managers, officers, employees, agents and other representatives;

(i) the term “SEC” means the U.S. Securities and Exchange Commission;

(j) the term “Third Party” means any person that is not a party to this Agreement or a controlling or controlled Affiliate thereof, a member of the Board, a director or officer of the Company, or legal counsel to any party to this Agreement; and

(k) the term “Voting Securities” means the shares of Company Common Stock and any other securities thereof entitled to vote in the election of directors, or securities convertible into, or exercisable or exchangeable for, such shares or other securities, whether or not subject to the passage of time or other contingencies; provided that “Voting Securities” will not include any securities contained in any index, exchange traded fund, benchmark or other basket of securities which may contain or otherwise reflect the performance of, any securities of the Company.

7. Notices. All notices, consents, requests, instructions, approvals and other communications provided for in this Agreement and all legal process in regard to this Agreement will be in writing and will be deemed validly given, made or served, if (a) given by email, when such email is transmitted to the email address set forth below, and receipt of such email is acknowledged, or (b) if given by any other means, when actually received during normal business hours at the address specified in this Section 7:

if to the Company:

Evergy, Inc.
1200 Main Street
Kansas City, Missouri 64104
Attention: Heather Humphrey
Email: heather.humphrey@evergy.com

with a copy to:

Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, New York 10019
Attention: Erik R. Tavzel
Andrew C. Elken
Email: etavzel@cravath.com
aelken@cravath.com

if to the Elliott Parties:

Elliott Investment Management L.P.
Elliott Associates, L.P.
Elliott International, L.P.
40 West 57th Street
New York, New York 10019
Attention: Jeff Rosenbaum
Scott Grinsell
Elliot Greenberg
Email: jrosenbaum@elliottmgmt.com

with a copy to:

Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, New York 10019
Attention: Steve Wolosky
Kenneth Mantel
Email: swolosky@olshanlaw.com
kmantel@olshanlaw.com

8. Expenses. All fees, costs and expenses incurred in connection with this Agreement and all matters related to this Agreement will be paid by the party incurring such fees, costs or expenses.

9. Specific Performance. The Company and the Elliott Parties acknowledge and agree that the other party would be irreparably injured by a breach of this Agreement, and monetary remedies would be inadequate to protect a party against any actual or threatened breach or continuation of any breach of this Agreement. Without prejudice to any other rights and remedies otherwise available to a party under this Agreement, (a) each party will be entitled to equitable relief by way of injunction or otherwise to prevent breaches or threatened breaches of any of the provisions of this Agreement, without proof of actual damages; (b) the breaching party will not plead in defense thereto that there would be an adequate remedy at law; and (c) the breaching party agrees to waive any applicable right or requirement that a bond be posted by the non-breaching party. Such remedies will not be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

10. Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the choice of law principles of such state. Each party hereto (a) irrevocably and unconditionally submits to the personal jurisdiction of the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, the federal or other state courts located in Wilmington, Delaware), (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such courts, (c) agrees that any actions or proceedings arising in connection with this Agreement or the transactions contemplated by this Agreement shall be brought, tried and determined only in such courts, (d) waives any claim of improper venue or any claim that those courts are an inconvenient forum and (e) agrees that it will not bring any action relating to this Agreement or the transactions contemplated hereunder in any court other than the aforesaid courts. The parties hereto agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 7 or in such other manner as may be permitted by applicable law as sufficient service of process, shall be valid and sufficient service thereof.

11. Severability. If at any time subsequent to the date of this Agreement, any provision of this Agreement is held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision will be of no force and effect, but the illegality or unenforceability of such provision will have no effect upon the legality or enforceability of any other provision of this Agreement. Additionally, any such provision that is so held to be illegal, void or unenforceable shall be deemed deleted from this Agreement to the minimum extent necessary and replaced by a provision that is valid and enforceable and that as closely as practicable expresses the intention of such illegal, void or unenforceable provision.

