

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

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

MOTION FOR PROCEDURAL SCHEDULE

COMES NOW the Office of the Public Counsel (“OPC”) and respectfully requests an order directing the parties to file a proposed procedural schedule, per 20 CSR 4240-2.110(4), as follows:

The issues raised by these complaints require an additional process ordered by the Commission to enable the Complainants to present their evidence and argument to the Commission under Section 386.390 RSMo.

The issues raised by this complaint also invoke the Commission’s obligations under Section 393.140(5) RSMo to “[e]xamine 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.” The reasonableness of Evergy’s methods and practices of securing property rights are called into question by these complaints. This is not an issue to be decided by a circuit court because it would address Evergy’s

methods and practices generally and make corrections where necessary, which is an authority the circuit courts do not possess.

Missouri courts have held that the certificate authority under which Everygy operates includes “a continuing supervision by the Commission.” *State ex rel. Harline v. Pub. Serv. Com.*, 343 S.W. 2d 177, 183 (Mo. App. W.D. 1960). It also held that “[t]he 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...” *Id.* at 182.

The Missouri General Assembly contemplated the present scenario, wherein a complaint against a public utility gives the Commission insight into a utility’s practices that the Commission might not otherwise have. To address this scenario, Section 393.140(5) further provides:

Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the...acts or regulations of any such persons or 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.

The allegations against Everygy invoke rights protected under the Missouri Constitution’s Bill of Rights. Article 1, Section 2, promoting the general welfare of the people, includes the right to the enjoyment of the gains of one’s own industry – here, their property. It further provides, “that to give

security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.”

For all the above reasons, it is important for the Commission to establish a procedural schedule to enable it to address the complaints and whether Evergy’s actions are lawful; and any further actions the Commission deems appropriate should the Commission conclude that Evergy’s methods and practices are unjust or unreasonable.

Dismissal Would Fail the Public

The Staff’s investigation and recommendation is not evidence by which the Commission can conclude that Evergy’s practices relevant to the complaint are lawful or reasonable, as the Staff and Evergy appear to suggest. Dismissal is improper because the sole question in dismissing for failure to state a claim is whether the complaint “states a cause of action under applicable law.” *Asaro v. Cardinal Glennon Memorial Hosp.*, 799 S.W.2d 595, 600 (Mo. 1990). Violating a Commission order or rule is a clear cause of action under § 386.390 RSMo.

The Commission is guided by the Missouri Supreme Court’s conclusions on motions to dismiss, where it held: “*A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff’s petition. It assumes that all of plaintiff’s averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive.*”

Instead, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.” Bosch v. St. Louis Healthcare Network, 41 S.W.3d 462, 464 (Mo. 2001) (emphasis added). Dismissal of the complaints would be in direct conflict with the Missouri Supreme Court.

Request for a Procedural Schedule

A procedural schedule, and ultimately an evidentiary hearing if requested by the Complainants, will provide the process necessary for the Commission to determine whether Evergy’s practices are lawful and reasonable. To ensure the Complainants are afforded full rights of due process to present their case, the OPC requests the Commission direct the parties to file a proposed procedural schedule that includes an opportunity for the Complainants to present evidence and arguments to the Commission.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission direct the parties to file a proposed procedural schedule.

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 13th day of October 2026.

/s/ Marc Poston
