

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

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

**ANSWER, AFFIRMATIVE DEFENSES, AND MOTION TO DISMISS OF
EVERGY MISSOURI METRO AND EVERGY MISSOURI WEST**

COMES NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West”) (collectively, the “Company” or “Evergy”), by and through its counsel, hereby submits its *Answer, Affirmative Defenses, and Motion to Dismiss* (“Answer”) to the formal complaint of Timothy Allegri (“Complainant”).

I. INTRODUCTION

1. This case 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. The 8.7 mile 69 kV transmission line was originally constructed in 1977-78. Several of the poles are leaning and constitute a potential safety hazard, and Evergy has determined that the line needs to be replaced. The new line will continue to be a 69kV transmission line following the upgrade of the transmission line facility.

2. The determination of need to replace power lines has been delegated to the public utilities in Missouri by the legislature and is generally not subject to judicial review. According to

Missouri Public Service Co v. H&W Inv. Co., Inc., 602 S.W. 2d 41, 43 (Mo. App 1980)¹[T]he determination of need for the land to be condemned is vested in the sound discretion of the utility, and is not subject to judicial review, unless the protesting landowner alleges and proves that the utility's claim of necessity constitutes fraud, bad faith or an arbitrary or unwarranted abuse of discretion. That matter is controlled by Mapco, Inc. v. Williams, 581 S.W.2d 402, 405(1, 2) (Mo.App.1979), and cases cited, which hold that the question of whether the taking of any given private property is "necessary" and the extent and exact location of the property to be taken are matters of political or legislative determination which have been delegated to the condemning authority by virtue of the statute granting the right of eminent domain. (§ 523.010, RSMo 1969.) That case, and further cases cited, also hold that the landowner must plead and prove fraud, bad faith, or an arbitrary or unwarranted abuse of discretion of the condemnor in its claim of "necessity" in order that judicial inquiry may be invoked.

3. As explained in Evergy's Response To Additional Complainants and Mediation Request filed on August 24, 2023, in this proceeding, the Circuit Court of Lafayette and Johnson County have each scheduled hearings to consider the factual and legal issues associated with this easement for September 6 and October 24, 2023.¹ Chapter 523, RSMo gives the statutory authority for the circuit courts to resolve all matters related to eminent domain and condemnation issues. Given 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 usurp the courts authority by attempting to resolve the issues addressed by the Complainant in the Complaint addressed below.

¹ See Evergy Missouri Metro and Evergy Missouri West's Response To Additional Complainants And Mediation, Ex Nos. B and D. (filed on August 24, 2023).

II. BACKGROUND OF COMPLAINT

4. Complainant (along with Jesse L. Green, Jr.) filed a formal complaint (public and confidential versions) and against Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West with multiple complainants in addition to Mr. Allegri on July 25, 2023 (“July 25th Complaint”).

5. On July 26, 2023, the Commission issued its *Notice of Deficiency* related to the Complaint filed by the Complainant on July 25, 2023. The Commission stated:

On July 26, 2023, (sic) Complainants filed a complaint with the Missouri Public Service Commission against Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West. Commission Rule 20 CSR 4240-2.040(5), concerning practice before the Commission by non-attorneys, states that a natural person may represent himself or herself, but practice is strictly limited to the individual representing himself or herself on his or her own behalf, but not any other person or entity.

Therefore, this complaint is deficient and the Commission cannot take action on this matter until this deficiency is corrected.

6. On August 1, 2023, Complainant filed with the Commission a second Formal Complaint (public and confidential versions) against Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“August 1st Complaint”) in response to the Commission’s July 26th Notice of Deficiency.

7. On August 2, 2023, the Commission issued its *Order Giving Notice of Complaint, Directing an Answer, and a Staff Investigation* (“August 2nd Order”). The Order directed that Evergy shall file an answer to this complaint or request for mediation no later than August 31, 2023. The Order also directed that the Staff of the Commission shall investigate this complaint and file a report with the Commission no later than September 25, 2023.

8. On August 15, 2023, Complainant filed an *Amendment and Request to Reverse Omission of Co-Complainants* (“Amendment”) requesting that the Commission reverse its July 26th Order and add twenty-six additional “self-represented co-complainants”.² On August 15, 2023, Complainant also filed a Request For Mediator.

