

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Timothy Allegri, Complainant v. Evergy)
Metro, Inc. d/b/a Evergy Missouri Metro and)
Evergy Missouri West, Inc. d/b/a Evergy)
Missouri West, Respondents)

Case No. EC-2024-0015

**REPLY TO STAFF RESPONSE, MOTION FOR EXPEDITED TREATMENT AND
MOTION FOR INJUNCTION**

COMES NOW the Office of the Public Counsel (the “OPC”), in accordance with the deadline established by the Public Service Commission of the State of Missouri (the “Commission”) and in reply to the Staff of the Commission’s (“Staff”) Response, Motion for Expedited Treatment and Motion for Injunction (the “Motion,” Doc. 14) respectfully states:

1. In the Motion, Staff requests that the Commission issue an Order “directing the Commission’s General Counsel to seek in Circuit Court a temporary injunction pursuant to Section 386.360.1, RSMo, staying the eminent domain proceedings until the resolution of this Complaint” (Mot. 4-5). In support of its request, Staff cites to possible “irreversible damage” that could occur to the complainant, Mr. Timothy Allegri, and the other parties named in the original filing if the Commission fails to request that the Circuit Courts stay the eminent domain proceedings until the Commission rules on the complaint. (*Id.* 3).
2. The OPC supports Staff’s requested Order.
3. In its Reply to Staff Response, Motion for Expedited Treatment, and Motion for Injunction, Evergy acknowledges that “the Circuit Court of Lafayette and Johnson County have each scheduled hearings to consider the legal issues associated with the easement that is subject

to this Complaint proceeding for September 6 and October 24, 2023.”¹ (Evergy Resp. 2, Doc. 16). Evergy asserts that “[g]iven that the circuit courts of Lafayette and Johnson County, Missouri are in the process of resolving these issues, it is not appropriate for the Commission to attempt to stay the proceedings of this circuit court or otherwise usurp the court’s judicial authority to render a decision in the eminent domain proceeding.” (*Id.*). Evergy maintains that “[t]he Complainant and his neighbors are parties to the Lafayette County proceeding in Circuit Court and will have the opportunity to raise any issues which they believe are pertinent to the proceeding” (*Id.* 3).

4. However, Evergy’s response ignores the Commission’s broad authority to “[e]xamine all . . . corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business.”

§ 393.140(5) RSMo.

5. Section 393.140(5) further provides, in pertinent part:

Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the . . . acts . . . of any such . . . corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the . . . just and reasonable acts and regulations to be done and observed”

Id.

6. This provision suggests that the Commission has the authority to investigate the allegations in Mr. Allegri’s Complaint.

¹ It appears that Evergy filed the condemnation petitions in Lafayette and Johnson Counties two days *after* Mr. Allegri initially filed his complaint before the Commission. (*Compare* Allegri Formal Complaint (Doc. 1 (filed July 25, 2023)), *with* Evergy Missouri Metro and Evergy Missouri West Response to Additional Complainants and Mediation Request (Doc. 12 (stating that Evergy filed the condemnation petitions on July 27, 2023))).

7. As Staff recognized in its Motion, if the condemnation hearings proceed as scheduled, it is possible that “irreversible damage” could occur to Mr. Allegri and his neighbors, whom the Commission may decide to add as co-complainants. (*See Mot. 3*).
8. The Court of Appeals of Missouri, Southern District (the “Southern District”), described the first part of the two-step condemnation process, known as the condemnation hearing, saying

The condemnation hearing is an evidentiary hearing in which the right or power of the condemnor to condemn the property in question is finally adjudicated. Consequently, the obligation of the condemnee to surrender the property upon payment of damages becomes binding. When the order of condemnation is entered, the substantive rights of the parties with respect to ownership of the property are determined.

State ex rel. Rantz v. Sweeney, 901 S.W.2d 289, 291 (Mo. Ct. App. 1995) (quoting *Washington Univ. Med. Ctr. Redevelopment Corp. v. Komen*, 637 S.W.2d 51, 54 (Mo. Ct. App. 1982)); *see State ex rel. Mo. Highway & Transp. Comm’n v. Anderson*, 735 S.W.2d 350, 353 (Mo. banc 1987).

9. The Southern District described the order entered after the condemnation hearing saying

If, after an initial hearing, a condemnation order is entered, it is interlocutory in character. ‘Even though a defendant may contest the right of the plaintiff to condemn, the judgment in such a case is not final or appealable until after the commissioners file their report and the exceptions thereto, if any, are tried and the amount of damages finally fixed.’

Sweeney, 901 S.W.2d at 291 (quoting *State ex rel. State Highway Comm’n v. Hammel*, 290 S.W.2d 113, 117 (Mo. 1956)).

10. Further, the Southern District recognized “[a]t the initial hearing in condemnation actions, trial courts may inquire into questions relating to the necessity of the taking only upon a landowner alleging and proving that the condemnor’s claim of necessity for the taking constitutes fraud, bad faith or an arbitrary and unwarranted abuse of discretion.” *Id.* (citing

Missouri Pub. Serv. Comm'n v. H & W Inv. Co., Inc., 602 S.W.2d 41, 43 (Mo. Ct. App. 1980); *Mapco, Inc. v. Williams*, 581 S.W.2d 402, 405 (Mo. Ct. App. 1979)).

11. On the date that the entity seeking to exercise eminent domain pays the condemnation award into the registry of the court, that entity “obtains title to and possession of the property.” *City of Riverside v. Progressive Inv. Club of Kan. City, Inc.*, 45 S.W.3d 905, 912 (Mo. Ct. App. 2001) (citation omitted). At that time, “[a]ll rights of private property in the parcel are divested from the landowner.” *Id.* (citations omitted).
12. Based on this language, if the Circuit Courts conclude that Evergy may condemn the property at issue following the condemnation hearings, Mr. Allegri and his neighbors will lose ownership of their property. *Sweeney*, 901 S.W.2d at 291 (citation omitted). It will not be until after the appointed commissioners and/or juries determine the appropriate amount of just compensation that the complainants may seek appellate review of that decision. *See id.* (citation omitted). However, Evergy may take possession of the property after depositing the amount of the commissioners’ award into the Court’s registry. *See City of Riverside*, 45 S.W.3d at 912.
13. The report discussing Staff’s investigation of Mr. Allegri’s complaint is not due until September 25, 2023. (Aug. 2, 2023 Order 3, Doc. 4). If the Commission does not grant Staff’s requested relief, then it is possible that Mr. Allegri and his neighbors will be deprived of both ownership and possession of their property before the Commission has the opportunity to fully consider Mr. Allegri’s complaint.
14. Though the Commission may have limited jurisdiction in regards to eminent domain proceedings, it has broad authority to examine “the methods, practices, [and] regulations . . . employed by [the corporations under its supervision] in the transaction of their

business.” § 393.140(5) RSMo. After a hearing, the Commission has the authority to order “the just and reasonable acts and regulations to be done and observed.” *Id.*

15. To ensure that the Commission has the opportunity to fully investigate Mr. Allegri’s complaint and to order any just outcome, the OPC supports Staff’s request for the Commission to “Order its General Counsel to seek a temporary injunction of the eminent domain proceedings, staying those proceedings to permit the resolution of this Complaint case before the Commission as to whether Evergy Missouri Metro and/or Evergy Missouri West have violated a statute, rule or tariff.” (Mot. 3).

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission grant the relief Staff requests in its Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 30th day of August 2023.

/s/ Lindsay VanGerpen