

**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.)	

REPLY TO DOCKET ITEM #107
EVERGY MISSOURI WEST’S REPLY TO COMPLAINANT ALLEGRI’S RESPONSE
TO MOTION TO DISMISS DUE TO LACK OF CONTROVERSY

COME NOW Complainants Timothy and Denise Allegri (“Complainants”), and in reply to *Evergy Missouri West’s (“Evergy”) Reply to Complainant Allegri’s Response to Motion to Dismiss Due to Lack of Controversy* dated April 23, 2024, state as follows:

1. Although Evergy has filed a *Notice of Voluntary Dismissal* in three of the circuit court cases involved in their project, the resolution of court cases is ongoing, with pending matters before the court. The cases involving easement rights still exist, whether or not Evergy is claiming to seek them. The court has not made any final orders.

2. Evergy has asserted all along that “the Commission should not insert itself into circuit court issues” and in its August 24, 2023 *Response* states:

“It is unnecessary and inappropriate for the Commission to insert itself into the legal issues that will be resolved by the Circuit Courts in Lafayette and Johnson Counties. In fact, the Commission has no statutory authority to attempt to usurp the statutory authority of these circuit courts under Chapter 523, RSMo.”

Complainants have not ever suggested or implied that legal issues concerning the circuit courts can or should be resolved by the Commission; rather, that some issues involve resolution by both entities separately, and complainants’ motions for injunction were filed for that specific purpose, which the Commission denied.

3. Evergy’s April 23, 2024 *Reply* now asserts that indeed, the circuit court cases are directly related to the Commission complaints, and that because Evergy filed a dismissal

(although the cases are actually ongoing), the Commission should dismiss the numerous complaints in this cause.

4. Complainants have asserted all along that indeed, the Commission and circuit courts are two separate entities with different Missouri statutory authority. Complainants *first* filed complaints with the Commission, and then Evergy followed with filing retaliatory circuit court cases, **all involving Evergy’s same Highway 13/Fayetteville project.**

5. An investigation was conducted by the Commission Staff which resulted in findings of violations made by Evergy of not only Commission CCN orders but also NESC compliance. **Not all violations found were related to easements** of which it now claims are not being sought. In fact, Commission Staff’s *Response* dated August 29, 2023 states, “Pursuant to 20 CSR 4240-2.080(14)(B) Staff states that the Complainant deserves full resolution of his proceeding in front of this Commission prior to a circuit court ruling ... the complaint raises concerns of prudence of Evergy’s actions ... which should be fully investigated and resolved ...”

6. The Office of Public Counsel’s *Reply* of August 30, 2023 states “irreversible damage” could occur to complainant and other parties” and also states:

“Evergy’s response 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.**” § 393.140(5) RSMo.” [emphasis added]

7. This Complaint is not only about unauthorized and excessive easements being sought, but the methods and practices used by Evergy in the transaction of their business. The Commission should have no desire to dismiss this complaint but to address each issue and correct any deficiencies to ensure future utility projects not only meet all criteria of CCN orders but to put in place guidelines and criteria for project applications to meet Commission standards **prior to** project inception, and **prior to** an eminent domain lawsuit being filed, particularly in pole placement projects.

8. The Commission’s *Staff Recommendation* dated November 6, 2023 cites evidence of additional concerns that still need to be addressed, as follows:

- Evergy has sought to relocate an electric line outside of the highway 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.

- Staff also argues that giving notice to the Commission of the project would have alleviated some concerns and at the least Evergy should have ensured that proper notice of the exact plans was provided to landowners given the ordered paragraphs in the order granting a CCN in Case No. 9470. By Evergy’s own admission, the plans are not expected to be completed until April 29, 2024.
- In a recent Report and Order from the Commission related to Case No. EA-2023-0017, regarding Grain Belt, the Commission pointed out that Grain Belt had “developed the Missouri Landowner Protocol as part of its approach to right-of-way acquisition for the transmission line project. The Landowner Protocol is a comprehensive policy of how Grain Belt interacts, communicates, and negotiates with affected landowners and includes: the establishment of a code of conduct, its approach to landowner and easement agreement negotiations, a compensation package, updating of land values with regional market studies, tracking of obligations to landowners, the availability of arbitration to landowners, the Missouri Agricultural Impact Mitigation Protocol, tracking of obligations to landowners, the availability of arbitration to landowners, and a decommissioning fund.”

While Staff acknowledges that the Commission does not have authority to order exactly such a policy or protocol as the Grain Belt protocol, Staff has asked for conditions to be ordered related to a CCN case. Staff would suggest that of its own volition, every Missouri regulated utility could benefit from a similar policy or other directives in the course of its dealings with Missouri landowners.

9. On February 15, 2024, Complainants all agreed to an independent mediation, and the day prior to reconvening, Evergy attorney Mandi Hunter sent an email stating, “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.” [emphasis added]

10. Evergy not only abandoned an independent mediation it requested, it states that the project “is changing direction” except for the area impacted by MoDOT. **Evergy has not dismissed their project, they are “revising” it** to include other areas and landowners which are **unknown at this time**, but may involve landowners in this complaint who have not yet been sued by Evergy. Furthermore, Evergy may or may not be seeking easements (although MoDOT states it is “providing a utility corridor in any location where” it is “acquiring new ROW for any utility” and CCN 9470 orders do not allow otherwise). Evergy’s changed project may or may not

involve land of some of the complainants in this complaint case. It is unknown at this time, possibly even to Evergy (since it still needs to gather “the necessary information on the tracts that *will be* impacted”). Given Evergy’s budgetary constraints, what are its plans and intentions regarding the easements they needlessly acquired? Does Evergy intend to offer buy-backs to restore easements needlessly acquired? With cited budgetary concerns, does Evergy plan to recover its financial loss of easements needlessly obtained? Evergy states in its April 23, 2024 Reply, Item #4:

“Due to the Company’s change of plan for the rebuild of the electric transmission line along Highway 13 in Johnson and Lafayette Counties, it will not be necessary for the Company to seek easements ...”

