

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

Timothy Allegri,)	
)	
Complainant,)	File No. EC-2024-0015
)	
Evergy Missouri West, Inc.,)	
)	
Respondent.)	

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

COMES NOW Complainant Timothy Allegri (“Complainant”) and in reply to the Missouri Public Service Commission’s *WebEx Procedural Conference* held December 5, 2023, states as follows:

1. This formal complaint, along with numerous additional complaints filed by landowners affected by the proposed construction project/movement of Respondent’s electric line, addresses several issues of concern regarding compliance with CCN #9470, to which Respondent (“Evergy”) claims authority for their project. The original complaint was filed almost six months ago, on July 25, 2023.

2. The original formal complaint requested a hearing to discuss the issues contained in the protest/complaint and the support of the Missouri Public Service Commission (“PSC”) in compelling Evergy to negotiate honestly with us as required by law and if needed, mediation. The only hearing held with all Complainants to date is the *Procedural Scheduling Hearing* via telephone on December 5, 2023; a *Request for Mediation* was filed on August 15, 2023 and denied by Evergy on August 24, 2023.

3. I have read and concur with the *Staff Recommendation* that an evidentiary hearing should be scheduled to put evidence into the record, present witnesses and discuss the many concerns raised in the formal complaints. It is without question that Evergy has violated some

portions of CCN #9470 *Orders* of the PSC. Without total oversight of Evergy's project in relation to the assigned CCN, eminent domain lawsuits were filed against multiple landowners. Two of the lawsuits were filed just two days after the original complaint was filed with the PSC, and because "Verified" Petitions were filed by Evergy, it is possible that land easements could have already been obtained by default, all with a project in violation of CCN #9470 *Orders*. Some easements related to Evergy's project *have already* been obtained under false pretenses that Evergy's project met Missouri eminent domain law. The Circuit Court can only assume that prior to an eminent domain lawsuit being filed that the Commission (Evergy's governing authority) has ensured compliance with their project certificate.

4. Evergy's improper use of CCN #9470 from the PSC, coupled with their disregard for Section 227.050 RSMo and Rule 86.05 Petition-Contents. Mo Rules of Civil Procedure, having never filed their engineering or project plans with the Court (said plans are not complete until April 29, 2024, according to the PSC's *Staff Recommendation*) are all reasons the PSC should stay the Court hearings until evidentiary hearings and resulting Orders by the PSC are made, eliminating the possibility of Missouri landowners losing more valuable highway frontage land, and Evergy being allowed to gain easements through possible abuse of CCN *Orders* and the legislative eminent domain process as well. The Mo. Court of Appeals, Southern District, 588 S.W.2d 263, *Empire District Electric Co. vs. Cox*, found that:

"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."

5. In recognition of the PSC's governing authority over Evergy, and with regard to *Item #4* above, Complainant hereby **again** requests the PSC to *File a Motion for Preliminary Injunction* with the respective Courts at least one week prior to the next Court hearing, setting aside all lawsuits with relation to Evergy's project and this complaint until the PSC makes its final orders. It is the duty of the PSC to hold accountable all utilities under their jurisdiction. If a utility (Evergy) has not met (or is suspected to have not met) the requirements and *Orders* of the certificate authorizing their project, it is the PSC that holds or at least shares responsibility for

unauthorized lawsuits with regard to the utility's project ... lawsuits that will potentially harm Missouri landowners and in fact, have *already* harmed landowners.

6. There must be accountability for this unfortunate series of events related to Evergy's "project". Did the PSC authorize Evergy's proposed project plan under CCN #9470? Did the PSC ensure Evergy's project plan met *all* criteria for CCN #9470? What measures does the PSC take to ensure compliance with CCNs they assign? Did the PSC ensure all criteria was met prior to the final step of eminent domain lawsuits? The answer is NO because Evergy has never presented a complete project plan and they are not in compliance with all Orders of CCN #9470. These actions have harmed the Missouri citizens and landowners the PSC (and Office of Public Counsel) exist to protect. Requests for a *Motion for Injunction* in this case have previously been made and denied. Complainants respectfully argue that the PSC can and should file a Temporary/Preliminary Injunction in civil court to prevent further harm to all Missourians impacted by this project *unless the PSC deems this protection of Missourians as optional*.

MOTION FOR INJUNCTION

7. 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, municipal gas system, person or corporation is failing or omitting or about to fail or omit to do anything required of it by law or by order or decision of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order or decision of the commission, it shall direct the general counsel to the commission to commence an action or proceeding in any circuit court of the state of Missouri in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions.** The commission's general counsel shall thereupon begin such action or proceeding by a **petition to such court alleging the violation complained of and praying for appropriate relief by way of mandamus or injunction.** Such relief shall not be limited to permanent forms of mandamus and injunction, but shall include all available forms of injunction and mandamus, including temporary restraining orders, **preliminary injunctions, permanent injunctions, preliminary orders of mandamus, and permanent orders of mandamus.**” [emphasis added]

8. Evergy Missouri West is a public utility as defined in Section 386.020(43). RSMo.

9. The PSC has jurisdiction over all public utilities providing electric service pursuant to Section 386.250, RSMo.

10. Due to the timeline of the Procedural Conference and unknown scheduling issues, the PSC has been unable to hold evidentiary hearing(s) and make Orders with regard to the multiple formal complaints filed as a result of Evergy's project, determining if a violation of a statute, rule, or tariff has taken place. These hearings and orders are vital to the outcome of the civil lawsuits and potential land-takings, and it is possible that irreversible damage could occur to all parties involved in Evergy's project plan under the authority of the PSC.

