

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

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

File No. EC-2024-0015

**STAFF’S RESPONSE TO MOTION FOR CASE REVIEW AND IN SUPPORT OF
COMPANY’S MOTION TO DISMISS**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its response and in support of dismissal, states as follows:

1. Timothy Allegri filed his original Complaint against Evergy Missouri West and Evergy Missouri Metro (Evergy or Company), and his request to add an additional twenty-six (26) complainants, on July 25, 2023. The Commission ruled that complaint deficient because a pro se complainant is not authorized to represent other pro se complainants. On September 11th, 12th, 18th and 28th an additional thirty-seven (37) complainants filed individual complaints against Evergy with substantially similar fact patterns to this matter. The Commission issued an order consolidating these complaints and directed Staff to file its Recommendation for these complaints no later than November 6, 2023.

2. On December 21, 2023, the Commission issued an order establishing a procedural schedule. On January 5, 2024, Mr. Allegri filed a motion to reschedule so the

parties could discuss settlement and the Commission granted the motion. The Commission issued an order resetting the evidentiary hearings for May 14-16, 2024.

3. On April 10, 2024, Evergy requested the Commission dismiss the consolidated complaints as the Company's plans for the rebuild of the electric transmission line along Highway 13 in Johnson and Lafayette Counties have changed and the Company no longer seeks additional easement rights from the Complainants. Mr. Allegri responded to the Company's Motion to Dismiss on April 11, 2024, and Evergy replied to said response on April 23, 2024. Mr. Allegri responded once again on April 25, 2024.

4. Mr. Allegri filed a motion for case review and expedited treatment on May 2, 2024, stating in part:

"Because this Complaint is not only about unauthorized and excessive easements being sought and violations made of CCN orders, but also the methods and practices used by Evergy in the transaction of their business, each issue raised in the complaint(s) must be addressed and deficiencies corrected."

5. The Commission followed on May 3, 2024, with their *Order Directing Responses to Motion and Shortening Time for Responses*. The order states that Staff shall file a response no later than May 7, 2024. This filing serves as Staff's ordered response.

6. The Commission is authorized to hear and determine complaints by §§ 386.390, RSMo., *et seq.* The burden of proof is upon the complainant, ***State ex rel. GS Technologies Operating Co. v. Public Service Commission***, 116 S.W.3d 680, 693 (Mo. App., W.D. 2003) (*quoting Margulis v. Union Elec. Co.*, 30 Mo.P.S.C. (N.S.) 517, 523 (1991)). ***AG Processing, Inc. v. KCP&L Greater Missouri Operations Co.***,

385 S.W.3d 511, Mo. App., W.D. 2012), and technical rules of evidence and procedural formalities do not apply. Section 386.410, RSMo. Such a proceeding is a contested case, § 536.010(4), RSMo., and the procedures enumerated at §§ 536.063, RSMo., *et seq.*, therefore apply. Where the procedures set out in Chapter 386, RSMo., differ from those in Chapter 536, RSMo., the former control. “To the extent that there are matters not addressed by the PSC statutes and the administrative rules adopted by the PSC pursuant to section 386.410, [Chapter 536, RSMo.] ‘operates to fill gaps not addressed within the PSC statutes.’” ***State ex rel. Praxair, Inc. v. PSC***, 344 S.W.3d 178, 184 (Mo. banc 2011). The Commission has promulgated a rule setting out procedures for formal complaints, 20 CSR 4240-2.070.

7. In a formal complaint proceeding, such as this one, the complainant files a complaint with the Commission in which he or she must specify the relief requested and enumerate the facts purportedly supporting that remedy. Section 536.063.1, RSMo. [“Any writing filed whereby affirmative relief is sought shall state what relief is sought or proposed and the reason for granting it[.]”]

