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 a Modified Standalone Plan or Merger Transaction.	))))	Docket No. 20-EKME-514-GIE

COMMENTS OF THE CITIZENS' UTILITY RATEPAYER BOARD ON EVERGY'S REPORT REGARDING THE MODIFIED STANDALONE PLAN

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and submits its comments in response to the report filed by Evergy on August 13, 2020.

Background

1. On June 11, 2020, Commission Staff ("Staff") filed a Petition for Order Initiating Investigation, to investigate a certain agreement, dated February 28, 2020, by and between Evergy ("the Company") and Elliott Management ("Elliott").[1] The petition alleged that the agreement resulted in the appointment of two new members to the Company's Board, and the creation of a Strategic Review & Operations Committee ("SROC") to explore ways to increase the Company's shareholder value.[2]

2. The Staff's petition alleged that, pursuant to the agreement, the SROC was to consider either a Modified Standalone Plan to cut operating and maintenance expenses and increase capital expenditures or a Merger Transaction, and to present its recommendation to the Company's Board for consideration and vote.[3] The Staff's petition identified a number of issues of concern arising out of the agreement.[4] The petition recommended that the Commission require the Company to provide

[1] Petition of Commission Staff for Order Initiating Investigation, June 11, 2020.
[2] Ibid., ¶ 5.
[3] Ibid.
[4] Report & Recommendation Utilities Division, p. 43, attached to Petition of Commission Staff for Order Initiating Investigation, June 11, 2020.

the rationale and explanation of a number of questions outlined in the Staff's Report and Recommendation ("R&R") attached to the petition.[5]

3. The Company filed a Response to Staff's R&R on June 17, 2020, requesting, among other things, that the Commission provide additional time for the Company to respond to the questions proposed by Staff in order to allow the appropriate time for management and the Board to exercise their discretion in running the business and fulfill their respective responsibilities.[6]

4. On June 18, 2020, the Commission issued an Order Opening General Investigation. In that Order, the Commission directed the Company to provide a report to the Commission within two weeks of its Board's decision on how to proceed.[7] The Company was directed to produce the SROC Report submitted to the Board and to provide explanations of various issues pertaining to either the Modified Standalone Plan or the Merger Transaction, if selected by the Company Board.[8] Regarding the STP, the Commission directed the Company to provide detailed explanations for certain issues, including the following:

- Why the Modified Standalone Plan was selected;
- What level of additional O&M savings have been identified that are achievable;
- How the Modified Standalone Plan will comply with merger conditions;
- How the Modified Standalone Plan achieves regionally competitive rates as desired by Substitute for Senate Bill 69 ("SB 69"); and

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[5] Report & Recommendation Utilities Division, pp. 44-47, attached to Petition of Commission Staff for Order Initiating Investigation, June 11, 2020

[6] Response of Evergy Metro, Inc., Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. to Petition Of Commission Staff For Order Initiating A General Investigative Docket, June 17, 2020, ¶ 14.

[7] Order Opening General Investigation, June 18, 2020.

[8] Ibid., ¶ 8.

- How the Modified Standalone Plan balances the needs of customers and shareholders given both the realized and potential impacts of COVID-19.[9]

5. The Commission intended the general investigation to fully inform the Commission, the Company's customers and other stakeholders about the Company Board's analysis and rationale behind its decision to pursue either a Modified Standalone Plan or a Merger Transaction.[10] Further, the Commission's June 18, 2020 Order granted Staff, CURB, and any other intervenors an opportunity to file responsive comments no later than 45 days after the Company submitted its report.[11]

6. CURB filed a Petition for Intervention and Motion for Protective Order and Discovery Order on June 19, 2020.[12] The Commission granted CURB intervention by an Order issued on July 30, 2020.[13] The Commission's Order outlined a very high level of confidentiality because the pertinent decision-making process was still occurring, and the Commission determined the highest level of confidentiality would be necessary given the commercial sensitivity that existed, especially with the ongoing scope of the SROC work including an ongoing strategic market check.[14] Other parties have sought intervention in this docket and such intervention has been granted.

