

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

<b>Dwayne Marsh,</b>	)	
	)	
<b>Complainant,</b>	)	<b>File No. EC-2024-0015</b>
	)	
<b>Evergy Missouri West, Inc.,</b>	)	
	)	
<b>Respondent.</b>	)	

**RESPONSE TO ANSWER OF EVERGY MISSOURI WEST  
TO CONSOLIDATED COMPLAINTS and DISMISSAL WITH PREJUDICE**

**COMES NOW** Complainant Dwayne Marsh, and in reply to Respondent’s (“Evergy”) *Answer to Consolidated Complaints and Dismissal With Prejudice*, states as follows:

1. Evergy’s “*Answer*” which denied “*each and every allegation and statement*” in all of the Formal Complaints filed against them in this matter once again proves their lack of *public interest* and unwillingness to *negotiate* in connection with their project. Formal Complaints to the Public Service Commission (“PSC”) were filed in an attempt to have concerns addressed so an understanding and confirmation of how the CCN under which they claim use is applicable, and how Evergy is seeking to condemn such an excess amount of Complainants’ land without evidence of *need* and public necessity (*want* and *need* are not synonymous).

2. Evergy also failed to work in the public interest by refusing a *Mediation* by the Public Service Commission (“PSC”) in the subject project, brazenly claiming, in effect, the Circuit Court proceedings would be sufficient to resolve the 30+ PSC Complaints.

3. Evergy’s unwillingness to negotiate is also evidenced by the fact that they have never, to my knowledge, mentioned the *proposed written maintenance-only easement* presented by multiple landowners. Negotiations in good faith are a condemnation requirement.

4. Further, *all* Complainants and/or Defendants in a condemnation land-taking, should it be approved by a Court, deserve the right to negotiate the *terms* of any land easement related to their

respective properties, including the right to receive any and all monies made off of their easements and/or if and when any changes are made to their land. Is the 5<sup>th</sup> Amendment of the U.S. Constitution in the taking of excess land considered in the *public interest*? Is it *negotiating in good faith*? The only “need” proven here is Evergy’s need for power and money through deception and greed at Missouri citizens’ expense. Evergy is taking an excess amount of our land in the expectation that MoDOT will eventually widen MO-13 and as stated by Evergy representatives, they “would prefer to only have to work this out with you once and not have to come back again in 10 years if MoDOT decides to make another change.”

What an outrageous statement! Evergy wants to TAKE my land IN THE POSSIBILITY that IN ANOTHER TEN YEARS they MIGHT need more land IF the road is widened. *So in that light, “Evergy, I want you to QUIT-CLAIM TO ME YOUR CORPORATE OFFICES just in case I decide to move my corporate offices within the next 10 years and need a new location. That’s my plan for the future. I will send you the drawings next April. Maybe.”* Absurd, isn’t it? Evergy’s unwarranted abuse of discretion is just as absurd. The PSC holds the authority through their CCN for meeting certain criteria prior to any condemnation lawsuits being filed by a utility.

5. Complainants were all sued by Evergy in Circuit Courts and their “Verified” Petitions were found to be inaccurate. “**Verified**” Petitions are declarations under oath or upon penalty of perjury that a pleading is true, and any false information given is subject to penalties for perjury. From the very beginning, Evergy and/or its land agents have provided false information regarding their project and related “easements”. Some of the landowners involved in the project have not even been sued, further evidence of an incomplete plan and design, which is necessary to prove a **need**. Surveys were conducted as early as June 2022, almost two years prior to Evergy’s project plan becoming available (currently not until the end of April 2024). Is this proper use of Missouri condemnation laws?

6. Evergy has stated there are safety concerns involved in their project which would result in requiring extra land, yet they have not provided any accident data related to the project area. The one accident they have consistently referred to is over 14 miles from the closest point of the project area, involving a subcontractor whose employee jumped from a moving vehicle. This tragic accident could have occurred anywhere along a highway, or not, and was non-vehicular. I am committed to worker safety as much as I am to property rights and am willing to negotiate a 15-foot maintenance-only

easement to allow access to my land and ensure worker safety while upgrading or maintaining the poles and electrical lines.

7. The PSC has authority over Evergy and their **project**, albeit a separate authority than the Circuit Courts. Even if dual cases like this occur, it does not hinder the PSC from their responsibility of oversight of the utilities they are required and funded to govern.

