

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

Re: Evergy's Highway 13 Infrastructure Improvement Project. This complaint, pursuant to R.S.Mo. 386.30, is specific to Evergy and its proposed line and pole replacement [running along MO-13 in Lafayette and Johnson counties](#). Among other items cited, I allege Evergy is not conforming to a Certificate of Need and Necessity (CCN), #9470, dated January 18, 1938, the CCN to which may be applicable to this line on MO-13. This complaint is filed, because to the best of my knowledge, Evergy is not following the orders of CCN #9470.

Do I interpret Missouri law correctly, that it gives The Commission jurisdiction and authority for CCNs? If so, it is my understanding according to R.S.Mo. 386.280, "every ... certificate issued or approved by the commission ... shall be in writing ... and entered on the records of the commission ... and such record shall impart notice of its provisions to all persons ...".

I request a copy of The Commission's record of Evergy's Project CCN and verification that Evergy is operating and proposing upgrades within the *specific parameters* of the CCN under which they are claiming use on their MO-13 Fayetteville Project.

1. Has The Commission had the opportunity to evaluate Evergy's complete plans, designs, pole placements and intentions with corresponding need/necessity for the MO-13 project? If so, please provide that design information.
2. Is The Commission fully apprised of Evergy's MO-13 plans needs and objectives and how the MoDOT MO-13 project plan impacts the Evergy project design?
3. Have the project plans of either project been presented and filed with the Circuit Court pursuant to Rule 86.04 of the Missouri Rules of Civil Procedure and R.S.Mo. §227.050? I am unable to determine if that has transpired.
4. Can The Commission confirm if Evergy's MO-13 project design plan meets or exceeds the NESC standard of pole placement and easements widths?
5. If Evergy's MO-13 plans exceed (or in effect, defy) the NESC standard, does that imply the NESC standards are deficient and Evergy has jurisdiction to guess and apply imagined NESC guidelines that may never be written and enforced?
6. Can The Commission confirm if Evergy's MO-13 project plan places poles and/or lines "along" MO-13 highway and/or "along" private rights-of-way?
7. Can The Commission confirm if Evergy's MO-13 project plan places lines "above" MO-13 highway and/or "above" private rights-of-way?
8. Can The Commission confirm if Evergy's MO-13 project plan places poles "upon" MO-13 highway and/or "upon" private rights-of-way?

Without the complete line design, the subject-matter-expert who has agreed to evaluate Evergy's line design is unable to advise me and my neighbors as to its validity and if the pole positioning is restricted by design. Evergy has not provided me or my neighbors the proposed MO-13 line design, including all pole placements and size of poles.

Because of this fact, it is not possible to make an informed decision about the easement proposed on my property until the subject-matter-expert has, in-hand, the completed design plan to evaluate using their expertise and utilizing the Ground Clearance software tools used by electric utilities.

Is it true that once a CCN is issued, The Commission's role of oversight is no longer required? If true, is it correct to assume The Commission's act of approving a CCN negates their ongoing role and responsibility of that line's oversight and risk public safety, service reliability and compliance?

Is my understanding of R.S.Mo. 386.310 correct that Evergy has an obligation to Missourians to ensure line safety is maintained and kept in a reasonably safe and adequate manner so as not to endanger the public or to interfere unreasonably with the service of other aerial lines?

Is it true that The Commission's issuance/order of a CCN does not eliminate their role in upholding future specific requirements and specifications set forth in the orders of the CCN under which a line operates? Such as the ongoing operational safety of the lines, power delivery, NESC standards being met, pole/line placements and proximity kV increases?

Is it true that The Commission serves Missouri taxpayers by overseeing all utilities, the CCNs issued to utilities and the ongoing compliance of each CCN they approve?

It's my understanding The Commission remains the responsible authority as legislated, and in so doing it must clearly stand separate of the utility if/when a utility's CCN (or any other) non-compliance would otherwise create a joint liability. Is that correct?

Is it within The Commission's jurisdiction to ensure project expansions and upgrades are planned and then implemented within the specific parameters and limits of the applicable CCN?

The domino effect of irreversible damage begins if the CCN (and other) requirements of a project are not met, at any time, when a project proceeds without PSC oversight in compliance checks and balances. Any lack of oversight would result in errors that can harm the utility through poorly planned expenditures and *needless land taking from Missouri landowners*.

Without The Commission's role in ensuring CCN *compliance* to any newly approved project or subsequent upgrade, Missourian's would be without the responsible oversight they fund (PSC) and as passed to The Commission through the Federal Energy Regulatory Commission. Evergy should have no jurisdiction to regulate itself.

I submit this without reservation. However, the last time this group of impacted landowners submitted a complaint about this Evergy project through this PSC process (attached), Evergy responded by suing nearly all of them two days later.

Remedy and Relief:

- **I respectfully ask The Commission to**
 - **respond to all questions raised in this complaint,**

- provide me a copy of Evergy's completed project design, preferably a KMZ file and
- provide me your verification that the MO-13 project does not deviate from The Commissions orders in the applicable CCN of the project.
- If The Commission identifies non-compliance in the Evergy MO-13 project, with respect to conforming to the applicable CCN or any other violation, I respectfully ask The Commission to exercise its jurisdictional obligation (R.S.Mo. 386.330.3) and do the job the courts have no authority. Without The Commission's role practiced, the courts are left assuming The Commission (or some other unknown government authority) has fulfilled an oversight role over the utility. If the actions of Evergy are incorrect as alleged, me and all other impacted Missouri taxpayers may become victims of absent due process. As stated previously, the courts are unable to evaluate and determine the issues that fall within the role and duty of the Missouri Public Service Commission.

The Commission's role is well defined in the following:

- *Please refer to:* Empire Dist. Electric Co. v. Cox / Court of Appeals of Missouri, Southern District, October 4, 1979 / No. 10861 HN1 Appeals, Standards of Review
"While orders of the Missouri Public Service Commission (PSC) are subject to judicial review, the court is confined upon review to a determination of whether, on the facts before it, such order is reasonable and lawful. If the reviewing court finds the order both reasonable and lawful, its duty is to affirm it. If the order be found to be either unreasonable or unlawful, it should be set aside. The trial court has no authority to interfere with reasonable orders of the PSC when supported by facts found on competent evidence, nor may it weigh evidence or substitute its judgment for that of the PSC."
- Please also refer to Missouri Office of the Public Counsel's *Reply to Staff Response*, Item #13, dated August 30, 2023, re: EC-2024-0015.

Thank you for your urgent attention to this complaint and for supporting the public and utility's interests.

Respectfully submitted by,

Signature  *Date* Sept 28, 2023

Complainant/landowner/citizen

David J. Berg

