

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

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

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

ORDER OPENING GENERAL INVESTIGATION

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

1. On June 11, 2020, Commission Staff (Staff) filed a Petition for Order Initiating Investigation, to investigate Evergy's Agreement with Elliott Management (Elliott) to explore either a Modified Standalone Plan that would effectively cut operating and maintenance expenses and increase capital expenditures dramatically, or a Merger Transaction.¹ Staff's Petition is made pursuant to the Commission's plenary authority under K.S.A. 66-101 to "supervise and control" electric utilities doing business in Kansas and "and 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."²

2. 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.³ Currently, Elliott owns an economic interest equivalent of 11.3 million shares in Evergy or approximately \$760

¹ Petition of Commission Staff for Order Initiating Investigation (Petition), June 11, 2020, ¶ 5.

² *Id.*, ¶ 2.

³ *Id.*, ¶ 3.

million in current market value.⁴ On January 21, 2020, Elliott issued a press release advising it had engaged in private discussions with Evergy management on ways to maximize value for all of Evergy's key stakeholders.⁵

3. On February 28, 2020, Evergy and Elliott entered into an Agreement to: (1) appoint two new members to Evergy's Board, and (2) create a Strategic Review & Operations Committee (Committee) to explore ways to increase Evergy's shareholder value.⁶ The Committee is considering either a Modified Standalone Plan that would effectively cut operating and maintenance expenses and increase capital expenditures dramatically, or a Merger Transaction.⁷ The Committee's recommendation is scheduled to be presented to Evergy's Board by July 30, 2020, and voted on by August 17, 2020.⁸ If Evergy pursues a Modified Standalone Plan, the Agreement imposes an October 14, 2020 deadline to publicly present the plan to the investor community.

4. Staff is concerned that Elliott's focus on increasing shareholder value may result in Evergy's customers paying higher rates or receiving lower quality service, and circumvent the merger conditions agreed to by Evergy in the 18-KCPE-095-MER Docket.⁹ Because either a Standalone Plan or Merger could affect Evergy's ability to provide reasonably efficient and sufficient service at just and reasonable rates, Staff believes it is crucial to have a transparent process as Evergy works through its analysis and decision.¹⁰ The Commission agrees. Therefore, the Commission grants Staff's request to open a general investigation to enable the

⁴ Staff Report and Recommendation, June 11, 2020, p. 1.

⁵ Petition, ¶ 4.

⁶ *Id.*, ¶ 5.

⁷ *Id.*

⁸ *Id.*

⁹ Staff Report and Recommendation, p. 2.

¹⁰ *Id.*, p. 2.

Commission, stakeholders, and customers to be fully informed of the analysis and rationale behind Evergy's decision.

5. Staff believes Elliott's Modified Standalone Plan would directly contradict some of the core elements of the merger which created Evergy, including: (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.¹¹ Instead, Elliott's proposed Modified Standalone Plan would raise capital expenditures by nearly \$4.5 billion and use excess merger savings to finance the carrying charges associated with that investment, calling into question whether Elliott's proposed Modified Standalone Plan is in the public interest.¹² Staff is also concerned that Elliott's proposed Modified Standalone Plan is inconsistent with the policy goals set by the Legislature in Sub. SB 69.¹³ Specifically, Staff believes even if all of Elliott's projected cost savings were realized under Elliott's proposed Modified Standalone Plan, the Plan would not reduce Evergy's above average retail rates to regionally competitive levels and using cost savings to cover carrying charges for additional capital investment is directly contrary to the goal of achieving regionally competitive rates.¹⁴

6. To ensure that Evergy's Board of Directors Strategic Review and Operations Committee's evaluation of the Modified Standalone Plan and Merger Transaction are transparent and fully explained to the Commission and stakeholders, Staff recommends that it evaluate the Strategic Review and Operating Committee's process and work product immediately and that Evergy submit a report to the Commission in this general investigation.¹⁵ Staff requests the Commission require Evergy to file a report addressing the questions outlined by Staff within two

¹¹ *Id.*, p. 26.

