

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

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

**EVERGY MISSOURI METRO AND EVERGY MISSOURI WEST REPLY TO  
STAFF RESPONSE, MOTION FOR EXPEDITED TREATMENT,  
AND MOTION FOR INJUNCTION**

**COMES NOW**, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Missouri Metro”) and 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 their Reply (“Reply”) to the *Staff Response, Motion for Expedited Treatment, and Motion for Injunction* (“Response”) filed the Commission Staff (“Staff”) in this docket on August 29, 2023, states as follows:

1. On August 29, 2023, Staff filed its Staff Response, Motion For Expedited Treatment and Motion For Injunction requesting, among other things, that the Commission direct “the Commission’s General Counsel to seek in Circuit Court a temporary injunction pursuant to Section 386.360.1, RSMo., staying the eminent domain proceedings until the resolution of this Complaint. . .” (Staff Response, pp. 4-5)
2. On August 29, 2023, the Commission issued its Order Directing Response directing any responses to the Staff Motion to be filed no later than August 30, 2023.

3. For the reasons stated herein, the Commission should deny Staff's unprecedented request to seek a stay of a circuit court which is empowered by Chapter 523, RSMo. to resolve eminent domain issues related to electric corporations and landowners involving easements needed for the public use.

4. Concurrent with the filing of this pleading, Evergy is also filing its Answer, Affirmative Defenses, and Motion to Dismiss ("Answer") which is incorporated herein by reference. For the reasons stated in Evergy's Motion To Dismiss, the Complaint should be summarily dismissed.

**RESPONSE TO STAFF'S MOTION FOR INJUNCTION**

5. As acknowledged by Staff's Response, p. 2, the Circuit Court of Lafayette and Johnson County have each scheduled hearings to consider the legal issues associated with the easement that is subject to this Complaint proceeding for September 6 and October 24, 2023. These actions are appropriate since Chapter 523, RSMo. gives the statutory authority for the circuit courts to resolve in the first instance all factual and legal issues related to eminent domain actions. Given that the circuit courts of Lafayette and Johnson County, Missouri are in the process of resolving these issues, it is not appropriate for the Commission to attempt to stay the proceedings of this circuit court or otherwise usurp the court's judicial authority to render a decision in the eminent domain proceeding.

6. 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 Missouri Constitution

also specifically designates the judicial branch to resolve eminent domain issues when it states in Article I, Section 28 of the Missouri Constitution:

“...when an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be judicially determined without regard to any legislative declaration that the use is public.”<sup>1</sup> (emphasis added).

7. The determination of need to build or replace power lines has been delegated to the public utilities in Missouri by the legislature. According to Missouri Public Service Co v. H&W Inv. Co., Inc., 602 S.W. 2d 41, 43 (Mo. App 1980):

[T]he determination of need for the land to be condemned is vested in the sound discretion of the utility, and is not subject to judicial review, unless the protesting landowner alleges and proves that the utility's claim of necessity constitutes fraud, bad faith or an arbitrary or unwarranted abuse of discretion. That matter is controlled by Mapco, Inc. v. Williams, 581 S.W.2d 402, 405(1, 2) (Mo.App.1979), and cases cited, which hold that the question of whether the taking of any given private property is "necessary" and the extent and exact location of the property to be taken are matters of political or legislative determination which have been delegated to the condemning authority by virtue of the statute granting the right of eminent domain. (§ 523.010, RSMo 1969.) That case, and further cases cited, also hold that the landowner must plead and prove fraud, bad faith, or an arbitrary or unwarranted abuse of discretion of the condemnor in its claim of "necessity" in order that judicial inquiry may be invoked.

8. The Complainant and his neighbors are parties to the Lafayette County proceeding in Circuit Court and will have 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. Given that the circuit courts of Lafayette and Johnson County, Missouri are in the process of resolving

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<sup>1</sup> Mo. Const. Art. I, § 28.

these issues, it is not appropriate for the Commission to attempt to stay the circuit court's proceeding or otherwise usurp the courts authority by attempting to resolve the issues addressed by the Complainant. 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.

