

Re: Formal Complaint filed July 25, 2023 by Timothy Allegri

The following are some points of interest to consider in the above-referenced complaint.

In their *Response and Motion to Dismiss* dated August 30, 2023, Evergy summarizes our case **incorrectly**, stating that it “involves a landowner complaint regarding an easement that is needed to replace an old 69kV transmission line along Missouri Highway 13 in Lafayette and Johnson County, Missouri.”

“Our case” is that “Evergy has no case.” Evergy fails to provide proof of necessity for the project and has not provided landowners, the Commission or the Courts a completed project design. By simply stating that “an easement is needed” does not prove a need. Respondent’s *Verified Petition in Eminent Domain* states in **Item #35** – “The larger project is currently in the design phase, but ...” An incomplete design cannot show proof of necessity or give The Commission or Circuit Courts the information necessary to determine authority for condemnation. It would be likened to someone wanting to build a house and needing to borrow money from a Bank to pay for that house; the Bank would require completed blueprints (plan) in order to determine the value of the house and whether or not investing in that house would be a wise financial decision. Without a complete house design/blueprints/plan, the Bank would have insufficient information to determine the value of the project and the builder would be unable to build without a detailed design.

Of further interest is the fact that Evergy, to our knowledge, has not even filed condemnation suits on all properties involved in the Project; and several landowners haven’t even been given an offer; additional proof that their Project design being incomplete cannot constitute authority for condemnation.

Evergy cannot condemn properties if they don’t know whether or not they fall within the line of the (incomplete) Project or if they have not negotiated at all, would it be considered in “bad faith” or “no-faith” negotiations?

Bottom line, the rest of their *Answer and Motion to Dismiss* is irrelevant because they don’t have condemnation authority without a complete Project plan! Complainant is asking The Commission to determine whether they have negotiated in good faith and whether they are operating under the correct CCN for the Project and working within its limits... for starters.

Evergy states that, “The 8.7 mile 69 kV transmission line was originally constructed in 1977-78” and a few “of the poles are leaning and constitute a potential safety hazard,

and Evergy has determined that the line needs to be replaced.” By Evergy’s own admission, their transmission line has a few poles needing replacement which they say could be a potential safety hazard. Complainant respectfully asks the Commission to address Evergy’s current neglect of known and easy-to-resolve safety issues and if necessary, assist them with a plan to replace the wooden poles along the highway frontages that Evergy refers to as being deemed unsafe. Complainant would argue that known safety concerns, especially those which are admitted to be “potential hazards” should be addressed with equal concern as with their stated “safety concerns” involving condemnation takings.

May Complainant respectfully ask that the Commission verify that this Project falls within the scope of the CCN Evergy claims they are using? If it is #9470 (we have never been told a CCN), can they exceed NESC standards and therefore take excess land by choosing to “exceed” standards? The CCN states that they must conform to the **specific** rules and regulations contained in the NESC standards. Also, in relation to the safety issue Evergy admits with their current poles, the CCN Order #2 states: “said applicant herein shall maintain and operate said transmission lines and all equipment connected therewith in a reasonably safe and adequate manner so as not to endanger the safety of the public ...”

Evergy completely fails to acknowledge the fact that a Complaint with the Commission was filed PRIOR TO their Circuit Court condemnation suit and not only appears to be in retaliation to our Complaint, but it was filed in Circuit Court after our Complaint was made with The Commission on the same matter.

Complainant would also like The Commission to note that their numerous “blanket” answers denying all statements in much of their *Answer* and *Motion to Dismiss* are once again an attempt to disrespect the authority of The Commission.

Item #11 in their *Answer* refers to The Commission’s “far-fetched” argument of “irreversible damage” occurring to Complainants and goes so far as to say we are circumventing the eminent domain proceedings by filing our complaint ... when in fact we filed our complaint before they filed in Court! Evergy is the one circumventing proceedings.

