

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

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

**REPLY TO ORDER DISMISSING COMPLAINTS and  
APPLICATION FOR REHEARING**

COME NOW Complainants Timothy P. and Denise W. Allegri (“Complainants”), and in response to the Missouri Public Service Commission’s (“Commission”) *Order Dismissing Complaints* (“Order”) ([Docket Item No. 139](#)) dated December 19, 2024, file this *Reply* and *Application for Rehearing*, and provide the following overview along with questions for Commission response.

1. The Commission *Order* refers to this complaint case being “affected by [Respondent’s] project plans to obtain easements to replace and relocate a 69 kV electric line in coordination with a widening of the highway by the Missouri Department of Transportation (MoDOT).” From the beginning, confusion ensued as to MoDOT’s involvement with Evergy’s “Fayetteville” project in circuit court, which resulted in Evergy eventually stating that it was merely updating, rebuilding and relocating an old transmission line. Landowners along Highway 13 in two counties were involved in eminent domain proceedings in circuit courts (all of which have been dismissed), but an evidentiary hearing with the Missouri Public Service Commission has never been held regarding this formal complaint.

2. Complainants have acknowledged in pleadings several times that Missouri circuit court systems and the Commission are two separate entities. However, both entities are and have been involved in Evergy’s “Fayetteville” project from the beginning; and as a result, the two

issues are intertwined and must be addressed in these formal complaints. Eminent domain and seeking private property for public use is a very serious matter. By law, condemnation is only allowed if and when proof of necessity and adherence to Missouri statutory eminent domain law has been satisfied. With utilities, it all begins with a completed and approved project plan, and being in compliance with Commission-issued CCNs and *Orders*. RSMo. 386.530 grants the Commission priority over other civil cases in court actions.

3. The Commission's *Order* states, "The complaints in this matter stem from Evergy's efforts to secure easements" and "With the project on hold and Evergy no longer pursuing easements, The Commission agrees with Evergy's position that a controversy no longer exists" as to whether it should "render a decision" but instead would in essence be issuing "an advisory opinion, for which the Commission has no authority." Without an evidentiary hearing to formally determine whether or not any violations to Commission *Orders* have occurred **or are about to occur** (See RSMo. 386.360.1) this complaint cannot be satisfied and should not be dismissed. In addition, without a complete project plan submitted by Evergy, it is impossible to prove a need for land-taking.

A controversy *does* exist, as Evergy's "changed" project plan will involve "areas impacted by MoDOT" and implies in **Exhibit A** that it intends to depart from the MoDOT right-of-way, a violation of Commission *Orders*. Further controversy exists with violation of CCN #9470 *Orders* by virtue of Evergy having needlessly obtained approximately 14 easements from landowners, all based upon false claims cited by Evergy and its land agents, said easements being situate on the *west* side of Highway 13.

- Does the Commission agree or disagree that RSMo. 386.360.1 applies to this case? Please explain.
- Do the Commissioners understand that a controversy does indeed still exist? Yes or No, please explain.
- Does an investigation, report and/or Commission CCN *Order* citing or identifying alleged violations **require** an evidentiary hearing *prior to* taking action with regard to RSMo. 386.360.1? Please explain.

4. In its *Answer* dated August 2023 (Docket Item #17), Evergy cites "several of the poles are leaning and constitute a potential safety hazard" (referring to the subject transmission line) which, along with other safety concerns and questions, must still be addressed (in addition to

those in this *Reply*, the *formal complaints*, [Staff Report-Pages 10-11](#) and other docket items). Evergy also states, “The new line will continue to be a 69kV transmission line following the upgrade of the transmission line facility.” An evidentiary hearing held by the Commission (once a completed project plan has been submitted by Evergy, and prior to any work beginning on its project) would address and determine answers to these questions and outline the appropriate steps to be taken. Pursuant to RSMo. 386.360.1, it is indeed the Commission’s duty to determine whether or not a utility is **about to** fail, omit to do anything required by law or Commission Order, or is doing or **about to** do anything contrary to or in violation of law or Commission orders. Yet the Commission, even after its own investigation, still wrongly maintains in its *Order*, “Evergy hasn’t done anything yet so our hands are tied” position.

