

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

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| Timothy Allegri, et al. |) | |
| |) | |
| Complainants, |) | |
| v. |) | File No. EC-2024-0015, et al. |
| |) | [consolidated] |
| Evergy Missouri West, Inc. d/b/a Evergy |) | |
| Missouri West, |) | |
| |) | |
| Respondent. |) | |

**EVERGY MISSOURI WEST’S RESPONSE TO STAFF RECOMMENDATION
AND ALLEGRI’S AMENDED REPLY TO STAFF RECOMMENDATION**

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West”) (collectively, the “Company” or “Evergy”), by and through its counsel and, for its response (“Response”) to the Staff (“Staff”) for the Missouri Public Service Commission’s (“Commission”) *Staff Recommendation* (“Staff Recommendation) file on November 6, 2023, and the *Amended Reply to Staff Recommendation* filed by Complainant Timothy Allegri on November 14, 2023, states as follows.

1. As explained below, Staff’s recommendation for a hearing should be denied because the Staff Recommendation, like the Complaints themselves, failed to allege facts supporting that Evergy has violated any statute, tariff, or Commission regulation or order as required by 20 CSR 4240-2.070(1).

BACKGROUND

2. On August 2, 2023, the Commission issued its *Order Giving Notice Of Complaint, Directing Answer And A Staff Investigation* which directed Staff to investigate the Complaint and file a report pursuant to 20 CSR 4240-2.070(11).

3. On August 31, 2023, the Commission issued its *Order Denying Staff's Motion To Pursue An Injunction*, and held that “Chapter 523 empowers the circuit court, and not the Commission, with authority over condemnation proceedings. Therefore, the Commission will deny Staff’s request” [to seek a temporary injunction against the circuit court of Lafayette County in the eminent domain case.] The Commission’s Order also noted that: “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.” (Order, p. 3)

4. On November 6, 2023, Staff filed its Staff Recommendation and Staff Report, and like the original Complaints and previous pleadings filed by Staff in this case, failed to allege that Evergy has violated any statute, tariff, or Commission regulation or order as required by 20 CSR 4240-2.070(1). Without making any of the allegations required by 20 CSR 4240-2.070(1) to support a Complaint, Staff nevertheless recommends “that the Commission order a hearing in this matter and grant complainants the opportunity to put on witnesses and gather evidence to best determine the nature of the project by Evergy that sits at the center of these complaint filings, and whether the Company has violated a statute, Commission rule, tariff or Commission order.” (Staff Recommendation, p. 4)(emphasis added). In his Amended Reply filed on November 14, Mr. Allegri concurred in Staff’s recommendation to hold a hearing. (Amended Reply to Staff Recommendation, p. 1).

REQUESTS FOR A HEARING SHOULD BE DENIED

5. Both Staff’s and Allegri’s requests for a hearing should be denied, and the Commission should instead grant Evergy’s motion to dismiss the Complaints on the grounds that

the Complainants (and Staff) do not allege that the Company has violated any statute, Commission rule, tariff or Commission order, as required by the Commission's rules.

6. Staff states that its "position is that Evergy has exceeded the parameters of its authority granted in its certificate of convenience of necessity (CCN) granted to the Missouri Public Service Corporation in Case No. 9470 for the counties central to these complaint filings." (Staff Recommendation, p. 4) Notwithstanding this statement of position, Staff fails to identify what actions, if any, Evergy has taken that in any way violates the terms of the CCN Order in Case No. 9470. It merely points to two Ordered Paragraphs in the 1938 CCN Order.

7. First, the Staff Recommendation points to Ordered Paragraph 2 of the 1938 CCN Order which states in part:

[t]hat said electric transmission and power lines and all equipment connected therewith shall be constructed so as to conform to the specific rules and regulations contained in the National Electric Safety Code, issued by the United States Bureau of Standards, and where said transmission lines cross the tracks of any railroad company, said crossing shall be constructed so as to conform to the specific rules and regulations contained in the Commission's General Order No, 24, issued August 17, 1925.