Item #12 accuses The Commission of failing to provide evidence or basis for believing Evergy “failed to do anything required by it by law.” This is what we are dealing with ... false information, lies, deceit. Complainant has cited numerous reasons to mistrust Evergy’s business dealings with landowners and once again point out their incomplete Project design.

Item #13 – Pointing out “Staff’s failure” to cite a single case where an injunction is sought of a Circuit Court in a hearing related to an eminent domain issue. Complainants are not aware of a case law precedent ... but nothing says one can’t be set!

Item #14 once again points out Evergy’s regulating authority’s limits of power.

Note that Evergy, to our knowledge, has never addressed their reasons for ignoring our Group Offer, which included a 15-foot Maintenance-Only easement. To our knowledge, landowners in the group have always allowed utility workers on their property to perform maintenance. No one wants a utility worker to be unsafe! This “gentleman’s agreement” has existed since the highway has been here, but acknowledging that it is good business to put it in writing, we did. We offered 15 feet of our land, free of charge, for workers to safely maintain the lines off of the highway. The offer stated an expiration date of July 10, 2023 and we never heard a word from Evergy about it until Complainant emailed Evergy to let them know our offer had expired, to which Evergy replied, “Thanks for letting us know.” Complainants are not aware of an existing document such as a “*Maintenance-only Easement*” for a utility, but isn’t that what Evergy says they need an easement for? On July 24, 2023, Tim Allegri was made aware of Item 2b, “Evergy utilizes clearance buffers above NESC code to increase the safety of its infrastructure.” In another exchange, an Evergy attorney “said they want to move out of the ROW for safety reasons, so they don’t need to close a highway lane to do line maintenance.” Again, they were offered a FREE 15-foot easement to keep their workers safe and they didn’t even respond! Good faith negotiations? Saving the utility money on easement purchase and no need for rate recovery increase, which is passed on to the customer = win / win! Perhaps another new precedent for utility easements? Instead of taking your land, just sign a written agreement that you will allow us on your property to safely maintain our lines, and if any damages to the property are incurred in the process, you will be reimbursed.

Complainant respectfully requests The Commission to:

- 1) Issue an Order allowing all co-complainants whose properties are involved in the Project who would like to be included in the Original Formal Complaint be allowed to do so;
- 2) Order a Mediation between all Complainants and Respondent, preferably as soon as possible, allowing all parties an opportunity to address their concerns and attempt a resolution. As the Commission is aware, Complainants have documents regarding this project via Sunshine Requests that we believe prove fraud and unwarranted abuse of discretion, as cited in Evergy’s *Answer to Staff Response, Motion for Expedited Treatment, and Motion for Injunction*. Complainants would like to present these documents personally instead of via pleadings. If the Commission does not order a

Mediation, is it possible for Complainants to request an Order for a Case Management Meeting (or the like)?

3) Order Evergy to immediately address the safety concerns they mention in their *Answer, Affirmative Defenses, and Motion to Dismiss - Introduction Item #1* by replacing the few leaning poles (in their current location), per CCN 9470, Order #2.

4) Deny Evergy's *Motion to Dismiss* on the grounds that said Motion does not meet the criteria for dismissal. Complainants argue that Respondent's incomplete Project design cannot give them authority for condemnation under RSMO Section 523 or any other statute they refer to. As previously stated, there are several landowners whose properties are along the 8.7 mile Project who have not received any notification or offers from Respondent, and roughly 5.5 miles of the Project falls under the category of "unplanned" to our knowledge, as of this date.

5) Order Evergy to verify that their transmission line will continue to be 69kV and to verify the timeframe in which they foresee a need to exceed and upgrade the 69kV capacity, with data to show criteria for their answer, as well as data that proves keeping the poles within the current ROW fails.

6) Verify that this Project falls within the scope of the CCN Evergy claims they are using. If it is #9470, can they exceed NESC standards and therefore take excess land by choosing to "exceed" standards? The CCN states only that they *conform* to (meet) NESC standards.