- Is the Commission, by filing its *Order Dismissing Complaints*, satisfied that this Complaint and all of the findings in its *Staff Investigation*, *Staff Recommendation* and *Staff Report* have been addressed and Evergy’s project, in its original form and soon-to-be-revised form, are in compliance with Commission CCN Orders? Please explain.
- Does the Commission possess a copy of Evergy’s original project plan, and does it plan to *Order* Evergy to submit a copy of its revised plan prior to beginning work on its project? Or if work has already begun, does the Commission plan to *Order* work to halt until a complete plan is submitted? Please explain.
- Now that Evergy is “changing direction” with its project, does the Commission intend to investigate if the line will remain 69kV? Please explain.
- Does the Commission find it acceptable and understand its role in this complaint case and how its refusal to intervene on behalf of Complainants by filing a *Motion for Injunction* with the circuit courts (as suggested by its own Staff attorney in Docket Item #39 stating “possible irreversible damage to the Complainants” as well as being requested numerous times by Complainants in Docket Items #21, 67-79, 84). Such refusal adversely impacted the ability of landowners to protect their property from being taken by a utility which never presented a project plan or proof of necessity for the amount of land it was seeking. Had the Commission intervened in a timely manner, it is quite possible the approximately 14 Missouri landowners might never have felt pressured or been asked to provide an easement on their land for a project that is still “on hold” and can remain in the MoDOT right-of-way, eliminating any need for easements. (See attached **Exhibit B**)
- Page 6 of the Order states the Commission “must refrain from managing any public utility” and is dismissing all complaints “contained within this consolidated case.” Addressing potential violations of law is quite different from “managing” a public utility. Inaction effectively enables a utility under the regulation of the Commission to violate the law and PSC Orders. Given the statutory authority in RSMo. Sections

386.360.1, 393.140, 393.170, 386.530 and authority provided in Commission Rule 20 CSR 4240-20.045(2)(A)2, does the Commission maintain that further inaction and essentially treating these statutory laws and Commission laws and rules as optional is appropriate? Please provide detailed explanation.

- If it is determined that CCN *Orders* have been violated by Evergy, does the Commission intend to *Order* Evergy to withdraw the easements it has obtained with regard to this project? Please explain why or why not.
- Why did the Commission not *reschedule* and hold an **internal** evidentiary hearing on the findings of its own *Investigation*? Is it a Complainant's duty to request such an **internal** action? Does such an *internal* investigation-findings policy exist? It is Complainants' understanding that the Commission has the responsibility to govern a utility with respect to Commission *Orders*, including follow-up of its own investigative findings, especially **prior to** any cases or complaints involving Missouri landowners potentially losing land to an easement obtained without compliance to Commission or CCN *Orders*.

5. RSMo. Section 393.140 grants the Commission 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 ...” confirming that *the Commission does possess the authority to investigate the allegations and then act.*

6. Complainant Allegri requested a *Mediator* through EFIS early in the case (August 15, 2023) in an attempt to resolve the issues. Evergy denied this opportunity for resolution in its *Response* dated August 24, 2023. 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 all PSC complaints via **independent** mediation. Complainants/defendants agreed to participate in hopes of a resolution, 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.”

Evergy’s email (see **Exhibit A**) states its project is “changing direction” but does not state *what* is changing. Evergy is clearly going ahead with at least *part* of the project “**in the area that is impacted by MoDOT’s work**” and stated it will be “**reaching out to those owners individually.**” In this statement of withdrawal, Evergy expresses the intent (which is ongoing) to violate CCN #9470 Orders by placing poles outside of the MoDOT right-of-way to meet the terms of its self-imposed guideline. The email does not state which part of the “changed” project will be impacted by MoDOT, nor does it state which landowners will be impacted, the details of the changes, or how it will differ from the initial project.

- It has now been over ten months since this email was sent. What follow-up to the project “changes” has the Commission made or plan to make? Please explain.
- Does the Commission intend to address the expressed intent of Evergy to violate CCN #9470 Orders with regard to placing poles outside of the MoDOT right-of-way “in the area that is impacted by MoDOT’s work”?

7. The Commission’s *Order Dismissing Complaints* acknowledges in **Background**, Paragraph 1, that Evergy’s project is indeed in coordination with MoDOT’s widening of the highway. In response to Staff’s **DR 9.1**, Evergy states “the Company has instituted a new policy of constructing lines outside of highway right of ways” which is a clear violation of CCN 9470. Additionally, Evergy states in [Data Request 0003.1](#) it “does not have a documented set of guidelines concerning electric transmission line rebuilds.”

