

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

Timothy P. Allegri	)	
	)	
Complainant,	)	
	)	
v.	)	<u>File No. EC-2027-0058</u>
	)	
Evergy Missouri West, Inc. d/b/a	)	
Evergy Missouri West	)	
	)	
Respondent.	)	

STAFF RESPONSE IN SUPPORT OF COMPANY’S MOTION TO DISMISS

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its Staff Response in Support of Company’s Motion to Dismiss states as follows:

1. On August 25, 2026,¹ Timothy P. Allegri (“Complainant”) filed a complaint with the Missouri Public Service Commission (“Commission”) against Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW”) pursuant to Commission Rule 20 CSR 4240-2.070. The complaint is regarding the replacement of a 69kV transmission line along Missouri Highway 13 (“MO Route 13”) resulting from an expansion of the highway by the Missouri Department of Transportation (“MoDOT”). Complainant alleges that EMW’s proposed transmission line project violates National Electric Safety Code (NESC) standards; Commission Rule 20 CSR 4240-18.010, which requires electrical corporation adherence to the NESC; and EMW’s Certificate of Convenience and Necessity (“CCN”) in Case No. 9470

¹ All date references will be to 2026 unless otherwise indicated.

in regard to EMW's adherence to NESC standards as outlined in the *Report and Order*, Ordered Paragraph Two.² Complainant's requested relief is that the Commission order EMW to adhere to the terms of its CCN in Case No. 9470 and the NESC and direct EMW to place transmission poles within the MoDOT right-of-way.

2. On September 3, Complainant filed three additional documents with the Commission. These documents include an *Addendum to Complaint*, a chart detailing 2023 NESC clearances,³ and a copy of a data request ("DR") sent to EMW.⁴

3. On September 4, the Commission determined that the case would proceed as a Formal Complaint under Rule 20 CSR 4240-2.070, set a deadline for EMW's response, and ordered Staff to investigate the complaint and file a report no later than October 19.

4. On September 14, Complainant filed a *Motion to Compel and Request for Expedited Treatment* to compel EMW to produce documents and answer questions related to Complainant's DR 1, following receipt of EMW's objection to DR 1.

5. On September 18, EMW filed its *Answer, Affirmative Defenses, and Motion to Dismiss*.

6. On September 22, Complainant filed a *Reply to Every Missouri West's Answer, Affirmative Defenses and Motion to Dismiss*. Later that day, EMW also filed its Response to Complainant's *Motion to Compel*.

7. On September 23, Complainant filed a *Reply to Every Missouri West's Response to Motion to Compel*.

² *Formal Complaint, tpa_20260825.pdf*, EC-2027-0058, Docket Item No. 1

³ *Complainant's Additional Document, 2023_NESC_Clearance_Charts.pdf*, EC-2027-0058, Docket Item No. 3

⁴ *Complainant's Additional Document, 0001 EC-2027-0058.pdf*, EC-2027-0058, Docket Item No. 5

8. Staff now tenders a response in support of EMW's *Motion to Dismiss* in lieu of a Report.

9. Complainant does not allege any *specific* violation of NESC standards, merely the general charge that the placement of EMW's poles outside the MoDOT right-of-way is in violation of the NESC pole line swing clearance, in that it goes *beyond* the requirements of the NESC.

10. In Complainant's *Addendum*, Complainant states that, "Without MPSC issued policy determinations of CCN and NESC restrictions, it is not possible to negotiate the 'publicly needed' land's value. For example if the NESC states that power lines must be no closer than 18 feet from the ground, and that is achieved through lines and or poles upon the MoDOT utility corridor, why would it be necessary for Evergy to place lines up to 20 feet away horizontally? The NESC standard is achieved without moving the lines outside the MoDOT right of way."⁵

11. Missouri courts have consistently recognized that safety codes and standards set *minimum* thresholds of required conduct, not ceilings. The Missouri Supreme Court has ruled that, "An industry code is an admission of what the industry considers it should do, but the defendant's duty is and continues to be to exercise the highest degree of care in its operations." *Freeman v. Kansas City Power & Light Co.*, 502 S.W.2d 277, 283 (Mo. 1973).

12. Ordered Paragraph Two of the Commission's *Report and Order* in Case 9470 states in pertinent part,

⁵ *Addendum to Complaint, summary-nonresponse.pdf*, EC-2027-0058, Docket Item No. 4

ORDERED: 2. That said electric transmission and power lines and all equipment connected therewith shall be constructed so as to conform to the specific rules and regulations contained in the National Electrical Safety Code, issued by the United States Bureau of Standards . . . Furthermore, that said applicant herein shall maintain and operate said transmission lines and all equipment connected therewith in a reasonably safe and adequate manner so as not to endanger the safety of the public or to interfere unreasonably with the service of other aerial lines ⁶

13. Ordered Paragraph Two merely requires that transmission lines be constructed to conform to NESC standards and to maintain and operate said transmission lines in a safe and adequate manner so as to not endanger the safety of the public. Ordered Paragraph Two does *not* bar an electric utility from going *beyond* the standards of the NESC. To construe Ordered Paragraph Two in such a way would be contradictory to the Court's holding in *Freeman* and to the requirement that transmission lines be operated, and therefore designed and constructed, to ensure public safety. With reference to Complainant's hypothetical in his *Addendum*, if EMW believes that the location of its transmission lines, considering relevant siting factors, is most safe for the public if the lines are placed with 20 feet of horizontal clearance rather than the NESC minimum of 18 feet, that is within its discretion as a provider of safe and adequate service to the public to do so.

