

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

In the Matter of the Investigation into the )  
Sustainability Transformation Plan of Evergy Metro, )  
Inc., Evergy Kansas Central, Inc., and Evergy South, ) Docket No. 21-EKME-088-GIE  
Inc. (collectively, Evergy). )

**MOTION TO REMOVE CONFIDENTIAL DESIGNATIONS**

COME NOW, the Kansas Industrial Consumers Group, Inc. (“KIC”) the Climate and Energy Project, the Citizens’ Utility Ratepayer Board, and the Sierra Club (collectively, “Joint Movants”) and respectfully file this Motion to Remove Confidential Designations with the State Corporation Commission of the State of Kansas (“Commission”). In Support thereof, the Joint Movants state the following to the Commission:

**I. CONDENSED PROCEDURAL BACKGROUND**

1. In August 2020, the Commission opened this general investigation to evaluate Evergy’s<sup>1</sup> Sustainability Transformation Plan (“STP”) and how it may impact existing merger commitments, rate trajectories, and quality of service for Evergy’s customers.<sup>2</sup> The Commission directed parties to collaborate and recommend a procedural schedule,<sup>3</sup> which has been approved.<sup>4</sup>

2. To-date, the Commission has held two workshops regarding the STP’s grid modernization investments and purported operational efficiencies. Portions of these workshops could only be attended by parties who had formally intervened in the docket, and subsequently executed non-disclosure certificates.

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<sup>1</sup> The instant matter’s docket caption refers to Evergy collectively. Unless a specific entity is referred to, Joint Movants adopt and incorporate the same collective reference into this Motion.

<sup>2</sup> Order Opening General Investigation, ¶¶5, 7 (Aug. 27, 2020) (Order Opening General Investigation).

<sup>3</sup> *See id.* at p. 5.

<sup>4</sup> Order Establishing Procedural Schedule (Nov. 19, 2020).

3. On November 16, 2020, the Sierra Club, Climate and Energy Project, and KIC filed a Motion to Enhance Transparency, which remains pending before the Commission.<sup>5</sup> This motion provided a series of best practices the movants requested the Commission adopt in this docket.

4. The Kansas legislature codified its desire to achieve regionally competitive electric rates.<sup>6</sup> As Kansas' elected representatives and regulators move forward with "craft[ing] forward-looking electric policy that leads to regionally competitive electric rates and reliable electric service," it is critical all Kansans be aware of how Evergy's strategic vision will impact this process.<sup>7</sup> The overuse or misuse of confidential designations can only hurt this evaluation.

## II. MOTION TO REMOVE CONFIDENTIAL DESIGNATIONS

5. This docket was opened "to provide Staff, stakeholders, and Evergy an avenue to collaborate and fully vet the STP."<sup>8</sup> To fully vet the STP, it is critical this discussion occur in a public setting and be fully open to public inspection. Items discussed during this docket's workshops do not fully inform the public of the STP's consequences.<sup>9</sup> Joint Movants respectfully request the Commission direct Evergy to remove confidential designations on STP materials or fully comply with the Commission's confidentiality framework, discussed below.

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<sup>5</sup> Motion of Sierra Club, Climate and Energy Project, and Kansas Industrial Consumers Group, Inc. for a Public Process (Nov. 16, 2020).

<sup>6</sup> See K.S.A. 66-1287(a), (b).

<sup>7</sup> The Kansas legislature commissioned two expert studies to evaluate the issue of regionally competitive electric rates. The study presented by London Economics International found Kansas had the highest electric rates among nine surveyed neighboring states. The study also noted the effect that capital expenditures have on retail electric rates in Kansas. It is both unlawful and unreasonable that legislators, legislative committees, and the public are being denied large amounts of information related to capital spending and its effect on Evergy's retail electric rates, simply because legislators and the general public have not intervened in this matter and executed a nondisclosure certificate.

<sup>8</sup> Order Opening General Investigation, ¶4.

<sup>9</sup> For example, Evergy's public STP Report (filed in Docket No. 20-EKME-514-GIE), indicates the STP's rate impact for Kansans will be 1.5%, annualized. Evergy's Notice of Filing Report to the Commission, Docket No. 20-EKME-514-GIE, Appendix II, p. 10 (Aug. 13, 2020) (STP Report). Based on information discussed during closed portions of the STP's workshops, this statement does not accurately convey the STP's rate impact at the service-territory level. Likewise, statements made during closed portions of the STP's workshops regarding the Boston Consulting Group Report ("BCG Report") call into question the relevance and confidential nature of these materials.

6. “The question before the Commission is **whether the STP is in the public interest of the State of Kansas.**”<sup>10</sup> To that end, “the Commission is investigating the STP, not the decision to pursue the STP.”<sup>11</sup> Since the Commission is investigating whether the STP is in the public interest, the rate impacts, elements, and core underpinnings of the STP must be open to public inspection.<sup>12</sup> Removing confidential designations from Evergy’s filings and discovery responses is not only consistent with the clearly stated public policy of the state, but also consistent with Kansas statutes and the Commission’s rules, regulations, and orders.

7. Throughout this proceeding Evergy has over-relied on confidential designations which has restricted the public’s ability to observe this matter. Consistent with Commission orders, and described in detail below, KIC has attempted to informally resolve discovery disputes with Evergy. Despite these efforts, Evergy continues to designate items confidential when either: (1) the materials are already publicly available, (2) there is no basis for the designation, (3) the basis supplied is insufficiently supported, or (4) the basis supplied is contrary to Commission precedent. With the conclusion of two STP Workshops, Joint Movants believe good cause exists to remove most, if not all, confidential designations.

#### **A. Legal Basis**

8. As a general matter, in Kansas “meetings for the conduct of governmental affairs and the transaction of governmental business [must] be open to the public.”<sup>13</sup> To that end, the Kansas Open Meetings Act is subject to broad construction to “carry out the legislative intent that meetings for the conduct of governmental affairs and the transaction of governmental business

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<sup>10</sup> Order Denying KIC’s Motion to Join Elliott Management as a Required Party, ¶18 (Nov. 24, 2020) (emphasis added).

<sup>11</sup> *Id.* (emphasis omitted).

<sup>12</sup> The parties to this proceeding have collectively declared this proceeding is not the appropriate docket to make any decisions regarding the STP’s prudence or cost recovery. Likewise, parties have agreed the filing (or abstention from filing) of comments does not signify acquiesce or “approval” of the STP or any portion of the STP.

<sup>13</sup> K.S.A. 75-4317(a).

be open to the public.”<sup>14</sup> Likewise, the Kansas Open Records Act sets out a liberally construed policy that public records shall be open for public inspection unless otherwise prohibited by law.<sup>15</sup> Together, Kansas’ open meetings and open records laws “were passed by the legislature to insure public confidence in government by increasing the access of the public to government and its decision-making processes.”<sup>16</sup> These standards of open government are likewise embodied in the Kansas Administrative Procedure Act (“KAPA”). Judicial proceedings, including quasi-judicial hearings under KAPA “held behind closed doors and shielded from public scrutiny have long been repugnant to our system of justice.”<sup>17</sup> Hearings before an administrative agency exercising judicial, quasi-judicial, or adjudicatory powers (i.e., the Commission) must be fair, open, and impartial.<sup>18</sup> Shielding relevant documents behind cloaks of confidentiality frustrates this policy.

