

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Susan K. Duffy

In the Matter of the Application of Evergy)
Kansas Metro, Inc. and Evergy Kansas) Docket No. 21-EMKE-320-TAR
Central, Inc. for Approval of Transportation)
Electrification Portfolio.)

ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having reviewed the pleadings and record, the Commission finds and concludes as follows:

1. On February 24, 2021, Evergy Kansas Metro, Inc. and Evergy Kansas Central, Inc. (Evergy) filed an Application for approval of their Transportation Electrification Portfolio.¹ Evergy's Transportation Electrification Portfolio (Portfolio) includes rebate programs, rates for charging services, and associated education and program administration budget, and the authorization to use a deferral accounting mechanism to track program costs associated with the Portfolio.² Evergy also seeks a finding from the Commission that a limited and targeted expansion of its Clean Charge Network (CCN) is prudent from a decisional perspective.³ Evergy's Application was supported by testimony from Charles A. Caisley, Evergy's Senior Vice President Marketing and Public Affairs, and Chief Customer Officer.

2. On May 5, 2021, Evergy submitted a revision to its Portfolio Filing Report to increase the estimated customer benefits associated with increased EV adoption in its Kansas

¹ Evergy Kansas Metro and Evergy Kansas Central Application for Approval of Transportation Electrification Portfolio (Application), Feb. 24, 2021.

² *Id.*, ¶ 3.

³ *Id.*

service territory.⁴ As revised, Evergy estimates the net present value (NPV) in Kansas Metro customer benefit through 2040 is \$72.3 million and the estimated benefit to Kansas Central customers through 2040 is \$46.9 million.⁵

3. On June 25, 2021, the Commission received direct testimony from: Don Thoren on behalf of American Fuel & Petrochemical Manufacturers (AFPM);⁶ Justin T. Grady, Leo M. Haynos, and Dr. Robert H. Glass, Ph.D., of Commission Staff (Staff); Andrea C. Crane, on behalf of the Citizens' Utility Ratepayer Board (CURB);⁷ and Justin D. Wilson on behalf of ChargePoint, Inc. (ChargePoint).⁸

4. AFPM argues the Portfolio will hurt its members who offer competing fuels,⁹ and allowing Evergy to shift the costs of the Portfolio from its shareholders into rate base will unfairly benefit Evergy at the expense of gasoline and diesel fuel manufacturers and the majority of drivers who do not own or want to own an electric vehicle (EV).¹⁰ AFPM contends that EVs and EV charging equipment are optional luxury items, rather than an essential utility service, and are already heavily subsidized by federal taxes.¹¹ AFPM opposes: (1) finding any of Evergy's costs incurred for its Portfolio to be prudent from a decisional perspective or (2) allowing Evergy to use a deferral accounting mechanism to track costs for EV rebates or consumer education and administration program to facilitate recovery of these costs in future rate cases.¹²

⁴ Updated Evergy Transportation Electrification Portfolio Filing, May 5, 2021, p. 4.

⁵ *Id.*

⁶ American Fuel & Petrochemical Manufacturers (AFPM), Kansas Corn Growers Association (KCGA), Fuel True Independent Energy & Convenience (Fuel True), and Renew Kansas Biofuels Association (Renew) were granted intervention on June 29, 2021. Under K.S.A. 77-521(c)(3), their intervention conditioned upon combining their activities in the Docket. The consolidated intervenors will be referenced to as AFPM.

⁷ CURB was granted intervention on March 9, 2021.

⁸ ChargePoint was granted intervention on April 22, 2021.

⁹ Direct Testimony of Don Thoren, June 25, 2021, p. 3.

¹⁰ *Id.*, p. 5.

¹¹ *Id.*, p. 7.

¹² *Id.*, p. 9.

5. Mr. Grady's testimony focuses on opposing the "decisional prudence." Grady explains Evergy's request for decisional prudence is unprecedented.¹³ Instead, Grady believes Evergy should be subject to the regulatory risk that its decisions will later be deemed imprudent in a rate case.¹⁴ Rather than expand the CCN at this time, Grady recommends that Evergy scale back its Commercial EV Charger Rebate Program to meet the demand for EV charging infrastructure as the need arises.¹⁵ He states Evergy's Commercial EV Charger Rebate Program (CCR) should supplement the private competitive market for EV charging infrastructure.¹⁶ Grady expresses four major concerns Staff has with the proposed expansion of the CCN: (1) Uncertainty over which business model or competing technology will prevail; (2) Staff's desire to protect a burgeoning competitive market from Evergy's monopoly power; (3) Evergy's CCN proposal directly competes with the budget for Evergy's Commercial Rebate Program; and (4) Evergy's CCN expansion is aimed at accelerating EV adoption and stimulating market demand for EVs, not to meeting a verified customer need.¹⁷

6. Mr. Haynos testified that a time of use (TOU) tariff should be a mandatory component of the rebate program.¹⁸ He also questions the effectiveness of the \$250 rebate to residential builders because a \$250 taxable payment may not be worth the builder's time to complete the paperwork associated with the program.¹⁹ Haynos opines the current DC Fast Charge (DCFC) stations are under-utilized,²⁰ suggesting there is not enough demand to use the stations for the number of EV cars in EKM territory. Since the DCFC charging ports are only used 600 times

¹³ Direct Testimony of Justin T. Grady, June 25, 2021, p. 3.

¹⁴ *Id.*, p. 4.

¹⁵ *Id.*, p. 11.

¹⁶ *Id.*

¹⁷ *Id.*, p. 19.

¹⁸ Direct Testimony of Leo M. Haynos, June 25, 2021, p. 4.

¹⁹ *Id.*, p. 6.

²⁰ *Id.*, p. 14.

per year, Haynos believes the existing 17 DCFC stations are more than sufficient to meet the needs of 6500 EVs in legacy KCP&L territory (Missouri and Kansas Metro) at the present time.²¹ Haynos also recommends: (1) requiring an annual progress report for any of the rebate programs approved by the Commission be filed in a Compliance Docket; (2) a list of specific items to be included in the report should be negotiated by Staff, CURB, and Evergy and filed in this Docket; (3) requiring Evergy to assess the residential rebate recipients' use of off peak charging habits by evaluating Advanced Metering Infrastructure (AMI) meter data or other means; (4) requiring Evergy to develop and file with the Commission a TOU rate for EV charging that includes some means of separately metering the residential EV charging port; (5) requiring homeowner consent before sharing any information with third-party entities in the EV industry; (6) requiring Evergy to provide preference to commercial stations that develop along highways in underserved areas; (7) commercial stations that receive a rebate must document how the customer's contribution in aid of construction is calculated in the compliance docket; and (8) requiring Evergy to develop and publish a list of potential sites for charging stations at minimal line extension costs to the customer.²²

7. Dr. Glass recommends approval of: (1) a substantially smaller budget for the Commercial EV Charger Rebate Program; (2) the proposed Residential programs; and (3) Evergy's proposed tariffs with the reporting requirements proposed by Staff witness, Leo Haynos.²³ Glass explains measuring the effectiveness of a utility's EV adoption promoting program is difficult because: (1) the oversized effect of the Federal EV Tax Credit (for eligible vehicles, the tax credit is \$7,500, versus a \$500 Residential Customer EV Outlet Rebate),²⁴ and

²¹ *Id.*

²² *Id.*, pp. 17-18.

²³ Direct Testimony of Robert H. Glass, June 25, 2021, p. 2.

²⁴ *Id.*, pp. 9-10.