9. This Commission has also recognized its absence of authority to resolve eminent domain disputes of landowners. In Missouri Landowners Alliance, et al. v. Grain Belt Express, LLC, et al., File No. EC-2021-0059 ("Grain Belt"), the Commission held that it has no jurisdiction or authority to grant a public utility eminent domain (p. 14). Moreover, the Commission found that its statutory authority in complaint cases, pursuant to Section 386.390, RSMo, is limited to determining whether a public utility committed any act or failed to act in violation of any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission. (p. 16). In the Grain Belt case, the Commission found that the complainant had not met its burden of proof regarding its allegations that the utility had violated a Commission order. (p. 19). In the instant case, Complainant has not even alleged a violation of a Commission order, tariff or regulation. Complainant questions the need for a 30-foot easement instead of the existing easement but as noted above all questions concerning the ability of a utility to condemn property for public use are solely for the circuit court to decide. Similarly, Complainant questions whether Evergy has a Certificate of Convenience and Necessity ("CCN") for the transmission line. Again, the circuit court will determine if Evergy has the authority to condemn property for the building of the transmission line. Evergy does have a CCN for the entire transmission line in Lafayette and Johnson Counties as the Commission's CCN map

(attached as Exhibit A) clearly shows.<sup>2</sup> Staff also indicates that the Commission case in which the certificate for the service area affected by this Complaint was issued in 1938.<sup>3</sup>

10. While the Staff cites Section 386.390.1 as authority for the Commission to hear complaints against public utilities, Staff fails to allege any “act or thing done or omitted to be done by any . . . public utility, including any rule, regulation or charge heretofore established or fixed by or for any . . . public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission...” (Staff Response, p. 2) Nor does the Complaint itself allege that Evergy has violated any statute, tariff, or Commission regulation or order as required by 20 CSR 4240-2.070(1). See Answer, pp. 8-10. As a result, the Complaint should be summarily dismissed.

11. Staff asserts that “irreversible damage” could occur to the complainant if the circuit court resolves the eminent domain issues before the Commission can weigh in on the allegations of the Complaint. This argument is far-fetched since the Complainant and his neighbors will have all due process under Chapter 523 that they are entitled to by law, including appellate review of the court’s order. As noted above, the circuit court will determine whether Evergy can legally condemn the property or determine if Evergy has acted in bad faith. Complainant is not entitled to circumvent the eminent domain proceedings by filing a Complaint against the public utility at the Public Service Commission, and the General Counsel of the Commission should not be permitted to interfere with a circuit court that is properly exercising its judicial authority.

12. Staff cites Section 386.360.1 for the proposition that the Commission has the authority to pursue a temporary, preliminary and permanent injunction against a circuit court whenever the Commission shall be of the opinion that a public utility “is failing. . . to do anything

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<sup>2</sup> [Missouri Electric Service Area Map 11-8-19.pdf \(mo.gov\)](#)

<sup>3</sup> See paragraph 2 of Staff’s Response.

required by it by law.” (Staff Response, p. 3) While Staff has quoted the statute, it has failed to provide any evidence or basis at all to give the Commission a reason for believing that Evergy has “failed to do anything required by it by law.”

13. Staff has also failed to cite a single case in the Commission’s 110-year history where the Commission’s General Counsel was directed to seek an injunction of a circuit court in a hearing related to an eminent domain issue.

14. The Commission has often recognized that its authority is limited. As the Commission stated in a complaint case involving Kansas City Power & Light Company:

As noted previously, however, authority to hear and determine GST’s complaint does not necessarily equal authority to grant the relief therein requested. The Public Service Commission “is purely a creature of statute” and its “powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted.” *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958). While the Commission properly exercises “quasi judicial powers” that are “incidental and necessary to the proper discharge” of its administrative functions, its adjudicative authority is not plenary. *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 (Mo. 1982), quoting *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 279 (Mo. 1942). “Agency adjudicative power extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise.” *State Tax Commission*, *supra*.<sup>4</sup>

15. The Commission should reaffirm these long-held principles and deny Staff’s Motion For Injunction.

**WHEREFORE**, the Company respectfully submits its Reply to the Staff’s Response.

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<sup>4</sup> *GS Technology Operating Co., Inc. v. Kansas City Power & Light Co.*, 2004 WL 2752782 (Mo.P.S.C., 2004).

Respectfully submitted,

*/s/ Roger W. Steiner*

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Roger W. Steiner, MBN 39586  
Evergy, Inc.  
1200 Main Street, 16<sup>th</sup> Floor  
Kansas City, MO 64105  
Telephone: (816) 556-2791  
Email: [Roger.Steiner@evergy.com](mailto:Roger.Steiner@evergy.com)

James M. Fischer, MBN 27543  
Fischer & Dority, P.C.  
2081 Honeysuckle Lane  
Jefferson City, MO 65109  
Phone: (573) 353-8647  
Email: [jfischerpc@aol.com](mailto:jfischerpc@aol.com)

**Attorney for Evergy Missouri Metro and Evergy  
Missouri West**

**CERTIFICATE OF SERVICE**

A copy of the foregoing has been served this 30<sup>th</sup> day of August 2023 upon counsel for all parties of record in this proceeding via electronic service or U.S. mail postage prepaid.