11. Pursuant to RSMo. 523.025, easements acquired via eminent domain by an electrical corporation which does not obtain the financial commitments necessary to construct a project for which the involuntary easement was obtained within seven years of the date, the corporation shall return possession of the easement to the title holder within sixty days. In the event of such return, no reimbursement of any payment made by the corporation to the title holder shall be due.

Complainants have not seen evidence of financial commitments for this project nor has Evergy presented any project plan for evidence of its claims. Now faced with cited budgetary concerns and rate increase requests, what is Evergy’s plan for restoring the financial output of needless easements they have acquired through this project? What options will Evergy provide Missouri landowners to have their property rights fully restored?

12. Evergy argues that “the Commission does not issue advisory opinions” and “there is no controversy for the Commission concerning the CCN to adjudge.” *Without knowing its change in plans, the argument is moot.* There is no evidence proving whether or not its revised plan will involve controversy for the Commission to adjudge.

13. The Commission’s *Staff Recommendation* dated November 6, 2023 states, “Staff’s investigation has revealed quite a bit of contradictory and confusing data, which would hopefully be straightened out at a hearing.” It further states, “The Courts have also stated that they are bound by the findings of the Commission if substantial evidence supports either of two conflicting factual conclusions. *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n*, 120 S.W.3d 732,734 (Mo.banc 2003). **A Commission order for a CCN, therefore, carries a presumption of lawfulness by its mere issuance pursuant to the Commission’s statutory**

authority” as well as, ... Staff “does counter Evergy’s assertion that the Commission has no jurisdiction in regards to this overall matter.”

14. In ordered paragraph two of CCN 9470, the Commission states that “the Commission shall retain jurisdiction of the parties and the subject matter of that proceeding on the evidence now before the Commission, for the purpose of making such further order or orders as may be necessary.” **This statement is made in regards to ensuring safe and adequate service and that all construction is consistent with the National Electrical Safety Code (NESC).** This evidence can also be discussed Commission hearings scheduled for May 14-16, 2024.

15. Evergy’s August 30, 2023 *Answer* states in **Introduction Item #1**, “several of the poles are leaning and constitute a potential safety hazard, and Evergy has determined that the line needs to be replaced.” Though requested several times by complainants, Evergy never provided complainants complete detailed information as to replacement pole size; it has only stated it would be replacing wooden poles with steel structures. Are the steel structures 4 feet in diameter? Would they require a concrete footing? Will they be placed in the exact location of the wooden poles? Will there be more poles than there are currently? In the interest of safety, those questions still need to be addressed, even if the poles remain in the MoDOT right-of-way, as it impacts landowners. Further, **dismissing lawsuits or this complaint will not remedy the potential safety hazard Evergy cites**, and considering there are now “budgetary constraints” with the project, this safety issue must be addressed by the Commission.

16. The “budgetary constraints” Evergy cites for changing its project plan and abandoning mediation come just after Evergy Missouri West was awarded by Commissioners “an electric rate increase of approximately \$30 million” with the “effective date of January 9, 2023” according to news sources. Also, in February 2024, Evergy applied for a base rate increase of an additional 13.42% (approximately \$104 million) for the Evergy “Missouri West” area alone (which involves the subject project area) and if approved by the Commissioners, this base rate increase would become effective January 2025.

17. The Commission is reminded that this project involves not only easements sought by complainants, but also easements *already* obtained from landowners impacted by Evergy’s project (easements without CCN authority), whether or not it is continuing with the original plan – said completed plan has **never** been presented to landowners. In fact, **months ago** when Commission Staff requested a copy of the final plans for the Fayetteville Transmission Project in

its *Data Request #14*, Evergy responded that **the final plan was not complete, and it may not be final before April 2024. Now that the plan is changing, when can the Commission and impacted landowners expect to receive a copy? Who are the impacted landowners?**

18. Evergy’s assertion of “lack of controversy” is not valid as it provides no evidence proving whether or not its revised plan will involve controversy for the Commission to adjudge. Complainants have been forced to endure more than a year’s worth of defending our land in circuit courts and through the Commission. It has been a long, expensive and emotional ride. We deserve our “day in court” at the evidentiary hearings to ensure that *all* issues are addressed to avoid this travesty happening to other innocent Missouri landowners.

19. Continuing with the evidentiary hearings will allow complainants the right to have their complaints involving multiple issues addressed by the Commission, noting that Evergy itself states that areas impacted by MoDOT’s work *will impact tracts*, (although it states that at this time **it is unknown which tracts and which landowners will be involved**), and no evidence has been presented in a revised project plan to support its claim of no easements being pursued.

WHEREFORE, Complainants request the Commission to issue an *Order* denying Evergy’s April 10, 2024 *Motion to Dismiss Due to Lack of Controversy* and continue with the May 14-16, 2024 evidentiary hearings.

Respectfully submitted this 24th day of April, 2024 to all parties via EFIS by:

/s/ Timothy P. Allegri
Timothy P. Allegri

/s/ Denise W. Allegri
Denise W. Allegri