(2) neither Tesla nor GM are eligible for tax credits, raising the question of whether a \$500 rebate would impact anyone's willingness to purchase a Tesla or GM EV.²⁵ Thus, Staff was unable to determine whether any of the EVs assumed in its models would have been purchased without the Rebate Programs.²⁶ Glass also notes that while Evergy provides no evidence that its programs will increase EV adoption,²⁷ Staff's models find that transportation electrification provides net benefits to Evergy customers.²⁸

8. CURB opposes Evergy's request to offer rebates to residential customers, residential developers, and commercial customers.²⁹ Ms. Crane believes if the Commission authorizes rebates for EV charging equipment, those costs should be shared between ratepayers and shareholders.³⁰ CURB opposes expansion of the CCN program, but supports Evergy's request to offer two new TOU rate structures that promote EV charging during off-peak hours and deferring incremental customer education and administration costs associated with these two new TOU rate structures to Evergy's next rate case.³¹ Crane testifies that although Evergy's proposals are premised on the need to promote the development of an electric vehicle market, Evergy has provided no evidence to suggest that its customers want additional charging stations or rebates to purchase EVs.³² Therefore, Crane concludes that rather than responding to a demand from its customers, Evergy is trying to create a more robust market for its electricity.³³

9. Mr. Wilson notes that ChargePoint largely supports Evergy's proposals, but believes modifications to the rebate programs and the proposed Clean Charge Network (CCN)

²⁵ *Id.*, p. 10.

²⁶ *Id.*, p. 16.

²⁷ *Id.*, p. 9.

²⁸ *Id.*, pp. 6, 29

²⁹ Direct Testimony of Andrea C. Crane, June 25, 2021, p. 5.

³⁰ *Id.*, p. 6.

³¹ *Id.*

³² *Id.*, p. 18.

³³ *Id.*

expansion are needed to ensure the programs are effective, encourage participation, and support the competitive market.³⁴ ChargePoint recommends modifying the Residential Rebate program to: (1) require Evergy to provide all qualifying customers with a \$500 rebate per home; (2) require Evergy to give residential customers that participate in the Residential Rebate program the option to hardwire their home chargers or to install NEMA outlets; (3) require Evergy to develop and update a list of qualifying chargers for the Residential Rebate program; and (4) require chargers be ENERGY STAR certified, have a safety certification from UL or another nationally recognized testing laboratory, and have managed charging capabilities.³⁵ ChargePoint recommends approval of Evergy's CCR with two modifications: (1) removing the requirement that site hosts participating in the Commercial Rebate program share charger utilization data with Evergy; and (2) removing the requirement that customers agree to participate in demand response events.³⁶ Lastly, ChargePoint favors expansion of the CCN, but would allow site hosts at new CCN sites to choose the EV charging hardware and network service provider, and to set the prices paid by drivers.³⁷

10. On July 2, 2021, Andrea Crane filed Cross-Answering Testimony, disagreeing with both Staff's support for a scaled-down version of the rebate program³⁸ and with ChargePoint's proposed modifications to the rebate programs.³⁹ On July 6, 2021, Justin Wilson filed Cross-Answering Testimony, urging the Commission to reject the recommendations made by Staff, CURB, and AFPM to either reject or significantly reduce the size and scope of Evergy's Transportation Electrification Portfolio.⁴⁰ Wilson also urged: (1) rejecting Staff's recommendation to reduce the budget of the Commercial Rebate programs; (2) rejecting CURB's and AFPM's

³⁴ Direct Testimony of Justin D. Wilson, June 25, 2021, pp. 3-4.

³⁵ *Id.*, p. 4.

³⁶ *Id.*, pp. 4-5.

³⁷ *Id.*, p. 5.

³⁸ Cross Answering Testimony of Andrea C. Crane, July 2, 2021, p. 3.

³⁹ *Id.*, p. 7.

⁴⁰ Cross Answering Testimony of Justin D. Wilson, July 6, 2021, p. 2.

recommendations to deny the rebate programs; (3) requiring Evergy to collect data from residential rebate recipients' smart EV charging stations for developing an EV-specific TOU rate; and (4) requiring Evergy to develop an EV-specific TOU rate that encourages off-peak charging and uses the embedded meters in smart EV charging stations to measure charging consumption.⁴¹

11. On July 16, 2021, Evergy submitted Rebuttal Testimony from Caisley, Kimberly H. Winslow, Nick Voris, Brad Lutz, Darrin R. Ives, and Ambika Coletti.

12. Caisley testifies there will be a major shift away from petroleum-based driving because: (1) car manufacturers are turning towards EVs; (2) and consumer attitudes have significantly evolved, since the CCN was introduced in 2015; (3) governments have intervened with both financial incentives and tailpipe emissions mandates; and (4) COVID has disrupted global supply chains and led to a greater emphasis on locally derived energy/electricity.⁴² Caisley believes, "Simply put, the growth of EVs over the next 5, 10, and 20 years is inevitable; it is a tidal wave already heading our way. We are poised now to decide whether we will surf it or drown in it."⁴³ Caisley argues a utility is the best option to provide EV charging because it deploys stations and offers rebates to other areas that are more likely to include lower income citizens and more rural territories versus competitive companies that will "cherry-pick" the more profitable locations in Kansas, creating "haves" and "have nots" for Transportation Electrification (TE) services.⁴⁴ Caisley claims that if the Commission rejects or substantially limits its Application, Evergy will not move forward at this time.⁴⁵ Furthermore, Caisley claims the costs of the TE portfolio is

⁴¹ *Id.*, p. 4.

⁴² Rebuttal Testimony of Charles A. Caisley, July 16, 2021, pp. 2-3.

⁴³ *Id.*, p. 3.

⁴⁴ *Id.*, p. 15.

⁴⁵ *Id.*, p. 17.

miniscule, amounting to approximately \$4 and \$2 a year for an average residential Metro and Central customer, respectively.⁴⁶

13. Winslow disputes: (1) Crane's opinion that Evergy fails to demonstrate the need for rebates or the CCN expansion, arguing that Crane ignores the forward-looking information that Evergy relies upon, and the significant changes in the EV industry since 2016;⁴⁷ and (2) Thoren's criticism that Evergy's TE proposal fails to consider its impact on the grid and facility costs caused by TE growth.⁴⁸

14. As opposed to Staff, which believes demand for public charging infrastructure is primarily signaled by the number of local EV owners, Voris posits that current EV ownership is a poor indicator of demand for public charging infrastructure.⁴⁹ Instead, Voris suggests demand is best signaled by data indicating EV desirability is increasing.⁵⁰ Voris claims Evergy's continued, modest investment in the CCN benefits all customers by: (1) accelerating the availability of public charging infrastructure—particularly in Kansas Central where over 95% of Evergy's Kansas proposed CCN budget is allocated, (2) making charging services available to a broader range of customers than those taking advantage of the proposed rebate program, and (3) reducing range anxiety, increasing EV adoption and electric sales to put downward pressure on rates for all Evergy customers.⁵¹ Voris argues there is no data to support the assumption that the competitive marketplace will be the catalyst to achieving EV charging stations throughout Kansas.⁵²

15. While Voris believes Staff's reporting recommendations are reasonable and expresses Evergy's willingness to work with Staff to establish reporting guidelines across all

⁴⁶ *Id.*, p. 21.

⁴⁷ Rebuttal Testimony of Kimberly H. Winslow, July 16, 2021, pp. 3, 6.

⁴⁸ *Id.*, p. 10.

⁴⁹ Rebuttal Testimony of Nick Voris, July 16, 2021, pp. 3-4.

⁵⁰ *Id.*, p. 4.

⁵¹ *Id.*, p. 7.

