

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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

**Application for Rehearing and Reconsideration**

COMES NOW the Office of the Public Counsel (“OPC”) in response to the Public Service Commission’s December 19, 2024, *Order Dismissing Complaints* (“Order”), and requests the Commission rehear and reconsider<sup>1</sup> its *Order*, and in support of this application, OPC states:

**1. Introduction**

This case is a consolidation of thirty-eight (38) complaints against Evergy Missouri West, Inc. d/b/a Every Missouri West (“Company” or “Evergy”) by landowners in Johnson and Lafayette Counties (“Landowners”). The complaints regard Evergy’s manner of securing, and authority to secure easements for relocating a 69 kV transmission line along State Highway 13. Evergy sought to relocate this line from the Missouri Department of Transportation (“MoDOT”) right-of-way and onto the Landowners’ properties.

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<sup>1</sup> § 386.500 RSMo.

The OPC requests that the Commission rehear and reconsider its *Order* and determine whether Evergy committed the acts alleged by the Landowners, as well as any necessary remedies. Evergy's assertion that it is no longer pursuing the easements does not relate to the Landowners' assertions that the Company attempted to mislead the Landowners in its efforts to acquire the easements. Further, the question of whether Evergy exceeded the authority granted by the Commission's ordered certificate of convenience and necessity (CCN), still stands.

**2. Did Evergy's Condemnation Methods and Practices Seek to Mislead Landowners?**

Among the Landowners' allegations, they claim that the Company made false representations to secure property rights, as follows:

1. **"False: Evergy claims MoDOT is forcing them out of the MoDOT ROW for the full 8.7 miles.** Evergy initially claimed (and as recent as May 10 stated in a text message to a landowner) that MoDOT is forcing them out of the MoDOT right-of-way on the West side of MO-13 for the full 8.7-mile section and must move their poles and lines to accommodate MoDOT's widening of the shoulder/road..."
2. **"False: Evergy tells landowners that Evergy has an existing easement on their land.** At the beginning in late 2022; Evergy told every landowner they talked with that Evergy had an existing easement. All but one landowner assumed that was accurate. JJ Green asked for proof and Evergy took a few weeks to tell him they were wrong..."
3. **"False claim by Evergy; Future MoDOT projects require Evergy to move their poles.** Evergy says they need a 30-foot easement outside the MoDOT ROW because of future MoDOT

projects that may push them.”<sup>2</sup>

The Landowners claim Evergy engaged in practices that were unjust and unreasonable, namely providing allegedly false information and claims in an attempt to persuade the Landowners to sell Evergy an easement on their properties. The Landowners assert that at least one property owner in the area relied on Evergy’s false claims and sold Evergy an easement.<sup>3</sup> Regardless of whether Evergy changed its plans for now, Evergy still subjected the Landowners to its methods and practices in its efforts to secure easements, and was successful in at least one instance.<sup>4</sup> The act of making these allegedly false statements is enough to make a claim of a violation, even if Evergy does not intend to move the line or pursue the condemnation actions at this time.

Section 393.140(5) RSMo grants the Commission, and only the Commission, with the authority to address these issues. It grants the Commission the following authority:

(5) Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. **Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations**

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<sup>2</sup> Complaint, EC-2024-0015, July 25, 2023.

<sup>3</sup> *Id.* Attachment 2.

<sup>4</sup> Other landowners appear to have also relied on Evergy’s false representations. *See* Allegri Reply to Order Dismissing Complaints & Appl. for Rehearing 2 (referring to fourteen (14) individuals who sold Evergy an easement “all based upon false claims cited by Evergy and its land agents, said easements being situated on the west side of Highway 13.”).

**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 rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the **just and reasonable acts and regulations to be done and observed;**<sup>5</sup>

If Evergy attempted to mislead the Landowners into giving up their land rights, Section 393.140(5) RSMo provides a remedy. The Complaints are not rendered moot by Evergy changing its plans. Section 393.140(5) RSMo requires that, if the facts support a finding that the Company engaged in unjust and unreasonable acts, the Commission “shall determine...the just and reasonable acts and regulations to be done and observed[.]”