12. Termination. The obligations of the Elliott Parties and the Company under this Agreement will terminate on the date that is the end date of the Cooperation Period, unless another period is specifically set forth herein. Notwithstanding the foregoing: (a) Sections 7-17 of this Agreement will survive the termination of this Agreement; and (b) no termination of this Agreement will relieve any party of liability for any breach of this Agreement arising prior to such termination.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute the same agreement and shall become a binding agreement when a counterpart has been signed by each party and delivered to the other party. Signatures of the parties transmitted by facsimile, PDF or other electronic file shall be deemed to be their original signatures for all purposes and the exchange of copies of this Agreement and of signature pages by facsimile transmission, PDF or other electronic file shall constitute effective execution and delivery of this Agreement as to the parties.

14. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Company and the Elliott Parties and is not enforceable by any other persons. No party to this Agreement may assign its rights or delegate its obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other parties, and any assignment in contravention of this Section 14 will be null and void.

15. No Waiver. No failure or delay by any party in exercising any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial waiver thereof preclude any other or further exercise thereof or the exercise of any other right or remedy hereunder.

16. Entire Understanding; Amendment. This Agreement (including its Exhibits), together with the Confidentiality Agreement, contains the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior and contemporaneous agreements, memoranda, arrangements and understandings, both written and oral, between the parties, or any of them, with respect to the subject matter of this Agreement. This Agreement may be amended only by an agreement in writing executed by the Company and the Elliott Parties.

17. Interpretation and Construction. The Company and each Elliott Party acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement, and that it has executed the same with the advice of said counsel. Each party and its counsel cooperated and participated in the drafting and preparation of this Agreement and the documents referred to in this Agreement, and any and all drafts relating thereto exchanged among the parties will be deemed the work product of all of the parties and may not be construed against any party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted or prepared it is of no application and is expressly waived by the Company and each Elliott Party, and any controversy over interpretations of this Agreement will be decided without regard to events of drafting or preparation. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” For the avoidance of doubt, any reference to a Representative of the Company or any of its Affiliates in this Agreement shall not be deemed to be a reference to any Elliott Party or any of their Affiliates, and vice versa.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized signatories of the parties as of the date first written above.

ELLIOTT PARTIES:

Elliott Investment Management, L.P.

By: /s/ Elliot Greenberg
Name: Elliot Greenberg
Title: Vice President

Elliott Associates, L.P.

By: Elliott Investment Management L.P.,
as attorney-in-fact

By: /s/ Elliot Greenberg
Name: Elliot Greenberg
Title: Vice President

Elliott International, L.P.

By: Hambledon, Inc.,
its General Partner

By: Elliott Investment Management L.P.,
as attorney-in-fact

By: /s/ Elliot Greenberg
Name: Elliot Greenberg
Title: Vice President

[Signature Page – Elliott Parties]

COMPANY:

EVERGY, INC.

By: /s/ Terry Bassham

Name: Terry Bassham

Title: President and Chief Executive Officer

[Signature Page – Company]

EXHIBIT A

Form of Press Release

[Attached]

Evergy Announces Agreement with Elliott Management

- *Utility & Power Industry Veterans Paul Keglevic and Kirk Andrews Join Board*
- *New Strategic Review & Operations Committee of the Board Established*
- *New Committee to Explore Strategic and Operational Alternatives to Enhance Shareholder Value*

KANSAS CITY, Mo. - March 2, 2020 - Evergy, Inc. (NYSE: EVRG), a vertically integrated, regulated, investor-owned electric utility, today announced that it has entered into an agreement with affiliates of Elliott Management Corporation (“Elliott”), which currently own an economic interest equivalent to approximately 10 million shares of Evergy’s common stock. As part of the agreement, two new independent directors will join the Evergy board of directors, effective March 3, 2020. In addition, the board is establishing a new Strategic Review & Operations Committee (the “Committee”) with a mandate to explore ways to enhance shareholder value.