Company Response

7. In response to the KCC's Order, the Company filed the Sustainability Transformation Plan ("STP") on August 13, 2020. In addition, the Company filed responses to various questions that had been posed by the KCC. In that filing, the Company stated that it had decided against a strategic

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[9] Ibid.
[10] Ibid., ⁋ 6.
[11] Ibid., ⁋ 9.
[12] CURB Petition to Intervene and Motion for Protective Order and Discovery Order, June 19, 2020.
[13] Order Granting CURB's Petition To Intervene; Protective/Discovery Order, July 30, 2020.
[14] Ibid.

combination, i.e., a merger, and instead would remain a standalone enterprise. However, in view of concerns raised by Elliot, the Company outlined a series of capital spending increases and operating expense reductions that are designed to increase shareholder earnings over the next five years. The Company stated that its proposals will result in an earnings per share ("EPS") compound annual growth rate ("CAGR") of 6-8% from 2019-2024.[15]

8. With regard to capital expenditures, the Plan calls for $8.9 billion in investment from 2020-2024 for the Company's combined Kansas and Missouri territories, which represents an increase of $1.4 billion over the base case.[16] While the Company identified some broad categories of capital spending, it did not provide details of the underlying incremental capital projects. The Company did state that its rate base is expected to grow at a CAGR of 5-6% over the five-year period, which it claims is at the low end of comparable utilities.[17] The Company stated that it plans to allocate a proportionally greater amount of the incremental investment to Missouri because of more favorable rate treatment in that jurisdiction.[18]

9. The STP anticipates that non-fuel operating and maintenance costs ("NFOM") will be $330 million below 2018 levels by 2024 (a reduction of 25%).[19] While specific cost-reduction programs were not identified, the Company provided the following breakdown of NFOM savings – 25% Generation, 19% Transmission and Distribution, 14% Administrative and General, 9% Customer and Community Solutions, 9% Information Technology, and 24% Other Technology Enabling Savings.[20] The Company also anticipates that the 2024 Fuel and Purchased Power Costs

15 STP, page 4.
16 Id.
17 STP, pages 30-31.
18 STP, page 30.
19 STP, page 3.
20 STP, Appendix II, page 4.

("FPPC") will be approximately $145 million below 2019 levels.

10. The Company claims that it has already realized $250 million in merger savings.[21] No details of the $250 million were provided. The Company claims that the STP will result in net savings of $2.0 to $3.0 billion over the next 20 years on a net present value ("NPV") basis.[22] Approximately 50% of the savings are related to reductions in the social costs of carbon.

11. The Company estimates that the rate impact of the STP will be an annual increase of 1.6% from 2020 to 2024 "across all our utility customers."[23] No actual rate changes will occur until after the end of the five-year rate moratorium that was agreed to as a condition of the merger in Docket No. 18-KCPE-095-MER ("18-095 Docket").

12. The Company stated that it is targeting an 80% reduction in CO_2 emissions by 2050.[24] The Company states that additional decarbonization efforts could reduce CO_2 emissions by up to 85% by 2030, but no details are provided in the STP.[25] Instead, the Company indicates that the pace of decarbonization will be defined in collaboration with its stakeholders, presumably if agreement can be reached on stranded cost issues including securitization.

CURB Comments on the STP

13. As a preliminary matter, CURB notes that the process that resulted in the STP was initiated by Elliot on the basis that shareholders were not achieving sufficiently high returns from their investment in the Company. Therefore, CURB's primary concern is to ensure that the STP does not result in higher costs to ratepayers or deterioration of utility service in an effort to increase

21 STP, page 2.
22 STP, page 19.
23 STP, page 12.
24 STP, page 24.
25 STP, page 4.

shareholder earnings. Given the five-year base rate moratorium that was a condition of the merger agreement in the 18-095 Docket, the Company will be unable to increase base rates over the next few years. As a result, the Company will need to either reduce operating expenses or find new revenue sources in order to increase shareholder earnings during this period. It is important for the KCC to ensure that an effort to reduce operating expenses does not result in deterioration of utility service. Therefore, the Company should be required to demonstrate that any operating expense reductions will not impact service quality in the short-term, and will not have a detrimental long-term effect on the integrity of the Company's operations.