*/s/ Roger W. Steiner*

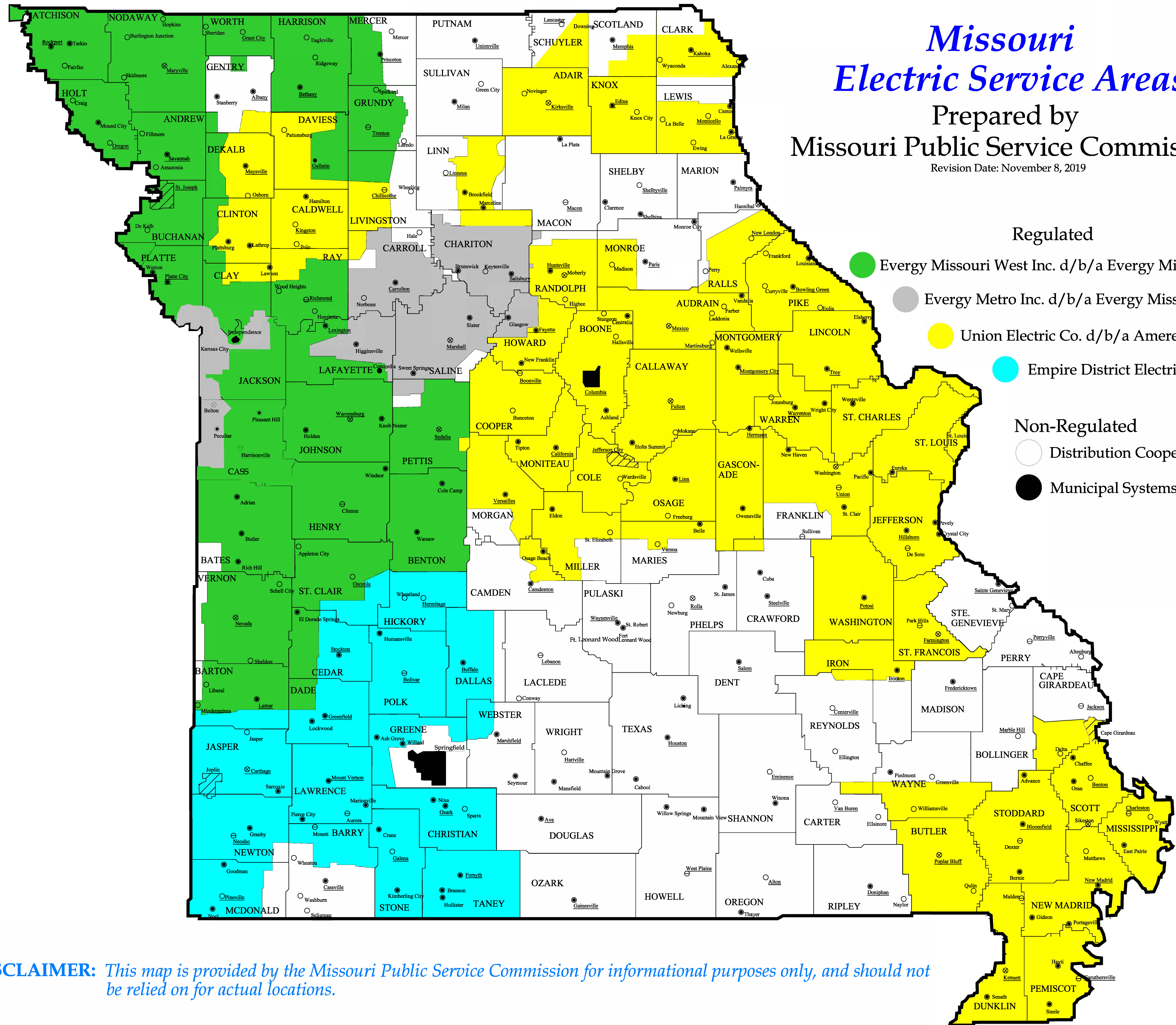
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Roger W. Steiner

# Missouri Electric Service Areas

Prepared by  
Missouri Public Service Commission

Revision Date: November 8, 2019



**DISCLAIMER:** This map is provided by the Missouri Public Service Commission for informational purposes only, and should not be relied on for actual locations.