As part of the agreement, Paul Keglevic, former chief financial officer and chief executive officer of Energy Future Holdings, and Kirk Andrews, current executive vice president and chief financial officer of NRG Energy, are being appointed to the Evergy board as new independent directors, resulting initially in a board comprised of 17 directors. Four current directors will retire from the Evergy board at the end of their current term such that, at the time of the 2020 Annual Meeting of Shareholders in May, the size of the board will be reduced to 13 directors. Evergy will provide additional information regarding the 13 directors who will stand for election at the 2020 Annual Meeting of Shareholders in its proxy materials to be filed with the Securities and Exchange Commission (SEC) in the coming weeks.

Terry Bassham, Evergy president and chief executive officer, said, “Elliott recognizes our commitment to serving the best interests of all Evergy stakeholders. We welcome these new, highly qualified directors and the significant and valuable experience they bring to this effort. The comprehensive strategic and operating review we are undertaking will help ensure that Evergy is directing capital to the greatest opportunities and continuing to consider all opportunities to enhance shareholder value.”

The Strategic Review & Operations Committee is 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 standalone operating plan and strategy, as further detailed in the Committee’s charter.

Terry Bassham, Art Stall, Paul Keglevic and Kirk Andrews will serve as members of the Committee, and Art Stall and Paul Keglevic will serve as co-chairs. The charter for the new Committee will authorize it to retain its own independent consultants, advisors and counsel to facilitate its review. Additionally, Elliott has entered into an information-sharing agreement that will allow for an ongoing dialogue between Elliott and the Committee. The Committee plans to complete its review, make its formal recommendation to the Evergy board and publicly announce the review’s outcome during the first half of 2020.

Jeff Rosenbaum, senior portfolio manager at Elliott, said, “We appreciate the constructive dialogue we have had with Evergy’s board and leadership over the past several months. We believe Evergy is well positioned to significantly increase investment in critical electric infrastructure to benefit key

stakeholders. We view this agreement, including the clear mandate of the Strategic Review & Operations Committee, as a great opportunity to ensure that Evergy is best positioned to drive shareholder value creation, whether that be through a strategic combination or an enhanced standalone plan with higher investment levels and stronger growth rates.”

Evergy remains committed, as always, to serving the best interests of all its stakeholders and will continue to work closely with state regulators and other stakeholders.

Pursuant to the agreement, Elliott has agreed to customary standstill, voting, and other provisions. The full agreement between Evergy and Elliott will be filed on a Form 8-K with the SEC. The charter for the new Strategic Review & Operations Committee will be available on Evergy’s website.

Morgan Stanley and Goldman Sachs & Co. LLC are acting as financial advisors and Cravath, Swaine & Moore LLP is acting as legal advisor to Evergy.

Paul Keglevic

Mr. Keglevic served as Chief Executive Officer of Energy Future Holdings, the majority owner of a regulated transmission and distribution business, from October 2016 to March 2018 and also served as Executive Vice President, Chief Financial Officer and Chief Risk Officer from July 2008- October 2018. Prior to that, Mr. Keglevic served as an audit partner at PricewaterhouseCoopers LLP (PwC) from 2002-2008, where he was the U.S. utility sector leader, and in various roles at Arthur Andersen LLP, including as lead of the utilities practice, before joining PwC. Mr. Keglevic serves on the Board of Directors of Ascena Retail Group, Inc., Frontier Communications Corporation, Bonanza Creek Energy, Inc. and Stellus Capital Investment Corp.

Kirk Andrews

As Chief Financial Officer of NRG Energy, Inc. (“NRG”), a Fortune 500 integrated power company, Mr. Andrews leads all of NRG’s corporate financial functions, including treasury, financial planning, accounting, risk management, tax, insurance, supply chain and investor relations. He also plays an instrumental role in formulating and executing NRG’s capital allocation strategies and in financing the company’s repowering initiatives. Mr. Andrews has also helped lead NRG’s transformation plan, announced in 2017 - targeting significant cost and operational enhancements across the company.