- If Evergy doesn’t have a set of guidelines, does it follow Commission guidelines? Do Commission “guidelines” or CCN *Orders* exist regarding electric transmission line rebuilds? Please explain the guidelines a Missouri utility follows regarding electric transmission line rebuilds and the follow-up documentation the utility provides or the Commission gathers evidencing compliance.
- Does the Commission agree with Evergy’s (or any utility’s) institution of *any* new policy without first obtaining approval from the Commission?

- What action does the Commission take when a violation of CCN *Orders* has been made? Please explain in detail.
- As stated by MoDOT in **Exhibit B**, easements outside of the MoDOT right-of-way are not required. The question remains, why was Evergy *initially* seeking a large, permanent easement as opposed to a partial, permanent easement / temporary construction easement, as in past projects? More importantly, why was it seeking easements in this project outside of the MoDOT right-of-way without authority and need? These are questions the Commissioners should seek answers to from Evergy; Have these questions been asked of Evergy? Please explain.
- Per the Staff investigation and resulting [Recommendation](#), Evergy failed to obtain Commission approval prior to seeking larger-than-necessary easements. Does the Commission hold a utility accountable if it seeks to obtain (or does obtain), via eminent domain, and without CCN compliance, a larger land acquisition/easement than can be proven necessary? Please explain.
- Does the Commission hold a utility accountable if it is found to have ***sold*** an easement related to a Commission-approved project, obtained via eminent domain to MoDOT or any other entity? Why or why not? Would approval of a project plan, along with follow-up to each project, answer and potentially avoid this prohibited activity? Please explain.
- Does the Commission or would the Commission approve of a utility **selling** an easement related to a Commission-approved project that condemned **more land than was needed via eminent domain which was subsequently sold for financial gain?** Yes or No, please explain.

8. In Response to a *Data Request* by the Commission, Evergy stated that its plan was “not expected to be complete until April, 2024.” However, the [original Commission Complaint](#) (Allegri and Green) was filed on July 25, **2023** and first condemnation filing was July 27, **2023**, approximately 9 months prior to possessing a complete project plan (said plan still incomplete to our knowledge as of January 2025).

- Without a project plan, how is it possible for the Commissioners to approve a project and authorize use of a specifically assigned CCN? Please explain.
- If a utility is found to be operating outside the parameters of its Commission-assigned CCN, how and by what means does the Commission hold the utility accountable? Does the Commission understand the necessity of its role in ensuring a utility is in compliance with CCN Orders **prior to** beginning a project, especially those involving eminent domain? Please explain.
- If a utility is seeking or has been found to have obtained excess land for an easement outside of CCN parameters, what does the Commission do or what would the

Commission do to hold the utility accountable for non-compliance of *Orders*? Would the Commission intervene in circuit court, if applicable? Please explain.

- If easements involving eminent domain are being sought by a utility and a “*Verified*” *Petition* has been filed in circuit court containing information which is found to be untrue, the *Verification* is then considered perjurious and punishable by law. Has the Commission attempted to verify any of the violations or potential violations contained in the Commission *Complaint*, [Staff Report](#), *Staff Recommendation*, *Data Requests* or any related documents in this case? If not, why not--please explain.

9. The Commission’s *Order*, Page 4, Paragraph 2, acknowledges Evergy’s project as being currently “on hold.” Regardless, the concerns of this complaint still need to be addressed.

- Does the Commission plan to *Order* Evergy to submit a proposed project plan for Commission approval prior to any work *resuming* on the project? Please explain.
- Will all original Complainants be presented with a *proposed project plan* and/or Commission-approved project plan, whether or not the Commission dismisses the complaints? Yes or no, please explain.

10. The *Order*, Page 5, states, “the Commission agrees with Evergy’s position that a controversy no longer exists for which the Commission should receive evidence and render a decision on whether Evergy has violated a statute, tariff, or Commission rule, decision, or order.”

- It is Complainants’ position that 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 complaint case, making it still a live controversy concerning the CCN at issue and other possible “unknowns” that may be a live controversy as well.
- After studying this *Reply* and considering the statutory authority and rules the Commission possesses to determine if a violation has been made or is about to be made, does the Commission still “agree with Evergy’s position” and maintain that “a controversy no longer exists?” Please explain in detail.