9. On August 17, 2023, the Commission issued its *Order Directing Response to Additional Complainants and Mediation Request* which directed Evergy to respond to Complainant’s requests by August 24, 2023.

10. On August 24, 2023, Evergy filed its Response to Additional Complainants and Request For Mediation which opposed the inclusion of twenty-six additional complainants in this proceeding and Complainant’s request for mediation.

11. On August 27, 2023, Complainant filed its Response to Evergy’s pleading filed on August 24, 2023.

12. As of this date, the Commission has not ruled upon the appropriateness of including twenty-six additional complainants or Complainant’s request for mediation.

13. Since Evergy has previously addressed the inclusion of twenty-six additional complainants and Complainant’s request for mediation, this pleading will not reiterate Evergy’s arguments on those issues, but this pleading represents Evergy’s Answer, Affirmative Defenses and Motion To Dismiss the second Formal Complaint that was filed by Mr. Allegri on August 1, 2023, as required by the Commission’s August 2nd Order.

14. On August 29, 2023, the Commission Staff filed its Staff Response, Motion For Expedited Treatment, and Motion For Injunction. The Commission issued its Order Directing

² See, Amendment, p. 1.

Responses to the Staff Response to be filed by August 30, 2023. Evergy is filing a separate Reply to the Staff Response concurrent with this pleading.

III. ANSWER TO COMPLAINT

15. 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.

16. The Company admits that Complainant resides at the address, as identified in Paragraph 1 of the confidential version of the Complaint.

17. Paragraph 2 of the Complaint does not appear to contain any allegations. The Company admits that Complainant received electric service at the property identified in the confidential version of the Complaint.

18. In response to Paragraph 3, the Company admits that it maintains a mailing address at One Kansas City Place, 1200 Main Street, P.O. Box 418679, Kansas City, Missouri 65105.

19. In response to Paragraph 4, the Company admits that it is a public utility under the jurisdiction of the Commission.

20. Paragraph 5 of the Complaint does not appear to contain any allegations and indicates that the amount at issue is “Not Applicable” in this case. To the extent a response is required, the Company denies.

21. Paragraph 6 of the Complaint does not appear to contain any allegations. Rather than stating the relief being requested by Complainant, Paragraph 6 directs the reader to “Please see attached.” On page 4 of 4 of the Attachment to the Complaint, the Complaint requests three specific actions from the Commission:

I request utility service options through both Evergy and West Central Electric COOP be available to my MO-13 property and others on MO-13 for the 8.7-mile section discussed in this small formal complaint.

I request a hearing to discuss the issues contained in this small formal complaint.

I request your support in compelling Evergy to negotiate honestly as required by law and within reasonable parameters, and encourage the option of mediation. (Attachment to Complaint, p. 4 of 4).

As explained below, none of these requests for relief may be granted by the Commission.

22. Paragraph 7 of the Complaint does not appear to contain any allegations. Instead of identifying the statute, tariff, or Commission regulation or order that Complainant alleges has been violated by Evergy, as required by 20 CSR 4240-2.070 (1), Paragraph 7 directs the reader to “Please see attached.” The attachment identifies no statute, tariff, or Commission regulation or order that Complainant alleges has been violated by Evergy. To the extent a response is required, the Company denies.

23. Paragraph 8 of the Complaint does not appear to contain any allegations. Instead of identifying whether the complainant has directly contacted the Respondent or the steps taken by Complainant to present this matter to Respondent, as required by 20 CSR 4240-2.070(4)(D), Paragraph 8 directs the reader to “Please see attached.” The attachment identifies no steps taken by Complainant to present this matter to Respondent. To the extent a response is required, the Company denies all allegations made in the attachment, except as specifically admitted herein.

24. Attached to the Complaint is a four-page document which contains numerous allegations and statements. Much of the attachment contains unsubstantiated and unverified allegations and statements, and hearsay to which Respondent objects and denies.

25. To the extent a general response is required to the four-page attachment, the Company denies each of the statements, unless specifically admitted herein. More specifically,

Respondent denies that it is refusing to negotiate easements in the public interest. Respondent denies that it “[d]isregard of a utilities (sic) public purpose.” Respondent denies that it has issued “[m]isleading statements regarding CCN related issues with misrepresentations of fact.”

26. With regard to the statement contained in the second paragraph on page 1 of 4 of the Attachment, Respondent admits that the Commission has jurisdiction regarding Evergy, but not over the MoDOT.