The Commission dismissed the Landowners’ claims in its *Order* by concluding, “while it is proper for the Commission to investigate and review Evergy’s methods and practices during a general rate case, it must refrain from managing any public utility.”<sup>6</sup>

The OPC asks the Commission to reconsider and rehear this conclusion. Misleading landowners to acquire easements is not the type of management decision the Commission should concede to the discretion of a public utility, especially when there is an allegation of fraud. The OPC also wishes to address the implication by the *Order* that these issues are only to be addressed in a general rate case and not a complaint. Addressing the

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<sup>5</sup> Section 393.140(5) RSMO, emphasis added. See also § 393.270.2 RSMo.

<sup>6</sup> Order Dismissing Complaints, Case No. EC-2024-0015, December 19, 2024, p. 6.

issues raised by this allegation is central to the Commission's primary purpose of protecting the Missouri public against abuse by public utilities, and § 393.140 RSMo empowers the Commission to protect the public from such abuse in a complaint proceeding.

In a Missouri Court of Appeals case addressing the Commission's purpose and authority to protect the Missouri public in a case involving Every predecessor's use of condemnation, the Court held:

The dominating purpose in the creation of the Public Service Commission was to promote the public welfare. To that end the statutes provided regulation which seeks to correct the abuse of any property right of a public utility...

The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance...

The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.

*State ex rel. Harline v. Pub. Serv. Com.*, 343 S.W.2d 177, 181 (Mo. App. W.D. 1960). In the present case, the Landowners allege Every abused a property right and committed corporate malfeasance. Abusing the power of eminent domain is harmful to the public welfare, especially Missouri landowners. The Commission is empowered and obligated by Missouri statute to determine whether such abuses occurred, and if they did, to issue orders that protect the Missouri public from further abuses. The *Order* unlawfully and unreasonably dismisses the complaints without addressing these important issues.

### 3. Did Evergy Violate the Commission's CCN Order?

The Landowners also question whether Evergy's actions to acquire their land through eminent domain violated the Commission's 1938 order that granted Evergy's predecessors a CCN:

**“Undetermined: Certificate of Convenience & Necessity**

Does Evergy have a CCN that covers this project? We have sought the CCN that Evergy claims to use for this project but they refuse to provide it to us. The CCNs we have viewed indicate a CCN and related approvals/notifications are not applicable for the impacted counties for the project area.

Responses from Evergy when we ask for their applicable CCN are as follows:

- For all publicly available records, any member of the public may request those records from the Public Service Commission. If you would like any confirmation regarding that form, you may request that confirmation from the MPSC.
- Evergy operates an electrical system under authority granted to it by the State of Missouri. If you have any questions [concerning Evergy's authority to operate a public utility or have any questions about your rights,] Evergy encourages you to consult with your attorney.”<sup>7</sup>

In its recommendation, the Commission's Staff interpreted Evergy's CCN to not authorize the condemnations sought by Evergy.<sup>8</sup> Specifically, “...the Staff concludes that EMW has violated the terms listed in the Ordered Paragraphs included in the Commission's Report and order in Case No.

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<sup>7</sup> Complaint, EC-2024-0015, July 25, 2023.

<sup>8</sup> Staff Recommendation, EC-2024-0015, EFIS No. 57, November 6, 2023, p. 4.

9470.”<sup>9</sup> Further, “Staff recommends the Commission find that EMW has exceeded the bounds of the Commission’s approval of said CCN.”<sup>10</sup>

If Evergy lacks the authority of eminent domain in this instance, then Evergy asserting that it has such authority, and gaining easements as it did under that assertion, violated a Commission order. As such, it presents a very important issue to be determined by the Commission before it resolves this case. Accordingly, the *Order* unlawfully and unreasonably dismissed the complaints by asserting there is no controversy. The controversy to be resolved is whether Evergy violated the CCN order.

