

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

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

**RESPONSE TO ORDER, MOTION TO PURSUE AN INJUNCTION
and MOTION FOR EXPEDITED TREATMENT**

On December 17, 2023, Complainant Timothy Allegri filed a *Motion for Injunction and Request for Expedited Treatment* which was denied by the Commission via an *Order* issued on December 21, 2023.

After reviewing the Commission’s (“PSC”) *Order*, it became obvious the *Motion* wording and citations were again misconstrued by someone at the PSC. The *Motion* did not assert that the PSC has any statutory authority in the circuit courts or over eminent domain proceedings, but rather the PSC *does* have authority under Section 386.360.1 to seek injunctive relief 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 ...” said violations of orders being the basis of the many complaints and resulting PSC Investigation findings. With this knowledge, inaction on the part of the Commission in this regard effectively enables Evergy and their project to violate PSC orders and Missouri law. The Commissioners treating Section 386.360.1 as optional with the evidence already presented in the PSC Investigation is unwise and potentially harmful to all parties.

It is documented the Commission is aware of Evergy’s *intent* to violate CCN orders by their own investigation into the matter. Injunctive relief being granted by the circuit courts would relieve the PSC of possible shared liability for Missouri citizens’ loss of land due to a utility’s violation of Commission orders.

A preliminary injunction is “a court order restraining a party from doing some specified thing, until the matter is settled, or until the Court has issued a further directive.” The “Court” referred to here is the **circuit court**. The request for injunctive relief simply asks the PSC to order their General Counsel to file a *Motion for Preliminary Injunction* with the circuit courts until the PSC can determine, pursuant to RSMo. Section 386.360.1, if a violation of their CCN orders or laws has been made by Evergy (the very reason these laws and orders exist), which protect the PSC as well as Missouri landowners. Inaction of the PSC in fulfilling their obligation to hold Evergy accountable to Commission orders and laws, resulting in any land-taking, would no doubt be costly and time-consuming for all involved.

The PSC *Order* states, “The Commission has not yet determined if Evergy Missouri West plans to violate the authority granted it in its CCN” which is *exactly* why complainants are asking for injunctive relief. The PSC has plenty of evidence of Evergy’s imminent violations and/or intent to violate Commission orders or laws, referenced in **their** investigative findings and staff report, as well as the multiple complaints.

Further, to clarify the citation of RSMo. Section 227.050 and Missouri Civ. P. Rule 86.04 in the previous *Motion for Injunction*, it was included because of the fact that Respondent Evergy’s proposed project plan is in direct relation to the Missouri Department of Transportation’s (“MoDOT”) highway improvement plan, said plans never being furnished to the *Highway Commission* in writing, nor were they submitted to the *county clerk for filing*, to the best of our knowledge. It is obvious that the “Commission” referred to in this statute and rule was not in reference to the Missouri Public Service Commission but rather to the Missouri **Highway Commission**. Again, included in the pleading because Evergy’s project, by their own admission, is in relation to MoDOT’s “larger infrastructure project.”

The *Order* denying injunctive relief states, “The Commission has no authority to stay a circuit court proceeding.” That is absolutely true, and ***the request was for the PSC to Order its General Counsel to request an Injunction in the circuit court proceedings*** (which effectively stays a proceeding, if granted by the circuit court), not for the PSC itself to stay a circuit court proceeding (which it cannot do). The *Order* ignores the Commission’s broad authority to “[e]xamine all . . . corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business” **and**

“Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the . . . acts . . . of any such . . . corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the . . . just and reasonable acts and regulations to be done and observed” according to § 393.140 RSMo., stating that the PSC *does possess the authority* to investigate the allegations and then act.

The PSC denied seeking injunctive relief without regard for or exercise of their authority for those facing harm. The PSC evidentiary hearing date is January 23-25, 2024 and the circuit court hearings are 1-2 weeks *prior to* that date. Notwithstanding the PSC’s knowledge of Evergy’s intent to violate CCN orders, as evidenced by its *Staff Report and Recommendations* and other documents, the *Order* states the reason for denial is that the PSC has not **yet** determined if Evergy plans to violate its CCN, which in essence willfully and knowingly disregards Section 386.360.1 RSMo.

To further clarify, the *Motion* was merely requesting the PSC to order their General Counsel to file a *Motion for Preliminary Injunction* with the Circuit Courts in Lafayette and Johnson Counties to allow the PSC time to conduct an evidentiary hearing and make a determination as to whether or not a violation **or imminent violation** of law subject to PSC jurisdiction, rule or order has **or likely will be** committed and was not asking the PSC itself to stay a circuit court proceeding, as it has no judicial power to do so.

MOTION TO PURSUE PRELIMINARY INJUNCTION

Based upon the facts outlined in the above *Response*, Complainant hereby *again* requests the Missouri Public Service Commission to exercise its authority under law to order its General Counsel to seek a *Preliminary Motion for Injunction* in the circuit courts of Lafayette County (Case No. 23LF-CV00939) and Johnson County (23JO-CC00142), Missouri, pursuant to Section 386.360 RSMo., which authorizes the Commission to direct its 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’ until such time the Commission makes its final orders with regard to this complaint case.

MOTION FOR EXPEDITED TREATMENT

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.

Complainants ask the Commission to act on ordering General Counsel to pursue a temporary injunction in circuit courts as of the date of this document, January 2, 2024, pursuant to 20 CSR 4240.2.080(14)(A), and before the next scheduled circuit court hearing (Johnson County) on January 11, 2024. Inaction and denial of this *Motion* on the part of the Commission effectively enables Evergy and their project authorized by PSC orders to potentially violate law and result in unnecessary and undue harm to complainants. This pleading and previous motions to pursue an injunction were all filed in a timely manner.

Pursuant to 20 CSR 4240.2.080(14)(B), Complainant states a **full resolution** of this proceeding in front of this Commission is warranted *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 exceeded by Evergy with regard to the certificate of convenience and necessity granted by the Commission.

Respectfully submitted this 2nd day of January, 2024 to all parties via EFIS by:

/s/ Timothy P. Allegri
Timothy P. Allegri

/s/ Denise W. Allegri
Denise W. Allegri