

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of December, 2023.

Timothy Allegri,)
Complainant,)
v.)
Every Metro, Inc. d/b/a Every Missouri)
Metro and Every Missouri West, Inc. d/b/a)
Every Missouri West,)
Respondent)

File No. EC-2024-0015

**ORDER DENYING COMPLAINANT’S MOTION TO PURSUE AN
INJUNCTION**

Issue Date: December 21, 2023

Effective Date: December 21, 2023

On December 17, 2023, Timothy Allegri, Complainant, filed a motion for an injunction and a request for expedited treatment. Complainant’s motion asks that the Commission seek to stay court proceedings until the Commission issues its Report and Order in this complaint. Several other complainants filed pleadings supporting Mr. Allegri’s motion. This is Complainant’s second request for the Commission to direct its General Counsel to seek a temporary injunction of the eminent domain proceedings, staying the circuit court proceedings until this complaint case is resolved.

In support of its request, Complainant states that Every Missouri West’s alleged improper use of its certificate of convenience and necessity (CCN), and disregard for Section 227.050 RSMo., and Missouri Court Rule 86.04¹ concerning petition contents are

¹ Complainant cites Missouri Court Rule 86.05, but that rule refers to summons and service.

reasons for the Commission to request an injunction before the Circuit Courts of Johnson and Lafayette Counties. Complainant further states that an injunction would eliminate the possibility of Missouri landowners losing more valuable highway frontage land, and Evergy Missouri West being allowed to gain easements through possible abuse of its CCN and the eminent domain process.

Applicable Law

The Commission has jurisdiction to hear complaints under Section 386.390.1, RSMo, which provides that a person may file a complaint against a utility, regulated by this Commission, setting forth violations of any law, rule or order of the Commission.

Section 386.360 RSMo., authorizes the Commission 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.

Discussion

Complainant requests the Commission order its General Counsel to request an injunction to halt or stay the eminent domain proceedings pending the resolution of this complaint case. The Commission has no authority to stay a circuit court proceeding. The

Commission, through its General Counsel, may request an injunction from the circuit court.

Complainant cites that Evergy Missouri West has not filed engineering or project plans with the Commission. However, "Commission" as used in Section 227.050 RSMo., refers to the Missouri Highways and Transportation Commission and not the Missouri Public Service Commission.

Likewise, Missouri Court Rule 86.04, concerning petitions in Condemnation Proceedings, concerns what is required in condemnation petitions before the circuit court and not the Missouri Public Service Commission.

Whether Evergy Missouri West's plans exceed the authority granted it under its CCN is an appropriate matter for a complaint hearing. The complaint case is to determine if Evergy Missouri West's plans would violate its CCN.

The Commission denied the Staff of the Commission's previous request for the Commission to seek an injunction in this case. That order stated: "The Commission cannot seek an injunction where there is no violation or imminent violation of law subject to Commission jurisdiction, a Commission rule, or a Commission order. Additionally, Chapter 523 empowers the circuit court, and not the Commission, with authority over condemnation proceedings." That same reasoning also applies to Complainant's request for an injunction. The Commission has not yet determined if Evergy Missouri West's plans violate the authority granted it in its CCN. Therefore, the Commission will deny Complainant's motion.

THE COMMISSION ORDERS THAT:

1. Complainant's motion to have the Commission direct its General Counsel to seek an injunction in circuit court is denied.
2. This order is effective when issued.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 21st day of December 2023.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

December 21, 2023

File/Case No. EC-2024-0015

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



Nancy Dippell
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.