Mr. Andrews joined NRG in 2011 after a successful 15-year career in investment banking. Mr. Andrews served as Managing Director and Head of Power Mergers and Acquisitions and subsequently headed the North American Power Investment Banking group at Citigroup Global Markets. Later, he served as Managing Director and co-head of Power and Utilities-Americas at Deutsche Bank. In his banking career, Mr. Andrews led numerous large and innovative strategic, debt, equity and commodities transactions, including multiple advisory roles for NRG. Kirk also serves on the board of directors for RPM International (NYSE: RPM), a high-performance coating, sealants and specialty chemicals company, where he serves on the Audit Committee and co-chairs its Operating Improvement Committee.

About Evergy, Inc.

Evergy, Inc. (NYSE: EVRG) provides clean, safe and reliable energy to 1.6 million customers in Kansas and Missouri. The 2018 combination of Kansas City Power and Light Company and Westar Energy to form Evergy created a leading energy company that provides value to shareholders and a stronger company for customers.

Evergy’s mission is to empower a better future. Today, half the power supplied to homes and businesses by Evergy comes from emission-free sources, creating more reliable energy with less impact to the environment. We will continue to innovate and adopt new technologies that give our customers better ways to manage their energy use. For more information about Evergy, Inc., visit us at www.evergy.com.



About Elliott

Elliott Management Corporation is a multi-strategy fund manager with approximately \$40 billion in assets under management. Its flagship fund, Elliott Associates, L.P., was founded in 1977, making it one of the oldest funds of its kind under continuous management. The Elliott funds' investors include pension plans, sovereign wealth funds, endowments, foundations, funds-of-funds, high net worth individuals and families, and employees of the firm.

CAUTIONARY STATEMENTS REGARDING CERTAIN FORWARD-LOOKING INFORMATION

Statements made in this press release that are not based on historical facts are forward-looking, may involve risks and uncertainties, and are intended to be as of the date when made. Forward-looking statements include, but are not limited to, statements relating to our strategic plan, including, without limitation, earnings per share and dividend growth targets, operating and maintenance expense savings goals and future capital allocation plans; the outcome of regulatory and legal proceedings; and other matters relating to expected financial performance or affecting future operations. Forward-looking statements are often accompanied by forward-looking words such as "anticipates," "believes," "expects," "estimates," "forecasts," "should," "seeks," "intends," "proposed," "projects," "planned," "outlook," "remain confident," "goal," "will" or other words of similar meaning. Forward-looking statements involve risks, uncertainties and other factors that could cause actual results to differ materially from the forward-looking information.

In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, Evergy, Inc., Evergy Kansas Central, Inc. and Evergy Metro, Inc. (collectively, the Evergy Companies) are providing a number of risks, uncertainties and other factors that could cause actual results to differ from the forward-looking information. These risks, uncertainties and other factors include, but are not limited to: economic and weather conditions and any impact on sales, prices and costs; changes in business strategy or operations; the impact of federal, state and local political, legislative, judicial and regulatory actions or developments, including deregulation, re-regulation and restructuring of the electric utility industry; decisions of regulators regarding, among other things, customer rates and the prudence of operational decisions such as capital expenditures and asset retirements; changes in applicable laws, regulations, rules, principles or practices, or the interpretations thereof, governing tax, accounting and environmental matters, including air and water quality and waste management and disposal; the impact of climate change, including increased frequency and severity of significant weather events and reduced demand for coal-based energy; prices and availability of electricity in wholesale markets; market perception of the energy industry and the Evergy Companies; changes in the energy trading markets in which the Evergy Companies participate, including retroactive repricing of transactions by regional transmission organizations and independent system operators; financial market conditions and performance, including changes in interest rates and credit spreads and in availability and cost of capital and the effects on derivatives and hedges, nuclear decommissioning trust and pension plan assets and costs; impairments of long-lived assets or goodwill; credit ratings; inflation rates; the transition to a replacement for the London Interbank Offered Rate benchmark interest rate; effectiveness of risk management policies and procedures and the ability of counterparties to satisfy their contractual commitments; impact of terrorist acts, including cyber terrorism; ability to carry out marketing and sales plans; cost, availability, quality and timely provision of equipment, supplies, labor and fuel; ability to achieve generation goals and the occurrence and duration of planned and unplanned generation outages; delays and cost increases of generation, transmission, distribution or other projects; the Evergy Companies' ability to manage their transmission and distribution development plans and transmission joint ventures; the inherent risks associated with the ownership and operation of a nuclear facility, including environmental, health, safety, regulatory and financial risks; workforce risks, including those related to increased costs of, or changes in, retirement, health care and other benefits; the possibility that the expected value creation from the merger of Great Plains Energy Incorporated (Great Plains Energy) and Evergy Kansas Central that resulted in the creation of Evergy will not be realized, or will not be realized within the expected time period; difficulties related to the integration, including the diversion of management time; difficulties in maintaining relationships with customers, employees, regulators or suppliers; disruption related to the rebranding of the Evergy Companies, including the impact of the rebranding on receipt of customer payments; and other risks and uncertainties.

