

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

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

**REPLY TO RESPONDENT’S NOTICE TO COMMISSION and RESPONSE TO  
MOTION TO DISMISS DUE TO LACK OF CONTROVERSY and RESPONSE  
TO REQUEST FOR DISMISSAL OF CONSOLIDATED COMPLAINTS**

COME NOW Complainants Timothy P. and Denise W. Allegri, (“Complainants”), and in reply to Evergy Missouri West’s *Notice to Commission and Motion to Dismiss Due to Lack of Controversy* and *Notice and Request for Dismissal of Consolidated Complaints* dated April 10, 2024, state as follows:

1. Respondent erroneously asserts in its *Motion to Dismiss Due to Lack of Controversy* in **Background Item #8**, “The consolidated complaints involve **easements** that are *needed* to replace an old 69kV transmission line along Missouri Highway 13 in Lafayette and Johnson County, Missouri.” [emphasis added] The Commission’s CCN 9470 does **not** authorize the excessive land-taking Evergy is seeking, nor does the Missouri Department of Transportation (“MoDOT”) require Evergy to place any equipment outside of the MoDOT utility corridor / right-of-way along the entire 8.7 mile stretch of highway involved in Evergy’s project, *thus eliminating any need for easements and land-taking*.

To be clear, easements are *not needed* for Evergy’s highway project and the Commission has Exhibits and numerous evidentiary documents filed on EFIS referencing same.

2. Complainants’ January 5, 2024 *Motion to Reschedule Prehearing Conference and Evidentiary Hearing* was drafted in partnership with the Allegris and Evergy attorney, Mandi Hunter. The jointly-drafted *Motion* was submitted to EFIS after Evergy attorneys concurred, and

was submitted **only because** Evergy requested all complainants and civil court defendants attempt settlement of all circuit court cases and PSC complaints via independent mediation. Complainants/defendants agreed to participate, and an independent mediation was held February 15, 2024. Because more time was needed to settle the more complex issues, mediation was scheduled to reconvene on March 5, 2024 but **Evergy abandoned the mediation on March 4, 2024** via email, stating:

“Evergy is changing direction with this project due to budgetary constraints and will not be pursuing the rebuild of the line **except for in the area that is impacted by MoDOT’s work**. Once Evergy has gathered the necessary information **on the tracts that will be impacted**, it will reach out to those owners individually. In light of this information, there is no need to reconvene the mediation tomorrow.” (attached as **Exhibit A**)

Evergy’s email (**Exhibit A**) states its project is “changing direction” but does not state *what* is changing regarding its project. Evergy is clearly going ahead with at least *part* of the project **“in the area that is impacted by MoDOT’s work” and stated they will be “reach[ing] out to those owners individually.”** The email does not state which part of the “changed” project will be impacted by MoDOT, nor does it state which owners will be impacted, how the project is changed, or how it will differ from the current project.

3. In its *Notice and Request for Dismissal of Consolidated Complaints*, **Item #14** states, “Due to a change in the project, the Company has dismissed the Missouri circuit court condemnation cases in Lafayette [sic] and Johnson counties” with attached copies of the circuit court dismissals as Exhibits. It is important the Commission note that ***the three circuit court cases are currently ongoing***, despite the voluntary dismissals filed. (Lafayette County Case No. 23LF-CV00700, Lafayette County Case No. 23LF-00939, Johnson County Case No. 23JO-CC00142). There are currently motions before the court in both Lafayette and Johnson Counties as of this date that are all set to be heard.

4. Furthermore, the circuit court cases, as Evergy counsel Steiner and Fischer state in the October 30, 2023 *Reply to Co-Complainants’ Responses*, **“... Complainants’ Responses focus on issues that are before the circuit courts and should not be addressed by the Commission.”** The parties are all keenly aware that the circuit courts have a separate jurisdiction than the Commission in regard to the formal complaints, as well as there being *separate*

arguments and issues in addition to some of the *same* arguments and issues before the two courts. Therefore, by Evergy counsels' own admission, issues before the circuit courts should not affect the resolution of the Commission complaints.