9. Kansas’ KAPA and public utility statutes allow the Commission to impose reasonable restrictions on the release of material to the public.<sup>19</sup> KAPA requires hearings to be open to the public except to a limited extent when confidentiality is required.<sup>20</sup> K.S.A. 66-1220a prohibits the Commission from disclosing trade secrets or confidential commercial information unless the Commission finds disclosure is warranted after considering a series of factors.<sup>21</sup> Supplemental to K.S.A. 66-1220a, the Commission’s regulations, protective orders, and discovery orders create a confidentiality framework for Commission proceedings.

10. While a party may designate information to be a trade secret or other confidential commercial information if a good faith basis for the designation exists,<sup>22</sup> the party claiming

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<sup>14</sup> *Stevens v. City of Hutchinson*, 11 Kan. App. 2d 290, 294, 726 P.2d 279, 282 (1986).

<sup>15</sup> *See Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407, 416, 997 P.2d 681, 688 (2000).

<sup>16</sup> *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407, 416, 997 P.2d 681, 688 (2000).

<sup>17</sup> *Adams v. Marshall*, 212 Kan. 595, 601, 512 P.2d 365, 371 (1973).

<sup>18</sup> *Adams v. Marshall*, 212 Kan. 595, 602, 512 P.2d 365, 372 (1973).

<sup>19</sup> *See* K.S.A. 66-1220a; K.S.A. 77-523(f).

<sup>20</sup> K.S.A. 77-523(f).

<sup>21</sup> *See* K.S.A. 66-1220a(1) – (4).

<sup>22</sup> *See* Protective Order, ¶8; *See* K.A.R. 82-1-221a(a)(5).

confidentiality has the burden of proving the confidential status of the information.<sup>23</sup> The party claiming confidentiality must provide a written statement supporting the confidential designation as well as the harm they would experience if the confidential information was disclosed.<sup>24</sup> Under the Commission's confidentiality framework, blanket designations of confidentiality are not appropriate.<sup>25</sup> The Protective Order in this docket requires parties informally attempt to resolve disputes regarding confidentiality claims before bringing the dispute before the Commission.<sup>26</sup>

## **B. Specific Items**

11. Applying this framework, Joint Movants assert good cause exists for the Commission to order certain confidential designations be abolished and that documents be made available for public review. Regarding discovery-related documents, one of the Joint Movants, KIC, has previously attempted to informally resolve confidentiality concerns with Evergy. Given Evergy's continued misuse of confidential designations, Joint Movants respectfully file this Motion.

### **i. Post-STP Workshop I Presentation**

12. Following the conclusion of the first STP Workshop, Evergy prepared a presentation answering questions raised by Commissioners and parties during the proceeding. This presentation was provided during the confidential portion of the second STP Workshop. Evergy declared the presentation confidential, and subsequently filed a heavily-redacted version of this presentation.<sup>27</sup> Contrary to Commission regulations and orders, Evergy did not provide a rationale explaining why this presentation should be deemed confidential. There is no rational

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<sup>23</sup> *See id.*

<sup>24</sup> *See* Protective Order, ¶8; *See* K.A.R. 82-1-221a(a)(5).

<sup>25</sup> *See* 16-593 Order, ¶¶10 – 15.

<sup>26</sup> *See* Order Designating Prehearing Officer; Protective and Discovery Order, Docket No. 21-EKME-088-GIE, ¶16 (Sep. 10, 2020) (Protective Order).

<sup>27</sup> Evergy Operational Efficiencies Presentation Supplemental Information (Dec. 22, 2020).

reason for redacting any portion of this presentation. Any redaction of this presentation is inappropriate because the information is either not confidential in nature, or **already publicly available on Evergy’s own website**. In fact, some of the redacted materials **have been publicly available for months**. There is no valid basis for this presentation being kept under seal and the Commission should order its immediate release.

13. Regarding Overview of Capital Expenditures by State (i.e., slide 3), the information redacted is projected capital investment levels by certain categories in Kansas and Missouri. The information is no more “confidential” than Evergy’s prior capital budgets provided in Docket No. 19-KCPE-096-CPL (“19-096 Docket”) – Evergy’s Capital Plan Report. In the 19-096 Docket, Evergy is required to detail its five-year capital plan. Evergy’s previously filed reports contain projections into 2024. With the STP, Evergy is merely updating these projections. In fact, KIC previously commented in the 19-096 Docket on this very issue.<sup>28</sup> If one set of five-year capital projections are public, there is no reason the STP’s more updated and current five-year projections should be deemed confidential. After all, the STP’s overall capital budget, by state, is **already public**.<sup>29</sup>

14. Regarding Rate Impact by Jurisdiction – Kansas (i.e., slide 4), the information redacted is the STP’s projected rate impact by Evergy’s Kansas service territories. There is no basis for redacting rate impacts on a service territory-level. Evergy’s STP Report filed in Docket No. 20-EKME-514-GIE (“20-514 Docket”) stated, “The STP will limit the percentage change in rates from 2020 to 2024 with overall rate CAGRs expected to be 1.6% for Evergy overall and 1.5%

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<sup>28</sup> Comments of the Kansas Industrial Consumers Group, Inc., Regarding Evergy’s Capital Plan, Docket No. 19-KCPE-096-CPL, ¶6 (“Evergy’s Current Plan has become outdated because it does not reflect Evergy’s STP.”).

<sup>29</sup> See *infra* notes 32 and 33.

for Evergy in Kansas.”<sup>30</sup> Evergy is averaging its Kansas service territory impacts to arrive at a 1.5% Compound Annual Growth Rate. If the average of these two projections is public, surely the service territory projection should be public. Evergy’s Kansas retail ratepayers do not take service under an average Evergy rate – they take service under the rates applicable in a specific service territory. Fully vetting the STP requires the public know how the STP will affect them in their respective service territories – not some average. Moreover, slide 8 of the second STP Workshop Presentation indicates customer bills will grow at an annualized rate of around 2%.<sup>31</sup> Given the degree and scope of discussion surrounding rate impacts, there is no basis for continuing to keep under seal the STP’s Kansas rate impacts by service territory.

15. Regarding Capital Plan Changes Since Evergy Formation (i.e., page 6) and Capacity vs. Energy Mix – Clean Energy Transition (i.e., page 7), the redacted information has been publicly available on Evergy’s own website for months. **Slide 6 is copied from, and publicly listed in, three separate Evergy Investor Updates.**<sup>32</sup> **Slide 7 lists Generation Capacity by Fuel Type and is copied from two separate Evergy Investor Updates November 2020 Investor Update – even the footnotes are copied verbatim.**<sup>33</sup>

16. Designating items confidential, either without reason or rationale, is not appropriate in Commission proceedings. Likewise, designating public items confidential serves no legitimate

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<sup>30</sup> Evergy’s Notice of Filing Report to the Commission, Docket No. 20-EKME-514-GIE, Appendix II, p. 10 (Aug. 13, 2020).

<sup>31</sup> Evergy Filing Providing Materials of the Workshop, p. 8 (Dec. 14, 2020).