27. With regard to statements regarding the Complainant and his neighbors in the third and fourth paragraph on page 1 of 4, Respondent has insufficient information to admit or deny.

28. With regard to the statements contained in the fifth and sixth paragraphs on page 1 of 4, Respondent has insufficient information to admit or deny.

29. With regard to the statements contained in the seventh and eighth paragraphs on page 1 of 4, Respondent has insufficient information to admit or deny.

30. With regard to the statements contained in the ninth paragraph on page 1 of 4, Respondent admits that Complainant’s property is part of the easement that Evergy is seeking along MO-13 highway frontage at the rate specified in the confidential version of the Complaint.

31. With regard to the statements contained in the first paragraph on page 2 of 4, Evergy admits that is seeking a 30-foot easement along MO-13 highway frontage, but denies all other statements.

32. With regard to all other statements contained on page 2 of 4, Evergy denies all allegations.

33. With regard to the statements contained on page 3 of 4, Respondent states that it has insufficient knowledge to respond, and therefore denies all statements.

34. With regard to the statements contained on page 4 of 4, Respondent has insufficient information to admit or deny, except that Evergy admits that it needs the private easements of 30-feet is needed, among other reasons, to ensure safety of workers and road travelers.

IV. AFFIRMATIVE DEFENSES

35. The following are the Affirmative Defenses that Evergy raises in response to the Complaint:

FIRST DEFENSE

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

SECOND DEFENSE

37. The Complaint fails to allege that Evergy has violated any statute, tariff, or Commission regulation or order as required by 20 CSR 4240-2.070(1).

THIRD DEFENSE

38. The Complaint fails to allege that the Commission has jurisdiction to hear the complaint.

FOURTH DEFENSE

39. The Commission lacks jurisdiction to issue any orders related to eminent domain or condemnation issues that are under the jurisdiction of the circuit courts, pursuant to the provisions of Chapter 523, RSMo.

FIFTH DEFENSE

40. The Commission lacks jurisdiction to mediate any dispute involving issues beyond its jurisdiction.

SIXTH DEFENSE

41. The Complaint fails to allege that any of the easements being sought are within the service area of Evergy Missouri Metro, and therefore Evergy Missouri Metro requests that it be dismissed from this Complaint case.

V. MOTION TO DISMISS

42. The Commission’s rules provide that “The commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted.” 20 CSR 4240-2.070(7). When evaluating such a motion “the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.”³ In other words, the Commission should ask, assuming the allegations are true, whether the complainant would have a right to the relief he seeks. Under this standard, Mr. Allegri’s complaint must fail. Even if each fact Mr. Allegri alleges were accurate, he is not entitled to the relief he seeks. The Complaint seeks three specific actions from the Commission:

I request utility service options through both Evergy and West Central Electric COOP be available to my MO-13 property and others on MO-13 for the 8.7-mile section discussed in this small formal complaint.

I request a hearing to discuss the issues contained in this small formal complaint.

I request your support in compelling Evergy to negotiate honestly as required by law and within reasonable parameters, and encourage the option of mediation. (Attachment to Complaint, p. 4 of 4).

43. Complainant requests “utility service options from both Evergy and West Central Electric COOP be available. . . .” In order to change service providers, Missouri law requires that

³ *Richardson v. Richardson*, 218 S.W. 3d. 426, 428 (Mo. 2007).

the change of supplier be for reasons other than a rate differential. Section 393.106(2). Complainant has not alleged that his current electric service is deficient or any other reasons sufficient to support a change of supplier. The Complaint does not meet the requirements of 20 CSR 4240-3.140 required for an Application for Change of Electrical Supplier. Moreover, changing electric service providers will not change the need for a new transmission line nor prevent Evergy from siting that line on Complainant's property.

44. Complainant "requests a hearing to discuss the issues contained in this small formal complaint." The Commission does not hold hearings to "discuss issues." Typically, hearings are held in order to present evidence for the Commission to use in making a decision within its statutory authority and jurisdiction. There is no decision for the Commission to make with regard to the easement for a new transmission line within Evergy's service area. As noted above, the Company has determined that it requires a new transmission line and has taken the legal steps to acquire Complainant's property to do so. The Commission does not have the jurisdiction to resolve any eminent domain disputes. Instead, as explained herein, the circuit courts of Lafayette and Johnson County, Missouri are already scheduled to hold hearings under Chapter 523, RSMo to consider the eminent domain issues relevant to this Complaint.