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Cody VandeVelde
Director, Investor Relations
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NEWS RELEASE
FOR IMMEDIATE RELEASE



Evergy Announces Agreement with Elliott Management

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): March 25, 2020

Evergy, Inc.

(Exact Name of Registrant as Specified in Charter)

Missouri
**(State or Other Jurisdiction
of Incorporation)**

001-38515
**(Commission
File Number)**

82-2733395
**(I.R.S. Employer
Identification No.)**

1200 Main Street
Kansas City, Missouri 64105
(Address of Principal Executive Offices, and Zip Code)

(816) 556-2200
Registrant's Telephone Number, Including Area Code

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Evergy, Inc. common stock	EVRG	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement

On March 25, 2020, Evergy, Inc. (“Evergy”) and Elliott Investment Management L.P., Elliott Associates, L.P. and Elliott International, L.P. (collectively, “Elliott”) entered into an Amendment (the “Amendment”) to the Agreement, dated as of February 28, 2020 (the “Agreement”), between Evergy and Elliott.

The Strategic Review & Operations Committee (the “Committee”), formed on March 3, 2020 in connection with the Agreement, has commenced its review consistent with the Committee’s charter and is continuing to advance its work. Given recent developments related to the COVID-19 illness, including with respect to the implementation of certain measures intended to safeguard the health and safety of Evergy employees and the external population, the effects on travel, the feasibility of in-person meetings and the volatility of economic and financial markets, Evergy’s board of directors (the “Board”) determined, following the recommendation of the Committee and discussions with Elliott, that it is in the best interests of Evergy to extend certain dates set forth in the Agreement (and the corresponding dates in the Committee’s charter) to allow additional time to conduct the Committee’s review. Specifically, pursuant to the Amendment, the deadline for the Committee to present a formal recommendation to the Board has been extended from May 30, 2020 to July 30, 2020; the deadline for the Board to vote on such recommendation has been extended from June 17, 2020 to August 17, 2020; and, if Evergy pursues a Modified Standalone Plan (as defined in the Agreement), the deadline for the public presentation of such Modified Standalone Plan to the investor community has been extended from September 4, 2020 to October 14, 2020.

The foregoing summary of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, a copy of which is attached as Exhibit 10.1 hereto and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment, dated March 25, 2020, among Evergy, Inc., Elliott Investment Management L.P., Elliott Associates, L.P. and Elliott International, L.P.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Evergy, Inc.

By: /s/ Heather A. Humphrey
Heather A. Humphrey
Senior Vice President, General Counsel and Corporate Secretary

Date: March 26, 2020

**AMENDMENT TO
AGREEMENT**

This Amendment (this "Amendment"), dated as of March 25, 2020, is by and among Elliott Investment Management L.P., a Delaware limited partnership, Elliott Associates, L.P., a Delaware limited partnership, and Elliott International, L.P., a Cayman Islands limited partnership (each, an "Elliott Party," and, collectively, the "Elliott Parties"), and Evergy, Inc., a Missouri corporation (the "Company"), and amends the Agreement, dated as of February 28, 2020 (the "Agreement"), by and among the Elliott Parties and the Company. Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Agreement. In consideration of and reliance upon the mutual covenants and agreements contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Elliott Parties and the Company agree as follows:

1. Amendments to the Agreement. In accordance with Section 16 of the Agreement, Section 1(c)(i) of the Agreement is hereby amended by (a) deleting "May 30, 2020" where it appears and replacing it with "July 30, 2020", (b) deleting "June 17, 2020" where it appears and replacing it with "August 17, 2020" and (c) deleting "September 4, 2020" where it appears and replacing it with "October 14, 2020".