<sup>32</sup> See Evergy’s September 2020 Investor Update, INVESTORS.EVERGY.COM, p. 12, (Sep. 10, 2020) *available at* <https://investors.evergy.com/static-files/3cc92ad1-df50-4afc-88ee-7861a00a573a> (last visited Dec. 30, 2020); Evergy’s November 2020 Investor Update, INVESTORS.EVERGY.COM, p. 15, (Nov. 9, 2020) *available at* <https://investors.evergy.com/static-files/063392c9-439d-4cc0-87cc-e3ac1c4fcec3> (last visited Dec. 31, 2020) (November 2020 Investor Update); Evergy’s December 2020 Investor Update, INVESTORS.EVERGY.COM, p. 16, (Dec. 8, 2020) *available at* <https://investors.evergy.com/static-files/ed973e67-6b43-447a-b5fb-669fb05bab2d> (last visited Dec. 31, 2020) (December 2020 Investor Update), for brevity, selective slides are collectively provided in Attachment A.

<sup>33</sup> November 2020 Investor Update, p. 24; December 2020 Investor Update, p. 25. Note, the pie chart is rotated slightly in Evergy’s confidential filing.

purpose whatsoever. These designations evidence no desire to protect trade secrets or confidential commercial information. Rather, it shows a desire to limit the information provided to the public in this general investigation. The Commission should put a stop to Evergy's history of designating items confidential for the sake of securing the label. The burden is on Evergy to explain why an item should be kept under seal. Neither the Commission, nor the Joint Movants, nor any other party should have to go to this level of effort to reign in Evergy's insensible confidential practices.

## **ii. BCG Materials**

17. On October 23, 2020, KIC requested to informally confer with Evergy regarding Evergy's use of confidential designations.<sup>34</sup> KIC's concern was, among other things, classifying the Boston Consulting Group's Materials ("BCG Materials") confidential.<sup>35</sup> The BCG Materials were grouped with other confidentially labeled board-level materials, and totaled thousands of pages. On November 3, 2020, counsel for Evergy and KIC met virtually to discuss the confidential designations placed on, among other things, the BCG Materials. On November 9, 2020, Evergy responded, in part, stating:

With respect to the BCG materials, these documents are appropriately designated as confidential because they contain material, non-public financial information that is commercially sensitive to Evergy's ability to raise capital and they discuss potential actions at a granular level that forecast specific potential job eliminations/consolidations and plant closures well in advance of when they might occur. Public disclosure would affect Evergy's ability to raise capital and could lead to a loss of skilled personnel in advance of any final decision to eliminate a position or close a plant.<sup>36</sup>

18. As required by Commission order, KIC met in good faith to resolve confidentiality concerns. Given Evergy's public presentations, which are derived from BCG Materials,

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<sup>34</sup> Formal Correspondence from KIC, October 23, 2020 (Attachment B).

<sup>35</sup> The BCG Materials consists of a multi-part report outlining areas of capital investment and savings opportunities at Evergy. Totalling hundreds of pages, the BCG Materials are the key source material for, and basis of, Evergy's STP.

<sup>36</sup> Formal Correspondence from Evergy, November 9, 2020 (Attachment C).

continuing to shield these items in their entirety behind a confidential designation is inappropriate. The December 3, 2020, Grid Modernization Workshop broke out transmission and distribution capital investment levels by year, voltage level, and project.<sup>37</sup> The December 21, 2020, Operational Efficiency Workshop provided an overview of twenty-three (23) Cost and Operational Excellence “Areas of Focus.”<sup>38</sup> The BCG Materials are the “source” for these presentations,<sup>39</sup> and the STP is the result of Boston Consulting Group’s “intensive and comprehensive assessment” of Evergy.<sup>40</sup> Moreover, the material amount of money Evergy spent acquiring the BCG Materials further bolsters their relevance in this particular proceeding.<sup>41</sup>

19. Evergy’s concerns about removing the BCG Materials’ confidential designation is premised on raising funds in capital markets as well as fallout from discussing potential job losses and plant closures. Neither of these reasons is valid for shielding the BCG Materials from public review and the Commission has previously held the same. During the acquisition proceeding of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Westar Energy, Inc. the utility made a strikingly similar argument. The Commission flat out rejected it:

**The Commission is particularly hard pressed to justify redacting such items as the number of projected job losses or the identity of power plants possibly targeted for closure. The Commission does not believe such information constitutes a trade secret, as no competitive advantage would be gleaned by its release. As a regulated utility operating as a monopoly within its certificated territory, the Joint Applicants face no competition.** At the hearing, the only competition the Joint Applicants appear to claim is the competition for capital, yet in rebuttal testimony they admit Great Plains Energy successfully issued \$1.6 billion of common stock and \$863 million of mandatory convertible preferred stock to the public markets. Therefore, the Joint Applicants have **adequate access to**

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<sup>37</sup> See Evergy Grid Modernization Workshop Presentation (Nov. 25, 2020).

<sup>38</sup> See Evergy Filing Providing Materials of the Workshop (Dec. 14, 2020).

<sup>39</sup> See e.g., *id.* at p. 9.

<sup>40</sup> STP Report, Appendix I, p. 6.

<sup>41</sup> Likewise, payments made to other consultants and advisors (e.g., Centerview Partners) should not be considered confidential. Expert fees are routinely presented in rate cases for public review. Therefore, responses to discovery requests regarding expert fees paid should not be deemed confidential.

**capital** and their concerns seem to be an excuse to withhold potentially damaging disclosures from the public.<sup>42</sup>

20. The Commission’s rationale stated during the acquisition is directly applicable here. Not only are job losses and plant closures not a valid basis for deeming items confidential,<sup>43</sup> the STP presents no capital competition concern. Despite pursuing the STP, Evergy’s December 2020 Investor Update indicates the company will retain its investment grade credit rating and no additional equity is required to fund the STP’s capital allocations.<sup>44</sup> As early as August 2020, Evergy’s Chief Financial Officer told investors Evergy was “able to fund our new plan [(i.e., the STP)] without any new equity issuances and maintaining a solid investment-grade profile.”<sup>45</sup> As such Evergy already has “adequate access to capital,” and publicly disclosing the BCG Materials would not affect Evergy’s ability to raise capital.

21. More troubling is Evergy’s continued reliance on these grounds for restricting the public’s access to information. The management team from the prior acquisition proceeding is, by and large, **the same team at Evergy today**. Despite being aware of this Commission precedent, the company continues to deem things confidential for no apparent or justifiable purpose. There is no valid basis to redact any portion of the BCG Materials. Not only should the Commission put an end to this practice, but the Commission should also order the BCG Materials’ confidential status be revoked immediately. This includes all BCG Materials, retainer agreements, internal presentations, etc.

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<sup>42</sup> Order on Prehearing Motions, Docket No. 16-KCPE-593-ACQ, ¶12 (Jan. 26, 2017) (emphasis added).

<sup>43</sup> Notwithstanding, Evergy’s STP may only have a *de minimis* effect on plant closures given its relatively small (i.e., less than 10%) allocation of capital investment to renewable projects.

<sup>44</sup> December 2020 Investor Update, p. 11.

