

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 31st day
of August, 2023.

Timothy Allegri,					
	Complainant,))))
))))
v.)	<u>File No. EC-2024-0015</u>))
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Evergy Metro, Inc. d/b/a Evergy Missouri))))
Metro and Evergy Missouri West, Inc. d/b/a))))
Evergy Missouri West,))))
	Respondent))))

ORDER DENYING STAFF’S MOTION TO PURSUE AN INJUNCTION

Issue Date: August 31, 2023

Effective Date: August 31, 2023

Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy) is seeking permanent easements to allow it to relocate an overhead transmission line as part of an infrastructure improvement project along Highway 13 in Lafayette and Johnson Counties. That project is still in the planning stages. Timothy Allegri, Complainant, filed a formal complaint alleging that Evergy refused to negotiate easements in the public interest and made misleading statements concerning its certificate of convenience and necessity (CCN) for the Highway 13 infrastructure improvement project. The Commission issued notice of the complaint and a Staff report and recommendation about the complaint are due September 25, 2023.

On August 29, 2023, the Staff of the Commission (Staff) filed *Staff Response, Motion for Expedited Treatment and Motion for Injunction*. Staff’s motion states that Evergy initiated a condemnation action on July 27, 2023. This eminent domain action was

brought in circuit court to acquire easements to move its overhead transmission line. Staff states that eminent domain proceedings are set to occur in the Circuit Court of Lafayette County on September 6, 2023.

Staff asks the Commission to direct its General Counsel to seek a temporary injunction of the eminent domain proceedings, staying the circuit court proceedings until this complaint case is resolved. In support of its request, Staff states that it is possible that irreversible damage could occur to the complainant and others enumerated in Complainant's original July 25, 2023, complaint filing. Staff further states that the complaint raises concerns about the prudence of Evergy's actions, the need for the project, and the bounds of the authority granted in Evergy's CCN. Staff believes those should be fully investigated prior to any eminent domain determination.

Evergy replied to Staff's motion. Evergy notes that Chapter 523, RSMo., gives circuit courts, and not the Commission, the statutory authority to resolve all factual and legal issues related to eminent domain actions. Evergy asks the Commission to deny Staff's motion.

The Office of the Public Counsel and Complainant filed responses in support of Staff's request to seek an injunction.

Applicable Law

The Commission has jurisdiction to hear complaints under Section 386.390.1, RSMo, which provides that a person may file a complaint against a utility, regulated by this Commission, setting forth violations of any law, rule or order of the Commission.

Staff relies on Section 386.360 RSMo., for the Commission's authority to direct its General Counsel to seek injunctive relief. Section 386.360.1 RSMo., provides that

whenever the Commission believes a public utility is “failing or omitting or about to fail or omit to do anything required of it by law or by order or decision of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done...”in violation of a law subject to the Commission’s jurisdiction or of any order or decision of the Commission, it shall direct the General Counsel to commence an action in circuit court for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions.

Discussion

Staff requests the Commission order its General Counsel to request an injunction to halt or stay the eminent domain proceedings pending the resolution of this complaint case. Staff will continue its investigation into this case and the complainant’s underlying allegations.

For a separate injunctive action to be pursued, facts must be submitted supporting that a violation law, rule or order of the Commission has or is about to occur. Staff’s request must be denied because the motion failed to allege facts supporting that Evergy is about to fail or omit to do anything required of it or about to violate any law, any Commission order, or any Commission decision. Further, this complaint has not been decided and the Commission has not made any finding that Evergy has violated any law, rule or order of the Commission.

Staff’s general concerns and topics for investigation do not provide sufficient facts to support the contention that a violation of law, rule or order of the Commission has or is about to occur. The Commission cannot seek an injunction where there is no violation or imminent violation of law subject to Commission jurisdiction, a Commission rule, or a

Commission order. Additionally, Chapter 523 empowers the circuit court, and not the Commission, with authority over condemnation proceedings. Therefore, the Commission will deny Staff's request.

THE COMMISSION ORDERS THAT:

1. Staff's motion to have the Commission direct its General Counsel to seek an injunction in circuit court is denied.
2. This order is effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell". The signature is written in a cursive, flowing style.

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 31st day of August, 2023.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 31, 2023

File/Case No. EC-2024-0015

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Nancy Dippell
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.