

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

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

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

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its *Staff Response, Motion for Expedited Treatment and Motion for Injunction* in this matter states as follows:

1. Complainant filed this *Complaint* on July 25, 2023, alleging that Evergy Metro, Inc., d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc., d/b/a Evergy Missouri West (collectively Evergy) among other things, were refusing to negotiate easements in the public interest in connection with a project the Complainant references as the Fayetteville Transmission Line Upgrades. Staff believes the subject of the Complaint actually involves only Evergy Missouri West. The initial filing was ruled deficient and the Commission did not issue an *Order* directing a response from Evergy until August 2, 2023.

2. Prior to filing this Complaint, the Complainant issued a Sunshine Request to the Commission requesting information involving the certificates of convenience and necessity for Missouri Public Service, Aquila, KCPL, Kansas City Power & Light and Evergy along a stretch of Highway 13. The case in which the certificate for the service

area affected by this Complaint was issued occurred in 1938 and includes several ordered paragraphs, including reference to the National Electric Safety Code.

3. Evergy's response is ordered due no later than August 31, 2023 and Staff's report is due no later than September 25, 2023. Staff issued a series of data requests related to this complaint, the earliest of which is due September 7, 2023. Complainant filed an additional request to add the 26 individuals previously identified in the original Complaint filing and seeking mediation of his complaint. Evergy filed a *Response* the evening of August 24, 2023, to the Complainant's requests to add additional complainants and for mediation asking the Commission to deny those requests.

4. Evergy states in its *Response* that it filed to proceed with condemnation actions on July 27, 2023, pursuant to Chapter 523, RSMo. The Company further states that the hearing for the condemnation action filed in Lafayette County is set for September 6, 2023 at 9:15am and in Johnson County for October 23, 2023. Evergy further claims that the Commission has no authority to mediate the matters alleged in this complaint proceeding.

5. Section 386.390.1, RSMo, authorizes the Commission to hear and determine complaint cases:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission . . .

MOTION FOR INJUNCTION

6. Further, Section 386.360.1, RSMo, authorizes the Commission to pursue temporary, preliminary, and permanent injunctions, “[w]henver the commission shall be of the opinion that a *public utility . . . person or corporation* is failing . . . to do *anything required of it by law*”

7. Evergy Missouri Metro, Inc., d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc., d/b/a Evergy Missouri West are public utilities as defined in Section 386.020(43), RSMo,

8. The Missouri Public Service Commission has jurisdiction over all public utilities providing electric service pursuant to Section 386.250, RSMo.

9. Due to the timeline of this proceeding, as set forth above, Staff has been unable to complete an investigation of this complaint to determine if a violation of a statute, rule, or tariff has taken place.

10. If the eminent domain proceedings occur on September 6, 2023 and October 23, 2023, as Evergy states they are presently scheduled, it is possible that irreversible damage could occur to the complainant and the other parties named in the original filing and Evergy’s *Response* prior to the resolution of this matter before the Commission.

11. Staff asks 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.

MOTION FOR EXPEDITED TREATMENT

12. Pursuant to 20 CSR 4240-2.080(14) a party may move for expedited treatment of any pleading by including the words “Motion for Expedited Treatment” in the title and setting out the day by which the party asks the Commission to act, the harm or benefit resulting from inaction and whether the pleading was filed as soon as possible and if not, why it was not.

13. Pursuant to 20 CSR 4240-2.080(14)(A) Staff asks the Commission to act on seeking an injunction as soon as possible, but prior to the earliest scheduled circuit court hearing of September 6, 2023.

14. Pursuant to 20 CSR 4240-2.080(14)(B) Staff states that the Complainant deserves full resolution of his proceeding in front of this Commission prior to a circuit court ruling to condemn portions of his land. While Staff’s investigation is in its preliminary stages, the complaint raises concerns of the prudence of Evergy’s actions, the need for the project, and the bounds of the authority granted in Evergy’s certificate of convenience and necessity issued in 1938, which should be fully investigated and resolved prior to such an absolute action taking place.

15. Pursuant to 20 CSR 4240-2.080(14)(C) Staff states that this filing is being made as soon as possible considering the natural delays of this proceeding stemming from the deficiency and the filing of Evergy’s response to the Complainant’s requests for additional parties and mediation.

WHEREFORE, Staff prays that the Commission will accept Staff’s *Response*; grant this *Motion for Expedited Treatment and Motion for Injunction*; will issue an Order as soon as possible 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; and will grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Whitney Scurlock

Whitney Scurlock
Chief Deputy Counsel
Missouri Bar No. 64078
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7434 (Telephone)
(573) 751-9285 (Fax)
whitney.scurlock@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 29th day of August, 2023, to all counsel of record.

/s/ Whitney Scurlock