<sup>45</sup> See Edited Transcript of Evergy Inc.’s Q2 2020 Earnings Call, THOMSON REUTERS STREETEVENTS, p. 6, available at <https://investors.evergy.com/static-files/5940a3d1-0c74-44da-9a49-d6784f12306a> (last visited Dec. 31, 2020) (Attachment D). For brevity, selective slides are collectively provided in Attachment D.

### III. CONCLUSION

22. “The question before the Commission is whether the STP is in the public interest of the State of Kansas.”<sup>46</sup> Evergy’s STP will have material impacts on the rates, terms of service, and resources used to supply ratepayers with electricity. To ensure the STP is fully vetted, this proceeding must be as open and transparent as possible. Such a public vetting is required to ensure the Commission is satisfying legislative policy that leads to regionally competitive electric rates. Kansas, and Evergy’s ratepayers, already suffer from the region’s highest electricity prices. The STP’s \$8.9 billion capital investment scheme **will lead to rate increases**. This conclusion runs counter to legislative policy. Ensuring this proceeding, and the materials reviewed in it, are open to the public guarantees Kansas’ citizens and their elected officials stay apprised of Evergy’s rate trajectories, whether legislative goals are being met, and whether further action is required.

WHEREFORE, the Joint Movants respectfully request the Commission: (1) order the confidential designations placed on STP Presentations and BCG Materials, including ancillary documents described herein, be immediately revoked, (2) order Evergy to limit its use of confidential designations, (3) require Evergy to fully comply with the Commission’s confidentiality framework, including but not limited to a re-evaluation of all confidentially-designed materials in this docket and report which documents must remain confidential by a date certain (4) provide a public response to discovery detailing fees paid to experts, and (5) for any other relief the Commission deems just and reasonable.

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<sup>46</sup> Order Denying KIC’s Motion to Join Elliott Management as a Required Party, ¶18 (Nov. 24, 2020).

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of January, 2021, the foregoing *Motion to Remove Confidential Designations*, was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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<p>PATRICK PARKE, CEO  MIDWEST ENERGY, INC.  1330 CANTERBURY RD.  P.O. BOX 898  HAYS, KS 67601-0898  <a href="mailto:patparke@mwenery.com">patparke@mwenery.com</a></p>	<p>ANNE E. CALLENBACH, ATTORNEY  POLSINELLI PC  900 W. 48TH PLACE, STE 900  KANSAS CITY, MO 64112  <a href="mailto:acallenbach@polsinelli.com">acallenbach@polsinelli.com</a></p>
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# Investor Update

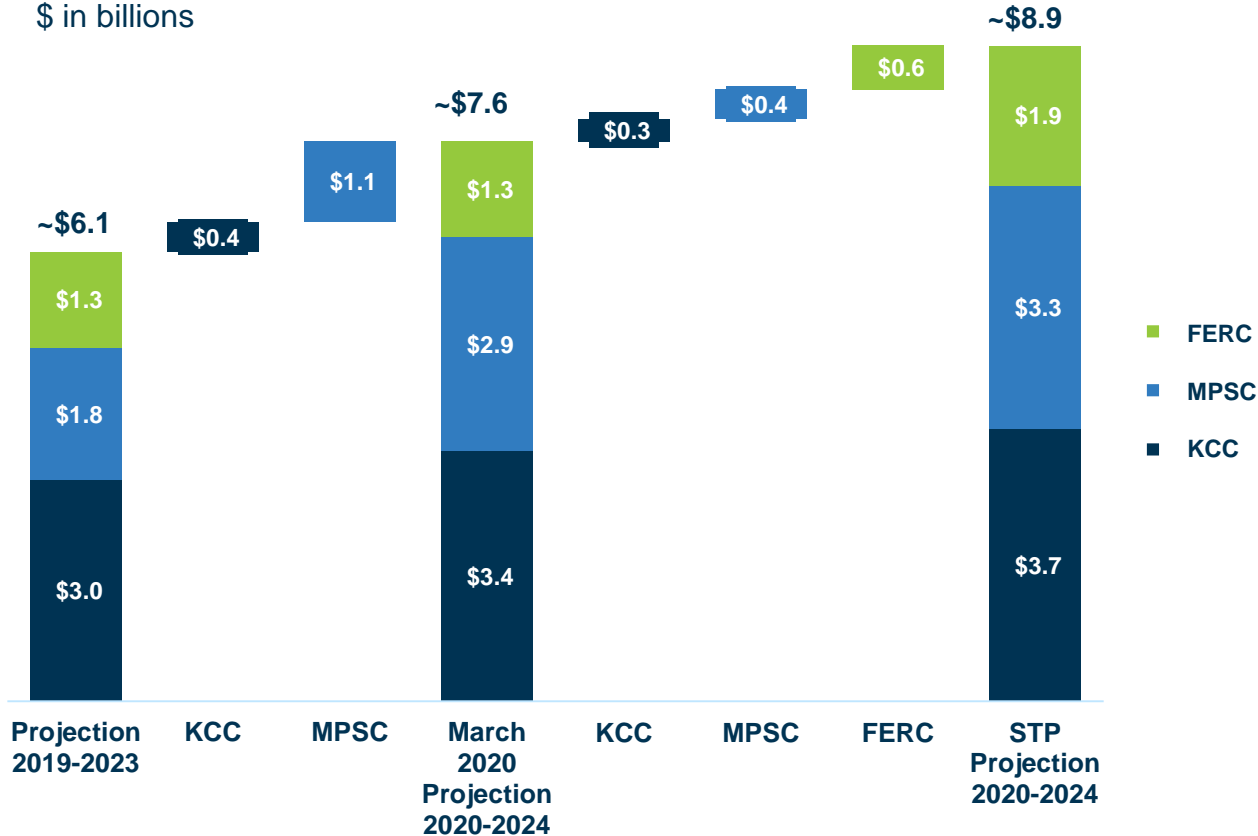
*September 2020*



# Balanced, Diverse Investment Opportunities and Accelerated Transition to Cleaner Energy

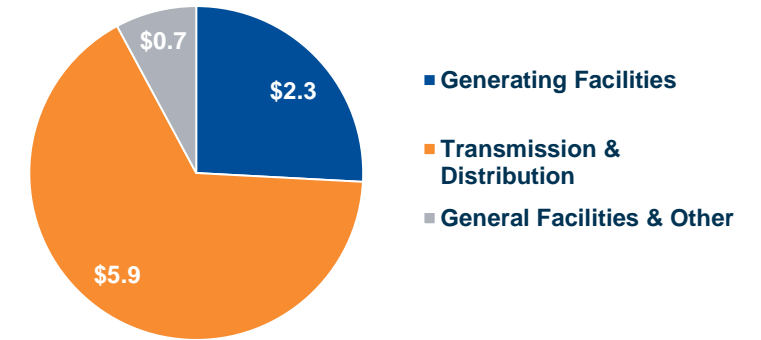
## Change in Five-Year Capital Plan Ending 2024

\$ in billions



## Projected 2020 - 2024 CapEx

\$ in billions



### Key Highlights of Plan:

- Over \$2.9B of Missouri CapEx expected to qualify for Plant In Service Accounting (PISA)
- ~\$675M of potential renewable investment, which will be evaluated and finalized through the STP and IRP stakeholder processes