14. Complainant's statement that it is not possible to value "publicly needed" land without a Commission ruling on CCN and NESC restrictions is clearly in reference to future easement negotiations or eminent domain proceedings. This is a question of arbitrariness regarding EMW's land acquisition decisions, not a question of adherence to safety standards. Missouri statute grants public utilities the authority to condemn property

⁶ *Report and Order*, Case No. 9470, Pgs. 11 and 12

for the construction or expansion of its transmission lines.⁷ This authority is subject to a utility receiving a CCN to provide service to the area from the Commission, per Section 393.170, RSMo. The Commission has the authority to issue a CCN but plays no role in easement negotiation or eminent domain proceedings, as, pursuant to Section 523.256 RSMo, the authority to adjudicate eminent domain proceedings rests with the judicial system, not the Commission.

15. Complainant alleges that EMW is, “[S]eeking excessive easements outside of the MoDOT ROW/utility corridor to pass the cost of moving its poles to all Missouri taxpayers (the state) instead of to Evergy customers/ratepayers.”⁸ Complainant further argues that the Commission should compel production of EMW’s response to Complainant’s DR 1, as this information “directly relates to the dollars Evergy pays for an easement, which directly affects the cost of service for its customers (ratepayers).”⁹

16. These allegations relate to the cost of service and rates of EMW, rather than allege a violation of any provision of law subject to the Commission’s authority, Commission rule, Commission order, or utility tariff. Pursuant to Section 386.390.1 RSMo, “[N]o complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any . . . electrical . . . corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city,

⁷ 523.010 RSMo

⁸ *MOTION TO COMPEL AND REQUEST FOR EXPEDITED TREATMENT*, EC-2027-0058, Pg. 3

⁹ *REPLY TO EVERGY MISSOURI WEST'S ANSWER, AFFIRMATIVE DEFENSES AND MOTION TO DISMISS*, EC-2027-0058, Pg. 1

town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.” As no such signature(s) have been attached to this complaint, Complainant’s allegations pertaining to the impact of the proposed transmission line design on EMW’s cost of service/rates are improper; the appropriate venue for the Commission to consider the prudence of these decisions is in a rate case.

17. Complainant alleges that EMW is seeking excessive land for its project, in violation of Commission orders, but fails to cite to a Commission order that supports this allegation. Instead, Complainant makes reference to Staff’s *Report and Recommendation* from EC-2023-0015 to support this allegation. In this *Report and Recommendation*, Staff stated that EMW’s encroachment onto private land outside of the existing highway right-of-way required Commission approval as it exceeded the bounds of its CCN based on the authority granted in Ordered Paragraph One.¹⁰ This interpretation mistakenly interprets the rights-of-way referenced in Ordered Paragraph One as MoDOT rights-of-way, rather than private rights-of-way or easements secured by EMW. Ordered Paragraph One states, “That the Missouri Public Service Corporation be and is hereby authorized to construct, maintain and operate electric transmission lines and distribution systems over, along and across the highways of the Counties . . . and along such other routes as may be properly provided in said counties, and along *private rights-of-way as may be secured by the applicant . . .*”¹¹ The rights-of-way contemplated in Ordered Paragraph One are those of the

¹⁰ *Staff Report and Recommendation*, EC-2023-0015, Docket Item No. 14

¹¹ *Report and Order*, Case No. 9470, Pgs. 10 and 11

Missouri Public Service Corporation – EMW’s predecessor – as it is the applicant which would go about securing such private rights-of-way or easements. As such, the Commission’s *Order* in Case No. 9470 does not restrict EMW to construct exclusively in MoDOT’s right-of-way, rather it explicitly permits EMW to secure and construct in additional easements along roadways in the relevant counties.

18. Complainant’s broader concerns about ulterior motives¹² or arbitrariness of EMW’s land acquisition for its transmission line project is outside the scope of the Commission’s authority to determine. “[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.” *Mo. Pub. Serv. Co. v. H & W Inv. Co.*, 602 S.W.2d 41 (Mo. Ct. App. 1980). If Complainant wishes to assert bad faith or arbitrary nature in EMW’s decision, this argument should be made before the Circuit Court in eminent domain proceedings, not before the Commission.

Recommendation

19. Staff recommends that EMW’s *Motion to Dismiss* be granted. NESC safety standards are a *minimum standard* by which electric utilities are to design and construct its transmission lines. Complainant’s allegations that EMW has violated the NESC and its CCN in Case No. 9470 by going *beyond* those standards are erroneous and should be dismissed. Complainant’s allegations pertaining to the impact of EMW’s transmission line design on

¹² Complainant argues that EMW seeks additional clearance “under the guise of ‘safety,’” to pass costs unto Missouri taxpayers. MOTION TO COMPEL AND REQUEST FOR EXPEDITED TREATMENT, EC-2027-0058, Pg. 3

cost of service and rates lack standing and should be dismissed. Complainant's allegation that EMW's CCN in Case No. 9470 restrict EMW to construction of transmission lines only in the highway right-of-way is erroneous. As the Commission lacks jurisdiction over matters pertaining to eminent domain, including questions of arbitrariness of land acquisition or valuation of land, Complainant's requested relief cannot be granted by this Commission. As such, Staff recommends that this case be dismissed.

WHEREFORE, Staff respectfully files this *Response in Support of Company Motion to Dismiss* in lieu of a Report and Recommendation; on account of all the foregoing, Staff prays that the Commission dismiss this Complaint; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully Submitted,

/s/ Travis J. Pringle

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 13th day of October, 2026.

/s/ Travis J. Pringle