45. The Complainant requests "your [Commission] support in compelling Evergy to negotiate honestly as required by law and within reasonable parameters, and encourage the option of mediation." The Company denies that it has not negotiated honestly. The Commission is not empowered to "support" a party to a Commission complaint. Moreover, the Commission does not have the legal authority to mediate an eminent domain or condemnation dispute.

46. This Commission has also recognized its absence of authority to resolve eminent domain disputes of landowners. In Missouri Landowners Alliance, et al. v. Grain Belt Express,

LLC, et al., File No. EC-2021-0059 (“Grain Belt”), the Commission held that it has no jurisdiction or authority to grant a public utility eminent domain (p. 14). Moreover, the Commission found that its statutory authority in complaint cases, pursuant to Section 386.390, RSMo, is limited to determining whether a public utility committed any act or failed to act in violation of any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission. (p. 16). In the Grain Belt case, the Commission found that the complainant had not met its burden of proof regarding its allegations that the utility had violated a Commission order. (p. 19). In the instant case, Complainant has not even alleged a violation of a Commission order, tariff or regulation. Complainant questions the need for a 30-foot easement instead of the existing easement but as noted above all questions concerning the ability of a utility to condemn property for public use are solely for the circuit court to decide. Similarly, Complainant questions whether Evergy has a Certificate of Convenience and Necessity (“CCN”) for the transmission line. Again, the circuit court will determine if Evergy has the authority to condemn property for the building of the transmission line. Evergy does have a CCN for the entire transmission line as the Commission’s CCN map (attached as Exhibit A) clearly shows.⁴ Staff also indicates that the Commission case in which the certificate for the service area affected by this Complaint was issued in 1938.⁵

GROUND FOR DISMISSAL

47. The Company moves to dismiss the Complaint in its entirety on the basis that it fails to state a claim upon which relief can be granted.

⁴ [Missouri Electric Service Area Map 11-8-19.pdf \(mo.gov\)](#)

⁵ See paragraph 2 of *Staff Response, Motion for Expedited Treatment, and Motion for Injunction* (“Response”).

48. The Company moves to dismiss the Complaint on the grounds that none of the allegations made by Complainants constitute a violation of any statute, tariff, or Commission regulation, or order.

49. The Company moves to dismiss the Complaint on the ground that it has operated within its approved tariffs, Commission orders and regulations, Missouri law and therefore and the Complaint should be summarily dismissed.

50. The Company moves to dismiss the Complaint on the ground that the Commission lacks jurisdiction to issue any orders related to eminent domain issues that are under the jurisdiction of the circuit courts, pursuant to the provisions of Chapter 523, RSMo.

51. The Company moves to dismiss the Complaint on the ground that the Commission lacks jurisdiction to mediate any dispute involving issues beyond its jurisdiction.

52. The Complaint fails to allege that any of the easements being sought are within the service area of Evergy Missouri Metro, and therefore Evergy Missouri Metro should be dismissed from this Complaint case.

VI. CONCLUSION

53. In conclusion, the Company has complied with its tariffs and all Commission rules, regulations and Orders. For the reasons set forth herein, the Company requests the dismiss the Complaint. In the alternative, the Company requests that the Commission hold this matter in abeyance until the circuit courts of Lafayette and Johnson County, Missouri have rendered their decisions in Case Nos. 23LF-CV00700 and 23-JO-CC00142.

WHEREFORE, the Company respectfully submits for Commission consideration this Answer to the Complaint and moves the Commission for an order dismissing the Complaint with

prejudice for failure to state a claim upon which relief can be granted, and for any such further relief the Commission deems appropriate.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Evergy, Inc.
1200 Main Street, 16th Floor
Kansas City, MO 64105
Telephone: (816) 556-2791
Email: Roger.Steiner@evergy.com

James M. Fischer, MBN 27543
Fischer & Dority, P.C.
2081 Honeysuckle Lane
Jefferson City, MO 65109
Phone: (573) 353-8647
Email: jfischerpc@aol.com

**Attorneys for Evergy Missouri Metro and Evergy
Missouri West**

CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 30th day of August 2023 upon counsel for all parties of record in this proceeding via electronic service or U.S. mail postage prepaid.

/s/ Roger W. Steiner

Roger W. Steiner