¹² *Id.*

¹³ *Id.*, p. 30.

¹⁴ *Id.*

¹⁵ *Id.*, p. 43.

weeks of Evergy's Board making its decision on whether to pursue a Modified Standalone Plan or a merger, and allow Staff and all intervening stakeholders an opportunity to respond in writing.¹⁶

7. The Commission agrees with Staff that it is in the public interest to maintain a transparent process where the Commission, customers, and stakeholders are kept apprised of Evergy's Strategic Review and Operating Committee's evaluation of its path forward. The Commission believes opening a general investigation is the best means to ensure a transparent process. Therefore, the Commission adopts Staff's Report and Recommendation in its entirety and directs Staff to:

- start reviewing meeting materials and work product of Strategic Review & Operations Committee immediately;
- start review of Board Minutes and related meeting materials immediately;
- review all work product generated by consultants retained to evaluate both the Modified Standalone Plan and a possible Merger Transaction; and
- review the final report submitted to Evergy's Board for vote.

8. The Commission directs Evergy to: (1) provide a report to the Commission within two weeks of its Board deciding how to proceed; and (2) submit the Strategic Review and Operations Committee's Report to the Board and provide full rationale and explain:

- If the Modified Standalone Plan was selected:
 - (1) why was it selected and why is it better than a merger;
 - (2) what level of additional O&M savings have been identified that are achievable;

¹⁶ *Id.*, p. 2.

- (3) identify the specific areas of additional O&M savings;
- (4) describe the analysis performed to determine the increased amount of discretionary cap-ex growth, including all documents supporting the benefit/cost analysis of the discretionary cap-ex growth and identifying additional projects by type (e.g., generation, transmission, or distribution);
- (5) 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 customers and shareholders;
- (6) discuss how the Modified Standalone Plan achieves regionally competitive rates as desired by Substitute for Senate Bill 69 (SB 69) and address: (a) whether the plan supports Evergy’s ability to adequately attract needed utility capital investments and adequately discourages unnecessary capital investments in Kansas; (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; (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 (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); and

- (7) 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 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"

- If the Board elects to pursue a merger:

- (1) why was this plan selected;
- (2) why is this plan better than Modified Standalone Plan;
- (3) 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 conforms 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: (a) with its current merger agreement: and (b) 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; and
- (8) did the Board consider whether a successful acquisition can be accomplished given Staff's position on double leverage in the 16-KCPE593-ACQ acquisition due to the likelihood that Staff's position will remain the same for any acquisition seeking to use double leverage; (a) did the Board consider whether any acquirer can provide customer benefits that address the issues in SB 69; (b) did the Board consider whether any acquirer can reasonably quantify benefits to customers given the uncertainty created by COVID-19; (c) 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; (d) did the Board consider whether any potential acquirer could provide customer benefits that address the issues to be addressed in SB 69;

9. Staff, CURB, and any other intervenors have the opportunity to file responsive comments no later than 45 days after Evergy submits its report.

THEREFORE, THE COMMISSION ORDERS:

A. Staff's Petition to investigate Evergy's Agreement with Elliott to explore either a Modified Standalone Plan that would effectively cut operating and maintenance expenses and increase capital expenditures dramatically, or a Merger Transaction is granted.

B. Evergy is directed to provide a report to the Commission within two weeks of its Board's decision on how to proceed, specifically responding to the issues outlined in Paragraph 8 of this Order.

C. Staff, CURB, and any other intervenors may file responsive comments within 45 days of Evergy submitting its report.

D. Any party may file a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹⁷

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 06/18/2020



Lynn M. Retz
Executive Director

BGF

¹⁷ K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

20-EKME-514-GIE

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 06/18/2020.

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/S/ DeeAnn Shupe

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