

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

Timothy Allegri,	)	
	)	
Complainant,	)	
v.	)	File No. EC-2024-0015
	)	
Evergy Missouri West, Inc. d/b/a Evergy	)	
Missouri West,	)	
	)	
Respondent.	)	

**EVERGY MISSOURI WEST’S POSITION STATEMENT**

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 *Position Statement* states as follows.

**LIST OF ISSUES**

1. Has Evergy Missouri West violated any statute, tariff, or Commission regulation, or order, as required by 20 CSR 4240-2.070(1)?

**POSITION STATEMENT**

**Evergy’s Position:** No. Evergy Missouri West has not violated any statute, tariff, or Commission regulation, or order.

The Complainants have not asserted that Evergy Missouri West has violated any statute, tariff, or Commission regulation, or order, as required by 20 CSR 4240-2.070(4). The Commission should therefore dismiss the Complaint either before or after the evidentiary hearing.

The Complainants misunderstand the role of the Circuit Courts and the Commission, thinking that they both have authority over eminent domain cases. As the Company has previously explained, Chapter 523 RSMo. gives the statutory authority to the courts, not the Commission, to

resolve all factual and legal issues related to eminent domain issues. It also gives electric corporations the statutory authority to use the eminent domain process to secure easements necessary to serve the public use. See Section 523.010.

The Complainant Tim Allegri and many of his co-complainants are parties to the Lafayette County proceeding in Circuit Court and are currently availing themselves of the opportunity to raise any issues which they believe are pertinent to the proceeding, including any alleged “bad faith” negotiations, “arbitrary or unwarranted abuse of discretion” or other allegations that are pertinent to the eminent domain proceedings. Simply stated, the Commission is the wrong forum to raise issues related to eminent domain issues. Such issues are appropriate to be heard in the circuit court and appellate courts.

The Commission itself has already reviewed its authority over condemnation proceedings, finding: “Additionally, Chapter 523 empowers the circuit court, and not the Commission, with authority over condemnation proceedings.”<sup>1</sup>

### **RESPONSE TO STAFF RECOMMENDATION AND REPORT**

Evergy has already addressed Staff’s contentions in its Reply to Staff Recommendation filed on November 17, 2023. However, as already stated in that reply, Staff’s contentions should not be adopted by the Commission.

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

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<sup>1</sup> *Order Denying Staff’s Motion To Pursue An Injunction*, File No. EC-2024-0015 (issued August 31, 2023).

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.

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.

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 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. Staff has not alleged that the newer 2023 NESC which became effective on 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 was in effect at the time of the design and planning of the upgraded transmission line.

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]**.

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 Staff, Complainants or other landowners with the final design of the project.

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.

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).

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.”<sup>2</sup> 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. . .”<sup>3</sup>

**WHEREFORE**, the Company respectfully submits its Position Statement for consideration by the Commission.

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<sup>2</sup> *Order Denying Staff’s Motion To Pursue An Injunction*, p. File No. EC-2024-0015 (August 31, 2023).

<sup>3</sup> *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).

Respectfully submitted,

*/s/ Roger W. Steiner*

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**Attorney for Evergy Missouri West**

**CERTIFICATE OF SERVICE**

A copy of the foregoing has been served this 8<sup>th</sup> day of January 2024 upon counsel for all parties of record in this proceeding via electronic service or U.S. mail postage prepaid.

*/s/ Roger W. Steiner*

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Roger W. Steiner