11. It is now well documented that Evergy only has authority to work within the MoDOT right-of-way for this project. Given the mess and mistrust with Evergy personnel and the resulting legal battles and Commission complaints, we request that all Complainants and involved landowners be notified by the Commission or Evergy that Evergy does **not** plan to work outside of the MoDOT right-of-way or in any way exceed the bounds of Commission *Orders* in its “changed/revised” project.

12. RSMo. Section 393.170 instills the Commission with authority to grant a certificate of convenience and necessity to an electric utility for construction of utility plant and generation. Commission Rule 20 CSR 4240-20.045 (2)(A)2 **requires** an electric utility to get a CCN for construction of an asset pursuant to 393.170.1,5 where construction is defined as a new asset or **an improvement, retrofit, or rebuild** of an asset that will result in a ten percent increase in rate base as established in the electric utility's most recent rate case. Commission orders have been found to carry weight by their mere issuance, including a presumption that an order is lawful if it is issued under statutory authority. *State el rel. Assoc. Nat. Gas Co. v. Pub. Serv. Comm'n*, 706 S.W.2d 870,874 (Mo. App. W.D. 1985). 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). Understand that pursuant to the Commission's statutory authority, a Commission order for a CCN, therefore, carries a presumption of lawfulness by its mere issuance.

- After searching EFIS, Complainants could not find an application by Evergy to rebuild its "Fayetteville" transmission line. Did Evergy apply for a CCN for the rebuild of its "Fayetteville" transmission line, with reference to RSMo. 393.170 and Rule 20 CSR 4240-20.045? Yes or No.

13. The Commission's [Staff Recommendation](#) cites a recent 2021 decision by the Court of Appeals for the Western District, which states:

"The basic statutory structure for CCNs has existed without significant change for more than 100 years. The electricity industry, on the other hand, has undergone revolutionary changes and has dramatically expanded in scope and operation since the PSC's inception. Without significant changes in its enabling statutes, the PSC, nonetheless, has maintained its regulatory authority over the industry. The reason for this expansion of authority is the PSC's singular, continual mission to regulate the natural monopoly of a public utility." Matter of Amend. of Commission's Rule Regarding Applications for Certificates of Convenience & Necessity, 618 S.W.3d 520, 525 (Mo. 2021), reh'g denied (Apr. 6, 2021) *citing* State on inf. Barker ex rel. Kansas City v. Kansas City Gas Co., 254 Mo. 515, 163 S.W. 854 (1913).

Because of the disconnect between the Commission's CCN orders and a utility's filing of an eminent domain lawsuit in circuit court without a project plan being first approved by the Commission, several landowners have lost their valuable land through easements which were obtained nefariously *and without legal proof of necessity*. The Court of Appeals for the Western



District acknowledges that significant changes in the Commission’s enabling statutes are likely necessary, even though the Commission has retained its regulatory authority despite undergoing revolutionary changes over the last 100 years. A result of not having these updated, enabling statutes has resulted in Missouri land being wrongfully lost to a utility. Per court records, several landowners/defendants sued by Evergy have not been restored financially, to date.

- How will the Commission hold the utility it governs accountable for obtaining easements it did not need, or suing and subsequently dismissing the case, harming Missouri landowners financially and otherwise, for having to defend their land?
- Will the Commission *Order* the easement land be returned to landowners if it finds the land to be in excess of CCN parameters or *Orders*? (This may involve the circuit courts and coordinating with the Office of Public Counsel for assistance.)

14. Due to the numerous discrepancies that have occurred and most likely will occur in the future unless changes are made, the issuance of **”blanket”** CCNs for utility projects involving easement acquisition, *at the very least those involving eminent domain*, should be **discontinued**. The Commission, the Office of Public Counsel and Missouri legislators should work together to seek new statutory, regulatory and Commission laws to reflect additional protections for Missouri landowners involving eminent domain rights such as those discussed herein. Most importantly, the use of “Verified” Petitions should be *denied*, as well as extending the timeframe for defendants to file an *Answer*. Unless and until a verification of the contents of a *Verified Petition* by the Commission or the circuit courts occurs *prior to* a condemnation, it is simply unconscionable to allow Missourians’ land to be taken in the current timeframe allowed by law—as little as 10 days! Ten days isn’t enough time to find a competent eminent domain attorney and schedule an appointment, **much less prepare and file an *Answer***. The laws currently favor the condemnor over the condemnee in this regard and needs to be addressed.