⁵² *Id.*, p. 9.

approved programs, he challenges Haynos' recommendations that: (1) Evergy seek approval from residential customers receiving rebates before analyzing their AMI meter data; and (2) accepting TOU rates be a requirement for receiving the rebate.⁵³ Voris disagrees with Grady's testimony favoring a scaled down version of the commercial rebate program.⁵⁴

16. Lutz reaffirms Evergy's intent that the TOU rates established in this Docket will be reviewed in its next rate case.⁵⁵

17. Ives claims Evergy seeks a far more limited CCN program than that Grady has described.⁵⁶ Specifically, Evergy requests a ruling on the decisional prudence of investing in the CCN expansion, not on its management/execution of the CCN expansion project, the costs incurred for construction, or whether there were imprudent costs or costs that could have been avoided during the construction.⁵⁷ Ives also explains K.S.A. 66-1239 does not restrict the Commission's ability to preapprove a utility investment otherwise under its general statutory grant of authority if the Commission finds it is in the public interest.⁵⁸ According to Ives, Crane's suggestion that the TE program expenses should be shared between shareholders and ratepayers is contrary to established and reasonable utility regulatory ratemaking practices and policies.⁵⁹ He dismisses Thoren's testimony as an attempt to protect AFPM's petroleum business interests.⁶⁰

18. Ms. Coletti acknowledges it is very difficult to make a causation linkage between EV adoption and EV programs.⁶¹ Coletti faults Dr. Glass for focusing on at-home charging and ignoring that for charging away from home, a single EV may also depend on access to charging at

⁵³ *Id.*, p. 12.

⁵⁴ *Id.*, pp. 16-17.

⁵⁵ Rebuttal Testimony of Brad Lutz, July 16, 2021, p. 2.

⁵⁶ Rebuttal Testimony of Darrin R. Ives, July 16, 2021, p. 4.

⁵⁷ *Id.*

⁵⁸ *Id.*, p. 8.

⁵⁹ *Id.*, p. 12.

⁶⁰ *Id.*, p. 14.

⁶¹ Rebuttal Testimony of Ambika Coletti, July 16, 2021, p. 3.

the workplace, in public destinations, and/or along highway corridors.⁶² However, her characterization overlooks Glass' testimony that because residential and commercial programs are interrelated, increased residential adoption also increases away-from-home charging in Staff's models.⁶³ Despite her criticisms of Glass' analysis, Coletti notes Glass' modeling results support approval of the proposed transportation electrification programs from a cost effectiveness perspective.⁶⁴

19. On July 29, 2021, Evergy, Staff, and CURB filed a Motion to Approve Non-Unanimous Partial Settlement Agreement (Settlement). The Settlement provides:

- \$10 million, of which \$1.6 million will target underserved areas, for the Commercial EV Charger Rebate Program (CCR);
 - Under an expedited process, Evergy can increase the budget for CCR to \$15.4 million without having to file a new application;
- For residential rebates, Evergy will offer Customers who install a 240V outlet:
 - \$500 rebate if they enroll in TOU rates, or
 - \$250 rebate if Customer does not enroll in TOU rates.

The Transportation Electrification (TE) Program is slated to begin on February 1, 2022, and continue for five years, terminating on January 31, 2027.⁶⁵ Applications for incentives will be accepted until the earlier of funding being exhausted or January 31, 2027. The Settlement is attached as Attachment A.

⁶² *Id.*, p. 4.

⁶³ See Direct Testimony of Robert H. Glass, p. 29.

⁶⁴ Rebuttal Testimony of Ambika Coletti, p. 7.

⁶⁵ Application, Appendix B, Program Tariff Sheets, p. 3 of 11.

20. On July 30, 2021, the Natural Resource Defense Council (NRDC)⁶⁶ expressed its support for the Non-Unanimous Partial Settlement.⁶⁷ Also on July 30, 2021, Justin Grady of Staff, Andrea Crane on behalf of CURB, and Darrin Ives of Evergy filed testimony in support of the Settlement, and Don Thoren on AFPM’s behalf filed testimony in opposition to the Settlement. On August 3, 2021, ChargePoint filed its Statement on the Settlement, opposing the Settlement because it does not resolve several of its primary concerns with Evergy’s Portfolio.⁶⁸ ChargePoint proposes modifying Evergy’s proposed Residential Rebate program to: (1) allow residential customers participating in Evergy’s Residential Rebate program to either hardwire their home chargers or install NEMA outlets if the customers prefer; and (2) require Evergy to develop a list of qualifying chargers for the Residential Rebate program.⁶⁹ ChargePoint also proposes modifying Evergy’s proposed CCR to remove the requirements: (1) that site hosts share charger utilization data with Evergy; and (2) that customers agree to participate in demand response events.⁷⁰

21. On August 6, 2021, AFPM filed its opposition to the Settlement, claiming: (1) it violates K.S.A. 66-101b because Evergy’s Portfolio is not necessary for Evergy to provide “reasonably efficient and sufficient services;”⁷¹ (2) unlawfully allows one class of Evergy’s customers to bear the costs of another class of customers;⁷² (3) unlawfully gives Evergy a competitive advantage over the fuel industry;⁷³ and (4) violates public policy because it is not the proper function of a utility to stimulate demand for electricity service.⁷⁴

⁶⁶ NRDC was granting intervention on April 22, 2021.

⁶⁷ Natural Resource Defense Council’s Notice of Support for Non-Unanimous Partial Settlement Agreement, July 30, 2021, ¶ 2.

⁶⁸ Statement of ChargePoint, Inc., Regarding Non-Unanimous Settlement Agreement, Aug. 3, 2021, p. 1.

⁶⁹ *Id.*, pp. 1-2.

⁷⁰ *Id.*, p. 2.

⁷¹ Objection to Non-Unanimous Partial Settlement Agreement, Aug. 6, 2021, p. 6.

⁷² *Id.*, p. 7.

⁷³ *Id.*

⁷⁴ *Id.*

22. On August 20, 2021, Evergy, Staff, CURB, and NRDC submitted their definition of the term “underserved.”⁷⁵ Under their definition, for the six months ending December 31, 2021, Leavenworth, Wyandotte, Riley, Butler, Saline, Miami, Harvey, McPherson, Cowley, Franklin, Atchison, Pottawatomie, Crawford, Geary, Dickinson, Coffey, Montgomery, and Osage are considered underserved.⁷⁶

23. The Commission held an Evidentiary Hearing on September 20-21, 2021. Evergy, Staff, CURB, AFPM, and ChargePoint all appeared by counsel. The Commission heard live testimony from a total of twelve witnesses, including six on behalf of Evergy, three on behalf of Staff, two on behalf of KEPCo, and one each on behalf of CURB, AFPM, and ChargePoint. The parties agreed to waive cross-examination of several witnesses and had the opportunity to cross-examine the remaining witnesses at the evidentiary hearing and to redirect their own witnesses.

24. On October 8, 2021, Evergy filed its Post Hearing Brief, reiterating that electrification of America’s transportation sector is accelerating at a substantial pace, and that the programs identified in its Application need to begin right away.⁷⁷ Evergy explains that the cost effectiveness evaluation performed by ICF Resources, LLC (ICF) shows all Evergy customers benefit from increased EV adoption, regardless of whether they drive an EV.⁷⁸ Evergy claims the programs it proposed in the Portfolio give it the ability to better manage the impact of TE adoption on its grid to ensure the inevitable growth in this industry will benefit both its customers and Kansas.⁷⁹ Rather than playing an active role in providing EV charging stations, Evergy’s stated goal with CCN expansion is to fill the gaps where the competitive marketplace have chosen not to

⁷⁵ Submittal on Definition of “Underserved” Pursuant to Terms of the Non-Unanimous Partial Settlement Agreement, Aug. 20, 2021.