11. Complainants ask 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 has violated a statute, rule or tariff.

MOTION FOR EXPEDITED TREATMENT

12. Pursuant to 20 CSR 4242.2.080(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), Complainants ask the Commission to act on seeking a temporary injunction as soon as possible, but at least one week prior to the earliest scheduled circuit court hearing (currently January 11, 2024). Legal fees with regard to the lawsuits are harmful to the landowners as well, and accrue, along with emotional distress, with each passing day.

14. Pursuant to 20 CSR 4240.2.080(14)(B), Complainants state that they deserve full resolution of this proceeding in front of this Commission prior to a circuit court ruling to condemn portions of their land. The *Staff Investigation* and resulting *Reports* and *Recommendations* raise reasonable concerns of the prudence of Evergy's actions executed thus far, the need for their project, and the bounds of the authority granted in Evergy's certificate of

convenience and necessity issued in 1938, prior to such an absolute action taking place and raising possible legal concerns for all entities involved.

15. Complainant relies on Section 386.360 RSMo., for the Commission’s authority to direct its General Counsel to seek injunctive relief. Section 386.360.1 RSMo., provides that whenever the Commission believes a public utility is “failing or omitting or about to fail or omit to do anything required of it by law or by order or decision of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done...” in violation of a law subject to the Commission’s jurisdiction or of any order or decision of the Commission, it shall direct the General Counsel to commence an action in circuit court for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions. Earlier requests for Injunction have been denied due to the fact that they did “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.” The PSC’s own *Report of the Staff* concludes:

“...Staff recommends that the Commission conduct a hearing on the issues proffered by the Complainants, concluding that EMW has exceeded the bounds of the Commission’s Report and Order issued in Case No. 9470. EMW has not shown, in sufficient detail, that additional easement width is necessary in regard to Evergy seeking such additional easement width from Mr. Allegri and other Complainants along Hwy 13 in Johnson and Lafayette County, Missouri. Evergy states that a final design of their proposed Fayetteville Project will not be available until April 29, 2024 ...”

Additionally, the PSC *Staff Recommendation*, Item #14, Page 9 states:

“Staff contends that Evergy has exceeded the bounds of its CCN based on the authority granted in ordered paragraph one of the CCN order extending to construction in the right-of-way and even states that this is a new policy of the company in its response to Staff DR 3, citing safety concerns. Staff argues that this policy of the Company to encroach on private land outside of the existing highway right-of-ways is sufficient to warrant it seeking Commission approval prior to the policy change and prior to seeking eminent domain.”

16. Although Chapter 523 empowers the circuit court, and not the PSC, with authority over condemnation proceedings, the PSC has a responsibility to file a *Motion for Temporary Injunction* because they are empowered by Chapter 386 to **govern** utilities; that with proper oversight of CCN #9470 and ensuring Evergy’s compliance with CCN Orders, condemnation

proceedings in circuit court should not be allowed to proceed until the PSC retains jurisdiction of Evergy and the subject matter of the proceedings on the evidence now before the Commission. Further, the Commission *is* able to seek an injunction because a violation or imminent violation of law subject to Commission jurisdiction or rule has been made, as evidenced by their own *Staff Investigation, Report of Staff, and Staff Recommendation* as well as voluminous documentation provided in this *Formal Complaint* and EFIS filings. Complainant further states that should the PSC **not** file a *Motion for Temporary Injunction* it would hinder the Complainants from the possibility of having a fair circuit court trial based upon the evidence already before the PSC from their investigative findings. Further, pursuant to Mo. Civ. P. Rule 55.03(d)(1)(B), on its own initiative the court may enter an order describing the specific conduct that appears to violate Rule 55.03(c) and directing a lawyer, law firm or party to withdraw or correct the questioned claim, defense, request, demand, objection, contention or argument or to show cause why it has not violated the rule with respect thereto.

17. Pursuant to 20 CSR 4240.2.080(14)(C), Complainant states that this filing is being made as soon as possible considering the natural delays of this proceeding.

WHEREFORE, Complainant prays that the Commission will accept Complainants' *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* in Lafayette and Johnson County, Missouri at least one week prior to the next hearing and pursuant to Section 386.360.1, RSMo, staying the eminent domain proceedings of all circuit court cases (Lafayette County Case No. 23LF-CV00939; Johnson County Case No. 23JO-CC00142) related to Evergy's project until the final resolution of this Complaint; and will grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Timothy P. Allegri

Timothy P. Allegri, Complainant

CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 17th day of December 2023 to all parties in this proceeding via electronic service.