# Investor Update

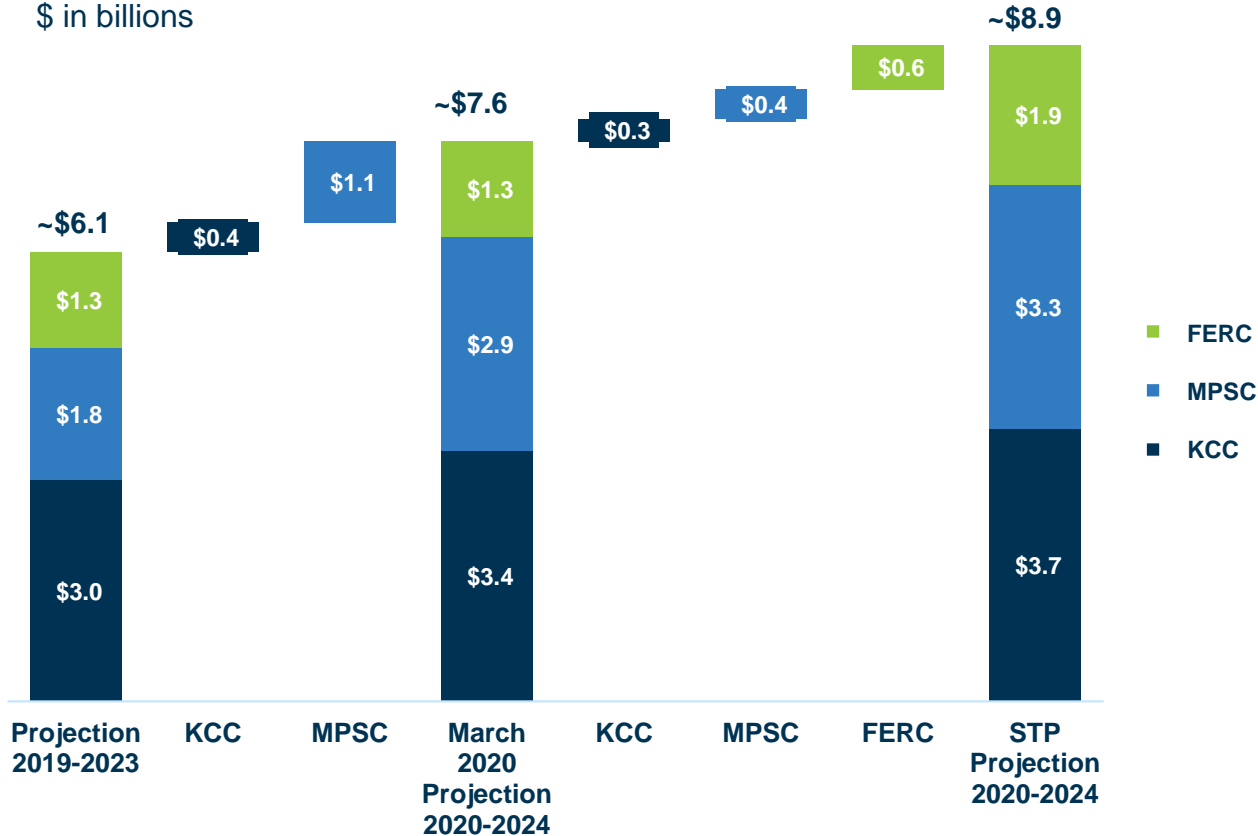
*November 2020*



# Balanced, Diverse Investment Opportunities and Accelerated Transition to Cleaner Energy

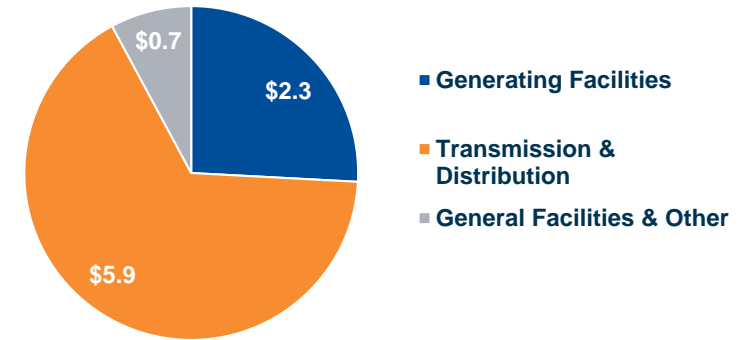
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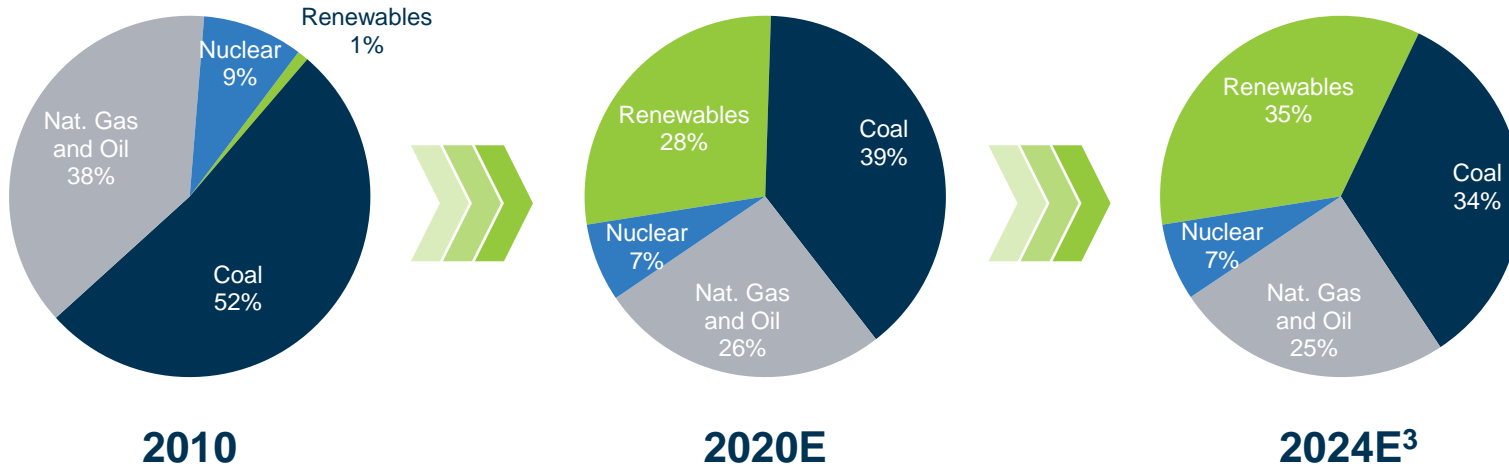