2. Amendment and Restatement of the Committee Charter. The Elliott Parties hereby consent to the amendment and restatement of the Committee Charter in the form attached hereto as Exhibit A.

3. Miscellaneous

(a) This Amendment shall not constitute an amendment of any provisions of the Agreement, except as expressly amended herein. From and after the execution of this Amendment, each reference in the Agreement to "this Agreement," "herein," "hereunder" and "hereof", and words of similar import, will be deemed to refer to the Agreement as amended by this Amendment; provided that references to "the date of this Agreement", "the date hereof" and other similar references shall continue to refer to February 28, 2020 and not to the date of this Amendment.

(b) The provisions of Sections 7, 8, 9, 10, 11, 13, 14, 15, 16 and 17 of the Agreement are incorporated by reference herein *mutatis mutandis* and this Amendment shall be governed by and construed in accordance with such provisions.

[Signature page follows]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by the duly authorized signatories of the parties as of the date first written above.

ELLIOTT PARTIES:

Elliott Investment Management, L.P.

By: /s/ Elliot Greenberg
Name: Elliot Greenberg
Title: Vice President

Elliott Associates, L.P.

By: Elliott Investment Management L.P.,
as attorney-in-fact

By: /s/ Elliot Greenberg
Name: Elliot Greenberg
Title: Vice President

Elliott International, L.P.

By: Hambleton, Inc.,
its General Partner

By: Elliott Investment Management L.P.,
as attorney-in-fact

By: /s/ Elliot Greenberg
Name: Elliot Greenberg
Title: Vice President

[Signature Page - Elliott Parties]

COMPANY:

EVERGY, INC.

By: /s/ Heather A. Humphrey
Name: Heather A. Humphrey
Title: Senior Vice President, General
Counsel and Corporate Secretary

[Signature Page - Company]

EXHIBIT A

AMENDED AND RESTATED STRATEGIC REVIEW & OPERATIONS COMMITTEE CHARTER

[Attached]

STRATEGIC REVIEW & OPERATIONS COMMITTEE CHARTER

Amended March 25, 2020

A. Purpose

There will be a Strategic Review & Operations Committee (the “Committee”) whose members will be appointed as set forth below by the Board of Directors (the “Board”) of Evergy, Inc. (“Evergy” and, together with its subsidiaries, the “Company”) to assist the Board in exploring ways to enhance long-term shareholder value.

The Committee will be established and maintained in accordance with the terms of that certain agreement, dated as of February 28, 2020 (as amended from time to time, the “Cooperation Agreement”), by and among Elliott Investment Management L.P., Elliott Associates, L.P. and Elliott International, L.P. (each, an “Elliott Party,” and, collectively, the “Elliott Parties”), and the Company. Any capitalized terms used but not defined herein will have the meanings given to them in the Cooperation Agreement.

The Committee’s primary purposes are to:

- 1) Serve as an advisor to the Board and management in exploring ways to enhance long-term shareholder value (the “Strategic Review”), including through the evaluation of:
 - a) Opportunities for a strategic combination or merger involving the Company (a “Merger Transaction”); and
 - b) Enhancements to the Company’s long-term standalone operating plan and strategy (a “Modified Standalone Plan”).
- 2) Report to the Board periodically during the course of the Strategic Review, as the Committee deems necessary, on information and developments related to a potential Merger Transaction, including receipt of indications of interest and proposals.
- 3) Present a formal recommendation (by majority vote of the Committee) to the Board on the results of and conclusions from the Strategic Review (including on whether the Company should pursue a Merger Transaction or a Modified Standalone Plan) on or prior to July 30, 2020; provided, however, that, subject to the terms of the Cooperation Agreement (including Section 1(c) thereof), if both of the New Directors vote in favor of a formal recommendation that is not approved by a majority vote of the Committee, (x) the Committee will present to the Board both the formal recommendation of the New Directors and that of the other members of the Committee, (y) both formal recommendations will simultaneously be publicly disclosed by the Company promptly following delivery of such recommendations to the Board (in no event more than five (5) business days later) and (z) the New Directors will be permitted to discuss their formal recommendation and the reasons for their decision publicly, which disclosure the Company agrees will not be deemed to violate any confidentiality obligation to the Company or any other Company Policy applicable to the New Directors so long as such disclosure does not cause the Company to breach a confidentiality obligation to a Third Party.

B. Membership

The Committee shall be composed of four (4) directors and will initially consist of Terry Bassham, Art Stall, Paul Keglevic and Kirk Andrews, with Art Stall and Paul Keglevic initially serving as Co-Chairs. The Co-Chairs shall be responsible for the leadership of the Committee, including overseeing the agenda, presiding over meetings and reporting to the Board.

Each member of the Committee shall have one vote on each matter presented to the Committee, except as set forth below. Every decision made at a meeting of the Committee by majority vote of all members of the Committee shall be deemed the decision of the Committee.

If a New Director is unable or unwilling to serve as a member of the Committee, resigns as a member of the Committee, is removed as a member of the Committee or ceases to be a member of the Committee for any other reason, and the Elliott Parties are entitled to select a replacement in accordance with the terms of the Cooperation Agreement, for any period during which only one New Director is serving on the Committee and until a replacement has been seated on the Committee, (1) such remaining New Director will serve as Co-Chair of the Committee and (2) any action of such remaining New Director (including voting) will be deemed to be an action on behalf of two members of the Committee.

The Committee shall meet (including telephonically) as often as the Committee may determine is appropriate (at a minimum every two weeks through the earlier of the Committee End Date and August 17, 2020) to carry out its responsibilities and will maintain minutes of meetings and regularly report to the Board on the activities and actions of the Committee.

C. Authority

The Committee has the authority to:

- 1) Retain, at the Company's expense, its own independent advisors (including strategy and cost consultants, financial advisors, regulatory advisors, transaction and tax counsel and other experts) as it deems necessary in the performance of its duties.
- 2) Request any information it requires from employees or other representatives of the Company, all of whom shall be directed to cooperate in a timely manner with the Committee, as it deems necessary.
- 3) Provide oversight of day-to-day process matters and guidance to Terry Bassham and other company officers and executives on negotiations with Third Parties around any necessary changes to initial indications or proposals received for a potential Merger Transaction.

D. Duties and Responsibilities

The Committee's responsibilities and duties are as follows:

Merger Transaction Review

- 1) Explore a potential Merger Transaction, taking into account all considerations deemed relevant by the Committee, including the value and form of consideration to shareholders (taking into account nominal transaction price, expected timing to close and overall certainty and achievability).