8. The factual allegations of an administrative complaint are generally to be judged against the standard of notice pleading rather than the stricter standard of fact pleading. ***Sorbello v. City of Maplewood***, 610 S.W.2d 375, 376 (Mo. App., E.D. 1980); ***Schrewe v. Sanders***, 498 S.W.2d 775, 777 (Mo. 1973); *and see* ***Giessow v. Litz***, 558 S.W.2d 742, 749 (Mo. App.1977). The Missouri Supreme Court has stated that a complaint under the Public Service Commission Law is not to be tested by the technical rules of pleading; if it fairly presents for determination some matter which falls within the jurisdiction of the Commission, it is sufficient. ***St. ex rel. Kansas City Terminal Railway***

Co. v. Public Service Commission, 308 Mo. 359, 372, 272 S.W. 957, 960 (banc 1925).

9. Mr. Allegri's complaint presents some general matters which may fall within the jurisdiction of the Commission; however, as stated in Evergy's *Motion to Dismiss Due to Lack of Controversy*:

"Due to a change in the project, the Company has dismissed the Missouri circuit court condemnation cases in Lafayette and Johnson counties... There is no live controversy concerning the CCN at issue in the consolidated complaints."

10. Since Evergy is no longer seeking easements from the Complainants, all that purportedly remains for hearing is "the methods and practices used by Evergy in the transaction of their business." Mr. Allegri has not specified any remedy in respect to this matter and it is difficult to imagine what such a remedy might be. With no live controversy, Staff's position previously issued, that Evergy exceeded the authority of its CCN issued in Case No. 9470, no longer applies. Mr. Allegri may not agree, but the point is immaterial since he is seeking no relief. In its own *Order Denying Complainant's Motion to Pursue an Injunction* in this case dated December 21, 2023, the Commission states that they have "not yet determined if Evergy Missouri West's plans violate the authority granted it in its CCN." This determination cannot be made at this point because Evergy has not provided specific plans.

11. During initial discovery in ER-2024-0189, the current Evergy Missouri West rate case, Staff has requested information and intends to explore the possibility of conducting an investigation and review of "the methods and practices used by Evergy in the transaction of their business" as related to transmission line rights-of-way. This investigation may include making recommendations on such in the current rate case.

12. Given all the above, a hearing on the general issue of “the methods and practices used by Evergy in the transaction of their business” would serve no practical purpose. Like other administrative agencies, the Commission is not authorized to issue advisory opinions. ***State ex rel. Laclede Gas Co. v. Pub. Serv. Comm’n of State***, 392 S.W.3d 24, 38 (Mo. App., W.D. 2012). “The function of [the Commission] is to resolve disputes properly presented by real parties in interest with existing adversary positions.” ***Wasinger v. Labor & Indus. Relations Comm’n***, 701 S.W.2d 793, 794 (Mo. App. 1985). The Commission was restricted to determining the complaint before it, and it should not be issuing decisions with “no practical effect and that are only advisory as to future, hypothetical situations.” ***State ex rel. Mo. Parks Assoc. v. Mo. Dept. of Natural Res.***, 316 S.W.3d 375, 384 (Mo. App. 2010). “The petition must present a ‘real, substantial, presently existing controversy **admitting of specific relief** as distinguished from an advisory or hypothetical situation.” ***Akin v. Dir. of Revenue***, 934 S.W.2d 295, 298 (Mo. banc 1996) (citation omitted; emphasis added).

13. In addition to the Commission not being authorized to issue advisory opinions, the Commission also may not manage a public utility. “It must never be forgotten that, while the state may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership.” ***State of Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm’n of Missouri***, 262 U.S. 276, 289. A hearing in which the Commission would be reviewing “the methods and practices used by Evergy in the transaction of their business” is clearly an invitation to clothe the

Commission with the general power of management incident to ownership; the Commission should decline such an invitation.

14. Because there is no remedy available for Mr. Allegri, Staff supports Evergy's Motion to Dismiss this case. In the alternative, Staff requests the Commission indefinitely suspend the procedural schedule in this matter until it is clarified whether any existing plans of Evergy concern the complainants associated with this Complaint. At this time, however, Evergy asserts they have no such plans.

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will grant Evergy's *Motion to Dismiss* this case. In the event the case is not dismissed, Staff prays the Commission indefinitely suspend the procedural schedule in this matter until it is clarified whether any existing plans of Evergy concern the complainants associated with this Complaint; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully Submitted,

/s/ Tracy D. Johnson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 7th day of May 7th, 2024, to all counsel of record.

/s/ Tracy D. Johnson