

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

**REPLY OF EVERGY METRO, INC., EVERGY KANSAS CENTRAL, INC. AND
EVERGY KANSAS SOUTH, INC. TO PETITION TO INTERVENE OF KANSAS
INDUSTRIAL CONSUMERS GROUP, INC.**

COME NOW Evergy Metro, Inc. (“Evergy Kansas Metro”), Evergy Kansas Central, Inc. and Evergy Kansas South, Inc. (together as “Evergy Kansas Central”) (collectively referred to herein as “Evergy”) and file this Reply to the Petition to Intervene of the Kansas Industrial Consumers Group, Inc. (“KIC”) and KIC’s Response to Commission Staff and Evergy’s Joint Motion for Revisions to Procedure for Docket. In support of its Reply, Evergy states as follows:

1. On June 11, 2020, Staff filed its Petition, with an attached Report and Recommendation, requesting that the Commission open a general investigation into an Agreement that was entered into by Evergy’s Board of Directors and Elliott Associates, L.P., Elliott International, L.P., and affiliates (collectively “Elliott Management” or “Elliott”) on February 28, 2020 (the “Agreement”).

2. The Agreement with Elliott resulted in the appointment of two new members to Evergy’s Board and the creation of a Strategic Review & Operations Committee (“SROC”) to consider the possibility of Evergy pursuing either a Modified Standalone Plan or a Merger Transaction and present its recommendation to Evergy’s Board for consideration and vote. As Staff explained in its R&R, currently, the formal recommendation to the Board is due July 30, 2020, and the deadline for the Board to vote on the formal recommendation is August 17, 2020.

Additionally, if Evergy pursues a Modified Standalone Plan, the deadline for publicly presenting the plan to the investor community is October 14, 2020.

3. Staff indicated in its R&R that it has concerns with both (1) the potential for a Modified Standalone Plan and the impact it could have on Evergy's service quality and on Evergy's rates and (2) the potential for a Merger Transaction because of the standards for approval of a merger in Kansas and the expectation that a proposed transaction would benefit both customers and shareholders. Thus, despite the fact that Evergy has not yet actually made a decision to pursue either of these options, Staff recommended that the Commission open a general docket, allow Staff to begin confidentially reviewing SROC and board materials, and require Evergy to submit a report answering a list of questions two weeks after any such decision is made by the Board.

4. On June 17, 2020, Evergy filed a Response to Staff's R&R. Evergy explained that throughout its engagement with Elliott Management, Evergy's Board and management team have been resolute in their commitment to serving the best interests of all Evergy stakeholders, including customers, employees, shareholders and the communities Evergy serves and that any action Evergy might consider that would alter the current strategic plan will balance the interests of stakeholders as noted above, serve the interest of regional rate competitiveness, and fully comply with the terms of the merger agreement that allowed for the creation of Evergy.

5. Given that the SROC process is ongoing and the Evergy Board has yet to make any of the decisions contemplated under that process, Evergy requested that the Commission provide additional time for Evergy 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 responsibilities¹ and requested that the Commission implement increased confidentiality protections for all of the information to be reviewed by Staff in the docket before Evergy files a report responding to Staff's questions.²

6. The Commission issued its Order Opening General Investigation ("Order") in the above-captioned docket on June 18, 2020, approving the Staff R&R in its entirety. Because the Order was issued the day after Evergy filed its Response, the Commission likely was not able to fully consider Evergy's requests regarding timing and confidentiality into consideration in the Order. Therefore, shortly after the Commission issued its Order, Evergy and Staff filed a Joint Motion indicating that they had reached agreement regarding several issues related to the procedure for the above-captioned docket – the timing of the responses to Staff's written questions, additional confidentiality protections, and a limit of the review process that occurs before Evergy publicly announces any decision to Staff alone.

7. On June 24, 2020, KIC filed its Petition to Intervene in the docket. In its pleading, KIC also objected to the procedures recommended in Staff's and Evergy's Joint Motion, arguing that they were "premature" and "too restrictive." While Evergy does not object to KIC's intervention in the docket, Evergy does strongly object to the requests KIC makes regarding the procedure for the docket and to the suggestion that any party other than Staff should be involved in the review of documents before Evergy has actually made a decision and announced it to the public. KIC's claims about the Joint Motion completely fail to recognize the rare and unusual nature of Staff's investigation in the docket.

¹ Evergy Response, ¶ 14.

² Evergy Response, ¶ 13.

8. As Evergy explained in its Response to Staff’s Motion to Open the Docket, even allowing Staff to review materials before the Board has made any decision on how to proceed pushes the limits with respect to impinging on management’s and the Board’s ability to exercise their discretion in running the business and fulfill their respective responsibilities.³ However, in its Response to Staff’s Motion to Open the Docket, Evergy indicated that it could accept Staff’s review of materials as long as certain adjustments were made with respect to timing and confidentiality. Those adjustments were reflected in Evergy’s Response and in the Joint Motion.

9. KIC’s comparison of this docket to the procedure used in the Great Plains Energy, Inc. and Westar Energy, Inc. merger docket, Docket No. 16-KCPE-593-ACQ, is inappropriate because in the merger docket, the companies’ boards had already made a decision to pursue a merger and the merger was being presented to the Commission for approval in the docket. Here, no such decision has been made.