Given the fact that the circuit courts of Lafayette and Johnson County, Missouri were not involved in the process of resolving these issues until after the Formal Complaint was filed with The Commission, it is not appropriate for Evergy to attempt to usurp The Commission's authority by retaliation in filing suit in a Circuit Court after the fact.

In Evergy's August 30, 2023 *Answer to Complaint*, Evergy states: "Except as specifically admitted herein, the Company denies, or is without sufficient knowledge to admit or deny, each and every allegation and statement in the Complaint and all related attachments."

When requesting relief be granted by The Commission, Evergy asserts none of them may be granted because statute, tariff or Commission regulations or Orders have not been violated or alleged to have been violated by Complainant. We have repeatedly pointed out an invalid CCN, no necessity or authority for condemnation per RSMo Chapter 523. Is that statute incorrect?

Their response to Paragraph 8 alleges we have not taken steps to present matters of concern to Evergy. We have numerous emails with Evergy counsel that prove otherwise.

Evergy again feels the need to “explain” to The Commission in their *Answer* that none of these requests for relief may be granted by the Commission.

Evergy denies that it is refusing to negotiate easements in the public interest; they deny issuing misleading statements regarding CCN-related issues ... of which we disagree.

Evergy does admit to seeking a 30-foot easement along MO-13 highway frontage, but never addresses their reason for seeking the additional 15 feet above the industry standard except for “safety concerns”, which we address by offering a *Maintenance-Only Easement*. Also, “Evergy admits that it needs the private easements [sic] of 30-feet is needed, among other reasons, to ensure safety of workers and road travelers.” As stated in previous documents, the only road-traveler safety concerns Evergy provided us was for a fatality of a Contractor who jumped from a moving truck, struck his head and subsequently died. The Contractor was fined by OSHA for the incident.

Evergy cites several Affirmative Defenses by the *Complaint*:

1) The Complaint fails to state a claim upon which relief may be granted.

OUR CLAIM: Lack of proof of necessity

ADDITIONAL CLAIMS:

1) Possible incorrect CCN under which the Project is operating.

2) The Commission DOES have jurisdiction to hear the Complaint, and The Commission DOES have authority to issue orders related to the condemnation issue because the Formal Complaint was filed prior to Evergy’s Circuit Court action which we assert that at the very least is a conflict of interest ... *possibly another precedent?* (Evergy cites pursuant to Chapter 523 there is lack of jurisdiction but 393.140(5) RSMo applies.)

3) Complainant alleges that the easements being sought are believed to be within the service area of Evergy Missouri Metro and/or Evergy Metro, Inc. and/or Evergy Missouri West and that Evergy Missouri Metro and ask the Commission to deny their request for dismissal from this Complaint case.

Complainant is full aware that changing electrical suppliers would not prevent Evergy from attempting a condemnation or property taking. Evergy further argues that “The Commission does not hold hearings to ‘discuss issues’” and then proceeds to “explain” how the Commission operates, ignoring the fact that a Mediation was requested by the

Complainant to which Evergy denied attendance. Evergy needs to be aware that a Mediation is defined as, "The act of mediating; intervention; interposition. Agency between parties with a view to reconcile them or to effect some arrangement between them; entreaty for another; intercession." Basically, the parties "discussing issues."

Evergy alleges, "There is no decision for the Commission to make with regard to the easement for a new transmission line ...". Again, Evergy does not meet the criteria for authority to condemn and rushing to file suit and expedite the scheduled hearings in order to slip under the radar of The Commission or Circuit Courts still won't make an incomplete project plan a complete plan.

Complainant alleges that Evergy has no grounds for dismissal of their Complaint for any of the reasons stated in their *Motion to Dismiss*.

Complainant respectfully asks The Commission to deny Evergy's Motion to Dismiss (in particular deny *with* prejudice), and to continue their ongoing investigation in this matter, and if The Commission does choose to approve Evergy's request for dismissal that it be dismissed *without* prejudice.

Thank you,

Tim Allegri, Complainant