

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

Mark A. Hill / Bethann C. Hill	)	
	)	
Complainant,	)	
v.	)	File No. EC-2026-0350
	)	
Evergy Missouri West, Inc. d/b/a Evergy Missouri	)	
West	)	
	)	
Respondent.	)	

**EVERGY MISSOURI WEST’S REPLY TO
PUBLIC COUNSEL’S RESPONSE TO STAFF’S RECOMMENDATION**

COMES NOW, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy”), by and through its counsel, hereby submits its Reply to Public Counsel’s Response to Staff’s Recommendation filed on September 21, 2026:

I. INTRODUCTION

1. The Office of the Public Counsel’s Response (“OPC Response”) urges the Commission to undertake an expanded investigation into matters that fall outside the Commission’s jurisdiction and that Staff has already reviewed. Staff’s Report and Recommendation concludes that Evergy is acting in accordance with its Certificate of Convenience and Necessity (“CCN”) in Case No. 9470 as it pertains to the National Electrical Safety Code (“NESC”), and has not violated any statute, rule, tariff, or Commission order. OPC’s Response does not identify any contrary evidence. (Staff Report, p. 3, Paragraph 8.)

2. Instead, OPC speculates about Evergy’s motives for acquiring an easement and suggests that the Commission should investigate issues that are, by statute, reserved exclusively for the circuit courts under Chapter 523, RSMo. The Commission has repeatedly held that it lacks

jurisdiction over eminent domain matters, including the necessity, scope, or location of easements sought by a public utility.

II. THE COMMISSION LACKS JURISDICTION OVER EMINENT DOMAIN MATTERS

3. OPC's Response repeatedly raises questions about Evergy's motives for seeking an easement and suggests that the Commission should investigate whether Evergy's actions could constitute an "abuse of discretion" in a future condemnation proceeding. (OPC Response, pp. 2-3) These issues fall squarely within the exclusive jurisdiction of the circuit courts.

4. As Staff correctly noted, and as the Commission has held in Grain Belt Express, EC-2021-0059, the Commission has no authority to adjudicate eminent domain matters, including the necessity, scope, or location of easements. Section 523.256, RSMo., expressly assigns these questions to the judicial branch. (Staff Report, p. 3, para. 9) The Commission's authority in complaint cases is limited to determining whether a public utility has violated a statute, tariff, Commission rule, or Commission order. OPC identifies no such violation. Speculation about Evergy's motives or future condemnation strategy is not within the Commission's jurisdiction and cannot form the basis for continuing discovery or investigation in this complaint.

5. The determination of need to replace power lines has been delegated to the public utilities in Missouri by the legislature and is generally not subject to judicial review. 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.

III. STAFF HAS FOUND NO VIOLATION OF ANY STATUTE, RULE, TARIFF, OR ORDER

6. Staff's Report and Recommendation concludes that Evergy is acting in accordance with its CCN in Case No. 9470 and is in compliance with the NESC. (Staff Report, pp. 3-5) Staff further concludes that the Hills' requested relief—ordering Evergy to place poles within the MoDOT ROW—cannot be granted by the Commission. (Id. at 5, para. 11) In fact, in the case of the Hill's property, Evergy already intends to place its poles with the MoDOT ROW.

7. OPC's Response does not identify any statute, rule, tariff, or Commission order that Evergy has violated. Nor does OPC dispute Staff's conclusion that Evergy is adhering to the CCN and the NESC

7. Because the Commission lacks jurisdiction over eminent domain matters and because Staff has found no violation of any law or Commission requirement, dismissal of the Complaint is warranted.

IV. CONCLUSION

WHEREFORE, Evergy Missouri West respectfully requests that the Commission:

1. Grant Staff's Recommendation;
2. Dismiss the Complaint for failure to state a claim upon which relief may be granted; and

3. Grant such other and further relief as the Commission deems appropriate.

Respectfully submitted,

/s/ Roger W. Steiner

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CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 1st day of October 2026 upon counsel of record for all parties.

/s/ Roger W. Steiner

Roger W. Steiner