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# Reducing Coal Exposure

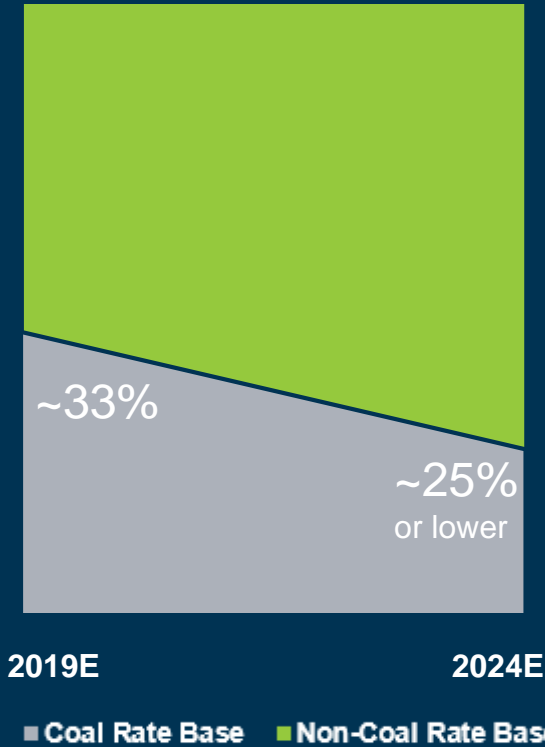
## Generation Capacity by Fuel Type<sup>1,2</sup>



**NOTE:**

1. Renewables include both owned and power purchase agreements and are listed at nameplate.
2. Percentages may not add up to 100% due to rounding.
3. Ultimate resource plan and generation capacity will be defined through scenario analysis and in collaboration with stakeholders through IRP process.

## Targeted Coal Rate Base as Percentage of Total Rate Base



- Rate base growth coming from non-carbon emitting assets
- Pursuing decarbonization policy enablers that could result in further upside to this metric



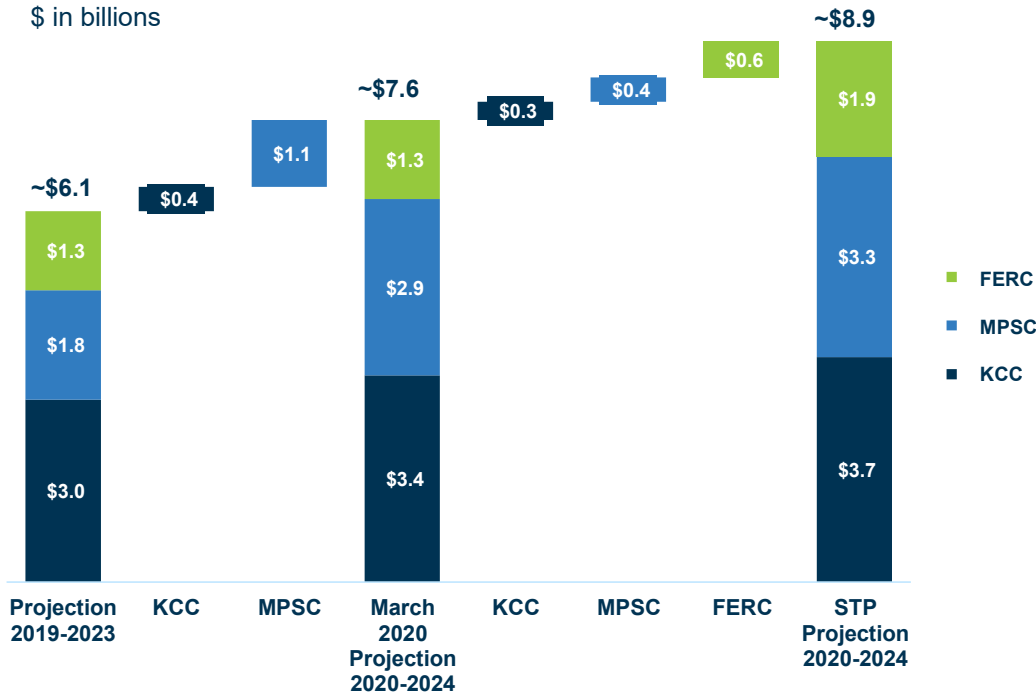
# Investor Update

*December 2020*

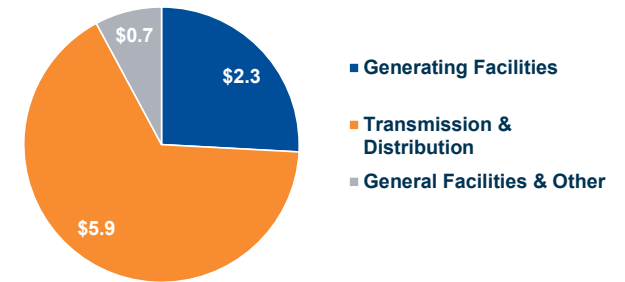


# Balanced, Diverse Investment Opportunities and Accelerated Transition to Cleaner Energy

**Change in Five-Year Capital Plan Ending 2024**  
\$ in billions



**Projected 2020 - 2024 CapEx**  
\$ in billions

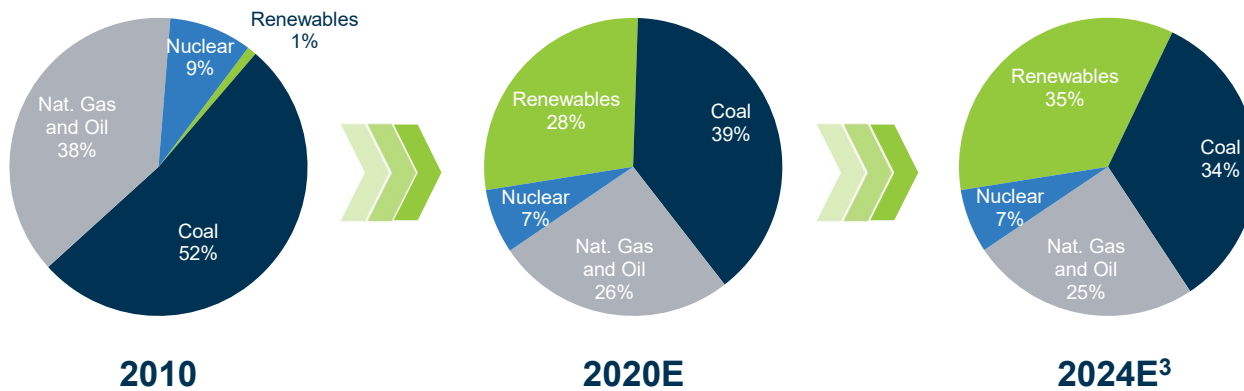


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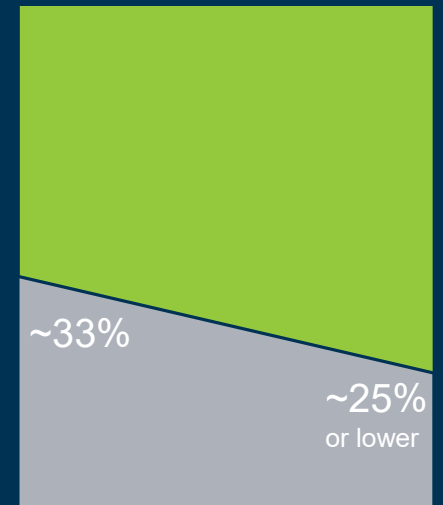
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3. Ultimate resource plan and generation capacity will be defined through scenario analysis and in collaboration with stakeholders through IRP process.