Again, **it starts with the Commission holding a utility accountable from the start.**

- What changes has the Commission made, or will make, in its CCN issuance process to ensure that Missouri landowners are not harmed by a utility’s excessive easement acquisition in the future? Please explain in detail.
- Will the Commission provide Missourians the assurance there will be a “checklist” or “Landowner Protocol” for utilities authorized under Commission CCNs, evidencing the utility has met all of the criteria BEFORE eminent domain *Petitions* under Chapter 523 are filed to avoid harm like landowners in this “Fayetteville” project have experienced? Please explain.
- A “Landowner Protocol” would put in place a process wherein policy directives for completed project plans are made, approved and monitored throughout each phase of

- the project; said directives being made via CCN orders. Will projects involving eminent domain be pre-approved by the Commission (with the assistance of the Office of Public Counsel), ensuring all criteria of eminent domain law has been met prior to the utility filing eminent domain proceedings in circuit court? Please explain in detail the Commission's current policy directive process and follow-up procedures, and if one does not exist, does the Commission now plan to put one in place?
- Are the current Commissioners willing to work alongside legislators and the Office of Public Counsel to address and assist with writing necessary legislation and Commission rules regarding condemnation/eminent domain cases such as this to secure protections such as are outlined in this *Reply*? Yes or No; please explain.

15. Staff's **Data Request 9.1** inquired of Evergy what type of notice was provided to the complainants regarding condemnation. Part of Evergy's response was that it provided conversations between itself and Mr. Allegri, including a letter from Evergy referencing that "we must obtain land" related to the movement of the line but then calls the transaction an "easement". This confusing notice alone is justification for an evidentiary hearing in which these questions could be answered more succinctly.

16. The Commission's investigation and resulting [Staff Recommendation](#) dated November 6, 2023 concluded that "*Staff's investigation has revealed quite a bit of contradictory and confusing data, which would hopefully be straightened out at a hearing.*"

- With the December 19, 2024 *Order Dismissing Complaints*, what does the Commission intend to do, or what has the Commission already done about each of the findings in its *Staff Recommendation and Report*?
- Does the Commission, after considering this *Reply*, wish to reconsider and hold an evidentiary hearing based on the unresolved facts of the Complaints and its own investigation and other findings or allegations?

17. The Commission's *Order* states that it "takes up Evergy's *Motion to Dismiss* filed on April 10," yet seemingly ignores Complainants pleas for intervention. (Please read [Docket Item #106-- Reply to Motion to Dismiss](#) filed April 11.) Numerous *Motions for Injunction* were made by Complainants, requesting the Commission to seek time to resolve issues with its CCN *Orders* related to Evergy's project, **all of which it denied**. The Commission having *Ordered* its Staff to file a *Motion for Injunction* would have given all parties time to look at the Complaints more in-depth and potentially resolve many of the Complainants' issues with both the Commission and circuit courts. Timing was essential with court rulings that could have resulted in more loss of land obtained

illegally by a utility. However, the Commissioners were unwilling to pause and examine even the results of its own investigative findings.

- While Complainants recognize the support and hard work of Commission Staff in seeking answers to this Complaint, Complainants would like to see the Commissioners be held more accountable by law, and willing to intervene for Missourians who are facing eminent domain land-taking. (In our case, the utility never presented a complete project plan and therefore never given approval by the Commission for its project plan, which was not in compliance with Commission CCN *Orders*.) Statutory authority for intervention is provided in RSMo. 386.360.1. We, the taxpayer, deserve this protection and the Governor should exercise great care in choosing Commissioners who will represent all Missourians and the best interests of the State. Abuse of law and excessive land-taking are a serious violation that **our** Public Service Commission should not condone. To date, the Commission has not provided a *credible* argument for its decision NOT to pursue injunctive relief.
- With regard to the prior statement, do the Commissioners regret not filing, or Ordering, a *Motion for Injunction* in the circuit courts? Please explain in detail how refusing to file a *Motion for Injunction* with the circuit courts in order to allow time for discovery of Staff's investigative reports and findings would have not been in the best interests of all involved. Again, there is statutory authority allowing the Commission to do so, and the legislation was written purposely for protection of Missourians.
- Will the Commission agree to examining facts of this and all future complaints involving utility projects seeking eminent domain *prior to issuing and/or approving a CCN*, and if so, how? Please explain.
- If a circuit court lawsuit is filed in relation to a utility's project, especially in cases where a project plan has not been approved by the Commission or the court or a violation or potential violation has occurred or will likely occur, will the Commission agree to filing an injunction with the circuit court, if necessary or requested, to protect Missouri landowner rights involving condemnation? Please explain.