10. In the event Evergy’s board decides to pursue either a Merger Transaction or a Modified Standalone Plan, all interested parties, including KIC, will have the opportunity to participate when the Commission reviews those plans in detail after the decision is made – for a merger, when the parties filed for approval of the transaction; for a Modified Standalone Plan, the as part of the Integrated Resource Plan (“IRP”) and capital plan process that was recently implemented in Docket No. 19-KCPE-096-CPL and in the next general rate case when investments are reviewed for prudence. Additionally, as an intervenor in this docket, KIC will have access to

³ *Missouri ex rel. Southwestern Bell Tel. Co. v. Public Service Com.*, 262 U.S. 276, 289 (1923) (“The commission is not the financial manager of the corporation and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers”); *United Fuel Gas Co. v. Railroad Com. of Kentucky*, 278 U.S. 300, 320 (1929) (“We recognize that a public service commission, under the guise of establishing a fair rate, may not usurp the functions of the company's directors and in every case substitute its judgment for theirs as to the propriety of contracts entered into by the utility”).

Evergy's responses to Staff's written questions when those are filed in the docket two weeks after the deadline for public disclosure required in the Agreement of any Modified Standalone Plan to the investor community, currently contemplated for October 14, 2020, or, to the extent the Board approves a merger or other business combination, two weeks after the announcement of such transaction.

11. Given all of this, it is completely unnecessary and inappropriate for KIC to be given the same access to review documents that Staff is given at this time. This docket was initiated by Staff so that Staff could conduct an investigation, not so that any interested party could conduct an investigation outside of the normal regulatory review process for decisions made by the Company. As such, it was completely reasonable for Evergy and Staff to work together to reach agreement on the procedures to be used in Staff's investigation and file the Joint Motion reflecting that agreement. It was not necessary for Staff and Evergy to wait to see which parties intervened and get their input on the procedures Staff would use for its investigation, as KIC suggests.

12. The three adjustments to the procedures for the docket requested in the Joint Motion are all still appropriate. First, it is necessary to adjust the timing for Evergy's responses to Staff's questions to two weeks after the public announcement of the decision. The deadline for these responses contemplated in the Order – two weeks after the Board decides to pursue a specific option – would be premature. In either scenario – a Modified Standalone Plan or a merger transaction – additional work would be required by Evergy (and the other party to the transaction in the event of a merger) after the decision to pursue a specific option is made before Evergy would be prepared to answer detailed questions like those proposed by Staff.

13. Second, requiring review of SROC and Board materials at the Evergy Topeka offices is appropriate because the review of documents before a final decision is made and while

ongoing work, including a strategic market check, is occurring requires a high level of confidentiality.

14. Third, the confidential and sensitive nature of the review of these types of documents and the ongoing scope of work requires the review of Board and SROC materials that is to begin immediately, before a final decision is made and publicly announced, to be limited only to Staff.

WHEREFORE, Evergy requests that the Commission reject KIC's challenges to the Joint Motion for Revisions to Procedure submitted by Evergy and Staff and approve the Joint Motion to (1) extend the deadline for Evergy to respond to Staff's list of questions until two weeks after the deadline for public disclosure required in the Agreement of any Modified Standalone Plan to the investor community, currently contemplated for October 14, 2020, or, to the extent the Board approves a merger or other business combination, two weeks after the announcement of such transaction; (2) issue a Protective Order in the docket that includes the requirement for Staff's review of any SROC or Board materials to occur onsite at Evergy's offices; and (3) specifically limit the review of materials that is to begin immediately to Staff.

Respectfully submitted,

/s/ Cathryn J. Dinges

Cathryn J. Dinges, #20848
Corporate Counsel
818 South Kansas Avenue
Topeka, Kansas 66612
Telephone: (785) 575-8344
Cathy.Dinges@evergy.com

ATTORNEY FOR
EVERGY METRO, INC., EVERGY KANSAS
CENTRAL, INC., AND EVERGY KANSAS
SOUTH, INC

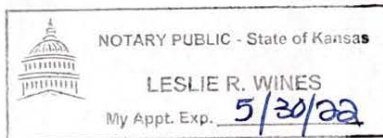
VERIFICATION

STATE OF KANSAS)
) ss
COUNTY OF SHAWNEE)

The undersigned, Cathryn Dinges, upon oath first duly sworn, states that she is Corporate Counsel for Evergy Metro, Inc. Evergy Kansas Central, Inc. and Evergy Kansas South, Inc., that she has reviewed the foregoing pleading, that she is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of her knowledge and belief.


Cathryn Dinges

Subscribed and sworn to before me this 30th day of June 2020.




Notary Public

My appointment expires: May 30, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2020, the foregoing Response was electronically served on the following parties of record:

BRIAN G. FEDOTIN, GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
b.fedotin@kcc.ks.gov

TERRI PEMBERTON, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.pemberton@KCC.KS.GOV

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
m.neeley@kcc.ks.gov

/s/ Cathryn J. Dinges
Cathryn J. Dinges