8. Evergy falsely states that Complainants have failed to state a claim upon which relief can be granted. Complainants **all** have requested the CCN under which Evergy is operating be proven accurate and in compliance of the specific CCN; all have also stated Evergy's proposed easements *exceed the need of land* they are attempting to condemn and have asked for *proof of need* with no concrete evidence (a plan does not prove **necessity**, it is simply a plan). Evergy personnel have stated they want the additional land "for future use". **Condemnation laws do not allow the taking of land "for future use" but only for *current need***, with said need to be *proven* in the public interest. We demand proof of necessity, of which we have not been given, and which cannot be proven without a completed plan.

9. There are still numerous unanswered questions regarding the subject project which I would like (and am entitled) answers to, as follows:

- a) Is the current 69kV is reaching its limit capacity? Please provide data regarding kilovolt usage along the project line.
- b) Please provide a documented set of guidelines concerning new or rebuilt electric transmission lines. If none exist, why not?
- c) Is it true that construction prints and specifications of Evergy's project that supposedly involves condemnation of our land will not even be completed and available until the end of April 2024?
- d) Is Evergy's decision to move the poles in this transmission project based on a desire to move out of the MoDOT right-of-way and not an actual need to do so? If there is an actual **public need** to be out of the MoDOT ROW, please describe said need in detail.
- e) Evergy states a safety concern for desiring to move outside of the road right-of-way, although it is not required in this project. Please provide safety data along this 8.7 mile project, as well as any documentation of landowners denying access to their land for line

or pole maintenance; and also the specific 2017 NESC requirement related to additional land necessary for maintenance safety.

f) What is the specific CCN number that Evergy alleges use of for this project?

g) I understand you plan on using steel poles in this project. Why steel and not wooden? Would wooden poles be sufficient for this 69kV replacement? Would a wooden pole be sufficient for anything *above or in excess of* a 69kV line? What size in height and circumference are all poles in the project?

10. Despite the fact that Evergy refuses to admit in Court their attempt to condemn our land is indeed accommodating MoDOT's highway improvements (as well as upgrade their line), their civil lawsuits have removed any reference to or insinuation of this fact because they **do not need** to move out of MoDOT's right-of-way and take extra land. They are misusing Missouri condemnation laws and should be held accountable.

11. In response to their request for dismissal with prejudice, Evergy again shows their lack of care for Missouri citizens by asking for dismissal of complaints by involved citizens without addressing their complaints and providing answers to concerns related to the project. Because of the lack of care and concern shown to all neighboring landowners, and Evergy's lack of respect shown to their governing authority, I wholeheartedly *object* to Evergy's request for dismissal *with* (or without) prejudice. Due to their past and current actions, I have no faith in Evergy changing their deceitful tactics and business practices in the future. Denying Missouri citizens the right to make future complaints against them, related to this project or any other, would be unfair and unjust.

WHEREFORE, Complainants pray the PSC grants the following relief:

1. Retract Evergy's use of the current CCN under which they are operating;
2. Order Evergy to apply for a new CCN for the project (along with completed plans, maps and design), but in any case, order the poles remaining *along* the highway *upon* the MoDOT right-of-way in this project or any related new project;
3. Order all future utility projects, *which involves condemnation*, to comply with the associated CCN by way of application to the Commission with proper project plans, completed

engineering design and maps being approved by the PSC *prior to* work beginning or condemnation lawsuits brought as a result of *any* project;

4. Order all future CCNs requiring utility and land easements to show written proof of necessity for potential condemnation of landowner property as a result of said utility project, and require *maintenance-only easements* instead of permanent easements, with terms *negotiated* (not *dictated*) in a *required Mediation* by all parties;

5. Order all future CCNs for utilities to require any and all monies made as a result of *condemnation easements* be paid directly to the landowner with no monies paid to the utility; and that absolutely *no Quit-Claims be allowed on land easements obtained via condemnation*.

6. Order all future CCNs for utilities to require **any** use of utility easements **obtained via condemnation**, including movement of utility poles or equipment (and subsequent monies made), be documented and filed with the appropriate county records department, a copy of all said documentation mailed to landowner(s) at the current address of record or if not available, mailed to the property address of the land associated with the project.

7. Provide answers to all questions in Paragraph #9 of this document.

8. Lastly, that Evergy's request for dismissal *with* prejudice in this or current and future related cases be **denied** within the PSC complaint processes.

**Respectfully submitted, October 19, 2023 on EFIS**

/s/ *Dwayne Marsh*

**Dwayne Marsh, Complainant**