⁷⁶ *Id.*, ¶ 2.

⁷⁷ Initial Post-Hearing Brief of Evergy Metro, Inc., Evergy Kansas Central, Inc., and Evergy Kansas South, Inc., Oct. 8, 2021, ¶¶ 1, 3.

⁷⁸ *Id.*, ¶ 13.

⁷⁹ *Id.*, ¶ 30.

build stations.⁸⁰ Without decisional prudence, Evergy claims it is unable to move forward with additional CCN investment.⁸¹ Evergy expressed its openness to guardrails around its approval of the CCN, but opposes Ms. Crane's recommendation that Evergy's shareholders be required to split the costs of the investment 50/50 with ratepayers.⁸²

25. On October 22, 2021, ChargePoint, CURB, Staff, and AFPM filed their briefs. ChargePoint supports expansion of the CCN and Evergy's request for a policy determination that expansion is prudent.⁸³ However, ChargePoint would require Evergy to allow site hosts to choose: (1) EV charging hardware; (2) EV network service provider; and (3) to set prices for drivers.⁸⁴

26. CURB recommends denying Evergy's request for decisional prudence because: (1) Evergy has not demonstrated a need or demand for the expansion of its CCN, (2) Evergy's proposal will result in cross-subsidization of EV owners, and (3) this public policy issue is best left for the Legislature.⁸⁵ CURB believes EVs may be an important public policy issue, but ratepayers should not be provider of last resort for investments that competitive public entities or governments fail to fund.⁸⁶ While acknowledging a small growth in EV ownership in Kansas, CURB argues the degree and trend of EV penetration in Kansas does not warrant significant investment by a regulated utility now.⁸⁷ CURB posits the evidence does not suggest the lack of charging stations is hindering adoption of EVs in Kansas, nor does it suggest that expansion of the number of charging stations will increase the number of EVs in Kansas.⁸⁸

⁸⁰ *Id.*, ¶ 33.

⁸¹ *Id.*, ¶ 39.

⁸² *Id.*, ¶ 47.

⁸³ Post-Hearing Response Brief of ChargePoint, Inc., Oct. 22, 2021, pp. 1-2.

⁸⁴ *Id.*, pp. 2-3.

⁸⁵ Responsive Brief of the Citizens' Utility Ratepayer Board, Oct. 22, 2021, ¶ 33.

⁸⁶ *Id.*, ¶ 34.

⁸⁷ *Id.*, ¶ 42.

⁸⁸ *Id.*, ¶ 45.

27. Even with the potential guardrails discussed at the evidentiary hearing, CURB opposes CCN expansion.⁸⁹ Not only does the settlement provide extensive support for EVs and establish a firm foundation to advance EV charging stations in Kansas by the competitive market, but CURB also notes that the Federal Infrastructure Bill includes billions of dollars for the building of charging stations across this country.⁹⁰ Since Evergy’s next rate case is only about a year away, CURB recommends giving HB 2145 time to work and see if private industry builds EV stations.⁹¹ Under CURB’s approach, by the time the rate case is filed, the Commission will have a much clearer idea of the need, if any, for an expanded CCN.⁹²

28. Staff urges the Commission to approve the Settlement without modifications.⁹³ Staff characterizes AFPM’s challenges to the Settlement’s legality as lacking merit because EV drivers are not currently a “class” of customers under Evergy’s rate design.⁹⁴ Furthermore, the Commission has historically allowed some cross-subsidization through special discounts or programs when it benefits the system as a whole.⁹⁵

29. Staff opposes Evergy’s request for “decisional prudence” of its CCN expansion because it circumvents the traditional ratemaking procedure and would effectively prevent the Commission from later concluding that costs were not prudently incurred, even if Staff’s rate case audit found evidence of imprudence.⁹⁶ While acknowledging growth in the EV arena, Staff remains unconvinced Evergy should receive a blanket predetermination of prudence on its current CCN proposal.⁹⁷ Thus, if CCN expansion is allowed, it should be with guardrails discussed during

⁸⁹ *Id.*, ¶ 63.

⁹⁰ *Id.*, ¶ 61.

⁹¹ *Id.*, ¶¶ 65-66

⁹² *Id.*, ¶ 66.

⁹³ Staff’s Closing Brief, Oct. 22, 2021, ¶ 20.

⁹⁴ *Id.*, ¶¶ 23, 24.

⁹⁵ *Id.*, ¶ 25.

⁹⁶ *Id.*, ¶¶ 27-28.

⁹⁷ *Id.*, ¶ 29.

the evidentiary hearing, *i.e.* Evergy must show a lack of interest from the private market in building a charging station in “underserved” areas or, a budget cap for what would be considered prudent spending.⁹⁸

30. AFPM contends Evergy’s TE Portfolio violates Kansas law and is not consistent with the public interest.⁹⁹ AFPM questions the need for Evergy’s TE Portfolio, citing Caisley’s acknowledgement that Evergy’s current TE Program is not necessary to provide sufficient and efficient electrical service, and that Evergy will provide its customers with electrical service regardless of whether the Commission approves the Settlement or CCN Expansion (“[a]t the end of the day we will absolutely continue to provide electrical service.”)¹⁰⁰ Likewise, AFPM cites to Voris testimony that in Evergy Kansas Metro’s territory, in 2019, the average charging time per charging station was only 149 hours (less than 25 minutes of charging per station per day.)¹⁰¹ AFPM also argues Evergy fails to present convincing evidence that offering residential rebates will incentivize off-peak charging.¹⁰² Because several private entities have entered the EV charging market since 2016 and HB 2145 and President Biden’s infrastructure proposals will further stimulate the market,¹⁰³ AFPM believes CCN expansion is unwarranted.

31. On November 5, 2021, Evergy filed its Reply Brief. Evergy argues Staff’s concerns that a finding of decisional prudence effectively prevents the Commission from later concluding the cost was imprudently incurred, are no longer justified because: (1) the parties have agreed on a definition of “underserved;” (2) disallowances are still permissible if the Commission agrees with a Staff finding of imprudence in how Evergy locates the stations or in their construction; and

⁹⁸ *Id.*, ¶¶ 31, 34.

⁹⁹ Post-Hearing Brief of AFPM, KCGA, Fuel True, and Renew, Oct. 22, 2021, p. 1.

¹⁰⁰ *Id.*, ¶ 8.

¹⁰¹ *Id.*, pp. 9-10.

¹⁰² *Id.*, p. 11.

¹⁰³ *Id.*, pp. 11-12.

(3) the investment is further limited by the proposed “cap” of \$13.5 million on the potential spend for the stations, and by Evergy’s repeated confirmation that it only plans to build stations as needed to fill gaps in service.¹⁰⁴ Evergy claims CURB’s position that expansion of the CCN should at least be delayed until the Settlement has time to work erroneously conflates the CCR and the CCN expansion plans.¹⁰⁵ While the goal of the CCN expansion is to make public charging available where it is needed but will likely not occur without utility involvement, the CCR program is designed to generate nonutility charging stations that contain “grid friendly” characteristics the utility can leverage in the future to manage the impacts of TE.¹⁰⁶

32. In response to ChargePoint’s suggestion to modify the S&A to allow customers to install a NEMA outlet or hardwire their charger under the Residential Rebate program, Evergy is concerned incentivizing installations larger than 50 amp could impact local distribution.¹⁰⁷ Evergy disagrees with ChargePoint’s proposal to modify the Settlement to require customer rebates for smart chargers, not just for installation of a 240V outlet, because utilities are currently pursuing a variety of approaches to managing the impact of residential charging.¹⁰⁸ Disputing AFPM’s claim that Evergy’s programs result in unjust and unreasonably discriminatory rates to competitors, Evergy notes it is the only entity with a legal obligation to provide electric services throughout its territory, including those areas likely be overlooked by the private sector during the earlier stages of the TE build out.¹⁰⁹ Evergy counters AFPM’s claim that ICF’s cost effectiveness modeling showing net benefits to all Evergy’s customers from the growth in EVs is not Kansas-specific, by stating ICF used EPRI’s projections which were specifically developed for Evergy’s service

¹⁰⁴ Reply Brief of Evergy Metro, Inc., Evergy Kansas Central, Inc., and Evergy Kansas South, Inc. (Evergy Reply Brief), Nov. 5, 2021, ¶¶ 4-5.