14. After expiration of the rate moratorium, the Company will be permitted to seek recovery of capital investments made over the five-year period of the rate moratorium, including the incremental investment outlined in the STP. Given the STP's focus on increasing shareholder earnings, CURB is concerned that during the next few years, the Company will have an incentive to increase investment as much as possible, so that in the next base rate case the Company's rate base will be high resulting in significantly higher earnings for shareholders. It is imperative that investments that are eventually included in rates be necessary for the provision of safe and reliable utility service to Kansas ratepayers. The KCC should guard against claims for investment that have been undertaken with a primary goal to increase shareholder earnings. The Company should be required to support all capital investments made during the rate moratorium period as being reasonable and necessary to serve its customers. It should also be able to explain why the incremental $1.4 billion of investment included in the STP is reasonable, given that this investment was not included in the original capital program for this period developed by the Company.

Docket 21-EKME-088-GIE

15. In its filing, the Company indicated that it envisioned two stakeholder processes to address the details of the STP and to gain consensus among stakeholders – a focused Integrated Resource Plan ("IRP") process to address generation resources and a broader process with a more diverse group of stakeholders to address other issues. On August 27, 2020, the KCC opened Docket No. 21-EKME-088-GIE ("21-088 Docket") to evaluate the STP in light of the merger conditions adopted in the 18-095 Docket, and to examine the STP in greater detail, including the effect of the STP on the provision of utility service and on utility rates in Kansas. This investigation will also allow the parties to propose and evaluate potential modifications to the STP. It is CURB's understanding that the 21-088 Docket is the appropriate forum to examine issues relating to the STP and we look forward to participating in that proceeding. Accordingly, we have kept these comments somewhat brief.

16. As noted above, CURB's primary focus is to ensure that the STP does not result in either higher rates or deterioration of service in an effort to achieve increased shareholder earnings as demanded by Elliott. In the 21-088 Docket, CURB will first attempt to gain sufficient supporting documentation for the STP so that we can better understand the underlying capital projects and operating expense reductions that will result in the higher earnings projected under the STP. Once we have a clear understanding of the underlying details of the STP, we will then evaluate the potential costs and benefits to Kansas ratepayers. While CURB believes it is important to examine the details of the STP and to gain a better understanding of the underlying components, we also believe that any final determination on ratemaking issues should only be performed as part of a full base rate case. Therefore, while we look forward to working with other stakeholders in this

collaborative process, we do not believe that the KCC should predetermine any rate treatment until such time as recovery is requested in a base rate case.

17. In addition to the increased capital expenditures and operating expense reductions contained in the STP that are designed to result in a 6-8% CAGR, the STP also discusses the possibility of further capital expenditures in order to accelerate decarbonization efforts. According to the Company, a critical component of any accelerated decarbonization effort would include resolution of stranded costs, either by securitization or by other means. CURB recommends that the stakeholders also address accelerated decarbonization efforts in the 21-088 Docket. We expect that a procedural outline of how the 21-088 Docket will proceed will be determined shortly.

Summary

18. The STP was developed by the Company in an effort to achieve higher earnings for shareholders. The STP, as filed, is a broad outline of increased capital spending and operating expense reductions, but provides few details regarding the underlying components of the STP. CURB intends to participate fully in the 21-088 Docket in order to review the underlying programs and projects supporting the STP. CURB's primary focus is to ensure that the STP does not result in either deterioration of service or in utility rates that are higher than necessary. Finally, CURB recommends that the determination of ratemaking issues, including whether any of the capital expenditures included in the STP should be included in utility rates, be deferred until the Company files its next base rate case at the end of the rate moratorium.

WHEREFORE, CURB respectfully submits the foregoing comments regarding the STP and requests the Commission duly consider the same.

Respectfully submitted,

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VERIFICATION

STATE OF KANSAS	)	
	)	ss:
COUNTY OF SHAWNEE	)	

I, David W. Nickel, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

David W. Nickel

David W. Nickel

SUBSCRIBED AND SWORN to before me this 28th day of September, 2020.

DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires Jan. 26, 2021

Della J. Smith

Notary Public

My Commission expires: 01-26-2021.

CERTIFICATE OF SERVICE

20-EKME-514-GIE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 28th day of September, 2020, to the following:

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