## Targeted Coal Rate Base as Percentage of Total Rate Base



2019E

2024E

■ Coal Rate Base ■ Non-Coal Rate Base

- Rate base growth coming from non-carbon emitting assets
- Pursuing decarbonization policy enablers that could result in further upside to this metric



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LEE M. SMITHYMAN  
JAMES P. ZAKOURA

ROBERT ELLIOTT VINCENT  
CONNOR A. THOMPSON

To: Cathy Dinges, Senior Corporate Counsel for Evergy  
From: Robert Elliott Vincent, Counsel for the Kansas Industrial Consumers Group, Inc.  
Subject: Informal Collaboration Regarding Confidential Designations  
Date: October 23, 2020

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Mrs. Dinges:

I am writing to begin an informal and collaborative process to address confidential designations made by Evergy, Inc. and its subsidiaries (collectively, “Evergy”) in Kansas Corporation Commission (“Commission”) Docket No. 21-EKME-088-GIE (“21-088 Docket”). The Protective Order in the 21-088 Docket requires parties informally attempt to resolve disputes regarding confidentiality claims before bringing the dispute before the Commission.<sup>1</sup> The Kansas Industrial Consumers Group, Inc. (“KIC”) has concerns regarding some of Evergy’s confidential designations, and would like to resolve these concerns informally. Specifically, KIC has concerns regarding the confidential designations regarding: (1) meeting minutes and materials of Evergy’s Board of Directors, and (2) agreements entered between Evergy and Elliott Investment Management L.P. and its affiliates and/or associates (collectively, “Elliott”).

As Evergy is aware, the Protective Order,<sup>2</sup> Commission precedent,<sup>3</sup> and Commission regulations<sup>4</sup> require confidential designations satisfy certain elements. For example, Evergy may designate information to be a trade secret or other confidential commercial information if Evergy has a good faith basis for the designation.<sup>5</sup> Still, Evergy has the burden of proving the confidential status of the information.<sup>6</sup> As such, Evergy must provide a written statement of the specific grounds supporting the confidential designation as well as the harm Evergy would experience if confidential information was publicly released.<sup>7</sup> Blanket designations of confidentiality are not

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<sup>1</sup> See Order Designating Prehearing Officer; Protective and Discovery Order, Docket No. 21-EKME-088-GIE, ¶16 (Sep. 10, 2020) (Protective Order).

<sup>2</sup> See Protective Order, ¶8.

<sup>3</sup> See Order on Prehearing Motions, Docket No. 16-KCPE-593-ACQ (Jan. 26, 2017) (16-593 Order).

<sup>4</sup> See K.A.R. 82-1-221a.

<sup>5</sup> See Protective Order, ¶8.

<sup>6</sup> See *id.*

<sup>7</sup> See Protective Order, ¶8; See K.A.R. 82-1-221a(a)(5).

appropriate under either the Protective Order or the Commission’s regulations.<sup>8</sup> Evergy’s blanket use of confidential designations renders entire documents and their contents confidential – even titles, dates, and signature blocks. K.A.R. 82-1-221a(a)(5) requires a written explanation of the confidential nature of each page for which confidential status is sought. Surely, not every page in these materials should be considered confidential.

### **A. Board of Directors-level Materials and Minutes**

Regarding the meeting minutes and materials of Evergy’s Board of Directors, Evergy’s responses to KIC data requests do not indicate the materials are confidential. Evergy’s response to KIC Data Request Nos. 1-2 and 1-3 indicate materials will be made available for on-site review, but do not indicate the materials to be reviewed are confidential. These materials total thousands of pages. While the file names of the materials contain the word “confidential,” and the pages are labeled “confidential,” there is no rationale underscoring their confidential nature or the harm that would fall upon the company if the materials were publicly released. Evergy’s Amended and Restated By-Laws (as of February 28, 2020) require Evergy to maintain critical company records:

The Company shall keep correct and complete books and records of account, including the amount of its assets and liabilities, minutes of its proceedings of its shareholders and Board of Directors (and any committee having the authority of the Board) and the names and business or residence addresses of its officers.<sup>9</sup>

Evergy’s shareholders have the right to inspect these records:

A shareholder may, upon written demand, inspect the records of the Company, pursuant to any statutory or other legal right, during the usual and customary hours of business and in such manner as will not unduly interfere with the regular conduct of the business of the Company.<sup>10</sup>

Evergy may require a reviewing shareholder: (1) agree not to use information to the detriment of Evergy, (2) agree not to share information with a competitor (or prospective competitor), and (3) indemnify Evergy against loss or damage resulting from an unauthorized disclosure.<sup>11</sup> No doubt, some of these materials may be protected. Still, the meeting minutes and materials of Evergy’s Board of Directors (and its committees) are largely available for public inspection by Evergy’s shareholders. The fact that these are Board-level meeting minutes and materials, by itself, does not render them confidential. Considering this information is available to shareholders upon request, Evergy must provide a specific rationale for any confidential designation.

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<sup>8</sup> See 16-593 Order, ¶¶10 – 15.

<sup>9</sup> See Evergy, Inc. Amended and Restated By-Laws (as of February 28, 2020), INVESTORS.EVERGY.COM, p. 30, available at <https://investors.evergy.com/static-files/bd26fab9-c0c0-4721-8739-dd2cb0e3e9a2> (last visited Oct. 23, 2020).

<sup>10</sup> See *id.* at p. 30.

<sup>11</sup> See *id.* at pp. 31 – 31.

## B. Agreements with Elliott

In total, Evergy has provided KIC eight different agreements entered between Evergy and Elliott. Regarding these agreements, Evergy's broad use of blanket confidential designations is inappropriate. Evergy declared every agreement provided in response to KIC Data Request No. 3-1 as confidential. Two of these agreements have been publicly filed with the Securities and Exchange Commission and there can be no basis for their confidential designation. Certain agreements appear to have been fully performed and therefore should not be subject to any confidential designation. Finally, the confidential designations used to protect these agreements do not align with the agreements' contents. For example, the rationale for maintaining confidentiality, in part, relies on protecting the security of Evergy's facilities. To date, KIC's review of documents provided in response to KIC Data Request No. 3-1 has not revealed any information that could impact the security of Evergy's facilities.

## C. Informal Collaboration Regarding Confidential Designations

KIC would like to informally, and collaboratively, work through confidentiality concerns with Evergy. As such, KIC would like to meet with Evergy representatives (either remotely or in person provided appropriate pandemic-response measures may be implemented) to address KIC's concerns regarding the confidential designation of these materials. For transparency, KIC would welcome the participation of any other party to the 21-088 Docket in these meetings. By close of business on Thursday, October 29, 2020, please indicate Evergy's willingness to address KIC's confidentiality concerns.

Best regards,

Robert Elliott Vincent

James P. Zakoura, KS Bar #07644

Robert Elliott Vincent, KS Bar #26028

Connor A. Thompson, KS Bar # 28667

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Attorneys for:

Kansas Industrial Consumers Group, Inc.

cc: Counsel for Commission Staff;  
Counsel for the Citizens' Utility Ratepayer Board; and  
Counsel for Intervened Parties



ATTACHMENT C

November 9, 2020

Robert Vincent  
Smithyman & Zakoura, Chtd.  
7400 W. 110<sup>th</sup> Street, Suite 750  
Overland Park, KS 66210-2362  
[robert@smizak-law.com](mailto:robert@smizak-law.com)

Dear Robert:

I'm writing in response to your letter dated October 23, 2020, regarding informal collaboration regarding confidential designations between Evergy and Kansas Industrial Consumers Group, Inc. ("KIC") and as a follow-up to the conversation we had discussing that letter on November 3, 2020. KIC requested that Evergy reconsider its confidential designations of three sets of material – the agreements between Evergy and Elliott Management; the board materials and minutes currently posted on the data room; and the BCG materials currently posted on the data room. I am writing to explain the basis for the confidential designation of each of these sets of documents.