¹⁰⁵ *Id.*, ¶ 10.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*, ¶ 17.

¹⁰⁸ *Id.*, ¶ 18.

¹⁰⁹ *Id.*, ¶ 21.

territory.¹¹⁰ In response to AFPM's argument that K.S.A. 66-1239 prohibits approving other forms of predetermination, Evergy contends that rather than limit the Commission's discretion, K.S.A. 66-1239 grants utilities the right to obtain predetermination from the Commission on transmission and distribution investments.¹¹¹

Settlement Agreement

33. The law generally favors compromise and settlement of disputes between parties when they enter into an agreement knowingly and in good faith to settle the dispute.¹¹² When approving a settlement, the Commission must make an independent finding that the settlement is supported by substantial competent evidence in the record as a whole, establishes just and reasonable rates, and is in the public interest.¹¹³

34. Since the settlement is non-unanimous, the Commission will apply the five-factor test to determine the reasonableness of proposed settlement agreement. These factors are:

- Whether each party had an opportunity to be heard on reasons for opposing the settlement;
- Whether the settlement is supported by substantial competent evidence in the record as a whole;
- Whether the settlement conforms to applicable law;
- Whether the settlement will result in just and reasonable rates;
- Whether the results of the settlement are in the public interest.¹¹⁴

¹¹⁰ *Id.*, ¶ 22.

¹¹¹ *Id.*, ¶¶ 23-25.

¹¹² *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-42 (2001).

¹¹³ *Citizens' Util. Ratepayer Bd. v. Kansas Corp. Comm'n*, 28 Kan. App. 2d 313, 316 (2000), rev denied March 20, 2001.

¹¹⁴ *See Order Approving Contested Settlement Agreement*, Docket No. 08-ATMG-280-RTS, May 12, 2008, ¶¶ 9-10.

I. Each party had an opportunity to be heard on its reasons for opposing the Settlement

35. AFPM and ChargePoint, the only parties opposing the Settlement, have had the opportunity to be heard. AFPM filed direct testimony from Don Thoren, testimony in opposition to the settlement, and appeared at the evidentiary hearing. At the evidentiary hearing, AFPM presented Thoren as a witness and had the opportunity to cross-examine witnesses supporting the settlement. ChargePoint filed direct and cross-answering testimony from Justin Wilson, a statement regarding the settlement, and appeared at the evidentiary hearing. At the evidentiary hearing, ChargePoint presented Wilson as a witness and had the opportunity to cross-examine witnesses supporting the settlement. Thus, AFPM and ChargePoint were given sufficient opportunity to be heard on any reasons they may have for opposing the Settlement.

II. The Settlement is supported by substantial competent evidence in the record as a whole

36. With one minor exception explained at paragraph 43 below, the Commission finds the terms of the Settlement are supported by substantial competent evidence in the record as a whole. The Settlement is supported by Evergy's Application, Direct, Cross-Answering, and Rebuttal Testimony, from several witnesses offering diverse and often conflicting perspectives about the issues presented in this Docket. Additionally, testimony in support of the Settlement was filed by Darrin Ives of Evergy, Justin Grady of Staff, and by Andrea Crane on behalf of CURB. Crane considers the Settlement to be based largely on Staff's filed position.¹¹⁵ Ives believes the terms of the Settlement reflect a consensus of the major parties for implementing the TE Portfolio,

¹¹⁵ Andrea C. Crane's Testimony in Support of Non-Unanimous Partial Settlement Agreement on Behalf of CURB, July 30, 2021, p. 7.

and a compromise of the positions taken by those parties from their prefilled positions.¹¹⁶ Where the Settlement differs from Evergy's Application, or from positions advocated by any party in prefilled testimony, these terms were negotiated to resolve the core differences of opinion on the issues.¹¹⁷ The Commission finds there is substantial competent evidence to approve the Settlement.

III. The Settlement conforms to applicable law

37. "An Order is 'lawful' if it is within the statutory authority of the commission, and if the prescribed statutory and procedural rules are followed in making the Order."¹¹⁸ None of the parties claim the subject matter of the Settlement is outside the scope of the Commission's authority. The parties opposing the settlement do not allege any procedural violations with the Docket. Staff negotiated the Settlement consistent with its understanding of its legally-authorized role in settling a contested docket and its understanding of applicable laws, regulations, and controlling authority.¹¹⁹ Staff states measures to ensure that the settlement conforms to applicable laws were taken.¹²⁰ Therefore, Commission approval of the Settlement complies with applicable law.

IV. The Settlement results in just and reasonable rates

38. Pursuant to K.S.A. 66-101b, every electric public utility is required to furnish reasonably efficient and sufficient service at just and reasonable rates. Case law suggests the "just and reasonable" standard coincides with the "zone of reasonableness" test adopted by Kansas courts. The "just and reasonable" standard was first outlined by the Supreme Court of the United

¹¹⁶ Testimony in Support of Settlement Agreement by Darrin R. Ives on Behalf of Evergy, July 30, 2021, pp. 9-10.

¹¹⁷ Testimony in Support of Non-Unanimous Stipulation and Agreement by Justin Grady, July 30, 2021, p. 15.

¹¹⁸ *Central Kansas Power Co. v. Kansas Corp. Comm'n*, 221 Kan. 505, 511 (1977).

¹¹⁹ Testimony in Support of Non-Unanimous Stipulation and Agreement by Justin Grady, p. 16.

¹²⁰ *Id.*, pp. 16-17.

States.¹²¹ The Court emphasized that the focus of inquiry when evaluating whether rates are just and reasonable, is properly on the end result or “total effect” of the rate order, rather than on the specific rate-setting method employed.

39. According to Staff and CURB, the Settlement should have relatively little impact on rates and does not actually change the level of current rates. However, the settlement creates two new off-peak rates for electric vehicle charging: the TOU electric vehicle transit service rate; and the business electric vehicle charging service rate. Further, the settlement permits Evergy to establish a regulatory asset for the rebate costs and for its costs of customer education and administration.¹²² Crane characterizes these costs as “not insignificant,” but notes they should not cause undue harm to ratepayers, and will allow the parties to gain significant knowledge regarding EV charging, which may result in future quantitative benefits to Evergy ratepayers.¹²³ Additionally, the program costs will be subject to the normal review process in a rate case.¹²⁴ Staff contends that reducing the CCR budget from \$15.4 million to \$10 million and the customer education and marketing budget from \$2.6 million to \$2.3 million, and eliminating the Residential Developer Rebate program and using deferral accounting for the program costs and rebates, will help produce just and reasonable rates in future rate cases.¹²⁵

40. While not conclusive evidence of the reasonableness of the Settlement’s provisions, Kansas law indicates the Commission’s goal in a ratemaking case should be to determine a rate that falls within a “zone of reasonableness” after applying a balancing test in which the interests

¹²¹ *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S.Ct.281, 88 L.Ed 333 (1944).