5. Without the necessary information regarding Evergy's claim of a "change in project," the potential exists for Evergy doing the same thing again in its "changed" project, resulting in the same harm to impacted landowners. At this point, *it is not even clear who the impacted landowners are*, but regardless, Evergy should be held accountable for non-compliance with CCN orders and any violations the Commission determines in their orders regarding the complainants in *this* case. **Exhibit A** clearly indicates the rebuild of the line in this project is still ongoing, but with revisions being made.

6. There are several reasons this case should not be "dismissed" simply because Evergy claims "changing direction with their project," as outlined below:

- As noted above, the civil cases are still ongoing.
- There are pending motions before the Commission on the complaint cases.
- The facts about the complaint case and potential violations (as described in the Commission's *Staff Investigation, Report and Recommendation*) are still in need of attention from the Commission in order to avoid the same potential violations in the future.
- Evergy needs to commit that in this project or any future project they will stay within the MoDOT right-of-way as MoDOT and CCN 9470 allows. See MoDOT email referencing same, attached as **Exhibit B**.
- Evergy's email (**Exhibit A**) states its project is "changing direction" but does not state *what* is changing regarding its project. Evergy is clearly going ahead with at least *part* of the project (even if it refers to it as a 'new' project) **"in the area that is impacted by MoDOT's work" and stated they will be "reach[ing] out to those owners individually."** The email does not state which part of the "changed" project will be impacted by MoDOT, nor does it state which owners will be impacted, how the project is changed, or how it will differ from the current project.
- Until Evergy makes all of the "changed" information available to the Commission and complainants, it is unknown how its "change in direction" and "revisions"

impact this formal complaint case, *making it still a live controversy concerning the CCN at issue and there are other “unknowns” that may be a live controversy as well.*

- The Commission and complainants have been given no **evidence** of a “changed” project other than Evergy stating it so in its email (**Exhibit A**).
- Complainants need the assurance there will be a “checklist” of sorts for utilities authorized under Commission CCNs, showing a utility has met all of the criteria BEFORE eminent domain Petitions under Chapter 523 are filed so as not to create the harm as has been done to landowners in this complaint.
- As the Commissioners are aware, Evergy’s August 30, 2023 *Answer, Affirmative Defenses and Motion to Dismiss* states, “Several of the poles are leaning and constitute a potential safety hazard, and Evergy has determined that the line needs to be replaced. The new line will continue to be a 69kV transmission line following the upgrade of the transmission line facility.” Without knowing the project “changes,” complainants deserve to know: Will any part of the “change” in project involve upgrading the 69kV capacity? If the line was a “potential safety hazard” in August 2023, wouldn’t it still be a safety hazard in April 2024? Will the alleged budgetary constraints cited in **Exhibit A** limit Evergy’s ability to maintain this transmission line as required in CCN 9470?
- Without orders from the Commission regarding the pending motions before it, and the *Evidentiary Hearing* still scheduled for May 14-16, 2024, Complainants contend that proceeding with the evidentiary hearing is a fair and reasonable request.
- The Mo. Code Regs. tit. 20 § 4240-2.070(15)(G) states, “The regulatory law judge, **after affording the parties reasonable opportunity for discovery and a fair hearing** ... shall issue a recommended report and order ...” Without a fair hearing and resulting orders from the Commission on this case, complainants could be permanently harmed if violations are found and not corrected and in fact, **there are landowners impacted by Evergy’s project related to this case that have already lost their valuable land to an easement.** Therefore, complainants should be afforded a fair hearing in order for the Commission to make its determination(s).

7. Until it is established **by the Commission** whether or not a “live controversy” exists concerning the CCN or any facet of the formal complaints, and the circuit court cases are ongoing regardless of the dismissals filed, Evergy should not be allowed to deny complainants

the opportunity of a hearing and resulting orders of *all* outstanding motions before the Commission.

8. Complainants look forward to the May 14-16, 2024 evidentiary hearing and resulting Order(s) of the Commission regarding not only potential CCN violations and safety concerns but the manner in which Commission-issued certificates are utilized in relation to eminent domain and easement procurement. The obvious harm resulting from dismissal of our complaints is land-taking without authorization (of any Missouri landowner) and a utility's abuse of certificate orders and Missouri statute. Dismissal of the complaints would also harm landowners by lack of due process and a utility being non-compliant with CCN Orders and Missouri law, placing other Missourians at future risk.