18. Commission Staff's position in its investigative findings "is that Evergy has exceeded the parameters of its authority granted in its certificate of convenience and necessity (CCN) granted to the Missouri Public Service Corporation in Case No. 9470" and "recommends that the Commission order a hearing in this matter and grant the complainants the opportunity to put on witnesses and gather evidence to best determine the nature of the project by Evergy that sits at the center of these complaint filings" and "Staff would provide the additional information gleaned from its outstanding DRs in testimony or at hearing" and further, that "Staff would also suggest that the Commission order Evergy to provide monthly update reports to Staff ... in order to permit Staff to better

determine the nature of this project and its effect on future rate cases.” See [Staff Position Statement](#) dated January 8, 2024.

- The *Status Reports* submitted by Evergy have been relatively vague and sometimes incomplete; and as Staff points out, the project can indeed affect future rate cases. Why does the Commission determine it appropriate to simply dismiss the complaints without looking into whether or not Evergy has violated a statute, Commission rule, tariff or Commission order, **whether or not its project is on hold?** At the time of the complaints, it was a valid and important point and still remains valid for this and other future related complaints. Please explain.
- Has the Commission, over the past 10 years, ever acted or knowingly NOT acted upon the identification of an alleged failure of compliance to any Commission *Order*? Please explain in detail.
- Does the Commission ever plan to examine “the additional information gleaned from the outstanding DRs”? Please explain.

19. The last paragraph of the Commission *Order*, Page 3, refers to the Allegris’ *Motion for Case Review and Motion for Expedited Treatment*. This motion requested the Commission “consider **rescheduling** the evidentiary hearing” **[emphasis added]** until Evergy “presents its revised [project] plan and files it ... and prior to beginning work on the revised project.” On May 9, the Commission **canceled** the evidentiary hearing instead of *rescheduling* it. Dismissal of the complaint(s) would 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.

- If an evidentiary hearing is not held for this complaint, at what point does the Commission determine whether or not any statutes, rules, tariffs or orders have been violated? Please explain.
- How are Complainants assured that CCN 9470 Orders will be upheld once Evergy’s project is no longer on hold and resumes? Please explain.
- Has the Commission considered holding more than one evidentiary hearing in this case, one to determine violations that have already occurred and another when it receives Evergy’s complete project plan? This could avoid Evergy potentially making the same violations in other projects before its revised plan is complete, thus protecting other Missouri landowners from losing their land through misuse of eminent domain law or CCN Orders.

20. The Commission’s *Order* states that the 30 remaining complaints in this case are dismissed but that any party can request a rehearing by the Commission.

- While we appreciate the regulation of utilities the Missouri Public Service Commission provides for Missouri citizens, how will Complainants have the assurance that the Commission will not deny such a rehearing request, given that the Commission has not to our knowledge held Evergy accountable to CCN *Orders* and submission of a project plan related to the Complaint case thus far? Please explain.
- The Mo. Code Regs. tit 20 Section 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 Order from the Commission, complainants could be permanently harmed if violations are found and not corrected. As stated, there are landowners that have already lost their valuable highway frontage land to an easement.

21. In conclusion, Complainants have from the beginning asked the Commission to hold an evidentiary hearing *once Evergy has submitted its completed project plan*. The Commission’s *Order* states, “since the allegation is that Evergy would be exceeding the authority granted by the CCN” and “it has not yet done so or presented a plan to do so” is exactly why Complainants requested an evidentiary hearing **once Evergy has submitted its completed project plan and prior to beginning any work on the project**. However, as indicated throughout this *Reply* and *Request for Rehearing*, violations *have already occurred* by Evergy obtaining easements it did not possess legal authority or CCN authority to obtain. Added to that are the safety concerns the Commission should address, as cited in Item #4 herein. Perhaps more than one evidentiary hearing is necessary, but in any case the Commission has the duty by law (as outlined throughout this *Reply*) to determine violations already committed and those about to be committed and if necessary, issue fines per RSMo. Sections 386.560 and .570.