¹²² Testimony in Support of Non-Unanimous Stipulation and Agreement by Justin Grady, p. 17; Andrea C. Crane’s Testimony in Support of Non-Unanimous Partial Settlement Agreement on Behalf of CURB, p. 8.

¹²³ *Id.*

¹²⁴ *Id.*, pp. 8-9.

¹²⁵ Testimony in Support of Non-Unanimous Stipulation and Agreement by Justin Grady, pp. 17-18.

of all concerned parties are considered.¹²⁶ In addition, the Kansas Supreme Court has described the “zone of reasonableness” as it applies to the Commission's ratemaking function as follows:

There is an elusive range of reasonableness in calculating a fair rate of return. A court can only concern itself with the question as to whether a rate is so unreasonably low or so unreasonably high as to be unlawful. The in-between point, where the rate is most fair to the utility and its customers, is a matter for the State Corporation Commission's determination.¹²⁷

41. The Settlement falls within the zone of reasonableness by taking into account the interests of all parties involved, even those non-signatory parties. Further, the Settlement terms represent a compromise of the parties' filed positions. The parties represent a variety of interests, including investors, commercial and residential customers and the public generally. The terms of the Settlement are fair and reasonable, and were fully and fairly negotiated by the parties in conjunction with the acknowledgement that it is unlikely the Commission would accept wholesale any party's prefiled position. The evidence in the record demonstrates the Settlement will result in just and reasonable rates.

V The results of the Settlement are in the public interest

42. Kansas law favors and encourages settlements.¹²⁸ Each party has a duty to protect the interests it represents. Evergy has a duty to both their customers and shareholders. CURB represents the interests of residential and small commercial customers. AFPM represents the interests of the petroleum industry. Staff represents the public interest generally, placing Staff in the unique position of being required to weigh and balance the interests of Evergy, all classes of the Evergy's customers, and any other interests impacted by the Commission's Order that may not be party to the proceeding. Consistent with the Court's statements in *Kansas Gas*, “the focus of

¹²⁶ *Kansas Gas and Elec. Co. v. Kansas Corp. Comm'n*, 239 Kan. 483, 488-92 (1986).

¹²⁷ *Southwestern Bell Telephone Co. v. Kansas Corp. Comm'n*, 192 Kan. 39, 41 (1963).

¹²⁸ *Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994).

the inquiry (in setting “just and reasonable rates”) is properly on the end result or ‘total effect’ of the rate order, rather than upon the rate-setting method employed.”¹²⁹ In exercising its duty to balance all the interests before it, those of the regulated utility, the consumers both present and future, and special interest groups such as industrial or ratepayer commercial groups, the Commission acknowledges that rate increases may be unfavorable to consumers, but necessary to provide adequate compensation to the regulated entity in exchange for the public use of its resources. The Commission finds the Settlement will result in just and reasonable rates and represents an equitable balancing of the interests of all parties. Therefore, the Commission finds the Settlement is in the public interest.

43. To ensure the settlement is fully supported by the evidentiary record and results in just and reasonable rates and services, the Commission finds one modification is necessary. The Commission agrees with ChargePoint’s recommendation to modify the Settlement to allow the Residential Rebate to be applied to installation of either a 240 volt outlet or a hardwired EV charger. As noted by Evergy and Staff, the rationale for the residential rebate charging program is to incentivize L2 charging.¹³⁰ Both Evergy and Staff explain L2 charging is faster and more efficient, so charging can be more easily devoted to off-peak hours and use energy more efficiently than at lower voltages.¹³¹ Evergy and ChargePoint note that hardwired chargers allow customers to achieve an even faster charging rate than plugging into a 240 volt outlet.¹³² The primary goal

¹²⁹ Kansas Gas, 239 Kan. at 489.

¹³⁰ Non-Unanimous Partial Settlement Agreement, July 29, 2021, p. 3, Sec. III(A)(2).

¹³¹ Direct Testimony of Leo M. Haynos, p. 3; Application, Evergy Transportation Electrification Portfolio Filing Report, Section 4.1.

¹³² Initial Post-Hearing Brief of Evergy Metro, Inc., Evergy Kansas Central, Inc., and Evergy Kansas South, Inc., ¶ 53 (Also, hardwired chargers are increasingly available at 60 or even 80 amps. The NEMA outlet establishes a de facto limitation on charging rate since NEMA 14-50 outlets are rated for a maximum of 50 amps.); Post-Hearing Response Brief of ChargePoint, Inc., p. 5 (Evergy does not explain why it is necessary or desirable to impose a limitation on residential customers' charging rates, or why such a limitation could not be implemented through the program's requirements. Customers that prefer to hardwire their chargers in order to achieve faster charging rates at their home should be permitted to do so through the Residential Rebate program.)

of the Residential Rebate Program is to encourage faster and more efficient charging, allowing customers to achieve sufficient charging during off-peak periods.¹³³ Hardwired charging meets these criteria and may, in fact, be preferable to non-hardwired applications in those respects. Therefore, the Commission finds customers should have the flexibility to choose whether to apply the rebate toward installation of a NEMA outlet or the installation of a hardwired charger.

44. The Commission recognizes Evergy’s stated desire to limit charging to 50 amps, below the level of some hardwired chargers, to avoid “increased potential for distribution impacts.”¹³⁴ However, the Commission does not share Evergy’s concern at this time. First, faster charging enhances a customer’s ability to manage usage and limit charging to off-peak hours, which should decrease pressure on the distribution system and further unlock the goal of managed charging. If hardwired chargers allow faster charging than an outlet, customers can more easily limit usage to off-peak periods. Second, installation of a hardwired charger ensures customers use the rebate for L2 EV charging – likely during off-peak hours. Evergy points out that 240 volt outlets provide more flexibility to customers,¹³⁵ but the Commission views this flexibility as potentially contrary to the goals of managed off-peak charging. If a customer merely installs a 240 volt outlet, the customer may choose to use the outlet to power another appliance in the future. This appliance may require on-peak electrical usage, contrary to the “beneficial electrification” goals of the program. So, the Commission can foresee a scenario where hardwired applications are more beneficial for the system than simply incentivizing the installation of high voltage outlets.

¹³³ Application, Evergy Transportation Electrification Portfolio Filing Report, Appendix A, Detailed Program Descriptions (“The rebate will reduce the costs associated with enabling Level 2 EV charging installation at home, which provides customers with the ability to charge EVs in less time using a more energy-efficient charger (compared to Level 1). L2 charging enables EVs to charge sufficiently in the overnight hours (off peak) more effectively than using L1.”)

¹³⁴ Evergy Reply Brief, ¶ 17.

¹³⁵ Initial Post-Hearing Brief of Evergy Metro, Inc., Evergy Kansas Central, Inc., and Evergy Kansas South, Inc., ¶ 53.

45. In the Commission’s view, the evidentiary record does not support the Settlement term excluding installation of hardwired charging applications from the Residential Rebate Program. Therefore, the Commission finds it is in the public interest to modify the settlement to allow residential customers to apply the Residential Rebate to either the installation of a 240 volt outlet or the installation of a hardwired charger. With that modification, the Commission finds the settlement is in the public interest, supported by the evidentiary record, and will result in just and reasonable rates. The settlement as modified is approved.

EXPANSION OF EVERGY’S CCN

46. Evergy is asking the Commission to determine that its proposed CCN expansion is “decisionally prudent,” which would give Evergy more certainty that it will be allowed to recover associated costs of this investment in its future rate cases. Evergy claims this additional certainty is necessary given prior Commission statements and decisions potentially implying the utility should not be involved in the provisioning of EV charging services.¹³⁶ Staff, CURB, and AFPM oppose Evergy’s request.