**WHEREFORE**, Complainants respectfully ask the Commission to **deny** Evergy's *Motion to Dismiss Due to Lack of Controversy* and also **deny** its *Request for Dismissal of Consolidated Complaints*.

Respectfully submitted this 11<sup>th</sup> day of April 2024 to all parties via EFIS by:

*/s/ Timothy P. Allegri*  
TIMOTHY P. ALLEGRI

*/s/ Denise W. Allegri*  
DENISE W. ALLEGRI

RE: Status and Mediation participants March 5, 3PM

From: tdallegri@reagan.com

Sent: Fri, Mar 22, 2024 at 11:14 am

To: Mandi Hunter

Cc: Ronda Harness, Corie Black, bob@jaydaughertymediation.com, 'roger.steiner@evergy.com'

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Mandi

Since declaring Evergy's withdrawal from mediation on March 4, citing "Evergy is changing direction with this project due to budgetary constraints and will not be pursuing the rebuild of the line ...", many in the group of landowners are concerned and bewildered about Evergy's expressed financial condition and contradictions. For example; Evergy's costly ongoing court cases against them (landowners) and Evergy's implied inability to perform line/pole maintenance due to cited "budgetary constraints".

**Unfazed:** Regardless of the legal actions of Evergy seeking our land as an apparent corporate investment/protection not needed to deliver power, along with our collective natural disdain for the excessive needless methods used by Evergy, **as always, our support of the utility maintaining safe poles and lines** (within the MoDOT ROW as invited and allowed by MoDOT for the full project) **remains unfazed and not optional.**

That said; please assure Evergy that we (Denise and I, along with others) will work with them as needed to maintain its poles and lines within the MoDOT right-of-way. If Evergy has any interest in working out a *formal access allowance* with landowners through mediation, including the Public Service Commission's mediation process, we and some of them remain open to that and any other like option.

Thank you,

Tim and Denise Allegri

-----Original Message-----

From: "Mandi Hunter" <mrh@hunterlawgroup.com>

Sent: Monday, March 4, 2024 3:13pm

To: "tdallegri@reagan.com" <tdallegri@reagan.com>, "Ronda Harness" <ronda@jaydaughertymediation.com>, "Patty Tebbenkamp" <patty@jaydaughertymediation.com>

Cc: "Corie Black" <Corie@hunterlawgroup.com>, "bob@jaydaughertymediation.com" <bob@jaydaughertymediation.com>, "John Reddoch" <johnr@krsr.net>, "johns@jmdllaw.com" <johns@jmdllaw.com>

Subject: RE: Status and Mediation participants March 5, 3PM

All – Evergy is changing direction with this project due to budgetary constraints and **will not be pursuing the rebuild of the line except for in the area that is impacted by MoDot's work.** Once Evergy has gathered the necessary information on the tracts that will be impacted, it will reach out to those owners individually. In light of this information, there is no need to reconvene the mediation tomorrow.



Mandi R. Hunter  
Managing Partner

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Prairie Village, Kansas 66208

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From: tdallegri@reagan.com <tdallegri@reagan.com>

Sent: Monday, March 4, 2024 11:30 AM

**EXHIBIT B**

RE: Q re: MoDOT ROW, MO-13

From: Jodie Puhr <Jodie.Puhr@modot.mo.gov>

Sent: Tue, Feb 20, 2024 at 11:30 am

To: tdallegri@reagan.com

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 image001.png (1.9 MB)

Tim,

I'm not sure exactly which area you are referring to for the final 0.6 miles. I assume you mean for the Evergy project's southern section from CR 700 to north of Rte E.

To put this simply, MoDOT is not requiring Evergy to depart from our current or future ROW anywhere along our project limits. We have been working with Evergy in the past to put their equipment in places where it would not have to be relocated when our project was constructed.

MoDOT is providing a utility corridor in any location where we are acquiring new ROW for any utility, including Evergy.

Let me know if you have any other questions.