#### **4. Landowners Do Not Seek an Advisory Opinion**

The Commission’s primary basis for dismissing the complaints is the Commission’s legal conclusion that the Landowners seek an advisory opinion. The Missouri Supreme Court stated, “An opinion is advisory if there is no

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<sup>9</sup> *Id.*, Staff Report, p. 2 of 12.

<sup>10</sup> *Id.*, Staff Report, p. 3 of 12. This issue is informed by *Harline, supra*, where landowners in Jackson County alleged Missouri Public Service Company sought to condemn their land for a transmission line without proper CCN authority. The issue was, “Must a public utility obtain an additional certificate of convenience and necessity from the Commission to construct each extension or addition to its existing transmission lines and facilities within a territory already allocated to it under a determination of public convenience and necessity?” The Court agreed with the Commission that “the law does not require a certificate for every extension of its lines to render additional service” within its authorized territory. *Harline* is similar and informative for the CCN issue raised in the present case since both cases involve an interpretation of Evergy’s authority under the CCN granted in Case No. 9470. The facts and arguments in the present case, however, are different from those raised in *Harline*. In addition, the *Harline* decision has since been qualified by the same Court: “...we believe that if we were to extend *Harline* as urged by Aquila, we would effectively be giving electric companies in the state carte blanche to build wherever and whenever they wish, subject only to the limits of their service territories and the control of environmental regulation, without any other government oversight. In some cases, the utility could be relying on territorial authority given to it decades before construction begins. We do not believe this is what the legislature intended when it drafted section 393.170.1.” *StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 37 (Mo. App. W.D. 2005).

justiciable controversy, such as if the question affects the rights of persons who are not parties in the case, the issue is not essential to the determination of the case, or the decision is based on hypothetical facts.” *State ex rel. Heart of Am. Council v. McKenzie*, 484 S.W.3d 320, 324 n.3 (Mo. 2016).

The OPC asserts that there is a justiciable controversy, which is whether Evergy engaged in acts that are unjust and unreasonable or exceeded its CCN authority. These issues are essential to the determination of the case and are not based on hypothetical facts. Evergy claiming it no longer wishes to pursue the remaining easements it was not able to acquire does not undo Evergy’s actions. Accordingly, a justiciable controversy remains, and the *Order* dismisses the complaints by incorrectly concluding that the issues raised by the Complaints seek an advisory opinion.<sup>11</sup>

##### **5. Additional Issues Raised in the Complaints**

Landowners raise additional issues, including the claim that there are additional negative public impacts due to the different compensation responsibilities for moving lines from the MoDOT right-of-way versus moving lines from a private easement. This issue also presents a justiciable controversy that the *Order* does not resolve.

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<sup>11</sup> Even if the issues in this case were limited to Evergy’s future taking of land, and that issue had become moot, the OPC would still encourage the Commission to investigate and resolve the issues of this case under the *mootness doctrine*. “A case is moot if something occurs that makes a court’s decision unnecessary. *State ex rel. County of Jackson v. Mo. Pub. Serv. Comm’n*, 985 S.W.2d 400, 403 (Mo. App. W.D. 1999). A narrow exception to that rule gives the court “discretion to review a moot case where [it] presents a recurring unsettled legal issue of public interest and importance that will escape review unless the court exercises its discretionary jurisdiction.” *Id.* (citation omitted).” *StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 27 (Mo. App. W.D. 2005).



**6. Conclusion**

Due to the significant impact a condemnation can have on the Missouri public, the eminent domain practices of Missouri’s public utilities should be heavily scrutinized by the Commission when claims of abuse are brought to its attention. The OPC requests the Commission reconsider and rehear its *Order* and resolve the issues raised by the Landowners.<sup>12</sup>

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission grant this Application for Rehearing and Reconsideration.

Respectfully submitted,

**/s/ Marc Poston**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 10<sup>th</sup> day of January 2025.

**/s/ Marc Poston**

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<sup>12</sup> Even if the Landowners were to withdraw their Complaints, given the serious nature of the claims in this case, the OPC would encourage the Commission to direct its Staff to investigate Evergy’s eminent domain practices to ensure those practices are just and reasonable.