47. Based on its review of the record, the Commission finds it premature and unnecessary to predetermine the “decisional prudence” of expanding the CCN. As Staff, CURB, and AFPM have argued, Evergy has failed to conclusively demonstrate the need to expand the CCN based on the evidentiary record. The Commission primarily bases this finding on evidence that the need for utility investment in public EV charging infrastructure is extremely fluid and unknown at this point in time. Chief among these uncertainties are an imminent, large federal investment in EV charging infrastructure¹³⁷ and a nascent competitive charging market in Kansas.

¹³⁶ *Id.*, ¶¶ 38-39.

¹³⁷ According to the Biden Administration, under the Infrastructure Investment and Jobs Act, Kansas would expect to receive \$40 million over five years to support the expansion of an EV charging network in the state. Kansas will

Given these factors, it would be inappropriate for the Commission to conclusively predetermine Evergy's proposed CCN expansion is "decisionally prudent."

48. The Commission declines to find Evergy's decision to expand its CCN is "decisionally prudent." However, the Commission does not find expansion is *per se* imprudent or that there is no role for Evergy to provide public EV charging infrastructure. The Commission believes there may be a role for Evergy to fill gaps left by the competitive charging marketplace and the federal infrastructure legislation. Depending on the response of unregulated providers of charging services, this gap-filling role may become necessary to support growth in demand and ensure EV customers in Evergy's service territories receive sufficient service. But, in light of federal infrastructure funding devoted to EV charging station expansion, as well as HB 2145 being in its infancy, the Commission recognizes Evergy may face a high burden to demonstrate a substantial expansion of its CCN is warranted in the near term.

49. In advance of Evergy's next rate case, the Commission offers some guidance on its views of potential CCN expansion. In determining prudence, the Commission would view the following factors as favoring cost recovery, though no factor or set of factors would be deemed to conclusively demonstrate or rule out prudence of a specific investment:

- Evergy gave the competitive charging market and federal infrastructure funds a meaningful opportunity to serve an identified need before building such infrastructure itself;

also have the opportunity to apply for the \$2.5 billion in grant funding dedicated to EV charging in the bill. https://www.whitehouse.gov/wp-content/uploads/2021/08/KANSAS_Infrastructure-Investment-and-Jobs-Act-State-Fact-Sheet.pdf.

- Evergy’s infrastructure was installed in an underserved area as defined by Evergy, Staff and CURB in their August 20, 2021 Submittal on Definition of “Underserved” pursuant to Terms of the Non-Unanimous Partial Settlement Agreement;
- Evergy explored and utilized, to the extent feasible, other funding opportunities, including federal infrastructure expansion funds, as an alternative to traditional investment and rate base treatment (or allowed other entities with access to such funds an opportunity to fill needs); and
- Evergy’s investment level for expanding the CCN was at or below the budget described in the application.

50. Evergy’s request for a determination that CCN expansion is decisionally prudent is denied. Evergy will have an opportunity to request recovery of costs associated with any CCN expansion in future rate cases, but it will bear its traditional burden of demonstrating any costs were prudently incurred.

THEREFORE, THE COMMISSION ORDERS:

A. The Motion to Approve Non-Unanimous Partial Settlement Agreement is approved as amended by this Order. Section III.B. of the Settlement is modified as follows: “Evergy will offer Customers the following options to receive a rebate for installation of a 240V outlet or a hardwired charger:...”.

B. Evergy’s request for a finding that expansion of the CCN is decisionally prudent is denied.

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

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 12/06/2021



Lynn M. Retz
Executive Director

BGF

ATTACHMENT A

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

In the Matter of the Application of Evergy Metro, Inc.,)
Evergy Kansas Central, Inc., and Evergy Kansas) Docket No. 21-EKME-320-TAR
South, Inc. for Approval of Transportation)
Electrification Portfolio.)

NON-UNANIMOUS PARTIAL SETTLEMENT AGREEMENT

COME NOW Evergy Metro, Inc., Evergy Kansas Central, Inc., and Evergy Kansas South, Inc. (“Evergy” or “Company”), the Staff of the State Corporation Commission of the State of Kansas (“Staff” and “Commission,” respectively), and the Citizens’ Utility Ratepayer Board (“CURB”), (referred to collectively as the “Signatories” or the “Signatory Parties”), and hereby submit to the State Corporation Commission of the State of Kansas (“Commission”) for its consideration and approval the following Non-Unanimous Partial Settlement Agreement (“Settlement Agreement” or “Agreement”):

I. INTRODUCTION

1. On February 24, 2021, Evergy filed with the Commission its Application for Approval of Transportation Electrification (“TE”) Portfolio (“Application”).
2. CURB, NRDC, ChargePoint and American Fuel & Petrochemical Manufacturers (“AFPM”)¹ filed for, and were granted, intervention in the docket.
3. Commencing on Wednesday, July 21, 2021, the parties to this case held meetings to discuss settlement, pursuant to the Commission’s procedural order issued on March 31, 2021.

¹ The AFPM group also includes Kansas Corn Growers Association, Fuel True Independent Energy & Convenience, and Renew Kansas Biofuels Association. (AFPM Petition for Intervention, filed on June 8, 2021.)

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As a result, Evergy, Staff, and CURB were able to reach partial settlement on many of the issues involved in this docket. The Settlement Agreement is non-unanimous in that the Natural Resources Defense Council (“NRDC”), ChargePoint and AFPM are not signatories to the agreement, but both participated in the settlement discussions.

II. TERMS OF NON-UNANIMOUS PARTIAL SETTLEMENT AGREEMENT

4. The Signatory Parties agree that Evergy’s Application should be approved with the following modifications and terms:

I. CLEAN CHARGE NETWORK (CCN)

This issue was not settled. The parties will present their positions to Commission for decision.

II. COMMERCIAL EV CHARGER REBATE (CCR)

A. The Signatories agree to a total budget for CCR of \$10 million. \$1.6 million of this amount will be targeted to areas that are underserved. The parties will work towards an agreement on the definition of underserved. If the parties can come to an agreement before the Evidentiary Hearing on the definition of underserved, they will submit that to the Commission the day before the hearing (August 23). If the parties cannot agree on a definition of underserved, the issue will be reserved for the brief for an ultimate Commission decision.

B. Signatories agree to establish parameters under which, during the 5-year period of the TE portfolio approved in this docket, Evergy can increase the budget for this program from \$10 million up to \$15.4 million in an expedited process without having to file a new application. A process will be developed whereby Staff and CURB would have to agree to increase the budget. If there is disagreement, there will be a 120 day dispute resolution process before the Commission.

Parameters will be based on the experience and success of the programs up to the point the increase in budget is requested. The Parties agree that the parameters for the program in each territory should at least include:

1. Number of EVs in each territory and number of public chargers that are available.

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2. Number of public charging ports that have become available without the assistance of the commercial rebate program.
 3. Progress towards current EPRI 2025 Medium Run projections—number of existing EVs relative to EPRI current medium run projections.
- C. Evaluation, Measurement and Verification (“EMV”) - Evergy agrees to perform an EMV for the Commercial EV Charger Rebate program.