- 2) Solicit one or more initial proposals or indications of interest from Third Parties regarding a potential Merger Transaction, and direct management (together with the Committee's and the Company's advisors) to enter into customary non-disclosure agreements with, and provide customary information to, such Third Parties in connection with such solicitation.
- 3) Provide periodic updates to the Board regarding any potential Merger Transaction, including any proposals or indications of interest received from Third Parties, and otherwise assist the Company in complying with its obligations under, or related to, the Cooperation Agreement.
- 4) Review and evaluate any bona fide proposals or indications of interest with respect to any potential Merger Transaction received by the Company. The Board shall have the ability to review and evaluate any bona fide proposals or indications of interest with respect to any potential Merger Transaction received by the Company in parallel with the Committee's review and evaluation; however, the timing of the Board's review shall not inhibit the Committee from moving forward on its review and evaluation and making a formal recommendation to the Board by no later than July 30, 2020 (including in advance of the Board's completion of its review and evaluation).
- 5) Make a formal recommendation to the Board on pursuing one or more Merger Transactions (including on which, if any, potential Merger Transactions provide the highest value to shareholders), it being understood that the Board will retain substantive decision-making authority with respect to any potential Merger Transaction, including whether or not to accept any Committee recommendation to pursue a Merger Transaction and the terms and conditions of any such Merger Transaction to be set forth in in any definitive merger agreement with any Third Party.
- 6) If an indication of interest or proposal for a potential Merger Transaction is received during the Strategic Review having such threshold terms determined by the Committee, the Committee will prioritize its duties and responsibilities in favor of consideration of a potential Merger Transaction.
- 7) Provide to the Elliott Parties a reasonable opportunity to (i) present the Committee their views and analysis regarding the exploration of a Merger Transaction and (ii) subject to the Elliott Parties electing to receive information under the Confidentiality Agreement, review any public disclosure to be made by the Company with respect to any formal recommendation of the Committee to pursue a Merger Transaction.

Modified Standalone Plan

- 8) Explore opportunities to enhance the Company's long-term standalone operating plan and strategy through implementation of a Modified Standalone Plan.
- 9) Consider, investigate, review and evaluate at least the following principal areas:
 - Opportunities to increase rate base investment / growth and long-term EPS growth, including relative to peers;
 - Operational and cost optimization and excellence initiatives (O&M, G&A, fuel), including relative to peers;
 - Generation-related savings from de-carbonization and the timing of coal plant retirements; and

- Potential benefits to be obtained from shifting renewables generation capacity from power purchase agreements to owned rate base assets (including certain of those recently announced),

in each case, accounting for applicable legal and regulatory requirements and any other considerations deemed relevant by the Committee.

- 10) Commission, in consultation with its advisors, new benchmarking and other key performance indicator studies (which could include (i) corporate-level SG&A costs, (ii) business- and unit-level SG&A costs, (iii) non-generation O&M costs, (iv) generation O&M costs, (v) generation fuel costs, (vi) distribution system investment levels, (vii) transmission system investment levels, (viii) potential new gas-fired generation investment levels, (ix) potential new renewables generation investment levels, (x) other system hardening, modernization, safety, reliability, security and cybersecurity investment levels, (xi) system average interruption duration index (SAIDI) metrics, (xii) system average interruption frequency index (SAIFI) metrics, and (xiii) greenhouse gas emission reduction metrics).
- 11) Make recommendations (including potentially as part of a formal recommendation) regarding the development of multi-year target benchmark metrics and key performance indicators for a Modified Standalone Plan, including as to any recommended ongoing public disclosure in connection therewith.
- 12) Assist and collaborate with the Board and other applicable committees of the Board in assessing the optimal management team to execute any modified standalone plan approved by the Board (including potential supplemental and replacement senior management candidates with appropriate utility operating credentials, including consideration of any candidates provided by any of the Elliott Parties), including through holding meetings without any current Company executives or officers (other than members of the Committee) present for such purpose as it deems necessary.

Committee Recommendation to the Board

- 14) On or prior to July 30, 2020, provide a formal recommendation (determined by majority vote) to the Board on the results of and conclusions from the Strategic Review.
- 15) If the Committee is unable to provide any such formal recommendation by majority vote by July 30, 2020, provide the Board with any formal recommendation that is supported by two members of the Committee.

Other Responsibilities

- 16) Provide periodic updates, respond promptly to inquiries and otherwise provide information regarding the Strategic Review to the extent required under the Confidentiality Agreement.
- 17) Periodically review and reassess the adequacy of this Charter and submit any proposed changes to the Board for approval, any which change to this Charter on or prior to the Committee End Date will require the written consent of the Elliott Parties.
- 18) Perform any other activities consistent with this Charter, the Company's By-laws and governing law as the Committee or the Board deems necessary or appropriate.

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the above *Petition of Commission Staff to Initiate Investigation* was electronically served or mailed postage prepaid, this 11th day of June, 2020 to:

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