8. Staff does not allege that Evergy has failed to construct its existing electric transmission line so as to conform to the specific rules and regulations contained in the National Electric Safety Code ("NESC"). Instead, Staff points out that the Company utilized the current 2017 version of the NESC (Staff Report, p. 11) for designing and planning the Fayetteville transmission project when there will soon be effective a newer version of the code. This 2017 version of the NESC was in effect when the transmission line upgrade was designed and planned (and is currently still effective). Staff has not alleged that the newer 2023 NESC which will not become effective until November 30, 2023, would make any difference in the design or plans of

the upgraded transmission line. Nor has Staff alleged that Evergy has violated Ordered Paragraph 2 by utilizing the version of the NESC that is currently in effect.

9. Second, Staff also points to Ordered Paragraph 4 of the 1938 CCN Order (Staff Report, p. 11) which states:

That before beginning the construction of any electrical power and transmission line in the territory herein designated and before a change is made in the location, phase or voltage of any electric line that may be in operation, **the applicant shall give all other utilities, associations or persons whose lines are or may be affected by such change or construction at least 15 days' written notice**, showing in sufficient detail what the proposed construction or change will be to enable competent representatives of those utilities, associations or persons to determine what action the particular utility or utilities, associations or persons may desire to take with deference thereto” **[emphasis added]**.

10. Ordered Paragraph 4 on its face does not apply to Complainants in this case. Complainant are not utilities, associations or persons who own electric lines that are or may be affected by the proposed upgrade to the Fayetteville transmission line. While Staff obliquely suggests that “there is no evidence that Evergy has provided the information in compliance with Ordered Paragraph 4” (Staff Report, p. 11), Staff has not alleged that Ordered Paragraph 4 applies to any person (such as Complainants) that does not own electric lines that may be affected by the change or construction of the project. While not required by Ordered Paragraph 4 above, Evergy has given the notice required by Section 523.250, RSMo to each of the affected landowners that are parties to the circuit court eminent domain proceedings. The fact that the final design for the project will not be available until April 29, 2024, has absolutely no bearing on the requirements of Ordered Paragraph 4 since this paragraph does not require Evergy to provide the Complainants or other landowners with the final design of the project.

11. Interestingly, Staff paraphrased Ordered Paragraph 4, which may mislead the casual reader when Staff stated: “However, ordered paragraph four provides for notice to be

provided to any utility, association or person affected by the construction or change of the phase, voltage or location of an electric line of at least 15 days.” (Staff Recommendation, p. 8, para.13)(emphasis added) As explained above, Ordered Paragraph 4 only applies to “utilities, associations or persons whose lines are or may be affected by such change or construction...” (emphasis added) Mr. Allegri and his co-complainants do not own electric lines, and Ordered Paragraph 4 is not applicable to them.

12. While Staff quotes Ordered Paragraph 3 at length in its Staff Report at page 2 of 12, the Staff Recommendation candidly admits that “Ordered paragraph 3 involves the crossing of lines of another utility and is not relevant to this complaint and five is simply housekeeping for the implementation of the order.” (Staff Recommendation, p. 8, para. 13).

13. As the Commission has already observed, “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.”¹ After the filing of the Staff Recommendation and Staff Report, and Mr. Allegri’s November 14 Amended Reply, the Commission again ruled in this case that “no violation of the Commission’s rules, orders, laws subject to Commission jurisdiction, or company tariff have yet been shown. . .”²

14. It would not be an efficient use of the Commission’s resources to convene an evidentiary hearing for the purpose of granting “complainants the opportunity to put on witnesses and gather evidence to best determine the nature of the project” as suggested by Staff. The Commission should not grant a hearing in this case when there is no alleged violation of any statute, tariff, or Commission regulation or order as required by 20 CSR 4240-2.070(1).

¹ *Order Denying Staff’s Motion To Pursue An Injunction*, p. 3, File No. EC-2024-0015 (August 31, 2023).

² *Order Directing Filing Of Procedural Schedule And Denying Request For Commission to Pursue An Injunction In State Court*, File No. EC-2024-0015 (November 15, 2023).

WHEREFORE, the Company respectfully submits its Response to the Staff Recommendation.

Respectfully submitted,

/s/ Roger W. Steiner

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CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 17th day of November 2023 on the pro se complainants in this proceeding via electronic service or U.S. mail postage prepaid.

/s/ Roger W. Steiner

Roger W. Steiner