III. Residential Programs

Residential Rebate:

- A. Signatories agree the general objectives of the Residential Rebate Program are to:
1. Provide Evergy, parties and Commission the opportunity to learn future grid impact of residential EV home charging, which can be used to inform future rate design and program offerings.
 2. Incent conversion from Level 1 charging to Level 2, which will allow for (1) managed charging that enables customer to charge off-peak, and (2) increased energy efficiency.
- B. Evergy will offer Customers the following options to receive a rebate for installation of a 240V outlet:
1. \$500 rebate if Customer is enrolled in the EV or Time Of Use (“TOU”) rate in the Kansas Central territory; or \$500 if Customer is enrolled in the demand TOU or 3-period TOU rate in the Kansas Metro territory. Company retains the discretion to recoup \$250 of the rebate from the Customer if Customer un-enrolls from said rates prior to 1-year after receiving the rebate.
 2. \$250 rebate if Customer does not elect to enroll in the EV or TOU rate in the Kansas Central territory; or \$250 if Customer does not elect to enroll in the demand TOU or 3-period TOU rate in the Kansas Metro territory.
 3. Customers receiving a rebate will be informed via a disclosure or FAQ as part of the Application that Evergy’s goal is to use the information gained from their EV charging behavior to provide them with feedback concerning the savings they did or did not achieve with TOU rates or managed charging. Evergy will inform the customer that all customer usage data for which the customer can be identified will be considered confidential.

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If in any future Evergy rate filings these rates are changed, this criteria will remain applicable for any similar TOU/EV rates through the approved period of the programs.

Company agrees to educate customers under either option, sharing the benefits of off-peak EV charging that results through TOU rate enrollment and/or managed charging.

C. Evaluation, Measurement and Verification (EMV)

Company agrees to perform an EMV to analyze the charging behaviors of participants and assess the effectiveness of Evergy's education and outreach activities. This EMV process will be used to further inform the grid impacts of the Residential Rebate Program and EV charging for future proposed rate designs, customer outreach programs, and other grid management activities.

1. EMV will be performed by a third party. Company will share the scope of work with signatories before issuance of RFP. The signatories must have an opportunity to agree with the RFP, and if not, dispute it before the Commission.
2. EMV to measure demand, energy and billing impacts of: EV customers receiving \$500 rebate and enrolled in TOU rate; EV customers receiving \$250 rebate and not enrolled in TOU rate or convert to TOU rate; identified EV customers (self-admission or identified through disaggregated data). EMV will also include process impact of Residential Program.
3. The Draft EMV will include the period through September 2023 and will be completed by December 2023. The Final EMV will include the period through September 2026 and will be completed by December 2026.

Developer Rebate:

The Parties agree that this program will not be part of Evergy's portfolio at this time. Any educational (non-rebate) goals associated with this program should be part of the Customer Education and Administration Program.

IV. Customer Education and Program Administration

The budget for customer education and program administration (including EMV for the residential and commercial rebate programs) will be \$2.3 million, provided the Company supplies additional detail to Staff regarding the breakdown of the items contained in the marketing and customer education budget.

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V. Reporting Requirements

The parties propose the following reporting requirements:

Annual Report

- Annual Report will be submitted to the Commission on April 30 for the previous calendar year for each jurisdiction and program. Evergy agrees the parties will collaborate after the annual report is filed and evaluate the need for revisions to reporting requirements. This is consistent with the requirements within the Clean Charge Network tariff.
- At a minimum, the Annual Report will include:

Residential Rebate Program

- Number of customers that utilized the program by year
- Number of customers that enrolled in a TOU rate from this effort
- Changes in TOU rate enrollment after initial choice. # of customers adding later, dropping later.
- Summary of information identified by Evergy within the rebate application, such as make/model of EV, etc.
- Summary of marketing efforts
- Detailed budget information
- Estimated amount of off peak charging for each methodology used by Evergy to make the estimate
- Update on budget variances in item IV.
- 240V circuit breaker size distribution (as installed)
- Interval data for one summer peak month and one winter peak month
 - Up to five customers from each category (i.e. TOU and non-TOU)

Commercial EV Charger Rebate –each item needs to be separated out by station type (fleet, multi-family, workplace)

- Number of rebates paid out
- Number of ports installed.
- Type of location (e.g. retail, workplace, highway) & detailed map of locations
- Types of chargers (L2 versus DCFC and make/model)
- Detailed budget information
- Number of applicants proposing to place station in underserved area
- Number of underserved area applicants selected
- For each station, provide cost of Evergy investment, amount of customer CIAC if any.

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- For each station, (identify workplace, fleet, multifamily) number of charge events, peak demand for station by month along with time of day peak occurred, kWh sold to each station.
- Charger utilization data consistent with current CCN reporting

The report will be provided by Evergy for the period of the approved programs under this docket.

Engagement with Parties

Results of draft and final EMVs will be presented to Signatories by December 2023 and December 2026, respectively.

Evergy will provide to Staff a technical paper describing how AMI data is disaggregated and assumptions used to disaggregate EV charging, specifically. Subsequently, Evergy agrees to utilize the annual update to advise parties regarding the maturation of its disaggregation capabilities and how that will further inform residential rate design for the rate case that follows 2023.

Evergy agrees it will have a presentation with Signatories on future rate designs that are applicable to EV charging by June 2024. This may include separate EV rate using disaggregated AMI data; utilization of OEM data; TOU variations; real time pricing.

Commission Presentations

Evergy agrees that it will provide a Commission presentation on the status of programs approved in this Application in June 2023 and June 2024.

VI. **Deferred Asset**

- A. No internal labor will be included in the deferred asset. However, external outside services labor and expenses will be eligible to be included in deferred asset.
- B. There will be no offset to the deferred asset for revenues related to the Commercial EV Charger Rebate program.

VII. **AMI Data**

Evergy will add an additional disclosure to Evergy's Privacy Policy page of its website on use of AMI data that is applicable across all uses and customers. Staff will review and approve the language.

VIII. **Transit and Business EV Rates**

These rates will be approved as proposed in the Application.

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III. MISCELLANEOUS PROVISIONS

A. The Commission's Rights

5. Nothing in this Settlement Agreement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including the obligation to ensure that Evergy is providing efficient and sufficient service at just and reasonable rates.

B. Regulatory Authority and Waiver of Cross Examination

6. The Signatory Parties are submitting this Settlement Agreement, with supporting testimony, pursuant to K.A.R. 82-1-230a and in accordance with the Commission's procedural schedule established by Order issued March 31, 2021.

7. The Signatory Parties waive cross-examination on all testimony filed by the Signatory Parties prior to the filing of this Settlement Agreement.

C. Negotiated Settlement

8. This Settlement Agreement represents a negotiated settlement that resolves the issues as presented in this pleading. The Signatory Parties represent that the terms of this Settlement Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Signatory Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Settlement Agreement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide to not approve this Settlement Agreement in the instant proceeding or if the Commission materially modifies or adds to its terms. If the Commission accepts this Settlement Agreement in its entirety and incorporates the same into a formal order without material

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modifications or additions, the Signatory Parties shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.

D. Interdependent Provisions

9. The provisions of this Settlement Agreement have resulted from negotiations among the Signatory Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Settlement Agreement in total, or if the Commission imposes additional or modified terms or obligations, the Settlement Agreement shall be voidable and no Signatory Party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in the event any Signatory Party opts to void this Settlement Agreement pursuant to its terms, the Agreement shall be considered privileged and not admissible in evidence or made a part of the record in any other proceeding.

IN WITNESS THEREOF, the Signatory Parties have executed and approved this Settlement Agreement, effective as of the 29th day of July, 2021, by subscribing their signatures below.

Respectfully submitted,

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ATTACHMENT A

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COUNSEL FOR THE CITIZENS' UTILITY RATEPAYERS BOARD

CERTIFICATE OF SERVICE

21-EKME-320-TAR

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 12/06/2021.

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