### **APPLICATION FOR REHEARING**

Complainants, pursuant to Section 386.500-1 and 4 CSR 240-2.160, files its application for rehearing of the Commission’s *Order Dismissing Complaints* dated December 19, 2024. In support of the *Application for Rehearing*, Complainants state as follows:

1. All decisions of the Commission must be lawful, with statutory authority to support its actions, as well as reasonable. *State ex rel. Ag Processing, Inc. v. PSC*, 120 S.W.3d 732, 734-35 (Mo. en banc 2003). An order’s reasonableness depends on whether it is supported by substantial and competent evidence on the record as a whole. *State ex rel. Alma Tel. Co. v. PSC*, 40 S.W.3d

381, 387 (Mo. App. W.D. 2001). An order must be neither arbitrary, capricious, nor unreasonable, and the Commission must not abuse its discretion. Id.

2. Pursuant to RSMo. Section 386.515, “With respect to commission orders or decisions issued on and after July 1, 2011, an application for rehearing is required to be served on all parties and is a prerequisite to the filing of an appeal under section 386.510. The application for rehearing puts the parties to the proceeding before the commission on notice that an appeal can follow and any such review under the appeal may proceed provided that a copy of the notice of appeal is served on said parties.”

3. In order for a Commission decision to be lawful, the Commission must include appropriate findings of fact and conclusions of law that are sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. State ex rel. Noranda Aluminum, Inc. v. PSC, 24 S.W.3d 243, 246 (Mo. App. W.D. 2000); State ex rel. Monsanto Co. v. PSC, 716 S.W.2d 791, 795 (Mo. en banc 1986); State ex rel. A.P. Green Refractories v. PSC, 752 S.W.2d 835, 838 (Mo. App. W.D. 1988); State ex rel. Fischer v. PSC, 645 S.W.2d 39, 42-43 (Mo. App. W.D. 1982), cert. denied, 464 U.S. 819 (1983).

4. After the Commission’s consideration of the *Reply to Order Dismissing Complaints* and pursuant to RSMo. Section 386.500.1, if it is determined that the *Order Dismissing Complaints* be upheld, Complainants request this *Application for Rehearing* be granted, as Complainants have indeed demonstrated sufficient reason to rehear the matter.

**WHEREFORE**, Complainants submit this *Reply to Order Dismissing Complaints and Application for Rehearing* for consideration by the Commission. We request the Commission:

- 1) Study the docket items and facts presented and reconsider dismissal of this complaint case;
- 2) Conduct an internal investigation into the allegations contained throughout this Complaint and make resulting *Order(s)*;
- 3) Schedule an evidentiary hearing when Evergy’s revised project plan has been submitted to address the “changes” and whether or not the project is in compliance with Commission *Orders*;
- 4) Change the status of this Complaint, whether dismissed or reheard, to ***small formal*** and hold the evidentiary hearing local to Complainants or via WebEx;
- 5) If this Complaint is dismissed, Complainants request the Commission grant the *Application for Rehearing*; and

- 6) Provide a definitive reply to each of the questions herein by January 15, 2025 (or extend Complainants' filing time for a *Response*) should Complainants deem it necessary to file a *Response* by the Commission's ordered deadline of January 17, 2025.\*

Respectfully submitted this 9th day of January, 2025 to all parties via EFIS by:

/s/ Timothy P. Allegri  
Timothy P. Allegri

/s/ Denise W. Allegri  
Denise W. Allegri

\* The *Order Dismissing Complaints*, Page 6, states the effective date of the Order is **January 10**, 2025, conflicting with **Commission Order #3**, which states the Order shall become effective on **January 18**, 2025.

## EXHIBIT A

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'

image001.png (6.8 KB)

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

Hunter Law Group, P.A.

p: 913.320.3830

a: 1900 W. 75th Street, Suite 120  
Prairie Village, Kansas 66208

www.HunterLawGroupPA.com

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

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

**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?