Thanks,  
Jodie

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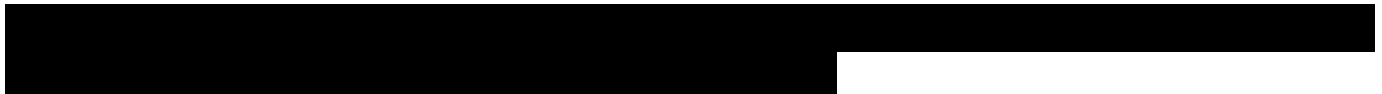
**From:** tdallegri@reagan.com <tdallegri@reagan.com>

**Sent:** Friday, February 16, 2024 10:12 AM

**To:** Jodie Puhr <Jodie.Puhr@modot.mo.gov>

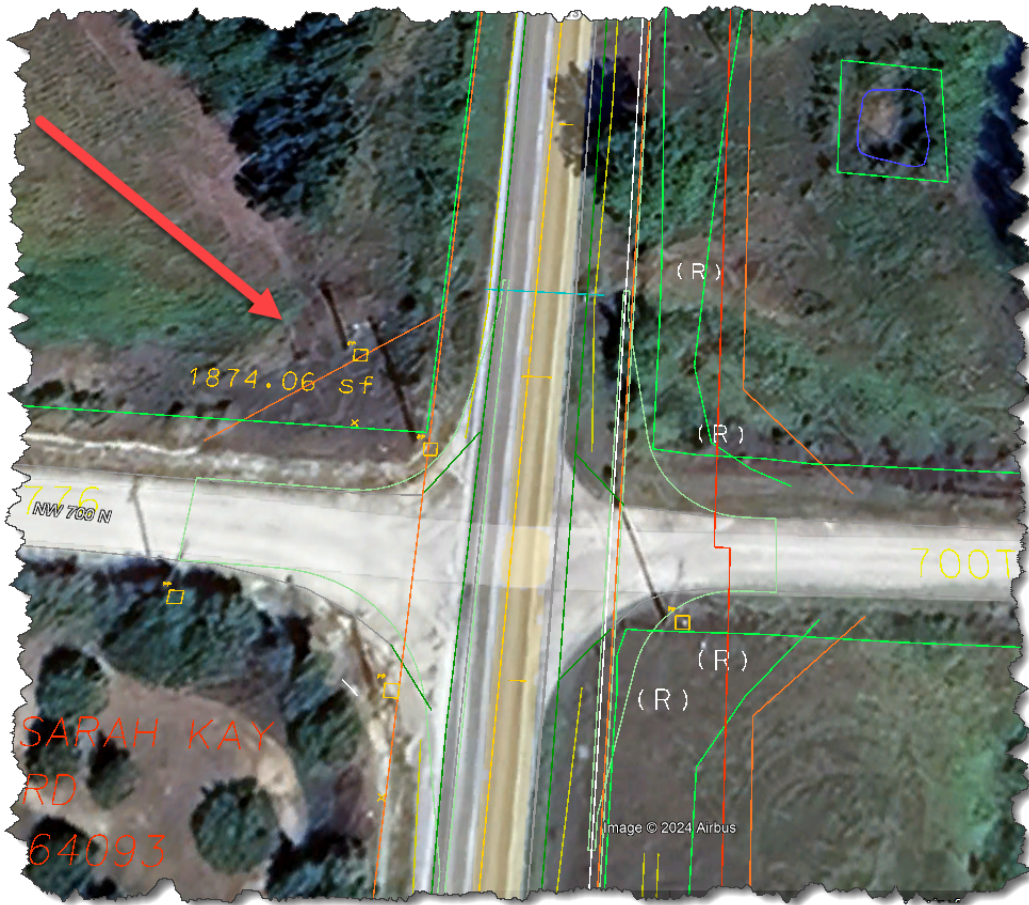
**Subject:** Q re: MoDOT ROW, MO-13

Good morning,



While we all know MoDOT is not forcing Evergy out of the MoDOT right-of-way for the MoDOT project on MO-13, we have a question.

- For the final .6 miles, at the southernmost section on the West side of MO-13, is MoDOT requiring Evergy to leave the MoDOT right-of-way as part of MoDOT's final project?
  - In other words, with/when the MoDOT work is completed, is MoDOT requiring Evergy to depart from what appears to be the generous utility corridor/ROW for that .6 mile section?
- Additionally, is MoDOT requiring Evergy to depart from the MoDOT ROW at the Northwest corner (Collett property, pictured below) of MO-13 and NW 700 Rd?



*Thank you,*

Tim Allegri