With respect to the Evergy/Elliott agreements, as we discussed, the 2-28-2020 Cooperation Agreement – together with the 3-25-2020 Amendment to the Cooperation Agreement – were already publicly filed with the SEC and Evergy does not consider these to be confidential. With respect to the remaining agreements between Evergy and Elliott, Evergy has designated the agreements as confidential because they reflect Evergy's negotiated bargaining positions with an activist shareholder and therefore constitute confidential commercial information. If these non-public agreements are made public, it would harm Evergy by disclosing its strategy with activist shareholders to other activists, potentially leading to other activists engaging with Evergy and increasing the likelihood of financial market questions and uncertainty that would necessarily detract the attention of management from the business and potentially impairing the company's access to capital and ability to attract and retain employees.

With respect to the board materials and minutes, those documents reflect the process Evergy undergoes to develop long-term strategy for the organization and how it is presented to the board – the ultimate decision maker for the company. This process is unique to the company and not publicly available and therefore constitutes confidential commercial information. Public disclosure of these materials in their entirety would damage any strategy the company is pursuing and impact its ability to compete when negotiating with suppliers, developing competitive business processes and ideas, and competing to raise money in the public stock markets. If someone were



able to take an idea made public from disclosure of board materials and capitalize on it, that would negatively impact Evergy's stock price and those who hold our stock, including employees and retirees.

The board materials and minutes at issue are comprised of over 3,000 pages of board materials from 27 meetings and over 300 pages of minutes. They contain information from multiple business units and employees across the company. As you are aware, KCC Staff began reviewing these materials before Evergy had even made a decision about whether to pursue a stand-alone plan or strategic transaction. Evergy moved quickly to provide all parties with access to the material Staff was reviewing after the STP docket was opened and KIC currently has access to all of the materials, other than a few items that are subject to the attorney-client privilege.

However, as we indicated in our conversation, if KIC identifies specific board materials or minutes it wishes to use in a filing in the docket, Evergy will review those specific items and determine whether we can release the confidential designation.

With respect to the BCG materials, these documents are appropriately designated as confidential because they contain material, non-public financial information that is commercially sensitive to Evergy's ability to raise capital and they discuss potential actions at a granular level that forecast specific potential job eliminations/consolidations and plant closures well in advance of when they might occur. Public disclosure would affect Evergy's ability to raise capital and could lead to a loss of skilled personnel in advance of any final decision to eliminate a position or close a plant.

During our discussion on November 3, KIC asked if it would be possible to tie the presentations that will be made at the workshops in the STP docket back to the BCG materials posted in the data room. We are working with the individuals preparing those presentations to determine whether that would be possible.

We appreciate you reaching out to us to discuss these issues informally. Please let me know if you have questions about our written response or would like to discuss further.

Sincerely,

A handwritten signature in black ink that reads "Cathy Dinges".

Cathy Dinges  
Corporate Council

THOMSON REUTERS STREETEVENTS

# EDITED TRANSCRIPT

EVERG.N - Q2 2020 Evergy Inc Earnings and Sustainability  
Transformation Plan Call

EVENT DATE/TIME: AUGUST 05, 2020 / 12:30PM GMT

**OVERVIEW:**

Co. reported YTD GAAP earnings of \$202m or \$0.89 per share and 2Q20 GAAP EPS of \$0.59. Expects 2020 GAAP EPS to be \$2.66-2.86 and adjusted EPS to be \$2.90-3.10.



On Slide 19, I'll give you some details on the sales impact from COVID-19. Commercial industrial sales declined, reached a trough in April and started to improve in May and June, all the while being partially offset by increased residential usage driven by folks staying at home. These trends are consistent with what we observed as businesses started to reopen throughout the quarter. For the second quarter and compared to the same period last year, our estimated weather-normalized total retail sales were about 7% lower, residential sales were up about 5%, while commercial and industrial sales declined 13% and 12%, respectively. We remain optimistic in terms of our local economy suddenly reopening, however, it's hard for us to predict if the situation will continue to improve or take a step back depending on the future impacts of the virus.

Moving on to Slide 20 in our latest financial activities and liquidity. As you may recall, we announced on April 2 that Evergy Kansas Central issued \$500 million of 30-year first mortgage bonds at 3.54%. Proceeds were used to redeem \$250 million of 5.1% of bonds that matured midyear.

In May, Evergy Metro issued \$400 million of 10-year mortgage bonds at 2.25%. This financing activity allowed us to pay down short-term debt at very attractive longer-term rates and further bolster our liquidity position, bringing June with total liquidity of approximately \$2 billion and do not expect new issuances or refinancing activity throughout the remainder of the year. As Terry discussed, we were able to fund our new plan without any new equity issuances and maintaining a solid investment-grade profile.

Now wrapping up on Slide 21. For reasons we stated on our year-end call, we did not issue any earning guidance for 2020. And accordingly, now, we're issuing 2020 GAAP EPS guidance of \$2.66 to \$2.86 and adjusted EPS guidance of \$2.90 to \$3.10. We are still expecting a decline in year-over-year weather-normalized sales, our outlook assumes a slow and steady recovery throughout the third and fourth quarter. Some of the additional drivers would include a reduction of 8% to 11% adjusted O&M expense compared to 2019, depreciation expense around \$20 million to \$30 million higher than last year, COLI proceeds of \$20 million, and we've received roughly about \$4 million through the end of June and an effective tax rate of 13% to 15%.

I'll now turn the call back to Terry.

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**Terry D. Bassham** - Evergy, Inc. - President, CEO & Director

All right. Thank you, Tony. Now we will be happy to take your questions.

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## QUESTIONS AND ANSWERS

### Operator

(Operator Instructions) Your first question comes from Shar Shahriar Pourreza from Guggenheim Partners.

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**Shahriar Pourreza** - Guggenheim Securities, LLC, Research Division - MD and Head of North American Power

So a couple of questions here. First, it's obviously a very robust plan you put out there. Has there even been any partial vetting with Missouri and Kansas? And do you had any sort of conversations with the commissions? Obviously, you have a 5-year base rate freeze in Kansas and conversations we've had with both commissions in the past seems to center on them wanting a fully vetted regulatory process in place before enacting plans like this. So what's the right podium to seek recovery, the timing of when you think you'll seek recovery? And what sort of gives you this sense that the plan is going to be palatable for them? And any sense on the bill impact on this plan?

---

**Terry D. Bassham** - Evergy, Inc. - President, CEO & Director

Yes. So first of all, Shar, yes, we have been talking to our regulators. Recall, in particular, on the Kansas side, that the investigation, if you will, with the request by the staff to set up the docket was specifically addressing these issues. And if you recall, we actually supported confidential sharing of information with the staff only, but we have been talking to them along with this kind of dialogue for several weeks. And in fact, they've made

